ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.38 | *Nº Especial*

1era Parte
2020

Contenido

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa

ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185

Depósito legal pp 197402ZU34

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1era Parte

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Vol.38 *Nº Especial*
1era Parte
2020

Cuestiones Políticas

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

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

Cuestiones Políticas aparece dos veces al año y publica trabajos originales con avances o resultados de investigación en las áreas de Ciencia Política y Derecho Público, los cuales son sometidos a la consideración de árbitros calificados.

ESTA PUBLICACIÓN APARECE RESEÑADA, ENTRE OTROS ÍNDICES, EN:

RevicyhLUZ, International Political Science Abstracts, Revista Interamericana de Bikbliografía, Centro Latinoamericano para el Desarrollo (CLAD), Bibliografía Socio Económica de Venezuela de REDINSE, International Bibliography of Political Science, Revencyt, Hispanic American Periodicals (Index/HAPI), UIrich's Periodicals DIrectory, EBSCO; y se encuentra acreditada en el Registro de Publicaciones Científicas y Tecnológicas Venezolanas del FONACIT y Latindex.

Revista Cuestiones Políticas. Av. Guajira. Universidad del Zulia. Núcleo Humanístico. Facultad de Ciencias Jurídicas y Políticas. Instituto de Estudios Políticos y Derecho Público
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IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Nuevas realidades jurídico-políticas en el marco del orden mundial post-coronavirus

DOI: https://doi.org/10.46398/cuestpol.38e.00

Ingrid Julissa Illidge Correa *

Angélica Gavidia Pacheco **

Resumen

La trascendencia del nuevo coronavirus y su impacto, tanto en la vida cotidiana de las personas como en el orden internacional en su conjunto, llevó a Cuestiones Políticas a publicar un número especial en dos partes con el interés de colocar a disposición de la comunidad científica mundial un conjunto de investigaciones de alto nivel que (directa o indirectamente) presentan información valiosa sobre el los efectos del virus, desde la perspectiva del derecho público, la ciencia política y las ciencias sociales. En este sentido, el objetivo del texto es presentar el volumen 38 número especial de Cuestiones Políticas. Se concluye que, al calor del presente histórico, urge reinventar el derecho y, muy especialmente, las concepciones de la política, la economía y del poder para evitar la reproducción de gobiernos autocráticos, la depredación sistemática de los recursos naturales no renovables en el mundo y, al mismo tiempo, empoderar a una ciudadanía activa dispuesta a participar desde las bases, en la construcción de sus propios espacios deliberativos y de convivencia, mucho más cuanto que, todos los modelos de izquierda y de derecha han fracasado a su modo, en mayor o menor medida, en el mantenimiento de un ecosistema sociopolítico y económico sustentable.

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Palabras clave: Nuevas realidades jurídico-políticas; orden mundial post-coronavirus; revista Cuestiones Políticas; ecosistema sociopolítico y económico sustentable; arquitectónica internacional.

New legal-political realities in the framework of the post-coronavirus world order

Abstract

The significance of the new coronavirus and its impact, both on people's daily lives and on international order as a whole, led Political Issues to publish a special issue in two parts with the interest of making available to the global scientific community a set of high-level research that (directly or indirectly) presents valuable information about the virus, from the perspective of public law, political science and the social sciences. In this regard, the objective of the text is to present volume 38 special issue of Political Issues. It is concluded that, in the heat of the present history, it is urgent to reinvent the law and, in particular, the conceptions of politics, the economy and the power to prevent the reproduction of autocratic governments, the systematic predation of non-renewable natural resources in the world and, at the same time, to empower active citizenship willing to participate from the bases, in the construction of its own deliberative and coexistence spaces, much more so since, all left and right models have failed in their own way, to a greater or lesser extent, in maintaining a sustainable socio-political and economic ecosystem.

Keywords: New legal-political realities; post-coronavirus world order; Political Questions magazine; sustainable socio-political and economic ecosystem; international architectural.

Presentación número especial

La trascendencia del nuevo coronavirus (COVID-19) y su impacto multidimensional, tanto en la vida cotidiana de las personas como en el orden internacional en su conjunto, llevó a Cuestiones Políticas a publicar un número especial con el interés de colocar a disposición de la comunidad científica mundial un conjunto de investigaciones de alto nivel que (directa o indirectamente) presentan información valiosa sobre los efectos materiales y simbólicos del virus, desde la perspectiva del derecho público, la ciencia política y las ciencias sociales, número que tenemos el agrado de presentar.

El avance de la pandemia en el 2020 afectó el ejercicio de un conjunto de derechos fundamentales para el resguardo de la dignidad humana, tales como: derecho a la salud, a la educación, a la locomoción libre y a la seguridad social, entre otros, por lo que puso a prueba la capacidad de los gobiernos para propiciar respuestas adecuadas ante la crisis sanitaria y del Estado derecho como garante de la democracia como forma de vida en las civilizaciones modernas. En palabras de Zouev:

> La amenaza sin precedente del COVID-19 ha causado un sufrimiento inimaginable alrededor del mundo. **Este año también desencadenó una discusión necesaria sobre el rol de las fuerzas del orden público en las sociedades**. Aunque la pandemia es en primer lugar una crisis de salud pública, hay retos relacionados que son relevantes para contenerla y para promover una recuperación rápida y sostenible. La lucha por defender el estado de derecho y el rol de las fuerzas del orden público en las sociedades hacen parte de ellos (2020: s/p.) (Negritas añadidas).

La discusión de la que habla el autor citado tiene que ver también, a nuestro modo de ver, con el fortalecimiento del Estado como máxima expresión de la soberanía popular en orienta y occidente a contravía de las doctrinas dominantes del fundamentalismo económico de tipo neoliberal, que apuestan en todo momento por la reducción del Estado, del gasto público y del sector público en general, como condición necesaria para producir crecimiento económico mediante el libre comercio. No obstante, las respuestas a la crisis, para bien o para mal, como es natural no provienen de las grandes corporaciones sino de gobiernos, siempre determinados por la carencia de recursos, corrupción e ineficiencia en el aparato de toma de decisiones.

Estas realidades en desarrollo significan que ¿Se avecina el resurgimiento del Estado de bienestar? ¿Las economías de mercado serán sustituidas paulatinamente por propuestas mixtas como la economía social de mercado? O, más allá de su esencia no-democrática, algunos Estados ubicados en el sur global ¿apostaran por el paradigma socialista y, en consecuencia, por la planificación central de la economía? Aun no hay nada seguro, pero queda claro que tal como postulan Arbeláez-Campillo y Villasmil Espinoza (2020), el agotamiento de los paradigmas constitutivos del orden mundial vigente, sumado a los estragos del coronavirus dará paso a una arquitectónica internacional diferente en el mediano plazo.

Estos cambios venideros, invisibles aun para muchos analistas cortoplacistas, es lo que definimos como Nuevas realidades jurídico-políticas en el marco del orden mundial post-coronavirus. Se trata, nos guste o no, lo queramos o no, de un conjunto de circunstancias materiales y simbólicas que impulsarán transformaciones objetivas y subjetivas en el orden mundial, nacional y regional ante las cuales la doctrina jurídica y la teoría sociopolítica deberán responder reinventándose en sus fundamentos epistemológicos para estar a la altura de los nuevos desafíos históricos que trae consigo el siglo XX en segunda década.

Pero no solo deberá reinventarse el derecho sino también y, muy especialmente, las concepciones de la política, la economía y del poder para evitar la reproducción de gobiernos autocráticos, la depredación sistemática de los recursos naturales no renovables en todo el mundo y, al mismo tiempo, empoderar a una ciudadanía activa dispuesta a participar desde las bases, en la construcción de sus propios espacios deliberativos y de convivencia, mucho más cuanto que, todos los modelos de izquierda y de derecha han fracasado a su modo, en mayor o menor medida, en el mantenimiento de un ecosistemas sociopolítico, ecológico y económico sustentable en el tiempo.

Estas y otras preocupaciones legítimas se ven reflejadas en su conjunto por los artículos publicados en esta nueva edición de Cuestiones Políticas, volumen 38, número especial, primera parte, como un intento de hacer ciencia, no solamente desde las preocupaciones propias de la erudición academicista –lo que es válido por derecho propio– sino también, desde las grandes preocupaciones de nuestro tiempo y espacio en plena sintonía con los problemas que se presentan en la realidad concreta de los diversos mundos de vida.

En la **sección Política latinoamericana**, el artículo de **Panchenko Olha** y otros, intitulado: **Lecturas del miedo y control social en la teoría sociocrítica y posmoderna** abre el presente número. Se trata de una interesante investigación que tuvo por objetico debatir distintas lecturas sobre el binomio: miedo y control social en los dominós del derecho, la teoría crítica de la sociedad, el pensamiento posestructuralista de Michel Foucault y la doctrina del shock, apropósito de los acontecimientos suscitados en el orden mundial por la pandemia de COVID-19.

En la **sección Ciencia política, Mykola O. Yankovyi** y otros presentan su investigación ***Protection of Personal Information in the Medical Sphere of Social Relations*** la cual tuvo por objetivo identificar los principales parámetros jurídicos de la información moderna. Asimismo, el trabajo intitulado: ***Economic and Political Realities and Models of Territorial Structure Development in the South of the Far East*** de la autoría de **Elena S. Koshevaya** y **Tatyana K. Miroshnikova** tuvo por objetivo analizar el impacto de las realidades económicas, políticas y sociales (externas e internas) con enfoque en la reestructuración y organización de la estructura territorial en las sociedades del sur del lejano oriente. También, Tatyana A. Olkhovaya y colaboradores presentan su trabajo de investigación ***Media clips on social fear to regulate individual behavior in temporary involuntary isolation (quarantine)*** el cual se planteó por objetivo revelar la manifestación de la emoción del miedo en el contexto de la pandemia del COVID-19, para determinar los detalles de su aplicación en clips de las redes sociales.

En la misma sección, **Mychailo V. Kostytsky** y otros, presentan su sugestivo artículo de investigación ***National identity in an emerging information society: some problematic issues*** el cual se planteó por objetivo caracterizar la identidad nacional en una sociedad de la información emergente. Del mismo modo, **Volodymyr Lysenko** y colaboradores, investigan el estado actual del tráfico ilegal de mercancías en Ucrania, así como las condiciones básicas que promueven la propagación de la falsificación en este país, junto a los métodos para contrarrestar este fenómeno en su trabajo ***Current state and some issues of countering illegal trafficking in goods in Ukraine***.

Igualmente, **Andrey B. Volynchuk** y **Sergey K. Pestsov** en su artículo intitulado ***Problems of the socioeconomic development of the border territory of the countries of Northeast Asia and their influence on the international integration of peripherals,*** estudian los problemas del desarrollo socioeconómico del territorio fronterizo de los países del noreste asiático (NEA) y su influencia en la integración internacional de periféricos en Asia. También, en ***Rethinking Tourism Public Policies to mitigate the effects of Covid-19,*** **Cynthia Milagros Apaza-Panca** y otros, analizan una muestra de artículos que abordan las políticas públicas de turismo en revistas especializadas a nivel global, con la finalidad de conocer por medio de políticas públicas comparadas, alternativas de solución en un escenario de postpandemia.

Finalmente, en la sección **Ciencia Política, Bahruz Guliyev** presenta un atractivo trabajo que estudia la formación del Periodismo Político Independiente como Institución en Azerbaiyán y, al mismo tiempo, identifica sus áreas de desarrollo y actividad, titulado ***Formation of Political Journalism as Institution in Independent Azerbaijan, its Development and Activity Areas.*** Además, la investigación ***Assessment of Potential Risks of Regional for Global Financial Security*** de **Alexandra Yuryevna Bokovnya** y colaboradores evalúa los riesgos potenciales de monedas digitales estables (CBDC), también conocidas como coins, para la seguridad financiera mundial.

En la **sección Teoría política**, se presenta el artículo ***Student - Volunteer: Aspect of Self-Realization Value in the Context of the Covid-19 Pandemic*** de la autoría de **Olga G. Tavstukha** y otros, el cual tuvo por objetivo identificar los aspectos motivadores de la necesidad de autorrealización de un estudiante voluntario en actividades prácticas para superar el COVID-19. Además, en la misma sección, **Mihail V. Kozhevnikov** y otros describen las condiciones organizativas y pedagógicas para la determinación y el apoyo de la gestión eficaz de los niños superdotados en una institución educativa basada en tecnologías educativas orientadas a la personalidad, en su trabajo ***Organizational and pedagogical conditions for the determination of gifted***

children and support policies for effective management in an educational institution.

También en la misma sección **Raviya Faritovna Stepanenko** y otros, en su trabajo ***Models of Marginality in the Historical-Theoretical and Political-Legal Contexts*** analizan distintos modelos de marginalidad en los contextos histórico-legal y político-legal, respectivamente. Del mismo modo, **Imdad Bayramov** en su trabajo intitulado ***Ethnopolitics - the principles of regulation of ethno-separatism*** estudia los principios etno-políticos más destacados del llamado discurso etnos-separatista, trabajo muy pertinente desde nuestro punto de vista en razón del actual conflicto entre Armenia y Azerbaiyán.

De seguida en la sección Derecho Público, **Andriy P. Cherneha** y otros, exponen su trabajo intitulado: ***State Guarantees of the Right to Housing for War Veterans: Substantive and Procedural Aspects,*** el cual se planteó por objetivo revelar los aspectos problemáticos de la realización del derecho a la vivienda por parte de los veteranos de guerra en Ucrania que participaron en operaciones antiterroristas/operaciones conjuntas. También en la misma sección, se publicó la investigación ***Social and Legal Healthcare Models and Their Functioning During A Global Crisis*** de la autoría de ***Alexandr Anatolievich Mokhov*** y colaboradores, que tuvo por objetivo analizar los modelos de salud existentes en términos de su efectividad legal, económica, social y potencial innovador, en el contexto de su capacidad para resistir las amenazas modernas causadas por cambios en el medio ambiente, ecología, desarrollo de bio-información y otras tecnologías.

Por su parte, **Oksana V. Gorbach** y otros, presentan en esta oportunidad su trabajo ***Creation of the Institute of Medical Law as its Sub-Institute (Sub-Directorate) in the Legal System of Ukraine,*** el cual tuvo por objetivo identificar el concepto de instituto de derecho médico, incluida la justificación de la necesidad de establecer una institución de derecho médico y la consideración de los sub-institutos (subramas) del derecho médico de Ucrania. Igualmente, en la misma sección **Olexander D. Krupchan** y colaboradores muestran un artículo de investigación intitulado: ***Characteristics of the Legislative Regulation of Participation of Representatives and Other Participants in the Civil Process.*** Su objetivo fue probar científicamente que la representación procesal difiere de la representación en el derecho civil, entre otras cosas, en el objeto y naturaleza de la relación que se da entre el representante y el *mandante*, así como en los fundamentos y consecuencias legales de ambos procesos.

También, en la sección Derecho Público **Nataliia V. Vasylieva** y colaboradores revelan una visión conceptual de la aplicación de enfoques innovadores a la formación de servidores públicos en un entorno

descentralizado, en su trabajo intitulado ***Approaches to the formation of Public Administration in the Context of Decentralization Reform in Ukraine.*** Además, **Tamara O. Kortukova** y otros, presentan un interesante trabajo intitulado ***COVID-19: Regulation of Migration Processes in The European Legal Area***, el cual tuvo por objetivo analizar la regulación legal de los procesos de migración dentro del área legal europea en las condiciones generadas por la pandemia de COVID-19.

Irina A. Petrova y colaboradores exhiben un trabajo intitulado ***Historical stages of the transformation of the judicial system and legal procedures in the Russian Empire: case of judicial reform of 1864*** el cual tuvo por objetivo estudiar las etapas históricas de las transformaciones en el sistema y el procedimiento judiciales en el Imperio Ruso en 1864. Asimismo, **Mykhailo Pokalchuk** y otros, analizan el concepto de "trabajo por contrato" en la legislación ucraniana e identifican el alcance de los derechos que surgen con su creación en su artículo intitulado ***Official work in Ukraine: characteristics of legal status and recurring problems.***

En la misma **sección Derecho Público**, el artículo ***Victimology prevention of crimes against the life and health of a child*** de la autoría de **Zeleniak Polina** y colaboradores, se planteó por objetivo proponer un renovado sistema de protección para los niños de prevención de delitos contra la vida y la salud. Del mismo modo, **Strelbytska Lilia** y otros, presentan su trabajo de investigación ***Features of civil liability of police officers for damage caused under the influence of force majeure*** el cual tuvo por objetivo analizar las características de la responsabilidad civil de los agentes de policía de Ucrania por los daños causados bajo la influencia de fuerza mayor.

Seguidamente, Oksana Safonchyk y colaboradores presentan un interesante trabajo intitulado ***Trust Property: Legal Aspects*** el cual tuvo por objetivo efectuar un análisis histórico de la institución de la propiedad fiduciaria para encontrar un posible lugar a la misma en el derecho interno de Ucrania, porque la propiedad fiduciaria es una construcción legal relativamente nueva para la ley de este país de Europa. Igualmente, **Mikhail Larkin** y otros, en su trabajo ***Typical Mistakes during Investigation of Crimes Committed by Youth Informal Groups Members*** se plantearon por objetivo general identificar los errores cometidos por investigadores y otras personas autorizadas para indagar delitos durante el proceso de investigación de infracciones cometidas por miembros de grupos informales juveniles delictivos.

Por su parte, **Sina Mohammadi** examina la política de asilo de la administración Trump aplicada a solicitantes centroamericanos y latinos en particular, en su investigación intitulada ***Latino and Central American Asylum Seekers in the United States of America During the***

Trump Administration. También, **Kyslyi Anatolii** y otros presentan un trabajo de investigación intitulado ***Educational processes of training, retraining and advanced training of private detectives in Ukraine*** el cual tuvo por objetivo realizar un análisis retrospectivo de los actos jurídicos sobre la legalización de las actividades de detective privado en Ucrania y, al mismo tiempo, considerar las características de la formación, el reciclaje y la formación avanzada de los detectives privados con el fin de mejorar aún más la legislación en esta área.

El trabajo ***Mother Company's Responsibility for Multinational Subsidiary Activities*****,** de la autoría de **Hamidreza Foadi** tuvo por objetivo analizar las diversas formas de responsabilidad de las empresas matriz y sus multinacionales subsidiarias en términos de los que significa la responsabilidad social empresarial. Del mismo modo, **Alexander Yuryevich Epikhin** y colaboradores presentan un trabajo intitulado ***Contemporary Criminal and Criminal Executive Law Conflicts and Ways of Overcoming Them*** el cual tuvo por objetivo analizar la definición y correlación de los conceptos de "conflicto" y "competencia" y brindan diversas opiniones de especialistas rusos en derecho penal.

Por su parte, **Alexandra Yuryevna Bokovnya y otros presentan un artículo intitulado *Computer crimes on the COVID-19 scene: Analysis of social, legal, and criminal threats*** que tuvo por objetivo analizar los delitos informáticos en la escena del COVID-19 e identificar sus variadas consecuencias sociales y legales. Asimismo, la investigación ***Methods and Procedural Forms of Protection of Personal Non-Property Patent Rights in Russia de la autoría de*** **Ruslan Borisovich Sitdikov y colaboradores se planteó por objetivo** analizar la regulación legal de la aplicación de métodos de derecho civil, específicamente de derechos personales no patrimoniales en la protección de derechos de patente.

El trabajo de **Seyed Ali Hussein al-Husseini** y otros, intitulado ***Challenges of Iran's Judicial Criminal Policy in Combating Violations of the Country's Economic System*** tuvo por objetivo explicar las deficiencias y lagunas en la política de justicia penal de la República Islámica de Irán, para hacer frente a la perturbación del sistema económico del país y el consecuente desorden que esta política ha creado en el proceso judicial en general. Por su parte, Farzad Hekmatnezhad y colaboradores presentan su investigación ***The Role of Canonical Ruler in Transformation of Hadd to Ta'azir Punishments*** con el objetivo de analizar el papel del gobernante canónico, en la nación persa, en la transformación paulatina de los castigos corporales que promulga la ley islámica en su versión chiita, también conocida como Tazir.

Para cerrar con la primara parte de edición especial, **Mohieddin Mohammadi** y **Garnik Safariani** estudian los conflictos entre distintas

leyes punitivas y su efecto en la creación de diferentes políticas en los tribunales de Irán, en su trabajo intitulado ***The Role of Law in Creating Different Policies in Iran's Court of Justice and Punitive Court.*** Además, **Nesprava Mykola** y otros presentan un trabajo de investigación intitulado ***Christian interpretation of anthropological guidelines for lawmaking*** que tuvo por objetivo destacar los principales fundamentos de la creación humana consagrados en la doctrina cristiana, que sirven como directrices axiológicas para la elaboración de leyes, proporcionando un contenido humanista de la ley. Como coeditoras invitadas reconocemos el compromiso de la Universidad del Zulia y de la revista Cuestiones Políticas, de estar a la vanguardia en la publicación de investigaciones científicas con compromiso social que significan un aporte al desarrollo del derecho público, la ciencia política y las ciencias sociales y humanas en general en la escena de la crisis sistemática mundial.

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Política Latinoamericana

Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 23-42
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Lecturas del miedo y control social en la teoría sociocrítica y posmoderna

DOI: https://doi.org/10.46398/cuestpol.38e.01

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Larysa Rybyk *******

Resumen

Históricamente el factor miedo a las amenazas ha desempeñado un rol fundamental en la legitimación de los sistemas políticos y sociales porque se presentan como la encarnación de un poder para la protección de personas y comunidades ante los distintos peligros que afectan a una sociedad determinada, de ahí que el miedo además se constituye en una fuerza que propicia en cada momento el despliego de los dispositivos del control social, formales e informales para disciplinar y castigar de ser preciso. El objetivo de este artículo científico radica en debatir distintas lecturas sobre el binomio: miedo y control social en los dominós del derecho, la teoría crítica de la sociedad, el pensamiento postestructuralista de Michel Foucault y la doctrina del shock. La investigación transcurrió en las coordenadas de la hermenéutica y la metódica de las entrevistas abiertas con guion semiestructurado como excusa para triangular los postulados de las teorías seleccionadas, la opinión de dos expertos en la materia y la perspectiva particular del equipo de investigación. Entre los hallazgos concluyentes de

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Recibido el 14/05/2020 Aceptado el 08/10/2020

la investigación destacan que en cualquier escenario venidero las estrategias de resistencia civil y movilización ciudadana juegan un rol primordial para inclinar la balanza del lado de las democracias.

Palabras clave: teoría sociocrítica; imaginarios colectivos del miedo; control social; sistemas de dominación; pensamiento contrahegemónico.

Readings of Fear and social control in sociocritical and postmodern theory

Abstract

Historically, the fear of threats factor has played a fundamental role in the legitimization of political and social systems because they are presented as the embodiment of a power for the protection of people and communities against the different dangers that affect a given society, hence that fear constitutes a force that fosters at all times the deployment of formal and informal social control devices to discipline and punish if necessary. The objective of this scientific article is to debate different readings on the binomial: fear and social control in the dominoes of law, the critical theory of society, and the post-structuralist thought of Michel Foucault and the doctrine of shock. The research was carried out in the coordinates of hermeneutics and the method of open interviews with a semi-structured script as an excuse to triangulate the postulates of the selected theories, the opinion of two experts in the field and the particular perspective of the research team. Among the conclusive findings of the research, it is highlighted that in any future scenario the strategies of civil resistance and citizen mobilization play a fundamental role to tip the balance on the side of democracies.

Keywords: socio-critical theory; collective imaginary of fear; social control; domination systems; counter-hegemonic thinking.

Introducción

Desde el surgimiento de los sistemas políticos complejos en ciertas sociedades humanas de la antigüedad como: Sumeria, China, el valle del Indo y Egipto se visualiza la estructuración de un proto-estado que implementa sistemáticamente un conjunto de tecnologías para la dominación y el control

social –en adelante solo CS– como condición de posibilidad para mantener en el tiempo el *statu quo*. En efecto, el CS responde a la necesidad del poder instituido de garantizar que las personas en sus interacciones sociales no trasgredan la concepción de normalidad[8] con base a los parámetros morales que define un tiempo y espacio particular y racionaliza el derecho. Sin lugar a duda, la modernidad del occidente hegemónico ha llevado el CS a horizontes sorprendentes que evocan a ficciones distopías[9].

Al decir de CRIMINA (2014), la noción de CS devela las distintas formas y métodos mediante los cuales el Estado intenta impedir y castigar las llamadas "conductas desviadas" que transgreden lo moralmente aceptable y al mismo tiempo son acreedoras de castigos (sanciones penales), por lo demás: "Diversos métodos se han empleado en las distintas sociedades a través del paso del tiempo con el objetivo de tratar de asegurar la convivencia pacífica o de imponer castigos a aquellos que quebrantaran las normas sociales" (CRIMINA, 2014: 02). No es la intención de esta investigación dar cuenta de las distintas teorías criminológicas sobre el CS y sus variados epifenómenos.

La relación entre derecho y CS es consustancial porque, por un lado, el derecho positivo, esto es, el compilado en los distintos códigos, reglamentos, leyes, edictos y cuerpos normativos en general para estricto acatamiento de las personas y autoridades en sus mundo de vida, *encarga en buena medida los saberes propios de la tradición* y del derecho consuetudinario para determinar lo aceptado o reprochable en una comunidad y; por el otro, el CS sirve especialmente de fuerza legitimadora a los interés de los grupos de poder que vigilan y castigan –de ser necesario– para impedir todo intento individual y colectivo de subvertir el orden societal y, más aún, de implementar uno distinto. Por estas razones y por otras, el CS produce y reproduce *el miedo al castigo* como una suerte de muro simbólico de contención a la puesta en marcha de prácticas disruptivas para la paz y la estabilidad del sistema.

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8 Los trabajos del psiquiatra cercano a los postulados de la Escuela de Frankfurt, Erich Fromm, demuestran que en la sociedad moderna el concepto de normalidad es cuanto menos paradójico y polémico. Se trata de un invento de la psicología clínica para tipificar como patológicas a todas las conductas que no respondan a los requerimientos productivos de la economía capitalista, para la cual solo importa la dimensión económica del hombre en su afán permanente de consumo. Por lo demás, para Fromm (1994; 2003), la idea de normalidad que subyace en la racionalidad instrumental de las sociedades abiertas es patológica por sí misma, porque, entre otras cosas, cuarta toda posibilidad de pensar críticamente. Esta visión no niega la existencia de los trastornos mentales, solo intenta exponer el uso político e ideológico de la psicología clínica y la psiquiatría en tanto herramienta de control social.

9 En este punto pensamos por ejemplo en la novela de la autoría de George Orwell intitulada *1984,* que describe una sociedad totalitaria dominada por una autoridad omnipotente llamada *Gran hermano* que no solo controla a la sociedad, sino incluso el uso del lenguaje y los pensamientos y sentimientos más íntimos de las personas comunes. A la final, la novela termina describiendo como este sistema, con sus múltiples y sofisticados mecanismos de control social, termina literalmente por *quebrar* al personaje principal en su tímido afán de rebeldía y en su intento por desarrollar un proyecto de vida en un umbral mínimo de libertad para *ser y hacer*.

El CS es, por tanto, un fenómeno propio de todas las formaciones sociales a través de la historia, necesario para la gestión del conflicto social que se origina en el reparto desigual de los bienes de valores (Villasmil, 2017) y, de contera, para el mantenimiento de los distintos espacios de convivencia más allá de los conflictos, tensiones y contradicciones que emergen de las relaciones intersubjetivas entre personas, grupos e instituciones. En este sentido, el CS ha suscitado lógicamente el desarrollo de un conjunto de escuelas y teorías que intentan explicar a su modo, desde la perspectiva de disciplinas como: el derecho, la sociología o la criminología; su origen, tecnologías y resultados.

El objetivo de este artículo científico radica en debatir distintas lecturas sobre la dialéctica: miedo y CS en los dominós del derecho, la teoría crítica de la sociedad, el pensamiento postestructuralista de Michel Foucault y la doctrina del shock, por ser *a nuestro entender* los desarrollos contemporáneos que más aportes han efectuado a la comprensión de este fenómeno relacional en clave crítica y contrahegemónica.

Se considera que el objetivo está ampliamente justificado en la realidad pasada y presente que posiciona a los imaginarios colectivos del miedo, como un agente esencial en la legitimación del CS bajo la hipótesis que este sostiene –como una columna vertebral– a los sistemas políticos y sociales que se presentan como la encarnación de un poder vinculante para la protección de personas y comunidades por ante los distintos peligros que afectan su devenir. De ahí que el miedo se constituye además en una fuerza formidable que propicia en cada momento el despliego de los dispositivos del CS, –formales e informales– para disciplinar y castigar personas y colectividades de ser preciso. Esta hipótesis no niega que además del miedo, el CS se justifique en otros factores materiales o simbólicos.

El trabajo se divide en cuatro secciones particulares pero interrelacionadas en su propósito de responder al objetivo de la indagación. El primer punto *Problema y marco teórico*, ilustra sobre el contenido y significación de la literatura científica seleccionada para estructurar el aparato analítico y crítico que sirvió de modelo interpretativo de los fenómenos en debate. En el segundo apartado se explica el proceso metodológico que avaló los resultados obtenidos. En el tercer punto *Miedo y control social en la teoría sociocrítica y posmoderna*, se intentó contribuir –al menos parcialmente– con la resolución del objetivo, al tiempo que se sintetizan los principales hallazgos obtenidos en las entrevistas a dos destacados científicos sociales; por el último, se arriba a las principales conclusiones como un intento de promover un debate académico sobre el miedo/ CS en el convulso mundo de hoy signado por los estragos ocasionados por el COVID-19.

1. Problema y marco teórico

Las teorías críticas que intentan exponer científicamente los abusos y contradicciones autoritarias de los poderes hegemónicos para la dominación social, en beneficio de elites económicas y sociopolíticas que asuman el CS –formal e informal– en su propio beneficio, bien sea para garantizar de forma sostenida el goce y disfrute de un conjunto de privilegios particulares en detrimento de las grandes mayorías o, para imponer una concepción del poder y del orden social que justifica las formas de violencia, explotación y exclusión sobre personas, grupos y comunidades que revindican identidades y prácticas que cuestionan, de algún modo, la noción de normalidad de forma de legitima, no niegan *a priori* la utilidad del CS, con la excepción de los anarquistas.

Por regla general, de lo que se trata en el pensamiento sociocrítico y posmoderno es de explicar, con base a evidencia empírica concreta, las tecnologías de CS que se usan para apuntalar históricamente ordenamientos que en la dimensión política, económica y social menoscaban la dignidad humana y sirven de óbice al desarrollo de una vida de calidad que, como sostienen Nussbaum (2012), *valga la pena ser vivida*. En este hilo conductor el problema se formula en las preguntas: ¿todos los sistemas conocidos de CS precisan como condición de posibilidad de los imaginarios sociales del miedo? ¿Ciertas coyunturas catastróficas como las pandemias auspician el uso arbitrario del CS a través de la inducción colectiva del miedo? Estas y otros preguntas similares se efectuaron a dos investigadores sociales de reconocida solvencia.

Cuando se habla de CS formal, no referimos a las normas, discursos y prácticas que son avaladas y socializadas[10] en todo momento por un conjunto de instituciones sociales (instituciones de poder) como: la escuela, la religión, la familia, las universidades, los órganos del estado, los medios de comunicación y especialmente por el derecho, entre otras, para regular por igual la conducta de las personas concretas en sus interacciones cotidianas. En consecuencia, es el derecho penal la principal disciplina garante del mantenimiento y conservación del orden social, desde la cual se identifican y castigan los ethos que erosionan al "interés general", al tiempo que se edifican las narrativas sobre lo admisible y lo inadmisible, lo valido y lo invalido y sobre lo ético o reprochable para una sociedad (Foucault, 2008).

Por su parte, el CS informal es quizá más difícil delimitar porque se manifiesta en los espacios simbólicos de una cultura particular y, por su naturaleza dinámica e intangible, es susceptible preferiblemente

10 Para un estudio pormenorizado de los procesos de socialización política en general se recomienda consultar el trabajo de MORALES CASTRO, Yolanda Rosa. 2018. Familia y socialización política en Colombia. UNERBM/Universidad del Zulia. Cabimas, Venezuela.

a investigaciones cualitativas pen el marco de la hermenéutico y la fenomenología, para las cuales las escalas de cuantificación no son suficientes cuando se trata de reconstruir fenómenos subjetivos en los que se entrelazan dialécticamente procesos individuales y colectivos, materiales y culturales, afectivos y cognitivos. A veces se da una completa sintonía entre el CS formal e informal, en otros casos, las instituciones objetivas del poder vinculante adquieran parámetros legales que provienen de otras latitudes diferentes y no responden a los saberes y rituales del derecho consuetudinario y la tradición. De cualquier modo, como admite David (1979), los límites que hay entre los sistemas formales e informales de control son tenues y difusos:

> (…) yo he mencionado muchas veces… las contradicciones que hay entre la estructura formalista, universalista, de la Ciencia del Derecho y de los Códigos; y al mismo tiempo, las presiones particulares del poder, amistad, economía, etc., que se dan en la realidad social. De forma tal, que contra un sistema formal tenemos un sistema informal; y ese sistema informal muchas veces contrala y dirige al sistema formal (1979: 33).

La complejidad de las realidades sociales gestadas históricamente rebasa las posibilidades heurísticas y hermenéuticas de las distintas teorías y disciplinas que se esfuerzan en estudiar parcialmente las dinámicas de CS. Esta situación verdaderamente impone una agenda de investigación holísticas e interdisciplinaria, que conjugue o confronte en igualdad de condiciones diferentes enfoques, métodos y perspectivas de análisis.

En el caso latinoamericano, verbigracia, la disonancia entre los modelos institucionales típicos de la modernidad (Márquez Ramírez, 2020) y las realidades socioculturales de los colectivos de esta región ha sido dramática, porque aún hoy discursos políticamente correctos como: derechos humanos, democracia, desarrollo económico o participación ciudadano, no han echado raíces suficientes en la cultura popular ni, muchos menos, en los imaginarios de las elites de poder que siguen ancladas, segundo la relectura de Max Weber de Canelón (2009), a la dominación carismática que propicia el caudillismo y la personalización radical de la política en detrimento del orden legal-racional.

La teoría crítica de la sociedad confeccionada por la primera y segunda generación de la célebre escuela de Frankfurt manifestó un interés central en los mecanismos informales de CS, característicos de las sociedades contemporáneas, modeladas por el eje transversal del consumismo y la democracia representativa de raigambre liberal. En este escenario, obras como: (Horkheimer y Adorno, 1998; Marcuse, 1993; Fromm, 1994; 2003; Habermas, 2000; 1999; Benjamin, 2001) exponen que más allá de la impronta del positivismo y la racionalidad iluminista del siglo de las luces, las libertades individuales son obliteradas en occidente, no solo por los regímenes fascistas y comunistas contrarios a la democracias, sino

que en las mismas "democracias liberales", se despliegan un conjunto de sutiles mecanismos que instrumentalizan la condición humana, dificultan la autodeterminación del ser e impiden, por lo tanto, el ejercicio de la soberanía individual.

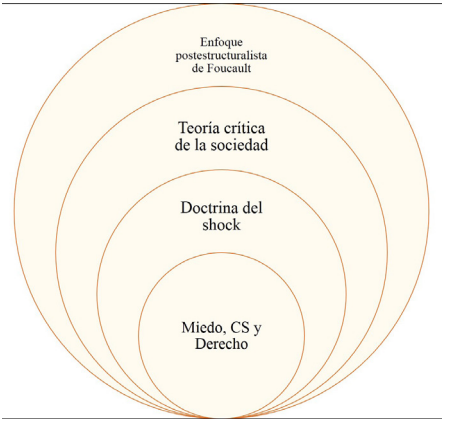

Figura No. 1. Representación concéntrica de las teorías seleccionadas en el estudio (Elaboración propia con base al objetivo de la investigación).

Según Laso (2004), el aporte de la teoría crítica de la sociedad radica en desarrollar precisamente el carácter desmitificador de las ciencias sociales en un mundo que se encuentra en *permanente riesgo de autodestrucción* como resultado de avances tecnológicos que más que ser medios al servicio del desarrollo humano, se posicionan ahora como fines en sí mismos, para apalancar mecánicas de dominación y explotación de personas y naciones enteras.

En consecuencia, la escuela de Frankfurt construyó una epistemología, inter y trans-disciplinaria con base en el psicoanálisis y al marxismo revisionista para denunciar las contradicciones de los modelos políticos, económicos y sociales que emergen de la modernidad y, de igual modo, exponer el papel de las ideologías, el miedo al cambio y el CS principalmente en las "sociedades avanzadas" de la de cada de los sesentas y setentas, apostando por el despertar del pensamiento crítico y asociativo como herramienta de cambio político de cara a la democracia deliberativa y a la democracia de base que dota de protagonismo a la ciudadanía en la construcción de sus propios espacios de convivencia, prescindiendo incluso de la burocracia y el gobierno.

En la misma línea revisionista y contrahegemónica, en la segunda mitad del siglo XX el pensamiento postestructuralista de Michel Foucault propone nuevas miradas inclusivas, para repensar el rol en la sociedad moderna de grupos marginados como: los homosexuales, los prisioneros o los orates –señalados como promotores primarios de conductas desviadas–, desde constructos epistemológicos que dan al traste con la racionalidad positivista. En cierto modo, Foucault es sin proponérselo el primer pensador posmoderno[11] que cuestiona la confianza de la modernidad en una supuesta racionalidad universal capaz de impulsar indefinidamente el avance de las sociedades o, del mesianismo del sujeto proletario para impulsar "revoluciones exitosas" al estilo marxista, devenidas en el socialismo real en totalitarismos.

El filósofo francés formula en sus ensayos (Foucault, 1980; 2002; 2008;) una analítica distinta del poder social, según la cual este no es un recurso o atributo que pueden poseer las elites posicionadas en el vértice de la pirámide social, tal como pensaron marxistas y estructuralistas; sino más bien, un fenómeno relacional simultáneamente simbólico y material que se manifiesta en cada momento por el resultado de una red multivariada en la que confluyen saberes, personas e instituciones de todo tipo desde la base del orden social para desplazarse en todas direcciones.

De hecho, para Foucault los sistemas de dominación y CS, se dan originalmente en el seno de relaciones interpersonales que denominó como *microfísica del poder*. Piénsese, por ejemplo, en un profesor autoritario en el panóptico de un aula de clase, o un hombre machista cuartando las posibilidades de desarrollo de su esposa o, en un empresario xenófobo que contrata migrantes ilegales en el norte global para explotarlos al máximo. Son estas pequeñas dominaciones cotidianas normalizadas o invisibilizadas por la cultura dominante, las que propician las condiciones de posibilidad de la gran dominación sistémica y las que legitiman el CS con base al miedo (Foucault, 2007).

En cuanto al miedo conviene destacar que en muchos casos se presenta como un factor inhibidor de la acción colectiva, retardando los necesarios procesos de cambio que rompen con el estancamiento de la tradición e impulsan –bajo ciertas condiciones– el salto cuántico de la humanidad a una fase cualitativamente superior de su existencia o, al menos, propician acciones de resistencia y protesta social. En este sentido, Hurtado (2015) sostiene que el miedo es un universal cultural y que tiene su manifestación máxima en el temor a la muerte:

11 El pensamiento de Foucault es posmoderno al decir de Canelón (2009), porque cuestiona la racionalidad instrumental y la primacía de la ciencia como operadora de la acción humana y social. Además, reivindica abiertamente las identidades y estilos de vida alternativos que se contraponen a las culturas dominantes. Se trata, en síntesis, de una denuncia a los *grandes metarrelatos* y a la visión evolutiva y lineal de la historia propiciada por liberales y positivistas por igual y, fundamentalmente, de una invitación al reconocimiento por parte de las ciencias sociales y humanas de nuevos o renovados actores sociales y sujetos políticos subordinados por la modernidad como proyecto de investigacion.

> El miedo a la muerte ha acompañado a nuestra especie desde sus orígenes y se encarna en cada uno de nosotros. Como expone Bauman: "**el miedo original es el miedo a la muerte, es un temor innato y endémico que todos los seres humanos compartimos, por lo que parece, con el resto de animales, debido al instinto de supervivencia programado en el transcurso de la evolución en todas las especies animal**es" (2007: 46). Además de este miedo, podemos rastrear desde las primeras expresiones culturales que nos han dejado nuestros antepasados, la presencia del miedo a las fuerzas de la naturaleza, a lo sobrenatural, al otro, al diferente (2015: 267) (negritas añadidas).

Visto así, el miedo es una emoción consustanciada al ser humano desde sus orígenes remotos, que surge normalmente como reacción a fuerzas y situaciones desconocidas que pueden amenazar la vida y tranquilidad de personas y grupos por igual. De este modo, el manejo político del imaginario colectivo del miedo es una variable que entra en los cálculos de todos los gobiernos en general y de los de tipo autoritario en particular.

Al decir de Salazar (2015), en el mundo globalizado de hoy, los *Mass media* han distorsionado su rol informativo para convertirse ahora en una pieza central dentro del engranaje del ejercicio del poder, perturbando las subjetividades colectivas mediante una agenda que genera angustia y zozobra en la población en general. Esta realidad explica el interés creciente de los gobiernos y grupos de poder por controlar y regular no solo la prensa en general, sino, además, las redes sociales y el internet.

En este contexto de erosión comunicacional por parte del discurso hegemónico, los medios se constituyen según Salazar (2015), en el *nuevo dispositivo informal de CS*, remplazando de cierto modo las tradicionales prácticas represivas de las fuerzas del orden público por efecto de la represión ideológica que, en particulares escenarios de arbitrariedad, crisis y medio –agregamos nosotros como la sucedida en la actualidad por el efecto devastador del nuevo coronavirus–, propician la represión ideológica y el deterioro del pensamiento crítico mediante una estrategia de guerra informativa de baja intensidad, que moldea la opinión pública para aceptar o rechazar ciertas matrices o temas de interés, en el marco de un miedo constante y latente que solo beneficia al poder constituido.

Ya en el siglo XXI la connotada obra de Klein (2008) *La doctrina del shock El auge del capitalismo del desastre* es la que mejor sintetiza los postulados del pensamiento sociocrítico y posmoderno. Básicamente se describen aquí los distintos mecanismos a través de los cuales los gobiernos manejan las crisis o, inclusive, las propician o crean deliberadamente para generar las condiciones suficientes y necesarias que permitan adelantar decisiones impopulares a contravía del verdadero interés general de las sociedades. La doctrina del shock expone racionalmente los vericuetos de un experimento social en el que participan el gobierno al más alto nivel y

distintos grupos de poder en alianza con los *mass media*, para controlar las representaciones sociales de una crisis y, primordialmente, *legitimar políticas neoliberales* que profundizan en muchos sentidos la injusticia, la arbitrariedad y la subordinación de grupos y minorías en condición de emergencia social.

No obstante, esta doctrina que busca distraer a los espectadores desprevenidos de las temáticas centrales en los dominios de la realidad social y mediática en las que están inmersos, para anular su repertorio crítico mediante la inducción de un estado de shock o conmoción general, en el cual se terminan por confundir problemas y soluciones, causas y efectos en términos de políticas públicas, responsables y víctimas, no solo es de utilidad para imponer un conjunto de medidas económicas, sino también, todo tipo de planes y proyectos hegemónicos que confunden a las masas, reducen la participación ciudadana activa y apuntalan, en consecuencia, un ordenamiento autocrático sustentado en el miedo a la crisis, independientemente de cuál sea la naturaleza de la crisis.

2. Metodología

La investigación se sustentó en el método hermenéutico por ser el que mejor se adapta a diseños documentales en los cuales prevalece el interés por interpretar y dialogar con un conjunto selecto de texto en su contexto multidimensional. Como indican (Arbeláez-Campillo *et al*, 2018; Arbeláez-Campillo, 2019; Arbeláez-Campillo *et al*., 2020) la hermenéutica implica un tipo de lectura profunda, que no solo se conforma con la exegesis de una obra en particular, decodificando sus mensajes claros u ocultos. Se trata también de una postura epistemológica que asume las realidades textuales y contextuales como una construcción intersubjetiva que refleja la cosmovisión general de una época y cultura determinada, la cual puede ser leída y releída sin llegar a agotar nunca sus verdades intrínsecas.

O modo de técnica para la recolección de información se emplearon las entrevistas abiertas con guion semiestructurado en dos connotados intelectuales latinoamericanos. Por último, se procedió a triangular los postulados de las teorías seleccionadas, la opinión de dos expertos en la materia y la perspectiva particular del equipo de investigación. Por lo demás, el diálogo con los investigadores entrevistados se generó en torno a las siguientes interrogantes:

Objetivo general de la investigación:
❖ Debatir distintas lecturas sobre el binomio: miedo y control social en los dominós del derecho, la teoría crítica de la sociedad, el pensamiento posestructuralista de Michel Foucault y la doctrina del shock.
1. ¿Qué relación hay en la teoría y en la realidad entre las variables: miedo-control social?
2. ¿Todos los sistemas conocidos de control social precisan como condición de posibilidad de los imaginarios del miedo?
3. ¿Ciertas coyunturas catastróficas como las pandemias auspician el uso arbitrario del control social a través de la inducción colectiva del miedo?
4. ¿Hay razones de peso para suponer que en el momento actual signado por la pandemia COVID-2019, ciertos gobiernos están haciendo un manejo de la crisis similar a la teoría del Shock?
5. ¿Cuál sería la estrategia de resistencia más adecuada en el seno de la sociedad civil organizada para rechazar a las políticas de propagación del miedo como control social? en este sentido ¿tienen algún aporte práctico que hacer los paradigmas sociocrítico y posmoderno?

Cuadro No. 2. Guion de preguntas con base al objetivo de la investigación (Elaboración propia).

Como se puede suponer, el texto que se presente se inscribe en el llamado paradigma cualitativo de investigación científica y surge, igualmente, apropósito de la crisis internacional generada desde principios del 2020 por la pandemia del COVID-2019 que bien podría transformar radicalmente el orden mundial vigente dando paso a un *statu quo* signado por el miedo y el CS de tipo autoritario. Del mismo modo, el trabajo en cuestión es en buena medida subsidiario de los aportes gnoseológicos de las teorías y enfoques seleccionados y, especialmente, de las ideas y opiniones suministradas por los sujetos entrevistados, más allá de lo polémicas que puedan resultar en algunos tópicos debatidos.

3. Miedo y control social en la teoría sociocrítica y posmoderna

De conformidad con la experiencia previa desarrollada por Calvano (2019) en el manejo de entrevistas en profundidad, en este apartado se efectúa una sinopsis de los relatos proporcionados a dos voces por el profesor Reyber Parra Contreras[12] y el joven filósofo y politólogo Moisés Flores[13], mediante conversaciones por WhatsApp desarrollas la última semana de mayo de 2020, en razón de la política de cuarentana social implementada como un intento de reducir las posibilidades de contagio del COVID-2019, lo que impidió nuestro contacto cara a cara.

Ante la primera pregunta ganada a indagar la relación que se da, en la teoría y en la realidad, entre las variables: miedo-control social, Parra (2020 a) argumentó que el miedo no es solo una construcción teórica, sino que está presente en las conductas individuales y colectivas de ahí el interés de pensadores como Antonio Gramsci y Michel Foucault, entre otros, por generar teorías que explicaran las implicaciones políticas e ideológicas de este fenómeno que connota CS. Por su parte, Flores (2020), efectuó una reseña histórica para destacar el modo como el CS se ejerció en los gobiernos totalitarios del siglo XX, específicamente por los NAZIS y comunistas de era de Stalin, donde se evidencia una estrategia de deliberada de controlar a las masas mediante la reproducción del miedo, que recuerda –a su modo de ver– la premisa maquiavélica que reza: "Es preferible que te teman a que te amen, porque si te aman pueden hacerte daño, en cambio si te temen no…"

De igual modo, al decir de Flores (2020) lo modelos políticos que se basan fundamentalmente en la inducción social del miedo como garantía de control, erosionan el repertorio de libertades humanas y tienen, efectivamente, pretensión de estructurar un ordenamiento totalitario, esto es, un sistema que no diferencia entre la esfera pública y privada de los mundos de vida y busca controlar por completo la vida de personas y comunidades con base a dogmas e ideologías fundamentalistas que menoscaban la dignidad humana.

Los modelos de "control social duros" funcionan mediante estados policiales que suprimen violentamente todo ápice de libertad individual y librepensamiento (Flores, 2020). Para el filósofo marabino, en el mundo de hoy la cuestión está en determinar hasta qué punto es legítimo un esquema de CS fuerte en democracia para preservar la seguridad colectiva amenazada continuamente por fuerzas antidemocráticas como el terrorismo u organizaciones radicales, sin que este control termine

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asfixiando las posibilidades de ser y hacer propias de un mundo libre que respeta la voluntad y conciencia de una ciudadanía que valora su privacidad y autonomía. En este caso, el CS se daría en el acceso a información sensible o en la amenaza del uso de la fuerza más que en la coerción pura, como condición para garantizar la propia existencia y autoridad del Estado y su *status quo*.

Para responder a la segunda interrogante sobre si los sistemas conocidos de control social precisan como condición de posibilidad de los imaginarios del miedo, Parra (2020 a) sostuvo que, a su criterio, todos los sistemas de CS propician, en mayor o menor medida, el miedo para inhibir las conductas que atentan contra el orden establecido que se busca preservar a toda costa. El problema radica cuando solo se usa el miedo como forma de controlar a las masas en detrimento de los incentivos que proporciona la legitimidad por desempeño de un modelo y de una gestión en particular que, se gana el compromiso y aceptación de las personas bajo la premisa que el orden que se tiene beneficia el desarrollo de sus vidas y es, por tanto, más deseable que el caos o la rebelión permanente propia del momento pre-estatal o el llamado estado de naturaleza.

Ante la misma pregunta Flores (2020), argumento que en los sistemas realmente democráticos la necesidad del CS formal es mínima toda vez que existen –al menos en teoría– un conjunto de leyes y protocolos racionales desarrollados consensuadamente entre los órganos del poder público y la sociedad en general, los cuales permiten gestionar la conflictividad social e incluso situaciones catastróficas sin la necesidad de apelar al uso arbitrario del poder, tal como se visualiza, verbigracia, en la figura límite del Estado de excepción que viene a sustituir en el constitucionalismo contemporáneo y más concretamente en los paradigmas jurídicos del *Estado social de derecho y de justicia* o en el *Estado constitucional de derecho*, al *toque de queda* que suspendía el goce y disfrute de las garantías constitucionales básicas.

Sin embargo, Flores (2020) reconoce que en la práctica en ciertas situaciones de catástrofe o calamidad colectiva pueden desbordarse los protocolos que regulan la acción coercitiva de la fuerza del Estado por el factor humano, generando un escenario de crisis y de violencia general que amerite el uso del *control social duro* como condición de posibilidad para rescatar un umbral mínimo de gobernanza y gobernabilidad, sin el cual no es posible la convivencia. Estas situaciones de estallido social que se dan por causas multidimensionales siguen suscitando acalorados debates entre juristas, filósofos y científicos sociales que oscilan entre posiciones libertarias que defienden la *desobediencia civil* y el *derecho de resistencia a la opresión*, hasta perspectivas neoconservadoras que justifican bajo ciertas condiciones la violencia de Estado como recurso indiscutido para la auto-preservación del orden sistémico.

Al formular la tercera interrogante ¿Ciertas coyunturas catastróficas como las pandemias auspician el uso arbitrario del control social a través de la inducción colectiva del miedo? Parra (2020 a) sostiene que las circunstancias catastróficas han servido históricamente para manipular el miedo colectivo e inhibir las conductas que no favorecen al sistema político. Ante las amenazas latentes o reales las personas y grupos que ocupan los principales espacios de poder vinculante se aprovecha de la situación para neutralizar, no solo las llamadas "conductas desviadas" sino hasta prácticas como el pensamiento crítico y la libertad de expresión, realidad mucho más patente en gobiernos poco o nada democráticos que se sirven de la teoría del shock.

Del mismo modo, Flores (2020) supone que hay sociedades mucho más disciplinadas que otras y, en consecuencia, son capaces de autorregularse y responder sin necesidad de la intervención de un *locus de control externo* de formas eficaz y efectiva a situaciones de emergencia colectiva. Tal es el caso, por ejemplo, de Japón, que ante contextos de tsunamis u otras calamidades naturales no reacciona con saqueos o disturbios. No obstante, existen también formaciones sociales menos cohesionadas como el caso de la sociedad norteamericana en la cual las situaciones de emergencia social demandan del uso arbitrario del CS para reducir el caos. En estos casos, el poder militariza a la sociedad con el pretexto de recuperar el orden obliterado por los focos de violencia social.

A nuestro modo de ver, las situaciones de catástrofe como las pandemias, entre otras, sacan a relucir un conjunto de problemáticas de diverso signo subyacentes en el seno del tejido social, invisibilizadas por la cotidianidad, tales como: la discriminación racial, la subordinación de minorías, la injusticia social, los desequilibrios económicos y las hambrunas, que en el caso del mundo coetáneo, demandan respuestas urgentes (Parra, 2020 b).

La cuarta pregunta indaga sobre si hay razones de peso para suponer que en el momento actual signado por la pandemia COVID-2019, ciertos gobiernos están haciendo un manejo de la crisis similar a la teoría del Shock, a lo cual Parra (2020 a) sostiene que sí, que los gobiernos que no se orientan por un contrato social democrático se valen de la tragedia del COVID-19 para manipular la información y presentarse como "dueños de la verdad de lo que acontece"; en esta ecuación se propaga el miedo al virus y se apuntalan aún más las tecnologías de CS aun punto que recuerda los postulados del biopoder de Foucault, mediante el cual ya no solo se controlan el uso de los espacios públicos sino además el cuerpo humano, delimitando las normas de higiene personal, conductas y hábitos alimenticios mediante las normas de bioseguridad. Aquí el estado vigila la disciplina y castiga a los infractores.

Por su parte, ante la misma pregunta Flores (2020), señala que conviene revisar desde que perspectiva se emplea y entiende a la teoría del shock

porque se trata de un concepto imaginado por un autor de izquierda para describir originalmente como gobiernos neoliberales se sirven de ciertas crisis para implementar políticas que reducen al estado de bienestar y erosionan los parámetros de seguridad social que adquieren desde la *declaración universal de los derechos Humanos de 1948*, la categoría de derecho fundamental. Por lo tanto, toca identificar en la investigación social más allá de la reflexión teorética ¿cuáles políticas y en qué países? se implementan en el sentido que señala Naomi Klein.

Además, interesa precisar también de qué modo gobiernos de *izquierda radical* en el mundo, ganados a las economías planificadas se sirven de la teoría del shock sin necesariamente implementar políticas neoliberales. Desde nuestra perspectiva, la opinión de Flores (2020) es mucho más pertinente cuanto que la tendencia internacional en el manejo de la pandemia ha significado un reposicionamiento del estado nacional como principal garante del bienestar colectivo, a contravía de los postulados del estado mínimo y de la iniciativa privada como factores regulares del conflicto social postulado por los fundamentalismos economicistas.

En definitiva, Flores (2020) asegura que el caso de la pandemia del COVID 19 la crisis no tiene necesariamente nada que ver con lo postulado en la teoría del Shock, porque nadie creo deliberadamente la crisis y las políticas neoliberales que promocionan el Fondo Monetario Internacional o el Banco Mundial no se adaptan en nada a los requerimientos sanitarios del momento que demandan maximizar los servicios de salud pública. Argumentar en contrario sería –desde su punto de vista– incurrir en los dominios de la teoría de la conspiración o de simple especulación sin conexión con los hechos.

Al responder a la última pregunta formulada para determinar cuál sería la estrategia de resistencia más adecuada en el seno de la sociedad civil organizada, para rechazar a las políticas de propagación del miedo como CS y, en este sentido, valorar si tienen algún aporte práctico que hacer los paradigmas sociocrítico y posmoderno seleccionados por los autores de este trabajo, Parra (2020 a) sostiene que la mejor estrategia de resistencia implica el manejo social de información veraz que refleje la realidad.

Esta es la diferencia esencial de las poliarquías con los sistemas autocráticos, donde el manejo de la información basado en la ideología y la propaganda distorsiona más bien la realidad, al tiempo que desinforma a las masas. Parra (2020 a) argumenta asimismo que incluso en contextos de información tendenciosa o de poca calidad las personas pueden desplegar su pensamiento crítico y buscar mejores fuentes de información que apuntalen su conocimiento de la realidad e informen en cada momento su proceso de toma de decisiones.

En contraste, Flores (2020) señala que, si fuera el caso de que algunos estados nacionales negaran arbitrariamente el goce y disfrute de los derechos humanos con la excusa de manejar la pandemia, entraríamos a un panorama que justifica el despliegue de estrategias de resistencia por parte de la sociedad civil organiza, ahí donde existe una sociedad con conciencia histórica y política dispuesta a resistir. En líneas generales, no existe al menos en las democracias occidentales una política de propagación del miedo como CS, se trata hasta ahora de un evento natural que surge cíclicamente en la historia humana como lo son las pandemias.

Según Flores (2020) son los medios de comunicación social, quizá sin proponérselo, los que socializan el miedo y hasta la paranoia colectiva a la epidemia. Recuerda el caso de Guayaquil donde se vivió un lúgubre fenómeno de quema colectiva de cuerpos en la vía pública por el colapso de los servicios públicos, reseñado sin ninguna discreción por la prensa de mayor divulgación a nivel mundial. Coincide con Parra (2020 a), en que la mejor estrategia de resistencia civil ante la crisis y el uso político de la calamidad consiste en informarse con fuentes fidedignas para hacer una lectura coherente de la realidad local, nacional y mundial. Se trata, tal como señala Albert Camus en su afamada obra *La peste* de 1947, de resaltar el valor de la solidaridad humana para ayudar a los que más lo necesitan y más sufren ante la enfermedad y su consecuente parálisis económica.

Conclusiones

- En el proceso de triangulación que vinculó dialécticamente una muestra de la teoría sociocrítica y posmoderna, con el relato de dos destacados científicos sociales no existe, a nuestro modo de ver, mayor disparidad o disonancia de criterios, salvo en sentido que Flores (2020) ve a la teoría del Shock como un constructo poco adecuado para explicar el actual escenario internacional signado por la pandemia del nuevo coronavirus. Se da más bien una relación de complementariedad entre las teorías y opiniones recabadas que converge también con la opinión de los autores de este artículo.
- Desde la perspectiva del equipo de investigación queda claro que el miedo se presenta como un factor inhibidor de la acción colectiva, retardando en muchos casos los necesarios procesos de cambio que rompen con el estancamiento de la tradición e impulsan –bajo ciertas condiciones– el salto cuántico de la humanidad a una fase cualitativamente superior de su existencia o, al menos, propician acciones de resistencia y protesta social. Por lo demás, supera las posibilidades de esta investigación determinar en qué países y contextos se exacerba el natural miedo a la enfermedad con fines de CS.

- Por las razones descritas conviene alertar, en la labor de investigación científica con independencia de su enfoque, disciplina y método, que la teoría no puede en ningún caso sustituir la evidencia empírica concreta que se debe recabar en la propia realidad, como entidad única y particular en cambio permanente.
- Cuando se intenta debatir distintas lecturas sobre el binomio: miedo y control social en los dominós del derecho, la teoría critica de la sociedad, el pensamiento postestructuralista de Michel Foucault y la doctrina del shock, surgen hallazgos inesperados de orden gnoseológico. Todo indica que el distanciamiento histórico del derecho, en tanto ciencia jurídica, con el patrimonio epistemológico compartido por las ciencias sociales de cara al pensamiento crítico han repercutido en el debilitamiento del primero cuando se trata de entender en profundidad las situaciones de crisis y calamidad colectiva.
- En este sentido, conviene impulsar el desarrollo de un derecho crítico que no solo se ocupe del estudio de la producción normativa que sirve de sostén al orden establecido, sino además de propiciar la transformación ordenada y justa de los modelos políticos, económicos y sociales cuando así lo amerite el movimiento histórico.
- Al parecer la pandemia del COVID 19 tiene el potencial de desarticular de formas inusitadas el orden mundial vigente hasta el momento presente tal como demuestran Arbeláez *et al* (2019). Consecuentemente, el uso arbitrario del CS dependerá en cada caso del modo como las tendencias democráticas o autocráticas logren determinar el curso y el contenido de los nuevos o renovados modelos políticos y económicos que se edifiquen o mantengan en cada país y sociedad. De cualquier modo, las estrategias de resistencia civil y movilización ciudadana juegan un rol primordial para inclinar la balanza del lado de las democracias y ganar más espacios de poder no regimentado en los escenarios venideros.
- Por último, los autores de la investigación postulan la necesidad de diseñar una teoría interdisciplinaria del CS que parte de los aportes epistemológicas del paradigma jurídico, sociocrítico y posmoderno pero que vaya más allá en su afán compresivo y explicativo, toda vez que los modelos debatidos provienen de realidades muy distintas a la latinoamericana y de una época en la cual las tecnologías de dominación y control no habían avanzado tanto como ahora en el siglo XXI, donde prevalece el uso generalizado de la inteligencia artificial, las nuevas tecnologías de comunicación y la internet.

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Ciencia Política

Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 44-62
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Protection of Personal Information in the Medical Sphere of Social Relations

DOI: https://doi.org/10.46398/cuestpol.38e.02

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Abstract

The purpose of the work was to identify the main legal parameters of modern information. As material sources of research at work, not only the Ukrainian regulations in the field of medical relations information are used, but also relevant innovations in the legal regulation of medical information relations, which are produced in the countries of the European Union. It is established that in the normative legal acts of Ukraine, unlike in European legislation, there is no division of information about an individual into general data and vulnerable personal data. The laws of Ukraine do not contain the notion of "public figure", whose limits of criticism, according to the European Court of Human Rights, are broader for an ordinary person. Among the main conclusions, it stands out that, in order to guarantee the freedoms and rights of citizens, it is necessary in the regulations to classify groups, lists of personal data and access to them based on the secret classification to avoid ambiguities. The materials in the article have practical value for graduates of higher education institutions of police and medical specialties, among others.

Keywords: personal health information; right to protection of information; sensitive information; legal relationships, legal regime of medical information.

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Recibido: 01/04/2020 Aceptado: 01/08/2020.

Protección de la información personal en el ámbito médico de las relaciones sociales

Resumen

El propósito del trabajo fue identificar los principales parámetros jurídicos de la información moderna. Como fuentes materiales de investigación en el trabajo no solo se utilizan las regulaciones ucranianas en el ámbito de la información de las relaciones médicas, sino también las innovaciones relevantes en la regulación legal de las relaciones de información médica, que se producen en los países de la Unión Europea. Se establece que, en los actos jurídicos normativos de Ucrania, a diferencia de la legislación europea, no existe una división de la información sobre un individuo en datos generales y datos personales vulnerables. Las leyes de Ucrania no contienen la noción de "figura pública", cuyos límites de crítica, según el Tribunal Europeo de Derechos Humanos, son más amplios para una persona común. Entre las principales conclusiones destaca que, para garantizar las libertades y derechos de los ciudadanos es necesario en la normativa clasificar grupos, listas de datos personales y el acceso a los mismos en función de la clasificación de secreto para evitar ambigüedades. Los materiales del artículo tienen valor práctico para los graduados de instituciones de educación superior de especialidades policiales y médicas, entre otros.

Palabras clave: información médica personal; derecho a la protección de la información; información sensible; relaciones legales, régimen legal de la información médica.

Introduction

The relevance of this article is that in general in the Ukrainian legislation the basic norms governing the circulation of personal information of persons were introduced ten or more years ago and have not been significantly revised at the legislative level by now. In contrast to a number of European countries, which have revised internal regulations in accordance with the General Data Protection Regulation since 2018, which came into force on 25 May 2018 and contains provisions and requirements for the processing of personal information of data subjects within the European Union. In addition, when applying to health care facilities, the patient agrees to the processing of their data, but the question arises as to how this data is protected, who has the right to access this personal data. Unfortunately, to date, this issue remains unresolved. All regulations that have been adopted do not cover the concept of vulnerable personal data of the patient and,

in general, there is no legal differentiation of types of personal medical information (Kerimov *et al.,* 2018a).

At the same time, today in Ukraine, in the context of informatization of society, the entire state system is being restructured, with the aim of strengthening the role of analytical activities and as a result of accumulation and analysis of large arrays of personal data, which cannot but affect the collection, storage, analysis and dissemination of data (information). Therefore, the study of problems that arise in the processing of personal medical data and the application of the legal regime of information and medical social relations becomes increasingly relevant today. Issues of personal data are dealt with by such scientists as O.A. Bedenko-Zvaridchuk (2019), V. Brizko andmM. Shvets (2006), O.A. Dmitrenko (2012), K.Y. Ismailov (2020a; 2020b), A.A. Pismenytsky and V.D. Gapoty (2012), A.M. Chernobay (2006) etc.

The purpose of our work is to establish legal parameters that determine the status of subjects that are the owners of medical personal information databases. At the same time, there is a need to find out the ways of legitimizing on the legislative bases of these bases, as well as to determine the extent of legally significant issues concerning categorical apparatus and terminological legal defects that arise in the information and legal circulation in the medical sphere of social relations. In turn, such a direction of the study leads to the formulation of certain proposals to improve the national information law.

1. Materials and Methods

As material sources of research in the work, not only national legal acts in the information sphere of medical legal relations are used, but also corresponding innovations in the legal regulation of medical information relations, which are formed in the states of the European Union. Scientific research publications of scientists working about information and legal regulation of social relations and, in particular, in the medical sphere, are also used (Kerimov *et al.,* 2018b).

The methods which are used in this work are primarily formed under the influence of philosophical dialectics and rely on logical techniques that are often inherent in legal research and legal practice in law enforcement. In particular, the technical and legal method allows to generalize the analytical material aimed at streamlining information social relations in the medical sphere. Materialistic-dialectical approach makes it possible to focus in the work on the disclosure of structurally significant elements of the terminology of information relations, with the simultaneous comparison of their content features with adjacent and close to content categories that

have different legal mode of their turnover (Kerimov *et al.,* 2018c; Lapidus *et al.,* 2018a).

The methodological basis of the study is a set of methods and techniques of scientific knowledge. Their application is due to a systematic approach, which makes it possible to explore problems in the unity of their social content and legal form: logical-semantic method deepens the conceptual apparatus; structural-logical and comparative-legal method was used for the analysis of structural elements; theoretical – for the study and analysis of statistical information, scientific and methodological literature, generalization of information to determine the theoretical and methodological foundations of the study; logical analysis – to formulate the basic concepts and classification; comparative law method was used to compare the rules of foreign law; dogmatic method – to determine the content of legal terms used; concrete-historical – to demonstrate the dynamics of development; statistical method is used to analyze and summarize empirical information related to the research topic; dialectics – to establish the content and features of the constituent elements; empirical methods – to generalize experience; the method of forecasting was widely used in the work in the development of proposals. The empirical basis of the study consists of the laws of Ukraine and other domestic regulations, legal acts of the EU, the Council of Europe, and other international legal documents (Kerimov *et al.,* 2017; Lapidus *et al.,* 2018b).

1. Results and Discussion

1.1. Specifics of protection of personal data in Ukraine and Europe

The effect of the Law of Ukraine "On Protection of Personal Data" extends to all subjects of economic activity in the medical sphere, regardless of the form of ownership and departmental subordination. That is, not only budget health care institutions, but all private and private practitioners should register the databases of their personal data. In this regard, the Resolution of the Cabinet of Ministers of Ukraine dated 06.06.2012 No. 546 "On approval of the electronic register of patients" (Regulation of the Cabinet of Ministers of Ukraine, 2012) adopted by the National Action Plan for 2012 on the implementation of the economic reform program for 2012-2014, which provides for the establishment of an electronic register of patients (Decree of the President of Ukraine, 2010).

The electronic register of patients is the only state information system for collecting, registering, collecting information about a patient, and receiving medical care. The register is created with the purpose of increasing the

efficiency of medical care, ensuring timely delivery of it, modernization of primary medical care. The electronic register of patients does not cancel the registration of forms on paper. Collecting, processing, and entering into the register of patient data will be carried out solely with his consent (Kerimov *et al.,* 2019; Kerimov *et al.,* 2016).

The register is created with the purpose of increasing the effectiveness of medical care, ensuring the timeliness of its provision and the reliability of statistical information. It is the only information system for collecting, registering, storing, storing, updating, using, and disseminating through the dissemination, implementation, transmission, and destruction of information about an individual and his or her medical care. The registry is an information resource of the Ministry of Health, which is conducted using information technology, electronic document circulation and electronic digital signature. It is worth pointing out that institutions of health care of all forms of ownership are obliged to enter in the register information about:

1) An individual contained in the medical records approved by orders of the Ministry of Health.
2) A health care facility in which the patient was provided with medical assistance.
3) The type of medical care provided to the patient.
4) Medicines and medical products purchased for the treatment of the patient at the expense of the state and local budgets.
5) The consent of the patient to processing personal data in the form prescribed by the Ministry of Health.

The main information unit for the register is the form of primary accounting document No 025/o "Medical card of the outpatient patient", approved by the Order of the Ministry of Health of Ukraine dated February 14, 2012 No 110, registered with the Ministry of Justice of Ukraine on April 28, 2012 under No 661/20974 (Medical card of outpatient patient of the Ministry of Health of Ukraine, 2012).

The owners of register are health care institutions. They, with the consent of the patients to process their personal data, enter the information in the register, process it and provide protection of the personal data which are entered in the register. The exchange of information between health care institutions is carried out with the help of a telecommunication network with the provision of information security in accordance with the requirements of the legislation. Sources of registry formation are passport documents or other identification documents and primary records of health care institutions. The register is formed by creating electronic databases to maximize the automation of the accumulation and processing of information. The reason

for entering a physical person (patient) in the register is the fact of the patient's referral to the health care institution and his written consent to the processing of personal data.

The introduction of the electronic registry of patients raises a number of problems due to the lack of qualified staff, the lack of quality computer equipment, the poor quality of Internet services in hospitals and the high cost of maintaining the database, the lack of regulation and the specific order of the destruction of personal data of health workers and patients. It should be emphasized that, according to European standards, personal data is divided into general data (surname, name, date and place of birth, citizenship, place of residence) and personal (sensitive) personal data (physical and mental health data, ethnicity, racial affiliation, attitude to religion, political views, identification codes or numbers, fingerprints, tax status, convictions, images, sexual life, etc.).

There is no such division in the Ukrainian legislation, that is, the distribution of the surname and the name of the person can be carried out only with the written consent of the person. At the same time, the law does not provide for the possibility of distributing personal data if it is of public interest, which is a significant restriction of freedom of speech. This contradicts the provisions of other laws, for example, the Law of Ukraine "On access to public information". The law significantly complicates the regulation of these relationships. For example, it obliges to inform the subject of personal data about inclusion in the database of his personal data. At the same time, according to the Law, any processing of these data and so is possible after obtaining the consent of the subject for such processing. It remains unclear what the expediency of such a double notification, carried out exclusively in writing (Kuznetsov *et al.,* 2018).

In the European Union, on May 25, 2018, new data protection regulations entered into force called General Data Protection Regulation (GDPR) (Statement by Vice-President Ansip and Commissioner Jourová ahead of the entry into force of the General Data Protection Regulation, 2018). The regulation updates and modernizes the principles enshrined in the 1995 Data Protection Directive to guarantee the right to privacy. It gives EU citizens more rights as to how their personal information is used. All EU citizens have the right to see what information the company has about them and may require that this information be deleted. Taking into account the aspiration of Ukraine to join the EU, national legislation should also be oriented towards the relevant standards.

Companies operating in the EU should get a clear agreement on the collection of personal information, otherwise they will be faced with high fines. Companies should also provide information to all interested users about any breach of data and notify control authorities within 72 hours. Each EU member state should set up a supervisory authority and these

authorities will work together to ensure that companies comply with the rules. "Changes will give people more control over their personal data and facilitate access to them, designed to ensure that personal information is protected, regardless of where it is sent, where it is processed or stored, even outside the EU, as it often happens on the Internet" (The EU has entered into force new rules for the protection of personal data, 2018).

1.2. Mechanism of action of Ukrainian personal data protection

The Law of Ukraine (2010) "On Protection of Personal Data" applies to all economic entities in the medical sphere, regardless of the form of ownership and departmental subordination. That is, not only budget medical institutions, but also all private clinics and private practitioners should register the bases of personal data held by licensees.

To begin with, we need to find out what kind of information relates to personal data of a person and is processed in medical institutions and privately practiced medical staff? Personal data is the information or set of information about a patient, employee or partner (individual) that allows you to identify this person. Data on which a person can be identified include all passport details, as well as some other information: surname, name and patronymic; age or date and place of birth; residence; identification number (code); social status; benefits according to the law (single mothers, women with children up to three years, Chernobyl's, minors, pensioners, etc.); the fact of applying for medical assistance, receiving medical care or medical services by a person-patient, participating in clinical trials of drugs, etc.

With all these categories, information about a person is more or less confronted in the work of the staff of health care institutions and privately practicing medical staff in the provision of medical care or medical services. In order to reveal the specifics of personal data processing and the creation of personal data bases in a health care institution, one should shift away from understanding when, where exactly and by whom such activities are carried out (Pogosyan *et al.,* 2018).

At the first visit, submission of a resume by the applicant to fill a vacant position or sign any cooperation agreements / memoranda, a person (individual) gives you – a representative of a medical institution or a private practitioner-a medical practitioner most of the personal data mentioned above. Thus, the collection of personal data of a specific person occurs. When filling in the medical, personnel or accounting legal documentation, the processing and systematization of the information received, as well as the introduction of information into the general catalog – the formation

of a database of personal data in a particular direction (Zheltukhin, 2012; Bedenko-Zvaridchuk, 2019).

It should be noted that the personal data of one person (individual) can fall into different bases and bases of your treatment-and-prophylactic institution. Accordingly, processed, systematized, and formed in the database of information will be different employees of your health center. For example, a Doctor Ivanov, an employee of your hospital, filed a staff member with his personal data on employment. During the process, your employee received some medical care or medical service, and his personal data got into the database of patients of your hospital (Pogosyan *et al.,* 2019).

Later, you held a seminar with the participation of a speaker of a leading specialist in his field of medical knowledge – a doctor of the highest category, Ph.D. I.I. Ivanov. After the lecture you paid, you paid the doctor I.I. Ivanov's fee based on the cooperation agreement. And the personal data of your employee has fallen into the database of partners, individuals. Private practitioners usually process, systematize personal data and form them in appropriate bases individually (Portnova and Portnova, 2019).

Processing of personal data is any action or set of actions performed in whole or in part in the information system (automated) and / or in personal data files that are associated with the collection, registration, accumulation, storage, adaptation, modification, renewal, use and distribution (distribution, realization, transfer), impersonation, destruction of information about an individual.

The database of personal data is a named set of ordered personal data in electronic form and / or in the form of personal data files. In a medical institution, personal data of persons can be processed by the person responsible for keeping the personnel records, the medical registrar at the person's address to the medical institution, the medical staff of the departments and offices, the staff of the department of statistics, accounting, private practitioners, etc. (Portnova, 2018; Portnova, 2019).

In accordance with Article 2 of the Law of Ukraine "On Protection of Personal Data" (Law of Ukraine, 2010), the owner of the database of personal data is a natural or legal person, which by law or with the consent of the subject of personal data granted the right to process these data. The BPD owner approves the purpose of processing personal data in this database, establishes the composition of these data and the procedure for their processing, unless otherwise specified by law.

That is, all health care institutions, regardless of the forms of ownership and departmental subordination, as well as private practitioners, are the owners of personal data bases. A personal data base manager is a natural or legal person who has the right to process this data by the owner of the

personal data base or by law. Usually, the manager of the personal data base in a medical institution has an employee, who will be required to process personal data, their formation in the database, updating the data, etc. The list of such persons is given in the answer to the previous question.

A third person is any person, with the exception of the subject of personal data, the owner or keeper of the database of personal data and the authorized state body for the protection of personal data, which the owner or manager of the personal data database transfers personal data in accordance with the law. For example, the third party will be the pharmaceutical company, which handles presents to pregnant women and newborns in the postpartum department. The personal data of the indicated patients are formed in the appropriate base of the hospital, and transferred to this pharmaceutical company.

There are several types of personal data bases in a health facility. The treatment and prevention institution can have three types of databases with sub bases, namely: 1) the database of personal data of employees; 2) the database of personal data of patients; 3) the database of personal data of partners – individuals.

Legally stipulated subjects and the sequence of the registration of the databases of personal data of a medical institution. According to the Law, the registration of personal data bases is carried out by the owner of the personal data base by submitting a corresponding application to the State Service for the Protection of Personal Data. By the time of submission of the respective application, the owner or his authorized person must develop a Regulation on the processing and protection of personal data in a medical institution and appoint responsible persons, to make changes in their job descriptions. The application for the registration of personal data bases indicates:

- Application for entering the database of personal data into the State Register of personal data bases.
- Information about the owner of the database of personal data.
- Information about the name and location of the database of personal data.
- Information about the purpose of processing personal data in the database of personal data.
- Information about other managers of the database of personal data.
- Confirmation of the obligation to comply with the requirements for the protection of personal data established by the legislation on the protection of personal data.

There is a certain procedure for confirming the fact of receiving an application and registering personal data bases. Thus, the State Service for the Protection of Personal Data on the next business day from the date of receipt of the application for registration of the personal data bases informs the applicant about its receipt. Within ten working days from the day the application is received, the State Service for Personal Data Protection decides to register a personal data base or refuse to register. In the case of a positive decision, the owner of the personal data base shall issue a document of the established sample on the registration of the personal data base in the State Register of personal data bases named a certificate.

The State Service for the Protection of Personal Data refuses to register a personal data base if the application for registration does not meet the requirements for the volume and quality of information to be contained in the application. Regarding the rights that a patient or legal representative of a patient has in the processing of personal data, in this aspect, the patient, personally, and lawful representative, in cases determined by law, have the right:

1) Provide voluntary consent to the processing of personal data of a patient.
2) To be informed about the collection and processing of personal data of the patient.
3) Be informed about the location of the database of personal data containing his personal data, its purpose and name, location and / or residence (residence) of the owner or manager of this database.
4) to receive information about the conditions for granting access to personal data, including information about third parties to which his personal data, contained in the appropriate database of personal data, are transferred.
5) Access to their personal data contained in the relevant database of personal data.
6) receive no more than thirty calendar days from the date of receipt of the request, except in cases provided by law, the answer as to whether his personal data is stored in the appropriate database of personal data, as well as to obtain the contents of his personal data stored.
7) Make a motivated request for the change or destruction of their personal data by any owner and manager of this database if these data are processed illegally or are unreliable.
8) to protect their personal data from unlawful processing and accidental loss, destruction, damage in connection with the deliberate concealment, failure to provide or late delivery thereof, as well as

protection against the provision of information that is unreliable or defame honor, dignity and business reputation an individual.

9) Apply for the protection of their rights regarding personal data to bodies of state power, bodies of local self-government, whose powers include the protection of personal data.

10) To apply remedies in case of violation of the legislation on protection of personal data.

The rights of the patient to protect personal data may also be performed by a legal representative.

According to the Civil Code of Ukraine, the legal representative of a person is: 1) parents (adoptive parents) are the legal representatives of their juvenile and infant children; 2) the guardian is a legal representative of a juvenile and a person recognized as incapacitated / disabled. A lawful representative in cases established by law may be another person (The Civil Code of Ukraine, 2003). Disposition of personal data of an individual, limited in civilian capacity or recognized as incapacitated, is carried out by her legal representative (Law of Ukraine, 2010). The following authorities monitor the compliance with the legislation on the protection of personal data within the limits of the powers provided for by law:

- Authorized state body for the protection of personal data – the State Service for the Protection of Personal Data.
- Other bodies of state power and bodies of local self-government.
- parliamentary oversight over observance of human rights with regard to the protection of personal data is carried out by authorized with the rights of people of the Verkhovna Rada of Ukraine in accordance with the law.

Consequently, business entities in the practice of medical practice should remember that now among the controlling bodies that will come to you with planned and unscheduled inspections, there was another government agency – the State Service for the Protection of Personal Data. The occurrence of legal liability is possible in case of violation of the legislation on the protection of personal data by the heads of medical institutions or privately practicing medical workers.

1.3. Legislative regulation of protection of personal data in Ukraine

From January 1, 2012, the Law of Ukraine "On Protection of Personal Data" (Bedenko-Zvaridchuk, 2019) provides for legal liability for violation of the legislation on the protection of personal data, namely: criminal; administrative-legal; civil law. In accordance with the Law of Ukraine (2011) "On Amendments Certain Legislative Acts of Ukraine Regarding Strengthening Liability for Violation of the Personal Data Protection Law" of 02.06.2011, No. 3454-VI the following legislative acts of Ukraine were amended. The Code of Ukraine on Administrative Offenses (1984) is supplemented by Articles 188-39 and 188-40 with the following content: Article 188-39. Violation of legislation in the field of protection of personal data.

Failure to notify or late communication of the subject of personal data about his rights in connection with the inclusion of his personal data in the database of personal data, the purpose of collecting these data and the persons to whom these data are transmitted entails imposing a fine on citizens from two hundred to three hundred tax-free minimum incomes of citizens and on officials, citizens – business entities – from three hundred to four hundred non-taxable minimum incomes of citizens.

Failure to notify or untimely communication of the specially authorized central executive authority on the protection of personal data about the change of information submitted for the state registration of the personal data base entail imposing a fine on citizens from one hundred to two hundred tax-free minimum incomes of citizens and on officials, citizens, subjects of entrepreneurial activity, from two hundred to four hundred tax-free minimum incomes of citizens.

Repeated infringement during the year from the number provided for in paragraphs 1 or 2 of this article, for which the person has already been subject to administrative collection, entails imposing a fine on citizens from three hundred to five hundred tax-free minimum incomes of citizens and on officials, citizens, business entities, from four hundred to seven hundred non-taxable minimum incomes of citizens.

Avoiding the state registration of personal data base entails imposing a fine on citizens from three hundred to five hundred tax-free minimum incomes of citizens and on officials, citizens, subjects of entrepreneurial activity, from five hundred to one thousand non-taxable minimum incomes of citizens. Failure to comply with the law on the protection of personal data of the order of protection of personal data in the database of personal data, which led to unlawful access to them, entails the imposition of a fine of 300 to 1000 tax-free minimum incomes of citizens.

Article 188-40. Failure to comply with legal requirements of officials of the specially authorized central executive body on personal data protection.

Failure to comply with legal requirements of officials of the specially authorized central executive body on the protection of personal data concerning the elimination of violations of the legislation on the protection of personal data, entails imposing a fine on officials, citizens, entrepreneurs from one hundred to two hundred non-taxable minimum incomes of citizens (Guliyev *et al.,* 2018).

Article 182 of the Criminal Code of Ukraine (2001) is set out in the following wording: Article 182. Infringement of privacy.

Illegal collection, storage, use, destruction, distribution of confidential information about a person or illegal alteration of such information, except cases provided by other articles of this Code, shall be punishable by a fine of five hundred to one thousand non-taxable minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years (Gordadze *et al.,* 2018).

The same acts committed repeatedly or if they caused significant damage to the rights, freedoms and interests of a person protected by law, shall be punishable by arrest for a term of three to six months, or restraint of liberty for a term of three to five years, or imprisonment for the same term. Significant damage in this article, if it is material damage, is considered to be such a harm that exceeds the non-taxable minimum income of citizens by one and more times (Allalyev, 2019).

Also, it should not be forgotten that violations in the field of personal data protection may lead to a person being brought to civil liability on a general basis (for example, non-pecuniary damage). The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data requires that the parties to the Convention ensure that personal data subject to automatic processing meet the following requirements:

- received and processed fairly and lawfully; are stored for specified and legitimate purposes and their use is not incompatible with these purposes.
- Adequate, relevant, and not excessive in relation to the purposes for which they are stored.
- Accurate and, if necessary, relevant.
- Are stored in a form that allows the identification of data subjects no more than is required for the purposes for which the data are stored.

In addition, the Convention prohibits the automatic processing of confidential data, such as data revealing racial origin, political views, religious or other beliefs, as well as data on health, sexual life or criminal experience without proper guarantees in domestic law. The Convention imposes strict restrictions and reservations on the application of provisions like those mentioned above. Any restrictions must be prescribed by law and be necessary in a democratic society in the interests of a legitimate aim proclaimed in the Convention, such as national security, public security, or the cessation of a crime. The concept of "necessity", as understood in international human rights standards, considers the proportionality of the achieved goal.

Conclusion

The legislator did not use the definition of personal data that meets European standards. Namely, personal data is divided into general data (surname, name and patronymic, date and place of birth, citizenship, place of residence) and sensitive personal data (health data – history of the disease, diagnoses, etc., biometric indicators ethnicity, attitude to religion, beliefs, affiliation with public associations, identification codes or numbers, personal symbols, signature, fingerprints, voice recordings, photographs, salary or other statutory income data, deposits and accounts in banks , property, the content of the tax return, the credit history, the data on the conviction and other forms of bringing the person to criminal, administrative or disciplinary responsibility; the results of examinations, professional and other testing, etc.), and laws on information, access and protection should prohibit the collection, storage, use and dissemination without the consent of the data subject of the most vulnerable personal data.

The lack of division of information about an individual into general data and sensitive personal data leads to anecdotal consequences. For example, the distribution of any personal data, including even the surname and the name of a person, may only be made with her written consent. And according to Article 6 § 9 of the Law on the protection of "the use of personal data for historical, statistical or scientific purposes may only be carried out in an impersonal manner". That is, you can not specify any personal data, even name and surname, textbooks, or any scientific work!

All three laws do not contain the concept of "Public person", the limits of criticism of which, in the position of the European Court of Human Rights, are wider than the ordinary person. Accordingly, such people may, without their consent, distribute more personal data if they are important to society. From the general prohibition on the dissemination of personal data without the consent of a person in the Access Act, there is an exception only with

respect to persons who are applying for employment or holding elected positions in government bodies or who occupy the position of a public servant, an employee of the local government of the first or second category (Article 6 § 6).

And this exception concerns only the data on the income declarations of these individuals and their family members (among other things, the draft exception concerns still biographical data, but then they were removed). And, according to Article 5 § 4 of the Protection Law, all personal data of a person who claims to take or hold an elective office (in representative bodies) or a civil servant of the first category does not belong to the restricted information. Obviously, these exceptions do not coincide, and both are considerably narrower than the concept of "public person". The law on protection does not at all include the possibility of distributing personal data, if this information is publicly necessary, and this contradicts the laws on information and access.

The situation changed radically in the summer of 2011, when on June 2 parliamentarians adopted a memorandum of understanding "On amendments to some legislative acts of Ukraine on increasing liability for violation of the legislation on the protection of personal data" (the law came into force on January 1, and later the entry into force was postponed). Fines up to 17 thousand UAH did not please anyone, and many rushed to register all sorts of databases. But, firstly, not everyone managed to do this (and many did not know about any registration), and secondly, with "databases" had to face even such "irresponsible" category of citizens as schoolchildren. In particular, many citizens were surprised at the need to sign a "voluntary agreement on the use of all kinds of data on their children to create personal data bases (BPDs) in schools". The fact of such BPD is not particularly surprising as directors also do not want to pay fines.

In addition, in order to ensure the freedoms and rights of citizens, it is necessary to enshrine in regulations the classification of groups, the list of personal data and the mode of access to them, depending on the classification to avoid ambiguity. The materials of the article have practical value for graduates of higher educational institutions of police and medical specialties, lawyers-practitioners, police officers of the criminal unit and specialists in the field of protection of personal information.

Acknoweledgements

The study was conducted within the framework of Scientific research work No. 0116U006767 "Legal and administrative principles of cybercrime" of the Department of Cyber Security and Information Assurance Faculty of Training for Criminal Police of Odesa State University of Internal Affairs.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 63-72
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Economic and Political Realities and Models of Territorial Structure Development in the South of the Far East

DOI: https://doi.org/10.46398/cuestpol.38e.03

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Abstract

The economic and political processes taking place in the southern Far East have had a significant impact on the development of the territorial structure. Methodologically, a constructive and comprehensive geopolitical approach was used that allowed a structural evaluation of economic and political realities and their impact on the formation and development of the territorial structure, as well as its various orientations and typologies in the south of the country. Far East. In addition, its focused study allowed to evaluate the economic and political effect of the modernization scenario, to analyze the impact of external and internal economic, political and social realities with a focus on the restructuring and organization of the territorial structure, all of which allowed to identify the main problems of its destabilization and, at the same time, determine the prospects for further growth of the elements of the system to varying degrees, affecting the industrial, transportation, infrastructure and other spheres of the population's life. It is concluded that the dialectical interaction of a set of political and economic realities of transformations and modernizations, internal and external, have configured an arial-nodal / linear-nodal polycentric linear structure in the south of the Far East.

Keywords: territorial structure; economic and political effect; government scenario; southern Far East, development models.

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Recibido el 21/03/2020 Aceptado el 12/08/2020

Realidades económicas y políticas y modelos de desarrollo de estructuras territoriales en el sur del Lejano Oriente

Resumen

Los procesos económicos y políticos que tienen lugar en el sur del Lejano Oriente han tenido un impacto significativo en el desarrollo de la estructura territorial. En lo metodológico se empleó un enfoque constructivo e integral de tipo geopolítico que permitió una evaluación estructural de las realidades económicas y políticas y de su impacto en la formación y desarrollo de la estructura territorial, así como de sus diversas orientaciones y tipologías en el sur del Lejano Oriente. Además, su estudio focalizado consintió evaluar el efecto económico y político del escenario de la modernización, para analizar el impacto de las realidades económicas, políticas y sociales externas e internas con un enfoque en la reestructuración y organización del estructura territorial, todo lo cual permitió identificar los principales problemas de su desestabilización y, al mismo tiempo, determinar las perspectivas de un mayor crecimiento de los elementos del sistema en diversos grados, afectando las esferas industrial, de transporte, infraestructura y otras esferas de la vida de la población. Se concluye que la interacción dialéctica de un conjunto de realidades políticas y económicas de transformaciones y modernizaciones, internas y externas, han configurado una estructura lineal policéntrica arial-nodal/ lineal-nodal en el sur del Lejano Oriente.

Palabras clave: estructura territorial; efecto económico y político; escenario de gobierno; sur del Lejano Oriente, modelos de desarrollo.

Introduction

The analysis of the past scenario of the development and the development of the territory in the south of the Russian Far East is represented by its consistent inclusion in the political and economic structure of the state. The economic and political effect of the military-administrative, raw material and integration development and settlement of this territory by Russia shows the government desire to strengthen its presence in the region, using the development of the territorial structure elements as the means of consolidation and attraction. This process is "characterized by continuity in time" (Shinkovsky *et al.*, 2007). It is a holistic system that caused or (assumed) certain changes (Shvedov, 2006) in the economic and political situation proceeding within the framework of the spatial-temporal dynamics. According to (Zausaev *et al.*, 1995), the formation of a support frame here was an integral part of the economic and political strategy of Russia.

1. Methods and materials

A constructive, comprehensive approach to this goal achievement provides for a structural assessment of economic and political realities and their impact on the formation and development of the territorial structure and its elements of various orientations and typology in the south of the Far East. Analysis of the past and current scenario of the system and its polycentric model formation of the frame structure will determine the possibilities and prospects for the development of industrial enterprises of state importance, will analyze the impact of economic and political determinants in the space-time continuum. The studies of the government scenario for a territorial structure and its support frame development are aimed at the retrospective of the past evaluation in order to solve the problems and prospects of economic growth in the south of the region in the future during development and implementation of the programs for innovative, and technological development and economic modernization.

Description of the main provisions for creating the models of territorial structure development

The government scenario for the development of the Far East south is the only possible option to prevent invasiveness and to include it in the integral socio-economic and political structure of the Russian state. This action was accompanied by the creation of new structural elements, the pace of formation of which was associated with the development of internal and external political and economic realities. Thus, the nature of the state internal content formalization through the construction and placement of the territorial structure elements was completely subordinated to state policy and "is performed under the influence of political determinants" (Shvedov, 2006:74).

The government sends the Cossacks to ensure the inviolability of state borders and the formation of the main types of agricultural production in the south of the Far East. The development of this territory by them began with the formation and development of the territorial structure nodal elements, which are the centers (focuses): forts, winter huts, military posts endowed with military-administrative functions. Their organization and construction had a "strictly established order by the Russian administration" with rare exceptions (Artemev, 1998:140).

It was characterized by the location of focus centers along the Amur River, at a certain distance from each other, which indicated military-administrative colonization. Here, a linear model of the frame structure has developed, characterized by an elongated system of the territorial structure nodal element placement along the Amur River. Further formation of the territorial structure continued in the depths of the region

and was accompanied by the creation of key elements of the economic and industrial orientation: rural and working settlements (Geographical Statistical Dictionary of the Amur and Primorye Regions, 1894). They performed economic functions, providing all the necessary focus centers that had arisen earlier. This arrangement of the territorial structure nodal element placement had an aerial-nuclear direction.

A similar model of a frame structure development was observed by a regular communication establishing between Odessa and Vladivostok. The only difference is that the development of the frame structure originated from the coast. The centers-focuses of economic and industrial orientation were built there (Geographical Statistical Dictionary of the Amur and Primorye Regions, 1894). The formation and development of the territorial structure nodal elements was very slow, the main reason was the lack and low quality of transport communications. The transport problem contributed to the adoption of political decisions by the authorities in the field of the territorial structure linear element formation and development (Highest Message Announced by the Governor of The Ministry of Finance, 2006).

The construction of highways in the South of the Far East was carried out in those areas that were of economic, political and strategic importance for Russia connecting important nodal elements of the territorial structure from the point of view of economic and geographical location: Blagoveshchensk, Khabarovsk, Vladivostok - the Ussuriyskaya railway; Verkhneudinsk (Ulan-Ude), Chita, Pogranichny, Mukden, Vladivostok - East China road; Vladivostok, Mukden, Dalny, Port Arthur - South Manchurian road (Kovalchuk, 1997). The large-scale construction of linear elements of the territorial structure in the region began with the construction of the Ussuriyskaya highway. Throughout its course, industrial focus centers arose (Geographical Statistical Dictionary of the Amur and Primorye Regions, 1894). Initially, the line had only local significance, which was explained by its isolation from the all-Russian railway network. The problem might have been overcome with the help of a developed system of transport communications (Personal Highest Decree Given To The Ministry Of Railways, 2007).

According to the economist and politician A. Brooks, the main way to solve it could be “a grandiose transcontinental railway construction with an end point in Port Arthur and Qingdao (Dalny port)” (Haushofer, 2001). Its practical result was the construction of geostrategic communication lines (Sanachev *et al.*, 2006), performing the function of a geopolitical attraction of territories that are unique in their characteristics - Manchuria and the Kwantung Peninsula. So, observing S.Yu. Witte’s “principle of the integrity of the Chinese empire” they managed to build linear elements of the territorial structure: the Chinese-Eastern and South-Manchurian

railways (Tarle, 2001). Throughout their entire length, industrial focus centers arose: Harbin, Pogranichnaya station, Manchuria, Port Arthur, Dalny, Mugden (Haushofer, 2001).

This is how a single geostrategic communication network was formed from Chelyabinsk to Khabarovsk, which did not last long. Confrontational relations with the Qing empire and Japan led the government to consider the initial version of laying a steel track across the territory of the Russian state from Chita to Vladivostok, with the branch to Blagoveshchensk - the Amur railway (Highly Approved Regulations of the Council of Ministers, 2006). The implementation of the state policy of large-scale construction of linear elements of the territorial structure by government "taking into account the logic of key geostrategic points" (Sanachev *et al.*, 2006) contributed to the formation of a linear areal-nodal - linear-nodal polycentric frame structure characterized by the development of linear elements of the territorial structure, which became the impetus for the emergence and growth of nodal ones.

Political and economic events unfolding in the south of the Far East during 1918-1922 and during 1922-1939 were aimed at elimination the consequences of a conflict of interests of a territorial nature. Here, the bodies of the autonomous economic management have oriented the economy of the south of the region towards the extraction and exploitation of their own resources in order to solve financial and raw material problems. This government decision contributed to the widespread emergence of industrial focus centers. Their dispersed arrangement over the southern territory of the region contributed to the further development of its areal space. Such a model had an aerial-nodal direction of the frame structure development, ensuring it's branching in breadth.

Further formation and ramification of the territorial structure and its elements was accompanied by the influence of internal and external economic and political realities occurring in Soviet times. The industries related to the country defense capability improvement have undergone transformations (Telegram, 2008; Information of the Secretary of the Khabarovsk City Committee of The Cpsu, 2008). Focusing on the maximum development of industries and means of production, the government acts as a powerful factor in the development of territorial structures, the formation of which was accompanied by the ubiquitous emergence of focus centers mainly focused on raw materials.

The militarization of non-priority sectors of production took place on the territory of the Russian Far East south, which led to the maximum development of the defense industries, and the evacuation of factories from the western regions of the country (Minakir, 1995). Large-scale development and unlimited mining during the Second World War led to the ubiquitous emergence of focus centers. Along with their creation, the

reverse process was observed. The working village with the development of the deposit and with the absence of other industries was deprived of the able-bodied population, gradually turning into "dying" area.

Since the beginning of the 60-ies, the role of extractive industries has declined. The priority place was taken by the service industries. The innovations carried out by the government since 1965-1985, represented the policy of an extensive path of development of agriculture and resources, especially fuel and energy, provided the formation of a ramified support frame in the south of the region in breadth due to the areal elements of the territorial structure. Based on the already created linear areal-nodal, linear-nodal models of the polycentric frame structure, further transformation and formation of the support frame was carried out.

With the collapse of Soviet Russia, the priority course of the government regional policy at the end of the 20th century was the restoration and formation of various types of relations with the countries of the Asia-Pacific region, which was carried out in a number of areas: raw materials, forestry, fishing, tourism, migration, transport. State policy for the implementation of integration trends during 1990-2008 contributed to the functional expansion of focus centers - industrial centers: Blagoveshchensk, Khabarovsk, Vladivostok, Ussuriisk, Pogranichny, and Grodekovo.

According to M.Yu. Shinkovsky, these centers are capable to act as the "vents" (Shinkovsky, 2004) of close border cooperation. On this basis, the creation of special forms of economic interaction in the border zone has acquired particular urgency. The models of zonal (focal) and "open rationalism" of cooperation were formed here. Based on these models, border trade complexes were created and operated in Manchuria and the Primorsky Territory within the Pogranichny - Suifunhe region, and the Amur area in the Blagoveshchensk - Heihe region.

The basis for the development of industrial centers of the frame structure within the territorial structure of the Russian south of the Far East during the period 1990-2008 was the production of competitive products - high technologies. So, the production of water treatment plants was actively carried out at the enterprises of the innovative orientation of the Vladivostok, Komsomolsk-on-Amur, and Khabarovsk (Levinthal, 2004). The transformations carried out had an insignificant effect on the process of the frame structure areal-nodal model restoration in the south of the region. Its further development was carried out through the construction and improvement of the territorial structure linear elements.

Infrastructure development was recognized as the main trend of further cross-border cooperation of Russia from 2004 to 2012. The transport problem hindered the implementation of the integration policy and the further development of the nodal and areal elements. The lack of an efficient

transport system, primarily trunk pipelines, was a constraining factor in expansion the ties with the APR country. So from 2004 to 2010 after the implementation of transport cooperation policy, the linear elements of the system were developed - the Sakhalin - Komsomolsk-on-Amur - Khabarovsk gas pipeline; the Chayvo - De-Kastri oil pipeline, the Eastern Siberia - Pacific Ocean oil pipeline (Levinthal, 2004).

Their formation had a significant impact on the development of the areal space in the south of the region through the formation of linear elements and the emergence of focus centers along their entire length, and also through the formation and development of highways. Here, according to Uyanov S.V., the priority was intermodal (Ulanov, 2007) container transportation. The most frequent traffic was along the Harbin - Vladivostok, Mudanjiang - Ussuriisk highways.

Further functioning of the areal-nodal and areal-linear polycentric models of the supporting frame of the year was carried out within the framework of the following target programs and the strategies for the Far East development developed by the government: "Socio-economic development of the Far East and the Trans-Baikal region until 2025"; Transport strategy of Russia until 2030; The strategy for the development of railway transport in Russia until 2030; the federal law "On the territories of advanced social and economic development in the Russian Federation". Here, the following elements of the territorial structure had the greatest economic development and functioning during 2013-2019: The nodal elements - Vladivostok - as a free port, Svobodny - the key center for the construction of a number of the largest high-tech enterprises for gas processing and gas chemistry; Komsomolsk-on-Amur is a dynamic center with the prospect of a modern high-tech industry development.

The areal elements, the functional growth of which was due to the creation of the territories of advanced socio-economic development (TAD), with a different typological direction: "Nadezhdinskaya" (light and food industries, diversified production and logistics, Primorsky Krai); Komsomolsk (industrial focus, Khabarovsk Territory); "Belogorsk" (agro-industrial focus, Amur region); "Mikhailovsky" (agricultural trend, Primorsky Territory), "Bolshoy Kamen" (industrial focus, shipbuilding, Primorsky Territory); "Petrochemical" (petrochemical focus, Primorsky Krai) (Eastern economic forum. Territories of advanced development, program, 2017).

The linear elements, their development for the most part occurred due to the growth of transport, information and communication infrastructure in TAD, and the general development potential of localized territories. These are the functioning of the Power of Siberia gas transmission system route and the formation of the free port of Vladivostok, which includes the key ports in the south of the Far East: Zarubino, Nakhodka and Knevichi

airport and the presence of active promising large international transport corridors, such as "Primorye-1" and "Primorye-2" (Eastern economic forum. Territories of advanced development, program, 2017).

2. Results

After internal and external political and economic realities, transformations, and modernizations a linear arial-nodal - linear-nodal polycentric frame structure was formed in the south of the Far East. Its organization from 1860 to 2004 began with the formation of the areal-nodal model. Further development of the support frame (from 2004 to 2018) continued with the development of the areal-linear model. From 2012 to 2019, it was carried out through the formation and development of industrial parks and clusters of various typologies on the basis of advanced development territories. Their formation contributed to the development of both models of the support frame - areal-nodal and areal-linear (Baklanov, 2014). Within their borders, small and medium-sized cities, closely interacting with each other in all spheres of their life, acted as urban polycentric systems (Baklanov, 2014; Osipov and Krasova, 2017). According to P.Ya. Baklanov, they are destined to become "an impulse for the development of neighboring territories, i.e. have a multiplicative territorial effect".

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 73-84
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Media clips on social fear to regulate individual behavior in temporary involuntary isolation (quarantine)

DOI: https://doi.org/10.46398/cuestpol.38e.04

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Abstract

The objective of the research was to study the manifestation of the emotion of fear in the context of the COVID-19 pandemic and to determine the details of its application in the clips of social networks. As a research method, the authors used the questionnaire survey to collect primary information. The novelty and originality of the study lies in the fact that the phenomenon of social fear in temporary forced isolation is investigated. For the first time, it is discovered that the overall goal of social

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Recibido: 03/03/2020 Aceptado: 08/04/2020.

media videos affecting the emotion of fear is to create a common problem that forces potential viewers to choose self-isolation. It is concluded that the analysis of the clips from social networks revealed four main directions to position the emotion of fear: fear associated with a direct threat to the life activity of individuals; fear caused by unforeseen situations; fear associated with situations that can be harmful to health; fear associated with non-conformity with certain values and norms accepted in society, with the fear of differing from established standards and benchmarks.

Keywords: social fear; social advertising; Media clips; COVID-19 pandemic; self-isolation.

Clips mediáticos sobre el miedo social para regular el comportamiento individual en el aislamiento involuntario temporal (cuarentena)

Resumen

El objetivo de la investigación fue estudiar la manifestación de la emoción del miedo en el contexto de la pandemia del COVID-19 y determinar los detalles de su aplicación en los clips de las redes sociales. Como método de investigación, los autores utilizaron la encuesta por cuestionario para recopilar información primaria. La novedad y originalidad del estudio radica en el hecho de que se investiga el fenómeno del miedo social en el aislamiento forzado temporal. Por primera vez, se descubre que el objetivo general de los videos de medios sociales que afectan la emoción del miedo es crear un problema común que obligue a los potenciales espectadores a elegir el autoaislamiento. Se concluye que el análisis de los clips de las redes sociales reveló cuatro direcciones principales para posicionar la emoción del miedo: el miedo asociado con una amenaza directa a la actividad de la vida de los individuos; miedo causado por situaciones imprevistas; miedo asociado a situaciones que pueden ser perjudiciales para la salud; miedo asociado con la no conformidad con ciertos valores y normas aceptados en la sociedad, con el temor de diferir de los estándares y puntos de referencia establecidos.

Palabras clave: miedo social; publicidad social; Clips mediáticos; pandemia COVID-19; autoaislamiento.

Introduction

Emotions are a driving force in a person's daily life. With knowledge of the human psyche, marketers, psychologists, advertisers, and PR specialists began to apply emotions as a strong motivator that can influence consumer behavior. A sense of fear encourages people to adapt to alarming and unpredictable situations, activating processes responsible for self-preservation and safety (Usak *et al.*, 2020). According to the majority of experts, such negative emotions as fear have a stronger impact on a person than positive ones: they are faster inducing to action and better manage motives (Kanbul *et al.*, 2019). This conclusion determines the interest in the emotions of fear from marketers, advertisers, and PR-specialists. In a number of studies and observations of consumer behavior, experts have found that fear is an excellent manipulator that can be successfully applied in various social campaigns.

Today there is a tendency in science to study in detail the behavior of a person and to analyze emotions, which are considerably transformed in modern societies and cultures. During the last decades, the interest of scientists to study the role of emotions in relation to social actions has been clearly traced. Emotions as typical and normative internal states of actors act as a necessary link between an individual and the social structure (Kostandov, 1977; *Putilina et al., 2019*; Olkhovaya *et al.*, 2019; Sorokoumova, 2009; Zakharov, 1995; Izard, 1999; Cherdymova, 2017; Melnichuk and Osipova, 2017; Khairullina *et al.*, 2019; Kepalaite and Suvorova, 1991). They support social solidarity while promoting social change.

A person of course, has learned to manage his or her emotions according to social and cultural rules, but not in all life situations, this is possible. Nevertheless, individuals tend to develop ways of managing emotions according to their social context (Sorokoumova *et al.*, 2019; Mishin, 1984; Vasbieva *et al.*, 2018; Gudkov, 1999; Vilyunas, 1976; Ivantsova, 2003; Cherdymova *et al.*, 2019). The research conducted in the field of fear studies can be conventionally divided into three areas, depending on methodological approaches and science schools: social-philosophical, psychological, and sociological. Philosophers were the first to talk about the problem of fear as one of the main features of human nature. It is important to note that virtually all philosophical teachings, currents or schools have addressed fear within their respective worldview systems (Oizerman, 1974; Hegel, 1977; Nietzsche, 1990; Schopenhauer, 1971).

Almost from the beginning of its formation, philosophical thought considers fear as one of the most important phenomena of human and social existence. The theory of fear has found its continuation in psychoanalytic

concepts that explain the phenomenon of fear from the psychological point of view (Freud, 1997; Adler, 1997, Horney, 1982). More developed the problem of fear turned out to be in the well-known philosophical-psychological direction - existentialism (Heidegger, 1994, Jaspers, 1991). In addition, the main methodological principles of fear and the phenomena associated with it are outlined in the framework of the modern discipline - the psychology of emotions (Leontiev, 1984; Wundt, 1913; Ekman, 2010).

In psychology, the concept of emotion has a narrow and broad meaning. In the narrow sense, emotions are defined as a special kind of mental processes expressing a person's experience of his or her attitude to the world around him or herself. In the broad sense, emotions are understood as the complete emotional reaction of a person that includes not only the mental component - experience, but also specific physiological changes in the body that accompany this experience. In this case, it is expedient to speak about the emotional state of a person (Reikovsky, 1979; Rubinstein, 1973; Stevene, 1996; Shingarov, 1971). At present, there are different viewpoints on nature and the meaning of emotions (Vilyunas, 2004; Konopkin, 2006; Dodonov, 1987; Kostandov, 1977).

It should be noted that most social fears are multiple by nature. The basis of catastrophic consciousness is fear of the future. In our opinion, it becomes especially relevant in conditions of temporary forced isolation, which means limitation of personal contacts of an individual or a group of people from other persons, where communication takes place indirectly (by means of telephone, Skype, messages, etc.). As we know, this kind of fear has been rooted in human consciousness and has cultural content since ancient times. Thus, fear acts as a universal alarm indicator in the dynamics of social, cultural, environmental, anthropogenic, economic changes.

1. Research Objectives and Structure

The empirical study consists of two stages. In the first stage, the object of the study is social advertising spots on the coronavirus pandemic and self-isolation, which show or talk about the emotions of fear. The study was conducted as part of a qualitative approach using a qualitative data analysis method. In the second phase of our study, the subject is a group of working people aged 24 to 55 years. The study was conducted as part of a qualitative approach using an online forum discussion method. The people who took part in the conversation were selected through a targeted random sample. A group of 13 people was formed.

Thus, at the first stage of the research social advertising spots appealing to the emotions of fear are analyzed. In the second stage, an online discussion

is held, discussing the social videos on the coronavirus pandemic and self-isolation in a forum format.

The purpose of these two stages was:

To analyze the content of the social clips on the coronavirus pandemic and self-isolation on using the emotion of fear.

To identify subjective perceptions by potential consumers of social advertising that demonstrates fear on coronavirus pandemics and self-isolation.

The questions used in the study:

What is your first impression of the social video you watched?

What did you think when you watched the social video?

What was in social advertising about the coronavirus and self-isolation during pandemic that led you to think about it?

Did you like this social advertising or not?

What exactly you liked in the public service announcement about the Coronavirus Pandemic and self-isolation?

If you did not like this social advertising, then what exactly you did not like in it?

What is your mood after watching such a social advertising video?

What emotions do you get from it: optimism, pessimism, boredom, and any other emotions? Why does this social advertising spot evoke such emotions?

What do you think is the main idea of this social advertising? What do you think this social advertising is created for?

What do you think about the information contained in this social video? Does it inspire your trust or not? If it does not inspire trust, why?

After watching this social video about the coronavirus and self-isolation pandemic, would you do the right thing? What makes you want to do it?

What should be changed in this social video about the Coronavirus and Self-Insulation Pandemic? What should be added or removed? Why do you think so? Questions are asked after each video.

2. Research of Perception on Social Clips Related to Self-Isolation and Coronavirus

Moving to the resolution of the first unit of tasks it is necessary first, to identify, whether the emotions of fear are touch upon in the social advertising dedicated to the coronavirus pandemic and self-isolation; second, to describe the social advertising that contains a component of fear and, third, to try to explain why and how this emotion is used in them.

Then we proceed to the analysis of media social videos, where we find that fear is actively used in social videos related to self-isolation. It should be noted that in many social videos dedicated to self-isolation and coronavirus, the emotion of fear is used as an intimidating component, probably because its producers are aware of the effectiveness of its use. They tell potential viewers the opinion that people staying at home, first, get a guarantee of safety.

Having analyzed social advertising of successful and ordinary people, we did not find any cardinal differences in how they use the emotion of fear. Thus, it can be argued that almost all the analyzed social videos (97%), dedicated to coronavirus and self-isolation, are aimed at attracting the attention of viewers and use the emotion of fear as a mechanism to regulate behavior. On the basis of the analyzed social advertising materials devoted to self-isolation and coronavirus, it is possible to allocate four basic directions of positioning of fear emotion: the fear, which is connected with direct threat of individual's vital activity (35 %); the fear caused by unforeseen situations (32 %); the fear connected with situations which can cause harm to health (21 %); the fear connected with nonconformity to certain values and the norms accepted in a society, with fear to differ from the set standards and behavioral standards (35 %). It is these fears can be seen when analyzing social advertising spots on self-isolation and coronavirus. Of course, if one continues to analyze social advertising materials in the future, one can expand the classification.

Moving to the second phase of the study, which aims to determine the subjective perception of potential viewers of media social clips on the coronavirus pandemic and self-isolation that demonstrate fear, an online discussion was held in a forum format. Responding to the first task, one should note the various reactions of informants to the video: positive, negative, neutral. "Advertising spots of this format do not attract my attention in any way"; (male, 26 years old) (neutral reaction, in 7% of cases). "My first impression of this video is good" (female, 25 years old); (positive reaction, in 21% of cases).

The plot is very scary, very scary" (female, 25 years old) (negative reaction in 72% of cases). Having analyzed the answers of the participants,

it was revealed that about half of them liked the social video by its content. "I like everything so saturated and not as usual; it is so special, it attracts attention" (female, 37 years old); and the other half did not like "I did not like it. It's all mixed up. It is about everything and about nothing" (male, 53 years). Participants highlighted such emotions as fear, positive, excitement, optimism, boredom, and neutral attitude. The analysis showed that a large half of the participants (61%) felt negative emotions "The video causes fear, and it seems to me that it was made a gaffe, in a hurry" (female, 30 years old).

Next, a survey was conducted among participants on how they understood the basic idea of advertising and received such opinions: "The basic idea of this advertising is a healthy lifestyle. Advertising promotes that we need to strengthen ourselves with sports so that we can find a way out of any, even the most terrible situation". (Male, 47 years old); "It is created for us to watch and distract from the problem" (male, 30 years old). More than half of the participants would not like to see this social video on TV or on the Internet: "no, one should not show it better, it scares me (female, 39 years old); "Yes, it is better to remove it, protect our brains and nerves" (male, 30 years old). The rest believe that social videos need to be corrected and modified (13%), "one cannot show the problem so clearly that one do not make the audience to be negative" (female, 30 years old). Almost all participants in the discussion concluded that in these media social videos dedicated to the coronavirus pandemic and self-isolation, nothing needs to be changed, added or removed (87%) "Nothing needs to be changed, everything is very good in these videos" (male, 44 years old) "very positive.

This is the main thing. There are so many problems in life" (female, 27 years old). In addition, people's opinions were distributed in this way: the majority of people believe that such social videos should be broadcast at a minimum (1%) "it is not good idea to show them" (female, 35 years old), and the rest of the participants believe that the plot of social videos dedicated to the coronavirus pandemic and self – isolation should be made more soft (99%) "Well, if one radically changes the plot, makes it not so acute-*the coronavirus and the victims*, and adds some optimism" (male, 48 years old).

If we talk about the informants' emotions that caused social videos about the coronavirus pandemic and self-isolation, one can note that there is no emotionally pronounced mood. After analyzing the responses of informants, one can note that the main idea of the media video, without exception (100%), is that "we need to be treated on time and self-isolate" (male, 47 years old)

More than half of the participants note that the information in the advertisement does not cause them trust (51%) "The information does not cause trust because I cannot believe that there are so many victims"

(female, 52 years), a smaller part (49%) think that the advertisement is useful and can be trusted "well, maybe the coronavirus is not as dangerous as it is said, but I still believe" (female, 55 years); "I trust the information" (male, 55 years). All respondents (100%) found social advertising about the coronavirus pandemic and self-isolation useful. This is evidenced by the following opinions: "I liked the advertisement» (male, 36 years old).

Emotions caused by watching this video are fear, frustration, regret, and pity. Almost all participants (97%) believe that the main idea of the videos is to draw the audience's attention to their health and the health of older people. "Every person is very vulnerable, and it is impossible to guess what is waiting for them and where" (female, 52 years old). Most of the participants in the discussion (63%) are skeptical about social videos about the coronavirus pandemic and self-isolation, and believe that self-isolation cannot guarantee complete isolation from the coronavirus "I'm not sure that self-isolation will help much" (male, 36 years old).

After analyzing the responses of viewers of media social videos, we came to the conclusion that to a greater extent, participants experienced negative emotions (81%), but also positive emotions occur "sharply negative, incomprehensible and unpleasant, most likely it is more like a big question mark in my head. Causes pessimism, because is everything so bad in our life" (male, 49 years old). Participants note that this advertisement causes them trust "Causes trust because it shows that the problem of the coronavirus pandemic" (female, 38 years old), and several people say that the advertisement does not cause trust "It does not cause trust, because anything can really happen, and sometimes no self-isolation will save. But as a means of security, of course, you must use it " (female, 54 years old) Participants (97%) emphasize that using an emotion such as fear makes them pay attention to the social situation, thus making it more meaningful. Most middle-aged people (83%) experience more fear (apprehension) after watching social videos.

Conclusions

Social fear is, first, a mechanism of subordination to the crowd or its individual leaders. Fear as a social phenomenon has a mass, collective, conscious, coordinated, and rational character. In General, based on the results of the discussion, we can note a number of key points that allow us to conclude that the reasonable use of fear emotions in social videos dedicated to the coronavirus pandemic and self-isolation as a mechanism for regulating the behavior of viewers of media social videos is not only acceptable, but also productive. First, an advertisement that involves the emotion of fear attracts the attention of potential viewers, because it seems

to them creative, unusual, and not similar to similar advertisements.

Second, such media videos force people to fix their attention on possible problems, suggesting ways to solve them. Third, the emotion of fear in media videos makes consumers think about the impact of external factors on their daily life, thereby motivating them to think through their further actions in such a way as to avoid possible unnecessary consequences. In addition, fourthly, the thoughtful use of the emotion of fear in media social videos really contributes to changing the behavior of potential viewers during the coronavirus pandemic.

However, we would like to note that the use of the emotion of fear in media activity is fraught with not only pros, but also cons. As many informants note it, the frequent display of some advertisements should be banned altogether. The fear depicted in them can harm the mental health of people with weak nervous systems, the elderly, and children. At the same time, the use of fear emotion in media social videos as a mechanism for regulating individual behavior is not only acceptable, but also productive for such reasons as: social videos that involve the emotion of fear attract attention; such social videos make people focus their attention on possible problems, offering ways to solve them; social advertising with the use of fear emotion acts as a motive that encourages certain behavior.

The disadvantages of using the emotion of fear in social videos include the problem of ethics and content of social advertising (if the created social videos undermine the ability of the individual to make rational and free choices, or exploit human weaknesses). High-quality media videos are more popular than those whose story is unclear and tasteless. Fear associated with non - compliance with certain values and norms accepted in society is the most exploited in social videos dedicated to self-isolation.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 85-94
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

National identity in an emerging information society: some problematic issues

DOI: https://doi.org/10.46398/cuestpol.38e.05

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Abstract

The objective of the article is to characterize the national identity in an emerging information society. The multidimensionality, internal contradictions, and variability of the phenomenon of national identity led to methodological pluralism, the application of various methods and principles. Thus, during the research, historical and philosophical, dialectical, phenomenological, and systemic approaches, structural and functional methods were used. The article considers the problems related to the development of the information society and the preservation of national identity, including the peculiarities of this process in modern Ukrainian society. The development factors of the information society that influence national and individual consciousness and promote their optimal interaction are defined. In addition, some possible trends in a further globalization of modern society are analyzed, its cultural, economic, national, and political unification, as well as its consequences for Ukraine. By way of conclusion, it is stated that the positive example of several countries gives hope for a favorable relationship between the

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Recibido: 14/03/2020 Aceptado: 28/08/2020

development of the information society and the preservation of national cultures through the strengthening of national identity and the reactivation of spiritual values.

Keywords: society of Information; information technology; globalization; National identity; cultural identity.

Identidad nacional en una sociedad de la información emergente: algunas cuestiones problemáticas

Resumen

El objetivo del artículo es caracterizar la identidad nacional en una sociedad de la información emergente. La multidimensionalidad, las contradicciones internas y la variabilidad del fenómeno de la identidad nacional llevaron al pluralismo metodológico, la aplicación de diversos métodos y principios. Así, en el curso de la investigación se utilizaron enfoques históricos y filosóficos, dialécticos, fenomenológicos y sistémicos, métodos estructurales y funcionales. El artículo considera los problemas relacionados con el desarrollo de la sociedad de la información y la preservación de la identidad nacional, incluidas las peculiaridades de este proceso en la sociedad ucraniana moderna. Se definen los factores de desarrollo de la sociedad de la información que influyen en la conciencia nacional e individual y promueven su óptima interacción. Además, se analizan algunas posibles tendencias en una mayor globalización de la sociedad moderna, en particular, su unificación cultural, económica, nacional y política, así como sus consecuencias para Ucrania. A modo de conclusión se afirma que el ejemplo positivo de varios países da esperanzas de una relación favorable entre el desarrollo de la sociedad de la información y la preservación de las culturas nacionales mediante el fortalecimiento de la identidad nacional y la reactivación de los valores espirituales.

Palabras clave: sociedad de la información; tecnologías de la información; globalización; identidad nacional; identidad cultural.

Introduction

The end of the twentieth century was marked by the process of transition from an industrial to an information society. This primarily applies to Western Europe, the United States, Japan, China and some other technologically advanced countries and regions. The feature of this

transition was the spiritual crisis associated with the lack of a clear ideological orientation, when the meaning of life is given to each and every one by a certain idea, justifying all the difficulties of earthly existence. Meanwhile, a characteristic is the problem of preserving national identity, which arose due to the inevitable unification of the virtual space of the Internet, the use of English as an international language (especially in the context of information technology (IT)), the emergence of certain socio-cultural "non-national" trends. This applies to such phenomena as the formation of the so-called "mass culture", which is anti-national in nature, and its spread through the media, primarily due to the extraordinary development of IT.

The notorious consequences are the actual destruction of national cinemas, literature, television and other sources of information with the characteristics of a particular ethnic group, nationality, nation. These processes have not passed in Eastern Europe (most post-socialist countries), where the process of informatization of society is also actively taking place. In this regard, the Eastern European mentality, in particular the Ukrainian one, acquires specific features. This new mentality is formed on a new pro-Western cultural basis, supplemented with such local features as emphasis on humorous and satirical genres; increased attention to the topic of death, catastrophes, violence, the end of the world; unhealthy interest in social deviations, marginals, sexual freedom and homosexuality, transsexuality; denial of scientific rationality, mysticism, sudden (mostly demonstrative) religiosity, etc. (Parkhomov *et al,* 2006).

1. Literature Review

Many foreign and domestic researchers are studying the issues related to the information society, some of them pay attention to the problem of preserving identity. Some scholars consider the destruction of national or cultural identity in connection with the globalization of the modern world. The development of the information society and the process of globalization of the economy, culture, politics, etc. are, naturally, interrelated, but they are not identical (just as the notions of national and cultural identity are not identical). So, we would like to emphasize the problem of the relationship between the information society and national identity in the Ukrainian context without dwelling in detail on the differences between globalization and informatization. In our opinion, this issue, in contrast to the study of the theory and practice of the information society, is still given quite a little attention by domestic and foreign researchers, although some aspects of it are covered by such scientists as Castells and Himanen (2003), Dyson (1998), McLuhan (2011), Meliukhin (1999), Prais (2000), Parkhomov *et al*, (2006), Webster (2006), Zakovorotnaia (1999) and others.

Thus, the aim of our study is to reveal the main factors in the development of the information society, which directly affect the national and individual consciousness and contribute to their optimal interaction.

2. Methodology

Multidimensionality, internal contradictions, and variability of the phenomenon of national identity led to the methodological pluralism, application of various methods and principles. The use of methodological strategy, which synthesizes on the basis of complementarity historical and philosophical, dialectical, phenomenological and systemic approaches, provided understanding of the essence, structure and typology of national identity, contributed to the disclosure of its epistemological status and a wide range of theoretical and methodological modifications.

The historical and philosophical approach enabled a comprehensive study of national identity in the context of the European philosophical tradition, allowed to characterize the geo-historical dynamics of migration processes in a globalized world.

The structural and functional approach contributed to the understanding of the structural components of the phenomena of nation, national identity, and migration.

The basic principles of the methodology of work are the principles of objectivity, historicism, unity of theory and practice, historical and logical, structural, and genetic approaches.

3. Results and Discussion

The situation is complicated by the total imposition of trade and political advertising (again due to the IT) with a significant psychoanalytic basis (for example, advertising with elements of eroticism), technology for forming and imposing an attractive image (image-making) to serve business, politics, mass culture. As a result of these processes in our culture, such means of information and cultural exchange as literature, theater, and finally direct, live communication have been pushed to the periphery. They were replaced by cinema, television, the Internet, and mobile communications. New carriers of culture are developing extremely fast technologically, but also degrading quite quickly in terms of content. First of all, it is about emphasizing the themes of sex, violence, accumulation of material goods, consumption as a lifestyle, sex and other anti-spiritual tendencies, inherent

in informational in form, but capitalist in content societies (Bestuzhev-Lada, 2000).

Certainly, there are a number of positive aspects that arise due to the latest IT. These include the availability of information, the speed of its transmission, the ability to store and operate large amounts of data in a compact form, the ability to communicate regardless of distance and national borders. Unfortunately, all the high manufacturability of modern information exchange is inferior to even higher rates of moral and spiritual degradation that accompany the development of the information society. And the loss of national identity is also one of the negative consequences of informatization of society, although it can be explained by the development of the global process of political and economic globalization and cultural integration.

Let us consider the main components of this process. Firstly, there is a loss of linguistic identity: English is becoming more commonly used, even at the household level. In addition, there is such phenomenon as "Americanization" of the national language because of the dominance of American popular culture and the use of English in IT. That is, there are a huge number of words of English origin in the national language. As for the situation with the Ukrainian language, it is further complicated by its "russification" in Soviet times. Secondly, there is a loss of anthropological identity due to the assimilation and extreme spread of plastic surgery. As a result of a change in appearance, the mental state and psychology of a person also changes: a member of the Negroid race tries to be a white man, a man – to be a woman and so on.

Obviously, the national consciousness of a person also changes along with significant physiological changes because the ease of a radical change in appearance contributes to the fact that it is difficult to identify a person's nationality. This leads to "blurring" of national consciousness, reducing the sense of individual national responsibility, etc. It can also be noted that the game with the word is replaced by a game with the body, focus on bodily in general (Tulchynskyi and Uvarov, 2001). Representation of the body at the household level and in art leads to permissiveness and aesthetic development of homosexuality – both male and female. This is also facilitated by virtual technologies: IT, in particular the Internet, provides an opportunity to remain anonymous and survive in any image, even without plastic surgery. The development of means of communication, the main stages of which are language, oral language, writing, printing, artificial languages (scientific terminology), media (media), information and communication technologies (ICT) do not also contribute to the preservation of national identity.

It is obvious that scientific terminology, mass media and ICT have an international, supranational character, so their further development and dissemination lead to the erasure of national characteristics, unification

of means of communication and information exchange. Preservation of national identity in some societies contributes to the developed religiosity of the population, the stability of social and cultural traditions. Thus, Poland has a solid foundation for maintaining national consciousness in mass religiosity or respect for Catholic traditions by the majority of the population.

As for Ukraine, the religious (Orthodox) basis, which would have contributed to the preservation of national consciousness, as a result of active ideological struggle was destroyed during the Soviet era. And no matter how much the ideology of modern Ukrainian citizens is restored by domestic ideologues, no matter how many churches are built and no matter what advertisements are made by different denominations (both Orthodox and others) Christian and other religious dogmas look outdated and unconvincing on the background of the latest information technologies, computer technology, genetic engineering, etc.

Naturally, the development of IT does not deny the belief in God as such, but certainly does not contribute to the development of traditional religious rites and the preservation of the appropriate worldview. In general, the researchers of the information society believe that the essence of the theory of the information society is reduced to the analysis of the conflict between it and cultural identity (Dyson, 1998; Castells and Himanen, 2003; Parkhomov *et al,* 2006). Thus, M. Castells notes that "the dominant general trend is that the progress of the global information economy causes a strong resistance, which is based on the feeling that development threatens cultural identity", (Castells and Himanen, 2003: p.35). As a result, along with the development of the information society, there is an increase in nationalism and religious fundamentalism.

The positive examples of resolving this conflict are the development of the information society in Finland and Japan. There are no nationalist movements, no religious fundamentalism, and no powerful anti-globalization movement. Thus, the Finnish model of the information society is built on the Finnish identity itself, on the policy of the "welfare state". This model mitigates the socially destructive impact of the information society and makes the success of the information society the financial basis of the welfare state.

The development of the information society in Finland has become a new project for the survival of the nation-State, which legitimizes the State as long as people can see that it contributes to the survival of Finland. An important factor in the positive development of the information society in Finland on the background of preserving national identity was the Finnish identity. It is based on ethnic homogeneity, common language, and the absence of ultranationalist sentiments. As a result of Finns' sensible and rational approach to IT, Finnish identity not only develops the information society, but is also organized on its basis.

The entire history of the independent Finnish state is a brilliant illustration of how the information society has become and remains a project of identity creation. Information technology has become a means for Finland to show itself and the world that it is no longer poor and dependent on Sweden or Russia, and that accession to Western Europe has taken place in an ideologically neutral way by joining its technological development.

Analyzing the state of self-consciousness of modern Ukrainians, the linguistic, ideological, political situation in Ukraine, one should note a number of problematic issues related to the development of the information society and the preservation of national identity in its territory. Firstly, despite the active "ukrainization" of the population during the years of independence, there is still no linguistic identity due to the popularity of the Russian language in the country. Secondly, the only undeveloped State ideology that would unite the Ukrainian nation would become a driving force in national, social, and economic construction. Thirdly, there is the ethical issue of blurring moral and spiritual values, which has not only not been resolved, but has increased since the proclamation of Ukraine's independence.

As indicated above, Orthodox ethics, which was widespread in this area until 1917, was ousted by communist ideology. But since gaining independence in 1991, the restoration of religiosity and the spread of Orthodoxy have not become a unifying factor for Ukrainian citizens either.

It should be noted that ethics prevailing in society always becomes either a factor of social progress or a factor of its inhibition. For example, Finland has been dominated by the Protestant work ethic, which assumes the perception of work as the highest duty and the best possible fulfillment of this duty. This ethic dominates to some extent now but is gradually and quite organically transforming into another ethic – the ethics of information creation, which can be called "hacker".

The latter is primarily lying in the fact that its followers find it really interesting, stimulating and even fun. Work is self-realization for the representatives of the information age because of the use of their own creative abilities, constant self-improvement, and self-development.

We should also pay attention to another important point. There is no doubt that every phenomenon has both advantages and disadvantages. Indeed, the information society presupposes a crisis of nationalism and national identity, but is this a tragedy for modern society? Today, the degree of assimilation of different nationalities, ethnic groups and even races is such that it becomes increasingly difficult to determine the nationality of a person, especially when it comes to the so-called "developed" countries. The passports of citizens of these countries does not include the column "nationality", i.e. national identity has actually been reduced to the definition of citizenship.

But the question arises: do American, French, Russian, Ukrainian, and other nations exist as such today? Given that national features are increasingly being erased by total assimilation, national identity is mostly determined by place of residence, which in turn is not fixed for many representatives of the above countries – they have property, economic, political and other interests in a lot of places, regardless of state borders and even less of the national identity. The development of the information society contributes to this process by providing new and very interesting meaning to total integration and assimilation.

The fact is that the ruling class of the information society is intellectuals, and the main value of the information age is knowledge and their own abilities. Thus, a person's belonging to a certain nation ("I am an American", "I am a Russian", "I am a Ukrainian", etc.), certain social or oligarchic group ("I am the son of a president / businessman / scientist", etc.) is gradually losing its relevance, because a person's value is determined not by nationality, social status, financial and other material capabilities, but his (her) creativity, intelligence and level of knowledge, access to information and the ability to operate it. This in turn creates a tendency to total unification in various senses: linguistic, national, cultural, economic, etc., which leads to the selection of one language as the dominant and most used (obviously today it is English), erasing national characteristics and features, developing single ethics and principles of co-existence regardless of official State borders, current legislation, religious guidelines, local traditions (Zakovorotnaia, 1999). Not everyone will agree that this tendency inherent in the information society is positive, but, in our opinion, it is a significant step forward compared to the existing consumer society, which is characterized primarily by the total dictate of money transformed into the highest value and meaning of existence.

Conclusion

The problem of identity in theoretical and practical aspects is one of the fundamental one for the socio-philosophical sphere of knowledge. The social nature of an individual implies that he (she) seeks to be included in the community, society and at the same time – to be separated from them as a personality. Identity is the awareness, feeling, experience of belonging to various social communities, such as family, professional group, class, territorial community, ethnic group, nation, social movement, State, humanity in general.

One of the leading places in the set of identities is occupied by national identity. The difficulties in defining national identity arise not only because of the ambiguity of the concept of "identity", but also due to its synthetic

nature, which makes it the subject of interdisciplinary research. This leads to the accumulation of a significant number of definitions. The lack of a holistic definition and clear conceptualization of national identity prevent us from establishing the criteria and conditions for their application. Besides, many researchers use the term "identity", to denote its varieties as something a priori clear that does not require any definitions. However, despite the desire of some authors to abandon the use of the category of national identity, it remains the subject of intensive research.

The problem of national identity first became the subject of scientific discourse in the 19th century and becomes more and more relevant under the globalization processes.

Summing up, we can say that, despite a number of serious contradictions and problems caused by the informatization of most societies, in particular, Ukrainian one, the scenario of technological civilization continues to unfold. At the same time, the integration of national cultures into the world's multicultural space is constantly growing, and national identity is under threat of destruction. But the positive example of a number of countries gives hope for some favorable relationship between the development of the information society and the preservation of national cultures by raising national identity, developing the right State ideology, the revival of spiritual values.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 95-107
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Current state and some issues of countering illegal trafficking in goods in Ukraine

DOI: https://doi.org/10.46398/cuestpol.38e.06

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Abstract

The aim of the article is to investigate the current state of illegal merchandise trafficking in Ukraine, as well as the basic conditions that promote the spread of counterfeiting in this country together with the methods to counteract this phenomenon. The research methodology was chosen based on the purpose and objectives of the study, consequently, a set of methods and approaches to scientific knowledge were combined, of a general theoretical and special scientific nature. Everything indicates that Ukraine is one of the world leaders in the illicit production and distribution of software, intellectual property, etc., and this problem has not been a priority for the authorities for a long time. It is concluded that the basic conditions that promote the spread of counterfeiting in Ukraine are determined on the basis of the analysis of the activities of the police and supervisory authorities in the fight against illegal trafficking of goods. The most efficient methods are proposed to counteract the illegal traffic of goods, within the framework of the underground economy in Ukraine.

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Recibido: 22/03/2020 Aceptado: 12/07/2020.

Keywords: illegal traffic of goods; counterfeit products; legal regulation; anti-counterfeiting methods; Ukraine.

Estado actual y algunos problemas de la lucha contra el tráfico ilegal de mercancías en Ucrania

Resumen

El objetivo del artículo es investigar el estado actual del tráfico ilegal de mercancías en Ucrania, así como las condiciones básicas que promueven la propagación de la falsificación en este país junto a los métodos para contrarrestar este fenómeno. La metodología de investigación se eligió en función del propósito y objetivos del estudio, en consecuencia, se combinaron un conjunto de metódicas y enfoques del conocimiento científico, de carácter teórico general como científico especial. Todo indica que Ucrania es uno de los líderes mundiales en la producción y distribución ilícitas de programas informáticos, propiedad intelectual, etc., y este problema no ha sido una prioridad para las autoridades durante mucho tiempo. Se concluye que las condiciones básicas que promueven la propagación de la falsificación en Ucrania se determinan sobre la base del análisis de las actividades de las autoridades policiales y supervisoras en la lucha contra el tráfico ilegal de mercancías. Se proponen los métodos más eficientes para contrarrestar el tráfico ilegal de mercancías, en el marco de la *economía sumergida* en Ucrania.

Palabras clave: tráfico ilegal de mercancías; falsificación de productos; regulación legal; métodos de lucha contra la falsificación; Ucrania.

Introduction

There is a clear tendency to introduce European norms of civil society at the present stage of development of our State, especially with regard to the progressive dynamics of the country's development, reforming of State institutions, ensuring the implementation of public policy in general and its individual institutions in particular. The State policy in the customs sphere, which is one of the most important components of the country's economic policy and is aimed at maximally filling the State budget, is no exception. Reforming the activities of the customs authorities of our country and adapting their work to the requirements of the European

Union are identified as one of the most important tasks of the Sustainable Development Strategy "Ukraine 2020" (Order of the President of Ukraine, 2015).

The issue of preventing and combating violations of customs rules (one of the manifestations of which is also illegal trafficking in goods), which are commonly identified with the phenomenon of a negative nature, is particularly relevant in the process of reforming the activities of customs authorities. The existence of such violations damages the State, undermining its economic stability. That is why the State attaches great importance to this problem. Today, such a phenomenon as illegal trafficking in goods has become widespread and is considered not only within a particular country or region, but at the global level, due to its inherent in almost all countries and regions of the world. To ensure an effective mechanism for preventing and counteracting this negative phenomenon, each State is making every effort to develop and implement a number of programs, tasks, improving its legislation in terms of combating this problem.

The shift in public and economic life in Ukraine affected many directions of social life, including the norms and standards of production and sales of goods. A large number of private business entities have joined the process of production and selling goods that previously had no experience, material or technical capacities for producing, storing and selling goods to consumers. Previous State standards and requirements for technology and conditions of production were mostly replaced with technical specifications of individual producers. This fact caused the issue of declining product quality.

Step by step, the production of goods in Ukraine has become more civilized and even achieved the quality level of European producers in some areas. Recently, modern technologies of production of goods have been implemented in Ukraine. This direction, though, leaves lots of unsolved issues of both organizational and technical nature. The State has lost control over private entities' performance.

1. Methodology

In accordance with the purpose and objectives of the study, the system of methods and approaches of scientific knowledge, both general theoretical and special-scientific ones, is used in the work. The application of these methods is guided by a systematic approach, which primarily provides an opportunity to explore problematic aspects in the unity of their social content and legal form and allows for scientific research on the nature of illicit trafficking in goods and services in Ukraine.

Besides, the following research methods are used in the course of the research:

- historical method is applied in the analysis of the development of criminological thought on the problem of crimes in the area of illicit trafficking in goods and services in Ukraine.
- structural and systemic method is helpful when considering the quantitative and qualitative characteristics of illicit trafficking in goods and services in Ukraine.
- analytical method is used in determining the current features and trends of illicit trafficking in goods and services in Ukraine in its dynamics.
- with the help of statistical method, the statistical data on quantitative and qualitative characteristics of illicit trafficking in goods in Ukraine are collected and processed.
- the methods of classification and grouping allow to identify the most effective methods of combating illegal trafficking in goods in Ukraine.
- the method of content analysis is applied in the review of domestic and foreign scientific literature on the issue under consideration.

2. Literature review

As the problem of illegal trafficking in goods is of worldwide nature, many foreign scholars dedicated their works to some particular aspects of this issue. For example, Gautam (2014) examines, which goods could be the subject of illegal circulation, the functions of the authorities empowered to counteract this problem, the main directions of co-operating between them and the major policies associated with illegal markets.

Misiunas and Rimkus (2007) investigated the preconditions and consequences of illegal goods traffic. They studied both theoretical and practical aspects of the problem, scale, structure and features of illegal goods traffic as well as the main schemes of illegal good's traffic and tax hiding.

Quentin Rossy and David Décary-Hétu (2018) studied the use of Internet traces either on their own or in combination with physical traces to counteract online illicit markets, where offenders interact and leave traces. They classified online illicit markets and proposed the methods, with the help of which buyers can evaluate the trustworthiness of sellers. The scholars also identified internet traces to apprehend online illicit markets as well as the ways maximize the research potential of Internet traces.

Some aspects of the problem under consideration are also highlighted in the works of domestic scientists. For example, Lysenko and Kurilov

(2013,2015a,2015b) dedicated their researches to the number of issues: a comprehensive analysis of the content of typical methods of preparation, commission and concealment of crimes related to illegal trafficking in goods in Ukraine was conducted (Lysenko and Kurilov, 2013); the methods of counteracting illegal trafficking in goods in Ukraine were determined (Lysenko and Kurilov, 2015a); the analysis of the current situation in Ukraine with the spread of counterfeit was carried out, the conditions conducive to the spread of illegal trafficking in goods were identified as well as the methods of criminal activity were described (Lysenko and Kurilov, 2015b).

(Zahorodnii, and Belogubova (2019); provided an overview of some manifestations of transnational organized crime in Ukraine, and, in particular, focused on illicit trafficking in firearms and narcotic substances, as well as crimes committed in the sphere of traffic and operation of vehicles

3. Results and Discussion

3.1. The legal regulation of circulation of goods

The work of the recent years with regard to the protection of the rights of consumers and control in the area of combating illegal trafficking in goods in Ukraine is worth noticing as well. Over the last few years, efforts have been focused on creating needed conditions for functioning in local governments the structural subdivisions in matters related to consumer protection. Series of law and other legal acts were enacted and adapted to the European Union's legislation requirements regarding consumer protection and ensuring of goods production security. Ukraine gradually meets the requirements of international legal documents that are implemented into the national legal system.

In this direction, the experience of EU countries has to be taken into consideration, because they created a system both out of and in court proceedings related to the examination of consumers' complaints on the level of regulatory and legal enforceability, technical regulation over the guarantee of production safety and service, and control over performance concerning production quality. Special attention was paid to providing actual consumer protection against dangerous, harmful goods, products, and low-quality service. Firstly, selling of such goods was provided by granting consumers sufficient and reliable information about these goods and their composition in accordance to which a consumer may make a meaningful and objective decision of his choice and further consumption.

At the same time, the analysis of the practice of supervisory and law enforcement authorities regarding law violations on the Ukrainian

consumer market indicates non-compliance with existing norms and standards while producing and selling goods in almost 90% of the total number of examined business. Statistics and practice show that the consumer market in Ukraine continues to be saturated with counterfeit, surrogates, poor-quality and dangerous goods; in most cases, this relates to food products and alcoholic beverages. The state does not ensure the proper implementation of consumer rights to obtain necessary, accessible, reliable and timely information about works and services, and goods (Lysenko and Kurilov, 2015b).

Unfortunately, there are some incidents of counterfeiting and falsification in the course of the circulation of goods in Ukraine. To a certain extent, in addition to the legal production of goods and products in Ukraine, as in other countries, there is a strong market for counterfeiting of goods and products. Significant increase in the volume of illegal trafficking in goods in Ukraine is due to the receipt of significant profits, the possibility of conducting business activities outside the existing accounting, the possibility of tax evasion, exemption from the need to comply with established requirements for production and storage technology, etc.

The growth of illegal goods trafficking is not inherent only in Ukraine. Falsification and counterfeiting of goods, particularly known brands, is a worldwide problem. Thus, according to experts of the International Chamber of Commerce, counterfeit products make up about 10% of the world's total trade volume. According to the Organization for Economic Cooperation and Development, the global counterfeits market is almost $200 billion a year. At the same time, taking into account the volume of sales of counterfeit goods and products that are produced only for the domestic market and domestic consumption – we can say that the world volume of illegal circulation of goods is several hundred billion dollars more (OECD, 2007). This situation is striking in size, moreover counterfeit goods are consumed by citizens and their consumption, in some cases, is extremely dangerous to the health of many people.

3.2. Current state of illegal trafficking in goods in Ukraine

One of the prominent places in this "anti-rating" is for Ukraine, which has a large number of well-known producers, as well as many industrial and food products that are manufactured outside official production and accounting. Ukraine is one of the world leaders in the illicit production and distribution of computer software, intellectual property, etc. The practice of law enforcement agencies shows that large quantities of tobacco products of well-known brands are illegally exported to the EU countries from the territory of Ukraine (Lysenko and Kurilov, 2015a).

Until recently, the issue of counteracting counterfeiting of goods, in addition to detecting and investigating crimes related to the illegal trafficking in goods, was not a priority for authorities. The lack of State control over the quality of goods creates the conditions for counterfeiting of food products, medicines, petroleum products, and other goods.

The analysis of the activities of law enforcement and supervisory authorities in combating illegal trafficking in goods in Ukraine allows us to define the basic conditions that promote the spread of counterfeit and falsification:

1. the lack of appropriate regulatory and legal support for the activities of the supervisory and law enforcement authorities.
2. the lack of proper State control over the production, circulation, and sale of goods, providing the appropriate law enforcement function in counteracting illegal circulation of goods.
3. the absence of effective, regulated State standards on the procedures for the organization and implementation of production, circulation, and marketing of goods throughout the territory of Ukraine.
4. the lack of effective State control over the circulation of raw materials (e.g. alcohol, tobacco, etc.), special equipment, which creates conditions for spreading of illicit fabrication, forgery, and falsification of goods.
5. the lack of effective control over the production of original packaging and packaging materials, which makes it possible to use these items during counterfeiting and falsification of goods.
6. the absence of State control over the transportation of raw materials, semi-finished products or finished products from places of production of counterfeit goods to places of their storage or sale.
7. the absence of appropriate state control over the process of activity of trade organizations through which the sale of counterfeit goods is carried out.
8. the lack of proper training and staffing of the process of monitoring the detection of illicit trafficking in goods in Ukraine, detection, and investigation of such facts.
9. the high level of corruption of the supervisory and law enforcement authorities of Ukraine (customs, tax service, police, etc.), direct participation and assistance and backing for the illicit circulation of goods by the supervisory and law enforcement authorities.
10. the lack of proper technical support (appropriate technical equipment, laboratories, tests, etc.) for the detection of counterfeit, fraudulent goods.

11. the lack of a single information center (corresponding automated information retrieval systems) that would be used to accumulate information on established facts of counterfeiting across the territory of Ukraine. This information could be used in the course of further counteraction to illegal activities and made it possible to familiarize such information with citizens-consumers of goods and products.
12. the lack of proper interaction and exchange of information on the facts of a mass selling of counterfeit, established in certain territories, mass poisoning of people because of the use of counterfeit products.
13. the lack of clear regulatory requirements for producers of goods, regarding the need to ensure the protection of goods from forgery, the creation of original packaging, special packaging, etc., which would make it impossible to reuse packaging for counterfeiting.
14. the absence of a certain nationwide program of the national health, the provision of data through the mass media concerning the spread of the facts of falsification of goods and their indications.
15. the absence of an appropriate State program on automated control over the circulation of goods in Ukraine, the appropriate marking of products that would allow to establish the movement of the relevant products and to detect the facts of counterfeits and uncontrolled circulation of original products.
16. the lack of a special State program for controlling the production and circulation of goods in Ukraine, creating equal conditions for business entities in business.
17. the existence of certain national traditions regarding the sale of original products and goods in the trading networks.
18. the lack of appropriate liability (criminal, administrative, financial) for committing falsification of goods.
19. the lack of a legal procedure of a deprivation of the right to engage in economic activity in case of use of the possibilities of an officially registered economic entity for falsification of goods.
20. the presence of low-income groups of the population who consume low-grade types of products, goods.
21. the reluctance of real producers of goods and products to report the spread of counterfeit, since this may reduce the consumers' interest in such products because of fear of buying counterfeit products.
22. the low level of State protection of intellectual property rights and distribution of non-licensed software on the territory of Ukraine, unauthorized copies of musical and other products, etc.

23. the absence of generalized statistical data and relevant research in relation to causing harm to the public health of the illicit circulation of goods and the related pecuniary damage to public interests (non-payment of taxes, medical expenses, sick leave, etc.).
24. the lack of public condemnation and intolerance to persons involved in the manufacture and sale of counterfeit products.

3.3. Methods of countering illegal trafficking of goods in Ukraine

Currently, countering illegal trafficking of counterfeit goods is an extremely topical issue. It requires an integrated approach and participation in this process not only of the state, its supervisory and law enforcement authorities, but also of non-governmental organizations, and the general population. It is worth noting that in Ukraine there is a certain practice of police authorities and tax police units in counteracting the illicit trafficking of goods since such units conduct operational searches to detect, document, and investigate illicit trafficking of goods. However, such units do not have any special laboratories in sufficient quantity, warehouses, or opportunities for the storage and processing of counterfeit products. It is imperative to adopt a special State program that would determine the procedure for law enforcement authorities to counteract the illicit trafficking of goods, their interaction with each other, and the relevant budget items for financing such activities (Lysenko and Kurilov, 2013).

In this direction, the activities of controlling and law enforcement bodies should be improved at the present stage in order to effectively identify the facts of illicit circulation of goods and counteract their spread. The State should realize that the problem of counteracting the illicit trafficking of goods is not only the loss of taxes to the state budget, but it is also the creation and provision of equal business conditions for all entities involved in this process, as well as the trust of business entities in the State policy in this area. But at the same time the most important thing in this direction is ensuring the safety of the Ukrainian population, ensuring the health of the nation, and securing them against harmful, dangerous products. At the same time, all measures of state bodies in this direction must be accompanied by appropriate regulatory and legal support, in addition to the development of special state programs.

A corresponding government program is to be developed and adopted on the peculiarities of State control over the quality of production and the sale of goods to consumers, countering counterfeiting and falsification of food products, medicine, petroleum products, intellectual property and

other goods, as well as series of measures of health support of the Ukrainian population. The above mentioned government program should include the definition of specific law enforcement and supervisory authorities, that are responsible for the organization of counteraction to an illicit trafficking of goods and a list of measures to organize effective counteraction. This program should be with no time limit and focused on the creation of global control over the activities of economic entities in respect to compliance with the requirements of the manufacturing of goods and products, minimizing counterfeiting of goods and their sale in trading networks.

On the basis of such government program, other programs should be developed, such as: programs for specific authorities (i.e. supervisory, law enforcement) on the organization of specific control, search operations and other special measures for the detection, documentation of illegal activities. Implementation of the program for counteracting illegal trafficking in goods and supporting the health of the nation should have appropriate state funding and should be specified in the state budget for each year by a separate line item. The funding of such activities should include measures for the appropriate technical equipment of supervisory and law enforcement authorities, as well as technical equipment for conducting expert studies in special laboratories for the study of the quality of goods and products received for sale, etc.

A sufficient number of appropriate State laboratories should be set up to monitor the quality of goods equipped with modern technical means that would allow to control the quality of products, to conduct an instant investigation of certain types of products, and to ensure the objectivity of the conducted research. The generalized information of these labs on product quality research is subject to generalization and with the help of a specially created automated information retrieval system should be used to counteract illegal circulation of goods on the basis of certain established indicators throughout the territory of Ukraine by appropriate laboratories, employees of supervisory and law enforcement authorities. The establishment of facts of the sale of low-quality products based on the results of expert investigations may be used in other regions of Ukraine for the possible formation of similar counterfeit products.

The State support and adequate State financing are required to be restored to carry out independent quality appraisals of goods sold within the territory of Ukraine, in order to establish the facts of the circulation of low-quality and dangerous products, that threaten the health of not only individual citizens, but also the nation as a whole. Involvement in the process of controlling the quality of products of non-governmental organizations and their personnel to conduct research on product quality will provide an alternative to State laboratories. Practice shows that consumer defense organizations are widespread in the territory of Ukraine and are constantly

taking measures to prevent the circulation of substandard products.

An important direction in improving the counteraction of trafficking of low-quality, counterfeit, and falsified products is the appropriate regulatory and legal support for the process of manufacturing goods and products in Ukraine. At the State level modern State standards should be developed and approved, which should be decisive in the process of manufacturing goods, products and which should minimize the facts of goods production only on the basis of the producers' technical specifications. This will allow to clearly identify individual indicators of the technological production process and minimizing the use of harmful to health components and raw materials during the production process. The presence of these State standards will allow controlling the production at the appropriate level and equally throughout the territory of Ukraine. The existence of unified State standards for manufacturing products will minimize the "amateur performance" of the manufacturers and will create conditions for increasing the quality of products.

The development of modern technologies requires the development of appropriate software to control marking and circulation of goods at the national level throughout Ukraine, which would allow to distinguish counterfeit products during the circulation of goods. The adoption of the appropriate national product labeling requires a series of measures and the provision of trade networks with the appropriate technical equipment, which would allow to identify the manufacturer with the help of special markings. Development of such product marking will allow to control the movement of goods at an appropriate level and automatically establish the facts of arrival of counterfeit products into the trading network. In this case the special labeling of products and goods that are most often falsified should be a top priority. This applies to food, drinking water, medicine, and perfumes. For example, special paints for marking fuel and lubricants can be used to distinguish one brand of petrol from another, using special tests to install non-certified impurities, petrol falsifications, etc.

The use of media opportunities (television, print media, Internet, etc.) to effectively counteract illegal trafficking in goods is important. It helps to bring to the consumers' attention data on established facts of counterfeiting of goods, information on preventing the use of such product that can cause damage to health. It is necessary to bring through the media information about the indicators of counterfeit products.

It should be noted that the counteraction to counterfeiting of goods must also involve official manufacturers of products. That is, the current legislation should impose obligations on such manufacturers on the mandatory adoption of measures on special marking or packaging that would further eliminate the facts of counterfeiting and the reuse of packaging. International practice knows cases of special labeling of goods

or the use of special equipment, which allows to distinguish the original product from counterfeit. The presence of special markings, for example, on certain types of vodka makes it possible to completely distinguish genuine products from counterfeits.

The implementation of the above-mentioned measures will, to a certain extent, allow to have an impact on such a powerful segment of the shadow economy as illegal trafficking in goods and gradually minimize its impact on the consumer goods market in Ukraine.

Conclusions

Despite the measures that had been taken to counteract the illegal trafficking of goods in Ukraine, this direction remains extremely difficult. The cases of forgery and falsification of a certain group of goods (food, alcoholic beverages, fuel) are widespread. Obtaining uncontrolled profits and improper regulation of production of goods are the main reasons for the illicit trafficking of goods in Ukraine.

The practice of law enforcement agencies shows that large quantities of tobacco products of well-known brands are illegally exported to the EU countries from the territory of Ukraine. Among the reasons of illegal trafficking of goods are:

- the lack of appropriate regulatory and legal support for the activities of the supervisory and law enforcement authorities.
- the lack of proper state control over the production, circulation, and sale of goods; the absence of effective, regulated state standards on procedures for the organization and implementation of production, circulation and marketing of goods throughout the territory of Ukraine.
- the lack of proper technical support for the detection of counterfeit, fraudulent goods, etc.

In this regard, State bodies and local authorities should implement a set of measures to eliminate the factors that are contributing to the spread of counterfeiting, such as: increasing the level of responsibility of manufacturers that produce low-quality and counterfeit goods, as well as retail networks that sell such products.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 108-118
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Problems of the socioeconomic development of the border territory of the countries of Northeast Asia and their influence on the international integration of peripherals

DOI: https://doi.org/10.46398/cuestpol.38e.07

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Abstract

The article studies the problems of the socioeconomic development of the border territory of the countries of Northeast Asia (NEA) and its influence on the international integration of peripherals in Asia. The study starts from the assumption that the international integration of border areas depends on the presence of certain factors in the development of these territories. At a methodological level, various tools of geopolitical and geostrategic analysis were used in the coordinates of interdisciplinary dialogue, also using theoretical and methodological devices from various disciplines such as: the humanities, international relations, economics, and socioeconomic geography. The discrepancy between the national average development indicators is typical of the border periphery of all Northeast Asian countries. The findings obtained allow us to conclude that the territorial disparities revealed in the course of the study are manifested in all areas of social relations (demography, economy, management, infrastructure). Despite the peripheral / border areas function in different natural, economic, and political conditions and have different traditions of economic development. However, the structure of development problems, in general, has similar mechanisms of influence in the processes of economic integration in this region of the world.

Keywords: integration problems; peripheral territories; Northeast Asian borders; cross-border region; international economic integration.

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Recibido el 04/15/2020 Aceptado el 09/10/2020

Problemas del desarrollo socioeconómico del territorio fronterizo de los países del noreste asiático y su influencia en la integración internacional de periféricos

Resumen

El articulo estudia los problemas del desarrollo socioeconómico del territorio fronterizo de los países del noreste asiático (NEA) y su influencia en la integración internacional de periféricos en Asia. El estudio parte del supuesto de que la integración internacional de las zonas fronterizas depende de la presencia de ciertos factores en el desarrollo de estos territorios. A nivel metodológico se hiso uso de diversas herramientas del análisis geopolítico y geoestratégico en las coordenadas del diálogo interdisciplinario utilizando además dispositivos teóricos y metodológicos de diversas disciplinas como: las humanidades, las relaciones internacionales, la economía y la geografía socioeconómica. La discrepancia entre los indicadores de desarrollo promedio nacionales es típica de la periferia fronteriza de todos los países del noreste de Asia. Los hallazgos recabados permiten concluir que las disparidades territoriales reveladas en el curso del estudio se manifiestan en todos los ámbitos de las relaciones sociales (demografía, economía, gestión, infraestructura). A pesar de que las áreas periféricas / fronterizas funcionan en diferentes condiciones naturales, económicas y políticas y tienen diferentes tradiciones de desarrollo económico. Sin embargo, la estructura de los problemas del desarrollo, en general, tiene similares mecanismos de influencia en los procesos de integración económica en esta región del mundo.

Palabras clave: problemáticas de la integración; territorios periféricos; fronteras del noreste asiático; región transfronteriza; integración económica internacional.

Introduction

Peripheral regions are traditionally viewed as the regions with disadvantages due to poor accessibility to large markets and low population density, which limits the development of economic processes. Regional authorities in these territories face difficulties in adequate social service provision due to low business activity and limited income. Border zones, in turn, are often defined as “periphery of the periphery” due to their remoteness from economic centers, lack of jobs and problematic development trajectories.

The governments of the countries that make up the cross-border regions consider the international environment as a resource for their development, but, often, integration stalls or goes into a format that is contrary to national interests. Thus, the macro-region as a whole and the border territories of the state's present there remain underdeveloped, as happened in the case of the countries of the Sea of Japan. Within the framework of this article, we tried to establish the problems of socio-economic development that are characteristic of border areas in Northeast Asia and make the constraining factors of cross-border integration.

1. Method

The goal stated in the article can be solved on the basis of an interdisciplinary approach using theoretical and methodological tools of various disciplines: the humanities of international relations, economics, and socio-economic geography. At the same time, interdisciplinarity determines the variety of methodological approaches used in the study:

- the theories of "new regionalism" are characterized by a complex nature, increased attention to regional identity, the changes in the world economy, and the growing role of non-governmental actors. They are well suited for interpretation, analysis, and comparison of integration processes at the regional level.
- the world-system approach is a fruitful method for studying the processes of international economic integration of peripheral territories, because it allows us to consider the political and economic processes through the prism of the market world-economy evolution, primarily in terms of the "core" and "periphery".
- the economic-geographical approach makes it possible to single out territorial structures of different ranks, to assess the factors, conditions, and trends of their dynamics, and, first of all, relative to the processes of socio-economic complex formation.

2. Results

2.1. Problems of socio-economic development of the NEA country periphery

The Far East of the Russian Federation is formed by 11 administrative entities that make up the Far Eastern Federal District (FEFD). The regional specificity of the economic development of the region forms similar problems of socio-economic development concerning the constituent entities of the district. These problems include:

1. Small amount of population. Occupying more than 40.6% of the territory of the Russian Federation, only 8.18 million people live in the Far Eastern Federal District, which is about 5.5% of the country's population.
2. Negative migration balance with relatively high mortality and low fertility. During the first half of 2019, 22.2 thousand people were born, and 26.4 thousand people died in the Far East (Lebedinskaya *et al.*, 2018). And if in previous years the natural decline was compensated by immigration, then during the last year the natural population losses are not compensated by mechanical growth.
3. Weak infrastructure of transport, energy, and communications. There is a lack of internal transport communications, which increases the transport costs of producers, making their products uncompetitive, and complicates the development of regional forms of economic cooperation (Mindlin *et al.*, 2017).
4. Sectoral disproportion of the regional economy in favor of the raw materials sector. In the conditions of market relations, the disproportions in the sectoral structure are increasing. If in 2005 the share of extractive industries accounted for 14.9%, in 2010 it reached 24.3%, and in 2018 - 28.2% (Federal State Statistics Service, 2018).
5. Overcentralization of regional policy and the growth of "development bureaucracy" instead of delegating powers to local authorities and state regulation weakening.

2.1.1. People's Republic of China

Historically, three provinces Heilongjiang, Jilin, and Liaoning, known as Inner Manchuria or Dongbei, form the northeastern periphery of China ("rust belt"). The main problems of their development may include the following:

1. Demographic potential decrease. More than half of the region 85 cities are facing population decline, exacerbated by low fertility, and aging of population. It is estimated that over the past decade about 1.8 million people left the Northeast (Elaine, no date).
2. Inefficient / outdated sectoral structure of the regional economy. Most of the economy is state owned. This problem has two aspects. The first is associated with the prevalence of outdated technologies and industries. The second aspect is the domination of large state-owned enterprises (SOEs), which do not adapt well to market conditions.

3. The economic downturn caused by the depletion of the old resource base. The volume of industrial production is sharply reduced in the cities specializing in the development of natural resources. Thus, there is a steady outflow of residents to more developed regions of the country for the search of work and better living conditions.
4. The overload of enterprises with a social burden. The current assets of most SOEs are associated with huge unproductive costs due to significant social obligations.
5. Preservation of state planning elements in the economy. According to both Chinese and foreign experts, the preservation of the state planning mindset in the northeast impedes change and creates an unfavorable business climate.

2.1.2. Japan

The uneven economic development of the territory of Japan is conditioned by both historical and geographical factors. Over the past fifty years, not only economic centers have been created, but also the economic periphery of Japan. It includes Hokkaido, Tohoku, Chugoku, Shikoku, and Kyushu. The main problems associated with leveling the disparities in the socio-economic development of the Japanese periphery include the following (System of Social and Demographic Statistics, 2018):

1. Outflow of local production factors - capital and labor resources to more developed and dynamically developing regions of the country.
2. Decrease in demographic potential due to population aging and migration outflow. Negative demographic processes are typical for Akita (5.2%), Aomori (4.4%), and Kochi (4.0%) prefectures. The concern about population reproduction is caused by its age structure. The percentage of age groups is the following: up to 15 years - 13.2%; 15 - 64-year olds - 63.8%; 65 years and older - 23.0%.
3. Low rates of economic growth and reduced investment attractiveness of peripheral territories.
4. Preservation of imbalances in the sectoral structure of the economy with the preservation of a high proportion of those employed in agriculture. As of 2010, the gross agricultural product produced in the peripheral regions amounted to 3.5% of the GRP, with 17.8% employed in agricultural production, while in the central prefectures this indicator made 1% and 3.5%, respectively.

5. Low level of self-sufficiency of the country with food. In 1965, food self-sufficiency ratio in Japan was 86% (as the ratio of food produced and consumed). Due to the outflow of labor and financial resources from the agricultural periphery of the country, the level of food security dropped to 66% by 2015 (Markaryan, 2017).

2.1.3. South Korea

1. Territorial imbalances in economic development. The economic development of RK is proceeding, first of all, along the Seoul-Busan line, other regions, especially the North-East and South-West, are lagging behind. The economy declined, living conditions deteriorated, incomes and the quality of jobs dropped in rural areas and small towns, without central regulation and stimulation.
2. Outflow of the resident population from peripheral areas. The peripheral regions of the Republic of Korea have a negative migration balance. More than 90% of the inhabitants of the Republic of Korea live in cities, and about half of the country population is concentrated in the metropolitan agglomeration, which accounts for only 13% of the land (Kim, 2016).
3. Aging of the resident population. Low fertility and long-life expectancy are common problems in South Korea, but they are most acute in the periphery. As young people strive to make a career in big cities, the concentration of retirees is increasing in the periphery.
4. Aging of fixed assets and production infrastructure. Many capital buildings, industrial buildings, land roads and marinas in the periphery became unnecessary when South Korea economy became specialized in high value-added goods and services.
5. Weak foreign economic ties. Peripheral regions are poorly included in global production networks. National chaebols and foreign TNCs are focused on large cities exclusively.
6. The threat of war with North Korea. Constant military readiness in the border counties of South Korea is implemented through strict administrative control that restrains economic activity (Kang, 2018).
7. Chinese Korean ethnic tensions in Jeju. After the liberalization of economic activity regime for foreigners, Jeju has become popular among the citizens of the PRC. In addition, the participation of Chinese capital in construction, tourism and services has become noticeable. The dominance of the Chinese in the local economy causes discontent among the indigenous people (Choe, 2015).

8. Disproportions in the placement of objects of science and education. The best universities, research centers, research laboratories of large companies are concentrated in the capital region and in Pusan, which additionally stimulates the outflow of young people to large cities (Jang, 2009).

2.1.4. North Korea

1. Poor development of infrastructure for roads, electricity, and communications. Regional highways in the DPRK are mostly unpaved, the speed of trains is no more than 30 km/h, and the power supply is usually modest.
2. International economic sanctions. In order to restrain the development of the nuclear missile program, the DPRK was imposed by the UN sanctions and by unilateral sanctions of the United States, Japan and South Korea, which limit the possibilities of international economic cooperation (Kozlov, 2018).
3. Dependence of inter-Korean economic ties on the change of power in South Korea. As a rule, the democratic governments of South Korea try to improve the relations with the DPRK through joint economic projects, while conservative governments usually lead to cooperation freeze (Zakharova, 2016).
4. Poor investment climate. In addition to sanctions, foreign business is confused by the frequent failure to fulfill obligations by North Korean counterparties and the authorities, difficulties with the withdrawal of profits from the DPRK, the dependence of investment projects on hidden and informal internal political processes, and poor development of the regulatory framework and infrastructure for the DPRK foreign economic activity.
5. Dominance of Chinese business in foreign trade. Today, China accounts for more than 90% of the DPRK foreign trade. In the borderlands, Chinese capital is represented in the Sinuiju and Rajin FEZs. In 2010, the agreements were concluded between the PRC and the DPRK on the development of Sinuiju and Dandong according to a general plan (Kim, 2013).

2.2. Systematization of typical problems of socio-economic development in peripheral territories of NEA countries

The entire set of problems that determine the nature of the socio-economic development of the peripheral territories of the Northeast Asia countries can be conditionally divided into five areas: demography; economy; control; infrastructure. The processes determined by international integration are in the focus of our attention. In this regard, we were faced with the following task:to determine the problems of the areas which are most elastic to the changes in international integration process intensity.

The demographic problem is common to all peripheral territories, regardless of nationality. Stagnation in the economy, the depressive state of social life, determine the negative demographic trends. The main ones include low birth rates, the population aging, and the population outflow to more developed regions of the country. The intensity of these processes differs from country to country. However, the presence of demographic problems in national development models increases the gap between developed and peripheral regions of the countries.

The unevenness of the economic development of peripheral territories is manifested in the formation of difficult-to-eliminate disproportions in the economic system of the region. The economic models of the NEA countries differ from each other. Each of them has its own development trajectory. However, two problems can be distinguished that are typical for the countries of the region and are elastic in relation to cross-border integration. First, there is an imbalance in the sectoral structure of regional economies. Secondly, there is low investment attractiveness of either all industries, or individual sectors of the regional economy. The problems negatively affect the competitiveness of the region and / or its economic entities in national and international markets, which reduces the incentives for integration.

When they analyze the problems related to the sphere of governance, it is necessary to proceed from the fact that at least three political and economic models of public administration are being implemented in NEA: 1) a mature market model (Japan, South Korea); 2) planned / directive model (PRC, DPRK); 3) transitional model (Russia). Within the framework of each model, the problems arise that are inherent only in a particular country and its management tradition. However, no matter in which political and economic model the problems were born, the degree of their influence on the nature and intensity of integration processes is high. The principles, rules and perspectives of integration are determined in the field of management. Here we can speak of inverse elasticity, i.e. the intensity of problem manifestation associated with the management of the territory development determines the intensity of economic integration.

The success of most events related to international economic integration within a single cross-border space is largely determined by the development of transport communications. Integration is implemented better where the movement of goods, energy, people, capital, information occurs with minimum obstacles, i.e. there are more communication options.

Conclusion

1. The problems of socio-economic development of peripheral territories differ from each other not only by belonging to a particular sphere of the regional functioning, but also by the degree of sensitivity / elasticity to the changes in the intensity of integration processes aimed at a particular periphery.
2. In relation to international economic integration, the problems of peripheral territory development can have both direct and reverse elasticity. Direct elasticity is determined by the dependence of the problem severity on the integration process intensity. The reverse elasticity characterizes the conditionality of cross-border integration by the presence of regional development problems.
3. An example of direct elasticity is the problem of population outflow and the low level of investment attractiveness. With the growth of the international contact intensity, a qualitative change in the problem field occurs - migration processes are stabilized, the investment climate is improving.
4. Development problems associated with regional management and the quality of transport and other infrastructure have a high degree of inverse elasticity in relation to the processes of international economic integration. Any, even a slight reduction in barriers (liberalization of legislation, the construction of cross-border infrastructure facilities, etc.) can significantly increase integration activity in the region.
5. The specificity of the peripheral sectoral structures of the NEA countries has formed the “diversity” of industries and economic processes in the region. This, in turn, creates objective preconditions for the development of various forms of cross-border integration. Local economic systems, using the complementarity property of individual industries can form a single cross-border economic complex under favorable conditions.

Acknowledgements

The study was carried out with the financial support of the Russian Foundation for Basic Research in the framework of the scientific project No. 18-014-00012.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 119-133
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Rethinking Tourism Public Policies to mitigate the effects of Covid-19

DOI: https://doi.org/10.46398/cuestpol.38e.08

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Abstract

The objective of the research was to examine and analyze the articles that address public tourism policies in specialized magazines at a global level, with the aim of knowing through comparative public policies, alternative solutions in a post-pandemic scenario. Regarding the methodology, articles were selected whose titles presented one or more keywords that referred to the disease "Covid-19" and "public tourism policies" in Spanish and English. To process the information, the content analysis technique was used. The results showed that the place and space occupied by tourism public policies in the main tourism magazines is scarce and not seen as a management tool for the sector. The conclusion emphasized the lack of clarity regarding the methodology used in the articles and the scarce proposal of public policies that were implemented in situations of health crises, epidemics, wars, etc. For the rest, the following questions served as a guide for the analysis: 1) What is the role of governments in the tourism sector? and, 2) What public policies did governments implement in similar situations such as the current health crisis?

Keywords: COVID-19; public policies in tourism; tourism; scientific publications on tourism; health crisis.

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Repensando las Políticas Públicas de Turismo para mitigar los efectos del Covid-19

Resumen

El objetivo de la investigación fue examinar y analizar los artículos que abordan las políticas públicas de turismo en revistas especializadas a nivel global, con la finalidad de conocer por medio de políticas públicas comparadas, alternativas de solución en un escenario de pospandemia. En cuanto a la metodología, se seleccionaron artículos cuyos títulos presentaban una o más palabras clave que se referían a la enfermedad del "Covid-19" y "políticas públicas de turismo" en español e inglés. Para procesar la información se utilizó la técnica de análisis de contenido. Los resultados mostraron que el lugar y el espacio ocupado por las políticas públicas de turismo en las principales revistas de turismo es escaso y no visto como una herramienta de gestión para el sector. La conclusión enfatizó la falta de claridad en cuanto a la metodología utilizada en los artículos y la escasa propuesta de políticas públicas que se implementaron en situaciones de crisis sanitarias, epidemias, guerras, etc. Por lo demás, las siguientes preguntas nos sirvieron como guía para el análisis: 1) ¿Cuál es el rol de los gobiernos en el sector turismo? y, 2) ¿Qué políticas públicas implementaron los gobiernos en situaciones similares como la crisis sanitaria actual?

Palabras clave: COVID-19; políticas públicas en turismo; turismo; publicaciones cientificas sobre turismo; crisis sanitaria.

Introduction

In late December 2019, an unknown pneumonia outbreak of etiology occurred in Wuhan, Hubei Province, China, and rapidly spread throughout the country. The Chinese Center for Disease Control and Prevention (CCDC) identified a new beta-coronavirus called 2019-nCoV, now officially known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which has become a global threat because of its quick spread, thus becoming a public health problem (Xie y Chen, 2020) causing a large number of deaths with tens of thousands confirmed cases mounting to rise around the world (Sun al.*, 2020). On January 12*th 2020, the World Health Organization (WHO) temporarily named this recent virus as the new coronavirus 2019(2019-nCoV). On 11th February 2020, WHO officially named the disease caused by 2019-nCoV as coronavirus disease (COVID-19) (Sun *et al.,* 2020). Since then, the World Health Organization (WHO) data have shown that more than 43 000 confirmed cases have been identified in 28 countries; becoming this way the sixth public health emergency of

international concern (Lai *et al.,* 2020); and therefore a real threat to global health given by the continuing outbreak of the disease (Fauci *et al.,* 2020). In addition, as a complex respiratory disease never experienced before and with a spreading ability and successful infection, it grabbed the world's attention but without a treatment and control manual (Suganthan, 2019). At a higher risk of developing the disease has led many governments to implement a series of control measures (Harapan *et al.,* 2020), on a trial-and-error basis. It is worth noting that the impact of Ebola epidemic on the economy and health care structures was still felt five years later in the countries concerned (Velavan y Meyer, 2020); meeting the challenge of a pandemic, the picture, of course, it is an outlook of uncertainty.

As a result, economies have become vulnerable and therefore shut down, and societies are quarantined to varying degrees, comparable measure to those in war situations. It will nevertheless always be essential for the State to support planning activities which must be confined to facilitating the conditions required to hold and involves both supply- and demand-orientated measures. On the one hand, it will require to develop and strengthen the capacities of public authorities, resources and policy instruments responsible for designing a very high productive capacity in each country in an attempt to safeguard the installed capacity. On the other hand, the lack of protection for the poorest strata and their difficulty in gaining access the right to satisfaction of basic needs have already sparked social unrest in some countries.

1. Literature Review

Covid-19 will be associated with serious short and long-term adverse effects on supply, demand and including at sectoral levels. The intensity and extent of which will depend on household's conditions in each economy, global trade, epidemic length, and the social and economic measures taken to keep it from spreading; tourism will be remained one of the most affected. In Latin America, the economic impacts of the Covid-19 pandemic are quoted as direct and indirect. Direct impacts will be fully reflected on health systems, given the colossal burden on broken systems and unequal access pertaining to income levels and place of residence. Indirect impacts will be reflected for the closure of production: education, trade, tourism, transportation, manufacturing, natural resources; on the premise that all of these will bring about a global recession and driving up unemployment.

In the same vein, medium- and long-term impacts will be displayed such as bankruptcies, downsizing private investment, a low level of economic growth, less integration into value chains, erosion of productive capacities and human resources. Furthermore, short-term impacts such as higher

unemployment, low wages and income, increased poverty, and extreme poverty (Economic Commission for Latin America and the Caribbean, 2020). In 2019, the worst world economy performance was registered since 2009, with a growth rate of only 2.5%. On March 24th 2020, Goldman Sachs' annual forecast indicated Gross Domestic Product (GDP) would decline of 3.8% in the United States, 9% in the Eurozone and 2.1% in Japan, and a serious downturn in Chinese economy that would lead to growth of only 3% (Goldman Sachs, 2020).

Thereby having a negative impact on employment wages, and income distribution; therefore, all firms, regardless of size, are and will be affected, especially those in transport, tourism, and services such as retail. Many are already dealing with a significant decrease in income, insolvencies and resulting in the loss of many jobs in specific sectors, in which labor market would ensue irrevocable impact.

What is more, Covid 19 crisis will hasten some structural changes which broke up in the last decade. For instance, forced quarantine will increase the virtualization of economic and social relations; teleworking shall prevail in more industries and regions; and digitalization will be sought more quickly. Within this framework, the most technologically advanced companies will be able to increase their advantages over those companies, MiPymes, which are lagging ever further behind. High-tech companies have already boosted their use of artificial intelligence tools to cope with the lack of workers due to quarantines.

The coronavirus will therefore affect the number of jobs (increased unemployment and underemployment), quality work (reduced wages and access to social protection) and the most vulnerable groups, such as informal workers. Loss work-related income will result in a decreasing consumption of goods and services and would lead many workers into poverty. The very vulnerable group people would feel the unbalanced impact due to the existence crisis: unhealthy people, elder people, unemployed youth, underemployed people, women, workers without biosafety equipment, migrant workers by heading a secondary effect by worsen inequality. Meanwhile, Latin America and the Caribbean surely face the pandemic at their weakest position than the rest of the world. Before this context, Economic Commission for Latin America, and the Caribbean (ECLAC) had forseen these regions would increase of 1.3% by 2020. However, reports have been updated and since external and domestic shocks have intensified the region will experience a -1.8% (Economic Commission for Latin America and the Caribbean, 2020).

It should be noted that, in developing countries, the level of informality makes it difficult to distance oneself from society, regardless of the type of occupation, the informal working arrangements makes it more difficult for the poor to shelter in their house. Many workers have no access to sick leave

or unemployment benefits, they barely have poor access to health benefits, and their savings are non-existent or extremely limited. Most informal workers experience living their lives with a minimum of resources. The lack of sound income maintenance policies, for many of these workers staying at home is not considered as a feasible option at this time (Busso and Messina, 2020).

There are two indicators about informality work. The first indicator: informal workers do not have access to healthcare or pension benefits through their jobs. The second one: the growing share of self-employed workers mainly with a low education. In Bahamas, Chile, Costa Rica and Uruguay, over two-thirds have the described characteristics above, therefore no one either of these employees is well-trained or prepared to withstand a prolonged solitary confinement (Busso & Messina, 2020). According to Nuguer and Powel (2020) Chinese industrial sector appears to be picking up. Looking ahead, consumption and services sectors are expected to positively be recovering. It will likely happen enormous drawbacks and even further outbreaks through this period which strictly control would be needed. Fiscal and monetary sector will support advanced economies but creating a great deal of uncertainty about loss and the speed at which recovery can take them; in particular, the most vulnerable sector as tourism.

During years, academic researches about tourism was looked to as "frivolous" and seemed as inappropriate for the scholars (Matthews y Richter, 1991:121). However, it is clear that there is a significant need to mesh tourism policies and social science techniques with skills and other competences required by tourism professionals (Matthews y Richter, 1991:133) to cope with this current crisis; particularly when mass tourism is understood as responsible for wreaking social, cultural, economic and environmental havoc in its path, and its practices must be radically changed to introduce a new proposal (Garnham, 1995).

Notwithstanding, tourism has a high economic importance in many countries. In Italy, tourism is considered as a strategic industry which represents 6% of the total value added and employing approximately 10% of the total workforce (Matthews y Richter, 1991:140); there is, of course, enough to talk about tourism, in turn, it implies a package of complex services, turning this into an great experience which requires a wide vary of conditions which would be needed simultaneously satisfied. On the other hand, tourist services has its own features so turning it into an attractive potential source of revenues, employment and new possibilities in the field of service innovation, in view especially of the fact that this would be an experience that might be continuously based on knowledge and technology management (Benavides, 2015a).

People travel abroad for different reasons which imply vacations, business, scholarly work, religious issues, sport or artistic work, medical

treatment (Arif y Hall, 2019:276). And, although it is true that global changes, matched by the need for solid economic activities, have enhanced some families to recourse to tourism as an economic diversification strategy for instance rural tourism (Iorio y Corsale, 2010).

Thus, a fundamental part of the government's role is the design, management, and evaluation of public policies (Lahera, 2004). Mexican tourist policies were focused on priority areas for economic development and to cover the increase in investment needed for them in this respect. They are evaluation of the current development model, suggestions for policy design and strengthening governance, as well as improvements in transport systems, mobility and connectivity for tourist travel; inclusive growth, regional and new destination development; product diversification; investment and strengthening of PyMEs (OECD, 2017).

In the 90s, conventional model of tourism broke up a crisis, alternative tourism started growing and due mainly to the increasing concerns about the environment, Mexico has incorporated the dimension of sustainability as a main element in the development of ecotourism, in which indigenous peoples and communities found an economic alternative that, at the same time it would help them both to preserve natural and cultural heritage, change the subordinate and dependent relationship in national market (López Pardo y Palomino Villavicencio, 2008). In addition, rural innovation programs have shown a significant increase in supply at various levels: rural accommodation rising, rehabilitation of heritage, value enhancement of historical elements, in short, of the historical, cultural, architectural and natural heritage of the rural world.

Background named "identity crisis" was used in Hong Kong post-colonial period, its complex century-old socio-cultural political heritage let express a different identity from China through tourism (Zhang *et al., 2015). Colombian tourism have become very powerful alternative way of doing business as a result of a strategic planning, institutional presence in the sector, spawning a regulatory framework, incentive mechanisms and in terms of attracting foreign direct investment (FDI), which has led the sector to significant progress in travel and tourism revenues in the balance of payments; and which is a good evidenced by the public policy on tourism (Benavides, 2015b).*

Likewise, cultural tourism policy in Colombia highlights the potential of tourism to articulate processes of identification, valuation, competitiveness, sustainability, and dissemination of cultural heritage. It also encourages locals and foreigners to learn about it and feeling the belonging of the customs and tangible and intangible heritage of the visiting country (Karimi et al., 2018).

2. Comparative Tourism Public Policies

In the U.S.A. public policies background dates back to the 40s and 50s. They emerged after World War II and with the concern that there would be a reversal of economic growth (Pereira, 1999). Almost all governments, at all levels, claim to have a tourism policy and this topic is named in election periods and government ones. A lot of governments make their efforts on promoting it, but little do they have on tourism policies.

Tourism policy could be understood as a set of actions by government entities, with the purpose of changing the current economic and social environment. In general, policies, in every country, set the essential activity guidelines, the objectives and action- state priorities for the sector (Lopes, et al., 2011). Therefore, tourism policy must consider the different stakeholders, products, impacts and so on; since only a program focused on a specific touristic typology or on a specific sub-sector would not be a good and effective policy. Although this does not mean that a government cannot promote a tourism policy through various specific programs. Reaffirming that tourism policy is the set of actions which is promoted by public actors in order to solve the public problems of the sector (Velasco González, 2011).

Tourism is the world's largest industry so it should lead the changes towards greater sustainability. For instance, there can be no delay in taking advantage of new opportunities on climate changing such as CO2 capture primarily due to travel, this would help to turn tourist destinations into favor of carbon neutral sites through the implementation of alternative energy processes and the promotion of carbon sequestration by natural means. This would allow local income through natural regeneration and ecosystem restoration like Costa Rica which has plans on carbon neutral country.

It is also important to say any attempt or strategy to develop tourism must start through the processes of self-esteem recovery, value of the environmental setting and its own culture at local level. Therefore, the more secure and proud a person is of their own identity, the less likely it is to have negative cultural and social impacts; thus, including the civil recovery and love of the homeland. Culture must be valued for what means to community and the preservation of its customs and values, and not merely for a given tip. Priority should be given to the continuous improvement of the quality of life of local populations. People from all society sectors must be incorporated, taking into account youth, the elderly, any gender and minority groups. Intersectoral coordination strategies must be clearly established (Müller, 2008).

As a first step, governments must stimulate tourism sector by creating the tourism offer and providing the infrastructure required to start it; at

the same time, it is the one that must promote the country both internally and externally as a tourist destination (Benavides, 2015a), given the current circumstances due to the health crisis.

2.1 Tourism Policy Aims

Governments have focused on different themes over the past sixty years:

Table 1. Tourism policy aims

Related to tourists	Related to tourist business	Related to tourist destinations	Related to outstanding issues
- Taking forward improvements and speed up border-crossing and transit formality procedures. - Tourism consumer protection (tourist as a service consumer has trouble with the local language and misunderstand cultural customs in their destination)	-Encourage the creation of small and medium-sized tourism enterprises and support their innovation. -Training is needed in order to provide female and male employees in the tourism enterprises. -Financing facilities to boost entrepreneurial activity, new products so this diversify the touristic offer. -Domestic legislation in subsectors.	-Action must be undertaken to promote countries in the international market. -Channelling tourist flows through the provision of infrastructure. -Actions must be taken in support of tourist destinies which were successful in the past decades and they are in stagnation process and obsolescence now. -Public – private cooperation to improve tourism policies design.	-Lack of planning tools which need to be encouraged to the extent compatible with tourism developing. -Negative impacts in the environment. -Lack of expertise and information.

Source: (Velasco Gonzáles, 2014).

Table 2. Challenges and commitments in South American tourism

Argentina	Development of a market policy to guide and coordinate the dispersed and dissociated factors to foster quality and efficiency required by a highly competitive global environment in a limited internal scenario.
Brasil	The tourism sector's business informality, low professionalism, high taxes, lack of flexibility in issuing visas for developed countries and the strong value of local currency. Investments are needed in airport infrastructure, hospitality and training.

Chile	The high seasonal fluctuation reduces to a seven-month tourist season per year. This scenario is made even more acute by the high cost of airfares over long distances to leading European, Asian, North American emitters. There is also a significant factor that influence on Chilean tourism which is low population density, this does not let create a national domestic market to support strongly tourism local industry.
Perú	Lack of a vigorous state policy as an obstacle to tourism development in the country. Tourism must be assessed in order to define market niches which they can work and determine their competitive advantages. Cultural tourism has its own won condition. Even though others market niches could likely be developed such as ecoturism, rural tourism and mystical one. Peruvian tourism sector is expected to incentive and encourage domestic tourism, micro tourism routes in particular, also called short routes. These ones foster initiatives to increase touristic awareness and many people can afford them due to their low cost.
Temas transversales	la cuestión del turismo sostenible y responsable es uno de los puntos críticos por resolver y un gran obstáculo para el desarrollo del turismo en el medio y largo plazo. A lot of Latin American touristic destinations are positioning themselves as nature tourism. sustainable and responsible tourism is a critical issue to solve and even is considered as a great drawback to develop tourism in a medium and long term.

Source: World Health Organization (2011) cited by (Benavides, 2015a)

In the same way, some solutions were proposed for tourism micro-businesses in Ecuador where women assumes a meaningful role, such as: supporting women-training to foster their integration into labor market, employment policies in local tourism planning, search from handicrafts market; boosting training due to improve touristic handicraft production, encourage and support rural community tourism development by improving local private homes to make them suitable for tourist accommodations, borrow money at low rates on the capital markets, settle a municipal fund office for microenterprises, creating a Microenterprise Chamber and defining tourism policies with gender equity according to each local reality and national guidelines (Ordóñez Andrade & Marco Navarro, 2005).

European policies focus on rural development have had a particular impact on promoting tourism; and above all, LEADER initiative since it started to operate, it became a rural tourism program boosting. At first, this program was applied to less-developed regions and also vulnerable rural areas. Even though, this one covered throughout Spain. Therefore, GAL (in Spanish) which stands for Local Action Groups were formed in charge of managing territorial development (Cánoves, *et al.,* 2006).

In Mexico, in the early 60s, there was a break on tourism policies given by the government. However, at the end of 60s, things would change in the federal government. Mexican government asked the Mexican Bank to implement a policy that would promote tourism in the country. In this

way, Mexico applied two strategies in some coastal areas: on the one hand, credits were granted for the infrastructure construction in beach resorts such as Acapulco, Guerrero and to a lesser extent Puerto Vallarta, Jalisco, Manzanillo, Colima and Veracruz Port and others. On the other hand, the second strategy focused on promoting investment and tourism through Integrally Planned Resort Centers (Bringas, 1999).

Today, government´s challenge could be seen as the search reconcile these two dimensions: tourism normative and institutional with policy management so this would lead to a better fair distribution of social, economic and political benefits by increasing the quality of services and goods (Pereira, 1999).

3. Methodology

Keywords such as "Covid – 19" and "tourism public policies were searched based on publications in high impact journals, official's documents and a few updated studies. Technique of content analysis was applied (Snyder, 2019). A literature search was also conducted by Mendeley and Google Scholar which included "public policies", and "tourism public policies" and "Covid-19" in both languages: Spanish and English.

Therefore, this research provides an overview of the literature concerning public policies, and specifically one of the sectors most affected by the pandemic, tourism. It also shows the efforts made by governments to implement public policies in the sector. However, the effort to address in view of the current health crisis caused by Covid-19 disease requires swift and effective responses or design and implement post-pandemic public policies which they will remain both urgent and overwhelming.

4. Results Analysis

Content related to the current situation resulting from "Covid-19" disease pandemic was identified and analyzed. To start with, different ways in which tourism public policies in are referred to were identified, this has been noticed there is scarce information about the topic in scientific journals and official documents, and it is found not to be a management tool for tourism sector. Likewise, there was a plurality of authors and institutions and little use of specialized bibliography.

From "Covid-19" content, the characteristics and impacts that have been and will be occurring in the post-pandemic stage are elucidated. Information

must be useful for governments, in order to be considered in the economic recovery plans for more than 150 countries affected throughout the world (Arroyo, 2020). In this context, governments have no pospandemic tourism public policies. However, there is great concern and uncertainty about this sector. Nonetheless, Covid-19 affected countries and even more countries with pre-existing tourism resources need to begin designing tourism public policies in order to mitigate pandemic adverse impacts and effects.

Conclusion

The lack of clarity in the methodology used in the scientific articles and official documents, which were worked with, was highlighted in this research. Furthermore, there no is evidence of implemented public policies in comparable situations such as health crises, epidemics, wars and so on.

Tourism public policies govern how a destination should be and look like, so the guidelines will say how to work, how to grow, determine where to focus and way to turn, so a proactive and active role of governments in the tourism sector is essential and crucial in a post-pandemic scenario.

Post-pandemic tourism public policies must be according to the local context due to different realities and the level of recovery of each place, taking into account that tourists are constantly on the lookout for companies that promote health care. There will also be people segments more predisposed to be appealed to have virtual experiences such as demanding for online shopping, virtual training and assistance and addressed within the preference for concerned companies about having the welfare of their customers at heart.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 134-155
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Formation of political journalism as an institution in Azerbaijan: areas of development and activity

DOI: https://doi.org/10.46398/cuestpol.38e.09

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Abstract

It analyses the methodological foundations and essence of political journalism as a social institution, as well as the interaction of politics and journalism. Based on an interdisciplinary study, the article gives an account of the peculiarities of the realization of political journalism in the world and in Azerbaijan, stating that political journalism performs informative, communicative, ideological, cultural, enlightening, organizational and recreational functions. It concludes by highlighting the power of the media to carry out democracy, in political decision-making and debates through the power of information. In other words, the power of the media is the power of political journalism, the unity of the media with political and economic power. It also points to the place and role of social media political science. Political media science is considered a new phenomenon in former Soviet republics. It is characterized as a phenomenon that encompasses systematic political theory, the science of modern comparative media, media, and politics. It is also believed that the political science of the media is related to the mediation of politics and the political processes of l to information.

Keywords: independent political journalism; media power; democratic press; information security; state consciousness.

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Recibido el 05/13/2020 Aceptado 15/09/2020

Formación del periodismo político como institución en Azerbaiyán: áreas de desarrollo y actividad

Resumen

Se analiza los fundamentos metodológicos y la esencia del periodismo político como institución social, así como la interacción de la política y el periodismo. Con base en un estudio interdisciplinario, el artículo da cuenta de las peculiaridades de la realización del periodismo político en el mundo y en Azerbaiyán, afirmando que el periodismo político cumple funciones informativas, comunicativas, ideológicas, culturales, esclarecedoras, organizativas y recreativas. Se concluye destacando el poder de los medios en la realización de la democracia, en la toma de decisiones políticas y los debates a través del poder de la información. En otras palabras, el poder de los medios es el poder del periodismo político, la unidad de los medios con el poder político y económico. También señala el lugar y el papel de la ciencia política de los medios de comunicación social. La ciencia política de los medios se considera un fenómeno nuevo en las exrepúblicas soviéticas. Se caracteriza como un fenómeno que abarca la teoría política sistemática, la ciencia de los medios comparativos modernos, los medios y la política. También se cree que la ciencia política de los medios está relacionada con la mediación de la política y los procesos políticos de la información.

Palabras clave: periodismo político independiente; poder mediático; prensa democrática; seguridad de la información; conciencia estatal.

Introduction

Relevance of the paper. In the 20th-21st centuries, influenced by the west, former Soviet republics entered a stage of modernization of their political system. This marked transformation and innovations in the entire political system, including political institutions, political values, political activity, and relations.

Modernization means quality changes in the political system. As a social institution, political journalism plays a key role in realizing these changes. Political journalism is a means of realization of the political strategy.

The role played by political journalism in the society`s political life as a social institution has the following theoretical models:

1. Pluralist model.

2. Ruling ideology model.

3. Elite value model.

4. Market model.

Political journalism shapes public opinion, educates masses politically, influences political processes, contributes to socio-political governance process, legislative and administrative state decision-making, legitimizes the political system, reflects, and protects society, group, individual, state, and national interests. Political journalism and journalists are responsible to society and instill political culture in society.

Political journalism has the following influence areas:

1. Ensuring the society`s information interests under conditions of globalizing information.
2. Ensuring publicity, democracy.
3. Organizing debates, discussions on main problems of public life.
4. Hailing and criticizing programs of state, party, public figures, and separate leaders.
5. Instilling moral values, political culture, patriotism, statehood values in citizens.

As a traditional and modern, internet and social network media, public judge, advocate of justice and truth, national interests, political journalism is becoming the "fourth power".

1. Literature review

In the western political science, modernization theory emerged in the U.S. in the mid-20th century. Society`s modernization was studied by D. Anter, S. Huntington, G. Almond, R. Dahl, D. Easton (Hasanov, 1999). There are liberal and conservative approaches to this issue. The first approach to the impact of the mass media on political processes was propaganda and journalistic approaches. Canadian philosopher and public intellectual Marshall McLuhan linked electronic media to information globalization (Marshall, 1995).

One of the prominent schools studying the role of political journalism in the political system as a social institution is the Frankfurt school.

Researchers determined several concepts in relation to this problem, including "Political journalism", "social institution", "information globalization", "political system", "modernization", "communication", "mass media", "media political science", "media power", "mediazation of

politics", "traditional and innovative media", etc. Some researchers (B. Baghirov, B. Grushin, E. Dennis, D. Merill, V. Savin and others) approach to political journalism as a real political process. They studied the work, methods and forms of the mass media in the political process (Mahmudov, 1999).

Other researchers (B. Dubin, S. Kara-Murza, O. Karpukhin and others) studied the socio-psychological impact of political journalism on the political activity, consciousness of participants of the political processes. G. Hajiyev, I. Panarin, O. Koltsov, Y. Machkov and others studied the role of political journalism in the political processes and its relation to modernization process (Hasanov, 1999).

Some Azerbaijani researchers studied different aspects of political journalism. R. Mehdiyev, A. Hasanov, G. Maharramli, S. Khalilov, A. Ashirli, K. Niftaliyev studied journalist ethics, freedom of press, history of press, political journalism concepts and typology, international journalism; A. Aslanov and Z. Babayev studied modern media, ICT and media problem; A. Rustamova and F. Babayev studied modernization and political journalism, and the role of the media in civil society (Hasanov, 1999; Khalilov, 2001; Mahmudov, 1999).

However, the process of formation of political journalism as an institution in Azerbaijan in the years of independence was not systematically and comprehensively studied from the perspective of political science at the doctor of science level. Objective of the paper is to study the role and place of political journalism as an institution in Azerbaijan`s political life.

Order to achieve this objective, the following **tasks** were set:

* To study the situation and development tendencies of the modern political journalism in Azerbaijan.
* To examine interaction between major subjects of information politics.
* To discover the peculiarities of the use of methods and ways of reflection of political processes in political journalism.

Methodological and theoretical base of the paper lies in historical, philosophical, sociological, and political works of the world public intellectuals who studied different aspects of political journalism. The study features a number of methodological academic principles: determinism, relevance, unity of form and content, academic professionalism – principles of political science, sociology and journalism – historical, institutional and structural function methods. A sociological survey and statistical approach were also applied.

Empirical base of the paper lies in the following documents and materials:

- international documents on the formation of global information society.
- national conceptions for development of the national media.
- laws and normative acts of the Republic of Azerbaijan.
- codes of professional ethics for journalists in Azerbaijan and foreign countries.
- periodical press materials.

Scientific novelty of the paper lies in the following:

1. determination of the role and place of political journalism as a factor of the formation of political journalism in modern Azerbaijan based on a comprehensive study.
2. objective substantiation of the increasing role of political journalism in the process of Azerbaijan`s transformation.
3. study of the realization of political journalism, information politics and civil position against a background of the formation of global information society and expansion of the political aspects of journalism.
4. study of the practical activity – based on empirical material – in the formation of political journalism.
5. determination of main aspects of the formation of political journalism and the activity of journalism towards building a humane society and ensuring sustainable development.

Theoretical and practical significance of the paper lies in the fact that its materials can be used for improving the political journalism theory and in practical activity of journalists.

2. Political journalism as area of socio-political activity and civil institution

Studying Azerbaijani political journalism aims to highlight the place and role of journalism in political processes taking place in the country, and forms and methods of coverage of the political life by the media.

The primary goal is to study the state of the modern Azerbaijani political journalism and its development tendencies.

Examine interaction between major subjects of politics in the country`s information arena. Discover peculiarities of the use of methods of objective, unbiased coverage in political journalism of political processes taking place in the country.

As a political institution, journalism represents vital importance to society, becoming the decisive factor of political struggle, and economic, socio-political, and cultural event. Western researcher Paul Virilio writes that under such circumstance's journalism acts as 1. a social institution; 2. a system of special theoretical and applied knowledge; 3. an institution of mass media methods and means. As suggested by Virilio, journalism is a unique form of a socio-political institution (Sheygal, 2004).

Nowadays political journalism also manifests itself as an indicator of the balance of political systems. Mediazation of politics and the strengthening of political journalism and the mass media increases demand for information of the work of authorities. Y. I. Sheygal believes that "politics is the only profession which has a mass-oriented communication, and which is, in fact, the primary element conditioning the existence of political communication (Sheygal, 2004). The author points out the increasing role of politics in society`s life.

Political journalism reflects the processes taking place in the country`s political life. O. V. Sulina from Saint Petersburg University says that "although political journalism plays a key role in interpreting, explaining and informing about political decisions, it can also affect the making and change of political decisions" (Sulina, 2015). She believes that under conditions when there is no alternative position, political journalism tends to defend authorities` views and cause imbalance of political forces and political system.

Political journalism reflects the views of the government, legislative and executive authorities, social groups, and parties. Informative political journalism and propaganda political journalism usually differ. Propaganda political journalism is considered as a characteristic of totalitarian society. "In good-structured, multi-party societies, political journalism reflects the necessary element of the socio-political life." In totalitarian regimes and single-party systems, journalism loses its informative function, and only propagates and encourages party program.

Trendy developed democratic societies, political journalism is an independent media outlet separate from the state and its government branches, parties, and public organizations. Unity of people's national and universal values, wide reader audience make up the social base of objective, independent, democratic political journalism. Western doctrines, concepts, theories and approaches analyze political processes and the impact of the mass media on people`s life. American researchers Shanto Iyengar and

Donald R. Kinder say that television newscasts shape judgement of citizens with poor political wisdom and experience. Those who rarely encounter with politics deem delivery of news through the network as irreplaceable. Political journalism reflects political diversity in society (Shanto and Kinder, 1987).

A group of Western conceptions put emphasis on managerial and manipulator function of the press. Most prominent representatives of this thought are Walter Lippmann, Herbert Schiller, T. Sorensen, G. Glasberg and others. Another group of researchers, including E. Mayo and others single out communicative function of the press. According to them, the primary task of the mass media is to implement horizontal and vertical relationships (Sulina, 2015).

Like all types of media, political journalism fulfils informative, enlightening functions, carries out control and observes activity of state, forms a political area. Researchers point our three peculiarities of communication sources of the media – truthfulness, attractiveness, and power. Other peculiarities include dynamism, communication, authoritarianism, study of journalistic aspects of the activity of political journalism. "Language and style of articles affects effectivity of sources". The author rightly underlines that contradictions between the social structure and development not only limits the media`s influence capabilities, but also necessitates its becoming a censorship and totalitarian control tool.

Harold Innis, a representative of technological determinism, believes that "monopolies of knowledge encourage centralization of power". Innis describes information as a political force. Another representative of this theory, Marshall McLuhan, believes that changing communication stages encourage the homogenizing process in society (Marshall, 1995). The triple-M theory, which is wide-spread in the west, includes the concepts of mass society, mass media and mass culture, while political economy theory is a leftist socialist and neo-Marxist theory, which claims that the mass media (including political journalism – B. G.) weaken conflict of interests and address class disagreements.

Many western conceptions draw attention to the issues that are the subject of political journalism – change in people`s political views and political socialization process. They note that this process takes place in two forms – direct and indirect. Direct form includes political experience, political organization and similarity, which emerge under influence of political journalism. Indirect forms of political socialization include interpersonal communication, participation in different non-political organizations and movements, the spread of values and norms applied in other spheres of social life to political objects and relationships process. Information power occupies a central place in the real context of the understanding of political journalism as the fourth power. Political journalism acts as a power bearer. Power of journalism is realized through masses.

The studies in this area allow to make the following conclusions: firstly, in the 21st century, world political journalism will develop strictly within the framework of political paradigms; secondly, Azerbaijani political, analytical journalism paves the way for the establishment of the country`s information arena only within the framework of analytical discourse; thirdly, political journalism should be made a priority in the process of preparation of specialists in journalism at Azerbaijani higher education institutions. Political journalism should shape the person`s political culture, his statehood and patriotic consciousness; fourthly, Azerbaijan should build its information market and information arena. The creative aspect should play a central role here along with the economic aspect.

Political journalism is a means that influences citizen, society, state and power. Political journalism, which is capable of exerting mass and political influence, affects not only the way citizens understand separate political events, but also affects their political views. Obviously, population`s political activity directly depends on the position of political journalism because it affects the way society`s political consciousness and value orientation change, social changes encourage mass political processes.

Political journalism occupies a special place in society and functions on a democratic basis. On the one hand, it plays a role in management relations in society, and between three manifestations of power (subject of governance) and people (object of governance). It provides information of, distributes and explains the government`s decisions, and broadcasts masses` reaction to these decisions and people`s demands from the government. So political journalism acts as a means of governance. Being one of the branches of the media, which cover political events, political journalism is the subject of study of political science. Political journalism provides a limited study of the activity of the authorities and socio-political processes from internal policy to international life and all aspects of social life.

Quality analytical journalism lies at the heart of political journalism. “Analytical journalism is efficient applied political science and sociology. More precisely, knowledge of laws of political and social development makes the core of this journalism.”. In the west, politics is more open. In the former Soviet republics, journalist investigation is one of the weakest sides of journalism. Close connection between the authorities and the business is one of the main reasons behind this.

Socio-political life and realpolitik pursued by the authorities and the opposition is the subject of political journalism. The main task is to explain the developments to society, and to cover – to the maximum extent – realpolitik taking into account the country`s national strategic interests. It is not journalists, but the ruling elite, editors-in-chief of leading media, publishers, influential journalists and local population who make the modern political agenda. Professional journalists write about real and

important, true political processes. On many occasions, journalists express their views covertly.

Although journalist investigations are widespread in the west, searches for the genre are still ongoing in the former Soviet republics.

The Scientific literature, investigative journalism is sometimes characterized as "black PR". Journalism investigation reflects modern realities of intensive establishment of market relationships, severe political, economic and moral tumults relating to radical democratization of all areas of public life. These investigations aim to address problems such as crime, corruption, drug addiction, environment. Analytical view, openness of journalist position are main features of these investigations. But in some countries, under conditions of development of civilized forms of democracy, improvement of society`s moral and economic situation, stabilization and peaceful development, journalist investigations take a completely different turn, and investigation almost disappears with the emergence of political killings and "dirty technologies" of PR.

In terms of the content and literary processing, journalist investigation features two important points. Firstly, journalist shows not only results of his study, but also reveals all mechanisms and methods used, turns the readers into interested participants of the study. The reporter expresses his own attitude to the conflict using applied means of expression, making an emotional impact on the readers, listeners, spectators... Secondly, the author tries to increase tension given the composition of journalistic study. By grouping and giving description of facts, the author consecutively reveals new aspects of the theme, relates them in accordance with a single story line, increasing reader`s interest in finding a solution to the issue. So journalist investigation has some features of the detective genre. Obviously, apart from assuring the reader in authenticity of the material, truthfulness of his own judgement, journalist also manages to attract public attention to his study to ensure objective assessment of his material.

A journalist study features an analysis of documented facts of the reality in the system of analytical genres, an immediate analysis of topical problems. So a political journalism study is distinguished by inclination to genres with detective elements.

Unity of politics and journalism occupies a central place in the activity of political journalism. This process is very active in dynamic development of information and communication technologies in the modern world of politics. Interaction of journalism and politics necessitates specification of some concepts. This can especially be related to "political journalism" term. In many cases, political journalism is understood as a political publication, independent press outlet or the one run by the business or state. Irrespective of its owner, political journalism is characterized by political comments and

information. This type of journalism is distinguished by political discussions and communication at different levels.

Political journalism fulfills the following functions: "1. Informative function, which includes collection, processing and distribution of information on all important elements of the political system. 2. Analytical function, which puts forwards information featuring knowledge about politics and political process. 3. Political socialization function, which features mastering political norms, values and conduct standards together with the normal activity of political systems. 4. Criticism and control function, which puts forward formation of attitudes and comments on the processes taking place in the field of politics" The author shows that the growth in the political importance of political journalism leads to increase in its role in political socialization and political mobilization, criticism and control of political processes.

Modern communication technologies are strengthening relations between politics and journalism. Technological progress and information revolution made a breakthrough in the development of political communication. New communication areas, social networks have peculiarities of political communication.

The subject of study of political journalism is of great interest from the point of view of different sciences. Peculiarities and problems of political journalism are studied by political science, sociology and theoretical journalism. The subjects of its analysis feature different manifestations. "The first subject of study is the content of political journalism. The analysis of the content includes the study of the theme of articles, and periodically remarks of journalists, political journalism dimensions. Spatial dimensions put forward level of political life of district, municipal, federal, intergovernmental, global relations. Temporal dimensions of the content of political journalism include the study of the history, current political conditions and political forecast. The second direction is an institutional study. In this context, journalism is studied as a political institute, element of the political system.

In institutional approach, the subject of study lies in level of activity of political journalism (local, regional, federal, international), interaction between journalists and media with political forces and institutions, typology of political journalism (parliament, party, official, opposition journalism, etc.). Thirdly, the subject of the study lies in the functions of political journalism. The functional analysis features the study of the independence of journalists and political tendencies, political effectiveness of political journalism, its qualitative and quantitative dimensions. The fourth area of the analysis lies in the study of political activity of political reporters, creative laboratories of opinion journalists and political scientists, their work with information sources, peculiarities of text writing, ethic

fundamentals of activity". The subject of the study of political journalism is thoroughly analyzed from the points of view of content, institutional, functional perspectives and from the point of view of activity, its influence on public opinion, reflection and coordination of different political interests is highlighted.

Political journalism influences formation of political culture and ideology. It conducts comparative analysis of different political systems in concrete historical conditions, studies the political elite and groups, which are involved in political decision-making, reveals the truth through conspiracy theories and methods. Russian researcher A. Dugin believes that:

> A conspiracy method is widely applied in political science and political journalism: first and foremost, the commentator and observer never knows the essence or hidden causes behind he developments and therefore uses uncertain means or shows voluntarist facts – and "conspiracy theory" comes to help here (Dugin, 2005: 49).

The author points out that conspiracy method is based on covert interaction of political figures and coordination of events and claims that this method is supposedly used in some cases. Study goals of political journalism can be empirical and applied. It uses systematic study and structural and functional methods. Political journalism studies focus on theoretical methods, scientific analysis, induction, deduction, study of institutions and organizations. Institution reflects the form and essence of political functions and relations. For Hegel, institution "is a sum of roles and statuses in the system of public relations determined to ensure certain social demands" (Hegel, 1974). The author considers institution as a stable form of socio-political experience, which emerges with the help of socio-political norms, which lies at the heart of socio-political life, and which ensures firmness of socio-political relations (Novruzova, 2011).

In socio-political life of democratic societies, government institutions, civil society and journalism maintain equal cooperation. Political journalism is closely involved in government-society dialogue in open societies. In democratic societies, political journalism has an institutional status and grows into a media organization after obtaining the status of institution through fulfilling a regulatory function and executing self-governance and control (Hegel, 1974).

In socio-political systems, apart from a regulatory function, political journalism also fulfills the integrative (relating to responsibility of the journalist to ensure political interests of society) and relational functions in accordance with cultural values, and political and ideological rules. Political journalism, which plays a key role in shaping public opinion, is based on the principles of isolation, specification and restoration, which are part of the socio-political control method.

Political journalism is also based on dialectical and comparative methods. It also uses regional-geographical, temporal-historical comparison-comparative historical method. Comparative study features comparative method, which reveals common, universal and distinctive peculiarities of political events based on comparison. Comparative approach uses two means: the understanding based on hermeneutical method and comparison based on this knowledge.

3. Formation and development peculiarities of political journalism in Azerbaijan

Political journalism, which reflects the political life, was established in Azerbaijan in the late 19th-early 20th century. Political journalism in our country has witnessed several historical development stages:

1. Political press, which operated under Tsarist censorship when Azerbaijan was part of the Russian empire in the 19th century.
2. political press of Azerbaijan Democratic Republic.
3. Development peculiarities of Soviet political journalism.
4. Political journalism in independent Republic of Azerbaijan.

Although Northern Azerbaijan lost its political independence within the Russian Empire, it was thanks to Russia that it modernized, embraced many Western liberal values, Europeanized, and built its institutions based on national identity, theatre, and political press.

In 1975, Hasan bay Zardabi founded "Akinchi" newspaper, the first press outlet in Northern Azerbaijan, which was part of the Russian empire. "Akinchi" newspaper played a crucial role in the establishment of Azerbaijan`s political information policy. Declared by "Akinchi" newspaper, the principles of the national democratic press – enlightenment, modernization, purity of ideology, promotion of national objectives, unity of universal values and national traditions, adjustment of literary language to colloquial speech, objective coverage of events laid the foundation of future development of Azerbaijan`s national and democratic press. This newspaper has been influencing the traditions of political and democratic press in Azerbaijan in the mid-20th century until the establishment of Azerbaijan Democratic Republic (Akinchi, 1876).

The enlightenment idea coincided with the emergence of political and democratic press at that time. The press rose up against colonialism, internal feudal rules, ignorance, and started to raise the society`s awareness through enlightening and political information. The founding

of "Akinchi" marked the era of domination of the national, politically-motivated information in Azerbaijan. This newspaper contributed crucially to learning, developing mother tongue, mastering world information in national language. "Akinchi" newspaper was providing the society with news articles on science, enlightenment, culture, literature and arts, public, political, academic and military elite of the country, and producing information educating all layers of the society, including children, youth, women, men, and covering the masses.

"Akinchi" newspaper went down in the history of Azerbaijan`s press as the first newspaper with the national status. For its typological nature "Akinchi" was characterized as "the newspaper, which received the national newspaper status". "Akinchi" newspaper laid the foundation of the spread of free, open, true, reliable information and this tradition was then continued by other press outlets. Hasan bay Zardabi wrote about the political essence of the newspaper: "A newspaper cannot tell fairytales as a darvish. It should show to people negative and positive sides of works as a mirror so that people know and address their problems. "Akinchi" newspaper set itself a goal of correctly covering the political reality and raising people`s awareness of political realities. Hasan bay Zardabi was sharply criticizing the arbitration right and rules, dirty political trick of the existing system. "Akinchi" grew into a press outlet, which influenced people`s public and political consciousness and laid the foundation of political and democratic journalism.

The political and democratic traditions of "Akinchi" influenced the emergence of a new generation of intelligentsia who were promoting the ideas of political independence. A new type of democratic political press emerged in Azerbaijan, which was closely related with our people`s struggle for political freedom and social justice. "Established and developed by Azerbaijan`s outstanding thinkers, enlighteners and public figures, progressing democratic traditions and ideas, contributed to the emergence of a new, more perfect stage of the democratic press." (Giffin, 1967).

"Sharg-Rus" newspaper (established in 1903), "Hayat" (established in 1905) "Fuyuzat" (established in 1905) magazines put promotion of progressing, enlightening, unity, freedom ideas at the center of their activity. Those times A. Huseynzade was promoting the principles of Turkization (national self-consciousness), Islamization, Europezation, language and religion, national and universal freedom (Huseynzade, 2005). "Molla Nasraddin" magazine, a new type of publication promoting democratic information, played an invaluable role in shaping Azerbaijan`s information policy in the mid-20th century. The magazine set itself the following priorities: 1. Struggling for simplicity and purity of Azerbaijani language, which lay at the heart of Azerbaijanism; 2. Using artistic laughter, criticism, and destructive ridicule against socio-political menace; 3. Promoting

western liberal and democratic and eastern cultures, as well as national and moral values (Huseynzade, 2005).

The magazine was sharply criticizing colonialism, political ignorance, external and internal enemies, and urging the people to wake up from ignorance. The magazine was providing an insight into both national and universal problems, and highlighting the necessity of applying traditions of socio-political, economic, and moral life as well as national and cultural peculiarities of the near and far foreign countries in Azerbaijan.

Researchers believed that there were a number of reasons behind the magazine`s success and its eminence outside Azerbaijan in the entire Caucasus, Russia, Asia and the East, including its truthfulness, courage to tell the whole truth, commitment to moral and professional values, modernity and relevance, possession of serious criticism targets, shortness and seriousness of its content, unity of the national eastern flavour, its highly-qualified staff which included the most progressive, patriotic and creative intelligentsia of that time, attractiveness of its material both from the points of view of content and literary and graphical composition and originality, the study and promotion of culture, literature, arts, classical poets and writers of the west and east, Azerbaijan, Russia, and the rest of the world.

Addition to struggling for national values, “Molla Nasraddin” magazine was also promoting the necessity of improving the socio-political consciousness of readers and the scale of information spread to European standards. The early 20th century, several pro-Marxist party newspapers emerged (Zasurskiy,1999). In 1904, the first Azerbaijani language underground political social-democrat newspaper stared to operate in Baku. “Hummat” newspaper was criticizing the political backwardness, public violence, exploitation, religion, and advocating women`s rights and freedoms. In the years 1900-1920, Marxist researchers classified political journalism into five categories for the socio-political content of information and idea priorities:

* Bolshevik press.
* Revolutionary democratic press.
* Democratic bourgeois press.
* Liberal bourgeois, or religious nationalistic bourgeois press.
* Feudal clerical press.
* Marxist and pro-Marxist press.
* Democratic, enlightening press.
* Pro-religious press.

Its activity, Marxist, and pro-Marxist press:

* insisted that all countries are experiencing an antagonistic, fierce struggle between two classes – the rich and the poor.
* put emphasis on the protection of the rights and interests of the poor.
* gave preference to a state building that prioritized equality of national rights, friendship of nations and internationalism.

In 1918, at the time of Azerbaijan Democratic Republic, the national and democratic state information policy was for the first time introduced.

"Press Charter" adopted by the parliament of Azerbaijan Democratic Republic gave impetus to the development of the state information system. This charter abolished censorship and laid the legal framework for the establishment of a free, democratic political journalism in Azerbaijan.

It marked the creation of a crucial and firm legal framework for establishing a democratic, state, political press body. By adopting this charter, Azerbaijan ensured the legal basis for the founding of the media. The tenure of Azerbaijan Democratic Republic saw the publication of newspapers and magazines for all layers, classes and parties in the country. "Azerbaycan", which was a political, public, literary and economic body, an independent newspaper, started to provide people with objective information those years. The newspaper was featuring articles on political, economic, social, scientific, literary, educational topics, promoting the ideas of Turkization, Islamization, modernization, and publishing official documents, government resolutions and decrees.

Azerbaijan`s political information bodies at the time of ADR included "Azerbaycan", "Istiglal", "Basirat", "Achig soz" newspapers, "Ganjlar yurdu", "Sheypur" democratic and youth bodies, "Madaniyyat", "Afkari-muallim" newspaper covering cultural news, and "Maktab", "Dabistan" newspapers highlighting school life.

The Azerbaijani newspapers and magazines were widely covering the issues of independence, economy, culture, arts, education and politics. Azerbaijan Democratic Republic`s tenure featured the attempts to establish democratic political journalism. So it was at the time of ADR when independent, democratic political journalism was founded.

The collapse of ADR and Sovetization of Azerbaijan in 1920 saw the imposition of the Soviet censorship on the activity of the Azerbaijani press. "On state monopoly in the media sector", "On revolutionary press tribunal" decrees were issued. The state censorship was then replaced with party censorship. The years of perestroika in the Soviet Union in the late 20th century marked democratic changes in the activity of political journalism. In the years of Azerbaijan`s independence, political journalism in the country

made great strides, censorship was abolished. This paved the way for access to free information, establishment of democratic information environment and free media. Academician R. Mehdiyev writes in this connection:

> The Azerbaijani state, which chose a democratic development path, has taken and continues to take notable steps towards establishment of a free, independent media, which is one of the permanent attributes of democracy. The provision of the freedom of speech, expression, press, free publication of a number of newspapers and magazines is indicative of the creation of all the conditions necessary for the full establishment of democracy and free execution of the freedom of press in the country (1999: 65).

The freedom of press, freedom of speech has become the Azerbaijani people`s political and democratic lifestyle, the publication of the press has been facilitated, favorable conditions were created for the activity of independent television channels along with the state television in Azerbaijan (Mehdiyev,1999).

A number of different entities of political journalism emerged in the country on the eve of independence – Soviet press outlets, journalism, which was hesitating between tradition and modernity and democratic political journalism.

Apart from being colorful and controversial, this political journalism also aroused greet interest. For its political goals, approach to problems as well as its content, political journalism of those years can be classified as follows:

"- party, soviet press, which preferred old methods and did not want to get rid of the Soviet and party fetters.

- newspapers and magazines that were hesitating between old work methods and new requirements.

- press outlets, which gave preference to the freedom of speech, freedom of press, democratic values, censorship-free publishing, and struggled for Azerbaijan`s independence and freedom". The author points out that political journalism serves national interests.

The national statehood line has been maintained and is being successfully developed in Azerbaijan, the country is considerably strengthening and improving the legal framework on the mass media. Azerbaijan has made great strides in developing the freedom of speech, freedom of thought, freedom of press. The Public television channel was opened, and the country embarked on a landmark new stage in ensuring the independence of political journalism, building a democratic information environment, in other words, in developing the state information policy, information communication technologies. The information society has reached its peak of development in the country, advanced information resources

were established, information flow and use systems, information and communications infrastructure were improved to the world standards, free circulation, search and access to information was ensured, constitutional rights in the field of information politics were successfully executed.

Conclusion

Being one of the integral elements of political system, political journalism influences mass political consciousness and practice as well as statehood consciousness through public opinion mechanism, rather than directly. Statehood consciousness of the independence period is completely different from the state-party consciousness of the Soviet times. If the Soviet time state-party consciousness bearers were the ruling elite and ideologists, it is the entire nation, country citizens who are bearers of the statehood consciousness in the independence period. Statehood is, if one can say so, the essence of the national self-affirmation process in the political dimension. This means that the nation`s, people`s capability to govern, to assume power is linked to statehood. One point should be emphasized. Statehood can exist without a state. That is, if the nation, which once lost its state, has statehood consciousness means that this nation has its statehood.

What should be taken into account is that if the nation, which has no state, but has only statehood, protects its position, it is a guarantee that this nation will build its own state sooner or later. Azerbaijanis can be cited as an example of this. Take a look at history: despite being victims of oppression and despite the fall of our state several times, we have managed to build our own state again. Obviously, even at the times when there were no national states, peoples preserved their statehood consciousness traditions and feelings.

The state-party consciousness was built up by political views, visions featured in political documents – programs, conceptions and doctrines. The state-party consciousness fulfilled the function of mobilizing masses to achieve collective goals, rather than assuring people. Formed influenced by political journalism, statehood consciousness allowed "to think independently of life and world and act in accordance with this".

Statehood consciousness embraces national peculiarities, national ideals and ideas, public moral values, patriotic values and patriotism itself.

Political journalism should not split the nation with its destructive activity but should unite it around national ideas by promoting statehood consciousness. Azerbaijan`s national interests demand the dialogue among the country`s key political forces, and unity for the sake of national statehood. National political journalism should understand that statehood

consciousness is a high, national value and force, which embraces people`s moral values and rule of law. By reflecting the interests of people and state, political journalism should serve Azerbaijani statehood and become an advocate of statehood consciousness.

Since statehood consciousness is a value that is above all limited interests and preferences, political journalism, which serves the nation, people, our statehood, should set itself a primary goal of instilling statehood goals in every citizen. A multi-profile, responsible political journalism should be an objective, fair chronicler of its time...and be preoccupied by the problems of motherland and people, rather than political ambitions. They should first and foremost think of state building, the strengthening of statehood...". The main criteria of the activity of political journalism should be committed to national interests and promotion of statehood. Statehood consciousness should capture the hearts and minds of people as a sense of belonging to a state. The media are playing an active role in shaping and developing people`s statehood consciousness, instilling love for the motherland in them.

Statehood consciousness and traditions promoted by political journalism are one of the crucial factors in population`s becoming a nation, society members` becoming citizens, shaping people`s patriotic feelings, making love for motherland an integral part of the national identity. If everybody in the country pursue their own interests and ambitions and are indifferent to national interests, tradition of statehood will never emerge in this country.

Statehood is linked to a sense of national interests and "requires the ability to put love for motherland above all other values by going beyond personal, family, tribal, zonal, regional scale, respect and love one`s state symbols, be proud of achievements of one`s state, take the failures of one`s state as personal tragedy".

Political journalism explains the essence of "nationality" and "statehood" notions, highlights its meaning and different aspects, and promotes the values of state building and statehood.

Reinforcing statehood in public consciousness, restoring statehood traditions is among primary goals of political journalism. "If there is statehood, those who love their people and want to serve them, try to contribute to the country`s progress in their own areas of profession and to express their opinion on processes taking place in society". Political journalism promotes Azerbaijanis, which embraces statehood consciousness and traditions.

Azerbaijanis is a phenomenon, which includes patriotism, national and moral values, national solidarity, statehood, nationality, universal values, unity of heredity and modernity. In political journalism, patriotic traditions, patriotic upbringing, moral, ethic qualities, unity of national and universal

values, respect for mother tongue, national unity idea, democratic values, statehood traditions, sense of statehood, unity of universal and national traditions are included in Azerbaijanis and promoted.

Statehood traditions in the East, including in Azerbaijan, date back to ancient times, and are maintained today with certain breaks. "The existence of statehood traditions is related to uninterrupted history and experience of currently existing states" (Merril, 1974: 58). Whereas statehood was prospering in Azerbaijan, Europe was dominated by feudal disunity. Having been established at the modern stage, European statehood has now reached the peak of its development. Statehood traditions in Azerbaijan had been broken for long, which considerably weakened statehood consciousness.

Political journalism should study statehood traditions, statehood thought and interaction of self-consciousness and ethnic and national feelings. In Iran, which has ancient statehood traditions, statehood consciousness is strong. In this country, "Iranian" national identity and statehood consciousness stands above the national and ethnic identity. In Azerbaijan, splits, occupation that took place in the 19th century dealt a serious blow to statehood consciousness and thought. Although Azerbaijanis preserved their ethic and national feelings as part of the Russian empire and Iran, they were deprived of statehood feelings:

> Although ethnic and national feelings were preserved to a pretty good level when Azerbaijan was part of Russia, statehood feelings and thought were considerably weakened. The beginning of the 20th century saw the emergence of bourgeois socio-political relations, which was accompanied by important steps towards national self-consciousness. But statehood consciousness failed to be established because the state was short-lived." The author points out that restoration of independence in the late 20th century again stimulated the development of ethnic and national consciousness (Mammadov, 2009: 112).

Under the conditions of weakening statehood traditions, civil and statehood feelings, at a time when statehood consciousness was being very slowly restored, national and ethnic feelings began to rapidly develop. As we know from media reports this process led to tension with ethnic groups living in Azerbaijan in the first years of independence.

However, successful steps were made thanks to the balance of statehood and national and ethnic consousness. Political journalism played a key role in this, even bigger than science. Political journalism was writing about goals of statehood consiousness, patriotism, Azerbaijanism. The notion of "Motherland" embraces "goals of motherland", "service to motherland", "patriotism", "love for motherland" notion. The land where every nation lives, its spirit is its cradle because the feeling of homeland, the spiritual and moral values of the nation are formed in this ethnic area. Motherland is not only landscape or land. It embodies national and ethnic, statehood, socio-economic and cultural values, which have been established for centuries, historical and modern mental peculiarities.

Statehood, motherland, unity of national and state interests occupies a central role in political journalism. Some political journalism bodies overstep boundaries of social responsibility, betrayed national and state interests, violate not only norms of professional ethics, but also state and legal norms, and even conduct an anti-Azerbaijani propaganda. In fact, all political media should protect statehood, serve national interests, and interests of the motherland and people. The author considers violation of internal, professional ethics norms as moral irresponsibility, describes serving to external enemies and undermining national and state interests as hostility.

Statehood ideology, which is featured in political journalism, raises people as citizens who respect and are committed to their state, and teaches them to put love for the motherland, interests of the state and people above all.

By increasing legal and political culture in society, statehood ideology ensures coordination of the people`s personal lives and interests with the interests of the nation, the people`s participation in public administration, realization of democratic governance and coordination of statehood consciousness with statehood practice.

Statehood ideology is also closely linked with economic thought and economic culture. The implementation of reforms by the state is also linked to public, personal interests and lifestyle.

As statehood ideology, Azerbaijanism unites all socio-cultural interests of people with the constitutional democratic state, which protects and defends the nation`s national and cultural identity. This ideology represents a strong phenomenon, which establishes a single society in Azerbaijan – unity of all Azerbaijanis and nations living in the country.

National and cultural values emerging in public thought are protected, enriched and developed by statehood consciousness. National ideas can spread and capture the nation`s minds thanks to statehood consciousness, psychology and ideology. As a historical and modern concept, Azerbaijanism has acted as a socio-political and moral phenomenon at all stages of the society`s development.

Having been reflected in political journalism, Azerbaijanism has today captured the hearts and minds of every Azerbaijani in the form of respect for the elders, national and moral values, state symbols, love for state attributes in the state policy, literary activity of creative people, works of culture and arts, linguistics, all areas of social life. As manifestation of national and state interests and love and respect for the Azerbaijani state, people, leader, one`s family, land, motherland, territorial integrity, history and modern values, Azerbaijanism is realized as a goal that unites all Azerbaijanis.

Statehood consciousness, thought and traditions lie at the heart of the Azerbaijani people`s national and cultural values, and constitutes unity of people, society and state. Being an element of political, economic, social and moral demands, these interests and values include the following:

- protecting Azerbaijan`s state independence, ensuring its political, economic, information, state, national and global security, ensuring the country`s integration into the world`s information space.
- realizing Azerbaijanism idea with the aim of strengthening unity of the Azerbaijani people.
- ensuring civil society institutes, including the freedom of speech, thought and press.
- turning statehood consciousness and thought into the people`s national, cultural and political asset in democratic society.
- developing the values that ensure solidarity and unity of the Azerbaijanis of the world, cultural and historical legacy, their statehood consciousness and traditions, language, religious, national consciousness, national identity, patriotism and national pride.

These problems embrace the existence of state and statehood, its development prospects, national unity, the country`s international influence. These issues can be considered as the terms conditioning the future activity of political journalism. In this sense, realization of statehood consciousness and implementation of state policy in this area holds special interest for political journalism.

Political journalism`s supporting positive sides of the policy to protect and ensure national interests and criticizing its shortcomings can be regarded as factors conditioning further development and influence of media outlets. (8,25). From this point of view coverage of the state policy on national interests should always be a priority for the media. Promoted by political journalism, Azerbaijanism and independent statehood ideology, patriotism feelings encourage great love and respect for the state, nation and motherland.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 156-166
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Assessment of Potential Risks of Regional for Global Financial Security

DOI: https://doi.org/10.46398/cuestpol.38e.10

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Abstract

The objective of the research was to assess the potential risks of stable CBDC digital currencies,alsoknown as coins, for global financial security.. For several years we have seen the phenomenon of «de-dollarization» in the international financial market; this is a gradual transition in abandoning the use of the US dollar in central bank payments and reserves. A key step in the strategy of freeing countries from the US dollar was the creation of national digital currencies, i.e. stable CBDC currencies. To systematize the data obtained, methods of functional and institutional classification, statisticalanalysisand, also, retrospective, currentand future methods of analysis and synthesis of theoretical and practical material were used.. It is concludedthat the rejection of the stable currency Libra was motivated by the possibility of its transformation into a competing system of traditional currencies. The emergence of a private CBDC prompted central banks and regional associations to create their own CBDCs that could compete with the US dollar in international payments. However, the emergence of CBDC is associated with undeniable advantages and objective risks to the existing financial system and its security.

Keywords: de-dollarization; legal regulation; digital economy; cryptocurrency; CBDC cryptoactives.

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Recibo el 05/26/2020 Aceptado el 12/10/2020

Evaluación de los riesgos potenciales de monedas digitales nacionales estables para la seguridad financiera mundial

Resumen

El objetivo de la investigación fue evaluar los riesgos potenciales de monedas digitales estables CBDC, también conocidas como coins, para la seguridad financiera mundial. Desde hace varios años se observa el fenómeno de la "desdolarización" en el mercado financiero internacional; se trata una transición gradual en el abandono del uso del dólar estadounidense en los pagos y reservas mundiales de los bancos centrales. Un paso fundamental en la estrategia de liberar a los países del dólar estadounidense fue la creación de monedas digitales nacionales, es decir, monedas estables CBDC. Para sistematizar los datos obtenidos, se utilizaron métodos de clasificación funcional e institucional, análisis estadístico y, también, **métodos de análisis y síntesis retrospectivos, actuales y futuros de material teórico y práctico**. Se concluye que el rechazo de la moneda estable Libra estuvo motivado por la posibilidad de su transformación en un sistema competidor de las monedas tradicionales. La aparición de una CBDC privada impulsó a los bancos centrales y las asociaciones regionales a crear sus propias CBDC que podrían competir con el dólar estadounidense en los pagos internacionales. Sin embargo, la aparición de CBDC se asocia con ventajas innegables y riesgos objetivos para el sistema financiero existente y su seguridad.

Palabras clave: desdolarización; regulación legal; economía digital; criptomoneda; criptoactivos CBDC.

Introduction

The virtually unlimited possibilities in the financial sector opened by digitalization are actively transforming not only financial institutions and instruments but also leading to a qualitative review of existing relationships in the financial sector. The introduction of digital institutions and alternative systems of interstate settlements based on the "blockchain" technology can usher in a new stage in the development of the international financial system (Begishev and Khisamova, 2018; Begishev *et al*., 2020).

The Western European states have no will to move to a multipolar world where the injustice of the global financial and economic architecture exists; the latter does not take into account the growing influence of emerging market economies. This injustice could be eliminated through the reform of

key institutions of the Bretton Woods system (the International Monetary Fund (IMF) and the World Bank Group). The unwillingness mentioned above has predetermined the need for developed countries in creating alternative financial systems.

This problem became particularly acute in the context of the "tough" sanctions policy of the Western European countries and the United States of America (USA) against Russia and the active trade war between the USA and China, which was named among the key threats to the stability of the global financial system.

Separately, it is worth noting the growing role of transnational corporations and tech giants such as Facebook, which saw in new financial instruments the opportunity to significantly expand their sphere of influence on the financial relationships of users.

The harsh criticism of Facebook from most countries for its trying to create its own digital currency, Libra, was also added with threats of using tough sanctions policy against companies that co-founded Libra, in particular, such payment giants like Visa, MasterCard, Stripe and eBay. This, ultimately, led to their withdrawal from the project in view of the "blurring of the regulation boundaries of the stable coin" (Fusaro and Hougan, 2019).

Central banks have said that Facebook's potentially huge cross-border payment coverage will make it instantly a systemic competitor to traditional currencies. In turn, the European Central Bank (ECB) has banned the circulation of the stable-coin of the Libra type until the creation of an effective regulatory mechanism for their circulation.

The creation of Libra provided a new impetus to the development of the Central Bank Digital Currency (CBDC) concept. Some countries began actively introducing bans on stable-coins, while others, on the contrary, intensified their development in the field of creating state cryptocurrencies (Corbet *et al*., 2018).

A report by the Financial Stability Board (FSB) for the Group of Seven (G7) notes that global the stable-coin pose a threat to the global financial system and their launch is impossible until legal, regulatory and supervisory risks would be addressed.

The concept of financial security is the subject of interdisciplinary research. In the legal literature, there are several approaches to understanding this concept, however, in our opinion, the most comprehensive approach to understanding financial security was proposed by Vorobyov and Poritsky (Vorobyov and Poritsky, 2015). As E.V. Kudryashova rightly notes, economic science and management to date have proposed qualitative and quantitative criteria for assessing the level of financial security

(Kudryashova, 2019). There is a direct correlation between financial and economic security. Financial security should be considered as part of economic security and, ultimately, as a component of national security, and one of its key components, because lowering the level of financial security can lead to loss of financial stability and solvency by the state (Khabrieva, 2016). In this regard, the assessment of potential risks of the impact on the financial security of a new financial instrument, such as the stable-coin, is of particular importance.

In a new report by the Bank for International Settlements (BIS) on digital payments, central banks are encouraged to consider CBDC as "their future." It is noted that the release of CBDC could lead to serious changes in the financial ecosystem.

Within the framework of this paper, the authors attempted to analyse the essence of stablecoins as a new financial instrument and to assess the potential and imaginary risks associated with their spread for global financial security.

1. Materials and methods

The study is based on a wide range of international sources, as well as data from international organizations, national legislation and scientific literature. As part of the study, we analysed official documents of Group of Twenty (G20), G7, FSB, at European Union (EU) aimed at assessing the threats posed by stablecoins to the global economy.

During the study, methods of system analysis, dialectic and its derivatives, methods and principles of determinism, induction, deduction and hypothesis were successfully applied. To systematize the obtained data, methods of functional and institutional classification, statistical analysis, and also methods of retrospective, current and future analysis and synthesis of theoretical and practical material were used.

2. Results

CBDC represents digital financial assets issued by central banks. Exaggeratedly speaking, the main difference between CBDC and traditional fiat money is that CBDC is a central bank obligation expressed in existing payment units, which can serve as a means of exchange (settlement), storage of value and payment method, that is, to fulfil all fiat money functions, however, operating on the basis of blockchain technology.

CBDCs are a special case of the stable-coins, which are understood as a digital financial asset, the current value of which is provided by one of the traditional and liquid types of assets, i.e. with currency, commodity values, assets accepted in world financial practice, as a reliable and legal means of calculation.

Traditionally, it is customary to distinguish three varieties of stable coins: those secured by a fiat currency or other liquid assets (Tether, TrueUSD, USDC); secured by cryptocurrency, where tokens/coins (MakerDAO) are used as a security deposit instead of the fiat currency, and not secured coins, where the nominal value is ensured thanks to the work of a smart contract (Nabilou, 2019).

In turn, there are four groups of coins in the report of the ECB:

- Tokenized coins (Tether, USD Coin, Paxos, etc.), which are secured by assets held by the issuer in custody;
- Stablecoins with off-chain support (Sweetbridge) by the issuer with assets of other traditional classes;
- Stablecoins provided by on-chain assets (i.e. crypto assets Dai, Aurora);
- Algorithmic stable-coins provided by the work of a smart contract (NuBits).

ECB stable-coins pegged to fiat currencies are described as digital units of value, while they are not a form of any particular currency; however, they rely on a certain set of stabilization instruments to minimize price fluctuations. According to the report, "tokenized coins" in the ECB classification are the most common type of stable-coins: they account for almost 97% of the total trading volume. The specified asset class also includes CBDC.

The emergence of stable-coins in general, and CBDC in particular, is due to the desire of participants in the financial market to use the opportunities and advantages offered by the blockchain to provide financial services; this was clearly demonstrated by cryptocurrencies, while reducing to zero the main disadvantages of cryptocurrencies, such as their high volatility and anonymity, which deprive their use as an equivalent alternative to a fiat currency (Sidorenko, 2019).

On the contrary, the predictable rate of the stable-coins allows us to make calculations even by long-term contracts between counterparties, to avoid a sharp devaluation of the coin (including through the manipulation of insider information in the financial markets), and use them as an equivalent replacement for the fiat currency.

Most CBDCs are designed for general use, although some are used solely for bulk payments and settlements between central banks. In relation to CBDC, three models of access for their implementation are distinguished:

- Access only for financial institutions (Model FI)
- Access for the whole economy (Model EW)
- Access for financial institutions, plus limited access to banks supported by CBDC **(Model FI+).**

It is worth noting that digital currency of a central bank cannot match all the canons of cryptocurrencies, such as decentralization, change by voting, branching or the emergence of a new currency (fork), free purchase/ sale. The CBDC concept and the underlying distributed ledger technology (DLT) technology are today in the plane of a controversial discussion of their impact on the existing financial system. On the one hand, the objective advantages of DLT-based CBDCs are indisputable, which will allow central banks to reduce the use of cash, ensure 24/7 system availability, reduce transaction costs and terms, minimize costs and improve trade. Stablecoins also has undoubted benefits for exchanges, as they increase its level of decentralization and make the market drop not so significant for investors, and finally, if a stable-coin is well implemented, it can easily replace the US dollar in settlements.

Undoubtedly, the mega regulator of all countries see these advantages; it is confirmed by a close study of the issue of launching CBDC on their part.

BIS and FSB express serious concerns about the risks of launching a CBDC, in particular, about how fundamental the impact of the introduction of CBDC on the existing financial ecosystem will turn out, which ultimately casts doubt on the role of banks in financing economic activities and makes their universal release unlikely in the short term. In February 2019 FSB chairman Randal Quarles stated that stable-coins could challenge any financial structure, so G20 member countries should actively implement FATF standards for stable-coins.

Among the key risks for the global financial system, the G7 report notes the following:

1) The expansion of the circle of customers (the transition from a model of interaction with commercial banks to a multi-user audience) entails a significant increase in operational risks for central banks;
2) Difficulties in complying with the principles of Anti-Money Laundering (AML)/ Know Your Customer (KYC);
3) Replacing the functionality of commercial banks (payment processing) with blockchain, and as a result, a complete drop-in bank income;

4) Difficulties in the p2p (peer-to-peer) lending system and in determining interest rates;

5) Containment of competition and a threat to financial stability if users suddenly lose confidence in digital currency.

In a separate letter to the G20 finance ministers, FSB Chairman Randal Quarles also noted that all these challenges "must be addressed as a matter of priority".

On April 14, 2020, the FSB provided general recommendations on regulating stable-coins. Thus, stable-coins must meet the same requirements that are followed by other organizations that carry similar risks, regardless of the technology used. That is, the DUE DILIGENCE and KYC/AML procedures should be strictly applied to stable-coins, which will allow at least partially to eliminating the risks. At the same time, it is noted that control over stable-coins used for making international payments is complicated by differences in financial regulation of different countries.

States are encouraged to be flexible and develop a common standard for regulating digital currencies so that their issuers cannot move from one jurisdiction to another. If necessary, the authorized bodies should specify regulation and eliminate possible gaps in the domestic legal system in order to effectively minimize the risks posed by international stable-coins. Special attention in the recommendations is given to stable-coin operators. Operators of stable cryptocurrencies must take measures for the effective management of risks and the stable operation of their system. In particular, they are required to provide protection against cyberattacks, to combat money laundering and the financing of terrorism. Also, according to the FSB, the possibility of free transactions using stable-coins is a serious threat to financial stability.

Meanwhile, it is worth dwelling on the distinctive advantage of CBDC, which takes on the nature of a problem in the global socio-political context. The spread of CBDC is able to streamline cross-border payments and create seamless trade without borders, which in turn means increased competition for global trade and, consequently, increased sovereignty over the global economy.

3. Discussion

As countries around the world continue to research and test the digital currencies of their central banks, it becomes increasingly apparent that the dominance of the US dollar can be called into question after the concept would be fully implemented on a regional scale. The US dollar remains an

undisputed "king" when it comes to international trade. According to the International Monetary Fund, as of 2019, about 61% of all foreign exchange reserves are allocated in dollars. Similarly, the sovereign currency of the United States serves as the primary vehicle for cross-border transactions, even for transactions in which the United States itself is not involved.

While most CBDC retailers focus on domestic economic issues, some projects focus on promoting trade in a specific region, creating a digital alternative to the US dollar.

Examples of such stablecoins are a regional stablecoin supported by a basket of currencies, including Chinese Yuan, Japanese Yen, South Korean Won and Hong Kong Dollar, which will allow East Asian countries to get rid of the hegemony of the US dollar. However, the support of CBDC with the national currencies of various states creates significant difficulties in providing the system, conducting KYC/AML procedures, as well as determining the centralized CBDC issuer and operator. Another example of a regional CBDC is the digital CBDC euro. The concept is most actively explored by the French Central Bank, Banque de France.

One of the main participants in the unofficial CBDC race is the digital yuan, a digital currency that is being actively developed by the People's Bank of China. According to the representative of the Chinese Central Bank, the "digital yuan" can be used on such large payment platforms as WeChat and Alipay. The security of China's cryptocurrency will be similar to that offered by paper money. In this case, the asset can be used without an Internet connection.

Challenging the dollar as a world trade currency is possible only if the base currency of the indicated CBDC is already the main world trade currency. The digital yuan is one of the few CBDC projects that have a real opportunity to squeeze the dollar because of China's trade relations and the great number of China's partners, which are scattered around the world, and the scale of world trade taking place with China.

It is noteworthy that the United States is also considering the possibility of placing its national currency on blockchain rails, which, if implemented correctly and quickly, can completely stop many competing projects.

Another alternative was the idea of creating a supranational CBDC for BRICS. At the beginning of 2018, the Russian Central Bank and Russian President V. Putin proposed to create an international digital currency common to the BRICS and the EAEU. Among the key advantages of such an initiative, there is the possibility of replacing the SWIFT system with blockchain technology, which will underlie such digital currency, as well as its lower susceptibility to possible devaluation in contrast to the national currencies already used in mutual trade settlements.

The potential implementation of such a project could make it possible to ensure significant efficiency of trade relations within the group by reducing transaction costs, increasing their reliability, and in the future by completely changing the structure of trade relations through the introduction of blockchain technology and smart contracts. Such an idea looks particularly attractive against the background of news about the launch in the test mode of CBDC by the World Bank and the IMF to study the possibilities of digital assets and blockchain.

However, there are serious doubts about the real possibility of implementing such an initiative, first of all, in view of the diametrical opposite of the national approaches represented by developing countries to the regulation of digital currencies. It should be noted that the delay in creating a "single digital environment of trust" based on interstate agreements demonstrated against the background of the constant distancing of the national approaches shown by the countries of the group in the issue of regulating digital financial assets virtually eliminates the possibility of implementing such an initiative. The absence of a single agreed position on the legal nature of CBDC and its implementation strategy at the international level is reflected in the quality of national legal regulation of virtual currency (Shuvalov *et al.*, 2017; Burnie, 2018; Carstens, 2019; Ciaian and Rajcaniova, 2018).

In brief it should be mentioned that the payment requirements and customer identity verification will allow at least partially eliminating the risks (Constâncio, 2018; Khisamova *et al.*, 2019; Begishev and Khisamova, 2018; Khisamova and Begishev, 2019; Begishev *et al.*, 2020; Khisamova *et al.*, 2020; Corbet *et al.*, 2018; Haig, 2017).

Conclusion

Digital innovations in the financial sector contribute to faster, cheaper, and more inclusive payments. The benefits that the CBDC have can significantly transform the global economic environment, reduce existing costs and stimulate the growth of the global economy thanks to access to markets for a wide range of entities. IMF insists on using CBDC to expand access to financial services, especially in poor countries where financial institutions are underdeveloped and not always accessible. However, such advantages can be realized only if there is a properly developed and regulated procedure for implementing CBDC. The rules applicable in the traditional financial industry must be applied to them. We are talking about payment requirements and customer identity verification. This will allow at least partially eliminating the risks.

The global scaling of CBDC creates important problems and risks related to financial stability, monetary policy, guarantees to prevent money laundering and terrorist financing, as well as protecting consumers and investors from risks. However, control over stablecoins used to carry out international payments is complicated by differences in financial regulation of different countries. Digitalization of the economy is inextricably linked with the globalization of financial and economic regulation, and the need to solve a number of emerging problems, which is possible only in conditions of interaction at the interstate level.

Acknowledgement

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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Teoría Política

Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 168-180
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Student - Volunteer: Aspect of Self-Realization Value in the Context of the Covid-19 Pandemic

DOI: https://doi.org/10.46398/cuestpol.38e.11

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Abstract

In the context of the COVID-19 pandemic, the issues of social capital and mutual aid networks become particularly relevant for the student volunteer in Russia, who independently and, at their own discretion, provides assistance, support and mutual aid. To people in need, as a vital incentive for self-realization. This research aimed to identify the motivating aspects of the need for self-realization of a student volunteer in practical activities to overcome COVID-19. The study method was the test, which allows to identify the characteristics of the content of the value aspects of the self-realization of the volunteer student, determined by the global context of crisis. By way of conclusion, the characteristics of the coronavirus pandemic are revealed as an extraordinary condition for the activity of a student volunteer. Based

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Recibido: 02/03/2020 Aceptado: 06/04/2020.

on the results of the study, a self-realization value model of a volunteer student is confirmed in the extraordinary conditions of the coronavirus pandemic. The practical importance of the model is demonstrated with the help of cognitive criteria typical of activity-based social psychology for the formation of value aspects of the self-realization of a volunteer student.

Keywords: Pandemia de COVID-19; voluntariado en Rusia; valores humanitarios del voluntariado; autorrealización de estudiante-voluntario; pruebas psicológicas y pedagógicas.

Estudiante – Voluntario: aspectos del valor autorrealización en el contexto de la pandemia de Covid-19

Resumen

En el contexto de la pandemia de COVID-19, los temas de capital social y redes de ayuda mutua se vuelven particularmente relevantes para el estudiante voluntario en Rusia, quien de manera independiente y, a su propia discreción, brinda asistencia, apoyo y ayuda mutua a las personas necesitadas, como un incentivo vital para la autorrealización. Esta investigación tuvo como objetivo identificar los aspectos motivadores de la necesidad de autorrealización de un estudiante voluntario en actividades prácticas para superar el COVID-19. El método del estudio fue la prueba, que permite identificar las características del contenido de los aspectos de valor de la autorrealización del estudiante voluntario, determinado por el contexto global de crisis. A modo de conclusión se revelan las características de la pandemia de coronavirus como una condición extraordinaria para la actividad de un estudiante voluntario. Con base en los resultados del estudio, se confirma un modelo de valor de la autorrealización de un estudiante voluntario en las condiciones extraordinarias de la pandemia de coronavirus. La importancia práctica del modelo se demuestra con la ayuda de criterios cognitivos propios de la psicología social basada en actividades para la formación de aspectos de valor de la autorrealización de un estudiante voluntario.

Palabras clave: Pandemia de COVID-19; voluntariado en Rusia; valores humanitarios del voluntariado; autorrealización de estudiante-voluntario; pruebas psicológicas y pedagógicas.

Introduction: Research Relevance

The beginning of the XXI century of our civilization is characterized by global contradictions. On the one hand, these are achievements in scientific fields, in the field of digital technologies, in robotics, and on the other- there is an increasing of risks caused by extreme natural and climate disasters, emergencies, and the intensification of man - made environmental disasters. As a rule, human casualties, global losses in the national economies of countries and regions, and irreparable damage to the human and animal habitat accompany dangerous risks (Bystrova *et al*, 2018; Colin, 2014). At the world Economic Forum (Global Risks Report, 2019), forum experts - specialists of various profiles and levels, heads of States and corporations prepared and presented a report on global risks.

Assessing the results of the past year and identifying the main problems of the coming year, they set a key strategy for sustainable development of our time: "environmental problems are the leading issues. They will maintain their dominance in the future" (Global Risks Report, 2019). Based on the analysis of the main global threats to humanity and trends that may affect the degree of influence or change in their specific weight, the forum participants formulated objective prerequisites for global risks, grouped according to the traditional classification established in the world practice: geopolitical, environmental, economic, social and technological (Colin, 2014).

The coronavirus pandemic of 2020 crossed out all the conclusions of the forum participants: it destroyed the existing stereotypes of environmental reality, revealed the incorrectness of the traditional classification of global risks, the authors of which did not take into account the dominance of viral risks in the surrounding space. Emphasizing the extreme danger of viral risks for the sustainable development of human civilization, Russian President Vladimir Putin in his Address to the citizens of Russia noted the importance of a person, his/her active life position, responsibility, and self-actualization:

> At all times, representatives of different classes, ages, views have selflessly served the Fatherland, people, actively participated in education and charity, contributed to solving socially significant problems in the fields of education, health, culture, and ecology. Today, representatives of modern students who are not indifferent to the problems of society are actively helping to overcome a new, terrible scourge – the coronavirus pandemic (Putin, 2020:48).

In the context of the COVID-19 pandemic, a special role is assigned to student volunteers, along with government, public, faith-based structures, representatives of non-profit, commercial organizations and individuals of private property, who fulfill this activity independently and at their own

discretion, as the highest personal need and a vital motive, providing support and assistance to people who find themselves in a dangerous situation of coronavirus infection.

In the absence of radical means to overcome the COVID-19 pandemic, student volunteers provide assistance to those in need with all available means and resources based on the humanitarian values of mercy and compassion in the name of saving human health and life. Due to the current circumstances, the research as an independent scientific direction is the first attempt to determine the theoretical and methodological aspects of self – actualization of a modern student - volunteer, aimed at helping people who are in a dangerous situation of the COVID-19 pandemic.

The article reveals the features of the coronavirus pandemic as an extraordinary condition for self – actualization of a student-volunteer; defines the need-motivational functions of self - actualization of a student-volunteer in the practice of overcoming COVID-19. Based on the results of the study, it substantiates a value model of self - actualization of a student volunteer in the extraordinary conditions of a coronavirus pandemic. The practical significance of the model is proved with the help of value-semantic, motivational-need and functional - regulatory criteria for the formation of value aspects of self – actualization of a student-volunteer.

1. Literature Review

The theoretical basis of this research is the conceptual approaches of A. Maslow (2011), the founder of the humanistic direction in personality psychology. Defining the characteristics of self-actualizing people based on his own empirical research, A. Maslow identified the most dominant among them: self-acceptance, acceptance of other people and (surrounding) nature, focus on solving primary problems, independence from cultural clichés and environment, and the democratic nature of relations.

The characteristics of a self-actualized personality, identical to the approaches of (Maslow, 2011) are presented in the research of other psychologists. In the works of K. Rogers (1990) and H. Heckhausen (2003), self – actualized people are people who are open to new experiences, external and internal stimuli, experiencing both positive and negative emotions; living existentially, constantly in the process of change, having flexibility and the ability to adapt; having an internal locus of control; showing creativity in any kind of activity, realizing the significance of their potential.

In the modern psychological and pedagogical literature devoted to the problems of self - actualization of the student-volunteer personality,

various approaches are traced. In the works of E.E. Vakhromov (2001), S.G. Ekimov (2010), V.I. Markelov (2011), M.V. Pevnaya (2016), self - actualization is considered as a set of values that stimulate the self-development of a student-volunteer, giving him/her the highest qualities of personal needs, goals and life strategies of the individual. In the collective work of N.V. Bystrova, S.A. Tsyplakova and L.A. Chumakova (2018), in the dissertation research of E.V. Samal (2008), self-actualization is identified with the process of personal development as a subject of volunteer activity. In the study of O.A. Idobayeva and G.I. Reznitskaya (2008), in the textbook by O.V. Reshetnikov (2005), self-actualization appears as a condition of psychological well-being of the individual.

In the works of V.I. Markelov (2011), M.V. Pevnaya (2016), K. Rogers (1990), self - actualization is considered as an indicator of personal maturity of a student-volunteer. In all works, special importance is attached to the key idea of self – actualization of the student-volunteer-orientation to the implementation of the values of mutual assistance, charity, compassion, justice, tolerance, the ability to bear independent responsibility for the assigned work, readiness to protect the subject as the highest personal need and goal of life.

2. Results

2.1. Features of the COVID-19 Coronavirus Pandemic – an Extraordinary Condition for Self – Actualization of a Student Volunteer

The coronavirus pandemic of 2020 is an extraordinary phenomenon that has no analogues in the history of humanity. It has the character of a global pandemic, from which now there is no effective means of protection. The pandemic instantly changed all the well-established plans, perspectives, behaviors, and forms of activity in people's lives. The dangers of COVID-19 risks, in the figurative words of the Executive Director of the world Health Organization, represent a threat of unprecedented scale, surpassing world wars in the number and speed of destruction of people (Ryan, 2020). The everyday, familiar life of people turned into an ongoing struggle with an invisible, cruel enemy. Before the risk of infection, most countries spontaneously close interstate borders, stop tourist exchanges, all communications are transferred to online mode, cultural and sports events that have the status of world Championships are canceled or postponed indefinitely.

Even NATO military exercises in Europe have been canceled. There are previously unusual forms of behavior of people: a ban on handshakes, hugs, keeping a distance of 1.5-2 meters between people, the daily use of medical masks and gloves in transport, in stores, when visiting any places where people gather, the systematic use of antiseptics to avoid the spread of infection. The main principle of countering the spread of infection is the self-isolation of elderly people in the age category +60 and people with chronic diseases and weakened health.

All other age categories are subject to quarantine. In Russia, students of secondary schools and all other institutions, University students, employees of small, medium and major industries and institutions, with the exception of those companies that provide the population with vital food, medicine, household sanitation are sent to be quarantined and their activity is organized by "remote" principle. The slogans *Stay at home!* and *Be at home!* - have become familiar in everyday life of people, as a reminder of the deadly danger. Millions of elderly and frail people have become self-isolated and have become in dire need of daily help from volunteers.

In this regard, the volunteer activity of the student-volunteer is being re-profiled. It is becoming more specialized and pragmatic, mainly aimed at helping the elderly in the age category +60, people with chronic diseases, as well as those affected or at risk from COVID-19. A new classification of student – volunteer activities focused on helping people in self-isolation and quarantine has been defined:

1) Assistance to elderly people of the age category +60 and persons with impaired health:

   - Delivery of food, medicine, and necessities.

   - assistance in pet care.

   - Payment for utilities, cleaning of residential premises, garbage removal. walking Pets and other urgent types of household chores.

2) Assistance to disabled people (without age category). Activities are similar to the category *Elderly people*.

3) Donation for COVID-19 patients.

4) Assistance in providing food and veterinary supplies to animals in zoos, local and nonresident circuses that arrived on tour and did not have time to go home before the introduction of quarantine.

5) Assistance to social services in carrying out preventive measures of quarantine compliance (distribution of informational posters, leaflets, logos that explain the danger of infection to the population, demonstrate measures of protection and behavior in the environment).

6) Prevention and neutralization of panic rumors.

7) Informing the population about the reasons and necessity of self-isolation of people during the quarantine period.

Psychological and pedagogical testing conducted in the course of the study shows that such intensive and dangerous activities for the health and life of a student – volunteer require special knowledge and individual qualities based on the rapid application of the humanitarian values of self-actualization in the context of a pandemic: focus on compassion, on mercy to people in trouble, on providing mutual assistance in the name of saving people's health and life; independence, flexibility and originality of thinking; courage, curiosity, creativity; activity, perseverance in saving the health and lives of victims. Testing confirms the assumption that self-actualization is used: 1) as a process that has its own characteristics of manifestation in the activities of a student – volunteer during COVID-19; 2) as an integrative personal formation, represented by a clear structure of values focused on overcoming coronavirus infection.

2.2. Need-Motivational Functions of Self - Actualization of a Student-Volunteer in Practical Activities (COVID-19)

Self-actualization in the works of modern researchers is considered as a mechanism that stimulates the self-development of the individual and directs his/her needs, motives and life strategies to implement higher requirements for the qualities of independence, initiative, social courage, responsibility (Ekimova, 2010; Samal, 2008; Heckhausen, 2003). However, the picture of the world, which has changed under the influence of COVID-19, reveals the features of this process from a new perspective. In relation to the activity of a student – volunteer, an important aspect is to rethink and expand the need – motivational functions of planning types of volunteer activities to help people who are in self-isolation and quarantine.

This process is determined by the personal position of the student - volunteer, as his/her highest need is to independently and at his/her own discretion distribute the humanitarian values of providing assistance to victims of coronavirus. Common sense, knowledge of their business, the ability to comprehend crisis situations, subject them to rapid and clear analysis, strong-willed attitude to overcoming the pandemic, understanding and acceptance of the values of self-actualization in volunteer activities, constancy in the search for means to protect people from coronavirus, allow the student – volunteer to quickly solve the tasks set. Individual forms of interaction with self-isolated people become for the volunteers a prototype

of activity in which they implement their need – motivational functions of self-actualization. In his work O.V. Reshetnikov (2005) quite correctly and evidently reveals the features of the implementation of the need – motivational functions of self-actualization of the volunteer's personality, which are carried out in the process of diagnosing the psychological state of the individual in need, determining the necessary assistance, clarifying the requirements for assistance, organizing and conducting Advisory activities.

Based on the conclusions of O.V. Reshetnikov (2005), an experimental verification of the validity of the need – motivational functions of self – actualization of a student-volunteer in the activity of assisting self-isolated and quarantined people was carried out. It is established that in the process of such interaction, favorable conditions are created for establishing a new model of interaction in direct, live contact with a person. The new model of interaction, in addition to the delivery of food and medicine, garbage removal and pet walking, allows us to solve other problems of a social nature that are no less important for the state and self-isolated people:

- reducing the level of social tension in society, which has a positive impact on the psychology of public consciousness.
- increasing the socially responsible self-awareness of citizens.
- increasing the country's authority in international relations.
- Infrastructure expansion.
- improving Internet technologies and online platforms for helping victims.
- Increase in the number of voluntary projects implemented in conjunction with social structures.
- expanding the number of volunteer groups ready to help victims of coronavirus.
- using various Internet technologies to promptly and timely inform the population about the solution of emerging problems.

The correlation of indicators of the student's personal position as a volunteer and the values of volunteer activity in the main directions of the new model of interaction correspond to the criteria of the need-motivational functions of self-actualization in the practical activity of overcoming coronavirus infection:

- Motivational focus on overcoming coronavirus infection.
- needs for assistance to victims.
- Life support for subjects affected by COVID-19.
- Social success in the fight against coronavirus.

2.3. Value Model of Self – Actualization of a Student-Volunteer in the Extraordinary Conditions of a Coronavirus Pandemic

During psychological and pedagogical testing, the key components of the value model of a student-volunteer's self – actualization in the extraordinary conditions of a coronavirus pandemic were established. The model is based on a set of theoretical ideas and assumptions about the dynamics of values of self-actualization, presented to varying degrees in a number of studies of teachers, psychologists, sociologists (Vakhromov, 2001; Ekimova, 2010; Markelov, 2011; Maslow, 2011; Rogers, 1990; Pevnaya, 2016; Samal, 2008; Heckhausen, 2003).

The first level of the model. Invariant modules of self-actualization values:

1. Orientation in time. It reveals the extent of the student's objective assessments of their time: pride for past events, respect for today's coronavirus control processes, understanding the dangers of COVID-19 risks, hope for better changes, awareness of their place and role in the positive transformations of time.
2. Orientation of the student's personality towards him/herself or people waiting for help. An indicator of self-sufficiency of the individual, the formation of beliefs, principles, and attitudes in working with self-isolated people. It indicates flexibility of thinking, tolerance, or conformity.
3. Value orientations. The most important element of the internal structure of the student - volunteer's personality. Their presence indicates the social maturity of the student, which caused awareness of the choice of working with people who are in a dangerous situation of coronavirus infection. Formation of valuable orientations of student is seen in the activities of the volunteer as integrity, reliability, loyalty to the principles and ideals of charity, mutual assistance, protection of health and life of people, the ability to strong-willed efforts in the name of these ideals and values, active life position, persistence in achieving goals.

Second level. Multivariate modules of student's personality properties and qualities:

1. Active life position of a student-volunteer. This indicates that the principles of charity, mutual assistance, and compassion have been formed in relation to all categories of people affected by COVID-19. In an active life position, the student - volunteer reveals the moral values that determine the nature of behavior, unity of word and deed, and intransigence to all manifestations of evil and injustice.

2. Cognitive activity of a student-volunteer. The severity of the desire to acquire knowledge about the world, cognitive interest, the formation of receptions of mental activity, readiness level to understanding of the processes of infection, death, his/her role and place in the salvation of their wards. Cognitive activity characterizes the entire life of the student; it influences his/her success in activities, the status of a professional volunteer. Cognitive activity of a student-volunteer is a stable personal formation and personal quality.

3. Communication skills of the student-volunteer. Positive moral and ethical quality of a student-volunteer, which is manifested in communication, establishing contacts, relationships, and connections with people who receive the necessary assistance. In the conditions of communication of a student-volunteer with self-isolated people, this quality is manifested as *sociability*. Sociability is based on the student's ability to create a benevolent atmosphere around people who are in fear of the inevitability of infection, to establish psychological compatibility with the wards, to position them to themselves through various methods, ways, and actions.

4. Creativity. Creative abilities of a student-volunteer based on the readiness to produce fundamentally new ideas to help their wards and quickly solve problem situations. According to the conclusions of A. Maslow (2011), creativity is a creative orientation that is innately inherent in all but lost by most under the influence of the environment. In the context of a coronavirus pandemic, the creativity of a student volunteer affects the environment and *cleanses* it from infection, bringing it closer to the previous standards of safe living of humanity.

Third level. Psychological module:

1) Psychological characteristics of a person determined by the values of self – actualization of a student-volunteer in the context of a coronavirus pandemic.

2) meaning-life orientations of the student – volunteer's personality.

3) Personal level of control of behavior in activities with categories of self-isolated people and people in quarantine.

4) Self-assessment of their own activities with victims of COVID-19.

Fourth level. Criteria-based module. It defines the meaning of student – volunteer's self-actualization values in practical activities (COVID-19:

1) value-semantic criterion defines and specifies value orientations, individual and social goals, strategies, behavioral models, and the content of the student's activity in helping a person in the extraordinary conditions of a pandemic.

2) motivational-need criterion determines the motivational orientation and need of a student-volunteer in the implementation of life support for people affected by coronavirus.

3) Functional and regulatory criteria coordinate the behavior of a student – volunteer in the process of providing mutual assistance to people affected by COVID-19, identifies the reflection, independence, responsibility of the student in the context of a pandemic.

Conclusion

The research confirms the theoretical and practical significance of an innovative approach to substantiating the value aspects of self-actualization of a modern student-volunteer. This is due to the extraordinary nature of the global coronavirus pandemic, its suddenness, intensity, and apocalyptic destructiveness.

The pandemic takes thousands of lives every day and isolates States, communities, and individuals. Before the fear of deadly danger, people are self-isolated in a closed space, deprived of the usual contacts with relatives and close associates. In the figurative words of WHO Executive Director - M. Ryan, the coronavirus pandemic is a threat of unprecedented scale, surpassing world wars in the number and speed of destruction of people. Emphasizing the extreme danger of viral risks to human civilization, Russian President Vladimir Putin in his Address to the citizens of Russia notes the special role in overcoming COVID-19 of student volunteers, their active life position, responsibility, and self-sacrifice. In the absence of radical means to overcome the COVID-19 pandemic, assistance by student volunteers is provided by all available means and resources based on the humanitarian values of mercy, compassion in the name of saving human health and life.

In connection with the current circumstances caused by the COVID-19 pandemic, the study for the first time, as an independent scientific direction, carried out a theoretical and methodological justification of the value aspects of self – actualization of a modern student - volunteer, aimed at helping people who find themselves in a dangerous situation of coronavirus infection. The article reveals the features of the coronavirus pandemic as an extraordinary condition for self – actualization of a student-volunteer; defines the need-motivational functions of self - actualization of a student-volunteer in the practice of overcoming COVID-19. Based on the results of the study, the effectiveness of the value model of a student-volunteer's self - actualization in the extraordinary conditions of a coronavirus pandemic is proved. The practical significance of the model is proved using a set of value-semantic, motivational-need and functional-regulatory criteria.

The process of studying the value aspects of self – actualization of a student-volunteer in the process of overcoming the coronavirus pandemic is not completed by solving the tasks of the study. The study of psychological deformations of people caused by the influence of self-isolation and quarantine in the extraordinary conditions of COVID-19 is also of particular interest to future researchers.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 181-197
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Organizational and pedagogical conditions for the determination of gifted children and support policies for effective management in an educational institution

DOI: https://doi.org/10.46398/cuestpol.38e.12

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Abstract

The article describes the organizational and pedagogical conditions for the determination and support of the effective management of gifted children in an educational institution based on personality-oriented educational technologies. The authors pay special attention to determining the research predisposition in the learning process (cognition), which can be considered as the most important form of manifestation of the research position of a gifted child. This position is most clearly expressed in problem situations, suspenseful and unusual situations. The approach to teaching gifted children is not based on the reproductive activity of a student in the assimilation of knowledge, skills, but on a creative search that leads to the development of individual intellectual and creative potential. In the main conclusions, the authors of the article point out the important role of the development of the educational environment, which includes three components: spatial-subject, social and technological. The educational environment must consider the age, gender, national characteristics, level of intellectual and mental development of a student's personality, all of which demands the implementation of a set of public policies in the education sector.

Keywords: definition of educational policies; personality-oriented

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technologies; pedagogical support of gifted children; organizational and pedagogical conditions; development environment.

Condiciones organizativas y pedagógicas para la determinación de los niños superdotados y políticas de apoyo para la gestión eficaz en una institución educativa

Resumen

El artículo describe las condiciones organizativas y pedagógicas para la determinación y el apoyo de la gestión eficaz de los niños superdotados en una institución educativa basada en tecnologías educativas orientadas a la personalidad. Los autores prestan especial atención a la determinación de la predisposición a la investigación en el proceso de aprendizaje (cognición), que puede considerarse como la forma más importante de manifestación de la posición de investigación de un niño superdotado. Esta posición se expresa con mayor claridad en situaciones problemáticas, situaciones de suspenso e inusuales. El enfoque de la enseñanza de los niños superdotados no se basa en la actividad reproductiva de un alumno en la asimilación de conocimientos, habilidades, sino en una búsqueda, creativa, que conduce al desarrollo de un potencial intelectual y creativo individual. En las principales conclusiones, los autores del artículo señalan el importante papel del desarrollo del entorno educativo, que incluye tres componentes: espacial-sujeto, social y tecnológico. El entorno educativo debe tener en cuenta la edad, el género, las características nacionales, el nivel de desarrollo intelectual y mental de la personalidad de un estudiante, todo lo cual demanda de la implementación de un conjunto de políticas públicas en el sector educación.

Palabras clave: definición de políticas educativas; tecnologías orientadas a la personalidad; apoyo pedagógico de niños superdotados; condiciones organizativas y pedagógicas; entorno de desarrollo.

Introduction

Modern management of the education system is based on international quality standards that consider activity as a process. The pedagogical conditions created by us should provide a high-quality organization for gifted child determination and support in an educational organization.

The basis of the search for a different, not traditional model of gifted child teaching, which will not be based on the student's reproductive activity in the assimilation of knowledge, skills, but on search, and creativity, is the special creative potential that a gifted child has, as well as recognition the development of a creative personality as one of the priority goals of training. The most suitable strategic trend for a gifted child teaching is creative learning, i.e. the learning focused on child's creative potential maintaining and development and assuming the child's personal activity in the process of generating and posing the problem, searching for and implementing its solution. This became the reason for consideration of practice-wide-based models of creative learning that were widespread abroad and their possibilities and application boundary discussion.

The implementation of a child's research activity has an impact on his research position development, which is most clearly expressed in problem situations, the situations of suspense, unusualness, and development in the broad sense of the word. During the school years, the identification of a research predisposition in the process of learning (cognition), which can be considered as the most important form of a person's research position manifestation, is of the greatest importance.

In addition to the "internal" factors that ensure the development of general giftedness during the school period, N.B. Shumakova also identifies "external" conditions that contribute to the development of research activity. To such conditions, she includes the content of training and teaching methods, which should fully take into account the special cognitive needs and capabilities of gifted children, especially their personality. Also, the social approval of a child's creativity is one of important conditions, and a high assessment of his research activity, which is mainly carried out by recognition from a teacher(s) and close relatives during school years (Shumakova, 2017).

It is useful for us to consider the activities of an educational organization in accordance with GOST R ISO 9000:2001 standards as a targeted set of interrelated activities of an educational organization aimed at creation the quality of graduate's personality readiness (at the exit) for activities which are of value to its internal and external consumers. The external consumers of an educational institution are the state and society, while the internal consumers are parents, students, and teachers.

We believe that personality-oriented educational technologies are becoming an effective means to manage the process of gifted child determination and support in an educational organization when they implement a set of organizational and pedagogical conditions, which we presented in the table.

1. Problem Relevance

The problem of intellectual and creative potential determination and support among the young generation is associated with human resource quality improvement not only in Kazakhstan, and Russia, but throughout the world. Pedagogical support is understood as a specially organized process of creative and intellectual potential disclosure promotion among talented and gifted children. Thus, the support of talented and gifted children requires the organization of conditions for their development in an educational institution.

Gifted children need a rich developmental environment in which their social activity, initiative, independence, and freedom of creative expression can be supported and realized through purposefully various means.

As practice shows, a modern school, as a rule, has a plan for working with gifted students, and some schools have developed their own concepts for gifted child development. However, the level of such plan implementation does not fully correspond to the stated learning outcomes. The organization of pedagogical support for gifted children is declared, but, as practice shows, work with gifted children in a common school is often represented by separate events, according to external programs, promotions and projects offered from above. At the same time, there is a tendency of insufficient attention to this problem on the part of teachers.

The analysis of the program content shows the lack of a holistic view on the issues of gifted child determination and support in an educational institution; the managerial aspects of the giftedness problem are not well developed. Teachers do not fully master the methodology for talented child and hidden and potential giftedness determination, therefore they do not take into account the psychoemotional, cognitive, behavioral characteristics of gifted children. This allows us to consider the topic of our study as an urgent problem (Dolgova *et al.*, 2019).

2. Problem Study

The problem of giftedness was solved by pedagogy, psychology, and philosophy in theory and practice and at different stages. Researchers addressed the following issues:

- the identification and development of giftedness and creativity (a fundamental justification is given in the works by L.S. Vygotsky, S.L. Rubinshtein, B.M. Teplov, V.N. Myasishchev, J. Renzulli, O.K.

Tikhomirova, A.V. Brushlinsky, L.A. Wenger, Ya.A. Ponomarev, D.B. Bogoyavlenskaya and others);

- the works by N.S. Leites, B.M. Teplova et al. are devoted to gifted child general and special ability support and development.

The works of psychologists, methodologists and practicing educators develop a system of didactic principles, curricula, and electives to solve the problem of gifted child determination and support. So, the study of the Russian scholar N.S. Leites, who studied the individual typological and age-related characteristics of intellectually gifted children, is considered as the most complete and deep (Leites, 2008). The work of Kazakhstani researchers also found the solution to the urgent problem of gifted child determination and support. The works by T.I. Smagliy, R.R. Bikbulatov revealed the psychological characteristics of intellectually gifted students (Smagliy and Bikbulatov, 2017).

The study by W.B. Zheksenbaeva examined the issues of theory and practice of working with gifted children in the conditions of the Republic of Kazakhstan, studied the aspects of giftedness diagnosis (Zheksenbaeva, 2004). The possibilities of differentiating educational preparation in the development of gifted children are studied in the works by M.Zh. Zhadrina (Zhadrina, 2000). They defended the candidate dissertations defining the conditions for the development of giftedness among schoolchildren (I.A. Bevz, E.O. Omar, E.E. Tleulova and others).

The abovementioned works develop the system of didactic principles, curricula, and electives to solve the problem of gifted child determination and support. The works emphasized the importance and necessity of a special educational environment creation for the development of gifted student intellectual potential.

3. Study Hypothesis

As the hypothesis of the study, we put forward the following assumption: the development process of talented and gifted student management in an educational organization will be more effective if the following organizational and pedagogical conditions are implemented in the management process:

- managing a system identifying and supporting talented and gifted students on the basis of a reliable measurement of activity.
- organization of a developing educational environment based on personality-oriented educational technologies.
- inclusion of all subjects of education in project activities based on personality-oriented educational technologies.

4. Research Methods

The methodology for a comprehensive assessment of the process identifying and supporting giftedness involves the participation of an administrator, a psychologist, class teachers, teachers, parents, as well as self-esteem of students.

The main monitoring method is a questionnaire, but in addition to this, testing is also used, certain conversations and observations are carried out, processing algorithms and interpretation of the research results are performed.

The most high-quality and effective implementation of diagnosing the giftedness of schoolchildren by teachers, requires specially developed techniques. Performance indicators for managing the process of giftedness determination and support are developed in the works of experts.

In our opinion, such techniques, first, should be aimed at identifying the levels of a child cognitive and personal sphere development. At the same time, they must be based on the principle of minimum sufficiency.

Unfortunately, in educational practice, the study of giftedness it is often limited to intelligence coefficient (IQ) evaluation, which is determined using psychometric intelligence tests. At the same time, the fact that the use of these tests has a number of limitations is ignored: most of them were created not to determine intellectual or creative giftedness, but for other purposes (mental retardation, academic performance prediction, career guidance, professional selection, etc.); many tests measure a specific intellectual ability (the development of specific mental operations); psychometric tests poorly predict the level of gifted child achievement. Two conclusions follow from this:

1) psychometric tests must be applied after the procedure of a child determination as gifted (not for and not until a decision is made) in order to organize the psychological and pedagogical assistance he needs.

2) psychometric tests are useful for tracking the dynamics of specific child giftedness manifestations.

Thus, psychometric tests are just one of many other information sources in the process of a gifted child determination.

As was already noted, domestic scholars recognize an integrated approach to gifted child determination, the essence of which is the use of various methods:

- child monitoring methods.
- special psychodiagnostic trainings.
- expert assessment of children's behavior.
- conduct of "trial" classes according to special programs.
- evaluation of creative activity products.
- organization of intellectual events (subject Olympiads, conferences, competitions, contests, shows, festivals, etc.).
- conduct of psychodiagnostic research using variable methods, etc.

However, researchers warn that a comprehensive approach to child giftedness determination does not completely eliminate mistakes. Pedagogical technologies that meet the requirements of interaction, activation, a personality-oriented and activity-oriented approach implementation are the following ones:

- Organization of student research activities (RA).
- "brainstorming", drawing up intelligent map diagrams and other methods of divergent thinking development.
- the development of critical thinking.
- development of reflection.
- problematic methods.
- dialogue methods, etc.

We use all the methods listed above. The feature of the dialogue method is the material presentation organization in the form of questions and answers. We use different types of dialogue in the organization of training, in each part of the lesson:

- Socratic dialogue - questions without a ready answer - contribute to the activation of student's thinking.
- level dialogue - organization of dialogs of various levels: teacher-student, student-student, teacher-group of students - helps to change roles, change activities, maintains interest in a lesson.

Such lessons are always distinguished by the activation of mental activity, which is also noted by the students themselves.

Dialogue interaction implies the equality of positions in communication. It is an excellent method to implement a personality-oriented organization of the educational process.

5. Main Part

The experimental work was carried out during the academic years 2017-2019 based on the State School No. 6 in Lisakovsk, the Republic of Kazakhstan.

The pilot work was attended by 770 students and 60 teachers.

The purpose of the experimental work was to evaluate the effectiveness of organizational and pedagogical conditions in practice for an effective management of gifted student determination and support system based on personality-oriented technologies.

The objectives of the experimental study were the following ones:

1. Determination of the initial level of school activity.
2. Testing a certain set of organizational and pedagogical conditions for an effective management of gifted student determination and support system based on personality-oriented technologies.
3. The study of management effectiveness dynamics concerning gifted student determination and support system based on personality-oriented technologies.

The basis for the work carried out effectiveness determination is to increase the level of students' creative activity development as the result of created organizational and pedagogical conditions in the educational space of school.

We have identified the following indicators the educational environment development:

- the level of teacher innovative activity.
- the level of educational program innovative component.
- the degree of innovative forms and method implementation in team activities.
- the level of pupil innovation mastery, etc.

The study had been conducted since September 2, 2017 till October 27, 2019. It was attended by 280 children of secondary and senior school (7-11 grades) of the State Institution "Secondary School No. 6", 110 boys and 170 girls.

Anticipating the study to assess the existing level of giftedness development among students during the experimental work, we conducted a survey among schoolteachers in order to identify the most important methods, forms and means of work organization with gifted children.

The teachers revealed the following main signs of giftedness:

- an integrative feature of giftedness concept, including the intellectual, creative, and communicative components (50%).
- giftedness as the psyche trait (30%).
- the ability of an individual to implement in the creative, educational field (10%).

Teachers named the most important methods of work with gifted and talented children:

- search, design, research methods (60%).
- active teaching methods (game, training, ICT use, etc.) (30%).

The most effective forms of educational process organization for gifted children:

- design and research activities (60%),
- gaming, training (30%),
- paired, group (10%).

Teachers named the effective means of working with gifted children:

- research activities (50%).
- dialogue activity (40%).
- ICT use (20%).

In the questionnaire, we proposed several possible reasons for the lack of teacher willingness to work with gifted children. Interviewees had the opportunity to select several of them. The results showed that the following three were the most relevant (33.8% of respondents chose them):

- there is no necessary knowledge, skills and abilities - they were not obtained at the pedagogical educational institution.
- no time for self-education.
- lack of necessary information.

But nevertheless, despite the existence of barriers of an objective and subjective nature, teachers consider it is possible to improve in this area. To do this, they use various sources of information, the most accessible and popular among them are the following ones:

- Internet resources (70.2% of respondents).
- continuing education courses (48.1%).

- methodical journals in the subject (42.9%).
- psychological and pedagogical literature on the problem (37.7%).
- attendance and discussion of open lessons, as a live exchange of experience with colleagues (28.6%).

Based on the analysis of the teacher survey who had the experience of working with gifted children, we found that the following criteria for giftedness are recognized as the most effective in teaching practice:

- the level of knowledge, claims, motivation, cognitive activity (70% of teachers).
- the results of gifted child practical activities (25% of teachers).
- outstanding cognitive data, creativity (10% of teachers).

Among diagnostic methods, 30% of teachers noted the methodology by J. Renzulli; 20% - IQ test; the KOS technique (Sinyavsky and Fedorishin) and the D.I. Bogoyavlensky methods - 5%.

We made the following conclusion: the modern school is still sensitive only to children with obvious giftedness. This often leads to the fact that their abilities are exploited with the expectation of quick results in work, without any prospect for the targeted development of students. Potentially gifted schoolchildren and the children with a disharmonious type of giftedness development are left without attention, and after all, when appropriate work is organized with them, they could show their bright and outstanding abilities.

It should be noted that in a common secondary school, it is the teacher who is tasked with gifted and talented child determination. And although we also use giftedness self-assessment questionnaires for students in our work, we believe that the selection process by a teacher is more reliable.

During the diagnostic stage, we used the method to monitor the behavior of schoolchildren. In the process of observation, the task was set to diagnose the frequency of gifted child characteristics manifestation identified by J. Renzulli. The author compiled the scales to characterize cognitive, motivational, creative, as well as leadership areas.

We also applied P. Torrens figure test to assess the development of students' creative giftedness.

The results of the study showed that modern schoolchildren do not have sufficient preparation for creative intellectual work. An average student has a rather low level of cognitive motivation, and the skills of strong-willed self-regulation are practically absent; he often seeks to find an easier way to achieve positive learning outcomes.

All mentioned above is confirmed by a survey that we conducted on social networks. As the results show:

- less than 8.5% of adolescents enjoy the process of cognition,
- the need to perform independent creative tasks are experienced only by 2.1% of respondents,
- 8.4% of students want "teacher to explain more clearly,"
- 14.7% of adolescents want the school curriculum to be "easier".

Of all the schoolchildren participating in the survey, 29.4% wished to have a variety of studies so that "the lessons would be in the form of a discussion or games."

It seems possible to overcome this situation completely only if the teachers are motivated and prepared for the development of intellectual, creative, and personal potential of gifted students, and at the same time of the rest of the students.

Thus, in the course of our study, we identified not only positive features in the modern school activities, but also the necessary aspects to solve the problems of training, education and development among gifted students.

The following factors are considered as positive. The vast majority of our respondents understand the urgent need to organize special work for the development of gifted children at high school. Teachers know the basic characteristics of gifted child cognitive activity and behavior and are aware of their problem causes. Most of the respondents have already worked with gifted students. Teachers improve their knowledge in this direction, for which they use various sources of information (Kozhevnikov and Lapchinskaya, 2019).

Besides, it is also positive that almost half of the respondents take a wide range of measures aimed at student development. Teachers develop experience of research, cognitive activity and creative abilities among students.

Nevertheless, we ascertain the fact that two-thirds of the respondents feel insufficient willingness to interact with gifted children, and some teachers are not at all ready to develop interaction. One third of teachers do not have sufficient knowledge of the methods for diagnosing giftedness in children, research skills, and they do not have enough knowledge about the technologies for a gifted child intellectual, personal, and creative potential development. Most of the teachers justify their incompetence of working with gifted students by external circumstances. The problem of educating parents about the development of child giftedness has not been resolved. Material stimulation of teacher additional efforts and encouragement of their talented students is very low.

The results of the ascertaining experiment served as the basis for the organization and implementation of organizational and pedagogical conditions aimed at effective management of the development process among gifted children in the educational space of the secondary school No. 6 (Lisakovsk).

We believe that personality-oriented educational technologies are becoming an effective means of managing the process of gifted child determination and support in an educational organization when they implement the set of organizational and pedagogical conditions that we presented in the table.

TABLE1: Organizational and pedagogical conditions for educational organization management effectiveness based on personality-oriented educational technologies

Condition	Content	Result
Educational institution management based on a reliable measurement of activity	Includes psychological and pedagogical monitoring of student cognitive abilities	Timely identification of problems among gifted children, the ability to adjust the process of giftedness support and development timely
Organization of a personality-oriented developing educational environment	Includes the use of student-centered educational technology	Provision of interaction and personal self-development
Organization of research activity	Inclusion of all subjects of education in project activities	Solves the problems of value attitude development

Own elaboration based on the research objective.

The implementation of the first condition - the use of the system to monitor the quality of the educational process — made it possible to track the dynamics of schoolchild training in the group as a whole and for each student. To this end, we used tests and individual maps to analyze the status and dynamics of the development of a child's educational activity quality.

Based on the completed map, the methodology by J. Renzulli, and Torrens, as well as the observation for each student, monitoring was conducted, taking into account the comprehensive identification of giftedness, as well as the timely identification of psychological and pedagogical problems. A psychological and pedagogical conclusion was drawn up, a map of giftedness was drawn up, the possibility of introducing the construction of possible individual development paths was developed.

During implementation of the second condition - the organization of a personality-oriented developing educational environment, - we proceeded from understanding it as such an educational environment, "which provides opportunities that allow all subjects of the educational process to self-develop." According to Yasvin, a set of these features includes:

- the opportunities that allow a subject to satisfy and develop his needs on the entire hierarchical ladder up to self-actualization.
- the opportunities, using which a person assimilates social values and organically transforms them into internal values. In combination, they make a developing psychological and pedagogical potential of the environment (Yasvin, 2007).

A developing educational environment is formed by three components: spatial-subject, social and technological. The spatial-subject component is represented by the architecture of a school building, the degree of openness and closure of structures of intra-school design, the size and spatial structure of the premises in a school building, the ease of their spatial change, the possibility and breadth of spatial movements of subjects, etc. This component characterizes not so much different spatial and subject "units": rooms, furniture, appliances, etc., but the ways of their functioning in a particular educational field.

The social component consists of the "human factor", the methods of interpersonal interaction of all subjects of the educational process, which require the adoption and assistance of each subject, regardless of his personal identity specifics, as well as of any person discrimination prevention by any criterion, etc.

The technological component consists of programs, technologies, forms, methods, learning styles, it conveys the essential connections of the spatial-subject and social components that provide developmental opportunities to each child.

An integrative criterion that determines the quality of a developing educational environment is the level of this environment ability to provide all subjects of the educational process with a set of opportunities that provides effective personal and professional self-development.

Children with a sufficiently high creative potential in such an environment can live in a state of creativity more often that integrates a child's cognitive, operational, emotional and personal spheres.

The third condition is the organization of research activities by inclusion of all subjects of education in project activities.

Work on educational activity conduct with intellectually gifted children was also built through the organization of project activities. The project

method forms the basis of project training, the meaning of which is to create conditions for students to learn the educational material in the process of project implementation independently.

We developed and conducted individual classes of the group "Learning to create a project", which were conducted according to the plan once a week. 34 hours of classes were held in total. In the process of the group work, we used the research and design teaching method. The main characteristic of the research method is that it is the method of student attraction to independent and direct observations, on the basis of which they establish connections between objects and phenomena of reality, draw conclusions, and learn patterns. Its main components are the identification of problems, the development and formulation of hypotheses, observations, experiments, as well as the judgments and conclusions made on their basis.

The project method of training is a certain way of organized search, research activities of students, individual or group, which provides not only the achievement of a particular result, designed as a specific practical output, but the organization of this result achievement process with the obligatory presentation of these results

The task of a modern teacher is to give the traditional tasks a research or design form.

Students use the "My Achievements" card as a self-assessment of their activities. We also used a rating system to evaluate the performance of a gifted student, describing the amount of participation in Olympiads and competitions.

To determine the effectiveness of organizational and pedagogical condition implementation after a formative impact conduct, we performed testing using the same methods. The change of gifted child number was the sign of the performed work effectiveness.

The results of the control experiment showed that the level of development of students' giftedness increased as compared with the ascertaining stage. The amount of students with the creative talent level of above the age norm increased by 4%, which amounted to 30% of the number of subjects.

The development of a creative environment is evidenced by group collectivist perception level increase. During the control stage of our study, they revealed the following:

- individualistic perception of the group decreased by 16.6% and amounted to 50%;
- pragmatic perception of the group remained at the same level;
- collectivist perception was revealed among 7 teenagers, which amounted to 25% of the total number of students in the class.

As observation shows, student became more united. This outcome is the result of work in the whole group on the creation of a creative learning environment, through psychological training aimed at communication improvement in the group. A larger number of children regard the group as a value, which is manifested by the desire to put the solution to the group problems in one of the most significant places. The guys began to show more interest both in the goal achievement by each member of the group, and in the achievement of goals by the group in general. Students with a collectivist type of perception of a group are ready to contribute to group activity, they show a need for collective forms of work.

Conclusions

The objectives of our experimental study were the following ones:

1. Determination of school activity initial level.
2. Testing a specific set of organizational and pedagogical conditions for the management effectiveness concerning the system for talented and gifted student determination and support based on personality-oriented technologies.
3. Studying the effectiveness dynamics concerning the system for talented and gifted student determination and support based on personality-oriented technologies.

The basis for the work carried out work effectiveness determination is to increase the level of students' creative activity development as the result of created organizational and pedagogical conditions in the educational space of the school. The criterion for the development of the educational environment, based on the determination of quantitative indicators is the number of children participating in contests, competitions and research events engaged in creative associations of an educational institution; statistics on the organization of a system for gifted child support at school, the needs of children and parents.

The implementation of the conditions is aimed at creation of a system to manage the process of gifted child determination and support at an educational institution (common secondary school). These conditions are the following:

1. Management of an educational institution on the basis of reliable measurement of activities by means of psychological and pedagogical monitoring of student cognitive abilities, aimed to solve the problem of gifted child timely identification, the possibility of timely adjustment of the support process and the development of giftedness.

2. Organization of a personality-oriented developing educational environment based on the use of personality-oriented educational technologies, aimed at interaction and personal self-development provision.
3. Organization of research activities by inclusion of all subjects of education in project activities aimed at the formation of value relationships, and motivation of gifted students.

The essence of the study was to evaluate the effectiveness of organizational and pedagogical conditions for effective management of the system for gifted student identification and support based on personality-oriented technologies. The results of the experimental work show positive changes in the following elements of educational organizations:

- innovative activity of teachers.
- the innovative component of educational programs.
- the introduction of innovative forms and methods in the activities of the collective educational organization.
- the educational space of the school (students are more satisfied with the organization of research activities at the school).

The study confirmed the effectiveness of gifted student support management in an educational organization.

Conflict of interest

The authors confirm that the presented data do not contain a conflict of interest.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 198-207
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Models of Marginality in the Historical-Theoretical and Political-Legal Contexts

DOI: https://doi.org/10.46398/cuestpol.38e.13

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Abstract

The research analyzes different models of marginality in historical-legal and political-legal contexts. The relevance of the study is due to the significant risks of spreading marginality in modern society, as a prerequisite for legal anomia. Understanding marginality, as one of the destructive forms of legal awareness and legally significant limiting behavior, allows marginality to be modeled historically and theoretically in relation to sociocultural phenomena such as state and law. At the methodological level, documentary design was used close to historical research and epistemological reflection typical of interdisciplinary dialogue. It is concluded that the use of legal means and techniques to combat marginality is based on the hypothesis of legal consciousness, according to which anyone initially focuses on consciousness, socially active and useful, and therefore on lawful behavior established by law. This approach can be formed, strengthened, or restored through the implementation of educational, ideological, and other functions of law, political science, or history.

Keywords: marginality models; risk of marginalization; marginality modeling; criminal subculture; limit behavior.

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Recibido el 06/06/2020 Aceptado: 14/10/2020

Modelos de marginalidad en los contextos histórico-teórico y político-legal

Resumen

La investigación analiza distintos modelos de marginalidad en los contextos histórico-legal y político-legal. La relevancia del estudio se debe a los importantes riesgos de propagación de la marginalidad en la sociedad moderna, como un requisito previo para la anomia legal. Entender la marginalidad, como una de las formas destructivas de la conciencia jurídica y el comportamiento límite jurídicamente significativo, permite modelar histórica y teóricamente la marginalidad en relación con fenómenos socioculturales como el Estado y el derecho. A nivel metodológico se hizo uso del diseño documental próximo a la investigación histórica y a la reflexión epistemológica típica del diálogo interdisciplinario. Se concluye que el uso de medios y técnicas jurídicas para luchar contra la marginalidad se basa en la hipótesis de la conciencia jurídica, según la cual cualquier persona se centra inicialmente en la conciencia, socialmente activa y útil, y por lo tanto en un comportamiento lícito establecido por la ley. Este enfoque puede ser formado, fortalecido o restaurado a través de la implementación de funciones educativas, ideológicas y de otra índole del derecho, la ciencia política o la historia.

Palabras clave: modelos de marginalidad; riesgo de marginación; modelado de marginación; subcultura criminal; comportamiento límite.

Introduction

The relevance of the research problem is due to the need to revise a number of theoretical categories and constructions inherited by modern Russian legal science from its "socialist predecessor" and still considered as the basic foundations of educational, research and practical activities in the field of state-legal relations. Among such categories, is inter alia "marginality", which in its most general sense is a form of borderline (alienated from the values and meanings of law) consciousness and behaviour of subjects of social and legal relations. Its fundamental research is carried out by an independent branch of social science, known as marginalist (Farge, 1989).

In jurisprudence, this area of knowledge is studied in terms of the general legal theory of marginality, which has developed since the beginning of the 21st century. The foundations of this theoretical structure include the works of foreign (Park, 1928; Billson, 1988; Bradatan and Craiutu, 2012), as well

as Russian (Atoyan, 1993; Popova, 2000; Sainakov, 2013) philosophers, sociologists, lawyers, political scientists, historians and psychologists.

Under the conditions of the Soviet period, the theory of the socialist state and law was undoubtedly oppressed by the concept of monism, according to which the world was a class dichotomy of civilizations and cultures (socialist and bourgeois-imperialist), while all social and legal negativity, regardless of types and forms external manifestation, was either "the legacy of the accursed past", or a consequence of the "pernicious" influence of the "decaying and parasitic world of capital" (Khazieva et al., 2019). With this approach, marginality was naturally perceived as a temporary, non-systemic phenomenon subject to complete eradication in the process of communist construction and incompatible with the ideological axioms enshrined in the "Moral Code of the Builder of Communism" (Sainakov, 2013; Stepanenko, 2014).

In the internal legal theory of the Soviet period, marginal behaviour was considered as a) an unstable and maladaptive form of illegal behaviour in relation to the rules of the socialist community, within which a potential violator would not commit illegal acts solely out of fear of punishment; b) as legal, although bordering on illegal behaviour, which did not become as such for a number of reasons (Feofanov, 1992).

The systemic crisis of communist ideology and the socialist economy caused the collapse of the USSR and destruction of the socialist legal family (Khazieva *et al*., 2019). In the post-Soviet space, this led to the formation of state-legal systems of transitional type, a number of which (the countries of Eastern Europe and some former Soviet republics) adopted the vector of perception and implementation of the established parameters and stereotypes characteristic to the states of traditional Western liberal democracy (Popova, 2000). Other countries, including the Russian Federation, are trying to find their own path of state and legal development, demonstrating their desire to become independent civilizations and claiming that they retain the status of "superpowers" that have a decisive influence on world politics (Sainakov, 2013). Today the modern vision of the state and law is carried out under the influence of two opposite vectors: a) the Soviet, based on the opposition of "hostile" cultures of Russia and the West; and b) post-Soviet-pluralistic, which asserts multiplicity of tolerant perception of cultures and civilizations that are equivalent in their right to existence and development. Under these conditions, the study of marginality acquires a qualitatively different meaning from that which has developed within the framework of the theory of the socialist state and law (Popova, 2000; Sainakov, 2013; Feofanov, 1992).

In the realities of modern state and law, marginality is accepted as a "normal alienation and borderline" that exists in legal consciousness. It is thus expressed in the behavioural acts of almost any individual or legal entity. Marginal status has become not so much an exception in the modern world

as the norm for the existence of millions and millions of people (Farge, 1989). In this sense, we can and should talk about marginality not only in relation to representatives of aluminized social groups or carriers of the criminal subculture (Romashov and Bryleva, 2019) but also in connection with rather closed social communities united by similar material, cultural, physiological, psychological status and other conditions of life. Equally, we should take into account the activities of individual "normal" representatives of the state bureaucracy (civil servants), confirmed by the risks of marginalization as well as "ordinary" Russian citizens (Stepanenko, 2014). Moreover, the state itself can be considered as an object and subject of marginal behaviour, whose activities can equally be aimed at both implementation and protection of national interests, and at meeting the requests of a narrow circle of its representatives in the state power elite. This ruling group has departed from the interests of society and, thus, can probably be seen as a marginal oligarchy (Popova, 2000).

Modern Russian law, based on the integrative approach to the typology of legal thinking and pluralistic approach to the perception of legal systems and legal cultures, develops a relevant attitude to the phenomena of marginal consciousness and behaviour of subjects of state-legal relations as a form of objective legal reality that, depending on various factors, can be expressed in both legal and illegal acts (Stepanenko, 2014). In line with this position, any marginal community ceases to act as a benchmark for negative sociality; rather, it is perceived as an element of the dialectical struggle between tradition and innovation under the image of society close to synergetic paradigm (Sainakov, 2013). As a result, marginality becomes, in a full sense of this concept, a "borderline" and "elastic" category, its main characteristic feature being uncertainty or polyformatty, which provides this phenomenon with a wide set of opportunities associated with formal and meaningful transformations (both positive and negative) (Atoyan, 1993; Stepanenko, 2014).

According to the authors, the results of a marginal lifestyle and marginal behaviour of individuals and collective subjects of legal relations are manifested as processes of sublimation, as the possibility of modifying or changing the negative behavioural, motivational sphere into constructive lawful behaviour (Ainoutdinova & Ainoutdinova, 2019); situations of escapism – as "oblivion" or "escape" from problems through the use of artificial "pathogens" (drugs, alcohol, and other tranquillizers) (Ainoutdinova & Ainoutdinova, 2019); the onset of frustration causing the state of despair, hopelessness, anomie and disbelief, and leading to aggression, including auto-aggression (Stepanenko, 2014; Romashov & Bryleva, 2019; Romashov et al., 2017); the expression of protest reactions through the commission of offences, including crimes, participation in riots via expressing disagreement with the causes of the current marginal circumstances (Stepanenko, 2014).

The study found that the expediency of building a strategy of demarginalization leads to the strengthening of national unity; formation of a tolerant attitude towards deviations in society that do not pose a social threat; legitimization of state legal means and methods with a regulatory and protective effect on social relations, primarily those containing no signs of alienation or borderline marginality of legislation and legal policy to comply with the values of the rule of law (Khazieva et al., 2019; Stepanenko, 2014).

1. Methods

In the course of this research, various methods were used, such as comparative analysis, cyclicity, theoretical and legal modelling, historical and legal reconstruction, and other methods of scientific knowledge. To consider the mechanism of the legal assessment of marginality, a complex method of historical-theoretical and intersectoral synthesis was used. This allowed combining scientific achievements of foreign and domestic historical-theoretical jurisprudence and other branches of law (Bradatan & Craiutu, 2012; Sainakov, 2013; Feofanov, 1992).

To characterize the subjects of marginal consciousness and behaviour, the method of interdisciplinary analysis was employed, while in relation to individual legal structures of marginal acts, priority was given to criminal and administrative methods (Feofanov, 1992; Romashov & Bryleva, 2019).

2. Results

Modelling of marginality in the historical-theoretical context involves identifying three stages (monistic, dualistic, and pluralistic) of the genesis of the paradigm of the world order. At each stage, the perception of human relations changes and, as a result, the ratio of such key concepts as norm and deviation, analogy and pathology, regularity and causality, law and crime are updated, which accordingly changes the content of the phenomenon of marginality (Stepanenko, 2014).

In conditions of the monistic stage, the world was represented by two mutually exclusive phenomena: the “ecumene” (intelligent universe) existing within the framework of a particular autarkic (self-sufficient) polis and the barbarism. In the socio-cultural dimension, only a citizen of the polis was regarded a person (or human being) as the individual bearer of such collective rights as freedom, democracy, defense with arms in the

hands of a native polis, etc. Loss of status of citizen automatically meant the defeat in all civil rights. At the same time, the rigid division of society into free citizens of the polis and slaves did not exclude singling out of a marginal group of strangers, which included both citizens of other policies and barbarians who, for some reason were not enslaved or killed (e.g., traders, leaders of "friendly" tribes, etc.). The marginals could stay in the polis, were obliged to comply with its laws, but did not have any civil rights, and in this sense, they occupied a borderline position: while not being "living things", at the same time, they were not citizens and, hence, people (or human beings) in the political and legal sense of the word.

The emergence of a dualistic paradigm of the world order is associated with the division of the Christian world and the Roman Empire as its basis into two conflicting, however, at the same time equally cultural and traditional segments: The Western Catholic Roman and Eastern Orthodox Byzantine empires (Bakulina, 2014). The dualistic world presupposes the allocation of two types of cultures and the perceptions of the world associated with them: true and false.

Under dualism, monism does not disappear, since only one of the two cultures is true and, accordingly, worthy of the "right to life." It does not matter, though in what forms this duality is presented (Del Pilar & Udasco, 2004). In religion, it is "true faith and heresy", in the legal field – "law and crime", in interpersonal communication – "love and hate", "partnership and conflict", etc. Within the dualistic world order, marginality is characterized by inconsistency with the traditional (normative) stereotypes of truth that have been formed in a particular society (Atoyan, 1993).

A pluralistic paradigm is primarily due to the reformatory revolution in the Catholic Faith, which caused bourgeois transformations in the political and economic life of Western society. This led to the recognition of the intrinsic value of the human's personality, expressed in their natural rights and freedoms, independent of the state in origin (Bakulina, 2014). In the context of social and cultural pluralism, the human personality, as the fundamental principle of human civilization, combines individual uniqueness (causality) and collective averaging (normativity) (Stepanenko, 2014).

Within the pluralistic paradigm of the world order, marginality is due to the dichotomy of individuality and collectivity, which act as equivalent vectors of state structure and legal regulation (Billson, 1988). In this sense, marginal is a citizen who seeks to overcome conservative or innovative state-legal restrictions to improve the system of political-legal communications, and simultaneously, the same citizen who considers the violation of law and order as illegal, albeit effective means of ensuring his/her own selfish interests (Farge, 1989).

Modelling of marginality in relation to the modern Russian state-legal system allows us to state that it is more consistent with the dualistic paradigm of the world order, within which the national political and legal culture continues to be opposed to the culture of the West (Popova, 2000; Sainakov, 2013; Khazieva et al., 2019).

3. Discussion

In the current situation with the Russian state-legal system, the domestic humanitarian science identifies several models of marginality, namely: political, legal, economic, ideological, cultural-historical, etc.

The innovation that distinguishes the modern legal model of marginality in Russia from its Soviet counterpart embraces: recognition of the objective nature of delinquency in general and organized professional crime in particular Bradatan & Craiutu, 2012; Romashov & Bryleva, 2019; Ainoutdinova & Ainoutdinova, 2019; Romashov et al., 2017); recognition of the fact of latent delinquency is associated with referring to a marginal group of persons involved in illegal relations, however, for a number of reasons, not brought to legal responsibility for the crimes committed (Popova, 2000; Feofanov, 1992; Romashov & Bryleva, 2019; Ainoutdinova & Ainoutdinova, 2019); presence of uncertainty, gaps and defects of law, "illegal" norms and acts, etc. (Billson, 1988; Bradatan & Craiutu, 2012; Khazieva et al., 2019; Davletgildeev & Klimovskaya, 2019); mismatch of goals and objectives, methods, and mechanisms of legislative regulations at the international, federal and regional levels, etc. (Popova, 2000; Khazieva et al., 2019; Feofanov, 1992; Romashov & Bryleva, 2019).

Understanding of marginality in modern Russia is pluralistic in nature, since: a) it is not reduced only to the "inherited paradigm" of marginalism (as a stable socially negative phenomenon) of the Soviet period (Popova, 2000); b) it is carried out within the framework of the dualistic paradigm of the worldview, according to which the normativity and deviance of law are correlated as its truth and falsity (Stepanenko, 2014); c) the state as an object of marginalization is a combination of three semantic images: a country / territory, a people / nation, an apparatus of public power / state bureaucracy, which in synergy form ideas about a particular state, its reputation and authority (Sainakov, 2013; Khazieva *et al.*, 2019); d) the state-country's comprehension of marginality boils down to recognition of possibility to change the results of the "division of the world" that emerged as a result of World War II (Bradatan and Craiutu, 2012; Stepanenko, 2014); e) in relation to the state-as-people, the problem of marginalization is actualized in connection with legal and illegal migration; though, in reality, migrants act as bearers of a legal status that is not much different

from that of any foreigners (Romashov and Bryleva, 2019; Romashov *et al.,* 2017; Davletgildeev and Klimovskaya, 2019).

Even the citizens of the European Economic Community (EEC) member states (that are formally building a single economic space in this country) are subject to a special legal regime based on a special restrictive approach to foreign workers, which is not recognized as discrimination though contributes to marginalization (Davletgildeev and Klimovskaya, 2019).

Speaking about the relationship between law and marginality, we should focus on two aspects. Firstly, the law acts as a public (generally valid and generally binding) regulatory and protective system, the norms of which serve as evaluative means, with the help of which the subjects endowed with the appropriate competencies carry out the legal qualification of subjective acts for their recognition as legitimate or unlawful and find out the corresponding motivational basis for decision making (Popova, 2000; Sainakov, 2013; Stepanenko, 2014; Feofanov, 1992; Del Pilar and Udasco, 2004).

Secondly, the perception of law as the most significant and effective instrument of regulatory and protective activity means that with the help of legal means, methods and techniques, prevention of marginality could be carried out effectively, as well as the consistent transition of legal marginality into legal normativity (Sainakov, 2013; Stepanenko, 2014; Romashov and Bryleva, 2019; Ainoutdinova and Ainoutdinova, 2019).

Conclusions

Qualification of an act (action and inaction) as marginal is carried out based on the presumption of guilt – a reasonable assumption about the possibility of committing an unlawful act by any subject. Marginal behaviour can be objectively illegal in nature but does not entail application of measures of legal responsibility, for example, due to age, insanity, insignificance, peculiarities of regional lawmaking in the field of administrative, family, labour and other branches of law, etc. The use of legal means and techniques for countering marginality is based on the hypothesis of legal conscientiousness, according to which any person is initially focused on conscientious, socially active and useful, and therefore lawful behaviour established by law. This approach can be formed, strengthened, or restored through the implementation of educational, ideological, and other functions of law.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 208-221
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Ethnopolitics: regulatory principles of ethno-separatism

DOI: https://doi.org/10.46398/cuestpol.38e.14

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Abstract

The existing relationship, both in theory and in concrete historical reality, between economics, political development and ethnicity is substantial, to the point that ethno-politics can then be talked about as a novel field of study that, although based on political science, quickly transcends the order of the multi and interdisciplinary. It is order of ideas; this research article was aimed at identifying from the perspective of ethno-political analysis the principles that regulate the discourse of ethno-separatism. At the methodological level, documentary research technique was used. It is concluded that ethnicity goes through certain stages in its historical development. Political records show. the existence of a multidimensional ethos that is observed culturally, socially, and democratically as a material and symbolic force that identifies some communities while differentiating them from others. Ethno-politics is in fact part of the concept of a political nation that preserves ethno-social-sofactors. From that moment on, the category of ethno begins to subsumme the historical memory of the community and the national thought that determines its level of modern consciousness.

Keywords: ethno-politics; ethno-separatism; economic development; critical historical period; nation-building.

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Etnopolítica: principios reguladores del etno-separatismo

Resumen

La relación existente, tanto en la teoría como en la realidad histórica concreta, entre economía, desarrollo político y etnicidad es sustancial, hasta el punto de que se puede hablar entonces de la etno-política como un novedoso campo de estudio que, aunque tiene su base en la ciencia política, trasciende rápidamente al orden de lo multi e interdisciplinar. Es orden de ideas, el presente artículo de investigación se planteó por objetivo identificar desde la perspectiva de análisis etno-política los principios que regulan el discurso del etno-separatismo. En el plano de lo metodológico se hizo uso de la técnica de investigación documental. Se concluye que la etnicidad pasa por ciertas etapas en su desarrollo histórico. Los anales políticos evidencian, la existencia de un ethos multidimensional que se observa en lo cultural, social y democrático como fuerza material y simbólica que identifica a unas comunidades al tiempo que las diferencia de otras. La etno-política parte en efecto del concepto de una nación política que preserva factores etno-sociales. A partir de ese momento, la categoría de etno comienza a subsumir la memoria histórica de la comunidad y el pensamiento nacional que determina su nivel de conciencia moderna.

Palabras clave: etno-política; etno-separatismo; desarrollo económico; período histórico crítico; construcción de la nación.

Introduction

Today the political composition of many countries of the world, the state of socio-economic inequality and differences in political positions, the development of high-level technologies that regulate public consciousness, the presence of self-determination in international law. As a result of ethno-separatism in our time, several countries were divided (SSRI, Czechoslovakia, Yugoslavia) and new ones were created. Potentially, differences based on the subconscious we-they dichotomy are historical in terms of formation.

For example, there are many historical reasons for the national-ethnic separatist movement that has gradually intensified in the post-Soviet space since the 1970s and 1980s. Because the post-council m□kanında yasayan various halqların religious, cultural, national, etc. “Halqlar dostlugu” based on the principle of class identity unifikasiya at the national level ziyalı class hostility damgası under represiyalara have been subjected to

natural heritage surviving rights have been questioned private property. As a result of the weak national policy of political leadership, many peoples were displaced within the country, and the policy of poor governance within the country led to the deterioration of interethnic relations. The linguistic, religious and national mentality of the peoples living in the Soviet Union, the world's largest region in terms of ethnic diversity, was so diverse and varied that even a Western researcher is still a researcher.

Today we have shown our influence on the formation of national and ethnic conflicts in Karabakh, South Ossetia, Abkhazia, Transnistria and in many Balkan countries, which are partly under the socialist regime. Socio-psychological factors that were suppressed only by fear of the collapse of totalitarian systems have shifted from psychological to physical to take advantage of existing historical conditions. We do not want to associate the roots of these psychological factors with a specific historical period. Because, according to C. Jung's theory, the origin of the "we-they" dichotomy comes from the collective subconscious level that goes back to mythical times. A practice that unites three main factors based on: firstly, the centrist who headed the Chiharan's national identity is the existence of certain political forces with a radical mood.

In the USSR, the use of the term "Soviet people" for all peoples was a means of covering up ethnic conflicts. The Soviet period, material and cultural values, which yaratdıgı cohusu "sinfilik" have a threat of destruction under the name of the very Hirdagerak recession, is also a place for the ethnoslar than other raziy stories of exile, national survivors and new "Soviet insans". Under Stalin, there were no serious ethnic protests the totalitarian regime and the Second World War, which intensified every year. During the war, the solidarity of the Soviet people and the general feeling of their homeland increased significantly.

Oriented to the method of socialism-realism, the creative people of that period believed that there was no ethnic difference at all and that a great ethnonym called the "Soviet nation" was gradually forming. However, one of the main factors accelerating the process of interethnic instability in the USSR was the incorrect regulation of national policy. Instead of ensuring the interests of peoples in a fair and democratic manner, without affecting national interests and national identity, the state does not use the power of an authoritarian regime to ensure the interests of peoples. Without the use of methods in accordance with the rules of the civilized world, democratic principles such as referendums, polls, opinion polls, any nation, ethnic minority constitute a minority. Thus, the use of administrative and bureaucratic methods has created conditions for the further exacerbation of national problems (Korolev, 1970).

1. Soviet Period

In the USSR, nationalism has always developed in secret. The poll results showed that Russians (68%) had more place in the USSR than other countries. Studies have shown that in the 1970s and 1980s, the participation of non-Russians in the party ranks significantly decreased compared to the 1920s. V. Tishkov, Analysis of the published biographies of 193 members and candidates for members of the Politburo (Presidium), Organizational Bureau and Secretariat of the Central Committee of the Communist Party for 1919-1990. The fact that Russians are the majority in the USSR proves that non-Russians were discriminated against, and not, as they say, Soviet-Russian nationalism. The views expressed by British anthropologist Ernest Gellner in Nation and Nationalism may be useful in proving that the collapse of the USSR was driven in part by national issues and the rise of nationalism.

According to Gelner, nationalism is, first of all, a political principle that requires the coincidence of political and national-cultural values. Violation of this principle, the absence of political and state institutions that ensure the development of the nation and its culture, leads to the emergence of nationalist sentiments and mass protests. Conflicts are inevitable where such violations exist. According to Gelner, nationalism is not unique to a backward society; nationalism is created in times of high literacy, the creation of mass media and communication, and the creation of national intellectual elites. If a society is ready for nationalism in the era of industrialization, its development cannot be prevented.

National awakening occurs when the masses feel that there is a discrepancy between what is possible and the state of their national cultures, that their national cultures are not protected politically by the authorities. At this stage, nationalism becomes aggressive. It should be noted that Soviet society was also going through a period of active industrialization; the level of literacy and national elites was high. National cultures needed or depended on the help of state institutions (Tishkov, 1997; Gelner, 2003).

With the emergence of the problem of Nagorno-Karabakh, the process of the collapse of the USSR accelerated. This conflict also led to the emergence or re-emergence of national-political conflicts in the Union, especially in the Caucasus. The struggle of Armenians against aggressive separatism and terrorism radically changed the ethnic situation in the USSR, proving once again that the Soviet leadership is not capable of solving national problems. Armenian aggressors living inside and outside the Nagorno-Karabakh conflict, their organizations, the patronage of Armenians by the Soviet leadership, and so on. The struggle of the Armenians continued intensively both abroad and within the Union.

Since the composition of most states in the modern world is multiethnic, the policy of any modern nation state is the basis of any modern nation state, regardless of the form of government, territorial structure, regime, as well as socio-political, cultural and economic development. For this purpose, the concept of strategy, approach, principles and goals of the implementation of complex measures related to the establishment of interethnic relations, the scientific catalog "Ethnopolitics".

Ethnic politics is an internal affair of every state. However, when any state cannot regulate its internal situation in the context of globalization and integration, it has the right to intervene in solving an international problem. Because many countries try to solve the problem by violating human rights and using violence. This creates conditions for internal dissatisfaction, destabilization, escalation of the political crisis and, finally, the outbreak of armed clashes. In our time, more attention is paid to the analysis of ethno-separatism from a modernist point of view. In these concepts, ethno-separatism arises as a result of the provocation of small ethnic groups of large states to a standardized way of life (westernization) and their fear of losing their identity and national culture. It is this psychological state that gradually begins to develop as follows:

1. Activation of the historical memory of the ethnos by humanitarian intellectuals in a social group and the actualization of ethnic identity on it.
2. Formation of a political party based on the institutionalization of the movement
3. Mobilization of party activities to expand the social base of separatism
4. Transformation of separatist demands into an emotional and psychological state.

2. Ethnic policy

Ethnic policy should be based on a concept consisting of concrete and practical measures. In this concept, it is necessary to regulate relations between ethnic groups in the country in all three spheres of public life (administrative-political, socio-cultural and economic). Ethnic policy of any civilized democratic country should be aimed at solving the following problems:

- The position of ethnic groups in the state or in a specific region that is a national minority.
- The position of compatriots abroad.

- Illegal migration (voluntary and forced).
- Demographic situation (proportionality and locality).
- Ethnocultural enclaves and diasporas.
- Ethnic problems in state and local structures.
- Ethnic problems in the education system.
- Settlement of ethnic conflicts.
- National unity.

International organizations (Council of Europe, UN) have adopted a number of documents with international status to regulate interethnic relations. At present, international standards of ethno-state policy of the state are based on two contradictory categories related to the self-determination of peoples and the rights of minorities (national, ethnic, cultural, religious and linguistic). Because here the content of the concept "people" and its connection with the concept of "nation" lead to different interpretations. Traditionally, the concept of "people" includes all people in a particular country, their common language, history, psychological state and cultural traditions. Ethnos and nation also have different meanings, as we have already mentioned. Within the state, these elements can manifest themselves in one way or another. Ethnopolitics should consist of public policies that shape the relationship and unity between these elements. However, self-determination often comes into conflict with the interests of the state. Ethnicity based on rational principles should serve to regulate these conflicting and dynamic interests in a unified system. Self-regulation can have different characteristics due to its dynamic nature. They can be partially characterized as follows:

- Anti-colonial self-determination (a certain population trying to get rid of the colony or gain more political power).
- Self-determination from the "state" or on the territory of the state (separation from one state and the creation of another state or obtaining high political and cultural autonomy in this state).
- Transnational self-government (the requirement to unite the population on a large territory of the state territory);
- Self-determination among widespread peoples (the requirement of peoples living in one state or in many states).
- Self-determination of indigenous peoples (a requirement of a local social group with a long history of pre-ethnic identity and colonialism).
- Self-representation (demand of the population to see their representatives in the government to change their political system).

The concept of ethnos, defined as a historical and social category, is broader, more complex and older than the concept of nation and people. The phenomena of people and a nation are, in fact, different historical forms of an ethnos. In the regulation of civil-human relations at the national level, the protection of the rights of ethnic minorities in an ethnos, which is quantitative (if the ethnic composition of the population is different) (if it is the majority in the state), deserves special attention. Because, unlike the ethnic level, the concept of a nation is a form of social cohesion that ensures political cohesion. However, this political unity contains elements of the phenomenon of ethnos. In this sense, the origin of the problem of separatism in any case intersects with ethno-separatism. Therefore, the study of separatism requires a certain clarity on the phenomenon of ethnicity.

Since the genesis and development of an ethnos is regulated both by the biological laws of nature and by social laws that are in dialectical unity with them, synchrony is syncretic in solving the problem. The Marxist literary ethnos is defined within a more socio-historical class category. The boundaries of the ethnic group do not coincide with this. Due to natural differences, he has his own chronological socio-economic education. Separatism differs from the national liberation movement in that it has a number of specific features and in many cases serves the interests of national minorities.

Nationalism emerges as a developed form of ethnic evolution. In terms of the mechanisms of influence on the civil-human factor, it manifests itself in the forms of polyethnic and monotheistic nationalism. Multiethnic nationalism is also called civic nationalism. Civil nationalism, besides any ethnic nationalism, determines the dynamics of national solidarity and regulates ethnic stability in multinational countries. At the same time, the most important positive principle is the principle of not transforming civil nationalism into state nationalism. But monotheistic nationalism removes the fear that nationalism will become a dangerous factor like state nationalism (for example, as in Japan).

In the process of creating a doctrine about ethnicity, it is necessary to pay attention to the acceptable generally accepted meanings and criteria that the phenomenon of “national minority” carries. More than 20% of the world’s population belongs to the category of “national minorities”. Their existence does not depend on the decisions of the state. The development of civil society does not harm their existence. In addition, each person must decide if everyone belongs to this social category. In terms of their legal requirements, these groups can be divided into two categories:

1. Members of a social group in a minority are generally equal to the dominant group that rejects discrimination.

2. Members of a minority social group should have special rights in addition to the same rights as the dominant group, which rejects discrimination against the dominant group. use their language orally or in writing in the legislature, in the administration, in the courts and in public relations in general.

An analysis of international documents regulates the attitude of an ethnic group towards national minorities as follows (Savelıev, 1990):

- Each member of the group should be given the opportunity to use their cultural values, to perform their religious rites in accordance with their religion and to speak fluently in their native language.
- Forced learning should not be allowed.
- Discrimination should be prohibited and everyone should be equal before the law.
- Terrorism and extremism should not be identified with any religion, culture, ethnic group or nation.
- It is necessary to provide support and development of the institution of national-cultural autonomy.
- A sense of tolerance and cultural pluralism needs to be developed through education.
- The language of the national minority should be used in educational and administrative bodies and taught in the field of education. Their development in the field of national television, radio and press should be regulated by the state.
- Going to court in their native language, economic activity must be ensured.
- Historical place names must be recognized.

Along with the state language, their language should be protected and should not be attacked by the language of the“ titular nation ”.

- Consultations with national-cultural autonomies and organizations of national minorities should be held.
- Their political interests, human rights must be protected, and their participation in public life must be ensured.

In all cases, the state is responsible for regulating ethno-separatism. Researcher V.A. Avksentyev, who has long been engaged in research in this area. For a successful solution of the problem, the following was proposed (Gumılov, 1996).

1. This is not about eliminating separatism, but about its localization, that is, about providing it with a limited political and ideological "shelter" outside the political "center".
2. The state will seriously respond to the appeal of the ethnic group regarding its dissatisfaction and the beginning of an urgent constructive dialogue and, if possible, refrain from it.
3. It is necessary to try to solve the problem on the spot on the spot, so as not to become a stereotype of thinking.
4. The state must take certain measures at the international level to eliminate internal and external factors that contribute to the growth of separatism.

3. Manifestations of ethno-separatism

The problem of ethno-separatism was presented in various forms within the framework of certain historical ideological systems and has become an object of scientific research in our time. In Soviet times, the emphasis on class relations and the study of politics as the main subject, as well as the surveillance of national movements, led to the fact that the problem of ethno-separatism was paid little attention. Socio-psychological problem of the twentieth century as a psychological and social problem, telling about etnik qurumların, life operations "partlayıs" and a brief history of world communities, which are small states representing separate states that are currently located in different states, in contrast to many other countries that currently belong to different state borders in different countries of the world.

Was connected. It would be wrong to associate the reasons for this only with certain historical conditions and the level of socio-economic development, with differences in socio-cultural development and the system of relations. Since the root of the problem is mainly associated with the peculiarities of the psychological state of the ethnic group, the psychological characteristics of the national character, separatism as an ethnopsychological phenomenon must be studied both from a theoretical and practical point of view.

Many complex ethnopsychological phenomena, whose separatist genesis, structural and functional reviews first study individual national characteristics, psychological characteristics, various ethnopsychological stereotypes, various views and traditions, as well as various social theories, various social theories, it is important to pay attention to this. We are primarily interested in the phenomenon of ethnos, which is the most

primitive and complex form of social unity. Because this phenomenon, as a complex socio-psychological phenomenon, manifests itself in all forms of historical social unity in one or another manifestation of separatism.

Of course, ethnic attitudes that reflect an effective component of ethnic identity play a certain role in the emergence of ethno-separatist tendencies. His welcoming member of the Ethnic Association Olmakdan Pleasure, his request for grant and his culture, ozun□m□hsuslugunun, traditions passed down by edilm□sin дости, reach the initiative, give self-confidence to increase halqların ozunut□yinetm□si Rights have proclaimed that this negative and important role is also important, that rights, like many others, are as important as others. of course, if this right does not materialize under certain conditions). Psychological determinants expressed during the indifference of the ruling ethnic groups to the national feelings of minorities in this country can act as explosives in other ethno-separatist processes.

In interethnic relations, the need for the subject's awareness of legal consciousness occupies a special place in the structure of his needs. Thus, a person who is a bearer of ethnic self-awareness, proceeding from the provision of his social needs, the position of belonging to an ethnic group, takes place in the structure of ethnic needs, where his needs are assessed. The contradiction between the indicators of the vital activity of an ethnic group and its level of socially significant needs and the level of objective possibilities of their existence in the specific historical conditions of a particular existing country is contradictory. With the correct organization of the policy of ethnic relations, the discrepancy between these two events can turn from a negative factor into a source of reducing social tension in the ethnic environment (Posh, 1995).

It is well known that the resolution of social conflicts is the source of the development of social systems, including ethnic institutions. Or other interests of the group as a result of qrulararası konfliktin uyusmayan ortaya cıhan separatizm MSerif puts forward the following hypothesis regarding the interdependence of the two groups: direct hostility in the spirit of functionality leads to a form of competition, negative stereotypical attitudes and social social groups, as well as to social groups and public figures , as well as to public and social groups, as well as to social groups and public figures, as well as to public and social groups, as well as to social groups and public figures, as well as to public and social groups, as well as to social groups and public figures, as well as public and social groups, as well as social groups and public figures, as well as public figures, as well as public and social groups, as well as public groups and public figures, as well as public organizations, and to public education.

And two phenomena (ethnic conflict and ethno-separatism) merge into one phenomenon. Referring to their judgments and conclusions, we

can conclude that there is a danger of ethnic conflict, which is expressed in the form of aggressive hostility in interethnic interactions. Interethnic interactions do not always and do not necessarily reflect real conflicts. Public-historical experience shows that this is quite enough, since there may be cases when an elder gives an ethnic conflict zahiri, a distorted character in a bear, or, conversely, in accordance with interests, as is usually the case, even if it is not is a prerequisite for comparison.

In conditions when the traditions of statehood were not very ancient, such an ethnos-psyche arose from the deepest layers of mythological thinking. According to L. Gumilyov, the ethnos should form in a short time as a closed system that strives for independence and isolation. Ethnicity creates urgent social institutions for self-defense. However, to determine the phase of ethnogenesis, it is necessary to know the main parameters of the studied period. The main parameters are behavioral imperatives (requirements) associated with spatial awareness and the logic of events. This is due to the movement of the ethnosystem.

Speaking about passion, L. Gumilev had in mind the excess of biochemical energy in living beings, as well as in the person to whom they belong. Each ethnic system was a small type of superethnoses that represent several ethnic groups - subethnoslars embrace and lure in any kind of biological and energetic aspects, such as “views”, “some of which may be even lower”, which may even lead to that some of them might even downgrade, which might cause some of them might even cause a little bit of this feeling, which might even cause some of them might even cause a little bit of this a feeling that it could lead some of them to even get a little carried away, which could even lead to some of them being so low that they could even lead to such a low that they could lead to such a low that could lead to such a low level that it could lead to such a low level that it could lead some of them to even understand get carried away a little, which may even cause some of them to even get a little carried away, which can lead to a level so low that it can lead to a level so low. associated with the rise.

According to him, the processes of ethnogenesis are the result of “explosions” or “upheavals” that lead to the emergence of new ethnic systems in a particular region. Thus, in subethnos, the resistance of the ethnic system to fragmentation is disturbed by an increase in attraction - energy that can satisfy the need for self-affirmation. The supernatural seeks to expand its territory and complicate inter-ethnic relations. The forces of his development are “taken from passion” (Tokarev, 1986). The resistance of the subsystems and their attempt to separate them leads to the disintegration of the supernatural into a number of independent ethnosystems. Any polyethnos is unstable in space and time, and its existence as a system is conditioned by the resistance factors of subethnos and their attempts to live freely and independently. The struggle of these

different polar forces is eternal and indestructible. In addition to the commendable views of L.N. Gumilyov, his views on the process of ethno-separatism in connection with the analogy between social and physical, biological and chemical processes. That is, this concept does not take into account the specificity of development forms, their inseparability from each other.

Ethnic communities have their own ethnopsychological characteristics. They become the main socio-psychological factor that determines the characteristics of ethnic separatism, which manifests itself in various forms. Some studies in the field of ethnopsychology, based on confirmed results, prompts you to separate the tolerance of khalkald, twazokarlyk, respect for elders and other similar key factors, ambition, pride, resentment, Kisaslyg courts, the charge of giving law and order, Ethno-psychological processes throughout the post-Soviet space arise under the influence of ethnopsychological phenomena. This is even more evident in the attempts of peoples to achieve psychological independence and separatism in solving economic, political and social problems in various ethnic regions.

Ethnic behavior stereotypes change both in space and in time. Any voluntary or involuntary human action occurs in one way or another under any influence. There is no doubt that under the influence of informal ethnic assessment, a mental trait such as anger is formed in people. This tendency is closely related to the separatist function of ethnic consciousness. Many psychological characteristics of an ethnos under the influence of imperatives (unconditional requirements) formed in connection with the established criterion for assessing the mental image of an ethnos are separatist actions. From this point of view, cultural separatism, due to its ethnopsychological characteristics, is more fundamental than its other forms. Because ethnopsychological characteristics are traditionally transmitted in cultural culture through cultural heritage and genetic characteristics. The phenomenon of culture determines the contours of ethnic self-awareness and forms the basis of irrational behavior.

This is manifested mainly in the language factor. The characteristic features of traditional culture and everyday life determine the general ethnic image of the phenomenon of the people, which is characterized as a socio-cultural concept. Culture is also a material and spiritual value that has historically been shaped as the common wealth of various ethnic groups. In multinational countries, the carriers of these resources are the multiethnic majority. At some points in its history, ECO, which has been subject to different cultural influences, coexists with others, integrating similar functions. S.A. Tokorev identified four basic psychological types of ethnos in four formations: tribal-consanguinity of the collective; demos active, free people, not counting slaves; On the eve of populist feudalism, the entire able-bodied population of the country entered it; excluding religious class; national capitalism, a product of the socialist era (Talha *et al*, 2020).

In general, not only ideas change and acquire a new essence, but also the psyche. It is with the renewal of the psyche that the four ethnic differences mentioned by S.A.Tokorev arise. The characteristics of communities, more or less differing from each other in language, traditions, ideology, are determined by their historical purpose and ethnic groups as a system of historical processes. It is wrong to associate this with the name of an ethnic group. This is due to the fact that an ethnos that has gone through the stages of development, "maturity" and "aging" in its development, is established at the stage of maturity, and at the same time its periphery is formed. The main process of renewal takes place within the ECO, the periphery becomes more inert and archaic.

This reflects the huge role of socio-political (former state) structures in the socio-economic and cultural development of ethnic groups. During the transition period and in extreme conditions, events occur that give rise to the development of separatism, that is, society is completely politicized, the old idea collapses, and the new one is accepted in society. When both the real historical reality and the features of the historical past contradict consciousness, the desire of society to think of a new type arises - a new form of worldview. The fact that a person wants and demands that something is not real requires changes in ideological consciousness, in contrast to ordinary consciousness. Before the collapse of the Soviet empire, a new philosophical worldview of changes was formed in Azerbaijan. As the desire to change the forms of social and political life grew, this worldview began to influence the ordinary level of consciousness.

Conclusions

Ethnicity goes through certain stages of its historical development. Political annals back, in a cultural, social, democratic, unifying ethnos, as well as in the world community and powers between the independence of enlightenment, economic sovereignty, national heritage, voluntariness, reciprocity and reciprocity of all levels of volunteers. It is part of the concept of a political nation that preserves ethnosocial factors while providing other means. From that moment on, the concept of ethnos begins to become the historical memory of the community that it expresses, and national thinking determines its level of modern consciousness. However, ethnic origin retains its potential at a subconscious level.

If one or another social process within the existing boundaries of an ethnic group is destructive, then this leads to a deformation of this social process and a certain potential form of tension in the ethnic environment. This can develop into social and psychological conflicts in this and other spheres of ethnic life, if the situation is not corrected in time. In this regard,

people need spiritual closeness from the point of view of ethnic kinship, and they feel the need to understand the specifics of the reflection of objective reality and its contradictions in ethnic consciousness. We are talking about all the contradictory manifestations that make up the "dialectic of the soul" - habits, characters, ways of thinking of individuals as representatives of ethnic unity. With this approach to the problem, it is possible to find out the driving forces and sources of ethnic separatism in the social context.

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Derecho Público

Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 223-247
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State Guarantees of the Right to Housing for War Veterans: Substantive and Procedural Aspects

DOI: https://doi.org/10.46398/cuestpol.38e.15

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Abstract

The purpose of the article was to reveal the problematic aspects of the realization of the right to housing by war veterans who participated in counter-terrorism operations / joint operations. I am interested in observing the protection of this right in civil, criminal and executive proceedings based on national and international law. The methodological basis of the study includes general and special methods of scientific research (historical, statistical, formal logic, comparative legal and structural logic). Statistics are given on the number of war veterans (combatants) as of 2019-2020, in the dynamics of providing them a living space in Ukraine during 2015-2020. In addition, the article provides examples of the elimination of conflicts of laws and ambiguous judicial practices of application of civil, family, housing and social law, as well as civil, criminal and executive procedure in the field of exercise of the right to housing by combatants and their families, protection of this right before the courts and execution of decisions in this category of cases. The results of this work can be useful for combatants who need to improve their living conditions, as well as for human rights defenders who help these people.

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Recibido: 01/07/2020 Aceptado: 05/13/2020.

Keywords: right to housing in Ukraine; war veterans; social security policies; substantive and procedural aspects; obstacles to the enjoyment of fundamental rights.

Garantías estatales del Derecho a la Vivienda para los Veteranos de Guerra: Aspectos Sustantivos y Procesales

Resumen

El propósito del artículo fue revelar los aspectos problemáticos de la realización del derecho a la vivienda por parte de los veteranos de guerra que participaron en operaciones antiterroristas/operaciones conjuntas. Intereso observar la protección de este derecho en procesos civiles, penales y ejecutivos con base en el derecho nacional e internacional. La base metodológica del estudio incluye métodos generales y especiales de investigación científica (histórica, estadística, lógica formal, legal comparada y lógica estructural). Las estadísticas se dan sobre el número de veteranos de guerra (combatientes) a partir de 2019-2020, en la dinámica de proporcionarles un espacio vital en Ucrania durante 2015-2020. Además, el artículo brinda ejemplos de eliminación de conflictos de leyes y prácticas judiciales ambiguas de aplicación del derecho civil, familiar, habitacional y social, así como del procedimiento civil, penal y ejecutivo en el ámbito del ejercicio del derecho a la vivienda por parte de los combatientes y sus familias, protección de este derecho ante los tribunales y ejecución de las decisiones en esta categoría de casos. Los resultados de este trabajo pueden ser útiles para los combatientes que necesitan mejorar sus condiciones de vida, así como para los defensores de derechos humanos que ayudan a estas personas.

Palabras clave: derecho a la vivienda en Ucrania; veteranos de guerra; políticas de seguridad social; aspectos sustantivos y procesales; trabas al goce de derechos fundamentales.

Introduction

Ukraine is a social and law-based state. Human rights and freedoms and guarantees thereof shall determine the essence and course of activities of the State. The State is responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty

of the State. Human rights and freedoms are inalienable and inviolable. Constitutional human rights and freedoms are not exhaustive, guaranteed and cannot be revoked or limited, except as provided in part one of Art. 64 of the Constitution of Ukraine (2015). According to the Constitution of Ukraine (2015), an individual, his or her life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value. And the rights of citizens to social protection (Art. 46), to housing (Art. 47), to a sufficient living standard for them and their families (Art. 48), to health care, medical care and health insurance (Art. 49) are recognized as the most important among other social rights (Kerimov *et al.,* 2015; Kerimov *et al.,* 2018a; Kerimov *et al.,* 2018b).

According to Art. 47 of the Constitution of Ukraine (2015), everyone has the right to housing. The State shall create conditions enabling every citizen to build, purchase, or rent housing. Citizens in need of social protection shall be provided with housing by the bodies of State power and local self-government, free of charge or at a price affordable for them in accordance with law. No one shall be arbitrarily deprived of housing other than on the basis of the law pursuant to a court decision. In case of violation of the rights, including the right to housing, they are subject to protection, in particular, before court, in accordance with Art. 124 of the Constitution of Ukraine (2015) stating that the jurisdiction of the courts shall extend to all legal disputes that arise in the State. Art. 129-1 of the Constitution of Ukraine (2015) prescribes that a court decision is binding. The State ensures the execution of a court decision in the manner prescribed by law. This shows the close connection between judicial and executive jurisdictional activities and their fundamental purpose – to restore the violated rights.

The right to housing is enshrined in international law of the United Nations and the Council of Europe. Paragraph 1 of Art. 25 of the Universal Declaration of Human Rights (1948) proclaims the right of everyone to a standard of living adequate for the health and well-being of himself and of his family. The necessary standard of living provides housing. In paragraph 1 of Article 11 of the International Covenant on Economic Social and Cultural Rights (1973), States Parties have recognized the right of everyone to an adequate standard of living, including housing.

This right is also established by paragraph 31 of Part I and specified by Art. 31 of Part II of the European Social Charter (revised), 1996, that have been ratified by the Law of Ukraine (2006) "On Ratification of the European Social Charter (revised)". In accordance with Art. 31 of Part II of the Charter, states undertake to take measures designed to promote access to housing of an adequate standard; to make the price of housing accessible to those without adequate resources. The human right to housing is universally recognized, and it is, like other constitutional rights, inalienable, inviolable and equal for all without any restrictions on grounds

of race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, custom etc. It may not be repealed or limited, except as provided by the Constitution of Ukraine (Kerimov *et al.,* 2018c; Kerimov *et al.,* 2019).

The state guarantees combatants and persons equated to them a provision of living space on preferential (priority) or extraordinary basis. The issue of exercising such a right has become especially relevant since 2015, when the state budget began to allocate up to UAH 1 billion to improve the living conditions of war veterans (combatants) who took part in antiterrorist operation (ATO)/joint forces operation (JFO) and members of their families. For example, 1,071 apartments were purchased for a total value of UAH 909.5 million during 2016-2017. In 2018, it was planned to purchase 356 apartments for a total value of UAH 354.8 million, including 29 apartments for a total value of UAH 25 million for combatants who have a status of internally displaced persons. According to the budget for 2018, almost UAH 200 million were directed to the programme of providing housing to combatants who took part in hostilities on territories of other states, and UAH 100 million for housing for internally displaced persons (Housing issue, 2017).

In 2019, the Cabinet of Ministers of Ukraine approved a decision to redistribute funds and purchase about 500 apartments for combatants who took part in antiterrorist operation (ATO)/joint forces operation (JFO), internally displaced persons, Maidan participants and families of deceased soldiers (The government has allocated funds for 500 apartments for anti-terrorist operation participants, displaced persons and Maidan residents, 2019). For 2020, the government has established monetary compensation in the form of a subvention from the state budget to local budgets for providing housing to people who need to improve their living conditions for the total value of more than UAH 750 million (For the first time in 5 years, 2019).

At the end of 2018, according to the information received from departmental committees on granting the status of combatants to those who took part in antiterrorist operation (ATO), 346,340 people were granted the status of combatant. This number consists of people who performed their duties under the Ministry of Defence – 234,605; the Ministry of Internal Affairs – 32,481; the National Guard – 33,409; the Security Service of Ukraine – 10,745; the Foreign Intelligence Service – 39; the State Border Service – 19,549; the State Special Transport Service – 2,397; the State Security Department – 472; the State Service for Special Communications and Information Protection – 826; the State Emergency Service – 5056; the Prosecutor General's Office – 311; the National Police – 5444 and the State Fiscal Service – 826 (The number of anti-terrorist operation fighters who received the status of the participant of hostilities is counted, 2018). In two

years, as of the end of 2019 – beginning of 2020, the number of those who took part in antiterrorist operation has increased by 15%, and today it is more than 370 thousand soldiers (The number of participants in hostilities was counted by the ministry of veterans, 2019).

The main guarantees for provision of housing to combatants (war veterans, those who took part in antiterrorist operation (ATO)/joint forces operation (JFO) are provided by the Law of Ukraine (1993) "On the Status of War Veterans, Guarantees of their Social Protection"; Law of Ukraine (1991) "On Social and Legal Protection of Servicemen and their Families", the Housing Code of the Ukrainian SSR (1983) and the Resolution of the Cabinet of Ministers of Ukraine (2018c) "Provision of housing to certain categories of individuals who participated in hostilities on the territory of other states, as well as to members of their families"; Resolution of the Cabinet of Ministers of Ukraine (2018d) "Provision of housing to internally displaced persons who defended the independence, sovereignty and territorial integrity of Ukraine"; Resolution of the Cabinet of Ministers of Ukraine (2019) "On approval of the Procedure of using funds allocated from the state budget for provision of preferential long-term state credit for purchasing a housing to internally displaced persons, combatants who took part in antiterrorist operation (ATO)/joint forces operation (JFO)".

1. Materials and Methods

The methodological basis of the study includes a system of general and special methods of research designed to obtain its objective and reliable results. The specifics of the purpose and objectives of the study necessitated the use of the following methods: dialectical, legal comparative, legal history, formal logical, system structure, statistics, and others. The leading method that was used to study this problem is the method of modelling, which allows us to consider this problem as a purposeful and organized process aimed at improvement of housing guarantees for combatants, their provision and protection.

The dialectical method was used in the study of categories, including combatants who took part in antiterrorist operation (ATO)/joint forces operation (JFO) and similar categories of individuals (disabled veterans, families of those who took part in antiterrorist operation (ATO)/joint forces operation (JFO), families of deceased combatants) entitled to receive housing free of charge, in determining the nature and specifics of the housing guarantee, when formulating proposals and recommendations for the application of legislation in the sphere of execution the right to housing by combatants and members of their families.

The legal history method was used to study the state of scientific coverage of the topic, the evolution of changes in national legislation, case law, decisions of the Constitutional Court of Ukraine, the dynamics of increasing the number of those who took part in antiterrorist operation (ATO)/joint forces operation (JFO) over the past five years and a state of providing the appropriate category of citizens with housing (Kerimov *et al.,* 2016).

The use of the legal comparative method allowed to determine the nature and relation between national and international law, civil, family, housing, criminal and specialized laws and regulations governing the provision of housing on a free of charge basis to citizens, servicemen, combatants who took part in antiterrorist operation (ATO)/joint forces operation (JFO) and members of their families. The formal logical method was used to define the basic concepts of the problematic issues of the study, as well as to substantiate proposals for improving national legislation in the sphere of ensuring and protecting the right to housing of combatants. The section on state guarantees of providing living space for combatants and persons equated to them contains a definition and a list of categories of individuals requiring the improvement of living conditions.

In the section on clarifying the issue of living space standards (norms) that a combatant can expect to be met, the issues of living space norms, standards for total living space, level of average living space per person are clarified. In the section on clarifying the issue of who is a family member of a combatant, there are various definitions of the category "family", which occurs in housing, family, civil, budget, tax and other codes and laws, criminal procedure, as well as interpretations of decisions of the Supreme Court of Ukraine and the Constitutional Court of Ukraine (Kuznetsov *et al.,* 2018).

The system structure method provided an opportunity to systematize national and international laws and regulations, to study and analyse rules relevant for our research; to analyse the grounds, procedure (of regular and extraordinary provision of housing) and conditions for housing, monetary compensation for obtaining adequate living space. Statistics were used during the generalization of the number of combatants as of 2018-2020 and the dynamics of provision a housing to them in Ukraine for the last five years (2015-2020), the number of regulations and legal acts governing the implementation and protection the rights of combatants to housing, research, generalization and analysis of state statistical reports and the formation of theoretical conclusions based on them.

2. Results and Discussion

2.1. State guarantees of living space provision to combatants and persons equated to them: grounds and procedure

In accordance with paragraph 14 of Article 12, paragraph 18 of Article 13 and paragraph 15 of Article 15 of the Law of Ukraine (1993) "On the Status of War Veterans, Guarantees of their Social Protection" the state guarantees the provision of housing for combatants and persons equated to them on a preferential basis. Such benefits may be received on an extraordinary basis by persons with disabilities as a result of war, families of deceased persons (items 5-8, paragraph 1 of Article 10 of the Law of Ukraine, 1993), persons who have disabilities of groups I-II due to wounds, blast injuries or illnesses received during direct participation in antiterrorist operation.

Combatants can be provided with housing on a preferential basis only in case they require improvement of living conditions. So in accordance with Art. 31 and 42 of the Housing Code of the Ukrainian SSR (1983) (hereinafter referred to as – "the Housing Code"), paragraph 13 of "Rules for registration of citizens requiring improvement of living conditions and providing them with housing in Ukrainian SSR", combatants and persons equated to them, are provided with living space if they require improvement of living conditions and are included in the relevant unified state register (Allalyev, 2019; Lapidus *et al.,* 2018a; Lapidus *et al.,* 2018b).

According to Art. 12 of the Law of Ukraine (1991) "On social and legal protection of military men and members of their families", individuals who have served in the military for 20 years or more, and members of their families are provided with accommodation for permanent residence or, if they wish, shall be provided with monetary compensation for obtaining adequate living space. So, in accordance to Art. 34 of the Housing Code (1983), those who require improvement of living conditions are individuals:

- provided with living space that does not meet the level determined in accordance with the procedure established by the State.
- living in a room that does not meet the established sanitary and technical requirements.
- who suffer from severe forms of some chronic diseases, which makes it impossible for them to live in a shared apartment or in the same room with their family members.
- living under an agreement of rent of residential premises in the buildings of state or public housing funds or under a contract of sub-rent of residential premises in the buildings of housing cooperatives.

- who have lived for a long time (not less than 5 years) under a rent agreement in houses (apartments), that are private property of citizens.
- living in dormitories.
- two or more families living in the same room, regardless of family relations, or persons of different sexes older than 9 years, except for spouses.
- Internally displaced persons who have status of combatants, persons with disabilities as a result of war and members of their families, as well as family members of the deceased combatants.

Citizens requiring improvement of living conditions are registered for state and public housing and put into a unified state register of citizens requiring improvement of living conditions. Citizens requiring improvement of living conditions, who also live permanently and have registered place of residence in the given settlement are included into the register for housing. These requirements do not apply to internally displaced persons and citizens who enjoy the right of preferential and extraordinary provision of housing, and therefore to combatants (ATO veterans).

In accordance with Art. 36-39 of the Housing Code (1983), Section II of the Citizens Registration Rules and Instructions on the organization of providing servicemen of the Armed Forces of Ukraine and members of their families with living space, approved by the Resolution of the Ministry of Defence of Ukraine (2018) "About the Statement of the Instruction on the Organization of Providing Servicemen of Armed Forces of Ukraine and Members of their Families with Premises" including into the list (registration) for housing of citizens requiring improvement of living conditions is carried out:

- in the place of residence – by the decision of the executive committee of the district, city, district in the city, settlement, village Council of People's Deputies.
- on the place of employment – by a joint decision of the administration of the enterprise, institution, organization or cooperative enterprise or other public organization and the relevant labour union committee.
- At the place of service – by the housing (or joint housing) committee of each military unit.

The main objective of the Housing Committee (Joint Housing Committee) at each military unit is: inspection of living conditions of servicemen and members of their families; decision-making on housing issues, including consideration of relevant reports (applications) of

servicemen and members of their families on housing issues; keeping records of servicemen who need to improve their living conditions by receiving service-provided accommodation (living space); keeping records of persons who need to improve their living conditions by receiving housing for permanent residence; consideration of applications, complaints and proposals that concern the work of housing committee at military units, and meetings with citizens on housing issues; issue of documents created by housing committees of military units and maintenance of operational records of service-provided housing.

In view of Article 2 of the Law of Ukraine (2004) "On Freedom of Movement and Free Choice of Place of Residence in Ukraine", citizens of Ukraine, as well as foreigners and stateless persons legally staying in Ukraine, are guaranteed freedom of movement and free choice of place of residence on its territory. According to the Fundamentals of Housing Legislation of the USSR and the Union Republics (1981), in cases and in accordance with the procedure established by the USSR Council of Ministers, the Citizens Registration Rules and other legal acts of the USSR Council of Ministers, citizens may be put into the register at the place other than the place of their residence. The application for housing registration is submitted to the executive committee of the village, settlement, city council, and village mayor at the place of residence of citizens or to the administration of the enterprise, institution, organization or cooperative enterprise or other public organization at the place of employment.

The application is signed by those family members who live together, have an independent right to receive housing and wish to be registered together. The application is submitted together with:

- certificates that confirm the place of residence of the person and each family member.
- certificates on whether family members are registered for housing at the place of their employment.
- citizens who are registered on preferential grounds or enjoy the right of priority or extraordinary provision of housing, indicate this in the application and submit the relevant documents.
- certificate that confirms a direct participation of a person in the antiterrorist operation or ensuring its conduct and protection of independence, sovereignty, and territorial integrity of Ukraine.
- certificate from the social service on registration in the unified state automated register of persons entitled to benefits, persons with disabilities because of war or status of a combatant or a family member of the deceased.
- copies of documents confirming the family relation of a person with a disability due to war or status of a combatant.

- a copy of the certificate of a person with a disability due to war, or a status of a combatant.

In case the combatant is enlisted by contract, the following shall also be attached to the application: a report on enrolment in housing registration; extract from the order of appointment to the military unit; extract from the record of the personal file of the serviceman; certificate of military service from a military unit; certificate of family composition from the military unit; certificate from the last place of service on housing registration status; certificates from previous places of service on provision (non-provision, rent) of housing; certificate of whether family members are registered for housing at the place of residence, employment (military service); copies of ID documents of adult family members, birth certificates of minor family members, marriage certificate of a serviceman (Pogosyan, 2018; Pogosyan, 2019).

Consideration of applications for housing registration in the executive committee of the local Council of People's Deputies is carried out by the public board on housing issues of the executive committee, while at the enterprise, institution, organization applications are considered by the committee on communal services and housing of the labour union committee. These committees draw up an Act based on the results of the consideration. The decision on registration for housing must be made within one month from the date of submission of the necessary documents by the citizen.

Citizens are considered to be registered for housing: by the executive committee of the local Council of People's Deputies – from the date of the decision of the executive committee, at place of employment – from the date of a joint decision of the administration of the enterprise, institution, organization or cooperative enterprise or other public organization and corresponding labour union, approved by the executive committee of the local council (Gordadze *et al.,* 2018).

Citizens registered for housing are put into the register book of persons who are in the waiting list for housing. For each citizen (family) in the housing register an accounting file that contains the necessary documents is created. Accounting files are kept at the place of citizens' registration for housing, and after providing them with housing – in the executive committee of the local Council of People's Deputies, which issued a permission to move in. Accounting files are stored for 5 years after the moment of provision of housing (or removal from the housing register). After the expiration of the specified period, cases are destroyed in accordance with the established procedure.

Regarding the procedure for registration of servicemen, it is regulated in detail by the Instruction on the organization of providing servicemen of

the Armed Forces of Ukraine and members of their families with housing, approved by the Resolution of the Ministry of Defence of Ukraine (2018), that regulates rental of housing and payment of monetary compensation for sublease (rent) of residential premises; registration of persons who have acquired the necessary rights and need to improve living conditions by providing housing for permanent residence; provision of housing for permanent residence; payment of monetary compensation for obtaining a suitable housing, etc.

2.2. Living space standard and conditions for receiving monetary compensation for housing

The problem of order of housing provision to combatants and persons equated to them is resolved in accordance with paragraph 14 of Art. 12, paragraph 18 of Art. 13 and paragraph 15 of Art. 15 of the Law of Ukraine (1993) "On the Status of War Veterans, Guarantees of their Social Protection", Articles 43-46 of the Housing Code (1983). It should be noted, that the Housing Code establishes only the general order of priority for the provision of housing to citizens, and Art. 45 and 46, which regulate the issues of preferential and extraordinary provision of housing to certain categories of citizens, combatants (ATO veterans) and persons equated to them, do not recognize members of their families at all as having the appropriate rights. The only thing that indicates the possibility of applying these rules for the exercise of the relevant right is part 2 of Art. 45 and 46, which is blanket and contains a reference to other laws and regulations.

In accordance with paragraph 14 of Article 12 of the Law of Ukraine (1993) "On the Status of War Veterans, guarantees of their Social Protection", the primary right to be provided with a living space is granted to combatants. In addition, war veterans who were wounded, disabled or blast injured due to war or while performing their military service shall be provided with living space in two-year term from the date of registration for housing. In accordance with paragraph 18 of Article 13 and paragraph 15 of Article 15 of the Law of Ukraine (1993), the right to be provided with living space on an extraordinary basis is granted to individuals with disabilities due to war or which occurred as a result of wound, blast injury or illness, received during direct participation in the antiterrorist operation, as well as families of deceased combatants.

The categories of persons specified in these rules are provided with living space in two-year term from the date of registration for housing. The participants of hostilities on the territory of other countries who have disabilities of the group I shall be provided with housing during the year.

In case of impossibility to provide combatants (ATO/JFO veterans), members of their families with housing on preferential basis, since 2016 the state has introduced a mechanism (procedure and conditions) for obtaining monetary compensation for obtaining suitable housing, guaranteed by Article 48-1 of the Housing Code (1983) and regulated by the Resolution of the Cabinet of Ministers of Ukraine No. 719, No. 214 and No. 280. Family members of the deceased combatants and persons with disabilities groups I and II as a result of the war; the combatants or persons with disabilities of group III as a result of war who have a status of internally displaced persons; persons with disabilities of the groups I and II as a result of war, members of families of combatants who took part in hostilities on the territory of other states were included by the law-makers into the category of people, who may receive monetary compensation (Resolution of the Cabinet of Ministers of Ukraine, 2016; Resolution of the Cabinet of Ministers of Ukraine, 2018a; Resolution of the Cabinet of Ministers of Ukraine, 2018b).

Persons from the above categories are entitled to compensation, if they require improvement of their living conditions and are registered for housing and are in the Unified state automated register of persons who are entitled to benefits. To receive compensation for the improvement of living conditions, you must apply in person, as a family member of the deceased or disabled combatant, or their legal representative or an authorized person to the social service at the place of registration for housing.

Monetary compensation to family members of the deceased persons or persons with disabilities is paid in full by the order of registration and taking into account the category of recipient of monetary compensation for family members of the deceased, within the funds provided by local budgets for compensation for housing. Family members of the deceased, whose death is related to direct participation in the antiterrorist operation, and who are on the housing register, receive compensation by category in the following order:

- category I – wife (husband) and minor children (including adopted before the date of death) who live with her (him); wife (husband) if the deceased has no children (including adopted).
- category II – minors (including adopted by a serviceman) if on the day of the person's death he (she) was divorced or, if not divorced, his wife (husband) was deprived of parental rights, or the deceased person was not divorced and his wife (husband) is not deprived of parental rights, but minor children live separately from his wife (husband); minor children of the deceased;
- category III – parents of the deceased.
- category IV – adult children who do not have (and did not have) their families.

- category V – adult children who are recognized as persons with disabilities from childhood and have their own families.
- category VI – adult children, both parents of whom died or went missing.
- category VII – wife (husband), who at the time of death was deprived of parental rights in relation to minors of the deceased person, including adopted by the deceased, or, if not deprived of parental rights, minor children, including adopted by the deceased, live separately from his wife (husband).

In the event of a decision to award monetary compensation to the applicant, the commission shall determine its amount in accordance with the following standards: according to standard, 13.65 square meters of living space for each member of the family of the deceased, classified in one category, including the deceased, if he was on the housing register with members of his family; according to the norm, 13.65 square meters of living space per person with disability and each member of his family; according to the norm, 35.22 square meters of total area for family members of the deceased, who fall under one category, or for the family of a person with disability. Additionally, 10 square meters of living space per each member of the applicant's family who is a person with a disability or a child with disability (including the applicant). The amount of monetary compensation is calculated by the following formula:

$$MC = (13.65 \times N_c + 35.22 + (10 \times N_a)) \times I_c \times C_i + E_h, (1)$$

Where MC – monetary compensation; N_c – the number of family members of the deceased combatant that fall into one category or the number of family members of a person with disability for whom monetary compensation is calculated; N_a – the number of family members of the applicant who are persons with disabilities or children with disabilities and who are entitled to monetary compensation, taking into account an additional 10 square meters of living space per each (including the applicant); I_c – indirect cost (in UAH) of 1 square meter of total living space as for the settlement in which the applicant is registered as a person requiring improvement of living conditions as of the day of application for monetary compensation; C_i – the coefficient of increase in the indirect cost of 1 square meter of total living space; E_h – expenses (in UAH) related to the purchase of housing, registration of housing ownership and payment of taxes and fees (mandatory payments) provided by law.

For Kyiv, Dnipro, Lviv, Odesa and Kharkiv, the indirect cost increases 1.75 times; for cities that are regional centres, as well as for cities of regional

significance with a population over 300 thousand – 1.5 times; for cities of regional significance with a number of populations from 100 thousand to 300 thousand – 1.25 times. In addition, according to the procedure of providing citizens with affordable housing, approved by the Resolution of the Cabinet of Ministers of Ukraine (2018a) programmes called "50 for 50" and "70 for 30" were established. According to these programmes, the state pays a certain part of the cost of real estate, in case of "70 for 30", 30% of the value is paid by the state and the programme participant covers 70% (Some issues of providing citizens with affordable housing, 2018). However, if the "70 for 30" programme is designed for all citizens of Ukraine, then "50 for 50" aimed at combatants, servicemen and disabled due to war.

According to Art. 47 of the Housing Code of Ukraine, the norm of living space is set at 13.65 square meters per person. According to Part 1 of Art. 48 of the Housing Code of Ukraine, living space is provided to citizens within the norm of living space, but not less than the size of living space determined by the Cabinet of Ministers of Ukraine and the Federation of Labour Unions of Ukraine. Part 4 of this Article also states that a living space may be provided in excess of the norm of living space, if it consists of one room (one-room apartment) or is intended for persons of different sexes. In addition to the standard of living space, certain categories of citizens are provided with additional living space in the form of a room or in the amount of 10 additional square meters. Citizens suffering from severe forms of some chronic diseases, as well as citizens who need this area due to the conditions and nature of the work performed, the amount of additional living space may be increased.

In accordance with item 2 paragraph 58 of Citizens Registration Rules, if the living space is constructed by the state enterprises, associations and the organizations at the expense of funds which according to the legislation can be directed for the purposes of housing construction, premises are provided by the joint decision of administration and labour union committee to the committee of the relevant council on the provision of housing. In some cases, the legislation does not use the standard (norm) of living space, but the total living space. For example, according to the Law of Ukraine (1992) "On Privatization of State Housing Fund" privatization is carried out by free transfer to citizens of apartments (houses) at the rate of sanitary norm 21 square meters of total living space per tenant and each member of his family and an additional 10 square meters per family.

Actually, when establishing benefits for combatants (ATO veterans) for the use of housing and heating, law-makers also use the standard of 21 square meters of total living space for each person who permanently lives in a dwelling (house) and is entitled to a discount, and an additional 10.5 square meters per family. Therefore, the norm of living space should be distinguished from the norm of providing citizens with housing provided by

Art. 48 of the Housing Code of Ukraine. This norm does not coincide with the level of actual provision of citizens with housing and is usually below this level.

2.3. Execution of court decisions: the final stage of protection of right to housing of combatants (ATO/JFO veterans)

As we have already covered such procedural guarantees as providing combatants (antiterrorist operation (ATO)/joint forces operation (JFO) veterans) and persons equated to them with housing, living space, and other guarantees regarding the maintenance and servicing of housing and their direct relation to the appropriate social status and category: a combatant/war veteran; disabled due to war (groups I-III); a person with disability as a result of a wound, blast injury or illness received during direct participation in the antiterrorist operation; family member of the deceased combatant (antiterrorist operation (ATO)/joint forces operation (JFO) veterans).

In practice, a certain pattern of social services' attitude towards combatants and their family members has developed. This has led to a number of denials of using their preferences due to lack of marriage registration, lack of family ties, children's coming of age or marriage, and so on. By such, frankly, unprofessional behaviour or negligence in their duties, social services deprive defenders of Ukraine of their constitutional right to housing, forcing the latter to seek protection and restoration of violated rights in the courts. The cases reached the Supreme Court of Ukraine, while the Constitutional Court, 20 years ago, in 1999, made an official interpretation of "family member". All of these facts help to execute the right of servicemen, combatants and their families to housing, as the content of the interpretation of the legal concept of a "family member" unites several branches of law, including family and housing law.

The same position was held by the Grand Chamber of the Supreme Court in the decision in case No. 644/6274/16-ц noting that "The family consists of individuals who live together, are connected by common household, have mutual rights and responsibilities. A family is established on the basis of marriage, blood relation, adoption, as well as on other grounds not prohibited by law and not contrary to the moral principles of society" (Resolution of the Grand Chamber of the Supreme Court, 2018). According to item No. 5 paragraph No. 6 of the reasoning part of the Judgment of the Constitutional Court of Ukraine the case on official interpretation of a "family member" concept, family members of a serviceman are persons who constantly live together and have a common household.

Such persons include not only close relatives (brothers, sisters, grandchildren, grandparents), but also other relatives or persons who are not in direct family relation with the serviceman (brothers, sisters of the wife (husband); half brothers and sisters; stepfather, stepmother; guardians, trustees, stepsons, stepdaughters and others). Mandatory conditions for being recognized as family members, in addition to living together, are: common household, i.e. joint expenses, joint budget, joint meals, purchase of property for shared use, sharing costs for housing maintenance, its repair, provision mutual assistance, the presence of verbal or written agreements on the use of housing, other circumstances that testify the family relations (Resolution of the Grand Chamber of the Supreme Court, 2018).

We pay special attention to the fact that the relevant laws and regulations in the sphere of social protection of servicemen and combatants exclude from the list of their family members adult children who are married and have children of their own. However, the judicial practice has formed a completely opposite model for legal regulation of relevant relations by applying to such relations general principles of law and legislation (analogy of law) by combining family, housing and social legislation regarding servicemen and their family members. Thus, according to the decision of the Supreme Administrative Court of Ukraine (hereinafter referred to as "SACU") in the case No. K/800/66214/13, "An adult daughter of a serviceman who is married does not cease to be a member of his family, like her husband, if they live permanently with the employer and run a joint household with him" (2016).

The dispute arose due to the fact that by the decision of the housing committee of the military unit of the Ministry of Défense of Ukraine, the lieutenant colonel of the reserve was removed from the waiting list for housing on the basis of paragraph 1 part 2 of Art. 40 of the Housing Code (1983), as provided with housing in accordance with current legislation, namely: in connection with the his daughter's coming of age and her subsequent marriage; she is no longer dependent on her father and is no longer considered a member of the serviceman's family.

The SACU, upholding the decision of the court of first instance in the plaintiff's favour, reminded that lawmakers did not establish an exhaustive list of persons that fall into the category of family members of the tenant, but defined the criteria according to which persons not related by marriage or blood can be recognized as family. The court noted that the wife (husband), their children and parents are members of the serviceman's family and, along with him, enjoy housing and utilities if they live with him and, in cases provided by law, also run a common household. If adult children or parents have or start their own families, their family members are entitled to these benefits on an equal basis with other family members of the serviceman, but only if they are recognized as other members of the serviceman's family

in accordance to Part 2 of Art. 64 of the Housing Code of the Ukrainian SSR (2017), i.e. as those who permanently live with the tenant and have a common household with him, and in compliance with the rules set out in Part 3 of the same article and Art. 65 of the said Code.

Having established legal framework for regulation of the execution of rights to housing by combatants (ATO/JFO veterans), the state does not always provide the possibility of such execution. Consequently, combatants (ATO/JFO veterans) are forced to apply to courts of different jurisdictions to protect their housing rights. However, a significant number of court decisions, including those on the rights to housing of antiterrorist (ATO)/ joint forces operation (JFO) veterans, involve enforcement measures.

For example, with regard to the above-mentioned Order of the Supreme Administrative Court of Ukraine (SACU) dd. 7 December 2016 in the case No. K/800/66214/13 (Housing Code of the Ukrainian SSR, 2017), that upheld the decision of the court of first instance, which imposed an obligation on one of the defendants (housing committee of the military unit A2309 of the Ministry of Defense) to take action (put the plaintiff families of four people on the register for housing). The obligation to act imposed to the debtor is subject to enforcement in accordance with the Art. 63 of the Law of Ukraine (2016) "On Enforcement Proceedings". The general procedure for such a measure of enforcement is as follows:

1. The executor on the next working day after 10 working days period (except for decisions subject to immediate execution) checks the execution of the decision by the debtor. If the decision is subject to immediate execution, the executor checks the execution of the decision no later than on the third working day after the opening of enforcement proceedings.
2. In case of non-execution of the decision by the debtor without good reason the executor issues a resolution on imposing of the penalty on the debtor, which also contains the requirement to execute the decision within 10 working days (or within three working days for the decision which is subject to immediate execution) and the warning on criminal liability.
3. The executor on the next working day after the expiration of the period provided above, checks the execution of the decision by the debtor.
4. In case of repeated non-execution of the decision by the debtor without good reasons, if such decision can be executed without participation of the debtor, the executor sends the notification on committing a criminal offense by the debtor to body of pre-trial investigation and enforces the execution of the decision as prescribed by law.

5. In case of non-execution of the decision, which cannot be executed without the participation of the debtor, the executor sends the notification on committing a criminal offense by the debtor to body of pre-trial investigation and makes a resolution on termination of enforcement proceedings (Law of Ukraine, 2016).

However, such a procedure for enforcement of court decisions does not seem to be effective enough in cases of the obligation to take action, in particular with regard to the right to housing of antiterrorist (ATO)/ joint forces operation (JFO) veterans. In particular, the procedure takes a long time and may not lead to a real restoration of housing rights of the antiterrorist (ATO)/joint forces operation (JFO) veterans. The lack of legislative technique is especially evident here: in case of non-execution of the decision, which cannot be executed without the debtor's participation, the executor must terminate the enforcement proceedings. The fact that the executor sends the notification on committing a criminal offense by the debtor to body of pre-trial investigation falls under the scope of another jurisdictional activity – criminal procedure – that provides no enforcement mechanisms for court decisions.

If we follow the correlation of the above-said with provisions of Art. 39 of the Law of Ukraine (2016) "On Enforcement Proceedings", which determine the grounds for termination of enforcement proceedings, it becomes clear that in the context of the grounds for termination of enforcement proceedings, these provisions do not correlate at all. In particular, Art. 39 of the Law of Ukraine (2016) "On Enforcement Proceedings" recognizes that one of the grounds for termination of enforcement proceedings is sending of an enforcement document to the court that issued it in cases provided for in part three of Art. 63 of this Law. But the third part of Art. 63 of the Law of Ukraine (2016) "On Enforcement Proceedings" does not refer to the sending of an enforcement document to the court. Thus, the rules of the Law of Ukraine (2016) "On Enforcement Proceedings" must correspond each other.

The issue of execution of the right of combatants (antiterrorist operation (ATO)/joint forces operation (JFO) veterans) to housing and the problems faced by war veterans in the process of improving their living conditions is a reflection of our legal reality, which makes it possible, due to a fairly large set of regulating legal acts and conflicts of law contained in them, to regulate relations in this sphere in different ways. Five years have passed since the introduction in 2015 of the state program of housing provision to those who took part in antiterrorist operation (ATO)/joint forces operation (JFO) on preferential basis, and the relevant issue is still not covered in scientific studies and periodicals. Some aspects of coverage of the implementation of their social rights by antiterrorist operation (ATO)/joint forces operation (JFO) veterans that can be found on state authorities' websites (such

as Ministry of Justice of Ukraine, Ministry of Armed Forces of Ukraine, Ministry of Veterans Affairs, Ministry of National Police of Ukraine, Social Policy Department of Ukraine, state administrations, as well as local governments, public organizations) have informational nature only.

Over the past few years, a lot of attention of scientists in the field of law and public administration is focused on clarifying the legal status (including administrative and legal), regulatory and legal support of antiterrorist operation (ATO)/joint forces operation (JFO) veterans and persons equated to them. Such professionals as Burka (2016), Kondratenko (2015), Mykytiuk (2018), Honcharenko (2017), are worth mentioning in this context. In their works, they define basic concepts and categories of research, in particular, consider different approaches to understanding of the concept of "administrative and legal status of antiterrorist operation (ATO)/joint forces operation (JFO) veterans", clarify the meaning of "status", "legal status", "administrative and legal status", "antiterrorist operation" and "antiterrorist operation (ATO)/joint forces operation (JFO) veteran".

They formulate the author's definition of "the mechanism of state regulation of social protection of antiterrorist operation (ATO) veterans and members of their families", analyse the concepts of "antiterrorist operation (ATO) participant *(veteran*)" and "war veteran"; conduct a comprehensive study of the prerequisites for receiving of the administrative and legal status of antiterrorist operation (ATO) veteran and the elements of the administrative and legal status of an antiterrorist operation (ATO) veteran; carry out scientific and theoretical analysis of regulatory and legal support of social protection of antiterrorist operation (ATO) veterans and members of their families. However, the issues of provision, securing and protection of the right to housing for those who took part in antiterrorist operation (ATO)/joint forces operation (JFO) are practically not covered in scientific works and are mentioned only sporadically with references to the relevant law as a legal opportunity for this category of citizens. Moreover, the problems that veterans face when exercising their right to housing are not covered or analysed, and not generalized, both for the public awareness and for the legal, practical, and scientific purposes.

Conclusion

The state links the granting of the status of a participant in hostilities to the emergence of a number of benefits, which are aimed at making life easier for soldiers after returning to a peaceful life. One of the declared rights is the possibility of provision of housing by the state, but this privilege sometimes becomes a problem, because the demand for affordable housing far exceeds

its supply. The number of ATO veterans, members of their families, disabled due to war, in the context of Russia's military aggression in eastern Ukraine, increases every year by at least 50 thousand, not counting other privileged categories, including those who took part in hostilities on the territories of other states and are still in a waiting list for provision of a living space.

During 2014-2019, the Ukrainian army underwent significant personnel and logistics changes. But the creation of a combat-ready army involves not only personnel changes and improved armaments, but also social support for military men, in particular, providing them and their families with sufficient living conditions. After all, living conditions directly affect the physical and psychological state and the morale of the defenders, while a well-off family is an additional motivation for exemplary military service and protection of the territory and sovereignty of the country. Another incentive to improve the physical and psychological condition of antiterrorist operation (ATO)/joint forces operation (JFO) soldiers is the confidence that their violated rights can be effectively protected before the court, and that the court decision, which formally protected their rights, including a right to housing, will be timely and impartially executed, in particular by enforcement proceedings.

The results of the study will be useful, first of all, for antiterrorist operation (ATO)/joint forces operation (JFO) veterans requiring the improvement of living conditions, as well as for human rights defenders who help combatants to exercise their right to housing. The analysis and overall conclusions presented in the article can also be used for consolidation of judicial practice, decisions of judicial and other state bodies, used for preparation of scholarly commentaries on housing, family and other codes and laws governing the execution and protection of a right to housing. The results of the research were tested at courses of law, round tables and conferences, workshops.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 248-265
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Social and Legal Healthcare Models and Their Functioning During a Global Crisis

DOI: https://doi.org/10.46398/cuestpol.38e.16

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Abstract

The article analyzes the existing health models in terms of their legal, economic and social effectiveness, innovative potential, as well as in the context of their ability to resist modern threats caused by changes in the environment, ecology, bio-information development and other technologies. The authors used the methods of comparative analysis, synthesis, structural-functional and statistical analysis. Everything indicates the need for a major modernization of existing care models and / or their replacement by new ones that satisfy the basic needs of the majority of society at the current stage of its development. Among the most prominent findings, it is also highlighted that the health insurance model is a creation of the late 19th and early 20th centuries. It was developed and implemented at a time when the economy, society, the social sphere, and technologies were completely different. The 2020 pandemic has revealed the reasons for the unsatisfactory health care work, in a seemingly as prosperous country as the United States, where the largest amount of budget money traditionally goes to health care.

Keywords: Socioeconomic models of health; government regulation of health; health financing; coronavirus infection (COVID-2019); biological security in the new world order.

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Modelos sociales y legales de atención de la salud y su funcionamiento durante una crisis global

Resumen

El artículo analiza los modelos de salud existentes en términos de su efectividad legal, económica y social, potencial innovador, así como en el contexto de su capacidad para resistir las amenazas modernas causadas por cambios en el medio ambiente, ecología, desarrollo de bio-información y otras tecnologías. Los autores utilizaron los métodos de análisis comparativo, síntesis, análisis estructural-funcional y estadístico. Todo indica la necesidad de una importante modernización de los modelos asistenciales existentes y/o su sustitución por otros nuevos que satisfagan las necesidades básicas de la mayoría de la sociedad en la etapa actual de su desarrollo. Entre los hallazgos más prominentes se destaca además que el modelo de seguro de salud es una creación de finales del siglo XIX y principios del XX. Fue desarrollado e implementado en una época en que la economía, la sociedad, el ámbito social y las tecnologías eran completamente diferentes. La pandemia de 2020 ha revelado las razones del trabajo insatisfactorio de la atención médica, en un país aparentemente tan próspero como Estados Unidos, donde la mayor cantidad de dinero del presupuesto tradicionalmente se destina a la atención médica.

Palabras clave: Modelos socioeconómicos de salud; regulación gubernamental de la salud; financiamiento de la salud; infección por coronavirus (COVID-2019); seguridad biológica en el nuevo orden mundial.

Introduction

Regardless of the characteristics of a particular country or region, the public health system has the following general tasks: improving public health, increasing the duration and quality of life of citizens; increasing the availability and quality of services; ensuring equitable access to health services. For example, in Decree No. 254 of the President of the Russian Federation “On the Healthcare Development Strategy in the Russian Federation for the period until 2025” dated June 6, 2019, attention is drawn to the need for increasing the population, life expectancy, healthy life expectancy, reducing mortality and disability, respecting the rights of citizens in the field of healthcare, and providing state guarantees related to these rights.

The development of countries, societies, and human civilization as a whole, due to the rather low knowledge and ability of humanity to manage several global processes critical for its existence, encounters many difficulties associated with socio-economic, environmental and other crises. One can simply point to the protracted economic crisis that began in 2008, as well as the 2020 crisis that joined in due to the socio-economic, political, and other consequences of the coronavirus (COVID-2019) pandemic.

A specific set of objectives considered in the development, implementation, and subsequent modification of the national healthcare model is determined by the government's policy in the field of healthcare, as well as in the social sphere.

During periods of crisis, solving several urgent tasks for the state and society, pandemics, etc., the sustainability of national healthcare systems, their ability to solve both current (ordinary) and extraordinary tasks (due to martial law, state of emergency, prevention or elimination of natural or man-made emergencies) become the priority. In this regard, in this study, along with the general characteristics of the existing healthcare models, we attempt to consider their potential (embedded in the model itself) and real possibilities for reaching the objectives planned for them by the political administration of the state and society.

1. Methods

In our study, we used the following methods: a comparative analysis of Russian and foreign healthcare models, synthesis, structural-functional and statistical analysis, as well as the empirical cognition method.

2. Results

Speaking about the healthcare development strategy, one should pay attention to the need to switch to the principles of the four Ps healthcare (predictive, preventive, personalized, and participatory) (Drucker and Krapfenbauer, 2013; Gefenas *et al.*, 2011; Scott, 2011). This kind of transition is impossible without the introduction of medical, genetic, informational, managerial, and other technologies into the industry. The introduction of new technologies for financing the industry (Sokolov and Kostyrin, 2018) is also a possibility to stimulate the main subjects and participants of legal relations in the healthcare sector to increase various types of efficiency, as well as to provide better healthcare. In this regard, the issues of innovative development of national healthcare systems are gaining importance.

For example, in Decree No. 254 of the President of the Russian Federation "On the strategy for the development of healthcare in the Russian Federation for the period until 2025" dated June 6, 2019, the development of new medical technologies and their implementation in the healthcare system and the widespread introduction of the directed innovative development mechanism for the industry are called the priority areas in healthcare development.

During periods of various crises and especially world pandemics, the task of ensuring the accessibility of a limited range of medical services critical from the standpoint of preserving the citizens' life and health to a wide range of people, preventing and treating socially significant diseases and diseases that are dangerous to others become one of the most urgent. Thus, in connection with the ongoing global spread, the threat of the import and spread of a new coronavirus infection (COVID-2019) in Russia, it was required to add the coronavirus infection to the list of diseases that are dangerous to others (Postanovlenie Pravitelstva, 2020) and reassign many medical organizations and other organizational measures (Prikaz Ministerstva zdravookhraneniya, 2020). The problems of technological lag, which should be overcome shortly, were also revealed.

Politicians and authorities in many countries see the achievement of the main healthcare goals differently, which is manifested in their choice of one of the basic healthcare models with possible national variations of its blocks and subsystems.

In the specialized literature, one can find various classifications of national healthcare models. The most accessible, understandable, and integrative, in our opinion, is the division into the following models: the non-state (private) healthcare model, the health insurance model with various options for organizing medical care (services) and financing channels (Medik, 2018; Shcherbakova, 2015), state-funded healthcare, as well as the model based on funded medical bills.

Many of these models have repeatedly been modified since the time of their development and implementation, but in general, they have retained their inherent features to the present.

In healthcare models, keeping in mind national characteristics, such factors are considered and can be individualized as the role of the state in regulating relations in medicine and healthcare; state guarantees in the field of health; the mechanism for financing the industry, medical care and services; the main agents of the industry (business entities, doctors) and their characteristics; the availability and quality of medical care and services provided to the population (both by categories of citizens and by the types of assistance and services provided); provision with medicines, medical products, and other means of medical use; economic (Isalova and Tasueva,

2008), social, and medical efficiency; susceptibility to the introduction and widespread use of innovations (medical, genetic, informational, managerial, etc.) (Birkun, 2013).

The non-state (private) healthcare model is based entirely or mainly on the laws of a market economy. In this system, the role of the state is minimal, reducible to the implementation of individual programs or actions financed from the budget, but using the existing private infrastructure (private practitioners and medical organizations). Such a healthcare model has historically been considered one of the oldest ones.

In Russia, a private healthcare model had also developed for many centuries. The development of the elements of the state healthcare model begins with the era of reforms started by Peter I, who organized the medical support of the army and navy. Later, serious attempts to provide the general population of the country with certain types of medical services at the expense of the state and (or) business were made as early as the 19th century, which led to the development of medicine in rural districts and urban areas. However, until the 1920s, the country was dominated by the private sector (represented by private doctors for wealthy citizens and by healers, herbalists, and midwives for the bulk of the Russian population).

The formation and wide dissemination of the non-state healthcare model were facilitated by some historical, national, cultural, and other prerequisites that still exist in some countries of the world (for example, in some African and Asian countries). Of great importance is the lack of constitutional and/or other national laws that impose obligations on states in the field of healthcare.

The advantages of a private healthcare model are as follows: minimal government intervention in the provision of medical services; consolidation of the most general rules and norms of the functioning of the medical services market; as a rule, average economic efficiency (depends on the competition in the national market); free choice of doctor by the patient; high autonomy of the doctor; a large selection of medicines and medical products (usually imported).

However, the private model also has drawbacks: the limited availability of medical services for some groups of the population (the number of such groups and their representation is determined by the particular state, its economy, employment structure, etc.); limited possibilities of the state regarding the implementation of healthcare and social policies (the number of possible agents for implementing the policy is low); the presence of restrictions on the introduction of innovations in the industry (due to restrictions on the solvency of the population and the lack of state support for the introduction of new technologies).

Given the foregoing, the social efficiency of the private model is quite low.

Its medical efficacy, in general, can be described as average. However, failure may occur in certain areas. The issue of infant and maternal mortality is still quite acute in these countries. For example, the infant mortality rate in Afghanistan in 2018 was 50.82 (per 1,000 births), while in Finland this number is as low as 1.7.

In the context of socio-economic crises, pandemics, and other emergencies, the private healthcare model is under great stress. A significant part of the population does not have the funds to carry out the necessary diagnostic tests, examinations, etc., or to purchase means for emergency disease prevention. Allocation of money for certain medical, sanitary, and other events by the state is possible, but it also often turns out to be ineffective due to the limited resources of the industry itself, represented by private medical organizations and (or) private practitioners, and sometimes due to the inflation of prices for medical services. Another problem is the virtually uncontrolled spread of infectious diseases from the territories of such countries, which requires additional measures by governments and officials of neighboring states to ensure biological safety and sanitary and epidemiological well-being.

The situation is aggravated if the crisis becomes protracted. Governments of countries with such healthcare models seek help from other countries, international agencies, and other organizations. For example, in 2014 alone, the World Health Organization (WHO), to prevent the further spread of Ebola, which had spread across nine African countries, deployed 77 field sites and 26 mobile laboratories, sent more than 710 WHO employees and 2013 technical experts, and assisted in the construction of five Ebola treatment units (Rol VOZ v borbe s epidemiei Eboly v Zapadnoi Afrike, 2015).

The existing healthcare system in the US is close to a private healthcare model. It combines various financing mechanisms, such as voluntary medical insurance, compulsory medical insurance, payment through personal medical savings accounts, etc. Most often, employers act as insurers, less often patients acquire insurance at their own expense. During the Obama administration, insurance was actively introduced for the most vulnerable, underprivileged groups of the population. Programs for the health insurance policy acquisition at the expense of the state budget were introduced.

Despite the non-governmental nature of US healthcare, government funding for the industry in some areas remains high.

Significant sustainability challenges for the US healthcare industry have been revealed by the coronavirus pandemic. The healthcare system

turned out to be limited in mobility and showed low medical and social effectiveness. Questions about the cost-effectiveness of American healthcare have been posed before: despite huge costs (about 15-17% of the country's GDP), the US healthcare industry is not a leader in virtually any of the indicators that characterize national healthcare. An exception is the industry's susceptibility to innovation (Global Innovation Index, 2017; Global Innovation Index, 2018; Global Innovation Index, 2019). The US is one of the countries with the largest number of registered innovative drugs, medical devices, and other medical facilities. The fact is that most of the biotechnology companies in the world are registered in the US. For them, the American market is the first and one of the most important ones (Sidorov, 2016).

It should be noted that despite the greatest scientific and innovative potential in medicine and pharmaceuticals, in recent years, they have been talking more and more actively about the "subsidence" of innovations, the insufficient susceptibility of American hospitals to new technologies, the very high cost of innovations for the industry, and other negative trends (Kristensen *et al*, 2011).

At the end of the 19th and the beginning of the 20th century, the non-governmental healthcare model was gradually replaced by other types of healthcare systems under the influence of serious economic, social, and political changes.

In many European countries, health insurance is being introduced (with variations in the degree of coverage of the population). Separate healthcare tasks, first of all, those related to public health, are solved at the expense of the budget. The formed model is beginning to be called the "Bismarck system". Otto von Bismarck wrote: "The state should take care of its subjects in need of help more than it has done so far. This is not only a matter of commitment to humanity and Christian virtues, which should be permeated by state institutions but also the task of a policy striving to strengthen the state, for its purpose is to inspire the poor classes of the population, who, at the same time, are the most numerous and least wealthy, that the state is not only a necessary institution but also a benefactor (Bismarck, 1924-1935).

The state creates conditions for the implementation of medical activities and guarantees a certain basic minimum of medical care (services) for the population. The market is formed based on various subjects of ownership, legal form, and other characteristics. The industry is financed from several sources (channels): insurance contributions (fees) of obligated entities (employers, individuals), budget funds, and other sources. Money follows the patient here. Financing, therefore, is tied to the number of patients served. The average cost of healthcare amounts to about 7-10% of the country's GDP (Komissinskaya and Ovod, 2018).

In "perfect" conditions, this results in the formation of a competitive environment, with a struggle for the patient, which helps to stabilize prices for services and increase their quality. There are prerequisites for ensuring sufficient industry efficiency in the main areas. In principle, this model accepts innovation quite well. At least at the initial stage of the functioning of the "Bismarck system" in Germany, France, and some other European countries, they were quite innovative. The rapid development of pharmaceuticals in these countries in the first half of the 20th century testifies to this.

Doctors have sufficient autonomy in this system, uniting into professional communities (medical associations, etc.).

Currently, the system under consideration has accumulated some problems, in connection with which efforts are being made to modernize it.

One example of a well-functioning healthcare system is healthcare in Israel. It is based on the "basket of health", a guaranteed set of medical services. They are provided by the state (public) medical organizations. Other services are provided under voluntary health insurance contracts or from other sources not prohibited by law.

The health insurance model works well or satisfactorily in normal, "standard" economic, social, and political conditions. However, during periods of crisis, the load on the industry increases, and available funds and reserves, as a rule, quickly exhaust themselves.

The formation of the state-financed healthcare model is associated with the name of N.A. Semashko, one of the prominent organizers of the USSR healthcare system.

This healthcare model was oriented towards solving the complex tasks of the young socialist state. It was characterized by a high level of centralization of management and logistics; the monopoly of the state represented by the medical organizations created by it on the provision of medical care; universality and accessibility of medical care; availability of standards for the main activities, operations, etc. (personnel, wages, medicine provision). The basic principle of financing is "money goes towards the patient". The state creates, purchases, and provides, and the final consumer (represented by the patient) and the intermediate (represented by the medical organization), consume the services.

The doctor in this system is an employee; their autonomy is limited. Professional communities (mainly based on belonging to medical or other specialties) solve a narrow range of problems.

In addition to the USSR, this healthcare model was introduced in several Eastern European countries, as well as in other states of the socialist bloc. In literature, it is sometimes also called the socialist system (Field,

1980). Some of its elements were borrowed by countries not included in the socialist camp.

In general, it has proven itself well, has shown stability and the ability to solve the main tasks in difficult years for the country (pre-war, wartime, and post-war). There was also a certain "reserve" of industry capacities (bed capacity, personnel, material reserves), which allowed it to cope with emergencies that had repeatedly arisen over the history of its existence. It was also quite economical. On average, the state spent about 3.5% of GDP on healthcare. This was not enough, but the industry provided the guaranteed volume of medical care of medium quality.

At the same time, it had many shortcomings: low incentives to increase its effectiveness (primarily economic), insufficiently high innovative potential, the difficulty of making managerial decisions (developed bureaucratic apparatus); poor equipment (lack of diagnostic tools, medical equipment, etc.).

It is also important to note that the party and state nomenclature was not personally interested in the development of the most advanced medicine since its medical and drug support was provided by the forces of the 4th Main Directorate under the USSR Ministry of Health.

With the collapse of the USSR, this model ceased to exist. Currently, its elements are used in some countries of the former socialist camp.

Another state healthcare model appeared historically a little later in the UK. On behalf of W. Churchill, U. Beveridge developed a program for the post-war development of the country, in which a significant place was given to the creation of the National Health Service (NHS). It provided for financing from the state budget through special taxes. In this model, the state became both the main supplier and the main buyer of medical care. However, there was an interesting feature: the money did not just go to the service providers according to the established standard but followed the patient, which created incentives for general practitioners to work better, attracting patients. This is similar to the health insurance model.

This model solved the problems of access to medical care, provided an acceptable level of quality of the services provided, and played a positive role at a certain historical period. However, the availability of assistance quickly led to an increase in the volume of services rendered (unjustified calls, appointments), and, ultimately, to a shortage of funds for the industry. The authorities were gradually forced to introduce various restrictions aimed at lowering costs (setting limits, creating special funds, forcing doctors to prescribe non-original medicines (generics, copies), etc.).

The innovative potential of the industry can be characterized as average.

From the standpoint of solving the tasks assigned to the industry in crises, emergencies, and other extraordinary situations, such a system as a whole is stable, but inferior in effectiveness to the Semashko system.

Since the 1980s, first in Singapore and later in South Africa, partly in China and some other countries, a system of medical savings accounts has been introduced. It was based on a completely new approach for the industry, the creation of a "responsible patient" with motivation for the economical consumption of industry resources. It should be noted right away: the issue of the economy in the industry has been resolved. Singapore spends the least on healthcare but is one of the leaders in industry efficiency worldwide (Reiting stran mira po effektivnosti sistem zdravookhraneniya, 2018). In this model, money goes with the patient (Grishin, 2008), is spent personally by them, and not by anyone else. This model can significantly reduce operating costs and eliminate corruption in the industry.

The sources of funds transferred to personal savings accounts for each category of citizens are company funds; federal budget funds (military personnel, public servants, etc.); personal funds, savings (for individual entrepreneurs, foreign citizens, etc.).

It should be noted that the state continues to finance certain types of medical care (primarily emergency) in the framework of the current model. There is also a system for subsidizing certain types of medical care (in particular, for patients with diabetes, heart and blood vessel diseases, and some others).

Singapore is increasingly compared to Boston for the presence of world-class hospitals in it, the active investment of both public and private funds in medical, biomedical, pharmaceutical, and other startups. It also has world-class pharmaceutical and medical clusters.

The stability of the new system has not been seriously tested to date, but the data on the spread of coronavirus infection (COVID-2019) in Singapore available at the time of preparation of this work let us conclude that the country successfully coped with the existing risks and threats. One must pay attention to the presence in the country as a whole of a rather rigid system of organizational and legal means to ensure biological safety.

Now we give a brief description of the current Russian healthcare model.

In Russia, with the adoption of the Law No. 1499-I of the Russian Federation "On Medical Insurance of Citizens in the Russian Federation" dated June 28, 1991, a combination of budget-financed and insurance-based models with multi-channel financing began to function. This document proclaimed the goal of medical insurance to guarantee citizens that they receive medical care from accumulated funds in case of an insurable event.

It is a modified Bismarck system with elements of the US system (in terms of the actual orientation of the industry towards obtaining funds through the provision of medical services on a fee basis not only in the private but also in the public health sector).

The system was based on the formula "money follows the patient", but it acquired distorted and even ugly forms. Insufficient financing of the industry, implementation of the tariff more than two times lower than the originally calculated one when implementing the system of compulsory medical insurance, led to the fact that at all stages of the movement of funds attempts are made for their misuse, withdrawal, delay in payment, etc. To this, we should add the intermediaries represented by insurance medical organizations, which do not provide insurance services but can use part of the system's funds. At the same time, this healthcare model did not become universal in Russia. Some population groups (such as military personnel, police officers, etc.) were excluded from it. The Soviet approach to the medical provision of senior officials of the country was also preserved (represented by the Main Medical Department of the Office of the President of the Russian Federation).

The Russian experience has shown that the current model is extremely inefficient, despite repeated attempts to reconfigure it, including at the legislative level.

Among the main problems of compulsory health insurance, as a rule, one can name low availability of medical care, increase in paid medical services, inefficiency in spending money, and control over the finances of the system (Bystrova, 2012).

Usually, the financing of medical care comes not only from the funds of the employer or the state but also from the income of the insured person.

The Russian healthcare model makes it possible, regardless of the number of contributions of a particular person, to apply for free medical care in the prescribed manner. However, this medical care will be minimal and does not guarantee a high quality of life and health. Therefore, the effectiveness of Russian healthcare is rated as extremely low. In recent years, Russia has been among the five worst countries in the world in terms of the effectiveness of healthcare systems.

Russian medical industry cannot boast of its innovations. For many years, science has been greatly underfunded, and without it, it is difficult to hope for new technologies. Besides, the complex relationship between science and medical practice, the lack of transparent and effective means, including legal ones, of promoting innovative products, also worsens innovative activity in the industry. The system does not contribute to the introduction of innovations since it is not oriented towards increasing its effectiveness. The "science-production-market-consumer" innovation chain does not exist (Ivanov, 2017).

Low population density, low incomes, underdeveloped infrastructure, networks of medical organizations, and other objective factors (Korablev, 2012) also do not allow us to hope for high industry efficiency in the coming years.

The coronavirus infection (COVID-2019) was a positive moment for Russian healthcare, putting it to the test. The state had to mobilize all the resources of the industry (the budget component) and, in the period of high preparedness for the introduction of an emergency in connection with the pandemic, try to influence the current situation through previously developed administrative mechanisms. Part of the state medical healthcare organizations began to function in the regime of the state model of a public health emergency.

In our opinion, the state should also admit its mistake of moving from the state healthcare model to the combination of budget-financed and insurance systems, since it did not consider the non-viability of this system in the long term. At the same time, it fixed this model at the highest level. According to Part 1 of Art. 41 of the Constitution of the Russian Federation, medical assistance in state and municipal healthcare institutions is provided to citizens free of charge from the budget, insurance contributions, and other income.

The insurance model is a model of the late 19th — early 20th century. It was developed and implemented in the time when the economy, society, social sphere, and technologies were completely different. Today, the world is on the verge of the fourth industrial revolution, the next change in technological mode, which can no longer be ignored by politicians, economists, lawyers, and legislators.

Regardless of the country and national characteristics of health insurance, this system is under serious pressure. It copes relatively well with the tasks assigned to it under the following conditions: a high number of people employed in the legal economy (which is typical for an industrial economy), a rather low and stable number of sick people (typical for young societies, with a small number of old people). Many modern economies are characterized by a rather low number of the full-time workforce, a high unemployment rate, a change in the structure of employment, an aging population, a large number of people with disabilities, and other categories of citizens who need protection.

Modern technologies contribute to the development of medicine. They open great opportunities for physicians and patients but are expensive for the healthcare system. Therefore, they are either not implemented on time or are implemented, but access to them (the “waiting list”) becomes virtually impossible for most citizens entitled to appropriate assistance with the application of new technologies.

In connection with the problems in the industry as a whole, the solution of which is difficult in the given coordinate system (the current combination of budget-financed and insurance-based models, ineffective and inadequate to the needs of financing the industry with compulsory health insurance), attempts are being made to search for a new model.

Based on the foregoing, there are only two main options: a return to the state-financed healthcare model (through fixing a special tax), but with the introduction of corrective mechanisms in it, leveling its main disadvantages to one degree or another, or a transition to a model of personal medical savings accounts. It may also be proposed to discuss an innovative healthcare model that meets all modern requirements and is free from the known shortcomings of already tested models. However, so far, no such models have been submitted for discussion.

The transition to medical savings accounts looks like an evolution. According to the order of deductions made and their features (dividing by working and non-working patients, transfer of funds for the non-working population to budgets of various levels, etc.), the model of medical savings accounts is generally similar to the Russian one, but there is also a fundamental difference. The funds go to medical savings accounts and not to the compulsory health insurance fund, where they are immediately depersonalized and later used in the current period to pay for medical assistance to someone.

At the level of the Constitution of the Russian Federation and federal laws, there are no significant obstacles to its implementation. The concept of insurance premium is not expressly enshrined in federal law. There is a long discussion in the literature on this topic, but regardless of it, for public-law insurance contributions, attention is focused on their commitment, focus (the formation of trust funds and other sources for targeted spending), goals (financial provision of public obligations).

The Tax Code of the Russian Federation classifies insurance premiums as direct federal taxes, namely, contributions payable by employers in connection with their payment of income (including wages; the "salary" tax). Only Federal Law No. 326-FZ "On Compulsory Medical Insurance in the Russian Federation" dated November 29, 2010, will have to lose force in connection with the adoption of a new Federal Law, such as "On Personal Medical Savings Accounts in the Russian Federation" (Mokhov, 2020).

At the same time, geographical, political, national, and other features, traditionally low financing of the healthcare industry (hopes for compulsory medical insurance as a tool to increase the financial sustainability of the industry for almost thirty years of history have not been met), as well as current challenges and threats (decrease in business activity, the growth of unemployment, environmental problems, the growth of natural and

man-made emergencies, the threat of bioterrorism, etc.) are putting on the agenda the question of preparing for the introduction of a new state healthcare model.

The benefits of a state healthcare model are well known and may be attractive to politicians and legislators. Some of the shortcomings can be eliminated or leveled but for this, the issues aimed at ensuring the efficiency of the industry as a whole and the business entities and the development of its innovative potential will have to be resolved at the stage of preparation of such a model. This will allow for the timely implementation of the latest technologies in the industry (genetic, information, etc.).

Conclusion

As a result of the study, the following conclusions were made:

1) The insurance-based healthcare model has not paid off during the period of sharply increased workload in the spring of 2020. This model copes relatively well with the tasks assigned to it when the number of people employed in the economy is high and the number of sick people is rather low and stable. However, in the modern world, the aging of the population exceeds the number of births, which is why we see a rather low number of the permanently employed population, a high unemployment rate, a large number of disabled people, and other categories of citizens in need of protection.

2) The combination of budget-financed and insurance-based healthcare models existing in some countries is also ineffective. Therefore, it is necessary either to return to the state healthcare model (through fixing a special tax) or to switch to a model of personal medical savings accounts or an innovative healthcare model.

3) The study revealed two possible options for the development of a healthcare model with the highest efficiency of providing medical services to the population:

   - Return to the state healthcare model (through fixing a special tax), but with the introduction of corrective mechanisms, leveling its main disadvantages to one degree or another.

   - Transition to the model of personal medical savings accounts.

4) An important problem that is practically not solved under the conditions of compulsory medical insurance of the population is the lack of any motivation for citizens to have a healthy lifestyle and to preserve their health. Without its solution, the transition

from established curative medicine to preventive medicine becomes impossible.

5) Advantages of a private healthcare model are the following: minimal government intervention in the provision of medical services; consolidation of the most general rules and norms of the functioning of the medical services market; as a rule, average economic efficiency (depends on the competition in the national market); free choice of doctor by the patient; high autonomy of the will of the doctor; a large selection of medicines and medical products (usually imported). However, during the pandemic period, this healthcare model proved to be ineffective, as large segments of the population were left without medical care and contributed to the growth of the pandemic both within the country and abroad.

Acknowledgment

This article was prepared with the financial support of the Russian Foundation for Basic Research (RFBR) (project No. 18-29-14063).

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 266-277
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Creation of the Institute of Medical Law as its Sub-Institute (Sub-Directorate) in the Legal System of Ukraine

DOI: https://doi.org/10.46398/cuestpol.38e.17

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Abstract

The current stage of training and development of medical law is characterized by discussions on the allocation of medical law in a separate law institute, all in the context of the global COVID-19 crisis. This article aims to identify the concept of medical law institute, including the justification for the need to establish a medical law institution and the consideration of sub-institutes (sub-branches) of medical law. The main method for the study of this topic was the method of analysis, which allows to comprehensively consider the sub-institutes of medical law and the reasons for the separation of the institute of medical law. The document presents the classification of the drug circulation sub-institute (sub-branch) and reveals the components of the structure of medical law. In conclusion, it highlights that, the formation and development of medical law must be based on the following principles: first, it must have the essential characteristics of the law; and, secondly, it must arise and exist in the field of medical professional activity: in the science, practice, ethics and deontology of medical personnel, the rules and procedures of medical institutions**.**

Keywords: health sector in Ukraine; pharmaceutical activity; medical law; legal system; sub-institute.

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Recibido: 03/07/2020 Aceptado: 08/08/2020.

Creación del Instituto de Derecho Médico como su Sub-Instituto (Subdirección) en el Sistema Legal de Ucrania

Resumen

La etapa actual de formación y desarrollo del derecho médico se caracteriza por discusiones sobre la asignación del derecho médico en un instituto de derecho separado, todo ello en el marco de la crisis mundial del COVID-19. Este artículo tiene como objetivo identificar el concepto de instituto de derecho médico, incluida la justificación de la necesidad de establecer una institución de derecho médico y la consideración de los sub-institutos (subramas) del derecho médico. El método principal para el estudio de este tema fue el método de análisis, que permite considerar de manera integral los sub-institutos de derecho médico y los motivos para la separación del instituto de derecho médico. El documento presenta la clasificación del sub-instituto de circulación de medicamentos (sub-rama) y también da a conocer los componentes de la estructura del derecho médico. Como conclusión destaca que, la formación y desarrollo del derecho médico debe basarse en los siguientes principios: en primer lugar, debe tener las características esenciales del derecho; y, en segundo lugar, debe surgir y existir en el ámbito de la actividad profesional médica: en la ciencia, la práctica, la ética y la deontología del personal médico, las normas y procedimientos de las instituciones médicas.

Palabras clave: sector sanitario en Ucrania; actividad farmacéutica; derecho medico; ordenamiento jurídico; sub-instituto.

Introduction

This paper is directed at identifying the concept of medical law institute, including justification of the necessity for the establishment of a medical law institution and consideration of the sub-institutes (sub-branches) of medical law. The paper suggests the author's approach to the creation of the medical law institute, which is the basis for developing the most promising directions of development of the domestic legislation in this area (Kerimov *et al.,* 2015; Kerimov *et al.,* 2018a).

The work concept is based on the use of general scientific and special-scientific methods and techniques of scientific cognition. Historical and legal method allowed to determine the preconditions of the emergence of the medical law institution as a structural element of the law system, characterized by a set of legal provisions governing the kind of homogeneous

social relations in the medical industry, as well as the formation of scientific and theoretical views on nature, problems with the establishment of the medical law institute. The comparative legal method was used to compare doctrinal approaches to the establishment and development of the medical law institute. The system-structural method contributed to the awareness of the separation of sub-institutes (sub-branches) of medical law, and namely: health care management, public medical and preventive care, medical treatment, paid medical services, etc. The formal legal method has allowed to comprehensively examine the current state of legislative and normative regulation of the medical law institute, identify the shortcomings of its activities, gaps, contradictions and miscalculations, as well as develop recommendations aimed at their elimination (Allalyev, 2019).

The purpose of this article is to substantiate the necessity and feasibility of implementing the medical law institute into the legal system of Ukraine. Also, the authors thoroughly described the structure of medical law and its components (sub-institutions (sub-branches). Medical law is the object of the research. The interest of such national researchers as Stetsenko (2004); Pashkov and Harkusha (2017); Hladun (2013); Babanin and Yasinskyi (2015); Seniuta (2016); Voronenko and Radysh, (2016); Pashkov *et al.* (2017); Pashkov *et al.* (2017); Radysh (2007); Strelchenko *et al.* (2018); Pashkov *et al.* (2018), etc. In the legal regulation of medical legal relations may be explained by a number of key factors that necessitate the creation of a separate legal institution, the institution of medical law with its sub-institutions (sub-branches), among which the following should be underlined:

- increase in the number of legal acts regulating the health care sector of Ukraine in general and its sub-sectors.
- the need in practical actions of medical and preventive establishments, as they are those facing problems of medical and legal nature the most often.
- legal practice requests, which indicate an increase in the value of special knowledge related to the peculiarities of public administration of medical and pharmaceutical activities.
- raising the level of legal literacy of people in the field of medical treatment, evidenced by the increase in the number of appeals of citizens in the case of poor-quality treatment and poor-quality medicinal products and medical devices (Voronenko and Radysh, 2016).

The empirical basis of the research is based on surveys of 350 health care professionals about the need to distinguish medical law as a separate sub-institute of law, and according to respondents, it allows to: 1) to systematize the standards of medical law in one codified act; 2) determine the legal

status of health care professionals and establish a system of guarantees of the rights of health care professionals; 3) to legislatively improve the provisions regulating the medicinal products circulation procedure in the system of law of Ukraine (Avtonomova *et al.,* 2019; Kerimov *et al.,* 2018b; Kerimov *et al.,* 2018c).

1. The internal structure of medical law

Based on the study, it is argued that the system of law is objectively determined by the unity and consistency of the state legal provisions and their division into separate interconnected elements: branches of law, sub-branches of law and legal institutions. That is why, in order to substantiate the essence of medical law, it is expedient to determine exactly its system, which should consist of the following elements: medical law provisions; medical law institute; medical law sub-institutes (sub-branches) (Stetsenko, 2004; Ermilova, 2017; Ermilova, 2018).

The said categorization of medical law into the relevant elements is related to the consideration of the internal structure of medical law by "smaller to larger" principle, i.e. from the smallest piece (medical law provision) to the largest (institute and sub-institute (sub-branch) creating together the medical law as a separate branch (Stetsenko, 2004). Thus, the primary element of the medical law system is the provision of medical law, which must be defined as a structural element of the ;aw system, which is defined as a general rule of conduct intended to regulate medical legal relationships, including legal relations in the field of medical treatment, and provided with state coercion.

The specifics of medical law are that as a complex branch, it includes the rules of various branches of law: criminal, civil, administrative, etc. For example, the issue of implementing compulsory measures of a medical nature is regulated by criminal and administrative law provisions. Public administration in health care are regulated generally by administrative law provisions. Civil law regulates relations between patients and health care institutions, health care contracts, etc. (Stetsenko, 2004).

The said provisions should have the following criteria, and namely: a) rules of conduct, which are already enshrined in legal regulations, if they are not fully legalized, but are declarative or not subject to implementation; b) various kinds of social and professional standards which directly regulate the behavior in the health care sector. The institute is the next element of medical law system as the branch. The general theory of law is defined by the law institute as a group of legal provisions that are an integral part of a branch or sub-branch of law and govern homogeneous social relations that are closely interconnected (Strelchenko *et al.,* 2018).

That is why, in our opinion, the institution of medical law must be understood as a structural element of the system of law, which is characterized by a set of legal provisions governing the kind of homogeneous social relations in the medical industry. The theoreticians of the law define the law system sub-institute (sub-branch) as a system of homogeneous subject-related institutes of a certain branch of law (Gordadze *et al.,* 2018; Zharikov *et al.,* 2018).

Many branches of law have their sub-institutes (sub-branches). Unlike legal institutes, sub-institutes (sub-branches) are not compulsory components of each branch, but they are present in the branch in question. Medical law institute includes the following sub-institutes (sub-branches) of law: health care management; public treatment and prevention; medicinal products circulation; paid medical services, etc. Accordingly, our research considers the medicinal products circulation itself, which is a sub-institute (sub-branch) of medical law as a branch of law. We believe that medical law sub-institute (sub-branch) is the direct element of law system (Strelchenko *et al.,* 2018; Kerimov *et al.,* 2019; Kerimov *et al.,* 2016).

Confirmation of the need in establishing an institution of medical law with its sub-institutes (sub-branches) is that it is medical law that is implemented on the basis of medical practice and ways of regulating of the industry. Accordingly, in medical practice, specific rules of behavior are formed, which are transformed into legal medical standards as a set of rules of conduct in the medical sphere, which are considered as the main source of creation and development of the medical law institution. It is of particular importance in the course of today's reforms that medical law as a branch of law becomes actuality, significance, and is experiencing an important time for itself as its becoming a law institute (Kudabayeva *et al.,* 2015; Kudabayeva *et al.,* 2018).

2. Medical law as an institution of law

We had to underline that coherence and development of the medical law institution reflects the development of this public administration, that is, its component, and is the starting point for its development. This position should be confirmed by the objective and subjective factors of the medical law institute development. It should specify the medical law regulation subject, find out its essential features and determine the place of medical law in the legal system of Ukraine among other legal institutions. Issues of legal provision of medical and pharmaceutical activities have recently become of particular relevance in Ukraine.

This is primarily due to the active development of medical and pharmaceutical industry, the introduction of voluntary health insurance and the development of a regulatory framework for the introduction of compulsory state social health insurance, the introduction of reimbursement of medicines, implementation of the Available Medicine Governmental Program, using the latest medical science advances (transplantology, reproductive technologies, cloning), improvement of administration in the field of health care, etc. The above summarizes the necessity of introducing such a powerful institute of law as medical law with its sub-institutes (sub-branches) (Kerimov and Rachinsky, 2016).

Recently, the need for legal protection of patients and doctors, legal support of medical institutions, and the creation of a legislative framework for the health care system reform are all more topical. That need arose due to increased public attention to cases of damage to health due to poor quality of medical care; the emergence of new biomedical technologies (for example, auxiliary reproductive technologies), causing a lot of ethical and legal issues; the necessity of normative and legal support of the initiated reforms in the industry, etc. Scientists emphasize the need to make maximum efforts to create the theoretical foundations and a single concept of medical law, as well as to develop clear positions, not only from the point of view of the theory of law, but also from the practical application of law, approaches to the assessment of relations in the health care as the most important social sphere (Kuznetsov *et al.,* 2018).

Over the past years, the traditional perception of the doctors and pharmacists as artists, and not as a professional, has changed. The development of legislation, the quality control of medical and pharmaceutical assistance, the adverse effects of medical intervention, all of this is far from a complete list of reasons that increase the "legalization" of the profession of doctors and pharmacists, and, accordingly, "legalize" medical law as the institute of law. Today's realities of medical and pharmaceutical practice show clearly that a doctor and pharmacist who does not know their rights and responsibilities and the limits on which responsibility comes must not be admitted to professional activity (Lapidus *et al.,* 2018a; Lapidus *et al.,* 2018b).

To a greater extent, the above applies to the professional medical and pharmaceutical competence (or incompetence) of the health care managers of various ranks in Ukraine. The need for the proper legal competence of this category of doctors and pharmacists is confirmed by various factors, here are the core ones (Strelchenko *et al.,* 2018): health care reform; significant changes in the regulatory framework for regulating the provision of medical care and provision of medines; the introduction of governmental programs to provide medicines for a certain category of patients (Available Medicine Program); fast development of medicine and pharmacy; paid medical

services at public and municipal treatment and prevention institutions; development of voluntary medical insurance; the opportunity for patients to protect their rights in the provision of medical and pharmaceutical assistance, with all available means, including by way of applying to the court, etc. (Molen, 2017; Lapidus *et al.,* 2018c; Portnova, 2019).

Medical law as an institution of law becomes especially important in the light of the medical reform in Ukraine, with new, legislative and regulatory acts, which regulate the creation of a modern, effective national legal system, are being amended, improved, supplemented and created, enabling Ukraine to integrate into European legal community, to form effective institutions of civil society and to build a truly democratic, social, and law-governed state (Voronenko and Radysh, 2016).

Thus, to date, justification of the role and place of medical law in the legal system of Ukraine is absolutely appropriate and urgent. It is worth mentioning that the medical law in European countries is determined differently. For example, in Germany, the structure of medical law includes such components as: treatment law (Arztrecht), pharmaceutical law (Arzneimittelrecht), medical instruments/products law (Medizinproduktrecht), transfusion law (Transfusionsrecht), which are determined by the regulating object. In Poland, medical law is characterized by the rights of patients and the duties of doctors and includes the varieties of legal liability of all subjects of medical legal relationships (Skakun, 2001; Law System Concept, 2019).

In our opinion, the formation and development of medical law should be based on the following principles: firstly, it should have the essential features of law; and secondly, it should arise and exist within the scope of medical professional activity: in science, practice, ethics and deontology of medical workers, the rules and procedures of medical institutions, etc. The coherence and development of the medical law institution reflects the development of this public administration, that is, its component, and is the starting point for its development. This position should be confirmed by the objective and subjective factors of the medical law institute development. It should specify the medical law regulation subject, find out its essential features and determine the place of medical law in the legal system of Ukraine among other legal institutions (Portnova and Portnova, 2019a).

This means that the institution of medical law should have its own peculiarities that determine the method and subject of legal regulation, as well as the system of medical law with its sub-institutes (sub-branches), and legal regulations. The development of the medical law institute is based on medical practice and ways of its regulation. It should be pointed out that during the medical activity specific rules of behavior are transformed into legal medical standards. The basic set of such rules of conduct in the medical field should be considered as the main source of the creation

and development of the medical law institution (Strelchenko *et al.,* 2018; Portnova and Portnova, 2019b).

Accordingly, there was a need for the creation of a separate legal institution within which this activity would be regulated, namely the medical law institution with its interrelated elements. Today, medical law is the branch of law and a part of the legal science, which becomes relevant in the light of the reforms and is experiencing an important time of its creation as an institution of law. Now, there are sharp discussions on the allocation of medical law in a separate institute of law, with its direct institutions of law determining its place in the system of legal science. Arguing the need for the separation of institutes and sub-institutes of medical law, we must distinguish the system of medical law, i.e., its internal structure (Strelchenko *et al.,* 2018).

Conclusion

Based on the foregoing, it should be noted that the sub-institute (branch) of medical law is a structural element of the law system, a separate part of the relevant field of law governing certain groups of public relations in health care industry. In our case, such institute (branch) is medicinal products circulation. We believe that the sub-institute (sub-sector) of the medicinal products circulation should be understood as a structural element of medical law, which includes a system of homogeneous relations that regulate pharmaceutical activity, i.e. the development, production, storage, transportation, quality control, import, export, sale and disposal of medicinal products. As we can see, the circulation of medicines is a kind of pharmaceutical activity, which is carried out in the health care industry as "personified" and large-scale specialized business.

The introduction of a new model for financing medical treatment involves preserving the powers of local self-government bodies in the health sector as a whole, and creating opportunities for their full implementation of tasks that are the creation and proper functioning of the medical law institute with its sub-institutes (sub-branches). The Cabinet of Ministers of Ukraine will clearly define the list of services to be provided within a designated institution, completely ensured at the expense of the state budget.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 278-300
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Characteristics of the Legislative Regulation of Participation of Representatives and Other Participants in the Civil Process

DOI: https://doi.org/10.46398/cuestpol.38e.18

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Abstract

The relevance of the issues outlined in the article is due to the peculiarities of the legislative regulation of the participation of representatives and other actors in the civil process of Ukraine. In this vein, the purpose of the article is to scientifically prove that procedural representation differs significantly from representation in civil law, among other things, in the object and nature of the relationship that exists between the representative and the principal, thus as well as the legal grounds and consequences of both processes. Furthermore, it is observed that the specialist, unlike the expert, acts as an assistant and consultant to the court and does not carry out an independent investigation aimed at clarifying the relevant circumstances of the case. The main method of research on this topic was modeling, which allowed, among other things, to consider the civil process as the only organizational lawsuit that serves to resolve the life situation. It is concluded that the legislative participation

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Recibido: 01/07/2020 Aceptado: 06/08/2020.

model of representatives and other people aims to improve their professional skills aimed at strengthening the work of the judiciary, while managing and resolving various conflicts of different nature to guarantee social order.

Keywords: legal representative in Ukraine; civil process; legislative regulation; social order; power of attorney

Características del Reglamento Legislativo de Participación de Representantes y Otros Participantes en el Proceso Civil

Resumen

La relevancia de las cuestiones señaladas en el artículo se debe a las peculiaridades de la regulación legislativa de la participación de representantes y otros actores en el proceso civil de Ucrania. En este orden de ideas, el objeto del artículo es probar científicamente que la representación procesal difiere significativamente de la representación en el derecho civil, entre otras cosas, en el objeto y naturaleza de la relación que se da entre el representante y el mandante, así como en los fundamentos y consecuencias legales de ambos procesos. Además, se observa que el especialista, a diferencia del perito, actúa como asistente y consultor del tribunal y no realiza una investigación independiente destinada a esclarecer las circunstancias relevantes del caso. El método principal de la investigación de este tema fue la modelización, que permitió entre otras cosas considerar el proceso civil como el único pleito organizacional que sirve para resolver la situación de la vida. Se concluye que el modelo de participación legislativa de representantes y otras personas tiene como propósito mejorar sus competencias profesionales dirigido a fortalecer la labor del poder judicial, al tiempo que gestiono y resuelve diversos conflictos de distinta naturaleza para garantizar el orden social.

Palabras clave: representante legal en Ucrania; proceso civil; reglamento legislativo; orden social; poder judicial.

Introduction

Based on the content of Part 1. Article 58 of the Civil Procedure Code (CPC) of Ukraine (2004), parties, third parties, as well as persons who are authorized to conduct a case in the court on behalf of others' interests, may participate in a civil case individually or through a representative. At the same time, the conduct of the case by the representative does not deprive

the party to the case of the right to personal participation in the process. Parallel conduct of the case by a person involved in the case and his/her representative is a common phenomenon in practice. This is a category of civil cases in which personal explanations on the merits of the case between the parties or third parties are important. For example, in cases of determining the place of residence of a child with one parent, the child's opinion is important, who is able to form and understand it; divorce cases, etc. Scientific work S. Fursa (2010) was devoted to the issues on the legal status of other participants and third parties.

At the doctrinal level, representation in civil proceedings is considered in three senses: as a civil procedural institution; as a legal relationship with the participation of a representative; as the activity of a representative for the conducting the mediation. From a practical point of view, representation in civil proceedings is associated with relations of two levels: the relationship between the person represented and the representative – the basis for their occurrence may be such legal facts as a civil contract, birth certificate, decision on appointment as a guardian, trustee or guardian of hereditary property (initial legal relationship); the relationship between the representative and the court (derivative legal relationship) (Allalyev, 2019; Gordadze *et al.,* 2018).

Persons who are not directly involved in the case and have no legal interest in the outcome of the civil case are considered other participants in the proceedings. The participation of other participants in civil proceedings contributes to the timely and proper consideration and resolution of civil cases. They are usually divided into two groups: persons who assist in the consideration and resolution of a civil case (witness, expert, interpreter, specialist); persons who provide organizational and technical support for civil proceedings (assistant judge, secretary of the court session, court administrator) (Guliyev *et al.,* 2018; Guliyev *et al.,* 2017).

In the doctrine of civil procedural law, participants in the trial are proposed to be considered independent participants in the process. However, given the lack of a doctrinal understanding of the "participant", such an approach is ambiguous. After all, the understanding of the secretary of the court session, the court administrator, the assistant judge determines the consideration of the position of the court as a mandatory subject of the procedural legal relationship. These participants perform fundamentally different functions than such participants as a witness, expert, specialist, interpreter. The secretary of a court session, court administrator, legal status is regulated by the rules of administrative law, as they are civil servants, i.e. – representatives of the state.

In particular, the secretary of the court session, the court administrator, the assistant judge differs from the witness, expert, specialist, interpreter by legal appearance, which has the following qualities:

- professional qualities that create conditions for their tenure in the relevant position in court.
- legal will, ability to make decisions and implement them.
- a set of legal relations and legal relations – connections and relations of a certain subject of law with other subjects.
- the subject of law from the standpoint of social and legal value. It is known that a person's interests are determined by the basis for the emergence of legal values.

These general features of the status of the secretary of the court session, court administrator, assistant judge give the right to characterize them as subjects of law in general, and not as subjects of civil procedural law in particular. Therefore, their legal personality should be understood through the recognition of their subject of law by the rule of law, because the legal guarantees for their activities, social and other protection, these persons are used precisely as those who hold the relevant positions. The basis of their procedural legal personality should be considered their competence as persons holding civil service positions in court.

Thus, other participants in the trial have a special legal personality of the court, which is characterized by a multifunctional nature with signs of organization. In turn, a witness, expert, interpreter, specialist is considered subjects of civil procedural law. In this case, the participation of the secretary of the court session, the court administrator, the assistant judge in the court session and the performance of their duties does not depend on the subject matter of the dispute in the process (Kerimov *et al.,* 2015; Kerimov *et al.,* 2018a).

In the research process the following methods were used: theoretical (analysis, synthesis, concretization, generalization, method of analogies, modeling); diagnostic (task method); empirical (study of the experience of civil proceedings and participation in civil proceedings of representatives and other persons); experimental (ascertaining, forming, etc.) and others. The research base of the study was the Research Institute of Private Law and Entrepreneurship named after Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine and judicial practice. The study of the problem was conducted in two stages:

- at the first stage the theoretical analysis of the existing methodological approaches in jurisprudence and civil proceedings, dissertations on the problem, as well as the theory and methods of the peculiarities of the participation of representatives and other persons in civil proceedings was carried out; identified problem, purpose, and research methods;

- at the second stage the model of participation of representatives and other persons in court case was developed; analyzed, checked, and clarified the conclusions obtained in the course of scientific work, summarized, and systematized the results.

1. Features of the relationship of the person represented and the representative

The initial (substantive) relationship between the person represented and the representative is the basis for the emergence of representative legal relations in civil proceedings. That is, without an established relationship between the principal and the representative, it is impossible for a court to have procedural legal relations with the participation of a representative (as an exception to this general rule, the so-called "consular" representation can be cited). Thus, all issues of the relationship between the representative and the person he represents are governed by the rules of Chapters 17 and 68 of the Civil Procedure Code of Ukraine (2004).

Instead, procedural representation differs significantly from representation in civil law in its purpose and nature of the relationship between the representative and the principal, on the grounds, legal consequences and so on. Thus, in some cases, representation in substantive legal relations is inadmissible (for example, entering into a marital relationship through a representative), while in the protection of such interests in civil proceedings there are no restrictions (for example, protection of the interests of one spouse by a representative in the cases of recognition marriage as invalid) (Kerimov *et al.,* 2018b; Kerimov *et al.,* 2018c).

At the same time, the authority of a representative in civil proceedings depends entirely on the powers delegated to him by the principal, because his legal position may not contradict the interests of the person he represents (meaning cases of voluntary representation). The activities of a representative in court must be lawful and specifically defined. That is why in para. 2 chapter 4 of the Code of Civil Procedure of Ukraine sets out the requirements for the legal status of the representative, documents confirming his authority, the peculiarities of his appointment or replacement (Fursa, 2010; Kerimov *et al.,* 2017; Kerimov *et al.,* 2019).

However, part 2 of Art. 58 of the CPC of Ukraine leaves unanswered the question of the possibility of participation in the case of several representatives with different, for example, powers (Civil Procedure Code of Ukraine, 2004). In general, in practice, these issues do not cause significant difficulties, because the rule about the possibility of participation in the

case together with a person whose rights and interests have been violated, several representatives with the same or different powers has become almost axiomatic. Moreover, the possibility for a person to represent his rights and interests together with the representative does not cause any objections (Kerimov *et al.,* 2016; Kerimov and Rachinsky, 2016).

Special attention deserves the possibility of self-representation of one's rights and interests directly by a legal entity through its head or a member of an executive body authorized to act on its behalf in accordance with the law, statute, regulations (self-representation of a legal entity) or by involving a representative in the case. In this regard, it should be noted that the current version of Part 3 of Art. 58 of the CPC of Ukraine (2004), compared to the previous version, is clearer, as it explicitly states that such self-representation is possible by participating in the case of the head or authorized member of the executive body, and not any legal entity, as provided in the previous version. In this regard, it has been repeatedly emphasized that the participation of the board of directors of the company in the process of consideration of the case is impractical (Fursa, 2010).

The current version of this article stipulates that the participation of the head of a legal entity, as well as an authorized member of the executive body, is not a representation in civil proceedings, as such a legal entity actually takes action to protect their rights and interests personally (self-representation). That is, the head of a legal entity has the right to apply to the court on its behalf without registration of powers to do so. Instead, a legal entity may apply to the court through a representative only by proxy (Kuznetsov *et al.,* 2018; Lapidus *et al.,* 2018a).

The issue of representing the interests of the state or territorial community as participants in civil legal relations also deserves special attention within the framework of this study. It should be noted that the participation in civil law of such subjects of public law as the state and the territorial community is not their main purpose. The state of Ukraine as well as the territorial community in the civil law aspect is not a set of persons, but a single participant (subject) of civil legal relations, organized on a corporate basis. Within the framework of civil legal relations, these subjects act in their own interests, which should not be equated with the private interests of any of the citizens of Ukraine or members of the territorial community.

Thus, the state of Ukraine as well as the territorial community in civil proceedings act on their own behalf through the relevant body of state power, local government in accordance with its competence. Thus, public authorities, local councils, executive committees are subordinated to the state of Ukraine or the territorial community. Accordingly, the actions of the head of such a body during the trial are the realization of the rights and obligations of the state or territorial community, and not these bodies.

Therefore, the relevant body of state power or local self-government is controlled and accountable in its activities to the state or territorial community. That is, in the relevant procedural legal relations, these bodies are representatives of the state or territorial community, to which in case of a dispute civil lawsuits are filed (Lapidus *et al.,* 2018b; Lapidus *et al.,* 2018c).

Representation in civil proceedings as well as in law is generally not uniform and is subject to classification according to different criteria. Thus, legal representation and contractual representation are two separate sub-institutions, each of which has its own subject of regulation, although neither of them falls outside the general principles of civil procedure representation. Legal representation in civil proceedings is reflected in the fact that the legal representative becomes a participant in the process and is endowed with the relevant procedural rights only after admission to participate in the case.

A person may have several legal representatives in the common law sense, but a party to the case, following the content of Art. 42 of the CPC, will be only one of them who is specially admitted to the case by the court. Moreover, not every legal representative in the general legal sense can be a legal representative in civil proceedings. For example, the conflict of interests of the legal representative to the interests of the represented person (Civil Procedure Code of Ukraine, 2004).

The basis for the entry of legal representatives into civil proceedings may be: the fact of the origin of children from the respective parents, certified in the manner prescribed by law; the fact of adoption of children; the fact of appointment of guardianship or custody; the fact of failure or improper performance of the function of protection of the rights and interests of minors, incapable or partially incapable individuals by legal representatives, etc.

Legal representatives may be parents, adoptive parents, guardians, trustees or other persons specified by law, persons (grandfather, grandmother, brother, sister, stepmother, stepfather) (Articles 258, 262 of the Family Code of Ukraine, 2002); representatives of the prosecutor's office (Part 2 of Article 23 of the Law of Ukraine, 1991); trade union representatives (Article 26 of the Law of Ukraine, 1999), etc. For example, parents in accordance with Art. 155 of the Family Code of Ukraine (2002) have the right to go to court to protect the rights and interests of the child, as well as incapacitated son, daughter as their legal representatives without special powers. This obligation to protect the rights and interests of children lies with their adoptive parents, who are equated by the legislator in the rights and responsibilities to the child's parents.

As a rule, legal representatives should have procedural legal capacity. As an exception, the court may allow the representation of the interests of its child to minor parents who have reached the age of fourteen, with the possibility of using free legal aid. Thus, Part 3 of Art. 59 of the Code of Civil Procedure of Ukraine provides for the right of legal representatives to entrust the proceedings in court to other persons (Fursa, 2010). Liability for the choice of a representative arises if the legal representative is to blame for improperly choosing who he/she instructs to represent the interests of minors, minors, incapacitated or partially incapacitated persons. When deciding whether the choice of a deputy is made correctly, it is necessary to proceed from the requirements that are usually put forward to the representative under the contract, and the peculiarities of the content of powers.

The responsibility of the legal representative for the selection of a deputy will be reflected in the latter's obligation to compensate for damages caused by the actions or omissions of another person involved in the court proceedings. Thus, a representative in court may be an attorney or legal representative – a person who has reached eighteen years of age and has civil procedural capacity, an official of the body authorized by law to apply to the court in the interests of minors or persons who have been declared incompetent by a court or whose legal capacity is limited.

2. Limitations for the participation of an attorney in civil proceedings

In accordance with Art. 6 of the Law of Ukraine (2013) "On the Bar and Practice of Law", an attorney is an individual who has a complete higher legal education, speaks the state language, has experience in law for at least two years, passed a qualifying exam, passed an internship (except as provided by this Law), took the oath of an attorney of Ukraine and received a certificate of the right to practice law. One of the types of attorney activities enshrined in the Law of Ukraine (2013) "On the Bar and Practice of Law" is the representation of the victim's interests during the consideration of an administrative offense case, the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings and representation of individuals and legal entities. in courts during civil, commercial, administrative, and constitutional proceedings, as well as in other state bodies, before individuals and legal entities.

The participation of an attorney in civil proceedings is in some cases limited by current legislation (Civil Procedure Code of Ukraine, 2004; Law of Ukraine, 2013; Attorneys' Code of Ethics, 2017). In particular, an attorney may not act in court in cases where he provides or has previously provided

legal assistance in this case to persons whose interests are contrary to the interests of the person who requested the case, or participated as a judge, prosecutor, court clerk, expert, specialist, witness, interpreter, investigator, person conducting the inquiry, civil plaintiff, civil defendant, witness, representative of the victim, as well as when the case involves an official with whom the attorney is related.

The Law of Ukraine (2016b) "On Amendments to the Constitution of Ukraine (Regarding Justice)" of June 2, supplemented the Constitution of Ukraine (1996) with Article 131, which stipulates that only an attorney represents another person in court, as well as protection from criminal charges. At the same time, the same article enshrines exceptions to the general rule. Thus, when considering disputes arising from labor relations, as well as cases in minor disputes (minor cases), representation in court is allowed not only by an attorney or legal representative, but also by any person who has reached eighteen years and is endowed with civil capacity, despite the lack of basic legal education. Applications for the settlement of labor disputes are submitted to the court at the location of the defendant. When applying to the court to resolve a labor dispute, employees are exempt from paying court costs. A similar approach is enshrined in the representation of the interests of the individual in minor disputes (Law of Ukraine, 2016b).

Analyzing the powers of officials of bodies authorized by law to apply to the court in the interests of minors or persons who have been declared incompetent by the court or whose capacity is limited, it is appropriate to emphasize that such powers are primarily vested in prosecutors, consulate officials, etc. In the theory of civil procedure, representation by officials of consular offices is also called official representation (Tertyshnikov, 1997). In general, the issue of the consul's participation in civil proceedings as a representative of minors, incapacitated or partially incapacitated persons is regulated at the level of consular conventions (agreements) concluded between Ukraine and other states. Representation in court of the interests of persons who do not have full legal capacity (incapacitated, partially incapacitated or minors) occurs only if such a person does not have a legal representative or a legal representative cannot directly participate in the process for various reasons. Moreover, consular officers, provided that such a right is enshrined in international treaties between the two countries, have the right to appoint a guardian or trustee and to supervise the latter's actions in the interests of persons without full legal capacity.

Accordingly, when considering such a case, the court must, in case of procedural actions affecting the interests of persons with no legal capacity, guardians or trustees appointed by consular officers (recognition of the claim, complete or partial waiver of the claim, amicable agreement, etc.), to require permission to perform such actions from officials of the consular

post. That is, a consul or other official who performs consular functions, when representing the interests of minors, minors, incapacitated or partially incapacitated persons, is endowed with the same powers as the legal representative.

Representation by the prosecutor of the rights and interests of citizens is used to protect categories of the population who are unable to go to court to protect their rights and interests due to health, physical development, or other valid reasons. Representation of the interests of a citizen and the state in court by the Prosecutor's Office of Ukraine is one of the types of representation in court, and at the same time differs from other types of representation by a number of specific features: composition of representatives and the range of subjects they represent, powers, forms of their implementation (Judgment of the Constitutional Court of Ukraine No 3-Рп/99, Rendered in the Case No 1-1/99, 1999).

The civil procedural legal personality of a prosecutor differs from the legal personality of a party in the process primarily in that he protects the rights of the party, and the party – its material rights and interests. The prosecutor is not a representative of the party, because in civil proceedings he acts independently, without the authority of the party, based on law. That is, the prosecutor in civil proceedings acts in the interests of minors, minors, incapacitated or partially incapacitated persons as an official of a state body, who on the basis of the law and official position performs the tasks and functions assigned to the prosecutor's office.

Instead, Article 61 of the CPC of Ukraine (2004) establishes a list of persons who cannot be representatives in court. That is, the legislator enshrined the prohibition of procedural combination in the same court case by a clear list of persons who cannot represent in court the rights and interests of the principal. Such persons are the secretary of the court session, an expert, a specialist, an interpreter, a witness, an assistant judge who is considering the case. In addition to the above list, a person who represents or has represented in this case another person whose interests in this case contradict the interests of his principal may not act as a representative in court. That is, lawyers cannot be represented in court if there is a conflict of interest between their principal (for example, the plaintiff in the case) and the defendant or a third party acting on his side. This legislative approach is quite justified given the violation of the principle of objectivity or impartiality in representing the interests of its principal.

In addition, it is prohibited to be representatives in court proceedings in connection with the holding of the relevant position by judges, prosecutors, investigators, employees of units engaged in operational and investigative activities. Such restrictions on the rights of these persons are due to their official status. At the same time, part 3 of Article 61 of the CPC of Ukraine (2004) provides for an exception to the above rule, when judges,

prosecutors, investigators, employees of units conducting operational and investigative activities, in case of such actions on behalf of the relevant body, which is a party or third party. For example, when a claim for damages and compensation for non-pecuniary damage for illegal actions is brought before the body of inquiry, investigation, etc.), or as legal representatives may act as representatives in court proceedings. These persons represent the interests of the relevant body, which is a party or a third party in the case, or a citizen, if the latter is unable to protect their violated or disputed rights or exercise procedural powers due to underage, incapacity or limited capacity, and legal representatives or bodies, which law gives the right to protect the rights, freedoms and interests of such a person, do not exercise or improperly protect it. In case the court confirms the existence of grounds for representation, the latter is granted the powers of the relevant party to the process, with the appropriate rights to apply to the court with a claim; entering into a case initiated by another person at any stage of court proceedings; initiatives to review court decisions; direct participation in the case; acquaintance with case materials, etc.

3. Proper consideration and resolution of civil cases and contribution of other participants (witness, assistant judge, secretary of the court session, court administrator) to it

It is considered that the assistant judge is an employee of the court staff and is accountable only to the relevant judge. In his work the assistant judge is guided by the Constitution of Ukraine, the Law of Ukraine (2016a) "On the Judiciary and the Status of Judges"; Article 92 of the Law of Ukraine (2016c) "On Civil Service", relevant procedural codes, other laws and regulations of Ukraine, Rules of Conduct, approved by the Council, decisions of the meeting of judges of the relevant court, the Instruction on court records, the Rules of internal labor regulations of the court, this Regulation, as well as job descriptions. The assistant judge is subject to labor legislation, except for Articles 391, 41-431 and 491 of the Labor Code of Ukraine (1971). An assistant judge may be a citizen of Ukraine who has a higher legal education and is fluent in the state language. Assistant judges of the Supreme Court must also have at least three years of professional experience in the field of law.

According to the job description, which is approved by the head of the court staff in agreement with the meeting of judges of the relevant court, the fundamental rights include (Standard job description of the Court Administrator of the Local General Court, 2005):

- to enjoy the rights and freedoms guaranteed to citizens of Ukraine by the Constitution and laws of Ukraine.
- receive from the staff of the court to which it is attached, documents and information necessary to perform their duties.
- use information databases, telecommunication networks of the relevant court in the prescribed manner.
- make proposals to the judge on the organization of their work.
- in agreement with the judge to participate in conferences, seminars, round tables, forums, other scientific and practical events, and at the request of the judge – to undergo internships in the relevant departments of state bodies.
- participate in meetings, staff meetings and other similar events of the relevant court.
- improve their professional level in the system of training and retraining of court staff.
- the right to respect for personal dignity, fair and respectful treatment of themselves by managers, employees, and citizens.
- the right to remuneration in accordance with current legislation.
- the right to social and legal protection in accordance with their status.

The assistant judge is obliged to: timely and efficiently carry out the instructions given to him by the judge; adhere to the deadlines for preparation of documents and execution of orders; constantly improve their professional level and qualification; treat the property of the court carefully; in the performance of their official duties not to allow violations of human and civil rights and freedoms.

An assistant judge in his/her professional activity must adhere to the ethical norms related to his/her status and stipulated by the Code of Conduct for a Court Employee, in particular, Section 2 "Personal Ethics" (Rules of Conduct for Court Employees, 2013). An assistant judge is prohibited from:

- committing acts of a procedural nature, as well as actions that may entail the emergence, change or termination of the rights and obligations of litigants (except for the exercise on behalf of a judge or presiding judge of the court secretary in in the absence of the latter);
- disclose information that constitutes a state or other secret protected by law, as well as information that became known to him in connection with the performance of official duties, in particular,

relating to the private life and health of citizens or affecting their honor and dignity;

- publicly express their opinion on the case under consideration, or provide information, advice, etc. on the circumstances that may be the subject of consideration in court.
- post information on social networks, Internet forums and/or comment on information that may harm the authority of the judge and the judiciary in the case of their registration on social networks, indicating the place of work and position.

An assistant judge should enhance the authority of the judiciary, demonstrate tact, courtesy, endurance, and respect, avoiding disrespect for others, and actions and statements that may undermine the authority of the judiciary, courts and judges. Depending on the type and nature of the violation, the assistant judge shall bear disciplinary, civil, administrative or criminal liability in accordance with applicable law, in particular for: non-performance, late or improper performance of his duties; exceeding their powers defined by law; inaction or unfair use of the rights granted to him; non-compliance with the requirements of the legislation on information, state secrets and protection of personal data; non-compliance with the requirements of anti-corruption legislation of Ukraine; non-compliance with the requirements of regulations on labor protection and fire safety rules; non-compliance with the restrictions established in the Regulations related to admission to the patronage service and the passage of the patronage service; for violation of the rules of internal labor regulations of the court and labor discipline and the Rules of Conduct of a court employee.

To properly ensure the consideration of civil cases, in contrast to the assistant judge, the Secretary of the court session monitors the return to the court of receipts for service of court summons. Receipts of persons who have received court summons, as well as court summons returned due to non-delivery to their addressee, are attached to the case. In cases of non-service of court summonses, the Registrar is obliged to find out all the reasons for non-service, report to the presiding judge and, on his instructions, take measures to ensure the timely service of the court summons.

According to the Labor Code of Ukraine (1971), the Laws of Ukraine "On Civil Service" and "On Combating Corruption", the Secretary of the court session is liable for violation of labor discipline, poor or untimely performance of official duties, inaction or non-fulfillment of rights granted to him, violation of norms ethics of civil servant behavior and restrictions related to admission to the civil service and its passage (Labor Code of Ukraine, 1971; Law of Ukraine, 1995; Law of Ukraine, 2016c). In the absence of a Registrar of the court, the secretary of the court session performs simultaneously with his functions, the duties of a Registrar of the court.

In turn, the Registrar of the court is an official of the local court, whose status is determined by the Law of Ukraine (2016c) "On Civil Service" taking into account the features defined by the Law of Ukraine (2016a) "On the Judiciary and the Status of Judges", who creates appropriate abidance of the established rules in the courtroom. The activity of a Registrar of the court in courts of general jurisdiction is regulated, in addition to the Code of Civil Procedure of Ukraine, by the above laws and "Regulations on the Procedure for Establishing and Operating the Service of Court Administrators" (2017), and "Standard Job Description of the Court Administrator of the Local General Court" (2005).

The Registrar of the court is obliged to ensure the proper condition of the courtroom and invite participants to the trial, announce the entry and exit of the courtroom from the courtroom and invite everyone present to stand up, monitor the order of persons present in the courtroom, and perform the order of the presiding judge to swear in the interpreter, the expert and to accept documents and other materials from the participants of the trial present in the courtroom and to submit them to the court. Participants in civil proceedings must comply with all the requirements of the Registrar of the court related to the performance of his/her duties, as they are obligatory for them. Violation of these requirements is the basis for the court to apply measures of procedural coercion.

The basis for entering into civil proceedings of witnesses should be considered the relevant data of his/her awareness of the circumstances of the case. After all, a witness is a carrier of information about events and an indispensable source of evidence in civil proceedings. The value and difference of a witness from other participants in the process lies, among other things, in the legal disinterest in the outcome of the dispute. The rule on the obligation of a witness to testify in court is constitutional. However, it is impossible not to take into account that the witness also has the general status of a natural person, which provides him/her with legal guarantees.

In the dictionary, a term "witness" is used in at least three, in some way related meanings: a person who was present at any event, adventure and personally saw something; a person summoned to court to certify the circumstances known to him/her; a person present at something to officially confirm the validity or correctness of something (Bilodid, 1978). Thus, a witness in civil proceedings is a natural person, without age restrictions, who has a special legal status in court. The activities of a witness are of a targeted nature, which sets the appropriate direction for the witness to exercise his rights and perform his duties.

The witness should meet certain characteristics, in particular: the witness should be only a natural person; the witness should have such physical and mental development that allows him/her to correctly perceive the circumstances and/or to speak about them; the witness should have the

information necessary to resolve the case; the witness must not have a legal interest in the results of the case; the witness perceives the circumstances of the case directly or indirectly; the perception of the circumstances of the case by the witness is not related to its consideration; the involvement of a person as a witness in a civil case is based on a court decision.

The participation of juvenile witnesses in court proceedings takes place in the presence of parents, adoptive parents, guardians, trustees, if they are not interested in the case, or representatives of guardianship and custody, as well as the children's service. Thus, despite the importance of the participation of minors as witnesses in court proceedings, primarily as sources of information, they should also be considered as subjects of civil procedural law.

The following persons are not entitled to examination as witnesses:

- incapable physical persons, and persons who are registered in or undergo medical treatment at residential psychiatric facility and are not able to perceive circumstances that are relevant to the case correctly or to testify because of their physical or mental defects.
- persons obliged by law to keep in secret information that had been entrusted to them in connection with their official or professional status – examination of such information.
- the clergy (about the information they obtained during the confession of believers).
- judges, people's assessors and jurors (about the circumstances of discussion of the issues that arose during the approval of decision or sentence in a courtroom);
- the persons who have diplomatic immunity cannot be examined as witnesses without their consent, and representatives of diplomatic missions – without the consent of a diplomatic representative (Law of Ukraine, 1993).

In terms of the ability to make decisions and implement them, the right of a witness to refuse to testify about himself, close relatives in cases provided by law (Article 63 of the Constitution of Ukraine) deserves attention. In accordance with Part 1 of Art 185 of the Code of Ukraine on Administrative Offenses (1984), a witness is brought to administrative responsibility in case of: contempt of court, which was expressed in malicious evasion from appearing in court; in disobedience of the said persons and other citizens to the order of the presiding judge or in violation of the order during the court session; committing any actions that indicate a clear contempt of court or rules established in court.

4. The role of an expert, a specialist, and an interpreter in civil proceedings

Among other participants in the civil proceedings, an expert, a specialist, and an interpreter stand out. An expert is a person who is entrusted with the study of material objects, phenomena and processes that contain information about the circumstances of the case, and to give an opinion on issues that arise during the proceedings and related to the scope of his special knowledge. The expert must have special knowledge in the field of science, technology, arts, crafts, etc., necessary to clarify the relevant circumstances of the case and provide an opinion on the issues under investigation.

Based on the court's decision, the expert is instructed to conduct a study of material objects, phenomena and processes that contain information about the circumstances of the case and provide an opinion on issues that arise during the case and relate to the scope of its special knowledge. The main legal acts that determine the status of an expert in civil proceedings are the CPC of Ukraine, the Law of Ukraine (1994) "On Forensic Examination", "Instruction on the appointment and conduct of forensic examinations and expert examinations" (1998), approved by the Ministry of Justice of Ukraine No 53/5, as amended by the order of the Ministry of Justice of Ukraine No 1950/5 and the Instruction on the peculiarities of forensic activities by certified forensic experts who do not work in state specialized expert institutions, approved by the order of the Ministry of Justice of Ukraine No 170/5 (Instructions on the peculiarities of carrying out forensic expert activity by certified forensic experts who do not work in state specialized expert institutions, 2011).

A reasoned and objective written opinion of the expert must contain answers to all questions asked by the expert. The expert's opinion means a detailed description of the research conducted by the expert, the conclusions made as a result and substantiated answers to the questions posed to the expert. If necessary, when examining the expert's opinion, for additional clarifications, the court shall issue a decision to summon the expert to a court hearing. The expert is obliged to appear in court and explain his conclusion to the court and the parties to the case and answer all their questions. The expert may participate in the court hearing by videoconference, in the absence of objections of the parties.

In the case of an expert study with complete or partial destruction of the object of examination or change of its properties, the expert must obtain the appropriate permission of the court, which is issued by a decision. In the case of the involvement of an expert in the case, the latter is notified of the consequences of the expert study with the receipt of written permission to

conduct it. At the end of the examination, the expert objects are provided, regardless of whether they are intact or damaged, or their remains, as well as other materials belonging to them are returned to the court.

In cases provided by law, the expert may be held liable for non-performance or improper performance of his duties. In general, the expert is criminally liable for a knowingly false conclusion – Article 384 of the Criminal Code of Ukraine (1960); administrative liability for contempt of court, etc.; disciplinary liability for violations during the examination, which do not entail criminal or administrative liability – paragraph 2.4. "Instructions on the appointment and conduct of forensic examinations and expert examinations" (1998), approved by the order of the Ministry of Justice of Ukraine. Measures of procedural coercion may be applied to the expert warning and removal from the courtroom (Articles 143-145 of the CPC of Ukraine).

In case of insufficiency of materials for a court opinion and proper justification for the impossibility of obtaining them (for example, if it is impossible to obtain the necessary additional samples for genetic testing, a person recognized in court as missing), the expert may refuse to provide such an opinion. In the statement of refusal, the expert provides a detailed justification. Unlike an expert, a specialist acts as an assistant and consultant to the court. The court engages a specialist to participate in the trial in cases where there is a need to perform such procedural actions as photography, drawing up diagrams, plans, drawings, sampling for examination, etc. As a specialist, you can involve any individual who has special knowledge and skills in the use of technical means, as well as could provide advice on issues that require relevant special skills and knowledge, or directly provide technical assistance.

In the legislation there are two forms of participation of a specialist in civil cases – advisory, which consists in providing advice during the commission of procedural actions on issues that require certain special skills and technical assistance during the commission of procedural actions. A separate type of participation of a specialist in a civil case may be the participation of a psychiatrist. In exceptional cases, if a person against whom proceedings have been instituted in the case of restriction of his civil capacity or recognition of his incapacity to pass the examination, the court with the participation of a psychiatrist may decide to forcibly send an individual for forensic psychiatric examination (Article 298 of the CPC of Ukraine). It should be noted that the assistance of a technical specialist during the commission of procedural actions does not replace the expert's opinion, and therefore, if there are appropriate grounds for the study, it is necessary to appoint an examination.

In cases provided by law, a specialist may be held liable for non-performance or improper performance of his duties. A specialist may be

held administratively liable for contempt of court, disorderly conduct during a court hearing, etc., as well as coercive measures, including warning and removal from the courtroom (Articles 143-145 of the CPC of Ukraine). It should also be borne in mind that a person is admitted to civil proceedings as a specialist if he or she is not interested in the case. The CPC of Ukraine states the grounds for dismissal and provides for the impossibility of participation of a specialist in civil proceedings.

All explanations and consultations provided by a specialist are not recognized as an independent source of evidence, they only have an auxiliary character in the examination of evidence or other procedural actions and cannot replace the conclusions of the expert. Given the fact that the proceedings are conducted in the Ukrainian language, a participant in civil proceedings, if necessary, may be an interpreter.

An interpreter is a person who is fluent in the language of the proceedings and another language whose knowledge is required for oral or written translation from one language to another, as well as a person who has the technique of communicating with the deaf, dumb or deaf. Any natural person may be involved as an interpreter if he or she is fluent in: the language of the proceedings and another foreign language that is needed during the trial; the state language and technique of communication with the deaf, dumb or deaf-mute; there are no grounds for its removal provided for in Art. 39 CPC of Ukraine. The interpreter enters the civil proceedings at the request of the person involved in the case or is appointed on the initiative of the court.

The interpreter is criminally liable for knowingly false translation (Article 384) and administrative liability for contempt of court, etc. (Criminal Code of Ukraine, 1960). Given that it is not possible to remove an interpreter from the courtroom, as a person who does not speak or does not speak the state language sufficiently will be deprived of the relevant services if the interpreter repeatedly violates the order during the court hearing or fails to comply with the presiding judge's instructions, the court can take a break and allow time to replace the interpreter.

Conclusion

Summarizing the above, we conclude that the legislative regulation of the participation of representatives and other participants in civil proceedings is a necessary component of the Ukrainian judiciary, which contributes to the rapid and high-quality consideration of civil cases. The article substantiates that the optimal models of civil procedural representation are legal and contractual representation, which corresponds to modern trends

of democratic, social, legal state. It is emphasized that the principle of the rule of law and the rights and freedoms of the individual are fundamental principles of the functioning of the judiciary. The legal nature of procedural representation gives grounds to assert that it is an integral part of the effective functioning of civil proceedings, which serves to ensure the legal mechanisms for the protection of individual rights.

The implementation of civil procedural representation is one of the necessary conditions for ensuring mechanisms to protect the civil rights and legitimate interests of the individual. Attention is paid to strengthening the institution of procedural representation by increasing the rights of principals and representatives and systematization of norms on the conditions and grounds of legal civil procedural representation. Attention is drawn to the need to strengthen the process of adaptation of civil procedural legislation to the requirements of the European Union law in the field of representation, as well as strengthening the role of other participants in civil proceedings in accordance with the importance of international cooperation in protecting civil rights and interests of Ukrainian citizens, including those who is abroad.

It is noted that other participants in civil proceedings also contribute to the administration of justice; they are endowed with a number of rights and responsibilities aimed at ensuring the proper performance of their procedural functions. The peculiarity of the procedural status of an interpreter and a specialist is also their application of their knowledge and skills of different legal nature. The materials of this article can be used for a wide range of lawyers, as well as specialists in the field of civil justice, in particular: scientists, graduate students, lawyers, notaries and anyone interested in current issues of civil procedural law of Ukraine. In the process of research, new problematic issues arose that need further scientific solution. It is necessary to continue scientific research to address these issues, to form new scientific approaches to improving the introduction of litigation in the civil justice system by other participants, as well as to promote the participation of representatives in civil proceedings.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 301-320
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Approaches to the formation of Public Administration in the Context of Decentralization Reform in Ukraine

DOI: https://doi.org/10.46398/cuestpol.38e.19

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Abstract

Based on the analysis of the works of national and international scientists and professionals available in the bibliography, the article aimed to reveal a conceptual vision of the application of innovative approaches to the training of public servants in a decentralized environment. Emphasis is placed on solving the urgent problem of public administration that is expressed in the professional capacity of those who form and implement public policies to solve socially significant problems under indeterminate conditions during the implementation of the decentralization reform in Ukraine. Methodologically, the text document analysis technique was used. The authors propose a professional training program for public servants, including community leaders, which is a synthesis of methodological techniques, as well as modern personnel technologies, such as: change management, design thinking, gender approach, human resource management , HR management, time management, etc. By way of conclusion, the convenience of using innovative

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Recibido: 03/07/2020 Aceptado: 26/08/2020.

approaches that meet the needs of each consumer of public services and can ensure effective and competitive development of the territories is verified. Furthermore, the article reveals the conceptual provisions that should form the basis of a new model of public service.

Keywords: public servants in Ukraine; administrative decisions; innovation in public services; decentralization in Ukraine; political and administrative reforms.

Enfoques para la formación de la Administración Pública en el Contexto de la Reforma de Descentralización en Ucrania

Resumen

Basado en el análisis de los trabajos de científicos y profesionales nacionales e internacionales disponible en la bibliografía, el artículo tuvo por objetivo revelar una visión conceptual de la aplicación de enfoques innovadores a la formación de servidores públicos en un entorno descentralizado. Se enfatiza en la solución del problema urgente de la administración pública que se expresa en la capacidad profesional de quienes forman e implementan políticas públicas para resolver problemas socialmente significativos en condiciones indeterminadas durante la implementación de la reforma de descentralización en Ucrania. Metodológicamente se utilizó la técnica de análisis de documentos de texto. Los autores proponen un programa de formación profesional para servidores públicos, incluidos líderes comunitarios, que es una síntesis de técnicas metodológicas, así como tecnologías modernas de personal, tales como: gestión del cambio, pensamiento de diseño, enfoque de género, gestión de recursos humanos, gestión de RRHH, gestión del tiempo, etc. A modo de conclusión se comprueba la conveniencia de utilizar enfoques innovadores que satisfagan las necesidades de cada consumidor de servicios públicos y se pueda asegurar un desarrollo eficaz y competitivo de los territorios. Además, el artículo revela las disposiciones conceptuales que deberían formar la base de un nuevo modelo de servicio público.

Palabras clave: servidores públicos en Ucrania; decisiones administrativas; innovación en servicios públicos; descentralización en Ucrania; reformas políticas y administrativas.

Introduction

The transformation of public administration is manifested in the transformations that allow optimizing the power structure, balancing the relationship between the center and the territories for the efficient use of existing resources (human, financial, natural, property and others) (Vasylieva, 2009). In Ukraine, on the one hand, there is a reform of decentralization of power, and on the other – there is an institutional crisis. Any crisis is a test of the system (state, society, individual) for the ability to function and adequately, systematically and rationally respond to unexpected changes in the current situation. Ineffective mechanisms of interaction between government and society lead to conflicts in the country (Vasylieva and Vasylieva, 2018). The results of the reforms directly depend on the professionalism and responsibility of the management staff that shape and implement public policy, as far as their decisions are clear and meet the needs of the population (Allalyev, 2019; Kerimov *et al.,* 2015).

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. Referring to the decentralization processes in society, the state tries to abdicate responsibility for organizing proper legal, financial, informational, and other coordination of activities of all participants in crisis management in various spheres and regions of the country. Personnel experiments create conditions in which it is difficult to meet the demands of the population, primarily related to ensuring their safety.

In our opinion, the application of design thinking will allow in complex and uncertain situations to make informed management decisions that will be aimed at meeting the needs of each consumer of public services and ensure effective and competitive development of territories (settlement, region, state). And also, to create added value of the received product – qualitative results of realization of reform of decentralization through effective adjustment of activity of public servants and functioning of sphere of public services (Gordadze *et al.,* 2018, Kerimov *et al.,* 2018a; Kerimov *et al.,* 2018b).

The article reviews international and domestic research on selected issues. Scientific publications (Spina, 2013; Muriu, 2013; Moisiu, 2014; Mookherjee, 2014; Sow and Razafimahefa, 2015; Martinez-Vazquez *et al.*, 2017; Troncoso *et al.*, 2017; Bojanic, 2018) allow to identify the causal links that occur between the subjects of decentralization reform. Review of individual reforms in different continents confirmed the dependence of the public service sector on the establishment of relations between

public authorities, citizens and business representatives (education: USA – Edwards and DeMatthews (2014); medicine: Western Europe – Saltman *et al.* (2007); Rechel *et al.* (2018); Liwanag and Wyss (2018); agriculture: Understand, analyse and manage a decentralization process (2006).

The authors (Bach, 2001; Burke *et al.*, 2013; Yahiaoui *et al.*, 2015; Daly, 2015; Knies and Leisink, 2018) emphasized the importance of human resource management in the public sector and the involvement of professionally trained officials in public affairs. Staff selection, management and motivation are important for the success of public administration. Any crisis creates space for new social, economic, political and other changes in the development of society, including and to personnel management, public services, etc. (Weber, 1980). It is argued that global and national recessions, crises, conflicts, and catastrophes are a test of the ability of public managers to respond effectively to them (Kellis and Bing, 2013). From this point of view, it is interesting to introduce design thinking as an innovative concept that allows you to analyze, synthesize and find the optimal solution to overcome barriers (Razzouk and Shute, 2012; Lyasnikov and Usmanov, 2019; Kerimov *et al.,* 2018c).

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, which led to the feasibility of researching the subject of the article. Analyze the work of international and domestic scholars and practitioners on the formulation of an innovative conceptual vision for training in public administration in the implementation of the reform of decentralization of power. Justify the need to apply innovative approaches, including design thinking, to the training program for civil servants.

1. Materials and Methods

To form the source base, the method of analysis of full-text documents by keywords was used: decentralization reform, public service, management decisions, innovations, design thinking, services. The search was not limited to geography, language, time of publication of scientific publications and research format, which allowed a comprehensive study of the subject of the selected issue. In the conditions of transformation processes taking place in public administration in Ukraine, it is necessary to apply the synthesis of methodological techniques, as well as modern personnel technologies,

in particular such as: change management, human resources management, HR-management, time management, design thinking and others.

Change management involves the simultaneous implementation of management functions and integrated application of different approaches (interdisciplinary, systemic, situational, program-target, project, gender-oriented, synergetic, behavioral, competence and others) to management decisions. The process of managerial decision-making in the field of public administration requires from those who develop, adopt and implement a high level of competence, responsibility, significant time, energy and experience, i.e. the establishment of effective and coordinated work of the entire public authority.

Human resource management and HR-management relate to the provision and effective use of personnel, their professional and social development. The application of time management allows to plan tasks properly, set priorities and functionally apply their skills in assessing personal and managerial effectiveness and efficiency, analyzing the goals achieved in strategic and operational planning, program, and project development. World trends in human resource management are global in nature and reflect the processes of finding different structures in the public and private environment and the creation of highly effective systems for the realization of creative and productive potential. The Japanese philosophy of management (kaizen) is interesting for application in the field of public administration in Ukraine.

According to it, the attention of the company's management (in our case – the public authority) focuses on the continuous improvement of its team, departments, and the organization as a whole, mainly due to existing internal reserves. The mandatory involvement of all employees in the processes taking place in the organization contributes to the fact that qualitative changes occur immediately and at all levels (in each place) in a form understandable to employees, and not imposed from above. The responsibility for change lies with the entire organization, not just top managers. Because each employee has the opportunity to freely consider and choose any interesting and useful initiative that helps to improve the effectiveness of its activities, reduce time, energy, etc., and will have a positive response from those to whom its activities are directed (consumers of services). This allows to obtain a significant synergetic effect from the adoption and implementation of management decisions in the context of decentralization reform.

Mastering the approach of design thinking and its further use in management involves the concept of human-centeredness, adherence to the principles of gender equality and social justice (focusing on the interests and needs of people, regardless of gender, age, position, social and financial status, etc.); multidisciplinarity (combination of knowledge from

different spheres of human life to overcome problems in indeterminate conditions); integrity, cooperation (comprehensive analysis and common understanding of crisis phenomena, joint development of management decisions), etc. Design thinking involves understanding the object of study, analyzing problematic aspects, visualizing innovative ideas, evaluating them for realism and further implementation.

Gender mainstreaming is a qualitative measurement of the processes of planning, implementation, monitoring, evaluation and control of programs and projects in political, socio-economic, environmental and other spheres of life to create favorable conditions for women and men to have equal opportunities to benefit and benefit from implementation of adopted programs and projects. Gender analysis is integrated into all stages of strategic, program-target planning, programming and design and improves the quality of decisions and the effectiveness of planned activities.

2. Results and Discussion

In the XXI century intensive changes in the field of human resources (in global, national, regional, sectoral, demographic, corporate, professional, and individual dimensions) are becoming revolutionary. In the field of HR-management there are radical changes from the former professional role stereotypes of the administrator-bureaucrat and the head to essentially new roles: the leader, the strategist, the businessman, the tutor (coach). This is manifested in the implementation of reforms in various spheres of life. Human resources are a key factor in the development of society. The speed and quality of implementation of the declared sectoral and sectoral changes, the competitiveness of the national economy and the standard of living of the population depend on the professional qualifications of public servants, their compliance with European standards of public service. There is an urgent need in the state to change the management paradigm of formation and implementation of personnel policy, development of a model of an effective personnel system, introduction of new technologies (Guliyev *et al.,* 2018; Guliyev *et al.,* 2017).

The intensity of interaction and the growth of the diversity of social relations affect people's communication, satisfying their need for communication. Dialogue is the highest form of communication, which is characterized by such features as: the presence of purpose; focus on finding the truth, which should be the same for all participants; subject-subject character; equality of participants, tolerance and responsibility; achieving mutual understanding and rational interaction in the field of communicative and practical activities; measurability of the result (Petroe, 2012). In the process of communication, a sociable community is formed,

which is characterized by relations of unity, interconnectedness, and mutual understanding (Osovska, 2003).

Nowadays, to make management decisions in the field of public administration is not enough to have the necessary knowledge in the economic, legal and socio-humanitarian spheres, the main thing is to be able to effectively apply skills and abilities in practice. In modern conditions, the training system should meet the needs of public authorities and other bodies and organizations in employees with a high level of professionalism and culture, able to competently and responsibly perform management functions, implement the latest social technologies, promote innovation. This allows us to identify ways to improve the system of training and retraining of public servants.

The content and level of their professional training should correspond to the strategic directions of statehood development, be of an advanced nature, consider the high dynamism of social and economic processes, the key tasks of public administration reform. High quality of their training is achieved through the use at all levels of vocational education, developed educational and scientific base, integrated multilevel curricula, attracting highly qualified teaching staff to conduct the educational process in vocational education programs (Prylipko, 2019). Therefore, in Ukraine at the present stage it is necessary:

- to modernize the system of continuous professional training of civil servants and local government officials with the use of e-government technologies, involvement of leading domestic and foreign specialists in the field of public administration and administration, providing professional internships abroad, etc.
- to update educational standards of vocational training with an emphasis on the ability to respond in a timely manner to changes caused by decentralization reform.
- to increase the financial support of the system of training and advanced training in accordance with European standards, which will improve the material and technical base and the quality of the organization of the educational process.
- to improve the methodology for assessing the effectiveness of improving the professional competence of civil servants and local government officials.
- to update approaches to the formation of the personnel reserve in the public service.

Local government officials should be initiators and designers of democratic transformations, effective managers, team leaders in their communities (Vasylieva *et al.*, 2017). Leaders play a leading role in staffing

public administration. Leadership implementation is of paramount importance and importance for improving effective and efficient interpersonal subject-object relationships. Leadership provides a search for the most rational forms and methods of management, the application of which depends not only on the effectiveness of each element of the local government system and each employee, but also the effectiveness of decentralization reform as a whole. The new role of management is not to stand at the top of the pyramid and control subordinates, but to give them new strength and opportunities (Grishchenko, 2016). This model of relations consists of its innovative methods, staffing, tools and more. Through the use of influencing technologies, it is possible to effectively unite people around the solution of certain issues (Kerimov *et al.,* 2017; Kerimov *et al.,* 2019).

In our opinion, such an innovative approach as design thinking should be used in the training of personnel in the field of public administration (especially leaders of territorial communities). This approach allows to develop such skills of public servants as initiative, creativity, originality and critical thinking, analysis, generation of ideas (Gusakov, 2019). The use of various methods and technologies in complex, non-standard and uncertain situations will allow managers to comprehensively solve existing problems (Kerimov *et al.,* 2016; Kerimov and Rachinsky, 2016).

For the first time, "design thinking" was used in business by IDEO, on the initiative of which a design school was established at Stanford University. This approach aims to develop innovations in indeterminate conditions and in high competition (Gejderih, 2018). It was IDEO President Brown (2008) who justified the new concept in response to the growing need of business for innovative solutions to meet the challenges of the global market. According to T. Brown (2008), the first to use "design thinking" was T. Edison, who in his work focused on human needs. Innovation is the result of observing and understanding exactly what people want, what they like or dislike, what and how to manufacture, package, sell and continue to support a particular product (Kuznetsov *et al.,* 2018).

Nowadays, the problem of development of design thinking is relevant for various spheres of human activity (Lyasnikov and Usmanov, 2019; Almomani and Bystrova, 2019). The design thinking model consists of 4P: people, process, place and partnerships and allows you to qualitatively develop and implement innovative ideas (Müller-Roterberg, 2018). Design thinking begins with people, not with technology or business goals, so it can be used in the development and implementation of various social initiatives (Brown and Wyatt, 2010; Lapidus *et al.,* 2018a).

We believe that design thinking allows you to meticulously, objectively, optimistically, constructively analyze the "product" that is being studied to meet the needs of people who will consume a product or service, or use

a specific infrastructure. For example, how to make a local community attractive to its residents so that they do not have the idea to leave it (move to another area)? Or how to make an educational, medical, or other institution so that it is in demand and competitive in the services market? We are not talking about paid services, but about the positive consequences for human resource development.

The same applies to political decisions on a national and local scale. How to ensure the implementation of the reform of decentralization and territorial organization of power (financial, personnel, information, and other resource aspects)? That is, this concept combines emotional, functional and process (technological) components. There are various scientific approaches (Hobcraft, 2017; Müller-Roterberg, 2018) to understanding the content of the stages of design thinking: Empathize/Understand – Define/ Observe – Ideate/Visualize – Prototype/Evaluate – Test/Implement. Consider these stages on the example of the activities of local government officials, which is to make management decisions regarding the provision of public services (Lapidus *et al.,* 2018b; Lapidus *et al.,* 2018c).

People react differently to events in their lives, that is why they subjectively assess the situations in which they find themselves. It is design thinking that aims to correct the emotions that are part of any process. Thus, at the stage of "Empathize/Understand" there is an understanding of the person who applied to the public authority: his needs, behavior, emotions, which allows you to build the right communications, especially the feedback between the provider and the end user of the service. The key tools are interviews, surveys, questionnaires, sociological, marketing, and other research, which allows you to gather the necessary information. This is an important stage in the formation and implementation of public policy in a particular area at the national, regional and local levels (Pogosyan *et al.,* 2018).

Sometimes civil servants make decisions in the absence of empirical data, for example, on the establishment of public transport, the creation of public space and more. We believe that the use of gender mainstreaming is useful at the "Define/Observe" stage. The decentralization reform stipulates the revision of legal documents for the provision of public services (Order of the Ministry of Finance of Ukraine, 2019). In many European countries, scholars focus on the issue of achieving gender equality in the formation and implementation of public policy (adoption of strategic and operational documents, implementation of appropriate measures), etc. (Daly, 2005; Gender Equality in Public Services, 2007; Bettio and Sansonetti, 2015; Sansonetti *et al*., 2018; Pogosyan *et al.,* 2019).

In our opinion, knowledge, and skills in applying a gender approach to the management decision-making process are very necessary in the process of training qualified personnel in the field of public administration.

Questionnaires provide complete information on the real situation of gender equality. Thus, for example, the question can be answered: will the analyzed object be convenient, accessible and comfortable for all residents and guests of the city: people of different sexes, ages, with small children, with disabilities, with animals or bicycles, for foreigners? Gender auditing can address staffing issues and address inclusive access to public services. It is desirable to use gender impact assessment when formulating targeted budget programs. Thus, it allows to obtain positive results in the planning and implementation of public authorities in various areas of their activities.

At the "Ideate/Visualize" stage, the created working groups discuss ideas, select alternative proposals in terms of their clarity and how to implement them in a certain period of time. The differences between future (projected) benefits and resource costs (financial, time, human and other) during the implementation of a particular project are clarified. In our opinion, due to ignoring the "Prototype/Evaluate" stage in practice, there are often cases of reworking the work performed and increasing the amount of resources spent. For example, the creation of inclusive infrastructure, public spaces and more. The result of the previous stages is "Test/Implement", the key point of which is to receive feedback from end users of services and take into account the relevant comments – suggestions when adjusting if necessary. Thus, design thinking is a heuristic method of studying existing problems in conditions of uncertainty.

On the example of the author's (Prylipko *et al.*, 2019) professional program "Management of sustainable development of the territorial community" we propose to consider the application of innovative approaches to the training of public servants in a decentralized environment. The program consists of 5 credits (5 topics), which are a set of practice-oriented trainings (Table 1).

Table 1. The structure of the professional training program "Management of sustainable development of the territorial community"

No	The title of the topic of the content module
1	Ensuring economic, social, and environmental security of the territorial community in indeterminate conditions.
2	Application of a gender-oriented approach to management decision-making in the activities of the management team.
3	Design thinking and creation of a creative and competitive territorial community on the basis of sustainable development.
4	Synergetic approach to the development of public services in the local community.
5	Development of urban areas on the basis of sustainable development.

Topic 1. Sustainable development as a priority of the Local Leader Program. It is planned to analyze the goals of sustainable development, determine the criteria and indicators for achieving the comfort of living in the local community. Get answers to the questions:

- How to effectively manage existing and how to find new resources of the local community (human, natural, land, financial, information, logistics and others)?
- How to correctly implement such a priority of municipal policy as the implementation of economic (business) activities in the territorial community, especially in terms of unification?
- How to establish inter-municipal cooperation?
- How to create innovative formations (clusters, industrial, technology parks, etc.) and with their help to achieve "sustainable" community growth?

Topic 2. The activities of the management team involve making management decisions to ensure sustainable development of the local community, and this requires understanding the algorithm and tools for developing, making, and implementing management decisions and effective communication in the community. It is important to understand the essence and purpose of gender tools, to be able to conduct different types of gender analysis. Be able to apply in practice a gender-oriented approach to the development of small and medium-sized businesses, employment, forecasting and planning of strategic, targeted and budget programs. It is also important to evaluate and monitor the effectiveness and efficiency of strategic, targeted and budget programs and projects to ensure sustainable development of the local community (achieving the goals of sustainable development, gender equality and social justice with respect to the principle of inclusion).

Topic 3. Application of innovative approaches to management decisions on public management and administration of sustainable development of the local community, which involves understanding how to use technology in practice: design thinking, benchmarking, municipal marketing, HR-management and more. As well as manage change, use a participatory approach (involving residents in the development of the local community, the use of forms of direct democracy); project approach (project management, public-private partnership, concession, etc.); smart technology (creating a "smart" local community) and others in carrying out their professional activities, which will attract investment in the development of the territorial community. The community leader must know how to create conditions for the emergence and development of cultural and creative industries, areas (for instance, tourism) using digital technologies. How to achieve profitability of the local budget in the conditions of globalization, to increase

the level of employment and public involvement in the processes taking place in the settlement, to expand access to new international opportunities, markets, and audiences.

Topic 4. It is important to understand the achievement of synergies and compliance with quality standards, and to do this to know the methods of achieving a high level of quality. This will allow to develop the social and humanitarian sphere in such a way that there are provided quality and accessible public services to residents; municipal infrastructure (housing and communal, transport, communications, etc.), to create centers of municipal services, to implement digital technologies.

- How can sociological research be used to assess the level of public satisfaction with the services provided?
- How to conduct a gender audit of accessibility and take into account the principle of inclusion?
- How to model the best options for making customer-oriented management decisions?

Topic 5. How to develop the territorial community in the conditions of urbanization and creation of agglomerations? It is important for the leaders of territorial communities to address issues of urban planning in the face of today's challenges: master plans, zoning, problems of urban architecture, landscaping, creation of public spaces and more. Territorial community for people: modernization of industrial, historical, natural zones. Revitalization as a tool for the revival of abandoned territory: algorithm, examples of project implementation (domestic and foreign experience).

A public servant (especially a manager) should have an appropriate set of competencies and professional qualities, and his position should meet the qualification requirements. In the process of decentralization reform, professionals must have a thorough knowledge of the legal framework, have analytical thinking, based on systematic analysis to make economically sound and socially responsible management decisions in terms of change and innovation, participate in the development of strategic documents, project management, to establish communication links on the basis of modern information technologies, to show leadership skills, to organize work and to control its implementation, to establish social cooperation between stakeholders, etc., (Prylipko *et al.*, 2019).

The proposed program is primarily designed to train leaders of local communities. Students at the end of the training will obtaine the following skills:

- effectively organize the work of yourself and your team and properly manage time.

- apply innovative approaches to the formation of municipal policy for sustainable development of the territorial community in indeterminate conditions.
- to analyze the available potential of the city and to determine priority directions during development of strategic and target programs of development and carrying out of budgetary policy.
- to organize collective events in the field of urban planning in order to increase the comfortable living of residents.
- develop and make service-oriented decisions to improve the functioning of institutions and organizations that provide a variety of services to residents.
- use a system of techniques, methods, and methods for making and implementing socially responsible management decisions focused on the needs and interests of women and men of different ages and social groups in compliance with the principle of inclusion.
- to establish effective communication with the community (public inquiries, involvement of residents in management decisions through the use of various forms of direct democracy) and achieve results to ensure sustainable development of the territorial community, comfortable with a high quality of life for all segments of the population;
- to organize a quality process for project development with the involvement of the community, to show initiative and entrepreneurship.
- to apply methods of strategic management of the population, the deputy corps, the executive body of local self-government, the community, mass media, as bases of maintenance of achievement of the purposes of sustainable development of territorial community.

Conclusion

Analysis of the researches of international and domestic scholars and practitioners allowed us to formulate our own conceptual vision for the integrated application of innovative approaches to staff training in the sphere of public administration, which allows to obtain quality results in the implementation of decentralization reform in Ukraine. Thus, the new model of virtuous public service in Ukraine should be based on the following conceptual provisions:

- Public service is built around the strategic needs and interests of people, local communities, and society as a whole.
- Formation of the system and determination of the number of public service bodies takes into account the integral ability of its subjects to cooperate effectively to achieve concrete social results, which together will improve the quality of life and security of the people on a permanent basis;
- The principles of organization of public service in the state are clear to society and ensure its openness, transparency, and accountability of the people.
- Civil servants are constantly increasing their productivity and reducing the cost of providing public services.
- Conditions of public service attract, retain, and stimulate productive activities of talented and qualified professionals, with respect to gender equality.
- Civil servants interact with the public to obtain concrete common results.
- Public structures are provided with resources that are sufficient to achieve certain goals, including reliable information that is not narrowly focused, but systemic.
- The state has a high level of public confidence in public institutions.

This, in turn, requires the use of a synthesis of methodological techniques, innovative approaches (interdisciplinary, systemic, situational, program-targeted, project, gender-oriented, synergetic, behavioral, competence and others) and technologies (change management, human resource management, HR-management, time management, design thinking and others) to the implementation of personnel of their professional activities. Meeting the interests and needs of the inhabitants of territorial communities requires the application of knowledge from various spheres of human life, a comprehensive understanding and analysis of crisis phenomena, the ability to cooperate with others. This will allow you to make and implement quality management decisions (in the form of appropriate programs and projects) to overcome the identified problems in a particular area.

The indeterminate conditions in which Ukraine finds itself recently make managers need to carefully study foreign experience and adapt its best practices, such as kaizen, design thinking, meritocracy, gender and others, to their professional activities in the field of public administration. To conclude, the model of virtuous public service today requires the use of innovative approaches in the training of civil servants in a decentralized environment, which is really important for overcoming the problems of corruption, secrecy and public trust.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 321-332
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

COVID-19: Regulation of Migration Processes in The European Legal Area

DOI: https://doi.org/10.46398/cuestpol.38e.20

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Abstract

The rapid spread of the virus around the globe, the widespread introduction of restrictions on freedom of movement and declarations by governments about the great threat to public health on a global scale, have had a serious impact on migration processes in the world. The European legal space has some regulation of migration processes, developed within the framework of the EU, the Council of Europe and the OSCE. However, COVID-19 presented him with some additional challenges. The purpose of the article is to analyze the legal regulation of migration processes within the European legal area in the conditions of the COVID-19 pandemic. The main method to study this problem is the comparative analysis, which allows to compare the legal regulation of migration processes during COVID-19 in three organizations: the European Union, the Council of Europe and the OSCE. In conclusion, the pandemic once again demonstrated the tendencies of national isolation, which exist in the European continent. The EU closes internal borders, the members of the Council of Europe make an exception to the rights contained in the European Convention on Human Rights, but they do not notify the Secretary General of the Council of Europe.

Keywords: COVID-19; migration in Europe; internal and external borders of the EU; freedom of movement; European legal space.

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Recibido: 02/03/2020 Aceptado: 07/08/2020

COVID-19: Regulación de los procesos migratorios en el espacio jurídico europeo

Resumen

La rápida propagación del virus en todo el planeta, la introducción generalizada de restricciones a la libertad de movimiento y las declaraciones de los gobiernos sobre la gran amenaza para la salud pública a escala mundial, han tenido un grave impacto en los procesos de migración en el mundo. El espacio jurídico europeo tiene cierta regulación de los procesos de migración, desarrollados en el marco de la UE, el Consejo de Europa y la OSCE. Sin embargo, COVID-19 le planteó ciertos desafíos adicionales. El propósito del artículo es analizar la regulación legal de los procesos de migración dentro del área legal europea en las condiciones de la pandemia de COVID-19. El método principal para estudiar este problema es el análisis comparativo, que permite comparar la regulación legal de los procesos de migración durante COVID-19 en tres organizaciones: la Unión Europea, el Consejo de Europa y la OSCE. Como conclusión la pandemia demostró nuevamente las tendencias de aislamiento nacional, que existen en el continente europeo. La UE cierra las fronteras internas, los miembros del Consejo de Europa hacen una excepción a los derechos contenidos en el Convenio Europeo de Derechos Humanos, pero no notifican al Secretario General del Consejo de Europa.

Palabras clave: COVID-19; migración en Europa; fronteras internas y externas de la UE; libertad de movimiento; espacio jurídico europeo.

Introduction

The modern world is characterized as closely interconnected. Over the past 100 years, there have been five pandemics, inter alia, Spanish Flu (1918), Asian Flu (1957), Hong Kong Flu (1968), Swine Flu (2009). On 11 March 2020, the World Health Organization characterized COVID-19 as a pandemic. The rapid spread of the COVID-19 has led to such global consequences in the history of mankind as the mass closure of borders for the entry of foreigners, stateless persons, and sometimes even their own citizens; as well as it has led the governments to impose certain restrictions on the movement rights.

On 16 March 2020, the European Union closed the external borders of the Schengen area (European Border and Coast Guard Agency, 2020). The EU Member States have closed an internal border that is the

largest closure from the time of the EU foundation. As a result, the EU has faced an unprecedented fall in the number of border crossings. The worldwide migrant population includes students, asylum seekers, refugees, permanent residents, temporary workers, undocumented migrants, etc. These categories of migrants have a set of rights, such as the freedom of movement, reunification with families, the right to seek asylum, the right to free entry in the country, etc. At the same time, such rights affect the realization of other rights: the right to family life, the right to education, the choice of a profession, property rights, etc.

However, COVID-19 put under the question the abovementioned rights. For the due regulation of migration processes, these rights are not absolute but restricted, for example, for the purposes of public health, which becomes of high importance in the context of COVID-19. At the same time, the right to enter one own country is absolute and could not be restricted. Also, under international law, measures taken in the area of asylum, resettlement, and return should comply with the non-refoulement principle. It means that even during the time of COVID-19 pandemic, individuals have the legal right to apply for asylum. However, border closures, suspension of international passenger traffic also restrict the non-refoulement principle. It should be noted that regulation of migration processes is within the competence of states, which define the criteria for a person for entry and leave the country, as well as regulation of the border control. However, a number of universal, as well as regional legal instruments set standards for the regulation of migration processes and conditions for restriction of migration.

Among the scientists, the issue of regulation of migration processes in the European migration space was given attention by: E. Guild (Guild and Grant, 2017), T. Konstadinides (2016), M. Schane (2009), C. Peers (2012), A. Palm (2016). Also, this issue was studied by Ukrainian scientists, in particular: V. Denysov (Denysov and Falaleeva, 2018), O. Malinovskaya (2018) and others. O. Polivanova (2012) explored the issues of freedom of movement of individuals in the EU. At the same time, the issue of regulation of migration processes in the European legal space during the COVID-19 pandemic has not been investigated by scientists.

1. Materials and methods

The leading method for studying this problem is the method of comparative analysis, that allows to compare the legal regulation of the migration processes during COVID-19 in three organizations, inter alia, the EU, the Council of Europe and the OSCE. The EU has seriously tightened its migration policy amid the spread of COVID-19. The crisis associated with the Covid-19 pandemic reinforces national isolation trends already present

in the policies of many EU countries. Migration flows within Europe are a poorly controlled mass of people, and often completely uncontrolled. Within the EU, the mobility of such flows is extremely high, as this is facilitated by the principle of transparent borders. And all this is completely incompatible with the main mechanism of the fight against coronavirus – social distance and localization of the source of infection.

That is why, the COVID-19 again closes the EU internal borders, which is one of the main EU values. In Greece, the migration camps were quarantined, and the resettlement programs suspended. Germany, Austria, Hungary, Belgium, and the Netherlands also stopped accepting refugees (COVID-19 Emergency Measures in Asylum and Reception Systems, 2020). It means that the non-refoulement principle in the conditions of COVID-19 became not effective and the EU cannot protect people suffering from discrimination. Another problem is that refugees often live in unsanitary conditions, which is a favorable environment for the spread of COVID-19.

Relations between migrants and EU citizens will deteriorate. The increase in unemployment in the EU will be an additional factor for this. Therefore, thousands of migrants and refugees are far more vulnerable to COVID-19 than the others. After Europe defeats the coronavirus, it will also face a problem that can take no less time to resolve. Regarding the regulation of migration processes, before finding a vaccine, and possibly even after, the Schengen Borders Code 2016 should be amended with the provision for a mandatory body temperature check on the external borders for EU citizens, as well as for the third-country nationals, stateless persons, asylum seekers, refugees and other categories of migrants. At the same time, COVID-19 demonstrated, that although some of the countries made a derogation from the European Convention on Human Rights (1950), they did not make a notification to the Secretary General of the Council of Europe, that violates the procedure of the derogation of the rights.

2. Results and discussion

Among universal legal instruments, which include provisions for the regulation of migration possesses are the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966). Also, there are several specialized international treaties which determines human rights of migrants, such as the Convention relating to the Status of Refugees (1951), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Global Compact for Safe Regular and Orderly Migration (2019). At the same time, Siracusa Principles on the Limitation and Derogation of Provisions in

the International Covenant on Civil and Political Rights (1984) defines, that public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population.

These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured. Due regard shall be had to the international health regulations of the World Health Organization (Feinberg *et al.*, 2018). It means, that international standards allow the limitation of the right to leave the country; freedom of movement and freedom to choose the residence within a country. However, the right to enter the own country should not be arbitrarily deprived, as is mentioned in article 12 of the International Covenant on Civil and Political Rights (1966). It means that the right to enter the own country is an absolute right and even in the case of COVID-19, a person should not be deprived of this right.

The European legal framework for the regulation of migration processes and restrictions of migration is based on international standards and is very broad. A number of regional organizations are functioning in Europe, such as the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe. All these organizations develop the standards for the response of COVID-19, inter alia, in the sphere of regulation of migration processes. The EU founding treaties stipulate the restrictions on the rights to freedom of movement. Such as, Article 45 of the Treaty on Functioning of the European Union (2009), which define that freedom of movement for workers is subject to limitations justified on grounds of public policy, public security, or public health.

The definition of the "threat to public health" is possible to find in the Article 2(21) of the Regulation (EU) 2016/399 of the European Parliament and of the Council (2016) on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (2016). It means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organization and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States. Article 6 of the Schengen Borders Code stipulates, that in the case when a third country national considers being a threat to public health it is possible to refuse in the entry on such grounds. The Directive 2004/38/EC (2004) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States in article 29 clarifies that diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.

At the same time, COVID-19 again threatened one of the main European values, namely freedom of movement within the Schengen area. In article 25, the Schengen Borders Code, 2016 allows the temporary reintroduction

of border control at internal borders in the cases of serious threat to public policy or internal security in a Member State. At the same time, the reintroduction of border control at internal borders is the competence of a Member State.

The EU Commission cannot prohibit such reintroduction; however, it could make an opinion concerning the necessity and proportionality of such reintroduction. As for 10 April, 2020, the following countries have notified the EU Commission and the interior ministers of all EU countries on the reintroduction of borders because of the threat of COVID-19, as it defined in the article 28 of the Schengen Border Code, inter alia: Denmark, Austria, Finland, Switzerland, Czech Republic, France, Belgium, Portugal, Norway, Spain, Germany, Poland, Lithuania, Switzerland, Estonia, Hungary, Finland, Norway. In general, from the beginning of coronavirus COVID-19, EU Member States applied 37 times for the reintroduction of border control at internal borders. The first EU country, which applied for such a measure was Austria on 11 March 2020 (Communication from the Commission COVID-19, 2020).

On 30 March 2020, the EU issued the Communication from the Commission Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (Communication from the Commission, 2020). It defines, that Member States should allow workers to enter the territory of the host Member State and have unhindered access to their place of work if the workers exercise in particular one of the following occupations:

Health professionals including paramedical professionals; Personal care workers in health services, including care workers for children, persons with disabilities and the elderly; Scientists in health-related industries; Workers in pharmaceutical and medical devices industry; Workers involved in the supply of goods, in particular for the supply chain of medicines, medical supplies, medical devices and personal protective equipment, including in their installation and maintenance; Information and Communications Technology Professionals; Information and Communications Technicians and other technicians for essential maintenance of the equipment; Engineering professionals such as energy technicians, engineers and electrical engineering technicians; Persons working on critical or otherwise essential infrastructures; Science and engineering associate professionals (includes water plant technicians); Protective services workers; Firefighters/Police Officers/Prison Guards/ Security Guards/Civil Protection Personnel; Food manufacturing and processing and related trades and maintenance workers; Food and related products machine operators (includes food production operator); Transport workers; Fishermen; Staff of public institutions, including international organisations, in critical function (Communication from the Commission, 2020).

In accordance with the data of the European Border and Coast Guard Agency (2020), the total number of illegal border crossings for the first quarter of 2020 reached 24 500, up 26% from the same period of 2019. However, comparing the number of detections of illegal border crossings on Europe's main migratory routes in March with the situation in February 2020, it should be noted, that it has fallen by nearly half to around 4650. It means that coronavirus COVID-19 has not influenced very much on the illegal migration to the European Union. Illegal crossings of the EU external borders are still happening. On March 17, EU Heads of State and Government endorsed proposals from the European Commission to temporarily limit "non-essential" travel to the EU from third countries for a period of 30 days, which was subsequently extended until May 15 (Official website of the European Union).

Exemptions from such restrictions apply to persons in need of international protection or seeking asylum for other humanitarian reasons. On 16 April, the European Commission presented COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (COVID-19: Temporary Restriction on Non-Essential Travel to the EU, 2020). Such instructions have been developed with the assistance of the European Asylum Support Office, the European Border and Coast Guard Agency (2020) and the relevant services of the EU Member States.

The new rules restrict the personal contact of officials with asylum seekers, giving them flexibility in the timing of registering and processing such requests. Personal interviews required in such cases may be conducted remotely, or generally bypassed in cases where such remote contact cannot be arranged. Quarantine and isolation measures associated with the coronavirus spike should be moderate, proportionate, and non-discriminatory. In doing so, such searchers in temporary accommodation centers should have access to the open air and should be provided with clear explanations for the reasons for limiting external contacts and visits. For health reasons, a new rule has been set – where asylum seekers cannot remove their fingerprints, such prints must be taken within 48 hours as soon as emergency health care is abolished. In accordance with Article 2 of Protocol 4 of the European Convention on Human Rights (1950) everyone who is legally located on the territory of the state has the right to free movement, and everyone has the right to leave any country. However, according to the Convention, it is restricted right. It means that a state may interfere with this right in certain circumstances:

> No restrictions shall be placed on the exercise of these rights other than such as are in accordance with the law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (European Convention on Human Rights, 1950: 09).

The European Court on Human Rights considers this provision with a number of questions. The Court is examining the applicability of the provision to a given situation. Secondly, whether there is an interference with this right. Thirdly, if there is interference, the Court will examine the justification of this interference. In order for the interference to be justified, it must be fully consistent with the law. This not only requires a national law that permits such interference, but this law must have certain qualities. It must be accurate and understandable so that the individual can be guided by it in his/her behavior. Fourth, the interference should be aimed at a legitimate aim, for example, the protection of health. Fifth, the intervention must be necessary in a democratic society.

This means that it must correspond to important public needs, and, more importantly, to be proportionate to the legitimate aim pursued. The proportionality of the intervention depends on all the circumstances of the case. It is necessary to find out whether appropriate and sufficient reasons preceded the intervention, whether procedural safeguards were involved, and whether the interference infringed the essence of the law.

The Court emphasized in the only case in which the application of quarantine has been considered – Kuimov v. Russia, No. 32147/04, 8 January 2009 – that the restriction should be: "A temporary measure, to be discontinued as soon as circumstances permit" and that "severe and lasting restrictions... a long duration are particularly likely to be disproportionate to the legitimate aims pursued". This suggests that the approach to the assessment of the admissibility of restrictions will be broadly the same, whatever the right or freedom involved (Council of Europe, 2020).

Some Members of the Council of Europe exercised the right to derogation from its obligations under the European Convention on Human Rights (1950) in accordance with Article 15. These countries declared a state of emergency on their entire territory. It should be noted, that measures implemented by Members of the Council of Europe have derogated from certain obligations provided for in the European Convention on Human Rights (1950) to the extent required by the epidemiological situation and medical necessity, in response to the COVID-19 coronavirus pandemic.

As for 10 April, 2020 such notifications to the Secretary General of the Council of Europe concerning Article 15 of the European Convention on Human Rights (1950) have been made by following countries: Serbia (7.04.2020), Romania (3.04.2020), North Macedonia (2.04.2020), Albania (1.04.2020), Georgia (23.03.2020), Estonia (20.03.2020), Republic of Moldova (20.03.2020), Armenia (20.03.2020), Latvia (16.03.2020) (Council of Europe, 2020). Thus, in the history of the European Convention on Human Rights (1950), the number of appeals from countries that simultaneously relied on Article 15 of the Convention and made the derogation from their obligations is unprecedented. Although it is also

worth noting that there are a number of countries that have also derogated from their obligations under the Convention but have not informed the Secretary General of the Council of Europe of the measures taken.

The Helsinki Final Act (1975) of the Conference on Security and Cooperation in Europe was adopted on August 1, 1975. The document stipulates the obligation of states to guarantee freedom of movement, in particular, to ensure family reunification, travel for personal or professional reasons, contacts and regular meetings based on family ties, marriages between citizens of different states, travel for personal or professional reasons. The obligation of states to gradually simplify and flexibly apply the procedure for exit and entry is envisaged; to facilitate the movement of citizens from other participating States, taking into account security requirements, etc. (OSCE). At the same time, Population Registration Guidelines (2009) stipulates, that the participating States will ensure that the exercise of rights cannot be the subject of any restrictions other than those provided by law and compatible with their obligations under international law. These restrictions are in the nature of exceptions. The participating States will ensure that these restrictions are not abused and that they are not applied arbitrarily, but so that the effective exercise of these rights is ensured.

Conclusion

The COVID-19 coronavirus has become a new challenge for the regulation of migration processes in the world, and in particular on the European continent. It came to Europe at the time when EU member states were actively working on the development of common standards for regulating migration processes. COVID-19 demonstrated that nowadays it is difficult for the EU to be single in decision-making, as well as in 2015 when it demonstrated the lack of solidarity during the European migration crisis. In addition, the coronavirus also happened against the backdrop of the UK's exit from the EU. All these factors complicate the EU's position in the global geopolitics, as well as the further expansion and deepening of integration.

It was also analyzed the reaction of the EU, the Council of Europe and the OSCE to the migration during COVID-19. The regulation of migration processes is very vulnerable. EU closing internal borders, that become a kind of tradition during last time. Members of the Council of Europe make derogation from the rights, contained in the European Convention on Human Rights, but not notify the Secretary General of the Council of Europe. That is why, COVID-19 again demonstrated national isolation trends, that exist on the European continent during last time.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 333-341
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Historical stages of the transformation of the judicial system and legal procedures in the Russian Empire: case of judicial reform of 1864

DOI: https://doi.org/10.46398/cuestpol.38e.21

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Abstract

The relevance of the study consists in the fact that the changes in the 1860-70s in the Empire determine the beginning of positive developments within the judicial system. Consequently, the objective of the article was to study the historical stages of the transformations in the judicial system and procedure in the Russian Empire in 1864. The main research method was deductive that allowed to study the nature and the key historical stages of the transformations in the judicial system and legal procedure in the Russian Empire in 1864. The solution to the problem posed was based on studying the legal foundations of the significance (place and function) of the judicial reform of 1864 within the general historical development of Russia. It is concluded that the key judicial principles include democratic foundations such as publicity in the oral process, frankness, and the right to a lawyer. Furthermore, it highlights that the authors of the Judicial Regulations of 1864 studied not only English and French law, but also examined the codes of procedure of Geneva and the Kingdom of Sardinia. Thus, the Russian jury trial became a new step in the development of European legal culture.

Keywords: judicial system in the Russian empire; Legal procedure; judicial reform; peasant reform; judicial modernization.

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Etapas históricas de la transformación del sistema judicial y los procedimientos legales en el Imperio ruso: caso reforma judicial de 1864

Resumen

La relevancia del estudio consiste en el hecho de que los cambios en la década de 1860-70 en el Imperio determinan el inicio de desarrollos positivos dentro del sistema judicial. En consecuencia, el objetivo del artículo fue estudiar las etapas históricas de las transformaciones en el sistema y el procedimiento judiciales en el Imperio Ruso en 1864. El principal método de investigación fue deductivo que permitió estudiar la naturaleza y las etapas históricas clave de las transformaciones en el sistema judicial y el procedimiento legal en el Imperio Ruso en 1864. La solución al problema planteado se basó en estudiar los fundamentos jurídicos de la trascendencia (lugar y función) de la reforma judicial de 1864 dentro del desarrollo histórico general de Rusia. Se concluye que los principios judiciales clave incluyen fundamentos democráticos como la publicidad en el proceso oral, la franqueza y el derecho a un abogado. Además, destaca que los autores del Reglamento Judicial de 1864 estudiaron no solo el derecho inglés y francés, sino también examinaron los códigos de procedimiento de Ginebra y del Reino de Cerdeña. Por tanto, el juicio con jurado ruso se convirtió en un nuevo paso en el desarrollo de la cultura jurídica europea.

Palabras clave: sistema judicial en el imperio ruso; procedimiento legal; reforma judicial; reforma campesina; modernización judicial.

Introduction

The judicial reform was part of the radical changes in the 1860-70s. After the abolition of serfdom in 1861, there was an urgent need to adjust the political system of the Russian Empire to new capitalist relations. The creation of new judicial bodies and the organization of their operation and actual implementation of the judicial reform in various regions of the state were important aspects in the history of the reform. During further development, the ruling elite's attitude towards the reform became clear – the strong wish to limit democratic institutions and restrict the field of their application (Kurbanov and Gurbanov, 2019a).

Judicial power became autonomous from administrative power, the principles of independence and irremovability of judges were enshrined in law. Social estate courts were abolished, and the all-estate court was

introduced. The number of judicial authorities was reduced, and there were different judicial bodies depending on the gravity of the offenses (magistrates' courts handled minor offenses whereas important cases were heard by general judicial settlements) (Kurbanov and Gurbanov, 2019b). The institute of jury trials was introduced for some cases in district courts. For the first time in Russia, the bar association ("barristers") was founded, "without whom it would be impossible to introduce adversariality in oral arguments during criminal proceedings for the litigant and the defendant to reveal the truth and present the full defense before the court" (Tsykova, 2005).

The prosecutor's office that used to be part of the judicial department underwent a major reorganization. The prosecutor's office had to ensure uniform compliance with laws, initiate criminal prosecution and participate in criminal proceedings in cases provided for by law. The prosecutor's office acted as a defender of the interests of the state, as a force that should resist any attempts to use democratic institutions of the judicial reform in the interests of the destructive forces of society (the Narodniks) (Kurbanov and Gurbanov, 2019a). In accordance with the judicial regulations, the positions of the judicial chamber prosecutor and the prosecutor's associates were established. The prosecutor's office was organized according to the principles of strict hierarchy, single authority and interchangeability in the process. Prosecutorial supervision was carried out under the supreme leadership of the Minister of Justice as the Prosecutor General. The Ober-Procurators of the Senate and judicial chamber prosecutors were directly subordinate to the Prosecutor General, the prosecutors of the district courts acted under the authority of the judicial chamber prosecutors. The number of assistant prosecutors and the distribution of their duties depended on the size of the judicial district (Koni, 1914).

Naturally, prosecutors were much more dependent on the government both due to the direct subordination to the Minister of Justice, and because prosecutors were not subject to the principle of irremovability. The prosecution and the defense engaged in public contests in the correct understanding and application of the law, in wit, in the brilliance of phrases and in comprehending the subtlest zigzags of the human soul. The prosecutor's office flaunted "impartiality", the defense relied on resourcefulness and pathos.

1. Methodological Background

The methodological background of the existing need to study the historical stages of the transformation that occurred in the judicial system and legal procedure in the Russian Empire in 1864 is based on the

importance of past historical experience for understanding the legislator and law enforcement authority's elaboration of directions for improving the modern judicial system of the state. The work on the preparation of the judicial reform began in the 1850s and intensified after the proclamation of the peasant reform and after the accession to the throne of Alexander II in 1855. One of the main wishes written in the Tsar's Manifesto read, "May justice and mercy reign in the courts". By the beginning of 1861, 14 draft laws had been submitted to the State Council for consideration. The materials of the judicial reform amounted to 74 volumes. The culmination of this long-term work was sent out at the end of 1862 to all judicial bodies – the draft of "The Basic Provisions of the Judicial System". To implement the program of the judicial reform presented in the report approved by Alexander II on 19 Oct. 1861, a commission was organized that included the most prominent legal professionals.

The legal framework of the judicial reform of 20 Nov. 1864 included the Establishment of Judicial Settlements, the Regulations of Criminal Proceedings, Regulations of Civil Proceedings and the Regulations of Punishments Imposed by Justices of the Peace.

2. Results

The strengthening of the position of the defense in court trials as a result of the Judicial Reform of 1864 was evidenced by the establishment of the institution of the Bar. Prominent lawyers-professors, prosecutors, ober-procurators of the Senate and the best commercial court lawyers strived to join the bar. A.M. Unkovskii, a prominent member of the peasant emancipation movement and M. Saltykov-Shchedrin's friend, also joined the bar association. Newspapers and magazines would increasingly feature the names of lawyers: F.N. Plevako, V.D. Spasovich, K.K. Arsenev, N.P. Karabchevskii, A.I. Urusov, S.A. Andreevskii, P.A. Aleksandrov, V.M. Przhevalskii, A.Ya. Passover and others. According to the judicial Regulations, there were two types of lawyers. Barristers were lawyers of the highest category that joined the bar according to the districts of judiciary chambers. Barristers elected the Council that was responsible for admitting new members and overseeing individual lawyers. The other, lowest category of lawyers consisted of private attorneys who handled insignificant cases and could only work in the courts where their license was issued.

3. Discussion

On 20 Nov. 1864, in Tsarskoye Selo, Emperor Alexander II approved the judicial Regulations and the "Establishment of Judicial Settlements". Judicial bodies were divided into two main parts: magistrates' courts (courts with elected judges – justices of the piece and assizes of the peace) and general judicial settlements (with appointed judges – district courts, judicial chambers and the Governing Senate as the Supreme Court of Cassation). Moreover, there were special jurisdiction courts: courts-martial, volost, commercial courts and others, the creation of which was provided for by other legislative acts. Every uyezd with the city it was formed around and, in some cases, a large city individually became a circuit that was divided into several districts. Each district had an acting and an honorary justice of the peace. Justices of the peace – acting and honorary – were elected for three years by local and zemstvo self-government bodies (uyezd representative councils and city Dumas) from the residents who could meet the requirements related to age, education, position and real estate possession (Tsykova, 2005; Lebedev *et al*, 2017).

The judicial reform of 1864 stipulated that judicial inquiry should become part of the criminal trial and should not be conducted by the police. The main principles of judicial procedure were such democratic foundations as publicity, adversariality, oral proceedings, directness and the right to counsel (Kurbanov and Gurbanov, 2019b). The new legal proceedings were based on the following principles: 1) the concept of formal evidence was abolished, and the rules on the strength of evidence from the judicial regulations served only as a guide in determining the guilt or innocence of the defendants according to the inner conviction of the judges, which, in turn, was based on the totality of the circumstances discovered during the investigation and court proceedings; 2) the defendant could either be condemned or acquitted (in other words, the defendant could not be left under suspicion).

The justice of the peace handled minor criminal, civil cases that could result in the following punishments: reproof, reprimand, fine in an amount not exceeding 300 rubles, arrest for a term not exceeding three months, imprisonment for a term up to one year. Justices of the peace (acting and honorary) of this district gathered at the assize of the peace or the congress of justices of the peace, which was the final court of appeal. The cases of justices of the peace were further considered only in cassation in the Senate (Lafitskii, 2012a). The courts of the first instance were the district courts. Each district court was established to handle civil and criminal cases outside the jurisdiction of a justice of the peace. The second instance in the general court system was the judicial chamber. There, one could appeal the sentences and decisions of district courts passed without a jury. Moreover,

the jurisdiction of the judicial chamber encompassed especially dangerous crimes – crimes against the state and crimes of officials. These cases were to be heard by the Crown court with estate representatives, one from each estate: the governorate (or uyezd) leader of the nobility, the mayor and the head of the volost (Koni, 1914).

Conclusion

The jury was a new institution at the first level of the general judiciary system (district courts) introduced by the reform. The jury trials were used in the cases "on crimes and misdemeanors, entailing punishment combined with the deprivation of all estate-related rights as well as all or some of the special rights and property". Like other democratic institutions in the judicial Regulations, the jury was borrowed from European states. England is considered the birthplace of the jury where its formation falls on the 11th-15th centuries. The Great French Revolution spurred the widespread proliferation of this institution in Europe. It should be noted that the French jury, and later the German and others, were not an exact copy of the English jury (Leroy-Beaulieu, 1881). The authors of the Judicial Regulations of 1864 carefully studied not only English and French law. In particular, the procedural codes of Geneva and the Kingdom of Sardinia were carefully examined by the editorial committee. Thus, the Russian jury trial became the new step in the development of European legal culture (Lafitskii, 2012b).

The chosen model of the jury (the answer to the question "Is the defendant guilty?") determined the organization and procedure for their work. Only men aged 25 to 70 years old, Russian subjects that met the local residency requirement (2 years) and the property ownership requirement could become a juror. One could not become a juror if one was on trial or under investigation, blind, deaf, insane, declared an insolvent debtor, in extreme poverty or a domestic servant. In addition, clergymen and monks, persons holding the positions of generals (the first four classes according to the Table of Ranks), employees of the court and prosecutor's office, police officials, military personnel, teachers and some others were not included in the lists of the jury. For the election of the jury, general lists were drawn up that included, regardless of income or salary, honorary justices of the peace, civil servants other than professional lawyers, all elected officials, volost and rural peasant judges and other persons who had real estate or income. General lists served as a basis for compiling lists of regular and reserve jurors for the year. The waiting lists included persons that should be summoned to the court within the next year. No one could be called on a jury more than once every two years.

The judicial reform of 1864 separated the preliminary investigation from the judicial inquiry. The inquiry was divided into general (preliminary, without charges) and special (formal, with charges).

Recommendations

The role of the jury in legal proceedings: three weeks before the trial, the presiding judge selected by lot 30 regular and six reserve jurors. The prosecution and the defendants had the right to a motivated and unmotivated challenge of six jurors. After challenges, a jury of 12 main and two reserve jurors was chosen by lot from the remaining number, and these jurors took part in the trial. After the formation of the jury, the jurors elected their foreman. The jury in the courtroom was separate from the crown judges. Jurors had the right to inspect the traces of the crime and other material evidence as well as the right to pose questions to the interrogated persons through the presiding judge. The jury could ask the presiding judge for clarifications on all the circumstances of the case and "in general everything that was unclear to them".

The jury was forbidden to communicate with anyone during the trial other than members of the court under the threat of a fine. Jurors had to keep the secrecy of the jurors' deliberations and were also fined for making the voting results public (Lafitskii, 2012a). After the parties' debate, the presiding judge addressed the jury with charge (resume) and handed the jury foreman a questionnaire for a verdict which consisted of answering the questions posed by the court, after which the jury retired to the deliberation room. The entrance to the deliberation room was guarded. No one had the right to enter and leave it without the permission of the court. The law called on the jury to make a unanimous decision but if it could not be reached, the questions were put to a vote. The answer to each question could only consist of an affirmative "yes" or a negative "no". If the votes were split equally, then the question was decided in favor of the defendant. The jury could only supplement their answers by indicating that the defendant deserved leniency. Based on the jury's verdict, the crown judges acquitted or convicted the defendant, respectively. Court verdicts made with the participation of jurors could be appealed only in cassation to the Senate (Mironov, 2003).

The second instance in the general court system was the judicial chamber. There, one could appeal the sentences and decisions of district courts passed without a jury. Moreover, the jurisdiction of the judicial chamber encompassed especially dangerous crimes – crimes against the state and crimes of officials. These cases were to be heard by the Crown court with estate representatives, one from each estate: the governorate (or uyezd) leader of the nobility, the mayor and the head of the volost.

Unlike the jury, the special tribunal of the judicial chamber was a single board of crown judges and representatives of the people where the rights of all members were equal both in the trial and in the sentencing. However, this formal equality did not lead to an increase in their role compared to the jury. On the contrary, as G.A. Dzhanshiev pointed out, this form was almost no different from an ordinary crown court (Dzhanshiev, 1891). Nevertheless, one should not think that the members of judicial chambers were also silent observers who obeyed guidance from the superiors. The number of acquittals of special tribunals with the participation of estate representatives was only slightly less than in jury trials (Dzhanshiev, 1892).

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 342-357
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Official work in Ukraine: characteristics of legal status and recurring problems

DOI: https://doi.org/10.46398/cuestpol.38e.22

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Abstract

The purpose of the article is to analyze the concept of «contract work» in Ukrainian legislation, determine its characteristics, as well as identify the scope of rights that arise with its creation. The methodological basis of the research is a series of general and special scientific methods of cognition. In the research process, formal and logical methods, systems and structural, comparative and legal, logical and legal and other scientific research methods were used. The rules of Ukrainian legislation, which regulate the subject under consideration, were investigated; they were compared with the relevant laws of some states of the world. Judicial practice, which deals with some problems related to the distribution of contract work rights between an employer and an employee, was also examined. Practical implication. The concept of «paid work» in the Ukrainian legislation was analyzed, its characteristics were identified, which are at the same time the conditions for recognizing work as paid work. By way of conclusion, it is convenient to distinguish the non-patrimonial and property rights of an employer and employee to work under contract, which in turn implies the problem of determining the amount of royalties.

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Keywords: contract work; rights not related to property; property rights; labor rights; legal status.

Trabajo oficial en Ucrania: características del estatus legal y problemas recurrentes

Resumen

El objetivo del artículo es analizar el concepto de «trabajo por contrato» en la legislación ucraniana, determinar sus características, así como identificar el alcance de los derechos que surgen con su creación. La base metodológica de la investigación es una serie de métodos científicos generales y especiales de cognición. En el proceso de investigación se utilizaron métodos formales y lógicos, sistemas y métodos estructurales, comparativos y legales, lógicos y legales y otros de investigación científica. Se investigaron las reglas de la legislación ucraniana, que regulan el tema en consideración; fueron comparados con las leyes relevantes de algunos Estados del mundo. También se examinó la práctica judicial, que se ocupa de algunos problemas relacionados con la distribución de derechos al trabajo por contrato entre un empleador y un empleado. Implicación práctica. Se analizó el concepto de «trabajo a sueldo» en la legislación ucraniana, se identificaron sus características, que son al mismo tiempo las condiciones para reconocer el trabajo como trabajo a sueldo. A modo de conclusión conviene distinguir los derechos no patrimoniales y de propiedad de un empleador y empleado para trabajar por contrato, lo implica a su vez el problema de la determinación de la cantidad de regalías.

Palabras clave: trabajo por contrato; derechos no relacionados con la propiedad; derechos de propiedad; derechos laborales; estatus legal.

Introduction

It is well known that every person has the right to own, use and dispose of the results of their intellectual, creative activities, other objects of intellectual property rights. Intellectual property rights are divided into property rights in intellectual property law and non-property rights in intellectual property law. However, a significant number of intellectual property rights are created by employees in the performance of their duties. These are, first of all, employees of creative and intellectual professions, who create works of science, literature and art in the course of their official duties. For example, scientific and pedagogical workers are also obliged to

prepare methodological, didactic and educational materials for organizing relevant scientific and practical classes in addition to performing their direct work duties (conducting lectures, seminars and workshops). Therefore, in carrying out such activities, the employee produces a work-for-hire, the legal status of which requires additional clarification and regulation.

The most complex and relevant is the issue of the amount of payment to which the author of this kind of work is entitled, and which are established by the employment contract and (or) civil contract between the author and the employer. Secondly, the Civil Code of Ukraine (2003) stipulates that intellectual property rights to an object created in connection with the performance of an employment contract belong to the employee, who created the object, and to the legal person or to the individual, in which or for which he (she) works, jointly, which, however, does not mean equally. Therefore, it is important to determine which part of the property rights to the work-for-hire belongs to the employee, and which one – to the employer.

The problems associated with the distribution of rights to the work are mainly related to the dual legal regulation of these relations. Thus, the legislation of Ukraine stipulates that the issue of the exclusive property right to a work-for-hire may be regulated by an employment contract (contract) and (or) a civil contract between the author and the employer. It is the misunderstanding of the subject matter of legal regulation that leads to conflict situations between these persons. It is these and other problems related to the legal status of the work-for-hire, which led to the need for this study.

1. Methodology

The methodological basis of the research is a number of general scientific and special methods of cognition, the choice of which is determined by the features of its object, subject, purpose and tasks. In the process of research formal and logical method, system and structural, comparative and legal, logical and legal and other methods of scientific research were used.

The analysis of the achievements of civil law, the norms of current legislation of Ukraine and some other countries and the practice of their application in the area of copyright protection in legal relations related to the creation of a work-for-hire, was conducted using the formal and logical method.

The system and structural method was applied to clarify the system of methods and means of protection of rights to a work-for-hire, their relationship with the general means of protection of civil rights provided by the current legislation of Ukraine.

The legal regulation of relations arising in connection with the creation of work-for-hire, as well as the ways to protect the rights to it under the laws of other countries were studied with the help of comparative and legal method.

The methods of analysis and generalization were applied in the course of case law study.

The main conclusions of the Article are based on the analysis of international acts on protection the rights to work-for-hire, current legislation of Ukraine and foreign legislation, practice of their application, achievements of general theory of civil law, intellectual property law, case law materials.

2. Literature Review

A number of foreign and Ukrainian scientists have considered the problems, connected with the copyright in general and work-for-hire in particular. For example, Matthew R. Harris (1990) studied the doctrines of Copyright, Computer Software, and Work Made for Hire. He examined, inter alia, what can be considered work-for-hire, and what cannot be considered as such; investigated the court practice concerning the settlement of disputes between the employers and the authors of the works; researched the history of establishment of work-for-hire doctrine and the development of legislative regulation of the issues related to this legal institution.

The representatives of the Sutherland Asbill & Brennan LLP (2004) conducted a comprehensive analysis of international work-for-hire laws. They studied the legislation concerning the issue under consideration of such States as USA, Australia, the UK, France, Germany, China, Japan. As the result the authors come to the conclusion that the overall approach to such works is rather similar in all the countries under consideration. All six countries acknowledge at least on a limited basis copyright in an employer when the employee creates the work within the scope of his employment.

Jon M. Garon and Elaine Ziff (2011) examined the US copyright law in general and the rules regulating the legal regime of the work-for-hire in particular. They provided us with the inclusive case law study, in the course of studying of which they considered a lot of illustrative court decisions such as JustMed, Inc. v. Byce, Woods v. Resnick, Mattel, Inc. v. MGA Entertainment, Inc, Marshall v. Miles Laboratories, etc. The researches state that most business works are created as works made for hire, which vests the copyright in the employer rather than the employee. If the employer and employee cannot reach agreement between themselves, than the work for hire doctrine will be used for regulating relations between them.

Among Ukrainian scientists this problem was studied by Kulbashna (2013), Denisova (2011), Soloviova (2008), Potomkin (2007) and others.

3. Results and Discussions

3.1. The concept of "work-for-hire" and its features

The Civil Code of Ukraine (2003) does not provide for the concept of "work-for-hire", but uses the phrase "object created in connection with the performance of an employment contract". The definition of "work-for-hire" is enshrined in the Law of Ukraine "On Copyright and Related Rights" (1993), according to which it is a work created by the author in the performance of the official (work) duties in accordance with the employment contract (her) between him and the employer (Art. 1).

Thus, an official work is a work created:

- by the author (employee) when performing his (her) official (work) duties.
- in accordance with the duty assignment or employment contract between the author (employee) and the employer.

The Law of Ukraine "On Copyright and Related Rights" (Art. 8) establishes the list of objects of copyright in the area of science, literature and art (i.e. those that, in particular, can be works-for-hire): literary written works of fiction, journalistic, scientific, technical or other nature (books, brochures, articles, etc.); speeches, lectures, sermons and other oral works; computer programs; databases; audiovisual works; works of fine art; works of architecture, urban planning and landscape art; photographic works, including works made in a manner similar to photography; illustrations, maps, plans, drawings, sketches, plastic works related to geography, geology, topography, technology, architecture and other areas of activity; collections of works, collections of folklore, encyclopedias and anthologies, collections of ordinary data, other compiled works, provided that they are the result of creative work on the selection, coordination or organization of content without infringing copyright on the works that are part of them; other works.

The analysis of the aforementioned rules allows to identify the following features of the official work, which are also conditions for recognition of the work as work-for-hire:

1) the author is in an employment relationship with the employer on the basis of an employment contract;

2) the work must be created by the author in the course of performance of his (her) official (work) duties, i.e. the obligation to create works-for-hire is part of the official (work) duties of the employee;

3) the work should be created in accordance with the duty assignment or employment contract between the author and the employer. In this case, as Kulbashna (2013) correctly points out, the very fact of hiring an employee and concluding an employment contract is not sufficient enough for the employer to obtain all or part of the intellectual property rights to works created by the employee during the performance of his (her) duties. The employer can acquire the rights only to those works-for-hire, for the performance of which the employee has received a duty assignment or which were clearly specified in the employment contract. The official task can be expressed in the form of an order or a separate official note. It can be formalized as an agreement on the creation of a work-for-hire, in which it is necessary to specify: a) the subject of the agreement (object of copyright); b) the terms of its execution; c) the amount of remuneration for the creation of the copyright object.

4) the creation of work-for-hire can be carried out both during working hours and after work hours, regardless of the place of its creation; both with the use of means and materials belonging to the employer, and without such means and materials.

5) the object should be recognized as official, if the employer provided its creator with the necessary financial, material or other assistance or otherwise contributed to it in the process of creating the specified object. It can be enshrined in the employment contract that the material and technical base of the employer (equipment, software, etc.) is prohibited to be used for the creation of works, intellectual property rights to which do not belong to the latter. The completion of the copyright object is fixed by an acceptance certificate, so that in case of conflict such a work could be identified (Denisova, 2011).

However, as Soloviova (2008: p.35) notes in this regard, “fixing in special laws on certain types of intellectual property rights the list of conditions necessary for their classification as official limits the possibility of recognizing all, without exception, intellectual property rights that may be created by an employee as a result of performance of the employment contract and allows to classify as works-for-hire only those, which are created not simply as a result of performance of the employment contract, but as a result of performance of official duties under the employment contract or the assigned duty”.

Such an opinion is entitled to be expressed, because, for example, the Law of Ukraine “On protection of rights to inventions and utility models”

(1994) stipulates that the invention is work-for-hire created by an employee using experience, production knowledge, production secrets and employer equipment. However, it is not clear from the content of this article whether all these conditions must be met for the invention to be considered work-for-hire, or whether the existence of one of them is sufficient enough.

Thus, we have defined what is meant by the term "work-for-hire" and defined its features. Now let's find out what rights does an employee have in relation to his (her) creation.

3.2. Intellectual non-property rights to a work-for-hire

The legislation stipulates that personal non-property property rights in intellectual property law to an object created as the result of performance of an employment contract belong to the employee who created the object.

Personal non-property intellectual property rights are:

1) the right to recognize a person as the creator (author, performer, inventor, etc.) of the object of intellectual property rights.
2) the right to prevent any encroachment on the intellectual property right, capable of damaging the honor or reputation of the creator of the object of intellectual property rights.
3) other personal intangible intellectual property rights established by law.

Part 1, Article 429 of the Civil Code of Ukraine establishes that in the cases provided by the law, some personal non-property intellectual property rights to such object can belong to the legal or an individual, in which of for whom an employee works. However, such cases are not specified in the special Law "On Copyright and Related Rights".

The courts also insist on the inalienable nature of the non-property rights of the author of the work-for-hire. Thus, the Plenum of the Supreme Court of Ukraine established in its Resolution of June 4, 2010 no. 5 that if the work is created in the performance of the employment contract and within its validity, i. e. in the performance of the official duties or according to the assigned duty, then the personal intangible rights of the author of the work belong to the employee; they are inalienable.

In addition to the above mentioned non-property rights to work-for-hire, the author also holds the following non-property rights related to the creation:

1) to require the indication of his (her) name in connection with the use of the work, if it is practically possible;

2) to prohibit the indication of his (her) name in connection with the use of the work;

3) to choose a pseudonym in connection with the use of the work;

4) the inviolability of the work.

Article 6 bis of the Berne Convention (WIPO, 1971) provides that, independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation. These rights, recognized by the author, remain in force after his (her) death at least until the termination of property rights and are exercised by persons or institutions authorized to do so by the law of the country, in which protection is required.

3.2. Intellectual property rights to a work-for-hire

Intellectual property rights to an object created in connection with the performance of an employment contract shall belong jointly to the employee who created the object and to the legal or natural person, in which or for whom he (she) works, unless otherwise provided by the contract.

Intellectual property rights are:

1) the right to use the object of intellectual property rights;

2) the exclusive right to allow the use of the object of intellectual property rights;

3) the exclusive right to prevent the misuse of the object of intellectual property rights, including the prohibition of such use;

4) other property rights of intellectual property established by law.

At the same time, according to the Law of Ukraine "On Copyright and Related Rights", the exclusive property right to the official work belongs to the employer, unless otherwise provided by the employment contract and (or) civil contract between the author and the employer. Thus, there is a legal conflict, i.e. divergence between different regulations. In this case, the normative act of higher legal force is applied, i.e. the Civil Code of Ukraine. Therefore, we believe that the property rights belong to the author of the official work and the employer together, unless otherwise provided by the contract.

However, joint use does not mean using work-for-hire equally, and, therefore, the disputes between an employee and employer may arise on this issue. To prevent such situations, it is necessary to enshrine the conditions, manner and procedure for the use of property rights to work-for-hire in the relevant employment or civil contract in detail.

The need to conclude a contract is indicated in the relevant case law. Thus, the Resolution of the Plenum of the Supreme Commercial Court of Ukraine of October 17, 2012 no. 12 states that such a contract can be: a) employment contract (indicating the provisions on the distribution of exclusive property rights to the work between the employer and the author or other creator, the amount of remuneration, a list of responsibilities for the creation of a particular work (works), the nature of the job, etc.); b) civil law contract, which can be concluded both before and after the creation of a work-for-hire.

If such an agreement is not concluded, the provisions of Art. 428 of the Civil Code of Ukraine are applied, which state that intellectual property rights that belong to several persons are exercised jointly. This means that each party uses the work-for-hire at its own discretion. To use the work-for-hire by the third parties, it is necessary to obtain permission both from the employer and the author (employee), because if they do not enter into an agreement agreeing on the terms, each party will not have the right to dispose of these rights without the consent of the other party.

At the same time, the rights to works, created beyond the employment contract or assigned duty, the order cannot be considered transferred to the employer or customer on the basis of law; for example, illustrations made by an employee to a work created in the performance of the official task will not be considered as works-for-hire if they are not provided for by such a task or employment contract with the employer. The boundaries of the job in case of dispute are determined taking into account both the content of the employment contract and other documents that determine the scope of duties of the employee (job descriptions, orders, directives, service notes, etc.) (Par. 35 of the Resolution no. 12).

4. Calculation of the amount of royalties

Let's consider another problematic issue in the legal relations under consideration, namely the amount of remuneration to the employee who is the author of the work-for-hire. Art. 16 of the Law of Ukraine "On Copyright and Related Rights" states that the author is entitled to royalties for the creation and use of a work-for-hire, the amount and payment of which are set by the employment contract and (or) civil law contract between the author and the employer.

Some employers believe that remuneration for a job is already included in the salary, as its creation is provided by the employment contract (civil contract) and / or job description. However, this is not so, because according to Art. 1 of the Law of Ukraine "On wages and salaries" (1995), wages are remuneration, calculated, as a rule, in monetary terms, which the employer pays to the employee for the work performed by him (her) under the employment contract. The amount of salary depends on the complexity and conditions of work performed, professional and business qualities of the employee, the results of his (her) work and economic activity of the enterprise. Thus, the payment of wages to an employee is not the same as the payment of royalties for the work created, because wages are remuneration for the work performed depending on certain conditions, and royalties are all types of remuneration or compensation paid to the authors for the use of their works (Par. 25 of the Resolution no. 5).

The author of the work-for-hire has the right to receive two different rewards – for the creation of the work-for-hire and its use. Thus, according to Art. 445 of the Civil code of Ukraine the author has the right to a payment for the use of his (her) work. Art. 33 of the Law of Ukraine "On Copyright and Related Rights" states that the agreement on the transfer of rights to use works is concluded if the parties agree on all essential conditions (term of the contract, method of use of the work, the territory covered by the transferred right, the amount and the procedure for payment of royalties). Speaking of the right to use the work, the right to allow or prohibit the use of work-for-fire by other persons is omitted. Thus, this Law stipulates that only the agreement on the transfer of non-exclusive rights must be paid. According to Art. 31 of the Law of Ukraine "On Copyright and Related Rights", property rights transferred under a copyright agreement must be defined in it. Property rights, which are not specified in the copyright agreement as alienable, are considered not to be transferred. Consequently, there is a possibility of free transfer of all exclusive property rights in general (Potomkin, 2007)

This fact is also confirmed by the Instruction on Wage Statistics, approved by the Order of the State Statistics Committee of Ukraine of January 13 (2004) no. 5, which established that the Remuneration Fund includes:

a) a fee for full-time employees of editorial offices of newspapers, magazines, other mass media, publishing houses, art institutions and / or remuneration for their work, calculated at the rates of the author's remuneration set by given enterprise (Par. 2.1.3);

b) remuneration paid under the copyright agreement for the creation and use of works of science, literature and art (paragraph 3.14).

The amount and the procedure for payment of royalties for official work is enshrined in the relevant contract, during the conclusion of which the parties should be guided by the provisions of the Resolution of the Cabinet of Ministers of Ukraine "On approval of minimum rates of royalties for the use of copyright and related rights" of January 18 (2003) no. 72, which states that the amount of remuneration cannot be less than the amount specified by the Resolution (this is usually determined in the form of a certain percentage or a clearly fixed amount) (Resolution of the Cabinet of Ministers of Ukraine "On approval of minimum rates of remuneration royalties for use objects of copyright and related rights" no. 72 from January 18, 2003.

In practice, there is usually a fixed amount of royalties set in the contract and linked to the scope of the work. This approach, on the one hand, is in the best interest of the performer: he is able to see a specific total amount in advance and can calculate the one he will receive as a result of his work. The specific amount specified in the contract allows the employer to plan the cost of the copyright object and the amount of profit he will receive from its use, as well as to avoid disputes with the employee about the amount to be paid for the transfer of copyright. The payment is recorded (cash disbursement order, payment order) with an indication that it is the royalties under a specific contract (Denisova, 2011).

At the same time, it should be noted that the Draft Law on Copyright and Related Rights is currently registered in the Verkhovna Rada at number 10143 of March 12, 2019, which provides different conditions for the payment of royalties for works-for-hire for the private and public sectors (Article 14 of the Draft Law). Thus, such a fee must be paid for any kind of use of the work-for-hire, except for computer programs and databases in private companies. Its amount and procedure for payment are determined by the employment contract or the agreement on the distribution of property rights to the work-for-hire, concluded between the author and the employer. The situation is somewhat different for the employees of public authorities: property rights to the created work-for-hire pass to the public authority without concluding a civil law contract and without payment of remuneration.

5. Foreign experience

The definition of "work-for-hire" first appeared in intellectual property law of the United States. This category includes not only works-for-hire (created by the employee within labor relations), but also 9 types of works created to order. Thus, the US Copyright Act (2016) defines a "work made for hire" in two parts: a) a work prepared by an employee within the scope of

his or her employment or b) a work specially ordered or commissioned for use 1) as a contribution to a collective work, 2) as a part of a motion picture or other audiovisual work, 3) as a translation, 4) as a supplementary work, 5) as a compilation, 6) as an instructional text, 7) as a test, 8) as answer material for a test, or 9) as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire (Section 101 of the US Copyright Act).

However, despite a sufficiently detailed definition, it is difficult to establish whether a work belongs to the category of official or not. Therefore, the US courts first find out whether the work was prepared by an employee or an independent contractor. If an object is created by an employee while performing his work functions, it is considered to be work-for-hire. A work created by an independent contractor can be work-for-hire if: a) it falls within one of the nine categories of works listed in Par. 2 Article 101 cited above, and b) there is a written agreement between the parties stating that the object of intellectual property is exactly the work-for-hire.

In the United Kingdom the rights to work-for-hire created by an employee in the course of his (her) official (work) duties belong, as a general rule, to the employer. Like US courts, those in the UK consider a variety of factors to determine employment versus contract labor, including the presence of employee tax and benefits treatment, although the primary test is "whether the work undertaken forms an integral part of the business (Sutherland Asbill & Brennan LLP, 2004).

Only an individual can be considered the author of work-for-hire according to French copyright law. He (she) owns all the rights associated with the created object of intellectual property, regardless of whether it is a work-for-hire or not. This rule applies to both the employee and the independent contractor. In resolving disputes related to the distribution of rights to works-for-hire, the French courts mainly use the relevant provisions of the Intellectual Property Code of France (1992), according to which the author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right which shall be enforceable against all persons. This right shall include attributes of an intellectual and moral nature as well as attributes of an economic nature. The existence or conclusion of a contract for hire or of service by the author of a work of the mind shall in no way derogate from the enjoyment of the right afforded by the first paragraph above (Art. L111-1 of the Intellectual Property Code of France). Thus, French law prohibits employers from claiming property right to works-for-hire, and the courts, as a general rule, refuse to recognize this right. However, there are some gaps in the laws that might be exploited by the employers.

The relevant legislative acts of Latvia, Moldova, Kazakhstan, Georgia, which regulate the distribution of rights to works-for-hire, provide that the

basis for the creation of a work-for-hire is the performance of official (work) functions or an assigned duty. In this case, the official duties of the employee are understood as his (her) functional responsibilities, fixed in employment contracts, job descriptions, which may lead to the creation of work-for-hire. Assigned duty, in its turn, is the task to the employee issued in writing that is directly related to the specifics of the enterprise or employer and can lead to the creation of work-for-hire.

As we can see, the concept of the official work provided in the Ukrainian legislation coincides with the definitions enshrined in the legislation of many other States in many respects. However, the issue of the distribution of rights to the work-for-hire between the employee and the employer is regulated differently by each country.

Conclusion

Thus, as a result of the study, we considered in detail the concept of the "work-for-hire", enshrined in the Law of Ukraine "On Copyright and Related Rights". The features of the work-for-hire were identified, which are at the same time the conditions for recognizing the work as work-for-hire, which are: 1) the author is in an employment relationship with the employer on the basis of an employment contract; 2) the work must be created by the author in the performance of his (her) official duties (work functions); 3) the work must be created in accordance with the assigned duty or an employment contract between the author and the employer; 4) the creation of work-for-hire can be carried out both during working hours and after working hours, regardless of the place of its creation; 5) the object should be recognized as work-for-hire, if the employer provided its creator with the necessary financial, material or other assistance or otherwise contributed to it in the process of creating the specified object.

It was established that the personal non-property rights of the author to the work-for-hire belong to the employee and are inalienable. The property rights related to the creation of the work-for-hire work were listed. It was determined that property rights belong to the employee and the employer jointly, unless otherwise provided by an employment or civil contract. However, joint use does not mean using work-for-hire equally, which often leads to disputes between an employee and employer. To prevent such situations, it is necessary to enshrine the conditions, manner and procedure for the use of property rights to the work-for-hire in the relevant employment or civil contract in detail; the latter may be concluded both before and after the creation of the work-for-hire.

The problematic issue in the legal relations under consideration is the determination of the amount of remuneration to the employee who is the author of the work-for-hire. Thus, the author is entitled to royalties for the creation and use of a work-for-hire work, the amount and procedure for payment of which are established by the contract. In practice, there is usually a fixed amount of royalties set in the contract and linked to the amount of work. In this case, the payment of wages to the employee is not the same as the royalties, although some employers believe otherwise. In addition, the author of the work-for-hire has the right to receive two different rewards – for the creation of the work-for-hire and its use.

During the study of foreign experience on the issue under consideration, it was found that the concept of the official work provided in the Ukrainian legislation coincides with the definitions enshrined in the legislation of many other States in many respects. However, the issue of the distribution of rights to the work-for-hire between the employee and the employer is regulated differently by each country.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 358-370
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Victimology: prevention of crimes against the life and health of a child

DOI: https://doi.org/10.46398/cuestpol.38e.23

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Abstract

The objective of the article is to propose a renewed protection system for children in the prevention of crimes against life and health. The research methodology is based on the combination of dialectical, formal, dogmatic, sociological, comparative law and documentary methods. The results of the study contributed to the development of measures to guarantee the safety of the child, which means a set of legal, economic, organizational measures, which are carried out by the public powers and the administration, with the aim of neutralizing and preventing usurpation of the life and health of children in Ukraine. Organizational and legal measures have been implemented to improve the interaction of the National Police with the services of children and special institutions for children by carrying out joint activities to prevent and identify possible invasions into the life and health of the child. It is concluded that in order to determine the characteristics of the subject, namely, crimes against the life and health of the child, it is necessary to improve the legislation in the interaction of the actors to prevent this type of crime.

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Recibido: 04/16/2020 Aceptado: 08/27/2020.

Keywords: crimes against the life and health of the child; victimological prevention measures; victimological safety; measures to ensure the safety of the child; Ukraine.

Victimología: prevención de delitos contra la vida y la salud de un niño

Resumen

El objetivo del artículo es proponer un renovado sistema de protección para los niños de prevención de delitos contra la vida y la salud. La metodología de investigación se basa en la combinación de los métodos dialéctico, formal, dogmático, sociológico, de derecho comparado y documental. Los resultados del estudio contribuyeron al desarrollo de medidas para garantizar la seguridad del niño, lo que significa un conjunto de medidas legales, económicas, organizativas, que son llevadas a cabo por los poderes públicos y la administración, con el objetivo neutralizar y prevenir la usurpación de la vida y la salud de los niños en Ucrania. Se han implementado medidas organizativas y legales para mejorar la interacción de la Policía Nacional con los servicios de la niñez y las instituciones especiales para la niñez mediante la realización de actividades conjuntas para prevenir e identificar posibles invasiones a la vida y la salud del niño. Se concluye que para determinar las características del tema, a saber, los delitos contra la vida y la salud del niño, es necesario mejorar la legislación en la interacción de los actores para prevenir este tipo de delitos.

Palabras clave: delitos contra la vida y la salud del niño; medidas de prevención victimológica; seguridad victimológica; medidas para garantizar la seguridad del niño; Ucrania.

Introduction

The Constitution of Ukraine places the highest value on a person, his (her) life and health, honor and dignity, inviolability, and security as the highest social value (Article 3). The State guarantees the protection of the family, childhood, motherhood and fatherhood (Article 51), as well as the protection of children from violence (Article 52). However, despite State guarantees, the problem of domestic violence against children in Ukraine is acutely social and requires adequate measures to respond to it at various levels. The problem of domestic violence against children has not been discussed outside the family for a long time, due to the isolation of family relations from society and the belief that the choice of methods

of upbringing a child is a personal matter for each family. However, at the present stage, the international community has recognized such violence as one of the most common forms of violation of the natural rights of the child. Childhood is one of the most important stages of human development, when the fundamental moral qualities, the foundations of the interaction of an individual with the society (in the family, in educational institutions, and in the future – with the colleges, etc.) are laid. Therefore, violence against children poses a great threat not only to their physical and mental health, but also to their further normal socialization in general. The importance of protecting the child's right to life and health led to the choice of the topic of the scientific article and facilitated consideration of this issue from the standpoint of criminology and victimology in order to develop specific proposals and practical recommendations for identifying signs of crimes, identifying their determinants and developing ways of prevention.

A significant number of scientific findings indicate that the problem of the effectiveness of preventive measures in this area remains relevant. Unfortunately, today there is no research in the field of victim prevention of crimes that encroach on the life and health of the child, in conditions of deteriorating crime. The current situation is due to the shortcomings of preventive activities not only of police units, but also of services for children, families and youth. All this determines the relevance and timeliness of the definition of measures to ensure the safety of life and health of the child as a special object that needs immediate improvement.

The aim of the article is to develop measures for the victimological safety of the child, namely to prevent crimes against the life and health of the child, which should be reflected in law and practice. Also with the aim of clarifying the nature of child victimization, the factors that contribute to this, as well as the development on this basis of scientifically sound recommendations aimed at preventing and stopping crimes against life and health of children, improving the effectiveness of existing forms and methods of preventing crimes.

1. Literature Review

The issue of protection of life and health of a person in general and a child in particular has been repeatedly addressed in legal science, and various aspects of this legal institution have been studied depending on the area of law. For example, Mussayev (2018) focuses on the peculiarities of victimological prevention of criminal offense against human life and health. He investigated different methods to improve the preventive measures system for crime against life and health by studing the experience of some foreign countries on this issue and allocating the main trends in

protecting crime victims used in these States. The Author also presented his own system of measures aimed at preventing crimes against life and health based on the comprehensive study of international experience.

Resented comprehensive analyses of such institutions of law as victimology and crime prevention. The Authors believe that victimology and crime prevention have developed in parallel and insist on *autonomous nature of* these institutions, which, however, are closely connected with such disciplines as sociology, law, criminology, medicine, economics, psychology, etc. They examined a lot of issues within the research, among which are: crime prevention, personal offenses, school offenses, school-based crime prevention, victimology and so on.

Frieze, *et al* (1987) focused their attention on the *physiological response* of victims to the crime committed against them. The authors believe that the consequences of such a reaction could be much more severe than physical injury or material damage caused (for example, loss of a sense of self, a loss of safety or invulnerability, and feelings of inequity or injustice). Special attention is paid to the issue of children who are victimized.

Besides, the study used the results of scientific researches of such scholars as T. Wind, and Silvern (1992), who considered the issue of type and extent of child abuse; Giarbarlo (1995), who proposed some of the therapeutic methods of exit counseling; Baron and Richardson (1994), who investigated the development of aggression, biological bases of aggressive behavior, and aggression in natural settings and Abdulgaziev *et al* (2018), who examined the interconnection between family welfare and the crime rate among children.

Among Ukrainian scientists these problems was studied by Dzhuzha (1998), Tuliakov (2000), Zelenyak (2018) and some others.

2. Materials and methods

The methodological basis of the article is the dialectical-materialist method of cognition of reality. The study used a dialectical method of cognition of reality, as well as special theoretical and sociological methods, in particular: comparative law – in determining the legal responsibility for encroaching on the life and health of the child, which allowed to study the legislative experience of foreign countries, statistical – when studying data on the state, trends of investigated crimes and characteristics of persons committing crimes against the life and health of children, sociological – in the process of studying the opinions of practitioners of Ukraine on the factors that determine the commission of investigated crimes and study the materials of criminal proceedings. violated for crimes against the life and

health of the child, logical and normative – when formulating proposals for amendments to current legislation in order to prevent crimes against the life and health of the child.

The research is also based on the documentary method for collection sociological information, with was used in the course of the study of official statistics of the National Police of Ukraine during 2013 – 2019, the results of opinion polls of 309 investigative territorial units of the National Police and materials of 284 criminal cases and criminal proceedings for 2009 – 2019.

3. Results and Discussion

Currently, Ukraine has an extensive system of regulations that directly enshrine the legal mechanism for ensuring, protecting and defending the rights of the child. It should be noted that this mechanism generally complies with international standards in the field of children's rights, which are enshrined in the relevant regulations. Art. 6 of the Family Code of Ukraine (Law of Ukraine, 2002) defines "the legal status of the child as a person before reaching adulthood. A child is considered a minor until he or she reaches the age of fourteen. A child between the ages of fourteen and eighteen is considered a minor".

Despite the large number of scientific studies that have formulated the fundamentals of criminological victimology and the system of victimology prevention, further research today requires the protection of children from crimes against life and health, as well as the development of victimology safety for children.

The importance of protecting the life and health of a child is unquestionable, as provided by domestic law – the features of criminal liability for encroachment on the life and health of the child. The specificity of the child as a victim is due to age, level of knowledge, limited life experience, conformal qualities, etc. This contributed not only to the selection of aggravating features in criminal law (Law of Ukraine, 2001), but also to the development of a system of protection for this category of the population.

But despite the current system of measures, crimes against the life and health of children account for up to 7% of the total crime (Prosecutor's General Office of Ukraine, 2020). Therefore, there is an urgent need to develop a system to ensure the safety of the child from crimes against life and health, namely in the form of victim prevention measures. It is important to understand the potential victimhood of the child is to determine the environment in which the child is, the process of its formation, victimogenic

factors and conditions. As the process of victimization is dynamic, due to the interaction of various components - a set of circumstances in the life of the child and society, which determine the process of transforming the individual into a victim of crime, they in one way or another contribute to its implementation. The conditions of victimization are various phenomena of objective and subjective nature, which increase the child's ability to become a victim of crime, as certain properties of the child determine the degree of its vulnerability to crime.

According to the research, the potential nature of the child's victimhood is enhanced when the study is from a single fact, from the level of personality to the level of social group. The content of the child's victimhood is a personal and situational components. The personal component of a child's victimhood contains qualities of a subjective nature, which contributes to increased vulnerability to encroachments on life and health. The situational component of victimhood contains a set of objective circumstances that form personal components, or increase their role and importance in the process of victimization of the child (Malkina-Pykh, 2010).

One cannot but agree that the main factors of victims' victimhood are their age, which results in incomplete formation of a person in biological terms, and given this – the inability to resist criminal encroachment and socially, the inability to adequately assess the situation, which leads to greater likelihood to a criminogenic situation as a victim of a crime.

The scientists divide the victims' traits that are inherent in children into two groups – general and individual ones (Dzhuzha, 2015; 2017; Moiseiev, 1998; Tuliakov, 2000). Gereral traits are: gullibility, naivety, curiosity, inability to adequately respond to the situation, mental retardation from physical, the predominance in mental activity of the processes of excitation from inhibition, physical weakness.

Individual mental properties are divided into biopsychological, psychological and socio-psychological. The actual psychological traits are: aggression, anxiety, cruelty, riskiness, emotional imbalance. Socio-psychological traits are: the need for communication, self-affirmation, ignorance of the main methods of personal security. Psychological factors are: type of temperament, the presence of certain characteristics. Besides, some foreign scientists identify the factors associated with: objectively low socio-economic status of the family (Fattah, 1989), single-parent family (Wind and Silvern, 1992), the norms and style of communication and upbringing of a child (Giarbarlo, 1995; Frieze *et al*, 1989).

The interaction of subjective and objective factors not only leads to the victimization of the child, but also contributes to the process of turning the child into a potential victim. Therefore, during the research the determinants of victimization it is necessary to determine the mechanism,

which is a system of elements and stages of change in the victimhood of the child due to the interaction of external and internal factors. In this case, the objective (external) component is a set of conditions that exist in society and which are characterized by victimogenic potential, and subjective (internal) factors constitute a system of mental processes that form the victim motivation of behavior. Victim prevention should help not only to identify specific life circumstances of the potential victim, but also to model the victim situation, taking into consideration social mechanism of victimization. Increased victimization of children is determined not only by their psychophysiological qualities, but also by their social roles, the place in the system of social relations, the position they occupy in the family.

Today, a model that explains the mechanism of child victimization has been developed. Examining the cycle of development of aggressive tendencies in a child, it has been found that children who have been abused are more aggressive towards other children – the "index of aggression" for the offended child was 93% higher than for other children. This is especially true for children who have been subjected to domestic violence. Such a child is less able to process information and solve problems of interpersonal communication in a tolerant form. The pattern of aggressive behavior reproduced in early childhood can extrapolate to future actions (Baron and Richardson, 1994). Victimization of a child thus determines the criminalization of an adult. Accordingly, the task of victimological prevention is to prevent this.

Of particular concern is the increase in the number of crimes under investigation against minors. And it is crimes committed by parents and relatives. Such crimes have a high level of latency, which is facilitated by fear of adults and the belief that no one will be able to help a child. Sometimes it is impossible to distinguish between child abuse and criminal neglect of the child. The feelings of fear or shame in front of friends and acquaintances, fear of condemnation or ridicule, which is characteristic of the child's environment, the child's desire not to talk about what is happening. Internal experiences negatively affect on the child's development (Zelenyak, 2019). In our opinion, crimes against the life and health of a child should be investigated not only as a criminal law problem, but also, first of all, as a social one.

As a result of studying the materials of criminal cases and criminal proceedings, the so-called "secondary" victimization was established, which appears during the reproduction of the circumstances of the crime. Particular attention in the interview with the child should be paid to the crime committed. In this case, tactless, rude behavior or contempt for the child, its condemnation are unacceptable. The victim's rejection by her immediate environment, misunderstanding and condemnation will contribute to desocialization - escape from home, family, alcohol, drugs,

exposure to a deviant environment and, as a consequence, secondary victimization.

The identification of all social phenomena and processes in the relationship is of great importance for the development of victimological security measures that will help minimize (neutralize) the phenomena and processes that give rise to crime. Victimological security is understood as a set of measures carried out by state bodies, public organizations, individuals, aimed at a potential victim (child), the application of which reduces the possibility of becoming a victim of crimes against life and health (Zelenyak, 2018,).

The development of victim safety measures should be based on: a set of knowledge about the victim, the peculiarities of his (her) behavior before, during and after the crime, the specifics of the relationship "criminal – victim", specific life circumstances that led to the transformation of a person into a victim. The task of such activities at the present stage is scientific explanation and forecasting of victimological processes in order to intensify the preventive impact on crime based on non-traditional approaches, which will focus on the person (child) who in certain circumstances may become a victim of criminal encroachment.

Today the legal basis for preventive activities is: the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, criminal procedural and criminal legislation of Ukraine, which reflects and partially solves some of the general issues of victimological crime prevention, Laws of Ukraine "On the National Police", "On Prevention and Counteraction to Domestic Violence", "On Social Services", "On Agencies and Services for Children and Special Institutions for Children", Decree of the President of Ukraine "On the Concept of Protecting the Legal Rights and Interests of Victims of Crime", etc.

A complex multi-subject system of neutralization of victimization of both the population as a whole and individual social groups has also been formed. This system is a set of practical measures to transform social relations in accordance with the goal of devictimization of the individual, reducing the negative consequences for society of criminal excesses, the reproduction of the rule of law and the principle of justice.

According to the results of the study, it should be noted that the identification of potential victims should be built in three directions: 1) on the part of the situation when, identifying and analyzing the situation, one comes to potentially affected in this situation; 2) on the part of the offender, when by studying his (her) connections or typical behavior, the range of possible potential victims of his (her) actions is determined; 3) on the part of the victim, when the determination of a particular person reveals his (her) inherent victim qualities (Zelenyak, 2018). Such activities are entrusted to State agencies, public organizations, officials, citizens.

It should be noted that crimes against the life and health of children are the result of conflict situations that are periodic, long-term in nature with increasing severity, exacerbation. And this is where the special social danger of crimes against children manifests itself, which requires constant improvement of work to prevent it. Neutralizing conflict situations through the use of influence on the parties to the conflict is an effective way to prevent crimes against the lives and health of children. It is through the use of early prevention measures, which includes preventive measures in the application of psychological and pedagogical skills and abilities to prevent the commission of a crime, which aims to restructure the consciousness of the individual who may commit a crime against the life and health of the child. The method of early prevention includes the implementation of a wide range of educational measures.

Among the measures aimed at preventing the commission of crimes against the life and health of a child are the measures aimed at identifying persons suffering from various diseases, primarily mentally ill persons who show various forms of aggression. The main burden of identifying these individuals should be on psychologists and psychiatrists. Today, in the context of health care reform, citizens are afraid to turn to psychologists and psychiatrists because of the fear of disclosure. As a result, these diseases only complicate, which makes such persons to commit the crimes under investigation. Excessive administration will contribute to the separation of such people from the professional help of doctors, and thanks to anonymous measures to provide psychological and psychiatric care, people can turn to help. The police should be informed only in cases where persons are, in the opinion of a doctor, are possible offenders, who can commit crime against life and health, and the behavior of such persons is not amenable to permanent correction. Besides, the identification of such persons, if they have not committed a crime, should not contain any punitive measures; medical measures should be applied only under conditions of strict confidentiality. Such identification of persons is necessary, first of all, in order to carry out individual work with them, to apply measures of individual prevention. The police officers must properly warn these people about the inadmissibility of committing crimes against the life and health of a child.

Particular attention should be paid to identifying persons suffering from aggression among the employees of educational institutions. There is an objective need to introduce mandatory testing of all educators involved in the educational process by the experienced psychologists and psychiatrists at the legislative level, regardless of the permanent or temporary nature of such work.

In connection with the above, it is quite important to supplement the Labor Code of Ukraine with the provisions, which would enshrine the restrictions on employment in education, upbringing, child development,

recreation and health, medical care, social services, children's sports, culture and art with the participation of children. Sadly, the mechanism for implementing the adopted legislation has not yet been developed. Thus, a person hired must provide the employer with the documents and a certificate of criminal record and facts of criminal prosecution, including terminated, but the form of such a certificate is not approved by the Ministry of Internal Affairs of Ukraine. There are also restrictions on the presence of some diseases, but the Ministry of Health has not approved the list of these deseases.

We consider it possible to divide the measures of individual influence into two types: the measures of persuasion and the measures of help. Persuasion measures are both protective and educational: conversations, explanations on how not to become a victim of crime, how to ensure the preservation of health and property. Alcohol intoxication of the victim is a condition that contributes to the commission of some crimes, so victimological prevention is largely to reduce the level of alcoholism of our citizens. Assistance measures primarily include the organization of special counseling centers, centers for social and psychological protection of citizens from crime, the main task of which is to inform the public about measures to protect against crime. It is necessary to organize group and individual consultations with potential victims of crimes, during which to provide them with social and psychological assistance, predict their individual victim behavior, identify and try to neutralize victimologically significant personality traits and behaviors in the centers of psychological assistance.

Psychoprophylactic work with children on devictimization (an active learning of socially important skills) is of particular importance today. Such activities can be implemented in the form of group exercises (trainings), for example in educational institutions.

Careful analysis of the factors that contributed to the encroachment on the life and health of the child will also contribute to the application of precautionary measures. Information on the areas where these crimes are committed, the intoxication of persons and the lack of understanding of the damage should be documented, investigated and analyzed in order to apply the most effective prevention measures, taking into account the safety of life and health of a child.

Promoting the safety of the child, which should include the dissemination of regulations in the area of ensuring the rights and interests of the child; informing the population about crimes related to the encroachment on the life and health of the child and their consequences; advertising of various organizational events. Activities to promote the safety of life and health of the child are aimed at the legal education of citizens to prevent violations of the rights and interests of the child.

Conclusion

According to the results of the study, measures of general social prevention of crimes against the life and health of children in Ukraine have a system of measures to ensure the "safety of the child". The definition of "child safety" refers to the protection of the life and health of a child from real and potential threats, which is a priority of state bodies, local governments, their officials and the public. The measures "ensuring the safety of the child" mean a set of legal, economic, organizational measures carried out by public authorities and administration, which are aimed at ensuring the neutralization and prevention of encroachments on the life and health of the child in Ukraine. These include:

1) legal regulation in the field of ensuring the safety of development and life of the child;

2) identification of threats to the life and health of the child;

3) assessment of the possible needs of a child who found himself in difficult life circumstances;

4) development and implementation of requirements for ensuring the safety of life and health of the child;

5) classification of measures to ensure compliance with the safety of life and health of the child;

6) development and implementation of measures to ensure the safety and health of the child;

7) training of specialists in the field of ensuring the safety of life and health of the child;

8) State control and monitoring of the situation in the field of ensuring the safety of life and health of the child;

9) legal, informational, logistical and scientific and technical support for the safety of life and health of the child.

Unfortunately, today the proposed measures are not able to solve all the problems, but together with traditional prevention measures can significantly increase the level of crime prevention, creating an opportunity for comprehensive measures, increasing its effectiveness, and be logically consistent and complete. However, to ignore the possibilities of victim safety measures, and even more so to ignore them, means to fight crime, namely crimes against the life and health of children, only in part.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 371-382
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Features of civil liability of police officers for damage caused under the influence of force majeure

DOI: https://doi.org/10.46398/cuestpol.38e.24

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Abstract

The aim of the article is to analyze the characteristics of civil liability of Ukrainian police officers for damage caused under the influence of force majeure. At a methodological level to achieve the objectives of the article, the following scientific methods were combined: general (dialectical, formal-logical, system-structural) and special (historical, comparative-legal, etc.). Essentially, the concept of force majeure and its characteristics are studied, as well as two main theories of force majeure (objective and subjective). In addition, the main differences between force majeure and case are established. The types of force majeure circumstances and their particular properties are studied. By way of conclusion, the fact that police officers are exonerated from civil liability for causing damage under the influence of force majeure is discussed, if they can prove the effect of this influence. For the rest, given that Ukraine's jurisprudence on the exemption from civil liability of police officers due to force majeure is quite limited to formulating a precedent, it is based on the general rule that, in tort, the recognition that the damage was the result of accidental circumstances excludes the occurrence of liability for damages.

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Recibido: 18/04/2020 Aceptado: 16/09/2020.

Keywords: force majeure; context of the case; police forces; civil liability; dismissal.

Características de la responsabilidad civil de los agentes de policía por daños causados bajo la influencia de fuerza mayor

Resumen

El objetivo del artículo es analizar las características de la responsabilidad civil de los agentes de policía de Ucrania por los daños causados bajo la influencia de fuerza mayor. A nivel metodológico para alcanzar los objetivos del artículo se combinaron los siguientes métodos científicos: generales (dialéctico, formal-lógico, sistema-estructural) y especiales (histórico, comparativo-legal, etc.). Esencialmente se estudia el concepto de fuerza mayor y sus características, así como dos teorías principales de fuerza mayor (objetiva y subjetiva). Además, se establecen las principales diferencias entre fuerza mayor y caso. Se estudian los tipos de circunstancias de fuerza mayor y sus propiedades particulares. A modo de conclusión, se discute el hecho de que los agentes de policía quedan exonerados de responsabilidad civil por causar daños bajo la influencia de fuerza mayor, si pueden probar el efecto de esta influencia. Por lo demás, dado que la jurisprudencia de Ucrania sobre la exoneración de la responsabilidad civil de los agentes de policía por fuerza mayor se limita bastante a formular un precedente, se parte de la regla general de que, en el agravio, el reconocimiento de que el daño fue el resultado de circunstancias accidentales excluye la ocurrencia de responsabilidad por daños.

Palabras clave: fuerza mayor; contexto del caso; fuerzas de policía; responsabilidad civil; despido.

Introduction

The peculiarity of the work of the police is that they constantly have to apply preventive and coercive measures, and any mistakes in the application of these measures and the performance of official duties in general can lead to physical and moral suffering of a person whose rights and freedoms have been violated because of wrongful acts. Civil liability of police officers in this case is a means of deterring illegal behavior, as it entails the application of property sanctions that lead to the deterioration of the financial situation of the perpetrators.

Civil liability is an effective means of deterring police officers from illegal behavior, as proven by many studies of both domestic and foreign scientists. If disciplinary liability is a form of internal control, as official investigations of police misconduct are conducted by disciplinary commissions composed of the employees of the same police department where the offender is serving, then civil liability is a form of external control because anyone whose rights or interests are violated as a result of illegal actions of police officers, have the right to file a lawsuit and demand the perpetrators be brought to justice.

The principle of "responsibility for guilt" is enshrined in civil law, which means that civil liability is not absolute, i.e. it extends to certain limits. These limits are the circumstances that lead to the release of a person from the obligation to bear adverse property consequences. The offender is released from civil liability in the absence of one or more conditions for accountability. The grounds for release from liability may be provided by law or contract.

The general grounds for exemption from liability for breach of obligation are listed in Art. 617 of the Civil Code of Ukraine (Law of Ukraine, 2003). One of the unconditional grounds for exemption from liability for breach of obligations in civil law is force majeure.

The category of force majeure belongs to the most general legal concepts, which are used not only by specialists in civil, but also in criminal, administrative, labor and other branches of law. It owes its origin to the law of ancient Rome. The expression "vis major" is found in the sources of Roman law in relation to sales, loan and other contract. For example, the owners of steamers, hotels and inns were responsible for the loss and damage of the accepted property, even in the absence of their own fault, but were released from liability if the damage was caused by force majeure. Force majeure (vis maior) was defined by the Romans as the objective factor that did not depend on the will of the person concerned. Thus, the destruction of a thing as a result of natural (flood, earthquake) or social catastrophe, fire, robbery was considered accidental.

The category of force majeure passed from Roman law to the legislation of other countries, including Ukraine.

1. Research methods

The research methodology is based on using both general scientific (dialectical, formal and logical, system and structural, etc.) and special methods (historical, comparative and legal, etc.), which were used to clarify the nature and features of force majeure in civil legislation of Ukraine.

The use of the dialectical method allowed to analyze various doctrinal concepts of recognizing certain life circumstances as force majeure, to consider the issue of force majeure in inseparable unity with other related legal phenomena.

Formal and logical method was used in defining such basic concepts of this study as force majeure, case (event), significant change of circumstances.

Force majeure was investigated as an element of the system of grounds for exemption from civil liability using the method of system and structural analysis.

Historical method allowed us to trace the evolution of the legal regulation of force majeure under Roman private law, civil law of Soviet and modern periods.

Comparative and legal method was used in the process of comparative analysis of signs of force majeure and their variants under the legislation of Ukraine, as well as in the analyses of force majeure subjective and objective theories.

2. Literature Review

The issues related to force major have been a study topic for number of researches all over the world. For example, Brunner (2009) studied force majeure in international commercial arbitration as an excuse under general contract principles. He considered this circumstance as the grounds for exemption from liability for non-performance of the agreement along with hardship and frustration.

Augenblick and Rousseau (2012), having considered the problem of force majeure, state that there is no unique approach to its definition; each country puts forward its own requirements to invoke its presence. They also examined the relevant court practice, which allowed them to determine three main principles of force majeure: its foreseeability; the impossibility to avoid or overcome the impediment or its consequences; failure to give timely notice.

Kokorin and Van der Weide (2015) carried out a comparative analysis of the approaches adopted in response to situations of force majeure (trade embargoes) and unforeseen change of circumstances (currency fluctuations) by such States as Russia, Germany and France. To archive this goal they studied the history of each country, as well cultural aspects and the features of law and economy, which led to the establishment of the respective approaches.

In the course of the study we also used the scientific findings of the following Ukrainian and Russian scientists: Kryzhanovskaia (2010), Lebedev and Nytsevych (2007), Niemtseva (2014), Pavlodskyi (1972), Reznichenko and Tserkovna (2009), Sirokha *et al* (2020) and many others.

3. Results and Discussions

The Civil Code of Ukraine does not provide the concept of force majeure; the legislator only names it as a ground for release from liability for breach of obligation. Thus, according to Art. 617 of the Civil Code of Ukraine, "a person who violated the obligation is released from liability for breach of obligation, unless he (she) proves that the violation occurred as a result of an accident or force majeure". It is up to the person who breached the obligation to prove the existence of an accident or force majeure. It is he (she) who must provide the relevant evidence in case of dispute.

There are two main theories of force majeure: objective and subjective ones. According to the subjective theory, force majeure is an event that could not be prevented by the person who caused the damage, despite a high degree of diligence, care and foresight. Thus, the presence of force majeure is directly associated with subjective qualities – care and diligence (caution), i.e. based on the assessment of the capabilities of the perpetrator (Kryzhanovskaia, 2010).

In our opinion, the understanding of force majeure by the supporters of subjective theory is incorrect, because it does not contain clear and definite criteria for the differences between case (event) (which is provided by Art. 617 of the Civil Code of Ukraine) and force majeure.

The supporters of the objective theory, on the other hand, try to identify the signs of force majeure in the phenomena themselves and their properties that exceed human capabilities. They distinguish between a simple case (event) and a qualified case (force majeure), depending on whether it belongs to normal risks of a particular activity or arises beyond the activity. According to their opinion, force majeure is such a case (event), which does not belong to the normal risks of activity. Objective theory lists two main features of force majeure:

1) this phenomenon is external to the activity, in which area the damage was caused;

2) this phenomenon is extraordinary in the force of action, spontaneous, which can not be resisted by human forces (Kryzhanovskaia, 2010).

Henkin (1949) distinguishes between the concepts of chance and force

majeure through causal relationship. He writes that guilt and incident are among the necessary causality, and force majeure is associated with the concept of accidental causality.

Matvieiev (1963) in particular, noted that the case (event) and force majeure in terms of their causal conditionality are in different spaces; the case (event) as a concept opposite to guilt is in the space of objectively necessary connections between the acts (omission) of the perpetrator and harmful result; force majeure, as a concept not related to the subjective element of guilt, on the contrary, is in the space of random links between the sphere of activity of the perpetrator and the damage caused.

However, the definition of force majeure proposed by the supporters of objective theory is also not unconditional. This theory cannot fully explain the concept of force majeure, as it excludes a causal link between the offender's activities and the damage caused. Based on the idea of objective theory, the damage is caused by external emergency factors that the offender could not have foreseen. But this statement is not true, because the damage is caused by the action of the offender, and external emergencies cause it.

And therefore, it is necessary to support the position of Bieliakova (1967), who proposed two points that must be taken into account when clarifying the concept of force majeure, namely: external one – for the subject (extraordinary circumstances – floods, lightning, hostilities, etc.) and internal one – damage caused not by the actions of this extraordinary external event directly, and the activities of the offender (causation is required) came under the influence of this external emergency, and therefore caused damage. For example, the brakes of the police car went down during patrolling. The car, having lost control, crashed into another car, which caused material damage to its owner. In this case, the damage is in the necessary causal link with the activities of the source of increased danger, which was lost control by the police officer.

Most scientists share the view that force majeure is nothing more than a qualified case (event). However, it is necessary to distinguish between these two concepts, because in case of force majeure the obligated person is exempt from civil liability both in the presence of guilt and in its absence, and in case of the event the obligated person is responsible only for the presence of guilt. The science of civil law knows two ways to solve the problem of distinguishing force majeure and case (event). One of them is that it is proposed to distinguish between case (event) and force majeure on the basis of causation. Another one lies in the fact that it is possible to distinguish force majeure from the case (event) by considering force majeure as a circumstance endowed with certain specific features. It is this point of view is reflected in all legal definitions of force majeure (Pavlodskyi, 1972).

Prymak (2008) believes that the case (event) as a subjective phenomenon characterizes the behavior of the obligated person, is objectively manageable and arises only because of the limitation of intellectual and strong-willed abilities of the subject, resulting from specific situation. Instead, the objective case (force majeure), in contrast to the simple case (event), appears as a result of external influence and occurs inevitably regardless of any efforts that could actually be made to eliminate this influence.

According to Niemtseva (2014), the main difference between force majeure and case (event) is as follows: 1) force majeure is an objectively inevitable event under certain conditions not only for the person who caused the damage, but also for other persons at the achieved level of development of science and technology, and the case (event) is objectively the opposite, but it cannot be prevented by a certain person; 2) force majeure is an extraordinary event that cannot be foreseen by the person who caused the damage, the person is given the opportunity to predict the amount of damage under the case (event); 3) force majeure is always an external event in relation to the activities of the person who caused the damage, and the case (event) is, as a rule, an internal circumstance in relation to his (her) activities.

In our opinion, if we compare force majeure and case (event), we can identify the following differences: 1) force majeure is a coincidence that only complements the necessity inherent in the activities of the offender. The case (event) acts as a coincidence, which is a form of expression of the need inherent in the activities of the obligated person; 2) force majeure is always an external event in relation to the sphere of activity of the obligated person. The case (event) is usually an internal circumstance in relation to an activity that causes harm; 3) the extraordinary nature of force majeure does not depend on its predictability. The case (event), in turn, is an extraordinary phenomenon precisely because of its unpredictability; 4) the consequences of force majeure are inevitable not only for the offender, but also for other persons engaged in the same type of activity and under the same conditions. The inevitability of the case is determined based on the abilities of a particular person.

Thus, force majeure is an unconditional basis for exemption from civil liability. The Civil Code of Ukraine defines force majeure as an extraordinary or inevitable event under certain conditions (Paragraph 1, Part 1, Article 263 of the Civil Code of Ukraine). In practice, natural phenomena (earthquakes, storms, snowdrifts, landslides, floods, etc.) as well as some social phenomena (epidemics, hostilities, severance of diplomatic ties, strikes, orders of the competent authorities prohibiting the implementation of actions under the obligation) are considered as force majeure.

Ovsieiko (2009) believes that there are three types of force majeure: 1) force majeure of physical nature – earthquakes, fires, catastrophes,

epidemics (epizootics), hurricanes, eruptions, floods, tsunamis, droughts, frosts, crop failures, other natural and man-made cataclysms (natural phenomena or natural disasters).One should keep in mind that the concepts of force majeure, natural phenomena, or natural disasters are not identical. First of all, it should be noted that there are differences between force majeure and natural disaster: force majeure in some cases includes the phenomena of social events, in particular, caused by hostilities; natural disaster is not always can be considered as force majeure, for example, if the damage caused by a natural disaster could have been prevented by the defendant.

Further, it is impossible to equate the concept of natural phenomenon and natural disaster. Thus, natural phenomenon reflects only the manifestation of known forces of nature without indicating destructive consequences and without specifying their intensity, and in terms of natural disaster is already the action of natural forces. Besides, the difference between these concepts is that we speak of a natural disaster in the case when there is a phenomenon grandiose in its harmful effects. Natural phenomena do not have such a sign, because the grandiose nature of harmful effects is out of question when causing damage by a source of increased danger, for example, in the event of a lightning strike. In this case, there is no sign of grandeur. Thus, natural phenomena and natural disasters are a measure of the realization of force majeure.

2) force majeure of social nature – wars, revolutions, uprisings, coups, terrorist attacks, etc. Legal literature includes outbreaks of epidemics, epizootics; spills of dams, which took place as a result of insufficient validity of calculations of water pressure and strength of building structures, to the phenomena of a social nature. In addition to the above, the severance of diplomatic and trade relations also has signs, in some cases, of force majeure.

3) force majeure of legal nature – the issuance of various prohibitions, restrictions, embargoes, moratoriums, etc. by the competent authorities.

Kharytonov (2007), in turn, notes that the properties of force majeure are: 1) extraordinary (it goes beyond ordinary everyday phenomena); 2) inevitability (it cannot be prevented and overcome at the current level of development of science and technology).

The term “extraordinary” means “exceptional; superior; extra-large”; “the one that exceeds the usual measure; not as exceptional as ever” (according to the explanatory dictionary of Russian language). In the academic explanatory dictionary of the Ukrainian language, this term is interpreted as “very strong in its degree of expression and not similar to others; exceptional”.

At the same time, the extraordinary force majeure is expressed not so much in power as in the atypicality of a phenomenon. Indeed, in judicial practice, adverse weather conditions are a simple case (event). But if, for example, there are freezing temperatures in April or May, which is uncommon phenomenon for this time of year, and it caused damage to the agricultural activities not only of the obligated person, but also the activities of other people working in the same field, then it is force majeure.

Niemtseva (2014) agrees with this statement, arguing that extraordinary is not an ordinary, common circumstance that can cause some difficulties for the parties, although it does not go beyond the ordinary (melting snow in the mountains, annual seasonal monsoon rains, etc.), but and an extraordinary event that is not ordinary.

The second property of force majeure is inevitability. This feature is more difficult to investigate, because the inevitability is specific (under certain conditions). Inevitability must be interpreted in relation to the abilities of a particular debtor, not the abilities of society as a whole. Inevitability cannot occur in the case of offenses on the part of the debtor, its employees, contractors, uncertainty or lack of solvency of the debtor, market failures. The actions of public authorities and local governments are generally considered inevitable. Illegal actions of the authorities are not considered force majeure. Legitimate coercive actions of the authorities aimed at imposing sanctions on the debtor for the offense are not considered inevitable (Lebedev and Nytsevych, 2007).

In order for force majeure to become the basis for releasing the offender from liability, the person who violated the obligation must prove: 1) the existence of force majeure; 2) its extraordinary nature; 3) the inability to prevent damage under the given conditions; 4) the causal link between these circumstances and the damage caused. Therefore, it is necessary not only to confirm the existence of force majeure, but also the fact that it prevented the fulfillment of the obligation.

However, it is sometimes difficult, and sometimes impossible, to assess whether a circumstance will be recognized as force majeure in advance. For such an analysis, two main criteria should be used: the ability of a person to anticipate the relevant circumstances and the ability to prevent adverse consequences under certain circumstances. A negative answer to at least one of the above questions is enough to conclude that the offender is not held accountable (Lebedev and Nytsevych, 2007).

That is, in order to release the perpetrator from liability, it is necessary to prove that force majeure deprived the perpetrator of the opportunity to prevent damage. Force majeure belongs to the category of relative concepts, because what is inevitable at one level of development of science and technology is completely avoidable under other conditions. Therefore,

the court, determining the possibility of classifying the phenomenon as force majeure, clarifies all the specific circumstances of the damage in this case, in particular, place, time, etc. As a general rule, force majeure releases the debtor from liability in all cases; however, the content of Part C of Art. 1166 of the Civil Code stipulates that damage caused by injury, other damage to health or death of an individual due to force majeure is subject to compensation in cases prescribed by law.

Since neither Art. 1176 of the Civil Code of Ukraine (1995), nor the Law "On the procedure for compensation for damage caused to a citizen by illegal actions of bodies conducting investigative activities, pre-trial investigation, prosecutor's office and court" (which is a specific legal act that enshrines the procedure for compensation of damage caused by police officers) does not enshrine that law enforcement officers are liable in case of force majeure forces, we can conclude that the police are released from liability if they can prove the fact of its influence.

Conclusion

Based on the provisions of the civil doctrine and the basic approaches to the understanding of the concept of force majeure, the legislator enshrines them in a number of key provisions of the Civil Code of Ukraine. Thus, as a general rule, the person who caused the damage is released from its compensation if he (she) proves that the damage was not his (her) fault, and therefore he is not obliged to such compensation in case of accidental damage. On the other hand, Chapter 82 of the Civil Code of Ukraine further contains numerous exceptions from this general rule and cases of imposing the obligation to compensate for the damage caused on a person, regardless of his (her) guilt. In particular, we are talking about innocent liability for damage caused by a source of increased danger (Articles 1187 – 1188 of the Civil Code of Ukraine) and damage caused by public authorities, local governments, their officials in different areas (Articles 1173–1176 of the Civil Code of Ukraine). The only grounds for exemption from the obligation to compensate for such damage, based on the legislative provisions of Part 5 of Art. 1187 of the Civil Code of Ukraine and the above scientific positions, there is only force majeure and intent of the victim. Based on the doctrinal provisions and the conclusions obtained in the context of the conditions of tort obligations (illegality, liability without guilt and the peculiarities of causation in the obligations to compensate for damage caused by force majeure), we consider it necessary to extend these (and only these) grounds for excluding civil liability of police officers.

However, some researchers believe that force majeure can only be the limit of innocent responsibility. If the completed tort entails liability

on the basis of guilt, then the influence of force majeure on the conduct of the delinquent only indicates the absence of guilt of the latter (i. e. the conditions of his (her) liability). In other words, force majeure loses the significance of the circumstance that release from liability when imposing it on the basis of guilt (Reznichenko and Tserkovana, 2009).

However, the case law on the exemption of police officers from civil law due to force majeure is quite limited to formulate specific conclusions. Therefore, we proceed from the general rule that the recognition of the fact that the damage is the result of force majeure in tort law precludes the occurrence of obligations to compensate for the damage caused.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 383-395
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Trust Property: Legal Aspects

DOI: https://doi.org/10.46398/cuestpol.38e.25

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Abstract

The article is devoted to the history of the emergence and formation of the institution of trust property in relation to various legal systems. The purpose of such a historical analysis of the institution of trust property is to find a possible place of this legal institution in domestic law, because trust property is a relatively new legal construct for Ukrainian law. The relevance of the article is to study the possibility of using the Anglo-American Trust Institute in Ukraine. The object of the study of this article is the legal relations arising from the institute of trust property. Methods of historicism, method of logic, method of analysis, method of synthesis, method of systematic research, and comparative-legal method were used in the study. The authors concluded that the institution of trust property goes back to one of the branches of English law. At the same time, the institution of trust is not inherent in the domestic legal system. However, since the 1990s, the domestic legislator has tried several times to introduce the relevant institution into Ukrainian legislation. So far, all of these attempts have failed.

Keywords: history of trust in Ukraine; property trust institute; property management; civil law; legal systems.

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Recibido: 12/04/2020 Aceptado: 03/09/2020.

Propiedad en fideicomiso: aspectos legales

Resumen

El artículo está dedicado a la historia del surgimiento y formación de la institución del fideicomiso de propiedad en relación con varios sistemas legales. El objetivo fue efectuar un analisis histórico de la de la institución de la propiedad fiduciaria para encontrar un posible lugar a la misma en el derecho interno, porque la propiedad fiduciaria es una construcción legal relativamente nueva para la ley ucraniana. La relevancia del artículo está dada en estudiar la posibilidad de utilizar, con las adaptaciones del caso, el sistema *Anglo-American Trust Institute* en Ucrania. El ámbito del estudio de este trabajo son las relaciones jurídicas derivadas del instituto de fideicomiso patrimonial. En el estudio se utilizaron métodos de historicismo, método de lógica, método de análisis, método de síntesis, método de investigación sistemática y método legal comparativo. Los autores concluyeron que la institución de la propiedad fiduciaria se remonta a una de las ramas del derecho inglés. Al mismo tiempo, la institución de la confianza no es inherente al ordenamiento jurídico interno. Sin embargo, desde el decenio de 1990, el legislador nacional ha intentado varias veces introducir la institución pertinente en la legislación de Ucrania. Hasta ahora, todos estos intentos han fracasado.

Palabras clave: historia del fideicomiso en Ucrania; instituto de fideicomiso de la propiedad; administración de la propiedad; derecho civil; sistemas legales.

Introduction

An important factor in the development of the understanding of the concept of private law in Europe was the formation of the European community, reflecting integration tendencies first in Western Europe, and then, throughout the whole Europe (Kharytonov *et al*, 2019). The creation of the European Community has accelerated integration processes between European countries, in particular in the field of private law. Thus, the legal institutions previously inherent only in the Anglo-Saxon legal system began to actively penetrate into the continental legal system and vice versa. One of such institutions of Anglo-Saxon law is the institution of trust property.

Trust, which is one of the most popular instruments in common law countries, has in recent years been actively used in countries that have not traditionally defined this institution. Scientists and practitioners of continental law today reconsider their doctrinal approaches to this phenomenon and form a new vision of trust, and also create new legal

instruments that allow to achieve similar goals as the trust. However, in different countries, such instruments may be called differently, but by their legal nature to be an analogue of a trust or, conversely, to have the same name, but legally be a completely different legal construction. In order to properly understand and use the classical trust and its derivatives that exist in different countries, it is necessary to determine its essence and legal nature. It should be added that this should be done gradually moving away from classical approaches that have existed for a long time in English law, as some of them are frankly outdated and often do not correspond to existing trends in the use of trust, even in the common law countries.

The main function of this institution is property management in favor of a predetermined person – the beneficiary. Trust relationships and related services are extremely diverse. Trusts are the most ancient form of property, representing a complex set of property management relationships based on a power of attorney, trusteeship or guardianship. A trust is a special relationship between legal entities or individuals regarding ownership, which is accompanied by the establishment of specific duties and responsibilities of persons managing the property, as well as special rights and privileges of the property owner that protect him from unauthorized and erroneous actions of the manager.

Thus, the purpose of the paper is a comprehensive study of the institute of trust property, in particular the contract of trust management of property as a form of its implementation, which must be achieved through a critical analysis of scientific civil doctrine, existing legal practice and the state of legislation in Ukraine and abroad.

The structure of the article is clear and understandable, and includes a consistent analysis of the historical aspects of the formation of the institution of trust property in England, where it originated, in other countries of Anglo-Saxon and continental law, as well as in Ukraine; research of the current state of the problems of the institute of trust; comparison of the institution of trust property with other related legal institutions; the state of the legal institution of trust property management in Ukraine and the prospects of trust property in Ukraine and in the world in general.

1. Analysis of recent research

Many domestic and foreign scientists were interested in the problems of applying the right of trust in recent years and long before; among them are Kozlov and Demushkina (1994), Peter (2019), Kaplan *et al*, (2019), Khokhlov (1995), Kulikova (1997), Mostovoj (1994), Ryabov (1996), Qu (2019), Shmygov (1997), Solovyanenko (1993), and Sukhanov (1995; 1996).

Considering domestic scholars, the problem of providing property rigths was generally studied by Khokhlov (1995), Kozlov and Demushkina (1994), as well as Sukhanov (1995; 1996) analyzed the pecularities of the management of another's property.

Not only domestic scholars, but also legal scholars from European countries studied the question of whether the institution of trust is suitable for the countries of the Romano-Germanic legal family. Thus, Peter (2019) studied whenever the trust is a suitable instrument or whether it would be more advisable to review the existing instruments, such as the Swiss family foundation or the fiducia, and to amend them accordingly.

Moreover, Kaplan *et al* (2019) studied the problem of use of trust concept in the Israel legal system as well as they review the provisions of the Israeli Trust Law. Besides, Qu (2019) has devoted his work to the use of trust law in court decisions in recent years, since the institution of trust was introduced into Chinese law only about twenty years ago. Also, an in-depth analysis of the institution of trust and the peculiarities of its application in English law was studied in the paper of Allan and Griffin (2018).

However, attempts to apply trust in the continental system of law continue among many scholars. Many questions still have not yet been investigated.

2. Methodology

In this research, the authors used general scientific methods, as well as special scientific methods. For example, general scientific methods are represented by the methods of historicism, method of logic, method of analysis, method of synthesis. Special scientific methods are represented by the comparative-legal method and the method of systematic research.

Thus, the method of analysis was used to assess the main components of the institution of trust for the possibility of introducing this institution in the national legislation. The method of synthesis was used by the authors to provide an opportunity to determine the place of the institution of trust in the overall picture of the legal system. Moreover, the method of historicism was used to determine the conditions for the formation of the institution of trust in the Anglo-American legal family. The method of logic helped to determine whether the Institute of Trust is suitable for the Romano-Germanic legal family and whether it is possible to apply this institution in Ukraine.

As for the special scientific methods, the method of systematic research was used in the study to show the experience of different countries

concerning the attempts of implementation Anglo-Saxon Institute of Trust. Furthermore, among the special scientific methods, the method of comparative-legal should be mentioned. This method helps to compare the legislation of different countries due to the issue of place of Institute of Trust in legal system.

3. Presentation of key research findings

The development of trust is primarily associated with the evolution of property systems, and most importantly, with the personification of the rights of the owner, which leads to the emergence of the institution of inheritance, which is the direct basis for the trust.

The Institute of Property Management by the guardian in the interests of the owner, was formed in ancient times. There are documents evidencing the existence of the trust relations in Ancient Egypt, where, on the basis of guardianship and trust, the vast property of the Egyptian pharaohs and their children was managed.

Currently, there are two main concepts of trust relations, which have been consolidated in various systems of legislation:

a) trust in the Anglo-American (Anglo-Saxon) system of law.

b) trust management in the continental (Romano-Germanic, European) system of law.

Trust is a system of property and (or) physical relations between the founder of the trust, the trustee and the beneficiary, i.e. the person in whose interests trust transactions are made.

The concept of ownership in the Anglo-American system of law allows the separation (splitting) of property. Continental interpretation of ownership does not allow split ownership. Here the principle is established, according to which the number and content of property rights belonging to several persons in relation to the same thing can be determined by agreement (will) of participants in legal relations. Separation of ownership is allowed in space (horizontal and vertical) and in time. Authors from common law countries are critical of the well-known proprietor triad of Roman law and try to give a universal definition of property by compiling a kind of catalog of proprietary rights.

One of the definitions of ownership, developed in the Anglo-American doctrine, includes 11 elements:

1) the ownership as exclusive physical control over the thing or as the right to exclusive use of it. If it cannot be in a physical possession (for example, because of its incorporeal nature), possession can be understood metaphorically or simply as the right to exclude other persons from any use of it.
2) the right to use, i.e. personal use of a thing when it does not include two subsequent powers.
3) the right to manage, i.e. the right to decide how and by whom the thing can be used.
4) the right to income, i.e. there are benefits arising from previous personal use of the thing and from permission to other persons to use it.
5) the right to alienation, consumption, waste at its discretion, change or destruction of a thing.
6) the right to security (guarantee (immunity) against expropriation).
7) the right to transfer the thing.
8) perpetuity i.e. lack of term of ownership.
9) the prohibition to use a thing to the detriment of others, i.e. the obligation to prevent the use of things harmful to others in a way.
10) liability in the form of a penalty, i.e. the possibility of rejection of things in the payment of debt.
11) residual nature (residual charter), i.e. the existence of rules to ensure the restoration of violated property rights.

A specific ownership right may cover only some of these elements. Consequently, several property rights may exist on the same property.

The most vivid features of this understanding of property are expressed in the trust, which is one of the most common institutions of Anglo-Saxon law, a special form of ownership of property. Its essence lies in the fact that the original owner – a settlor of the trust transfers the thing to the trustee so that he transfers this thing or the proceeds from its operation to the beneficiary, in the role of which both the founder of the trust and any third party. Both the trustee and the beneficiary are considered owners, but with different rights – the first has the right to manage (operate) the property transferred to him, the second retains the right to income and to get things back. The scope of the rights of each of the owners may vary depending on the conditions under which the trust is established (which may be determined by agreement, unilateral transaction or law). The trustee shall use the acquired property only in accordance with the purposes indicated by the founder.

The trust institution (trust) is based on the peculiar medieval traditions of English law, later borrowed by the American legal system. The Anglo-Saxon rule of law, which has as its basis a system of judicial precedents, has a system of legal branches that is different from continental law. It distinguishes the so-called «equity», which arose in feudal times from the difference between the courts of general jurisdiction that gave rise to another branch of this right – common law, and the court of the Lord Chancellor. Within the framework of common law, it is practically impossible to protect the interests of the founder of trust in those cases when the trust acts contrary to its interests. Therefore, a way out of this situation is found using the "equity", since one of its aspects is the concept of a fiduciary obligation arising when one person acts exclusively in the interests of another person. Along with trust, real guarantees are also required for the true owner of the interest, if the trust turns out to be deceived.

The implementation of this complex, internally contradictory task is called upon to serve as the «equity», which, based on a case law, allows one to interpret the actions of the manager, based on the experience of previous or similar activities of other managers. The latter, in contrast to common law, recognizes the ownership of the founder of trust.

The construction of trust becomes indispensable where there is a need to hide the figure of the real owner, obscuring it by the nominal (trust) owner. The main goal of developing the institution of trust was to circumvent the prohibitions for some entities to be owners of certain types of property. For a long period of time, the trust existed for the preservation and redistribution of property within the family. For example, in accordance with medieval English law, land could not be transferred to any person by will, but passed after the death of the owner exclusively to his heir by law. However, when transferring the land to the trust, the owner had the right to independently appoint a beneficiary who would manage the land after his death, and thereby circumvented the prohibition.

This explained the creation of fiction – the consolidation of ownership of a person who did not actually use its consequences, the creation of a figure of a nominal owner. The relations between such a nominal owner and beneficiary, to which the real benefits should belong, are paramount. Naturally, such relations cannot have a purely formal character; otherwise, circumvention of the law becomes obvious. Hence the fiduciary, trusting nature of the relationship.

The above features of the institution of trust do not allow using it unchanged in countries with a continental system of law, where ownership is considered as a system of prerogatives of the owner: possession, use, and disposal. Therefore, lawyers of the countries of continental law will see the institution of representation where English or American lawyers see trust property.

However, the experience gained over the centuries of the institution of trust can be extremely useful for the development of the institution of trust management. In all common law countries, the legislator has done a great deal of codification and legislative regulation of trust relations, since case law, as a set of court decisions in specific cases, cannot serve as a reliable legal basis for modern trade. For example, in England, general laws regulate a significant part of such legal relations, and acts are codified. Case law applies to the extent not regulated by laws and not contrary to them.

As for Ukraine and some other countries of the continental legal system, the use of the trust in civil law relations is problematic. The first optimism about the implementation of the trust in European legal systems was soon replaced by doubt and skepticism caused by restrictions on the disposal of property, a special legal regime that violates the foundations of the Romano-German legal system and several other factors.

As was mentioned above the concept of trust is a unique historical product of the dualistic legal system of England. Although there is some legislative regulation of trusts, the complex set of rules, which govern trusts in English law, comes from centuries-old case law.

Liechtenstein was the first country in continental Europe to have established the institution of trust in the domestic law. However, the motivation for establishing trusts in Liechtenstein's jurisdiction has now changed: if the founders of the trusts wanted to save on taxes, now they are being established to protect assets and to plan inheritance. As a result, the trusts themselves, their types, have changed.

Germany is not a party to The Hague Convention on the Law Applicable to Trusts and on their Recognition (1985); it does not recognize foreign trusts. German law does not accept the institution of trust, as well as testamentary trust is also impossible. Instead, the legislator uses other mechanisms familiar to German law for succession planning (Foreign law trust: how does it work and why is it believed in?, 2016).

In the modern world, the construction of the divided property is most clearly represented by the Anglo-American Trust. The influence of the Anglo-American trust on the private law of the whole world is that the legal systems that are most resistant to external influences must nevertheless determine what exactly is the incompatibility of the trust with the principles of civil law.

If in the 1930s the trust was compared with the bond ownership or Fiducia (Fiducia Cum Amico, 2020) of Roman law, with usufruct, with German fiduciary property (Treuhand) and the Lombard Salman, the executor of the will, which even saw the pan-European predecessor of the English trust, then in the 1950s – 1960 years comparativists convincingly refuted these parallels by showing that they rather reveal insurmountable

differences between systems rather than provide examples of the presence of "trust-like" entities in civil law.

The implementation of a trust in the continental system of law can have such negative consequences:

- The trust allows for a long time to withdraw property from circulation, violating the interests of creditors and heirs.
- The trust manager is not interested in obtaining the maximum income from the property of the trust.
- The management of the trust is subordinate to the tasks of preserving the property, and not increasing it, so the manager is not recommended to enter risky commercial enterprises that promise high returns.
- The trust creates uncertainty in the distribution of assets in cash, which can mislead the subjects of turnover and tax authorities.
- The trust gives the beneficiary unjustified privileges concerning the creditors of the trust.
- The trust creates a special regime of property, violating the general principles and rules of law.

Of the main obstacles to the reception of trust in the continental system of law, we can name the following:

- Unitary ownership structure.
- A closed list (numerus clausus) of property rights.
- Freedom of disposal of the owner.
- The principle by which the debtor is liable for obligations with all his property.
- The principle of equal standing of creditors (par condicio creditorum).
- Protection of a bona fide acquirer.

The problem of the last two is due to the fact that the beneficiary is vested with the right to pursue the property of the trust, unlawfully alienated by the manager, in the hands of third parties (tracing).

Benefits of the beneficiary concerning third parties are generally referred to as "equitable ownership". The principle of separating the property of the trust from other property of the trustee trust has the same basis since from equity; the property of the trust does not belong to it. At the same time, in terms of English law, the beneficiary (which may not even exist in the

trust) does not compete with the trustee ownership, but can only require him to comply with the requirements of the constituent documents of the trust. However, from civil law, such a right aimed at the trustee not as an individual, but as the owner of the property of the trust, reinforced by the possibility of presenting claims against third parties, acts as the right to a thing. This contradicts the principle of an exhaustive list of property rights: the civil law system cannot recognize a trust within the framework of an established set of rights to things.

Unity of ownership also acts as the basis of the principle by which the debtor is liable for obligations with all his property. Separation of the trust property from the trustee's property, making the trust inaccessible to the personal creditors of the trust owner, from civil law creates two assets for one person.

As an owner, a trustee cannot act in his interests but is obliged to use the property for the purposes established by the constituent documents of the trust. The owner of the trust must obey the constituent documents of the trust, and in case of doubt, follow the instructions of the court. From a formal (legal) point of view, he does not have his interest, which is incompatible with the very concept of property and denies the nature of genuine law in his position. Restrictions on the disposal and external control of trustee actions also contradict the principle of unity of ownership.

So mentioned above specificity of the trust does not allow Ukrainian civil law to accept this institution.

An important stage in the establishment of a trust in countries with a contingent legal system was The Hague Convention on the Law Applicable to Trusts and on their Recognition (1985). The subsequent projects for the reception of trust in several civil law countries: France, Belgium, the Netherlands, and Italy – it was not the English model of the trust that was taken as a model, but the constructions known in a mixed legal system. Meanwhile, as we have seen, not a single "mixed" legal system has so far been able to arrive at a final definition of the subject of ownership in a trust, and the trust in these countries remains an artificial and alien formation. Failure to identify the institution with its concrete historical embodiment in the English model means eroding the concept of trust.

Conclusions

- Thus, trust property is an institution of law that has historically originated in the Anglo-Saxon system of law. Its emergence is due to the peculiarities of the Anglo-Saxon legal system. In particular, this institution arose within the concept of the split property, which is not inherent in the continental legal system.

- One of the main postulates of the continental legal system is the impossibility of establishing two identical property rights to the same property. Property rights in its continental, including Ukrainian, sense cannot be «split»: it is either completely retained by the owner or completely lost by him. With any other approach, there is an unresolved conflict of rights of owners, each of whom wishes to dispose of their property at its own discretion.
- Therefore, it cannot be implemented in the legislation of the countries of the continental legal system due to the presence of conceptual differences in approaches to understanding ownership of these legal systems.
- The legal analysis of the trust and trust management illustrates that these institutions have much in common: the economic goal of making a profit from property, the separation of management and profit functions between different entities, the legal status of the manager and trustee.
- However, the differences between the Anglo-American and civil law institutions are more than significant. The institution of the trust is unique and can fully function only in the system of precedent Anglo-American law that created it.
- The implementation of the trust in the domestic law of civil law countries is not possible due to several circumstances: the denial of the concept of split property; the principle of numerous clauses; the impossibility of referring the trust to the full extent to either property or liability law.
- However, the study of the institution of a trust may contribute to the improvement of the legal regulation of the domestic institution of trust management of property.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 396-405
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Typical Mistakes during Investigation of Crimes Committed by Youth Informal Groups Members

DOI: https://doi.org/10.46398/cuestpol.38e.26

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Abstract

The main objective of the study is to identify errors made by investigators and other persons authorized to investigate crimes during the process of investigating crimes committed by representatives of informal juvenile criminal groups. Problems related to the failure to present a version of the participation of members of an informal group of young people in crime have been identified. Some aspects of misuse of special knowledge were also considered. During the work, the scientific literature dedicated to the fight against crime, investigation of collective crimes, informal youth groups (associations, movements, etc.) was also analyzed. In addition, a set of different scientific methods was used, such as analysis method, synthesis method, extrapolation method, generalization method. Among the most relevant conclusions it stands out that the problem of juvenile delinquency is becoming general every year, a typical phenomenon not only in Ukraine, but also in other countries in the world; consequently, there is an urgent need to develop new interdisciplinary methods to combat this phenomenon and to understand its multidimensional causes and consequences.

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Recibido:12/05/2020 Aceptado: 20/09/2020.

Keywords: typical errors in criminological investigation; juvenile offenders; informal group; interdisciplinary crime studies; methods to prevent crime.

Errores típicos durante la investigación de delitos cometidos por miembros de grupos de jóvenes delincuentes

Resumen

El objetivo principal del estudio es identificar los errores cometidos por investigadores y otras personas autorizadas para indagar delitos durante el proceso de investigación de delitos cometidos por representantes de grupos informales juveniles delictivos. Se han identificado problemas relacionados con la falta de presentación de una versión de la participación de miembros de un grupo informal de jóvenes en el crimen. También se consideraron algunos aspectos de la utilización errónea de conocimientos especiales. Durante el trabajo se analizó también la literatura científica dedicada a la lucha contra la delincuencia, investigación de delitos colectivos, grupos informales juveniles (asociaciones, movimientos, etc.). Además, se utilizó un conjunto de diferentes métodos científicos, como el método de análisis, método de síntesis, método de extrapolación, método de generalización. Entre las conclusiones más relevantes destaca que el problema de la delincuencia juvenil se está generalizando cada año, fenómeno típico no solo de Ucrania, sino también de otros países del mundo; en consecuencia, existe una necesidad urgente de desarrollar nuevos métodos interdisciplinarios para combatir este fenómeno y para comprender sus causas y consecuencias multidimensionales.

Palabras claves: errores típicos en investigación criminológica; delincuentes juveniles; grupo informal; estudios interdisciplinarios sobre el crimen; métodos para prevenir el crimen.

Introduction

The development of civil society is impossible without the state fulfilling its functions in the fight against crime.

At the same time, citizens must also exercise legal awareness and do everything in their power to protect their rights.

Crime has various forms of manifestation. One such form is juvenile delinquency. Forensics, as a science, offers various ways to combat such crime.

Thus, the authors tried to identify the mistakes made by investigators and other persons authorized to investigate crimes during the investigation of crimes committed by representatives of criminal youth informal groups.

One of the main forms of combating the crime of youth informal groups is the creation (improvement) and application in the process of investigation of relevant criminalistics' techniques (forensic techniques, crime investigation techniques). The main objective of the forensic technique is to equip the investigator with a complex of knowledge, skills for revealing, investigating, and preventing a particular type (group) of crimes in various investigative situations. The key conceptual element of the forensic technique is the methodological recommendation, which is a scientifically based indication of the most appropriate way for the investigator to act in a typical situation that develops during the investigation of a crime (Shruba, 2018).

However, the development and improvement of guidelines for the investigation of crimes committed by members of youth informal groups involves the study and analysis of typical mistakes made by investigators (prosecutors) during their investigation. The mistake, in the context of this issue, should be considered as a negative result, which is expressed in the loss of the ability to identify and / or use forensic information (evidence) (Shepitko, 2018).

The use of these recommendations by investigators (prosecutors) gives them the opportunity to put forward versions that can optimize the investigation as much as these versions reflect the typical criminal activity of organized youth groups. That is, knowledge about youth organized crime is not just information that is useful for the cognition process, but also a structure that acts as a tool with which the investigator can obtain new information.

1. Literature Review

Features of the investigation of crimes committed by representatives of youth criminal groups are the subject of scientific research by a number of domestic and foreign researchers.

Shruba (2018), Konovalova (2013) and Shepitko (2009), as well as Sergeev *et al* (1975) have studied different issues of the forensic technique of the investigation of crimes in general.

The different notions of the forensics, forensic examination, and legal psychology can be found in the work of Shepitko (2018).

The peculiarities of investigation of vandalism are depicted in the work of Latvian (2017). The author gives the forensic characteristics and organizational-tactical foundations of such investigation.

Ershov *et al* (2007) have studied another type of the investigation – the investigation of crimes against the life and health of citizens committed by members of informal groups (movements).

The scientific work of Podolny (2007) is dedicated to the investigation of crimes that make up youth organized crime.

Among other authors can be named Garmaev and Lubin (2006), Korshunova (2003), Vasiliev (2008), Boiarov *et al* (2020), Enikeev (1996), Davydov (2016), Goncharenko (2010), Podkatilina (2013).

Thus, scientists have studied various aspects of crime investigation. Nevertheless, some problems of determining of typical mistakes in the investigation of crimes committed by members of informal youth groups remain unsolved. However, this is a subject for further research.

2. Methodology

During the work on the article, the scientific literature on the fight against crime, the investigation of group crimes, youth informal groups (associations, movements, etc.) was analyzed.

Thus, a complex of various scientific methods was used. Among them:

- The observation method (when studying the materials of criminal proceedings, which became the basis for the formulation of certain provisions of the article).
- The questioning method (when using statistical indicators).
- The analysis method (when studying scientific sources, the practice of investigating crimes committed by informal youth).
- The synthesis method (when summarizing individual recommendations on the investigation of crimes committed by members of youth informal groups).

- The extrapolation method (when studying scientific sources devoted to the investigation of crimes).
- Method of generalization (to formulate conclusions).

The empirical basis of the study was materials on the investigation of crimes committed by members of youth informal groups.

3. Research Results

3.1. Superficial study of a trace-picture

Initial investigative (search) actions during the investigation of crimes committed by members of youth informal groups (examination of the scene, interrogation of witnesses, victims (if possible), search, etc.) are of great importance for the results of the investigation. They determine the outcome of the investigation. The main task of these investigative (search) actions is to collect study and analyse evidence-based information, which, in turn, is reflected in the trace picture. The trace is a reflection of criminal acts, individual elements of a criminal act. In the forensic understanding, the value of traces is due to the existing relationship between crime and its reflection (Shepitko, 2009).

Konovalova (2013) rightly notes that "there is no way to commit a crime as such at the initial stage of the investigation, but there are only traces whose nature is not defined and unknown, and in some cases requires expert advice in a particular field of knowledge".

When crimes are committed by members of youth informal groups, a sufficiently large number of traces of a material and ideal nature remain. Conventionally, they can be divided into two groups:

1) general (those that are inherent in the commission of a crime, for example, traces of blood that are present in the commission of completely different types of premeditated killings – material traces; testimonies of witnesses who have suffered about the place, time, will take the criminals in which direction they disappeared and more – perfect traces);
2) specific, that is, these are traces testifying to the involvement of a certain youth informal group in the commission of the crime (objects left at the crime scene with symbols of informal movement, inscriptions, leaflets – material traces; testimonies of witnesses, victims, for example, about the presence of a suspected motive in the actions racial, national or religious hatred due to statements, insults, etc. – ideal traces) (Larkin, 2018).

The key mistake in studying the trace-picture is that the traces of the second group are given secondary importance and they are studied superficially. Nevertheless, it is specific traces that are the basis for establishing and proving the motive (s) for committing a crime (s).

To identify and study-specific traces as efficiently as possible, it is necessary, when conducting investigative (search) actions, to use the help of a specialist who studies the activities and functioning of various youth non-formal entities.

The results of the survey show that such a specialist was invited to leash in 2% of cases. Such a situation, in our opinion, is unacceptable and significantly reduces the quality of the investigation of crimes committed by members of youth informal groups.

3.2. Not putting forward a version of the involvement in the commission of a crime by members of a youth informal group

A superficial study of the trace pattern in the investigation of the criminal activity of informal youth, in turn, limits the possibilities for putting forward investigative versions (narrows their circle). The investigative version, determining the planning process, is its basis, the basis (Latvian, 2017).

The organic interconnection and interdependence of the processes of planning and building investigative versions are expressed in the fact that without investigative versions it is almost impossible to draw up an investigation plan, and without an investigation plan, it is impossible to verify the put forward versions (Sergeev *et al,* 1975).

As a rule, after conducting the primary investigative (search) actions, the investigator puts forward the basic versions of what happened (for example, a stool is committed – murder).

The version will only fulfill its function in the knowledge of the truth in a criminal case, when the assumption contained in it will be based on factual data, based on which investigative versions are constructed, verified by evidence obtained in the course of investigative (search) actions (Ershov *et al,* 2007).

If one of the versions is confirmed, then its refinement continues. Many versions are embedded in each version, resulting as a consequence of the premise. This is not about the "actual interweaving" of versions, but about their levels: if one version is formulated as a thesis, then the others should be its arguments (the structural environment of the main element) (Garmaev and Lubin, 2006).

When investigating crimes committed by members of youth informal groups, the main mistake is that they put forward a version about the commission of a group crime (crimes), the possible involvement of youth (minors), but they do not consider any ideological, ideological, political, religious components. It is not allowed that the group pursues any goals, and crime (s) is only a way to achieve them. Such an error leads the investigation in the wrong direction. The process of motivation and motives remains unexplored.

Sometimes a situation arises when the investigators, before carrying out the initial investigative (search) actions, have a preference to search for very specific evidence and that is why they do not pay any attention to the evidence that does not fit into this setting (Podolny, 2007).

3.3. Neglecting the study of selected special issues

One of the features of the investigation of crimes committed by members of youth informal groups is the need to study a fairly wide range of special issues. The use of special knowledge allows us to ensure the comprehensiveness, completeness, and objectivity of the study of all the circumstances of the case (Korshunova, 2003).

Obtaining special knowledge on the specified category of crimes is possible in three forms:

1) consultation with a specialist (specialists).

2) the appointment of forensic examinations.

3) independent investigation by the investigator of special issues.

The main mistake (error), which complicates, and sometimes leads to a dead-end investigation, is a neglect of the study of certain special issues. In particular, issues that directly relate to the functioning and activities of youth non-formal entities. Practitioners see this as a secondary task.

As a rule, the study of special issues is associated with the establishment of a place, time, method, instruments of crime. Investigators conduct consultations with a forensic doctor, appoint forensic, forensic psychiatric, ballistic, explosive, tribological, and other types of "standard" examinations.

At the same time, highly specialized issues are not being studied, for example, concerning the psychological aspects of the criminal activity of a youth informal group. Nevertheless, the use of psychological knowledge contributes to the correct solution of the tasks of disclosing and investigating crimes and re-educating persons who have committed crimes (Vasiliev,

2008). This is especially important during interrogations of victims (Boiarov *et al,* 2020), witnesses (Larkin, 2020). It is known that immediately after the commission of a crime, a person is in a state of strong mental stress, and this particular condition contributes, in some cases, to blocking part of the information important for the case. Only after this state passes do this important information begin to "pop up" (Enikeev, 1996).

As practice shows, investigators are superficially studying the issues of financing youth informal groups (Kolomoiets *et al,* 2017; Boiarov *et al,* 2019), which impedes their elimination, and after a certain time, "new", "recovering" groups continue to commit criminal assaults that could escalate into transnational extremism (Davydov, 2016).

Separate emphasis should be placed on existing prejudices among practitioners regarding the advisability of conducting the forensic linguistic examination. Its results can show a certain ideological orientation of the criminal activity of the youth informal group and solve a number of tasks (identification, classification, diagnostic, situational) (Goncharenko, 2010). The subject of a forensic linguistic examination is to establish the circumstances to be proved in a particular case, by resolving issues requiring special knowledge in the field of linguistics (Podkatilina, 2013).

Conclusions and Further Research

As a result of the study, typical errors were investigated in the investigation of crimes committed by members of youth informal groups.

- The outcome of the investigation of crimes by members of youth groups is often predetermined by the initial investigative actions, among which are the inspection of the scene, interrogation of witnesses, victims, search, etc.
- A superficial study of the trace-picture largely determines the negative results of the investigation. In particular, a superficial study of the trace pattern in the investigation of the criminal activity of informal youth limits the possibilities for putting forward investigative versions (narrows their circle).
- Neglecting the study of certain special issues during the investigation of crimes committed by representatives of youth criminal organizations, in particular those related to establishing the place, time, method, and instruments of the crime, complicates and sometimes leads the investigation into a dead end.

- A promising area of research is the study of the specifics of crimes committed by representatives of informal youth groups. Knowledge of such features of juvenile delinquency as the connection between the victim of the crime and the mechanism of its commission; full-structure way of committing crimes; excessive, unconditional cruelty, etc., can help the investigator and others involved in the investigation to uncover a committed crime more quickly.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 406-420
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Latino and Central American Asylum Seekers in the United States of America During the Trump Administration

DOI: https://doi.org/10.46398/cuestpol.38e.27

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Abstract

The purpose of the article was to examine the Trump administration's asylum policy applied to Central American and Latino applicants. The United States has grappled with refugee problems in recent decades, and in 2018 Trump signed an executive order to detain families seeking to immigrate to the United States without separating from one another. With this decree, a new approach was formed in the policy of the United States government, which emphasizes the severe restrictions on the entry of asylum seekers and immigrants. In the methodological, it is a documentary research close to hermeneutics. It is concluded that, although the United States government has cited security concerns as an excuse to restrict the entry of asylum seekers, especially Latinos from Central American countries, this political approach is in conflict with the national legislation of the United States that stipulates that any citizen Foreigner arriving at any point along the US border, or at official exit points, has the right to apply for asylum. Furthermore, the implementation of such a policy is contrary to the end of the 1951 Convention, which focuses on the protection of refugees without distinction.

Keywords: Asylum seekers; Latin Americans; Central American countries; United States of America; Trump administration.

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Solicitantes de asilo latinos y centroamericanos en Estados Unidos de América durante la administración Trump

Resumen

El objetivo del artículo fue examinar la política de asilo de la administración Trump aplicada a solicitantes centroamericanos y latinos en particular. Estados Unidos se ha enfrentado a problemas de refugiados en las últimas décadas, y en 2018 Trump firmó una orden ejecutiva para detener a las familias que buscan inmigrar a Estados Unidos sin separarse unas de otras. Con este decreto, se formó un nuevo enfoque en la política del gobierno de Estados Unidos, que enfatiza las severas restricciones a la entrada de solicitantes de asilo e inmigrantes. En lo metodológicos se trata de una investigación documental próxima a la hermenéutica. Se concluye que, aunque el gobierno de Estados Unidos ha citado preocupaciones de seguridad como una excusa para restringir la entrada de solicitantes de asilo, especialmente latinos de países centroamericanos, este enfoque político está en conflicto con la legislación nacional de norteamericana que estipula que cualquier ciudadano extranjero que llegue a cualquier punto de la frontera de EE. UU., o en puntos de salida oficiales tiene derecho a solicitar asilo. Además, la implementación de tal política es contraria al final de la Convención de 1951, que se centra en la protección de los refugiados sin distinción.

Palabras clave: Solicitantes de asilo; latinoamericanos; países centroamericanos; Estados Unidos de América; administración Trump.

Introduction

The issue of the displacement of some 70 million IDPs who have inadvertently relocated within or beyond the borders of governments, and suffering from a lack of freedom, security and minimal living facilities, and are pursued with special sensitivity by the international legal system. In the current era, which has sought to protect the status of humanity more than ever for the rule of international law. Acknowledging the fact that every two seconds a person is forced to leave their home due to government harassment and armed conflict is very worrying. In this regard, international law specifically supports the status of some 30 million refugees and asylum seekers under a cohesive system. This legal system, with the mechanism of binding treaties, international custom, as well as soft legal resources at the international, regional, and national levels, provides protection to refugees, and imposes certain obligations and rights on governments.

However, when asylum applications do not flow individually and within administrative disciplinary proceedings, but collectively to a single state, a new situation will arise that is called a Mass influx in the doctrine of International Law. In this situation, groups of several thousand and sometimes several million asylum seekers approached the borders of the governments and applied for asylum for fear of endangering their lives and freedom. The latest example of this Mass influx, the influx of asylum seekers from Honduras, Guatemala and El Salvador through Mexico into the United States in 2018 was met with a negative response from the US government and the deployment of troops to counter the aforementioned population.

The most important legal arguments of the United States of America have been based on the following: Failure of the United States to ban the return of asylum seekers who have not yet entered the United States, and the non-compliance of the United States with asylum applications outside the official points of departure in to the United States.

1. The Concept of Refugee and Asylum

Under the 1951 Refugee Convention, an asylum seeker is a person who is a citizen of a foreign country due to justified fear of persecution for racial, religious, or national reasons, membership in a particular social group, or political affiliation, and because of this fear, he cannot or does not want to be supported by the government.

An asylum seeker in the asylum system refers to a person who is seeking asylum for the same reasons as defined in the refugee definition but has not yet been identified as a refugee. The term is used to describe the legal status of the time gap between the date of asylum application by the asylum seeker and the date of asylum approval by the receiving state. Although it is clear by logic that not every refugee will necessarily be a refugee, under international law, asylum seekers have certain rights and privileges until their asylum application is determined on a temporary basis (Kayhanlou and Dadmehr, 2020).

A refugee is always someone who does not have the support of his or her government. Thus, the lack of support is seen as a source of fear for refugees. Conditions for asylum status will not be met whenever a person is able to avoid "justified fear of being harmed for reasons related to race, religion, nationality or membership in a particular social group or political opinion." Go to your respective government and get support. As one of the asylum seekers says: As long as the asylum seeker proves to have significant national support, there is no fear of persecution (Hathaway recited in: european legal network on asylum, 1998).

Lack of government support is one of the most important aspects of all the treaties, treaties and protocols adopted in the field of protection of refugees of special origin or citizenship in the years prior to the ratification of the 1951 Convention.

The definition of asylum at the 1951 UN Convention on the Status of Asylum is as follows: Refugees are those who live abroad for reasons of fear of being harassed for reasons related to race, religion, nationality, membership in a particular social group, or political opinion, and because of that fear, he doesn't want to be under the protection of that country or if he doesn't have citizenship. As a result of these incidents, he is living abroad, due to this fear, he does not want to return to it or is unable to return (United Nations Convention relating to the Status of Refugees, Art (A).

According to the UN High Commissioner for Refugees (UNHCR), seeking asylum abroad is a common condition for asylum. As refugees, those who have left the country of origin are supported. The decision to leave and cross the border where the person has lost or been deprived of the protection of his or her home country and needs another source of support makes the person the subject of international asylum law. Therefore, as long as a person is in the area of territorial jurisdiction of his or her home country, he or she cannot enjoy international protection. However, the judiciary does not allow asylum seekers to travel around the world in search of their preferred country. Asylum seekers who are afraid of being harassed are expected to apply for asylum from the first safe country they enter.

The fact that an asylum seeker must be abroad in order to be considered a refugee does not necessarily mean that he or she must have left the country legally or even for justified reasons. Individuals can apply for asylum after living in a foreign country for some time due to their activities in the home country.

However, it should be noted that the likelihood of success of refugee cases will be greatly reduced if these activities and actions are deliberate in order to influence the flow of asylum status (Kayhanlou, 2010).

Migrant is a person who, although as a refugee and asylum seeker, has left his homeland and in this respect has a certain common denominator with one of the components of asylum. Migrant are exempt from the two main components of asylum: justified fear and harassment. In other words, an immigrant is a person who leaves his or her country of citizenship for mainly personal reasons and in order to improve his or her quality of life in order to find a job, study, and so on. Unlike asylum seekers and refugees, Migrant will continue to enjoy the support of their respective governments when they leave the country (Kayhanlou and Dadmehr, 2020).

2. Refugee Support

Asylum seekers fleeing in search of a safe place in their home country, on the one hand, the variety of lawsuits filed by these individuals, and on the other hand, the ambiguity in the definition of refugees as enshrined in the 1951 Geneva Convention on the Status of Refugees -as the only international enforcement document in this regard - has forced the domestic courts of asylum-seeking countries. To perform their judicial function in resolving asylum claims, they must interpret the definition of a refugee in the domestic law of their country, which is in fact borrowed from the 1951 Convention (Kayhanlou, 2007).

The 1951 UN Convention on the Status of Asylum "considers whether or not a refugee is eligible for protection" The government concerned has considered the main conditions for granting asylum. The condition, which apparently entrusts the asylum seeker with a refugee status, has been interpreted as a "lack of government support" in refugee cases.

Therefore, by proving the lack of government support, the individual's inability, or willingness to have proven support is assumed, and the government's intention is to replace the individual's intention. Lack of government support is proven when an asylum seeker proves that, in addition to being abroad, he or she has sought support from government officials, but it did not have it, and it was not possible to resort to the option of internal escape (Kayhanlou, 2010).

The term "inability or unwillingness to be supported by the respective government" was first used in the Statute of the International Organization for Migration (2.I.R.O. Constitution, Annex I, Part I, Sec.A).

The High Commissioner for Refugees (UNHCR) based its definition on the status of refugees during the preparation of the Code of Conduct and the criteria for determining the status of asylum seekers.

"The inability to deal with support implies a situation that is beyond the control of the person concerned.

For example, a state of war, civil war, or other severe unrest can prevent an asylum seeker from spreading or make that support ineffective.

"This denial of support confirms or reinforces the asylum seekers fear of harassment and, in fact, can be an element of harassment."

The term reluctance refers to refugees who refuse to accept the support of their respective governments. The word is tied to "The cause of this fear" the propensity to be supported by the government is usually at odds with

the claim of being abroad "because of justified fear of being harassed." If the government may have the support of the government and there is no reason to reject it due to justified fear, that person does not need international and refugee support (UNHCR, 1992: 98).

3. Immigration to America

From the beginning, the United States has been one of the most immigrant-friendly countries in the world. It has always covered its population shortages and fertility rates by accepting Migrants. An important feature of US immigration policy is that it is contingent. At various points in time, the US Congress has revised and amended laws to suit the economic conditions of the time, the fertility rate, the need for labor, and the conditions for applicants to Migrant to the United States. From the end of World War II until the early 1960s, American immigrants and refugees included various European, Asian, Canadian, and Latin American nationalities.

With economic and political stability and increasing prosperity in European and Asian countries, in recent years the origins of immigrants to the United States have changed from those countries to Mexico and the poor countries of Latin America. So, in the last two decades, the country has been pursuing policies to prevent the entry of Mexican and Latin Migrants due to the disappearance of immigrant diversity and the influx of immigrants entering the United States from poverty and exorbitant costs. From this time onwards, with the increase in the welfare of European countries, the number of immigrants from these countries has decreased and it has increased to the number of Migrants from Latin American and communist countries.

In recent years, with the abolition of communist regimes, much of the legal and illegal Migrants to Central and Latin American countries has become a major concern for US governments. In 1996, Bill Clinton passed Congress on the illegal Immigration Reform Act, based on proposals from the Immigration Regulatory Commission. The law also imposed strictures on illegal Migrations living in the United States. For example, under the law, people who have been in the United States illegally for six months to one year at the time of their arrest It was not allowed to enter the United States for three years, and this number increased to 10 years for people who had spent more than a year in the United States illegally. Also, before the law, illegal Migrations were imprisoned for at least five years before being deported only if they committed a serious crime. Under the law, illegal Migrations who have committed minor crimes, such as to snatch a bag, were sentenced to six months to two years in prison, depending on the type of crime.

On the other hand, in recent years, the origin of immigrants to the United States has changed from these countries to Mexico and the poor countries of Latin America. So in the last two decades, the country has been pursuing policies to prevent Mexican and Latin immigrants from entering the United States due to the disappearance of immigrant diversity and the influx of immigrants entering the United States from poverty and exorbitant costs. But the high fertility rates of these immigrants, family visa applications, and the 3200-kilometer border between the United States and Mexico, which has made it possible for illegal entry, have become a major issue for racial change for decades to come.

George W. Bush tried to legalize the residence of some illegal immigrants by defining certain conditions and paying fines but failed. Obama has tightened ground entry into the United States, and with two programs, Dapa and Dasa, has tried to allow a number of illegal immigrants to work to encourage less-rooted immigrants in the United States. The Trump administration is also trying to reduce the number of illegal immigrants by enforcing the 2006 Mexican Wall Act and adding austerity to illegal immigrants, such as long-term deportations and imprisonment (Report, 2018).

The number of deportations of illegal immigrants and refugees in 2017 has halved compared to 2010. This is not about reducing border forces or facilitating entry into the United States. According to Bloomberg, Obama's connection, and influence with anti-immigrant people in the United States is one of the main reasons for the tightening of the Obama administration. On the other hand, Trump's policy, rather than dismissal, is based on toughening on refugees and illegal immigrants if the slightest violation of the law is done, which in itself has created fear and reduced immigration from the southern borders.

Another of Trump's goals is to employ American employers who are subject to harsh penalties if they hire illegal immigrants. Also, according to a law passed by Congress in August 2017, the annual number of green cards was halved, and the permitted ceiling for refugees was reduced to 50,000 annually (ibid: 22). Thus, the tough policies that began in the field of immigration and asylum from the Clinton era have become a critical issue under Trump's command. The number of deportations of illegal immigrants and refugees in 2017 has halved compared to 2010.

This is not about reducing border forces or facilitating entry into the United States.

Latin American asylum seekers invade US borders

In 2018, Trump signed an executive order to stop families planning to immigrate to the United States without separating from each other. Trump has vowed that not separating immigrant families from each other will not

overshadow his "very strong borders" policy. This makes it clear that the crisis of mass arrests and deportations across the border and throughout the United States will continue. The President's November 9, 2018 decree stipulates that anyone seeking asylum in the United States must enter the country from official points of departure, and that if they have entered the United States illegally, their asylum application will not be processed.

The decree was to run for 90 days, during which time the United States would reach an agreement with Mexico on the return of asylum seekers. Under US law, asylum seekers are required to apply for asylum seekers who have fled their country to escape violence, and do not depend on their place of entry into the United States. Thus, the presidential decree practically meant the suspension of this law for ninety days.

The mass influx of asylum seekers from South America to the United States is not in itself a new phenomenon. In the 1980s, thousands of South Americans took refuge in North America. This movement used to take place in the form of caravans that did not exceed a few hundred people in number, and for this reason, their passage was not very visible. But what sets the 2018 convoy apart from other caravans is the significant number of members, which is estimated at 7,000. When the convoy crossed the Honduras and Guatemala into the Mexican border to reach the United States, in a public statement, the president described the convoy's entry into the United States as a threat to US national security and ordered troops to block the entry of foreigners into the country by blocking the shared border with Mexico.

This happened at a time when the convoy included a large number of asylum and immigration applicants, and as noted, the principles governing immigration law are fundamentally different from asylum law. Trump issued a statement on November 9 expressing concern over the security threat to the US convoy, saying the United States was reluctant to process asylum applications except at official points of departure. He suspended the passage of foreigners (both immigrants and asylum seekers) across the US-Mexico border for 90 days. In this regard, while acknowledging the difficulties of the United States in responding to the foreign population who have reached the borders of this country, the UN High Commissioner for Refugees (UNHCR) has stated that blocking the border on the convoy will harm those who have fled the country due to justified fears (Kayhanlou and Dadmehr, 2020).

Refugee rights from an international legal perspective. The discourse on the political rights of Migrant and refugees in legal circles and international institutions is flourishing. In the law of the countries of the world, talking about the political rights of Migrant and refugees is subject to the principle of reciprocity. In other words, the host country of Migrant and refugees will treat the citizens of this foreign country in the same way that the government of these Migrant and refugees will deal with the citizens of the host country of Migrant and refugees (Valipour, 2017).

Article 31 of the 1951 Geneva Convention provides for refugees who are living in the country illegally:

1. Contracting States which have threatened or resettled refugees directly from the territory in which they lived and whose liberty is threatened and who have entered or resided there without permission, they will not be punished for entering or staying in their land against the law, provided that (they) immediately submit to the relevant authorities, provide convincing reasons for the entry or illegal presence.
2. Contracting States shall not impose any restrictions on the movement of such refugees other than those necessary, this restriction will only apply if the status of such refugees in a refugee country has not been determined or they have not been allowed to enter another country.

Article 33 also prohibits the expulsion or reinstatement of refugees:

"None of the Contracting States shall in any way grant asylum to lands which may be related to race, religion or nationality, membership in a particular social group, or having political beliefs, life or liberty, is not threatened with deportation or reinstatement".

One of the most important rights of refugees, which has been emphasized, is the principle of not returning refugees to a country that has been expelled or forced to leave the country for various reasons. This principle has always been strongly supported by the United Nations and other relevant institutions. The first paragraph of Article 11 of the 1951 Geneva Convention states: "None of the Contracting States shall in any way intimidate or repatriate any asylum seekers to lands which may be endangered for reasons of race or life or liberty."

The United Nations Convention against Torture and Other Cruel, Inhuman or Defamatory conduct or Punishment states: "No government member of the Convention will return a person to another country where there is serious evidence of torture and danger to life." This principle is also emphasized in various international, regional and national resolutions and declarations. This internationally emphasized principle also has an exception, which is stated in the second paragraph of Article 33 of the 1951 Convention: "But a refugee whose existence is dangerous for the security of the receiving country or who has committed an important crime for sufficient and justified reasons will not enjoy the privilege of this article".

Therefore, as long as there are no favorable conditions for the return of refugees to their country, their return will be contrary to the various declarations and resolutions concerning refugees (Valipour, 2017).

4. Reasons for Us Rights in the Face of a Wave of Refugees

Responding to the mass influx of asylum seekers has been one of the most important concerns of the international community, especially in recent years. It leaves a seal of approval on the assertion that approving the New York Declaration on Immigrants and Refugees by Government Decision with 193 votes in the General Assembly (September 19, 2016) and subsequently ratifying the International Refugee Convention with only 2 votes against the United States and Hungary in the final days of the General Assembly's annual activity (December 17, 2018).

Collective asylum not only creates a crisis for the receiving states but can also lead to widespread human rights abuses if they refuse to comply with the obligation to prohibit the return of asylum seekers. Historically, although the United States Government has not acceded to the 1951 Refugee Convention from the outset, it has accepted virtually all of its obligations under the 1967 Protocol. With the passage of the Asylum Act of 1980, which was annexed to the Immigration and Citizenship Act and the Immigration and Refugee Aid Act, the United States pledged to provide more protection to asylum seekers who leave their homeland for human rights violations under the 1967 Protocol.

In this regard, the US government, in accordance with the 1967 Protocol and the domestic law system, considers itself committed to the prohibition of the forced return of asylum seekers. Paragraph 1 of Article 8 of Article 243 of the U.S. Immigration and Citizenship Act makes the commitment under Article 33 of the 1951 Refugee Convention a domestic law. However, these domestic and international legal requirements did not preclude the United States from providing different interpretations of its obligations (ibid: 178).

5. Background to Us Treatment of Asylum Seekers

Then, just two years after the passage of the US Refugee Act in 1980, Reagan's administration launched an entry ban program that allowed the US Coast Guard to stop Haitian-owned ships, and prevent Haitian citizens from entering the United States through illegal immigration.

The only positive point of this program (the continuation of the US commitment to protecting asylum seekers) was canceled by the issuance of a similar program by George Bush, and it was decided that all Haitian nationals who illegally entered the United States would be returned to Haiti, regardless of their asylum application. By issuing an executive order

in 1992, George Bush officially declared that the privileges of Article 33 of the 1951 Refugee Convention would not be granted to persons outside the borders of the United States. The United Nations High Commissioner for Refugees (UNHCR) has called the United States the first country in the world to adopt such a policy (Pizor and Sale, 1993).

Although the executive order was amended by the Clinton administration a few years later, Clinton also emphasized the principle of intra-territorial commitment to prohibit the return of asylum seekers so that the Bush-Clinton asylum policy would be established in the US government. Following this process, the Council of Haitian Centers, along with several other institutions, filed a lawsuit against the US government's asylum policy in US domestic courts. However, the Supreme Court ruled that the provisions of paragraph 1 of Article 33 of the 1951 Convention, as well as the provisions of paragraph 1 of Article 8 of Article 243 of the US Immigration and Citizenship Act, only apply to asylum seekers within the territory of the United States.

As a result, George Bush's 1992 executive order does not conflict with domestic law, as well as US commitments under the 1967 Protocol. In the interpretation of Supreme Court of the United States, the word "return" in Article 33 was considered synonymous with dismissal and it was stated that the term should be interpreted in a narrow sense in relation to its common meaning. This is because in the 1951 Convention, the word is used interchangeably with the French word refoulement. The word is not considered an exact equivalent in any of the authoritative English and French cultures. Thus, in the view of the Americans, the most accurate and precise meaning is deportation, and one can be deported if one is within the country's borders.

The Court referred to the preliminary negotiations of the 1951 Convention and the objections of governments such as Switzerland, the Netherlands, Germany, and Italy to the interpretation of the word refoulement. It also emphasizes that the drafting authors of the Convention, by inserting this word in the text of Article 33, have sought to prevent the presentation of broad interpretations of the word "return" in a sense other than expulsion. In addition to emphasizing the intra-border commitment of Article 33, the US government also claims, except for paragraph 33 of Article 33, that the influx of asylum seekers poses security threats to the United States.

In this regard, the US government does not commit itself to complying with the principle of compulsory restitution. According to official statements from the White House and the US Department of Homeland Security, the convoy includes dangerous criminals and people from the Middle East who could pose a threat to US national security.

The President of the United States considers this danger so serious that he does not deny the possibility of the use of firearms by the US military in response to possible violence by members of the caravan. Another US argument for justifying the president's statement on the suspension of travel from the Mexican border is that the US government does not have the legal right to accept asylum seekers anywhere they seek asylum, and it will only be responsible for the asylum seekers who enter the pre-determined points at the borders and there they will submit their application in the examination process (Kayhanlou and Dadmehr, 2020).

6. The Principle of Prohibition of Forced Return of Asylum Seekers

Many General Assembly resolutions also consistently support the principle of mandatory restraint. From the point of view of the General Assembly, the return or expulsion of asylum seekers in any way possible poses a threat to the very foundation of the refugee institution. In some of its resolutions, the General Assembly calls on governments to respect the prohibition of forced repatriation as an inviolable principle, and the Security Council has endorsed such a requirement even during the fight against terrorism or during armed conflict. The UN resolution explicitly extends the scope of the Declaration of Refugee Prohibition to the prohibition of returning to the borders, and the UN Security Council's resolution approving the elimination of international terrorism also emphasizes the importance of the prohibition of forced repatriation.

In a statement issued by the Prime Ministers of the Parties to the 1951 Convention and the 1967 Protocol in 2001, the States Parties reaffirmed that the principle of prohibition of reinstatement, as the core of the rights and obligations of the refugee system, is supported by international custom. The importance and legal implications of the decisions of such meetings and conferences held by the States Parties to the Treaty are set out in detail in the International Law Commission's Article 13 draft of the Future Plan for Future Performance and Subsequent Government Agreements (2018).

The Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) has repeatedly stated in its decisions that deportation of refugees at the border is a gross violation of the obligation to prohibit reinstatement. In the Committee's view, this principle is generally accepted by governments at the international and regional levels. The Committee goes so far as to state in Resolution No. 25 of 1974 that the prohibition of compulsory restitution is increasingly becoming the International Law imperative (Allain, 2002).

The principle of prohibition on the return of asylum seekers under international treaty law and customary international law also includes the prohibition on the return of asylum seekers present behind territorial boundaries. Based on what has been seen from the performance of governments in creating hard and soft refugee legal resources, it can be concluded that governments should be committed to prohibiting the return of asylum seekers wherever they can exercise their effective competence, and the main criterion is not the placement of the asylum seeker inside or outside the country, but the placement of the asylum seeker under the effective control and authority of the governments. If this premise is correct, it can be accepted without a doubt that the general government has effective control over its territorial borders, and as long as it enjoys this border control and authority, it must abide by its contractual and customary obligations in the asylum system.

Conclusion

The United States' main claim that the obligation to prohibit restitution in Article 33 of the 1951 Convention is intra-border does not have a solid legal basis. In principle, the accepted mechanisms for interpreting treaties in international law, Articles 31 and 32 of the 1969 Vienna Convention, are intended to confirm the hypothesis of the obligation to prohibit the return of asylum seekers present at the borders. Obstruction of the border with asylum seekers is clearly one of the things that will harm the asylum seeker and force him to return to a country that endangers his life or freedom for racial, religious, national, and political reasons. Also, given the strong evidence that the restraining order is binding, the United States cannot have a solid basis for citing the exceptions set out in paragraph 2 of Article 33 of the 1951 Convention and defer the enforcement of the asylum caravan due to security threats. Although Article 33 recognizes two security exceptions as an excuse for states to enforce the principle of prohibition on the return of asylum seekers, the fundamental rule governing the reversal of obligations is that the reversal must be carried out in compliance with other international law. Therefore, the government's violation of the obligation to prohibit the forced return under the 1951 treaty will not affect the fulfillment of the same obligation in other legal systems, including the inalienable human rights system. If the receiving State knows that the asylum seeker's refusal will result in him or her being subjected to retaliation and endangerment, such as harassment and torture, he or she must not in any way dismiss the asylum seeker in accordance with his or her human rights obligations.

The United States has ultimately refrained from adhering to its commitment to ban asylum seekers from relying solely on official points

of departure. This claim will not go unheeded by referring to US domestic law and the purpose and subject matter of the 1951 Convention. The policy of blocking the border and not accepting asylum seekers in undefined crossings conflicts with the laws that have been in place in the United States for nearly 40 years. According to it, the US Congress has explicitly stated that any foreign national who reaches any point on the US border or official points of departure has the right to apply for asylum. The 1963 textual amendment to the Asylum Procedure Act by Congress did not provide for an exclusive admission of asylum seekers on official grounds. In addition, the implementation of such a policy is inconsistent with the end of the 1951 Convention, which focuses on the protection of refugees.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 421-435
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Educational processes of training, retraining and advanced training of private detectives in Ukraine

DOI: https://doi.org/10.46398/cuestpol.38e.28

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Abstract

The aim of the article was to carry out a retrospective analysis of the legal acts on the legalization of private detective activities in Ukraine and, at the same time, consider the characteristics of training, retraining and advanced training of private detectives in order to to further improve legislation in this area. The subject of the study is essentially the process of training, retraining and advanced training of private detectives in Ukraine. During the research, the following scientific methods were used: dialectical method, methods of synthesis and analysis, methods of induction and deduction, statistical method, historical and legal and formal and legal methods. The peculiarities of the Law of Ukraine "On the Activity of Private Detective (Search)" were considered, its advantages and disadvantages were described. By way of conclusion, he emphasizes that the existing legal education system, introduced in civil educational institutions, is not adequate for the training of private detectives. For these and other political and legal reasons, the need to

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train private detectives in the system of higher education institutions with specific learning conditions in the heat of the requirements imposed by reality itself is argued.

Keywords: private detective; private detective agencies; vocational training; recycling; advanced training.

Procesos educativos de formación, reciclaje y formación avanzada de detectives privados en Ucrania

Resumen

El objetivo del artículo fue realizar un análisis retrospectivo de los actos jurídicos sobre la legalización de las actividades de detective privado en Ucrania y, al mismo tiempo, considerar las características de la formación, el reciclaje y la formación avanzada de los detectives privados con el fin de mejorar aún más la legislación en esta área. El tema del estudio es esencialmente el proceso de formación, reciclaje y formación avanzada de detectives privados en Ucrania. En el curso de la investigación se utilizaron los siguientes métodos científicos: método dialéctico, métodos de síntesis y análisis, métodos de inducción y deducción, método estadístico, métodos históricos y legales y formales y legales. Se consideraron las peculiaridades de la Ley de Ucrania «Sobre la actividad de detective privado (búsqueda)», se describieron sus ventajas y desventajas. A modo de conclusión desataca que el sistema de educación jurídica existente, introducido en las instituciones educativas civiles, no es adecuado para la formación de detectives privados. Por estas y otras razones políticas y jurídicas, se argumenta la necesidad de formar detectives privados en el sistema de instituciones de educación superior con condiciones específicas de aprendizaje al calor de los requerimientos que impone la propia realidad.

Palabras clave: detective privado; agencias de detectives privados; formación profesional; reciclaje; formación avanzada.

Introduction

Ukraine is on the path of significant changes at the current stage of its development: the structure of economic relations is changing, new subjects of property and political activity are being formed, basic values, living arrangements are being transformed, the way of life and traditions are changing (Medvedev, 2014, p. 235). Therefore, radical socio and

economic transformations that have taken place over the past decade led to both positive and negative changes in modern Ukrainian society (Pavlenko *et al*, 2017). The development of welfare State in the context of legal European integration implies that a person, his life and health, honor and dignity are recognized in Ukraine as the highest social value and their protection is a priority of the criminal law policy of the country. However, the construction of civil society and democratic State governed by the rule of law in accordance with the European standards is significantly hampered by a serious aggravation of the criminal situation, an increase in organized crime (Nykyforchuk *et al*, 2017).

The Verkhovna Rada of Ukraine notes that the state of observance of the rule of law in ensuring human rights and freedoms in the work of law enforcement agencies does not comply with the Constitution of Ukraine; the level of crime in the country threatens Ukraine's national security. The criminalz situation in the country is difficult, tense and unstable in terms of level, content and negative consequences. From year to year, organized crime and the number of crimes against life, health and property of citizens are growing. Organized criminal groups are not detected at the stage of their creation, so they can operate on the territory of the State from two to five years.

Civil society institutions can provide necessary resources to combat illegal encroachment through the privatization of law enforcement. This process is noticeable in the legislation and practice of many countries, where the development of private detective agencies (security firms, security services and various public law enforcement agencies) is encouraged. It is the set of such institutions, which may have some of the purely law enforcement functions and characteristics, that forms the basis of the non-state law enforcement system (Yurko, 2017). Private detective (search) activity is recognized at the State level in most countries of the world, is regulated by law and is optimally used to increase the ability of citizens and legal entities to protect their legal rights and interests (Bezzub, 2017).

Ukraine has been building a law-based State on the example of the European community, in which an individual, his life and health, honor and dignity, inviolability and security are the greatest social values. Many countries have recognized and regulated private detective activities at the state level to provide more opportunities for individuals and legal entities for protection of their legal rights and interests. Considering all the factors, the activity of private detective agencies or private detectives is quite new in Ukraine, although their popularity is only growing every year (Gryshko, 2018).

Currently, the services of private detective agencies and detectives are in demand not only among individuals but also government agencies and institutions. Thus, the activities of private detectives are recognized as an

auxiliary and even integral part of the work of law enforcement agencies of Ukraine. Thus, in connection with the introduction of private detective work in Ukraine there are a number of questions and problems, namely: what should be the education of a private detective and who will provide training, preparation, retraining and advanced training of such persons, which determined the relevance of the chosen topic.

1. Materials and methods

Methodological basis of the study is a set of general philosophical, scientific, and special methods of cognition, the choice of which is due to scientific and applied expediency. Dialectical method allowed to study the object and subject of research in their development and interaction. The method of analysis was used to fragment the complex phenomenon of detective activity in Ukraine into simpler elements, which significantly affected the content and structure of the subsections of the article. The method of induction helped to analyze the problems related to the legal status of private detective in Ukraine.

Deductive method contributed to the sequence of presentation of the material and influenced the overall structure of the content of the research. The method of synthesis was used to study theoretical approaches to the institution of private detectives in Ukraine and to generalize the main provisions of the research, which allowed to expand the existing ideas about theoretical foundations of non-state law enforcement. Statistical method was applied to analyze statistical data on the level of confidence of Ukrainian people in the judiciary and law enforcement agencies. Historical and legal method helped in the study of the genesis of non-state law enforcement during the main stages of Ukraine's development. Formal and legal method contributed to the analysis of legal acts, which regulate the issue under consideration.

The security services of enterprises in the aspect of non-state law enforcement were studied by Mak-Mak (2003) in his monograph "Security services of enterprises as the subject of private law enforcement". He tends to consider security services as independent subjects of non-state law enforcement because their functions specify general law enforcement functions and is also a supporter of recognizing security services as independent subjects of law in the form of an autonomous non-profit organization.

Russian author Kvasha (2000) united private detective and security activities under the term "private police". This approach is found in the literature but is questionable. Private police in the United States and some

European countries are generally security agencies that provide public order and security services on the basis of agreements with public authorities and local governments. Such companies can really use the word "police" in their official name.

Sachavo (2006) monograph "Administrative and legal bases of activity of private security structures and their interaction with the police of Ukraine" also attracts attention because of its historical and legal analysis. The author disputes the idea of fundamentally new nature of private security activities in domestic law enforcement practice and even argues that the emergence of private security in Ukraine in its modern form occurred earlier than in other countries (France, USA, Japan, Germany, etc.).

The tradition of considering the activities of security agencies and private detective agencies in the context of ensuring economic security of entrepreneur activity is quite common in Ukraine. For example, detective and security activities are considered as tools to ensure business security, combating unlawful encroachments on the interests of enterprises under modern market conditions in the textbook of Bondarchuk "Business security: organizational and legal bases" (Bondarchuk, 2008).

The features of private detective activities in separate countries were investigated by Tameryan *et al.* (Great Britain) (2018), Matiukhina (Great Britain) (2001), Matiukhina (USA) (2013), etc.

2. Results and Discussions

The priority of human rights and freedoms in decision-making by public authorities and local governments determine the purpose of their activities. To ensure the effective realization of the National Strategy for Human Rights, which was adopted in order to improve the establishment and protection of human and civil rights and freedoms in Ukraine, and the Action Plan for its implementation, the Ukrainian Helsinki Human Rights Union, with the support of the Commissioner for Human Rights, established a Public Monitoring Platform (Motuz, 2011).

In this regard, today there is a question of legalization of non-governmental organizations and independent experts to engage in private detective work in Ukraine, which will primarily be aimed at ensuring the rights and freedoms of man and citizen. This type of activity had been not officially recognized and regulated in Ukraine for a long time, although in fact not only individuals but also legal entities had productively been engaged in private detective activity. According to unofficial data, several thousand private detectives and private detective agencies are now operating in all regions of Ukraine, and their services are in great demand among business, politicians, and lawyers (Motuz, 2011).

Ukraine is one of the few countries in Europe where the activities of private detectives are illegal. Private detectives in our country work under the guise of security or information-analytical agencies. They often use journalists' IDs to conduct their investigations. In general, they are guided by the principle "what is not forbidden is allowed".

According to the All-Ukrainian Association of Private Detectives, the number of search agencies in Ukraine has increased tenfold to 500 over the past two years, and 15% of Ukrainians have approached them for various reasons (Sarana, 2014). According to unofficial figures, there are about a thousand private detective agencies and private detectives who have successfully disguised themselves as law firms providing security or technical services. These services are used by politicians, lawyers, businessmen. A firm can offer protection from wiretapping or industrial espionage, but in fact it collects information about competitors at the request of a commercial syndicate.

Relatively low level of development of security activities in Ukraine is indicated by the existence of hundreds of small security structures, which still often provide low-quality services. The main reason for this is that the requirements for obtaining a license to carry out security activities are not strict enough. Firstly, those wishing to obtain a security license do not need to have a bank guarantee confirming the financial security of the entity's liability. Secondly, there are no strict requirements for the level of material and technical base and the availability of round-the-clock operative information centre. Thirdly, at the time of establishing a new company, it is not necessary to have qualified staff. As a result, the Ukrainian market is oversaturated with security entities that provide low-quality services, and the security profession is considered temporary one (Yurko, 2017).

After the events of 2014, the citizens of Ukraine express full mistrust to the law enforcement system. It should be emphasized that the main reason for the current large-scale reform of law enforcement agencies and the introduction of private detectives was the distrust of the people of Ukraine, namely to inaction and unprofessionalism of the former in the implementation of the work within their powers. 30% of respondents support the statement that the "police state" is being built in Ukraine, while 36% disagree with it. At the same time, 34% were undecided about their attitude (Sociological group "Rating" 2012).

According to a survey conducted by the Dragon Capital Investment Company (Kyiv) and the European Business Association, there is widespread corruption in Ukraine and a lack of confidence in the judiciary and law enforcement agencies. As reported in a joint press release of the organizations, the respondents rated the obstacles on a 10-point scale of importance at 8.5 and 7.5 points, respectively. Such factor as monopolization of markets and the seizure of power by the oligarchs is in

3rd place in the ranking (5.9 points), while the military conflict with Russia and unpredictable exchange rate (5.6 points) fell to 4th and 5th positions, respectively. Repressive actions of law enforcement agencies occupy the 6th position in the ranking (4.6 points). This is due to mass cases of illegal actions of the prosecutor's office, the Security Service, and the police. Other positions include constant changes in legal regulation, complex tax administration, and currency restrictions (Center of Economic Strategy, 2017).

In December 2017, volunteer organizations (+ 37%), the Armed Forces of Ukraine (+ 37%), the Church (+ 25%), and public organizations (+ 4%) achieved the best level of trust among social institutions.

Instead, the other institutions whose credibility was assessed have a negative balance of trust. Among the leaders of distrust are courts (-75%) and the prosecutor's office (-74%). Other social institutions also have a negative balance of trust / distrust: police (-46%), Security Service of Ukraine (-26.5%), trade unions (-25%), Western media (-22%), patrol police (-19%), ombudsman (-17%), National Anti-Corruption Bureau of Ukraine (-12%), local governments (-12%), Ukrainian media (-6%). The balance of trust / distrust in all institutions has either hardly changed or deteriorated compared to December 2016. The biggest deterioration is in the patrol police (negative balance increased by 24%) (Ilko Kucheriv Democratic Initiatives Foundation, 2017).

Thus, we support the opinion that the analysis of the attitude of the population to law enforcement agencies, the relationship between trust and distrust is a significant aspect in the general study of the prevailing mood in society. After all, in fact, this is a comprehensive indicator, on the basis of which it is possible to draw conclusions not only directly about the population's assessment of the work of law enforcement system, but also about larger trends.

Firstly, the trust in law enforcement agencies is evidence of the effectiveness of their work from the perspective of ordinary citizens of the country and the confirmation of public satisfaction with the activities of these structures. The opposite situation (when distrust prevails over trust) testifies, first of all, to the non-fulfillment or incomplete fulfillment of the functions assigned to them in this society.

Secondly, in a broader sense, the level of public confidence in law enforcement agencies and courts can be considered as one of the indicators of the development of the rule of law in Ukraine, the existence of problems in the field of compliance with the rule of law. This is due to the fact that law enforcement agencies and courts are the bodies that are created to protect the rights and freedoms of an individual and a citizen, and the high level of distrust in them, in view of this, indirectly indicates a violation of the rule of law.

Thirdly, confidence in law enforcement is also a component of the overall democracy of society and the system of government in particular. It is implied that in a society where democratic standards are fully respected; the law enforcement and judicial system operate transparently and cannot be influenced from the outside.

Having analyzed a number of reasons, which are different in nature and founded by various institutions (organizations), it should be stated that the implementation of institution of private detectives to ensure the constitutional guarantees of an individual and citizen to protect their legal rights and interests will effectively promote private detective (investigative) activities in Ukraine.

There are a number of draft laws from 2000 to 2017 on regulation on private detective activities, developed by different authors, but which, however, have not received relevant legislative support.

In particular, in 2005 private detective activity (which in fact has already emerged in our country and was carried out spontaneously in its various regions) was actually brought closer to legalization. This happened on January 12, 2005 during the discussion in the Parliament of the package of bills "On the Security Service of Business Entities and Other Legal Entities", "On Security Activities" and "On Private Detective Activities" (no. 5380), as well as an alternative bill "On Private Detective Activities" (no. 5380-1), submitted by other representatives of the Parliament. It was at this plenary session of the Verkhovna Rada of Ukraine that the deputies agreed on the need to legalize the activities of private security guards – detectives who were already actually working (Pidiukov, 2016: 168).

Domestic lawmakers returned to this issue only two and a half years in a row, when on June 26, 2007 the Draft Law "On Private Detective Activity" was registered in the Verkhovna Rada of Ukraine (no. 3727). The author of the document – Serhiy Gusarov, Chairman of the Subcommittee of the Verkhovna Rada of Ukraine on Legislative Support and Parliamentary Control over the Activities of Internal Affairs Bodies – also stressed the need to adopt it, as "such relations have already been developed in the country" (Pidiukov, 2016: 167).

Even after that, on February 25, 2008, December 13, 2012, and December 28, 2015, three more bills on private detectives and detective (investigative) activities were registered in the Verkhovna Rada of Ukraine (no. 2120, 1093 and 3726, respectively). And only the last of them, in the end, was adopted in the first reading at a meeting held on April 19, 2016 (Pidiukov, 2016).

The bill proposed in 2013 by the All-Ukrainian Association of Private Detectives has been far from ideal. From November 2015 to February 2016, it was finalized in the legal department of Private Police Company LLC and was hastily handed over to the experts to bring its text in line with

the requirements for documents submitted to the Verkhovna Rada. The amended text of the draft Law of the All-Ukrainian Association of Private Detectives included the opinions of practitioners – private detectives, business security specialists, other persons who are relevant to the implementation of this Law (Razumkov Center, 2016).

New attempts to regulate the area of private detective activities were undertaken in 2015 – 2016; but since the end of 2015, this issue of came to the fore again. On December 28, 2015, a new Draft Law on private detective (search) activity no. 3726 was registered (Motuz, 2011).

The features of this project: a) 70% of its text is borrowed without permission from the project proposed in 2013 by the All-Ukrainian Association of Private Detectives; b) the remaining 30% of the Draft Law are taken from various not very progressive bills and inserted into the document, which destroyed not only the content proposed by the practitioners, but also continues to increase the possibility of corruption and the emergence of a number of by-laws. On April 13, 2016, at the second attempt, this bill was passed in the first reading (Motuz, 2011).

On April 13, 2017, more than twenty years of history of legalization of private search in Ukraine ended with the adoption of the Law of Ukraine "On Private Detective (Investigative) Activity" and a new stage in the development of the private detective profession began (Draft Law of Ukraine, 2015). However, on June 07, 2017 the President of Ukraine vetoed it. It was noted that the law formed a list of permitted types of private detective services without taking into account the requirements of a number of legislative acts of Ukraine.

Thus, we considered the current state of detective activity, the reasons that did not contribute to the development of such activity, a retrospective analysis of the formation of private detective (search) activity. It turns out to be expedient to move on to the problem of private detective education, training, preparation and retraining of such persons.

Having a direct impact on crime prevention, detective agencies have a special place in the group of non-state law enforcement agencies. Given that the institution of private detectives is only developing, it would be appropriate, in addition to the legislative consolidation of the activity itself, to ensure a quality system of detective training and interaction between private and public law enforcement agencies.

Thus, we will consider the main issues of training, education, retraining and advanced training of private detectives, enshrined in the Draft Law of Ukraine "On private detective (investigative) activities". It should be noted that a significant part concerns one of the key issues – the training of future private detectives, which requires urgent scientific analysis.

The bill contains a list of requirements that a private detective must meet. A private detective can be a citizen of Ukraine who has reached 21, speaks State language, obtained higher legal education or work experience in operational units or pre-trial investigation bodies for at least three years, has undergone training for private detective (investigation) activities and received a certificate confirming the right to be engaged in private detective (investigative) activities (Article 5 of the Draft Law of Ukraine "On private detective (investigative) activities".

Article 8 (Issuance of a certificate of the right to engage in private detective (search) activity) states that to obtain a certificate confirming the right to be engaged in private detective (investigative) activities, a private detective submits such documents to the authorized body as duly certified copies of documents confirming the person's citizenship, higher legal education, relevant training or work experience, work experience in operational units or pre-trial investigation bodies. Article 14 "Responsibilities of a subjects of private detective (search) activity" notes that subjects of private detective (search) activity are obliged: to undergo retraining and advanced training.

Article 18 "Training of Private Detectives" defines that the procedure for training, retraining and advanced training of private detectives is approved by the National Police of Ukraine, taking into account the provisions of this Law; relevant agreements for the training, retraining and advanced training of persons engaged in private detective (investigative) activities may be concluded with higher education institutions, regardless of their form of ownership; development of training programs provided for in part two of this article is carried out in the manner prescribed by the central executive body that ensures the formation and implementation of State policy in education and science, in coordination with the Ministry of Internal Affairs of Ukraine, National Police of Ukraine, Ministry of Health Ukraine and the Ministry of Finance of Ukraine; the central body of executive power, which ensures the formation and implementation of State policy in the area of education and science, in the manner prescribed by law, approves the requirements for the content of training programs for the persons engaged in private detective (investigative) activities.

The persons who carry out private detective (search) activities and have been trained according to training, retraining and advanced training programs, receive a document of a higher educational institution of the established standard; subjects of private detective (search) activity who have not undergone training, retraining or advanced training are prohibited from engaging in private detective (search) activity.

I. Bezzub emphasizes that the provisions of the Draft Law of Ukraine "On Private Detective (Investigative) Activities" on education and training contains do no satisfy a number of professionals who emphasize the requirement for compulsory higher legal education, which should be

replaced by simply higher education, since future detectives still have to undergo appropriate training (Bezzub, 2017). In our opinion, it is unnecessary to require legal education or experience in law enforcement from a candidate for detectives, because representatives of other professions can successfully cope with such work if they just have search and analytical skills. Thus, higher legal education can be replaced by higher education in any field, because future detectives will undergo appropriate training.

We do not support this position, so we argue it. With regard to the training of private detectives by civil universities of public and private ownership, we would like to mention the statement of professor Venediktov on the significant difference between training in departmental (system of the Ministry of Internal Affairs of Ukraine) and civilian educational institutions and on the absolute inability of civilian universities to provide training of appropriate professional level and quality (Zozulya, 2008).

Thus, it should be noted that the existing system of legal education, introduced in civilian educational institutions, is not suitable for the training of private detectives because of the following reasons:

1. Civilian educational institutions do not set the goal of training specialists in detective activity; therefore, do not take into account its specifics. They mostly train specialists of the so-called broad profile in the specialty of law.

2. Despite the specifics of professional training of legal personnel, which is due to the peculiarities of the content of their subsequent activities, admission to the law faculties and law universities does not differ from admission to other faculties or other higher education institutions. The main criterion for selecting potential legal professionals is the successful results of an external independent evaluation. This criterion is undoubtedly necessary, but its application does not reveal such necessary qualities for a future private detective as honesty, morality, steadfastness and psychological endurance. These qualities are not properly reflected in the documents submitted by the applicant (Pavlenko *et al*, 2017).

Psychological training is becoming quite relevant under modern conditions in various fields of psychological knowledge. This is explained primarily by a number of objective and subjective difficulties experienced by employees in hazardous occupations in emergencies during the performance of their professional duties. This is especially true for those activities that are saturated with various extreme situations. Such activities include the professional activities of private detectives (Mohilevskyi *et al*, 2017).

3. Educational programs in civilian educational institutions do not take into account practical training, prefer theory and are detached from practice. Educational programs do not include the disciplines, which are

necessary for the future private detective, as: "Combat training", "Search activity", "Special equipment", "Special tactics". Even physical training at law faculties and law schools is conducted according to a general program that does not take into account the specifics of the future activities of private detectives.

4. Not all students of law faculties and law universities can undergo internships in the departments of the National Police of Ukraine. The practitioners are not interested in guiding the practice of students of civilian universities.

5. Some of the civilian educational institutions train specialists with legal education both in full-time and part-time education. It should be noted that the training of investigators, operatives and other specialists, who can later become private detectives, requires taking into account the specifics of their activities.

6. Civilian educational institutions produce the graduates who, for the most part, are unable to adapt to the practical unit and perform their duties effectively – it takes some time to fully prepare them for practical activities (Hrytsia, 2008).

Thus, departmental universities of the Ministry of Internal Affairs, unlike many other civilian universities, not only provide the process of theoretical training, but pay great attention to practical training, both law enforcement and private detectives, who will represent the Ministry of Internal Affairs in the near future. A specialist will not "be able to assess a situation in which he is likely to be influenced by some of his own prejudices and emotions" without such combination of theory and practice (Rogers, 1963). Besides, we support the idea of Khaertdinov et al. (2019, p. 58) that successful training of the officers is impossible without firm conviction in the strength and justice of the State, stable positive dynamics in the formation of positive social attitudes, value orientations and value priorities.

Conclusion

Ukraine, as a European State, is aware of the urgency of further improvement and development of new approaches in the area of public policy on the introduction of private detective (search) activities and stresses the importance of educational training of private detectives because ensuring the protection of human and civil rights and freedoms is one of the main activities of the State. In any case, the legalization of private detectives is necessary, because Ukrainians must be able to choose whom to trust their security.

The adoption of the Law of Ukraine "On Private Detective (Investigative) Activity" is necessary for our State, because it will legalize and bring out of the shadows the market of detective services, the demand for which will only grow every year. Besides, the rules established by law provide the entities, which want to engage in this activity, the guarantees that protect the rights and interests of persons represented by a private detective. It should be noted that private detectives can significantly help their clients, given the low level of training of some law enforcement officers, as well as large workload of enforcement system.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 436-453
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Mother Company's Responsibility for Multinational Subsidiary Activities

DOI: https://doi.org/10.46398/cuestpol.38e.29

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Abstract

The objective of the article is to analyze the various forms of responsibility of parent companies and their subsidiary multinationals in terms of what corporate social responsibility means. At the methodological level it is analytical and descriptive research. Despite all the struggles and activities carried out to regulate the operations of multinational corporations and the demand of the agents of the main governments responsible for strictly monitoring compliance with the rules (corporate social responsibility) the fact that major multinational corporations are pursuing interests for the implementation oflos control and monitoring of the cross-border activities of their companies should not be ignored. It is concludedthat the government's support for foreign investment, for example, is sometimes subject to compliance with minimum social, environmental, and human rights standards. It is difficult to judge the success and outcome of the effort made to monitor and regulate the business of multinational corporations, but what seems certain is that rich countries, such as the United States and the United Kingdom, have apparently accepted the task of playing a significant role in promoting and promoting cross-border (corporate social responsibility).

Keywords: multinational corporations; information-analytical activity; management decision-making; law enforcement; model of police action.

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Responsabilidad de la empresa matriz por las actividades subsidiarias en multinacionales

Resumen

El objetivo del articulo consiste en analizar las diversas formas de responsabilidad de las empresas matriz y sus multinacionales subsidiarias en términos de los que significa la responsabilidad social empresarial. A nivel metodológico se trata de una investigación analítica y descriptiva. A pesar de todas las luchas y actividades realizadas para regular las operaciones de las corporaciones multinacionales y la exigencia de los agentes de los principales gobiernos encargados de monitorear estrictamente el cumplimiento de las normas (responsabilidad social empresarial) no se debe ignorar el hecho de que las principales corporaciones multinacionales están persiguiendo intereses paralelos a la aplicación de control y seguimiento de las actividades transfronterizas de sus empresas. Se concluye que disfrutar del apoyo del gobierno para la inversión extranjera, por ejemplo, a veces está sujeto al cumplimiento de estándares mínimos sociales, ambientales y de derechos humanos. Es difícil juzgar el éxito y resultado del esfuerzo realizado para monitorear y regular el negocio de las corporaciones multinacionales, pero lo que parece seguro es que países ricos, como Estados Unidos y Reino Unido, aparentemente, han aceptado la tarea de desempeñar un papel significativo en el fomento y la promoción transfronteriza (responsabilidad social empresarial).

Palabras clave: corporaciones multinacionales; actividad de información-analítica; toma de decisiones gerenciales; aplicación de la ley; modelo de actuación policial.

Introduction

Multinationals companies working under the control of different legal systems in various countries, which means reconciliation of different laws and regulations and even contradicting the activities of these institutions. Multinational companies, on the other hand, have the ability to coordinate their activities in different countries, which enabls them to largely avoid the implementation and enforcement of national laws that are not beneficial to them. The activity of a multinational company in different jurisdical fields allows different and sometimes conflicting regulations to govern the activities of the company, although no single legal system can control the activities of a multinational company. As such, the specific features of multinational companies have led to certain legal issues that do not apply to other companies and institutions.

Multinational companies around the world specialize in manufacturing the most advanced technology, including chemicals, pharmaceuticals, advanced hospital equipment, machinery and petroleum. Companies such as Coca-Cola, Ford, General Motors, IBM, Microsoft from the US, Zeiss and Siemens from Germany, Philips from the Netherlands, Toyota from Japan, Renault and Peugeot from France, and Shell from the UK are multinationals.

It should be noted that the vast majority of foreign direct investment in the today's world is carried out by multinational companies, with a very high degree of reputation for the lesser known companies. It may not be an exaggeration to say that multinational companies are established to lead the foreign investment, and this performance is what distinguishes these large companies from other companies. We can see with some certainty that most of the multinational companies that mentioned by their brands have invested in FDI in most countries around the world.

1. Research Methodology

A. Full description of the research method in terms of objective, type of data, and method of implementation (including materials, equipment, and standards used as part of the research implementation process separately):

The method of research depends on the objective and nature of the research and its possibilities. The research method is analytic and descriptive, given to the theory. To define that, first by referring to related articles in accessible journals and books, we will specify the amplitude of the definition.

B. Variables in the text of a conceptual model and description of evaluation method as well as variable measurements are studied:

C. Full description of method (field, library) and tools (observation and test, questionnaire, interview, check-in, etc.) And data collection:

The first step in achieving research goals is to gather information and find the facts, and the library method is used in all scientific researches. Books, theses, articles and databases will be used to gather information in the fields of theoretical foundations and literature of research. Books and written articles as well as computer networks related to the thesis have been precisely studied, analyzed and classified.

D. Statistical population, sampling method and sample size (if available): are not available.

2. Multinational companies

Multinational companies are among the most controversial issues and playing significant role in the international arena. A wide variety of definitions are presented by multinational companies, which each of them has its own unique characteristics as well as common cases with other definitions. The following cases are some of the definitions that provided for multinational companies.

- A multinational company is a company that has assets and facilities in at least one country other than its original country. Such a company usually has offices or stores or even factories in various countries and usually has a head office through which it coordinates its global activities. These companies are sometimes called transnational companies (Mortara and Minshall).
- A multinational company is a company that has production equipment or fixed assets in at least one foreign country and makes its macro-management decisions on a global scale. In the areas of marketing, production, research and development, employment and labor, the decisions of a multinational company should be made according to the laws and customs of the host country (Downes and Goodman, 2006).
- Multinational companies are the companies that established in one country but settled their equipment and production offices in other countries, thereby marketing their products or services globally. These companies can use the special opportunities available in their origin country, such as cheap labor or exchange rates (Imber and Toffle, 2006).

3. Do multinational companies have a specific legal nature?

The main theme of the present study is the social responsibility of multinational companies and this question, reminds us of an important issue. We know that social responsibility is not only related to multinational companies, but also is a general issue that relates to all companies. The important question that arises is whether multinational companies due to their their specific features, require a specific international legal system or should they be treated like other national-scale companies. In other words, our question is that whether multinational companies have their own nature.

In spite of all the media attention and claims of abuses and misconduct by multinational companies, it should be said that the effect of multinational companies on the overall development or backwardness of social and environmental standards in host and capitalist countries there is no cohesive consensus. Multinational companies that are active in less developed countries usually claim that they adopt and apply social and environmental standards, which are higher than required standards by the host country's regulations. If these claims are true, regulation of more detailed and stricter rules for multinational companies how can be justificate?

According to the Code of Conduct adopted by the Organization for Economic Cooperation and Development, the International Labor Organization and the United Nations can answer our question. The instructions of the Organization for Economic Cooperation and Development are as follows: The purpose of these instructions is not to introduce the conduct differences between multinational and domestic companies, but to reflect good practice for all companies. Therefore, in parts of the instructions that apply to both multinational and domestic companies, there is a similar expectation of adhering to the instructions (McCahery *et al.*,1995).

There are similar rules in the United Nations and the International Labor Organization. However, the disparity of approach to the various rules is due to the difference in the purposes of the regulation. Are company's social responsibility regulations aimed at considerable enhancement of social and environmental standards? Is this aimed to the spiritual growth of the society? Is this goal responsible and respondent to the companies? Does it mean to take advantage of the main policies of international development companies?

There are three arguments and theories regarding the need to a specific regime for the social responsibility of multinational companies. Development, ethics and dynamics.

4. Legal organizing and control of multinational company's activities

Multinational companies throughout the world have adopted various legal methods to enter and invest in other countries in regard with their worldwide activities. What legal structure a multinational or transnational company should adopt depends largely on what the multinational company does and its transaction costs for the company. On the other hand, the legal restrictions applied by the multinational company and the restrictions applied by the host country's legal system is another factor affecting this

structure. In recent decades, legislators have been imposing pressure for foreign capital legislation, due to the variety of legal forms of foreign capital inflows into host countries. But whatever these factors may be, what you need to know in organizing a legal structure used in a transnational company is that a useful and efficient legal structure is one that has the least friction with the laws of the host country and the host of the multinational company. Although it burdens least legal load for it but has the most flexibility with the goals of a profitable business company (Backer, 2005).

5. Contract templates

Multinational companies can basically include all forms of for-profit legal; the criterion that determines a company's multinational title is that company or business can have a significant impact on another company across its borders. In other words, the criterion in this regard is a pragmatic one, not a completely theoretical criterion. In principle, multinational companies provide international markets by establishing a mother company in their origin country and establishing or owning one or more subsidiar companies in their host countries. But there are times when a company and an enterprise are in dire need of contracting with one or more other companies to meet the needs of international markets and accessing them.

This is where these companies can establish a contractual legal structure by concluding a partnership agreement and explaining joint policies based on profit and loss. On the other hand, it can be seen that in cases where cooperation is established through international trade and the global supply of goods by contract, one of the parties to the contract may have control over its other party due to its superiority indicators. In this case, in regard with the criteria set by the OECD, the issue falls within the concept of a multinational company.

That is why it is possible to defend the fact that contracts between companies are internationally referred to one of the multinational company templates and structures. Some authors (Vandekerckhove, 2007) have claimed that companies are connected to each other globally by using contractual links because they act as their own network in the world through their contractual links (Cerioni, 2008).

6. Responsibility in multinational companies

Given that in most cases, the mother company is formed in an advanced capitalist country and many subsidiaries are formed in developing and capitalist countries, the question arises as to whether a subsidiary in a developing country is harmed by third parties, is it possible to prosecute the mother company (an independent company in the capital country)? The answer to this question is particularly relevant in cases of environmental catastrophes (such as gas leakage, mining collapse, radiation, etc.), where it is likely that the subsidiary, as the principal responsible for the accident, has the ability to compensate for the damages. Therefore, the possibility of pursuing the mother company for the losers is considered a necessity.

In most advanced legal systems, the principle of company's legal independence has been accepted, and at the same time, limited shareholder liability for company's debt (as defined for limited liability companies or joint stock companies in Iranian commercial law) as an instruction that guarantees the interests of the company's shareholders to be recognized. As a result of the actions of the subsidiary company to the detriment of third parties, the limited liability effect allows the mother company to free itself from any liability. But the reality is that the theory of limited liability in the case of multinational companies loses its effectiveness. To better understand the issue, we need to take a look at the structure of the multinational organization. Subsidiary companies are usually an independent entity but also one of the intertwined pillars of a multinational organization that coordinates their actions with the whole organization. For example: (Saxena,2010). In many cases, the board of directors is a subsidiary of the mother company

7. Assign responsibility to multinational companies

In order to enforce the responsibility and obligation of multinational companies to observance of relevant standards, not only the requirements and limitations of the mother company (the main controller must be defined in the relevant laws and regulations, but also the subsidiaries must be responsible and respondent for violating the relevant rules).

The starting point and basis for the discussion of the allocation of responsibility to group economic institutions is the principle of «independent company's legal personality». According to this principle, every single member of the economic entity group is treated as an independent legal entity separate from the others without regard to existing communications (including control relationships) between the members of

the group. As a result, the general rule is that the mother company is not liable for the litigation against the subsidiaries. In assuming a claim for damages, the claimant is only permitted to file a lawsuit against members of a multinational company, which is legally responsible. The assumption that the distinction between the mother company and the subsidiary company is legally negligible (the legal personality veil) (Badge,2006) and the national courts that neglect this distinction is very limited(Du and Bhattacharya and Sen, 2010).

Some authors have criticized the principle of «independent company's legal personality» to group companies. Certainly, the ability of multinational companies to move resources under the veil of legal personality in their subsidiary companies, creates major problems in regulating their activities. On the other hand, the company's independent legal personality doctrine can create significant barriers to those who are inclined to compensate for multinational bodily or environmental damage. These issues have prompted critics of the doctrine to argue that laws should pay more attention to the economic realities behind the interconnected networks of companies and not to ignore the barriers raised by different legal entities (different companies). This approach is sometimes referred to as (economic organization theory).

8. Types of liability in multinational companies

As will be noted, the problems caused by multinational companies at the international level can be solved by solutions that seem difficult and costly. We know that multinational companys must play roles in social, cultural and political contexts and their activities should not be limited to economic activities. The interesting point is that multinational companies are increasingly playing roles that previously were governmental tasks; and conversely, these authorities have been given to multinational companies as well as international organizations (Backer & Molina,2009)

9. Civil liability

Company's liability may be contractual or non-contractual. Equally important to the principles of UK law, and consequently to the rights of all countries that have established their judicial system based on the foundations of their legal system, there is a fundamental principle of responsibility for care with the explanation that persons who are responsible for other persons under the law or they have a contract, they will also be responsible for the

actions of the supervised person. Accordingly, the mother company, since it is in charge of controlling and directing the second company, based on its relationship with the subsidiary company, will be liable for compensation for the loss if the subsidiary incurs and commits harmful acts. However, the implicit acceptance of this principle means that the mother company and the subsidiary company each have an independent personality, which is contrary to the principle of uniform appearance and unity of company's responsibility(Winckler,2011). On the other hand, there are other views that claiming the mother company should be respondent for all actions and activities of the subsidiary companies under any circumstances(Thorsen & Andreasen,2012)

10. Criminal responsibility

Corporate responsibility of companies is a new issue that has recently gained attention. One of the most important issues regarding the responsibility of multinational companies for human rights is their responsibility for international crimes, as according to the International Criminal Court's statute, their employees and managers may be responsible for actions that are subject to the Rome Convention. It is an internationally recognized crime. Although some believe that these companies act as an organization rather than as an individual and thus have legal independence and legal personality, but this should not prevent the punishment of human rights violators(Plouffe-Malette,2011).

An international criminal justice system has been established for war crimes against humanity, leading to the international responsibility of those who committed such crimes.

11. Social responsibility

This concept is a topic that is now being pursued extensively by all actors in governments, corporations, civil society, international organizations and academies in developed and open economies:

- Governments view company's social responsibility in terms of the duty division and responsibilities as well as drive for development sustainable (Coussens & Harrison, 2007);
- Corporations view company's social responsibility as a business strategy that increases their reputation in a highly competitive environment and increases their market share;

- Civil society and non-governmental organizations, requiring company's social responsibility to be aware of the scandals and catastrophes resulting from company's performance;
- International organizations considering impact of companies in today's world much greater than governments, which make it impossible to solve global challenges without the participation of companies, and many politicians are also companys executives;
- Academics also look at company's social responsibility from the perspective of company's role in the development of a country, the development of democracy, the interplay of duties and responsibilities of a company with the government and its overlap.

What is primarily concerned with the adoption of laws in the field of multinational companys is the issue of company's social responsibility (Badge, 2006).

12. Direct responsibility of the mother company

In this segment, we want to first talk about the direct responsibility of the mother company for the actions of the subsidiary companies.

When it comes to the responsibility of multinational companys, to analyze the mother company responsibility first and foremost, you have to concentrate on the basics of direct liability and guide the mother company because of its control and management over the responsible subsidiary company. Of course, it should be noted that in cases where it is not possible to direct mother company responsibility by tracing mother company management practices and actions, the way to use mother company liability assumption and indirect liability can be easy (Badge, 2006).

In proceedings that are the subject of a trial or, in other words, litigation, this case is a responsibility of a multinational company, usually even if it is brought by a multinational company in defense of its disqualification, courts will also consider lawsuits against the mother company, if they have qualification to be a part of subsidiary. To a large extent, it can be said that the investigation of this case and issuing verdict on the extent of the liability of multinational companies, and in particular the mother company, depends on the rules of the court and the referral authority.

The creation of foreign direct liability for multinational companies was happened through litigation, especially in the Communal courts. In many cases, it has been found that compliance with the principles of coercive or contractual liability is sufficient to hold the mother company respondent,

and it is no longer the case to investigate and prove the role of the mother company by resorting to mother company management. It should be considered, however, that the mother company responsible for pre-management of its subsidiaries can be particularly useful in cases where the court system does not have clear rules on contractual and coercive liability.

13. Indirect liability of Mother Company

As mentioned earlier, one of the most controversial issues in multinational companys is the issue of liability for branches and subsidiaries. This relationship can be considered as the relationship between the mother company and the subsidiary and is subject to its principles.

Given to this, traditional responsibility for the civil liability of manufacturers for defective goods can also apply to multinational companies, because a multinational company is often closer to foreign workers in its branches than a producer is to its consumers (Cernic,2008). In addition, if a multinational company is regarded as a merging of units into a single entity, each unit having a specific function, the performance of the mother company is to provide specialist, technology, capital, and supervisory power, etc., if the damage arises in the performance of the mother company, so the mother company should be responsible(Tignor, 2015).

It should be noted that the courts are reluctant to award damages in cases where the grounds for damages are pure abstinence. The rationale behind this view is that, contrary to the positive acts and events that the plot and chart have in their hands and that the public is aware of not committing, it is not conceivable to abandon such a situation and the matter may be included in that(Hosseini Khazan, 2010)?

The UK case law, of course, recognizes only a limited number of third-party liability cases where a third party liability can be legislated.

One of these is a situation where there is a particular relationship between the seeker and the reader. In this situation, the reader has a situation where expected him to take action and the act of abandonment by him leads to his recognition. Consider, for example, a contractor painting a home or installing a decoration installation. He confesses to locking the door by the key he was given to, but because of his forgetting to close the door, the house and objects in it are stolen. This is where one can warrant his responsibility and liability against a third party act.

14. Subsidiary responsibility

In this article, we will examine the liability of a subsidiary company under its title to minority shareholders and the violation of intra-company instructions and the protection of creditors and debtors against bankruptcy and apology.

15. Responsibility for minority shareholders

We have already noted that in multinational companies based on shares ownership, the majority of the shares are belonged to the mother company, which is a minority shareholder and predominantly belonged to local shareholders. In such cases, management may be threatened by the mother company, which will undoubtedly be affected by the interests of minority shareholders.

As an example, the following may be the case in which, the mother company may decide to transfer the company's assets in order to invest in another location based on the majority ownership of the board of directors idea. An investment that may not be a good fit or that can take on heavy subordinated loans for the sub company, loans that are subordinated in return for guaranteed repayment.

There are rules in English law that are the result of these laws establishing the legal rule that a company's executives have a full responsibility to assume all the responsibilities they need to manage their company. Legislating macro policies by the mother company may not be an excuse for subsidiaries to fail to perform their duties. Therefore, the senior executives of a holding company that owns a majority share in many of their subsidiaries, with the board of directors and independent directors managing their subsidiaries, they have no legal duty to protect the rights of minority shareholders and this responsibility lies directly with the managers and directors of these subsidiaries. On the other hand, the executives and managers of the subsidiaries are not responsible for the activities of the mother company and the main company itself is responsible for the consequences of the activities of the mother company.

16. Violation of in-company orders

In accordance with the legal principles and principles of any person, whether a natural or legal person, who orally or in writing authorizes or permits another person or entity to take action, is responsible for the actions taken by the second parties. Since he was the first lawyer and representative in this work – it returns to the representative. What is certain is that the company or the representative of the agency, only in the context of the authority given to the recipient (representative), is responsible for his actions, and obviously this range of responsibility extends far beyond when the type of representation is absolute. In fact, this responsibility has been accepted in accordance with this principle, and the notion is institutionalized that every employer should take responsibility for his employee's actions provided that these actions are in line with and not outside the scope of his duties. Even where the employer provides the employee with the authority to perform wrongful and improper work within the scope of his duties, the employer is responsible for the consequences of the operation, even if in some cases the employee has forbidden itself from doing these things(Ferran, 2011).

17. Protecting creditors and borrowers from bankruptcy and apology

Another issue being addressed is the question of how subsidiaries are liable to borrowers for possible bankruptcy. In fact, the subsidiary in the host country is always conducting social interactions with both legal and natural persons and may, in this interaction, be credited to the subsidiary of the multinational company, but due to the bankruptcy of these companies, the borrowers not coming. It is therefore appropriate to make reference to the laws and regulations in this area.

Under current UK law, if a company is in a position where any manager with the standard managerial knowledge level can conclude that continuing the current trend will lead to bankruptcy, however, it is responsible for refraining from necessary measures to eliminate or minimize the process of damages. The only defense the manager can offer in court is that he has taken every step possible to resolve the company's problems.

Accordingly, if the manager or board of directors of a subsidiary based in the United Kingdom owned by a foreign mother company receives instructions from the mother company management center, proceed with the insufficiently financed company. In the way that a company faces bankruptcy, it has a personal responsibility under UK law and the laws in issue.

Other countrie's laws and different legal systems also have relatively similar rules. According to the French legal system, when a mother company acts as the operating director of a «bankrupt subsidiary», the company can be held responsible for what is called its undeniable role in exacerbating the financial problems of the financial company (Seifi and Hassankhani, 2017).

18. Theoretical foundations of the principle country regulation of the mother company

There are many substantive debates and theories about the possibility and responsibility of the multinational group.

Under what circumstances will the mother company be responsible for the losses and damages caused by the activities of its foreign subsidiaries? Legally, the mother company and its subsidiary have separate legal personality, which means that the mother company will not be responsible for the activities of the affiliate company, solely for the benefit or share of the affiliated company. But this theory (separate legal personality theory) is not a general obstacle to mother company liability. On the contrary, there are many legal opinions regarding the liability of the mother company against the affiliate's failure or wrongdoing.

In general, theories of responsibility of the mother company of a multinational group can be divided into four different theories. First, primary liability (mother company responsibility for the results of its actions); second, liability-based or agency responsibility (mother company liability for the results of activities of subsidiaries that are assumed to act on behalf of or on behalf of the subsidiary) Is the mother company); Third, sub or secondary liability (liability of the mother company for participating in the failure or fault of the affiliated company); And fourth, the liability of the whole multinational group or the whole corporation of the mother company or any of the companies of a multinational group against the results of the activities of the subsidiaries or other group companies based on membership of both in the multinational group.

Conclusion

The volume of multinational company's activities and the amount of money they circulate along with their insatiable desire to gain more wealth and power has led to efforts to contain and regulate their activities as well as social responsibility, to prevent misconduct and ill effects. Multinational

companies have a global goal. While this aim at the slogan stage does not seem to raise any opposition, in practice the interests of different countries for various reasons, do not depend on it to be implemented voluntarily and non-binding.

Achieving an international treaty system in all company's social responsibility that embodies the rules of consensus of all countries in the world is an unrealistic ideal for the governor and the experiences of the United Nations and other international organizations (in particular the World Trade Organization and the World Trade Organization) have shown that reaching a consensus among the poor and developing countries because of the differences and sometimes inconsistencies they are almost impossible. So the more realistic way is to try to reach agreements that cover issues that are more narrow and specific to company's social responsibility or to be confined to a limited number of countries with similar interests or facilities, for the benefit of confined group interests, or within the scope of particular countries.

Taking into consideration all the problems and backgrounds in the field of multinational company social responsibility legislating, several suggestions are worth mentioning.

Due to the vacuum felt by the role of the host countries in the company's social responsibility campaign, a more prominent role is expected in these countries. One of these realistic approaches could be the binding treaty between developing countries with the aim of applying common standards with a minimum level of clarity. Achieving this, of course, requires a high understanding of the long-term benefits and guarantees necessary to achieve sustainable development in developing countries. As such, developing countries, which have played a relatively modest role in organizing the activities of multinational companies, will require themselves and multinational companies to abide by these minimum standards and refrain from competing to lower the level of attraction of foreign capital.

In this way, investor companies will also not be able to threaten developing countries with the threat of not investing in their territories or transferring their capital to lower standard countries due to the pressing need of poorer countries to attract foreign investors for violations of rights social and environmental abuse. The poorer countries will also be instrumental in balancing the balance of power that is currently weighing on multinationals and their major countries for if the developing countries (hosts) do not protect their labor rights and the human rights of their nationals, others will not.

In addition to these activities, it is essential that the host countries of multinational companies provide impartial authorities with due process to deal with the complaints of multinational companies affected so that they

can bear the suffering and hardships of their rights. Do not file claims in foreign courts and face the risk of having their claims ignored or dismissed. One of the suggestions in this regard is to determine the conditions for resolving disputes between multinationals and capitalist governments. It is simply feasible to implement such conditions in conventional, technically bilateral investment contracts.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 454-462
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Contemporary Criminal and Criminal Executive Law Conflicts and Ways of Overcoming Them

DOI: https://doi.org/10.46398/cuestpol.38e.30

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Abstract

The article discusses the definition and correlation of the concepts of "conflict" and "competence" and provides various expert opinions on this. In the methodology it is an analytical research based on documentary. In modern scientific literature, the clash of the rules of criminal law is called conflict of laws, using the definitions indicated as identical concepts. However, the authors point to the controversial nature of such an interpretation of those concepts. The causes of conflicts in the rules of Russian law are analyzed. Thereis also a detailed analysis of conflicts in the rules of domestic criminal law and criminal executive law. In the context of the topic studied, the authors refer to the categories of criminal law and criminal executive law as the principles of criminal law. It emphasizes by way of conclusion that the conflicts identified are not an exhaustive list, simply the authors of this work managed to consider only some aspects of the subject, therefore

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the conclusions and suggestions are not indisputable. In any case, the discussion of these issues is important to achieve coherence in the rules of criminal law and criminal executive law.

Keywords: collisions in criminal law; executive criminal law; causes of conflicts in legal hermeneutics; examples of criminal disputes; conflict resolution methods.

Conflictos contemporáneos del derecho penal y ejecutivo penal y las formas de superarlos

Resumen

El artículo analiza la definición y correlación de los conceptos de "conflicto" y "competencia" y brinda diversas opiniones de especialistas al respecto. En lo metodología se trata de una investigación analítica de base documental. En la literatura científica moderna, el choque de las normas del derecho penal se denomina conflicto de leyes, utilizando las definiciones indicadas como conceptos idénticos. Sin embargo, los autores señalan la naturaleza controvertida de tal interpretación de estos conceptos. Del mismo modo, se examinan las causas de los conflictos en las normas de la legislación rusa. También se realiza un análisis detallado de los conflictos existentes en las normas del derecho penal interno y del derecho ejecutivo penal. En el contexto del tema estudiado, los autores se refieren a las categorías de derecho penal y ejecutivo penal como los principios del derecho penal. Destaca a modo de conclusión que los conflictos señalados no son una lista exhaustiva, simplemente los autores de este trabajo lograron considerar solo algunos aspectos del tema, por tanto, las conclusiones y sugerencias no son indiscutibles. De cualquier modo, la discusión de estos temas es importante para lograr coherencia en las normas del derecho penal y del derecho ejecutivo penal.

Palabras clave: colisiones en derecho penal; derecho penal ejecutivo; causas de conflictos en hermenéutica jurídica; ejemplos de conflictos penales; métodos de resolución de conflictos.

Introduction

More than twenty years have passed since the criminal and criminal executive code has been adopted. Numerous changes and amendments

made during this time to these laws number in the hundreds. On the one hand, this circumstance indicates a continuous process of improving the criminal and executive criminal law of the Russian Federation related to dynamically developing public relations, on the other hand, it entails the emergence of new inconsistencies and contradictions, the identification of new conflicts that require focused work on their elimination. Consistency, soundness of legislation, lack of drawbacks in it are the key to a harmonious, effective law enforcement activity. For criminal and criminal executive law, which contains the most stringent measures of state coercion, the achievement of such consistency is of particular relevance. It is precisely from the point of view of their punitive content any imbalance can lead to a substantial violation of the rights and freedoms of human and citizen.

The term "conflict" has long been known to the law (the first references were met in the Code of Laws (1550) (Ufimtseva, 2019), but its single and unambiguous understanding has not yet been reached. Currently, a number of researchers consider this concept from different perspectives, but they all have one goal: uniform application of the rule of law.

An analysis of the studies available in this area shows that many of them relate to the theory of law (Sukhov, 2004; Yarmukhamedov, 2007; Kuznetsov, 2017), while others relate to the branches of law that are not related to the criminal law direction (Barkanov, 2005; Samigullina, 2015). Numerous scientific works have been devoted specially to conflicts in the law branches of the criminal cycle, including criminal, criminal procedure, and criminal executive (Krymov, 2013; Skyba & Skorik, 2017; Skiba, 2018). However, the indicated issues are usually addressed by researchers in relation to a specific publication (Volkov, 2013; Garmyshev, 2016).

Despite numerous studies of the issues of legislation and law related to conflicts, as well as the legislator's attempts to eliminate them, nevertheless, some difficulties arise due to their presence when making legally significant decisions. This is especially manifested in cases where the interests of opposing parties - participants in legal relations - collide. These and other circumstances necessitate the identification and analysis of certain conflicts in the criminal and executive criminal law.

1. Methods

The methodological basis of this study includes the dialectical method. The authors used special cognition methods: logical and legal; comparative, historical, sociological, system-structural, statistical, analysis and synthesis, as well as legal modelling.

2. Results and Discussion

The concepts of "conflict" or "competition of criminal law norms" are not defined in the current criminal and executive criminal law of the Russian Federation. These terms are widely used in the theory of these sciences and are often interpreted as distinct from each other (Kuznetsov, 2017), but in some sources - as equivalent (Inogamova-Khegay, 2015). Malkov V.P. defines conflict as a discrepancy or contradiction between laws and considers competition as "a state where two or more norms, which coincide or differ in content and are designed to resolve the issue, apply for application during qualification of a specific crime, and the law enforcement agency shall determine the norm giving priority" (Malkov, 1974). Malkov V.P. also indicates that it is impossible to contrast these concepts since there is a certain relationship between them, which is seen in the qualification process itself. The definitions of these concepts in science allow making one general conclusion that both competition and conflict arise when the law has two or more rules governing the same social relation.

Let us give examples of the most striking conflicts in the criminal and executive criminal law.

Conflict 1. In accordance with Article 4 of the CC RF, persons who have committed crimes are equal before the law. Parts 1 and 3 of Art. 60 of the CC RF contain provisions on the imposition of just punishment, taking into account the nature and degree of public danger of the crime, the perpetrator's identity, the circumstances mitigating and aggravating the punishment. At the same time, Art. 15 of the CC RF stipulates the court's right to change the category of crime to less serious, but not more than once, subject to the conditions specified in it, which contradicts the principle of justice (Art. 6 of the CC RF).

Taking into account that the legislator does not clearly establish the conditions for the implementation of Part 6 of Art. 15 of the CC RF, their application by the court in one case and non-application in another is a violation of the principles of justice and equality of everyone before the law, as well as double consideration of mitigating circumstances is inevitable when the crime category is changed.

As for the goals of punishment, they become unattainable in these conditions. By changing the crime category, a judge changes the whole complex of measures aimed at its achievement. In order to keep the balance of goal and punishment, a stricter punishment shall first be imposed, and when the category is changed, return to the framework defined in Art. 60 of the CC RF (Epikhin et al., 2019; Epikhin et al., 2018).

This conflict can be eliminated by indicating in the article the obligation of the courts to apply it under appropriate conditions, or Part 6 of Art. 15 should be deleted from the CC RF.

Conflict 2. Fine is a common form of punishment not related to isolation from society and imposed on minors. Changes made to Part 2 of Art. 88 of the CC RF by the Federal Law No. 162-3 dated December 8, 2003, significantly affected the fine imposition practice. A fine began to be imposed both in the presence of a convicted minor having his/her own independent earnings or property that may be charged and, in the absence, thereof. In this case, a fine may be charged from his/her parents or other legal representatives with their consent by a court decision. This provision of the law is criticized by some researchers (Nechaeva, 2016). These changes significantly expanded the courts' abilities to impose a fine on minors. Over the past five years, the average percentage of fines has been 11.3% (up to 2003 - 0.7%) (// http://www.cdep.ru). This indicator grew because the fine had begun to be charged most often from parents or legal representatives. This provision violates the most important principle of individual guilty (personal) responsibility (Art. 5 of the CC RF).

Following the legislator's logic applied in the CC RF, it is possible to stipulate the possibility of imposing other forms of punishment on minors' parents with their consent in the same way. The absurdity of such a situation is obvious.

A fine can indeed be an effective punishment, but only if the minor is personally responsible for the crime (Nechaeva, 2016).

Conflict 3. The convicted persons execute (serve) their punishment with the obligation to undergo treatment for alcoholism and drug addiction carried out by medical correctional institutions (hereinafter - MCI). To date, the legal status of MCI is not fully defined. As a place of liberty deprivation, it is mentioned in Part 1 of Art. 56 of the CC RF. However, Art. 58 of the CC RF established a procedure for determining the type of correctional institution for specific categories of convicts, but this procedure for MCI is not specified in this article. We believe that the indicated categories of convicts should be defined in the CC RF for MCO, as well as for other correctional institutions.

Conflict 4. According to the content of Art. 53.1 of the CC RF, forced labor is an intermediate punishment between imprisonment and punishments not related to the isolation of the convicted person from society, which allows making a conclusion that they can be considered as more severe punishment than restriction of freedom, but milder than imprisonment. The issue of the independence of this punishment is doubtful. According to the above article, forced labour is used as an alternative to imprisonment. The grounds for the application are clearly defined in the CC RF. In accordance with Part 2 of Art. 53.1 of the CC RF, if, having imposed a sentence of imprisonment, the court finds that the convicted person may be

corrected without serving a sentence in prison, it replaces the sentence of imprisonment with forced labor.

The fact of sentencing, first in the form of imprisonment, and then replaced with forced labor, undermines the status of forced labor as an independent form of punishment (Nechaeva, 2018).

But there are other contradictions. In accordance with Part 7 of Art. 53.1 of the CC RF and Part 1 of Art. 88 of the CC RF, forced labor is not applied to minors. At the same time, the provisions of Part 3 of Art. 49, Part 4 of Art. 50, Part 5 of Art. 53 do not exclude the possibility of replacing punishment for a minor convicted person who maliciously evades serving the sentences specified in the above norms with imprisonment. It turns out that for there is a replacement, for example, of corrective labor to forced labor, for adult convicted persons, but not for minors. For minors, the specified punishments can only be replaced with imprisonment, which puts them in unequal conditions compared to adult convicted persons. It is necessary to amend the relevant articles of the CC RF, which would stipulate the possibility of imposing punishment in the form of forced labour for minors (Krymov, 2013).

Conflict 5. Let us analyze the content of Part 9 of Art. 16 of the CEL RF, Art. 74, 77 and 77.1 of the CEL RF. Part 9 of Art. 16 of the CC RF establishes a list of types of institutions that can be chosen for imprisonment, including pre-trial detention centers (hereinafter - the PTDC) in relation to convicted persons specified in Art. 77 of the CC RF, that is, left to perform maintenance of PTDC and prisons. However, Part 1 of Art. 74 of the CC RF contains five categories of convicted persons, who may be held in PTDC: 1) those left to perform maintenance; 2) in respect of whom the court verdict has entered into force and who will be sent to correctional institutions to serve their sentences; 3) those moved from one place of serving a sentence to another; 4) those left in PTDC or transferred to PTDC in the manner prescribed by Art. 77.1 of the CC RF; 5) persons sentenced to a term of not more than six months, left in PTDC with their consent.

As we can see, this conflict should be eliminated, for example, by making appropriate changes to Part 9 of Art. 16 of the CEL RF.

Conflict 6. In accordance with Part 4 of Art. 58 of the CC RF, the type of correctional institution is changed by the court in accordance with the CEL RF (Part 5 of Art. 78 of the CEL RF)

However, Art. 77 of the CEL RF establishes that the convicted persons should be left in PTDC to carry out maintenance by order of the head, which contradicts the above standards. The decision to leave the convicted persons in PTDC for maintenance should be made by the courts, as required by Part 5 of Art. 78 of the CEL RF and Part 4 of Art. 58 of the CC RF, because the type of correctional institution is actually changed. This also applies to MCI (Nechaeva, 2013).

Conclusions

The issue considered represents the coverage of a wide range of criminal law and criminal executive issues. Therefore, it cannot be resolved within the framework of a single scientific article. The authors tried to highlight the shortcomings of only a small aspect of the issue - criminal and criminal executive law conflicts and ways of overcoming them. Further systematic investigation of the conflict issue is necessary with the expansion of the list of analyzed regulatory legal acts.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 463-472
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Computer crimes on the COVID-19 scene: analysis of social, legal, and criminal threats

DOI: https://doi.org/10.46398/cuestpol.38e.31

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Abstract

In January 2020, the World Health Organization announced an outbreak of SARS-CoV2, which caused COVID-19 coronavirus disease. Soon, a continuous outbreak of coronavirus infection was declared a pandemic. This situation has led to an increase in cybercrime. Cybercriminals did not stray from the situation and used the pandemic to commit various digital frauds and cyberattacks. As a result, the objective of the investigation was to analyze computer crimes at the COVID-19 scene and identify their social and legal consequences. This is a documentary-based investigation. It is concluded that, security standards have deteriorated in the context of forty social as many organizations were not prepared for remote work and the number of victims of cybercrime will only grow soon. International organizations and law enforcement agencies in many countries issue many recommendations to prevent digital criminal acts against businesses and citizens. This situation also prompted active legislation around the world to deal with the crisis. Most of the rules adopted in recent months are likely to be derogated.

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Recibido el 14/05/2020 Aceptado el 08/10/2020

Keywords: COVID-19 pandemic; regulation of social and legal consequences; criminal risks; cybersecurity; cybercrime.

Delitos informáticos en la escena del COVID-19: análisis de las consecuencias sociales, legales y las amenazas criminales

Resumen

En enero de 2020, la Organización Mundial de la Salud anunció un brote de SARS-CoV2, que causó la enfermedad por coronavirus COVID-19. Pronto, un brote continuo de infección por coronavirus se declaró pandemia. Esta situación ha provocado un aumento de los delitos informáticos. Los ciberdelincuentes no se alejaron de la situación y utilizaron la pandemia para cometer diversos fraudes digitales y ciberataques. En consecuencia, el objetivo de la investigación fue analizar los delitos informáticos en la escena del COVID-19 e identificar sus consecuencias sociales y legales. Se trata de una investigación de base documental. Se concluye que, los estándares de seguridad se han deteriorado en el contexto de cuarentana social, ya que muchas organizaciones no estaban preparadas para el trabajo remoto y el número de víctimas de delitos cibernéticos solo crecerá en el futuro cercano. Las organizaciones internacionales y los organismos encargados que hacen cumplir la ley de muchos países emiten un gran número de recomendaciones para prevenir la comisión de actos delictivos digitales contra empresas y ciudadanos. Esta situación también provocó una legislación activa en todo el mundo para hacer frente a la crisis. Es probable que la mayoría de las normas adoptadas en los últimos meses se deroguen.

Palabras clave: pandemia de COVID-19; regulación de las consecuencias sociales y legales; riesgos penales; ciberseguridad; ciberdelito.

Introduction

On April 9, 2020, the International Monetary Fund (IMF) stated that the coronavirus pandemic triggered an economic downturn, which has been last experienced by the world under the Great Depression and could be much worse than the global financial crisis. As countries apply the necessary quarantine measures and social distance methods to contain a pandemic, the world is in a state of great lockdown. The magnitude and

speed of the following activity are unlike anything experienced in our lives (Kentikelenis *et al.,* 2020).

Consequences of the crisis, having no analogues in recent history, are not yet predictable, and largely depend on the virus epidemiology, the effectiveness of containment measures, as well as on the development of therapeutic agents and vaccines, being difficult to predict.

In addition, many countries face many crises now - the health crisis, the financial crisis, as well as the collapse in commodity prices, which interact in a complex way.

The Great Lockdown also provoked an exponential increase in fears in the society not only for the health of yourself and your relatives but also forebodings of a threat of catastrophic developments. In conjunction with social distancing and massive dissemination of fake news, such a public attitude has become the object of intense interest of the criminal communities and individual cybercriminals. Criminals quickly caught up the opportunity to take advantage of the crisis by adapting their criminal activity methods to the prevailing conditions. Countries around the world report an increase in cybercrime during a pandemic (Saez *et al*., 2020).

1. Materials and methods

The methodological basis of the study is a systematic approach to studying the socio-legal consequences of the great lockdown introduction due to the pandemic. While processing of factual material, the authors used such traditional scientific methods as dialectical, logical, scientific generalizations, content analysis, comparative analysis, synthesis, source study, etc. Based on a comprehensive analysis, we made conclusions regarding the socio-legal consequences and criminal threats of the pandemic in this study.

2. Results

One of the key problems of analytical understanding of COVID-19 pandemic consequences is forecasting of the key negative trends in social and economic development. Without doubt, given the uniqueness of such pandemic for world history, it is not possible to compare or evaluate its consequences with the previous global crises. However, given the current trends, it seems possible to assess the effectiveness of certain measures taken by our governments.

According to the IMF experts, assuming that the pandemic will disappear in the second half of 2020 and that political actions taken around the world will be effective in preventing large-scale bankruptcies of firms, long-term job losses and financial problems throughout the system, it is expected a global growth up to 5.8 percent in 2021. However, the cumulative loss of world GDP for 2020 and 2021 due to the pandemic crisis could be around 9 trillion dollars, which is more than the combined economies of Japan and Germany.

In response to the growing health emergency and rapidly deteriorating economic prospects, national authorities and multilateral organizations around the world are considering the unprecedented policy measures[6]. In response, most countries have temporarily increased the unemployment benefits and expanded their social protection systems to a particular degree, as we mentioned above. Although some of these temporary emergency measures will cease to apply over time, making some of these provisions permanent and improving tax relief systems can also automatically stabilize people's incomes in case of future epidemics and crises. The following should be noted amount the key features of social support measures undertaken by countries.

First, the provision of differentiated (more generous for the poorest) allowances and benefits for vulnerable groups.

For example, approximately 2.3 trillion US dollars (about 11% of GDP) was allocated to provide one-time tax benefits to individuals; to increase unemployment benefits; to ensure a food safety network for the most vulnerable groups; as well as to prevent corporate bankruptcy by providing loans, guarantees and support to the Federal Reserve under the CARES Act in the USA.

According to the IMF experts, social protection systems can improve redistribution, if a larger share of benefits and allowances account for the poorest 20 percent of the population than the richest 20 percent of the population. Secondly, the preservation of incentives to work and assistance in finding work, obtaining health services, and passing educational and training programs.

On March 15, Austria adopted the General Civil Code, which declared COVID-19 to be a force majeure, allowing the companies forcing their employees to use up to two weeks of vacation accumulated in the previous years. The employers pay only for hours worked, and the rest is paid from the budget. Starting April 2, households can hold up the rent to their homeowners until the end of 2020.

6 For more information it is recommended to consult UN World Economic Situation and Prospects: April 2020 Briefing, No. 136. 1 April 2020.

In Belgium, the federal government announced a fiscal envelope of 10 billion euros to overcome the crisis (about 2.5% of GDP, including liquidity measures) and 50 billion euros (more than 11% of GDP) of guarantees for new bank loans granted to the companies and self-employed. On March 17, the Italian government adopted "Cura Italia" emergency package in the amount of 25 billion euros (1.4% of GDP).

In the UK, an independent government forecaster, the Office of Budget Responsibility (OBR), made a warning on April 14 that the country's economy could contract by a record 35% by June 2020. Support measures of unprecedented scale have also been taken in a country that, along with Italy, is one of the countries most affected by the epidemic.

Thirdly, the aim is to prevent the formation of a disparate, complex network of social protection programs that are more expensive to work with and do not provide people with fair and consistent support. The measures taken by the Government of the Russian Federation to support the economy during a pandemic are generally identical to the measures taken in all countries around the world.

The Government of the Russian Federation approved the Subsidy Provision Rules from the federal budget to Russian credit institutions for the reimbursement of shortfalls in their income on loans issued to SMEs for urgent needs in 2020 to support and maintain employment, as well as the Subsidy Provision Rules from the federal budget to Russian credit institutions in 2020 to ensure deferred loan payments. The total fiscal package is currently estimated at 2.8% of the country's GDP. These measures, along with measures of social support for the population, are targeted and implemented, bypassing bureaucratic delays that could reduce their effectiveness.

Based on these criteria, governments of advanced economies can improve their social protection systems by expanding the reach of existing programs and improving the impact of subsidies and benefits on people's lives. According to the UN forecasts, quality public investment in health systems is needed to protect people and minimize the risks associated with future epidemics. Other priority areas include infrastructure, green technologies, as well as wind and solar energy, and moving towards other Sustainable Development Goals, such as education and access to clean water and sanitation.

3. Discussion

However, in addition to positive forecasts, it is worth focusing on those social problems that acquired a new colour during the pandemic. Most

experts unanimously note that the trend of this era is inequality. Inequality of the future is not the result of someone's desire, greed, or incorrect policy, but is the result of the development of modern technologies that generate inequality of professions, and, therefore, income inequality.

Quarantine and the Great Lockdown also provoked an exponential increase in fears in the society not only for the health of yourself and your relatives but also forebodings of a threat of catastrophic developments. In conjunction with social distancing and massive dissemination of fake news, such a public attitude has become the object of intense interest of the criminal communities (Begishev et al., 2020) and individual criminals (Khisamova et al., 2020; Latypova et al., 2018). Often, cybercrime involves the use of artificial intelligence technology (Begishev & Khisamova, 2018; Khisamova & Begishev, 2019).

There was an expansion in the scope of people's education under the influence of digitalization. It becomes available to almost everyone. But there is also a developing countertrend: elite Socratic education (small groups led by a teacher). Due to the use of online technologies, quality education is becoming more affordable and cheaper, but elite education is becoming more expensive. Education becomes elite, involving direct contact between the student and the professor, the teacher.

Growing restrictions on people's movement and restrictions in Europe and North America have a strong impact on the service sector, especially in those filed that relate to physical interactions, such as retail, leisure, hotel business, and transportation services. Together, they make up more than a quarter of all jobs in these countries. As businesses lose their incomes, the unemployment is likely to skyrocket, transforming the supply-side shock into a broader demand-side shock for the economy. The negative effects of continued restrictions on economic activity in the developed countries will soon spread to developing countries through trade and investment channels. A sharp decline in consumer spendings in the European Union (EU) and the USA will reduce imports of consumer goods from the developing countries. In addition, global manufacturing production may decline significantly amid likely disruptions in the global supply chains.

According to experts, when the Great Lockdown is over, a quick economic recovery is possible only with wide budget support. This includes public investment in health, infrastructure, and climate change. High-debt countries will need to carefully balance between short-term financial support for the recovery stage and long-term debt sustainability.

The actions of central banks alleviate financial stress, ensure the continuous functioning of financial markets, and provide loans to the enterprises and households affected by the crisis. As soon as social restrictions are removed and the market confidence returns, a long period

of very low-interest rates can help support the economic recovery.

Supporting recovery through fiscal policy instruments, while managing public debt at its higher levels, is a delicate balancing task. The pandemic and its economic consequences, as well as policy responses, have affected a substantial increase in budget shortages and public debt. With the pandemic retreat and the beginning of economic recovery, it is expected that the public debt will be stabilized, albeit at a new, higher level. If economic recovery requires more time than expected, the dynamics of debt indicators may be more unfavourable.

The current global lockdown has become a catalyst for enhanced lawmaking around the world. There are many norms that are temporary in nature. And a number of experts predict the need for not only the "regulatory guillotine" already announced in the Russian Federation but also the "coronavirus one" in the near future. The massive adoption of the rules that have not passed the due diligence procedure will undoubtedly require a detailed study by the lawyers and their cancellation.

After the pandemic, it will also be necessary to resolve all the changes that were de facto introduced during it:

- Legal regulation of distant services.
- Legal regulation of already changed trust algorithms for the counterparties, new models of verification and interactions in the service market and the electronic commerce rules.
- Protection of the digital profile as a response to a surge of criminal attacks on personal data.
- Regulation of the balance of personal freedom and public safety when applying digital models of tracking and control, creating a digital profile, collecting and analyzing big data, assessing the legal capacity of digital platforms and digital solutions, distance education, as well as electronic court decisions;
- regulation of the risks of data leakage, violation of rights to access the software due to work at home.

A special issue is a legal regulation and responsibility for "fakes", where the line between truth and false is sometimes not always distinguishable. The growing misinformation around COVID-19 continues to spread throughout the world, which could have potentially harmful consequences for the public interest with far-reaching prospects.

Without doubt, the security standards have deteriorated in the context of lockdown, as many organizations were not ready for remote work, and the number of cybercrime victims will only grow in the near future.

International organizations and law enforcement agencies of many countries issue a large number of recommendations on preventing the commission of digital criminal acts against companies and citizens.

Today it is already possible to clearly distinguish the groups of criminal attacks that, during the lockdown period, acquired the nature of stable trends:

- Massive cyberattacks on the recently (and often quickly) deployed remote access infrastructure or remote working infrastructure.
- The growth of phishing attacks and the spread of malware in connection with the digital audience growth.
- Adaptation of "classic" fraud schemes using social engineering methods.
- Attacks and hacking of digital communication platforms ("Zoombombing").
- Growth of criminal phenomena in online gaming.
- Increased demand and distribution of pornographic material through social networks, encrypted applications and Darknet.

Conclusion

There was an expansion in the scope of people's education under the influence of digitalization. It becomes available to almost everyone. At the same time, the education that stipulates direct communication between the student and the teacher has acquired the nature of elitism. In addition to the social issue, the issue of economy restoration to a pre-crisis level is particularly acute on the agenda of governments of all countries around the world. During a pandemic, with the help of large injections of monetary resources, the countries are trying not only to prevent a crisis deepening but also to ensure economic recovery in the shortest possible time. Lockdown provoked active lawmaking around the world. Most of the norms adopted over the past few months are likely to be abolished, so it seems quite possible to conduct a "coronavirus regulatory guillotine" after the pandemic.

Acknowledgement

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 473-485
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Methods and Procedural Forms of Protection of Personal Non-Property Patent Rights in Russia

DOI: https://doi.org/10.46398/cuestpol.38e.32

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Abstract

The article discusses the legal regulation of the application of civil law methods of non-patrimonial personal rights in the protection of patent rights. Methodologically, the scientific method and the technique of documentary research close to legal hermeneutics were made. By way of conclusion, everything indicates that there is no mandatory administrative procedure for resolving authorship disputes in the patent dispute chamber in Russia. In addition, it was revealed that the provisions of Part 4 of the Civil Code of the Russian Federation with respect to the Protection of Non-Property Personal Patent and Intellectual Rights were unsuccessfully established and created legal uncertainty, as only part of the above methods of civil and personal rights have worked in non-property litigation. As a recomjunction, it is proposed to extend the scope of Article 1407 of the Civil Code of the Russian Federation "publication of the judicial decision on patent infringement" and related administrative procedures for cases of violation of non-patrimonial personal patent rights.

Keywords: protection of non-patrimonial personal rights; patent infringement; judicial and extrajudicialproceedings; legislation of the Russian federation; administrative procedures.

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Métodos y formas procesales de protección de los derechos de patente personales ajenos a la propiedad en Rusia

Resumen

El artículo analiza la regulación legal de la aplicación de métodos de derecho civil de derechos personales no patrimoniales en la protección de derechos de patente. En lo metodológico se hizo del método científico y de la técnica de investigación documental próxima a la hermenéutica jurídica. A modo de conclusión todo indica que no existe un procedimiento administrativo obligatorio para resolver disputas de autoría en la cámara de controversias sobre patentes en Rusia. Además, se reveló que las disposiciones de la parte 4 del código civil de la federación de rusia con respecto a la protección de los derechos de patentes e intelectuales personales no relacionados con la propiedad se establecieron sin éxito y crearon inseguridad jurídica, ya que solo una parte de los métodos anteriores de derechos civiles y personales han funcionado en los litigios sobre esta materia. Como recomendación se propone ampliar el alcance del artículo 1407 del código civil de la federación de rusia "publicación de la decisión judicial sobre infracción de patente" y los procedimientos administrativos relacionados para los casos de violación de derechos de patentes personales no patrimoniales.

Palabras clave: protección de los derechos personales no patrimoniales; infracción de patentes; procedimiento judicial y extrajudicial; legislación de la federcaion rusa; procedimientos administrativos.

Introduction

Getting to the study of personal non-property patent rights, one should first determine the concept and list of these rights. The law does not define the concept of personal non-property patent rights, but from a number of general provisions of civil law and legislation on the protection of intellectual property rights in this article, an attempt will be made to isolate and consider their features in order to further analyze the methods and forms of their protection.

The legal basis for the protection of personal non-property patent rights consists of the following provisions of the law. According to paragraph 3 of the Review of the Practice of Court Consideration of Disputes on the Protection of Honor, Dignity and Business Reputation (approved by the

Presidium of the Supreme Court of the Russian Federation on 16.03.2016), "The exercise of constitutional rights aimed at protecting intangible goods is carried out in the manner prescribed by Article 12, clause 5 of Article 19, Articles 150, 152, 1099 and 1100, clause 3 of Article 1251, clause 2 of Article 1266 of the Civil Code of the Russian Federation (hereinafter - the CC RF)". It seems appropriate to analyze the above norms.

The above norms will be the research subject in this article.

1. Methods

The methodological basis of this work is specified in the application of the general principles of scientific knowledge (objectivity, comprehensiveness, completeness of research) and general scientific methods of cognition (analysis, synthesis, approach, deduction, etc.), as well as the system of methods and techniques for studying legal phenomena. During the study, the authors applied special (general theory of systems) and private-scientific (comparative-legal, formal-legal) methods.

2. Results And Discussion

Article 150 of the CC RF actually discloses the content of objects of the personal non-property civil rights - intangible goods. At the same time, the list of intangible goods is indicated open, but authorship is directly indicated in it, and the right to it is intellectual. Here, the legislator formulated the main signs of intangible goods, and accordingly, the rights to them:

- Intangible and non-property nature (which follows from the names of these goods and rights to them).
- Inalienability and inexpressibility in another way.
- Belonging by force of law or from birth.

We consider it necessary to note that the literal meaning of the phrase "intangible good" does not necessarily mean that this "good" cannot be proprietary (since the word "intangible" rather means "non-material") or that it cannot belong to a legal entity. In clause 11 of Article 152 of the CC RF, the legislator directly uses the phrase "business reputation of a legal entity". However, in other situations, the legislator uses the concept of "intangible goods" primarily as an object of personal non-property rights of a citizen, and it is logical that the above signs are fully implemented in such cases.

We also believe that one can highlight the lack of artificial (legislative) limitation of the protection term as another sign of personal non-property rights.

Regarding the signs of personal non-property patent rights, it should be noted that since inventions, utility models and industrial designs are protected only under the condition of their state registration, the corresponding personal non-property rights to them should also be protected under the condition of such registration of the above objects. Therefore, one can single out such an additional sign of personal non-property patent rights as the presence of state registration of the corresponding object. It should be noted that the state registration of the patent rights object is an element of the right to obtain a patent, which may be alienated to the author. Even of the application for registration is filed, it can be withdrawn by the applicant at his/her/its own discretion. Therefore, the emergence and recognition of the right of invention, utility model or industrial design author depends on the rightholder's will to obtain a patent This can also be considered a specific feature of personal non-property patent rights.

The composition of personal non-property intellectual rights is disclosed only in Article 1228 of the CC RF, where they include the right of authorship and the right to a name. But their list is open. The signs of personal non-property intellectual rights allocated in the specified article correspond to those highlighted in Article 150 of the CC RF. It is also additionally indicated such a sign as the impossibility of waiver of the author's moral rights. Patent law, primarily Article 1345 of the CC RF, does not supplement the composition of personal non-property rights, and, moreover, narrows it down, indicating only the copyright and not indicating the right to a name. Moreover, Part 3 of this article, using the term "other" rights instead of the term "another" rights, introduces some legal uncertainty regarding the openness/closeness of the composition of patent rights, including personal non-property rights.

An attempt to eliminate this ambiguity was made in clause 32 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 dated 23.04.2019 "On the Application of Part 4 of the Civil Code of the Russian Federation". In our opinion, at least with the fact that the right to obtain a patent and the author's right to remuneration should not be attributed to personal non-property intellectual (and, therefore, to patent) rights, it is necessary to agree and, moreover, directly enshrine this in law.

As for the lack of a special indication of the right to a name of the invention, utility model or industrial design author, we believe that this is a drawback that needs to be addressed. Thus, if one literally reads clause 2 of Article 1228 of the CC RF, it follows that the right to a name is protected only in cases stipulated by the code. And as already mentioned above, it is not expressly stipulated in Chapter 72 of the CC RF in case of patent

rights. This circumstance was also noted in the legal literature (Bogdanova, 2019; Budylin & Osipova, 2007). At the same time, the right to a name of the author of the patent rights object is indicated in clause 1 of Article 1394 of the CC RF, according to which the "Federal executive authority on intellectual property publishes (in the official bulletin) the information on granting a patent for an invention or utility model, including the author's name (if the author did not refuse to be mentioned as such), name or title of the patent holder, name and formula of the invention or utility model". In continuation of this rule, there is a column in the approved invention patent application forms, where the author has the right to ask Rospatent not to mention himself/herself/itself when publishing information about the invention and patent. Similar forms and capabilities are stipulated for patent applications for utility models and industrial designs. We believe that these norms of by-laws and regulations are the actual implementation of the right to a name of the invention, utility model, industrial design author.

However, nothing is said about the possibility of using a pseudonym in these documents. Let's consider a little this moment. Since paragraph 2 of clause 1 of Article 19 of the CC RF provides for the possibility of using a pseudonym by a citizen only in cases stipulated by law, and such cases in the field of intellectual property protection are provided only for the objects of copyright and related rights, it can therefore be concluded that the author of the patent rights object has no right to a pseudonym. In our opinion, this circumstance seems illogical in view of the following.

Firstly, it could be assumed that this is due to the state registration of patent rights. However, for example, such copyright objects as computer programs can also be registered with Rospatent, and the possibility of specifying a pseudonym is provided in the approved application form for their registration.

Secondly, it is known that industrial designs are the works of design and can be protected at the discretion of the copyright holder both as an industrial design and as a copyright object by their legal nature. This was also mentioned in clause 74 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 dated 23.04.2019 "On the Application of Part 4 of the Civil Code of the Russian Federation", as well as in the scientific literature (Hazieva Guzel et al., 2018; Sannikova & Kharitonova, 2019) and judicial practice. Speaking about the composition of personal non-property patent rights, it is also necessary to pay attention to such a concept as inventive law, used in Article 7.12 of the Administrative Offense Code of the Russian Federation (hereinafter - the AOC RF) "Violation of Copyright and Related Rights, Inventive and Patent Rights" and Article 147 of the Criminal Code of the Russian Federation "Violation of Inventive and Patent Rights".

Meanwhile, neither the disposition of the above articles, nor the content of other acts clarifying the application of the above code articles, including the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 14 dated 26.04.2007 "On the Practice of Courts Considering Criminal Cases of Violation of Copyright, Related, Inventive and Patent Rights, as well as on the Illegal Trademark Use" ,the Letter of the Federal Customs Service of the Russian Federation No. 01-06/24387 dated 29.06.2007 "On Submission of the Methodological Recommendations", do not separately disclose the concept of " inventive rights". The term "inventive rights" is also used in a number of departmental acts, for example, in the Regulation on the Invention Bodies of the Armed Forces of the Russian Federation. We believe that this term is obsolete, remaining from the time when inventions in the USSR were protected not by patents, but by copyright certificates, or used in some foreign countries (WIPO Intellectual Property Handbook; Correa, 2007) At present, it should be completely eliminated in all branches of law for the purpose of legal certainty.

The legal basis for the protection of personal non-property patent rights consists of the following provisions of the law.

According to paragraph 3 of the Review of the Practice of Court Consideration of Disputes on the Protection of Honor, Dignity and Business Reputation (approved by the Presidium of the Supreme Court of the Russian Federation on 16.03.2016), "The exercise of constitutional rights aimed at protecting intangible goods is carried out in the manner prescribed by Article 12, clause 5 of Article 19, Articles 150, 152, 1099 and 1100, clause 3 of Article 1251, clause 2 of Article 1266 of the Civil Code of the Russian Federation (hereinafter - the CC RF)". It seems appropriate to analyze the above norms.

As we know, Article 12 of the CC RF defines general ways of protecting civil rights.

Clause 5 of Article 19 of the CC RF establishes such methods of protecting the right to a citizen's name as the right to demand a refutation, compensation for harm caused and compensation for non-pecuniary damage.

Article 150 of the CC RF additionally provides for such methods of protecting intangible goods as recognition by a court of the fact of violation of personal non-property rights, publication of a court decision on a violation committed, suppression or prohibition of actions that violate or create a threat of violation of personal non-property, rights or encroach or threaten to infringe on intangible good.

Article 152 of the CC RF establishes such protection methods as refutation, deletion of relevant information, suppression or prohibition of further dissemination of this information by seizing and destroying it

without any compensation made in order to introduce into civil circulation the copies of tangible media containing the specified information, if removal of relevant information is impossible without destruction of such copies of tangible media.

Articles 1099 and 1100 of the CC RF determine the rules for compensation for non-pecuniary damage.

The general rules for the protection of personal non-property rights to the intellectual activity results and individualization means are also enshrined in Article 1251 of the CC RF, especially devoted to this issue. According to it, the personal non-property rights are protected in such ways as:

- Right recognition.
- Restoration of the situation that existed before the right violation.
- Suppression of actions that violate the right or create a threat of its violation.
- Compensation for non-pecuniary damage.
- Publication of a court decision on the violation.

Article 1266 of the CC RF is devoted to work (copyright object) protection against distortion.

In fact, the general methods of protecting civil rights specified in Article 12 of the CC RF are partially re-set in in the chapter concerning the intellectual property rights. At the same time, it is clearly visible that the methods of protecting personal non-property intellectual rights listed in Part 4 of the CC RF are incompletely re-written and/or specified in it, which creates a certain difficulty in their understanding. Thus, Article 1251 of the CC RF does not indicate the applicability of the provisions of Article 150 of the CC RF to the protection of personal non-property intellectual rights. We believe that it would be more correct or complete to repeat all the general methods of civil rights and to supplement or specify them, or not to repeat them at all, confining ourselves only to references, and point out only special ways to protect the intellectual rights and/or features of the application of general methods in relation to the protection of the intellectual property.

Paragraph 8 of Part 4 of the CC RF is devoted to special rules for the protection of patent rights. However, the title and content of the articles contained therein do not specify and do not supplement the above methods of protecting personal non-property rights, but rather contain liability measures for violation of not personal, but exclusive rights, and determine the competence of courts and administrative bodies to resolve disputes on the protection of intellectual rights.

Speaking about the civil legal protection of personal non-property patent rights, some provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 14 dated 26.04.2007 "On the Practice of Courts Considering Criminal Cases of Violation of Copyright, Related, Inventive and Patent Rights, as well as on the Illegal Trademark Use" may be highlighted. Thus, it discloses such violations of personal non-property rights of authors of patent rights objects as disclosure of the essence of the invention, utility model, industrial design, attribution of authorship, coercion to co-authorship.

It should also be noted that the disclosure of the essence of the patent rights object may entail the subsequent impossibility of obtaining a patent due to the fact that the information becomes publicly available in the prior art, as well as other adverse consequences. This, in turn, means that the invention author will remain unrecognized. Violations of personal non-property rights, that is, the rights of authorship or the right to a name, should also include an incorrect indication of the authors, their names or pseudonyms, or failure to indicate the invention authors in general.

Now it makes sense to go through each of the above methods of protecting both intellectual and civil rights with a view to their applicability to the protection of patent rights.

The recognition of the right as a way of protection is indicated both in the General Part and in Part 4 of the CC RF, but, as mentioned above, is not specifically mentioned in Chapter 72, devoted to patent rights. We believe that, despite the fact that Article 1251 of the CC RF is applicable to all objects of intellectual property rights, this protection method has some peculiarities of application in relation to those objects for which the rights are subject to state registration, including in relation to patent rights objects. An exact way will be clear after analyzing the other protection methods.

Recognition of right violation. It is noteworthy that Article 1251 of the CC RF does not indicate the applicability of the provisions of Article 150 of the CC RF to the protection of personal non-property intellectual rights and the possibility of using such a protection method as recognition of right violation. This circumstance applies not only to the protection of personal non-property intellectual rights, but also to the exclusive right to the intellectual activity results, as well as to the individualization means.

But in this case, we will study this issue only in relation to the protection of personal non-property rights. We believe that the recognition of right violation in some cases may have independent legal value in the protection of intellectual rights in general, as indicated in the legal literature (Pylaeva & Nefediev, 2015; Novoselova, 2019). On the other hand, indeed, it is in relation to the protection of personal non-property patent rights that it is difficult to imagine a situation where, for example, it would be important

for the author only to establish the fact of violation of his/her/its right to a name or copyright, but not to request a corresponding change to the register of patent rights. Nevertheless, we believe that this does not exclude the need for a general legislative consolidation of the possibility of making a claim on the recognition of violation of any intellectual right, including personal non-property patent right.

Such methods as restoration of the situation that existed before the right violation, suppression of actions that violate the right or create a threat of its violation; invalidation of an act adopted by state body or local government (i.e., the author's right to a name and copyright) are interrelated and in fact involve the introduction of appropriate changes to the register of patent rights, as well as the issuance of a new patent through an administrative procedure or in court (Valeev & Baranov, 2014). Moreover, these methods are interrelated and virtually inalienable from the right recognition. The following should be noted in relation to all of these methods in the aggregate.

Since patent rights are subject to state registration, from the moment of filing a patent application for an invention, utility model or industrial design, the above methods of protecting personal non-property patent rights can be implemented only through the administrative procedures. This is not only Russian, but also worldwide practice (Klien et al., 2018). If the dispute between the authors and the copyright holder (applicant) is peacefully settled in a non-jurisdictional order, then it is possible to amend the application documents during the registration procedure or in the register of registered patent rights. If the dispute is not settled, then the clarification specified in clause 121 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 dated 23.04.2019 "On the Application of Part 4 of the Civil Code of the Russian Federation" is applicable.

The rules for filing objections, applications and their consideration by the Chamber for Patent Disputes do not provide for a pre-trial administrative procedure for the consideration of such disputes. The judicial procedure is implemented in the Intellectual Property Rights Court, and not in the courts of general jurisdiction, as before.

Publication of a cort decision on violation. Regarding this protection method, it is noteworthy that the protection method stipulated in Article 1407 of the CC RF - publication of a court decision on patent infringement - is applicable to the protection of exclusive rights, but not personal non-property rights. This conclusion follows from the fact that if one literally reads paragraph 3 of clause 1 of Article 1229 of the CC RF, which is the only one revealing the concept of illegal (equally "illegal" in the wording of Article 1407 of the Code) use of the intellectual activity result, it turns out that the illegal use of the intellectual activity result considers only those actions that violate the exclusive right, but not personal non-property rights

The relevant Administrative Rules for the provision of the state service for the publication of court decisions on violations of exclusive rights issued by Rospatent is also devoted only to the protection of exclusive, but not intellectual/patent rights.

We believe that refutation, as a way of protecting the right, can also be of independent importance for the authors of inventions, utility models or industrial designs in cases where publication of a court decision or the amended patent information is insufficient.

We believe that compensation, as a way to protect the author's personal non-property rights, despite the fact that the right to the author's name and the authorship right are non-property rights, may protect the personal non-property patent rights, for example, in cases where the author turned out to be deprived of certain property rights (rights to remuneration) or other benefits (bonuses, opportunities to participate and receive income from various grants, etc.) as a result of incorrect information about his/her/its authorship.

3. Final considerations

1) According to the legislation of the Russian Federation, personal non-property patent rights include only the right to a name of the invention, utility model and industrial design author.

2) The signs of personal non-property patent rights are the traditional signs of personal non-property rights: non-property nature, belonging to a citizen, inalienability, belonging by law; and specific to patent rights, such as: availability of state registration of patent rights objects, their indefinite protection, their dependence on occurrence and recognition of the rightholder's will to obtain a patent.

3) It is substantiated that the author's right to a name expressly stipulated in relation to the objects of copyright and related rights also exists for the authors of patent rights objects and should be directly enshrined in the legislation of the Russian Federation on the protection of intellectual property.

4) It is proved that the right to a pseudonym as an element of the right to the author's name should be extended not only to objects of copyright and related rights, but also to the patent rights objects, and implemented both in the provisions of the CC RF and in the corresponding application forms for state registration of the patent rights objects.

6) Violations of personal non-property patent rights include such actions as: attribution of authorship, coercion or other unlawful joining of the co-authors, failure to indicate or incorrect indication of the author's/co-author's name in the patent application, in a patent for an invention, utility model or industrial design or in any other way.

7) Personal non-property patent rights can be protected by such civil law methods as: right recognition; recognition of right violation; restoration of the situation that existed before the right violation; suppression of actions that violate the right or create a threat of its violation; invalidation of an act adopted by state body or local government (primarily a patent or other acts of Rospatent); law self-defense; indemnification; compensation for non-pecuniary damage; refutation; publication of a court decision on violation.

8) It was revealed that the provisions of Part 4 of the Civil Code of the Russian Federation regarding the protection of personal non-property intellectual and patent rights were set out unsuccessfully and create legal uncertainty, since only part of the above methods of civil rights and personal non-property civil rights are duplicated. 10) Procedural protection of personal non-property patent rights can be exercised:

- in voluntary pre-trial/extrajudicial form by peaceful dispute settlement and subsequent voluntary amendment of the information on patent application or the register of registered patent rights objects;
- in judicial form (in the Intellectual Property Rights Court).

There is no mandatory administrative procedure for resolving authorship disputes in the Chamber for Patent Disputes.

Conclusions

The above conclusions allow making the following proposals.

It is proposed to completely eliminate the term "inventive law" as an obsolete analogue of the concept of "patent law", excluding it from all legal acts and replacing it with the term "patent law".

It is proposed either to completely eliminate duplication of the above methods of protecting personal non-property rights in the legislation on the protection of intellectual property by making the rules reference, or to duplicate them in full and specify them in relation to the intellectual and patent rights.

It is also proposed to extend the scope of Article 1407 of the Civil Code of the Russian Federation "Publication of Court Decision on Patent Infringement" and related administrative procedures for the cases of violation of personal non-property patent rights.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 486-501
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Role of Canonical Ruler in Transformation of Hadd to Ta'azir Punishments

DOI: https://doi.org/10.46398/cuestpol.38e.33

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Abstract

In the Islamic perspective the ruler is a consummate jurisprudent with special authority. In criminal matters, for example, the ruler also has a prominent role, such as setting limits (Hadd) to accepted behaviors and punishments for reprehensible behaviors. In fact, in the case of convenience and special circumstances, the ruler can disapprove or modify a certain punishment. The objective of the article is then to analyze the role of the canonical ruler in the transformation of limit punishments or corporal punishment (tazir) in Iran. Based on the descriptive analytical method, the work concludes that, according to the belief concerning the permission to implement the limits during the time of The Absence, the basic principle is the lack of permission to switch the limits. But if the religious ruler realizes that the implementation of the limits, in certain circumstances, is contrary to the application objectives, the interests of Islamic society and the maintenance of the government, or in the confrontation with certain rules, such as " to be ashamed "(حرج ال) and" without harm "(ضرر ال), he can rule to commute the sentence.

Keywords: role of the canonical ruler in Iran; Hadd; Ta'azir; jurisprudential protection; Islamic law.

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El papel del gobernante canónico en la transformación de los castigos hadd en tazir

Resumen

En la perspectiva islámica el gobernante es un jurisprudente consumado con autoridad especial. En materia penal, por ejemplo, el gobernante también tiene un papel destacado, como establecer límites (Hadd) a las conductas aceptadas y castigos a los comportamientos reprochables. De hecho, en el caso de conveniencia y circunstancias especiales, el gobernante puede desaprobar o modificar un castigo determinado. El objetivo del articulo consiste entonces en analizar el papel del gobernante canónico en la transformación de los castigos limites o castigos corporales (tazir) en Irán. Con base en el método descriptivo analítico, el trabajo concluye que, según la creencia concerniente al permiso de implementación de los límites durante el tiempo de La Ausencia, el principio básico es la falta del permiso para conmutar los límites. Pero si el gobernante religioso se da cuenta de que la implementación de los límites, en determinadas circunstancias, es contraria a los objetivos de aplicación, los intereses de la sociedad islámica y el mantenimiento del gobierno, o en el enfrentamiento con ciertas reglas, como "ser avergonzado" (الحرج) y "sin daño" (الضرر), puede gobernar para conmutar la pena.

Palabras clave: rol del gobernante canónico en Irán; Hadd; Ta'azir; tutela jurisprudencial; derecho islámico.

Introduction

The people are always in need of a government that takes care of their affairs and this issue is not specific to a special time or place. Therefore, there is no difference between the times of presence and absence for the people are also in need of individuals that can shoulder their affairs on behalf of the Imam during his absence. Such a proctorship belongs to the just jurisprudents.

The guardianship of the jurisprudents at the time of occultation is like the guardianship of the rulers and deputies installed by the Imam himself in the era of presence. A substantial part of the considerable role considered for the ruler in line with the arrangement of the common jurisprudential relations in the society can be analyzed within the format of the ruler's duties and obligations. The ruler's role is related to the obligations he has to shoulder (Masjedsara'ei and Kabiri, 2015: 12). In penal affairs, as well, the outstanding role of the ruler is well clear in cases like the enforcement of

the Hadd and Ta'azir Punishments. By ruler, a well0qualified exegete with judgment position is intended (Ja'afari Langarudi, 2012: 58-69).

Shahid Thani states that well-qualified jurisprudent is intended by ruler; "Al-Morad Bi Al-H ākem Haith Yatleq Fi Abw āb Al-Fiqh, Al-Faqih Al-J āme'e Li Shar āyet Al-Fitw ā Ejm ā'an"[4] (Shahid Thani, Mas ālek Al-Afh ām, 1993: 161).

As it is observed, besides realizing the capability of issuing decrees as a qualification for the well-qualified jurisprudent, Shahid claims consensus in this regard. This article has been written based on a descriptive-analytical method to deal with the role and authority of the ruler in the transformation of Hadd to Ta'azir Punishments and to investigate the foundations of such an authority.

In regard of the role of ruler in transforming Hadd to Ta'azir Punishments, it has to be stated that since there are discrepancies amongst the jurisprudents regarding the enforcement of the divine limits (Hodūd as a plural for Hadd) in the occultation time, the transformation of Hadd to Ta'azir punishments is justifiable based on the opinions of the individuals who do not realize it permissible to enforce Hadd punishments during the occultation period; however, based on the perspectives of the jurisprudents who realize it permissible to enforce Hadd punishments during the occultation period, the question raised is that whether the Islamic ruler can rule the transformation of Hadd to Ta'azir punishments under certain conditions or not?

1. A Review of Some Perspectives About the Ruler's Authorities

As it was mentioned, a jurisprudent qualified for issuing decrees is intended by ruler. He has special authorities. The forthcoming part points to some perspectives regarding the ruler's authorities.

Allameh Tabataba'ei states in this regard that "the existence of the authorities for the ruler is a natural principle like the authorities of a family head. The relationship between guardianship position and Islamic government with the religious organization and social system is the same as the relationship between the family head and organization of the family and family members. The ethereal rules and regulations of Islam have been revealed to the great prophet and they are termed the Islam's canon and Allah's verdicts.

4 All fragments of texts that are transliterated from Farsi or Arabic to English throughout the article do not, from our point of view, agree that they will be translated without losing much of their ceremonial meaning and original meaning.

According to the sure documents in the holy Quran, the book, and the tradition, the Sunnah, there are regulations that are invariable and fixed and the enforcement of them and the punishment of their violators are carried out by the Islamic guardianship position and it is in the light of the canonical regulations and observance of the accordance with them that the jurisprudential guardianship can adopt a series of proper decisions based on the time's expediencies and enact regulations according to them and enforce these regulations in a timely manner; the foresaid regulations are indispensable and enjoying credibility like canon (Tabataba'ei, 1962: 83).

In a discussion under the title of "Fi Bay ān Wazifeh Al-Olam ā Al-Abr ār Wa Al-Foqah ā Fi Omūr Al-N ās", Naraghi divides all the things under the guardianship of the just jurisprudent into two sets:

The first set includes the things over which the great prophet and the immaculate Imams have had guardianship and proctorship as the rulers of the people and the fortresses of Islam; all of them also under the guardianship of the jurisprudential guardianship unless they are excluded through consensus or explicit text and/or another reason.

The second set includes all the affairs related to the people's religious or corporeal matters. These affairs are not drawn on the intellectual rulings and habits and they should be necessarily carried out for the corporeal or otherworldly tasks of an individual or a group of Muslims depend on them or they are affairs that have been canonically ruled obligatory due to such principles as consensus, no-loss axiom, no-hardship axiom or no-harm maxim in the affairs of the Muslims and/or for another reason. They can be affairs the performance of which has been allowed by the canonical ruler, but their accomplishment has not been assigned to a certain person nor group. All these cases are to be shouldered by the jurisprudential guardianship and it is his right to take measures in line with getting them done (Naraghi, 1997: 536).

In the book "Kitab Al-Bay'e", Imam Khomeini deals with the ruler's authorities and states in this regard that "Fa Li Al-Faqih Al- ādel Jami'e M ā Li Al-Rasoul wa Al-A'emmah Alayhem ā Al-Salam Mimm ā Yarje'e El ā Al-Hokūmah Wa Al-Si āsah Wa L ā Ya'aghal Al-Feraq Li An Al-W āli Ayye Shakhs K ān Howa Mojri Ahk ām Al-Shari'ah Al-Moqim Li Al-Hodūd Al-El āhyah Wa Al-Akhz Li Al-Khar āj Wa S āyer Al-M āliy āt Wa Al-Motasarref Fih ā Bim ā Howa Sal āh Li Al-Moslemin" (Khomeini, 2001: 464) meaning "the just jurisprudent has all the authorities the prophet and the immaculate imams (peace be upon them) have; of course, in affairs that return to the government and the politics and it is not reasonable to make differences between them because the ruler, no matter who he is, has to enforce the rules of the religion and observe the divine limits and receive tributes and collect taxes and it is him who can make interventions in these affairs for the sake of the Muslims' expediencies".

As it is observed, the ruler has authorities that are related to both the government and the politics as well as the canonical rules and observance of the divine limits. Considering the discussion subject, we seminally deal with the jurisprudents' perspectives regarding the enforcement of the Hadd punishments during the occultation time and subsequently explore the role and authorities of the ruler in the transformation of the Hadd to Ta'azir punishments.

2. Conceptualization of Hadd Punishments and their Enforcement During the Occultation Time:

In dictionaries, many meanings have been mentioned for Hadd [limit]. Amongst them, such meanings as the distinction and separation between two objects, punishment and the extreme end of a thing can be pointed out. The followings are some of these meanings:

Al-Hadd: Al-H ājez Bain Al-Shay'ayn Al-Lazi Yamna'a Ekhtel āt Ahadahom ā Bi Al- ākhar (Ragheb Esfahani, 1992: 221).

Hadd: Fasl Bain Kollo Shay'ayn Hadda Bainahom ā (Farahidi, 1990: 19).

Al-Hadd: Al-Fasl Bain Al-Shay'ayn Wa Montah ā Kolle Shay'e (Ibn Manzour, 1994: 140; Jawhari, 1990; Waseti, 1994: 410).

Al-Hadd Fi Al-Loqah Al-Fasl Wa Al-Man'e (Fayyumi, no date: 124)

In defining Hadd, Ameli states that "Al-Hadūd Jam'e Al-Had wa Howa Loqah: Al-Man'e Wa Minho Akhz Al-Hadd Al-Shar'ei Li Kawnehi Zari'eh El ā Man'e Al-N ās An Fe'el Mawjebahū Khashiyah Min Woqū'ehi Wa Shar'an: Oqūbehi Khaseh Tata'allaq Bi Ayl ām Al-Badan Bi w āsetah Talbes Al-Mokallaf Bi Ma'asiyah Kh āsseh Ayn Al-Sh āre'e Kammiyyatoh ā Fi Jami'e Afr ādehi" (Ameli, 1993: 325).

The author of Riyadh Al-Mas āyel, as well, states in a similar definition that "Al-Hodūd Wa Jam'e Al-Hadd Howa Loqah Al-Man'e Wa Shar'an Oqūbahū Khassah Tata'allaq Bi Ayl ām Bain Al-Mokallaf Bi W āsetah Talbesahū Bi Ma'asiyah Khasseh Ayn Al-Sh āre'e Kammiyatoh ā Fi Jami'e Afr ādehi" (Tabataba'ei, 1998: 433).

The author of Al-Tanfih Al-R āye'e, as well, has expressed similar expressions (Saywari, 1984).

As for the enforcement of the limits [Hadd Punishments] during the occultation era, there are discrepancies amongst the jurisprudents. Of course, it has to be stated that a group of jurisprudents who disagree with the enforcement of Hadd punishment during occultation time do not mean that

the Hadd punishments can be absolutely left unenforced rather they believe that the Hadd punishments are transformed into Ta'azir punishments and differ based on the general regulations of Ta'azir in respect to the temporal and spatial conditions as well as crime type and the criminal's personality.

He believes that only the immaculate Imam (may Allah hail on him) or a person installed by him has the right to enforce Hadd punishments; he continues his statements with expressing the ideas of the proponents through the use of the term "they say": "Wa Qila Yojawwez Li Al-Foqah ā Al- ārefin Eq āmah Al-Hodūd Fi H āl Qaibeh ā Al-Imam (Alayhe Al-Salam)" (Ibid, p.313). Amongst the contemporary jurisprudents, Ahmad Khansari, as well, agrees with Mohaqqeq Helli (Khansari, 1985: 412).

In the book "Al-Bay'e", Ansari points in this regard to two sets of affairs, namely those the legitimacy of which is externally sure and those the legitimacy of which is doubted. He states that the first set includes the obligations the fulfillment of which by a person makes it unnecessary for the others to perform them even in the absence of a jurisprudent; in these affairs, the jurisprudential guardianship has the guardianship right. As for the second set like the enforcement of the Hadd punishments, he expresses that "Ez ā Arrafat H āz ā Fanaqūl Moqtazi Al-Asl Adam Thobūt AL-Wel āyah Li Ahad-Bi Shay'en Min Al-Omūr Al-Mazkūrah Kharrajn ā An H āz ā Al-Asl Fi Khosūs Al-Nabi Wa Li A'emmah Salaw āt Allah Alayhem Ajma'ein Bi Adellah Al-Arba'ah" (Ansari, 1991: 81).

However, the author of Jawaher is atop of the proponents and he believes that most of the Imamiyyeh jurisprudents believe in the enforcement of Hadd punishments during the occultation time (Mohaqqeq Damad, 2004: 284).

Amongst the proponents is Imam Khomeini who has the following words in this regard: "Fi Asr Qaibeh Wali Al-Amr Wa Sultan Al-Asr Ajjal Allah Farajahū Al-Sharif Yaqūm Nawwabehi Al- āmmeh Wa Hom Al-Foqah ā Al-J āme'ūn Li Shar āyet Al-Fitw ā Wa Al-Qaz ā'a-Maq āmahū Fi Ejr ā'a Al-Si ās āt Wa S ā'er M ā Li Al-Em ām Alayhe Al-Salam Ella Al-Bed āh Bi Al-Jihad" (Khomeini, no date: 482).

In the above expressions, Imam Khomeini explicitly realizes the performance of all the political affairs except the preliminary jihad during the occultation era as the duty of the jurisprudential guardianship.

2.1. Proofs of the Proponents: Enforcement

Hadd (pl. Hodūd) punishments have been enacted in respect to the public expediencies and prevention of depravities and inhibition of transgressions

and mutiny amongst the people and the dedication of the time of Hadd punishments' enforcement to a given time contradicts the foresaid goals. And, surely, the presence of the Imam himself does not bring about any change in such enforcements. So, the wisdom leading to the canonization of the Hadd punishment still exists at the time of occultation and renders the Hadd punishments' enforcement expedient (Mohaqqeq Damad, 2004).

2.1.2. Narrations

Omar Ibn Hanzaleh's Approved Quotation

An Omar Ibn Hanzaleh, Q āl Sa'altoo Ab ā Abdullah (Alayhe Al-Salam) An Rajolain Min Ash āben ā-Bainahom ā Mon āze'ah Fi Dain Aw Mir āth Fat-han Kam ā El ā Al-Sultan Wa El ā Al-Qaz āh Ayahella Z āleka Q āl Min Tah ākom Elayhem Fi Haqq Aw B ātel Fa Ennam ā Tah ākom El ā Taqūt wa ... Q āl Yanzor ān Man K āna Minkom Mimman Qad Rawaya Hadithan ā wa Nazara Fi Hal ālen ā Wa Arrafa Ahk āmen ā-Fa Liyarzū Behi Hokman Fa Anni Qad Ja'altahū Alaykom H ākeman Fa Ez ā Hakama Bi Hokmen ā Fa Lam Yaqbal Minho Fa Ennam ā Estakhaffa Bi Hokm Allah Wa Alayn ā Radda Wa Al-R ādda Al ā Allah- Wa Howa Al ā Hadd Al-Sherk Bi Allah (Horr Ameli, 1989).

In this narration, Imam Sadeq (PBUH) realizes requesting a tyrant judge and sultan for judgment as being equal to requesting demon's judgment and his highness orders that one should go for judgment to a person who expresses our words and considers our prohibited and permitted things and knows our verdicts so you should be satisfied with what he rules and he who does not accept his sentences has humiliated the divine verdicts and rejected us and he who rejects us has rejected the God and this is equivalent to polytheism".

Narration by Hafas Ibn Qi āth:

An Hafas Ibn Qi āth, Q āl Sa'alto Aba Abdullah (Alayhe Al-Salam) Man Yotayyem Al-Hodūd Al-Sultan Aw Al-Q āzi Fa Q āl Eq āmah Al-Hodūd El ā Man Elayhe Al-Hokm" (Saduq, 1993).

In response to Hafas Ibn Ghi āth and in regard of the question as to who is qualified for enforcing Hadd punishment, Imam Sadeq (PBUH) ordered that enforcement of Hadd punishment is in the hands of the person who has the command in his hands.

2.1.3. Generalization of the Hadd Punishments' Proofs

Proofs of Hadd punishments (ĀY ĀT and narrations) are absolute and not specific to a certain time such as the ĀYA related to the Hadd punishment for fornication as ordered by the God: "Al-Z āniyah Wa Al-Z āni Fa Ejladū Kolla W āheden Minhom ā Me'ata Jaldaten" as well as the ĀYA related to the Hadd punishment of the robber as commanded by the God "Wa Al-S āreq wa Al-S āreqah Fa Eqta'ū Aydiahom ā". Based on these proofs, the enforcement of Hadd punishments is obligatory without it being specific to the time of the immaculate imams' presence or, in other words, these proofs do not imply the individuals who can enforce the Hadd punishments (Mohaqqeq Damad, 2004; Haji Dehabadi, 2018).

2.2. Proofs by the Opponents

The opponents firstly answer to the proponents' proofs and then express their own proofs.

Quoiting the author of "Mab āni Takmelah Al-Minh āj" and in an answer to the proofs by the proponents, Mohaqqeq Damad has reasoned in the following words: "the prerequisite to these proofs is that the enforcement of the canonical Hadd punishment should be absolutely obligatory in every era without it being in need of an individual's installment by the immaculate Imams (may Allah hail on them). Enforcement of Hadd punishment is the canonical duty of the jurisprudents even if the quotation by Omar Ibn Hanzaleh had not been issued. If the expediencies of the wisdom for the canonization of Hadd punishments pivot about the axis of the deserved individuals with no role being given to the enforcers of them, even the lewd persons should enforce the canonized Hadd punishments assuming the unavailability of the well-qualified exegetes and inaccessibility of the just believers like the preservation of the properties of the absentees and incapacitated persons that the lewd persons are also obliged to perform such a canonical duty in the absence of the canonical ruler (Mohaqqeq Damad, 2004).

As for the substantiation on the narration by Hafas Ibn Ghi āth, as well, the opponents believe that this narration is faulty in its document as well as in its implications hence non-substantiable (Haji Dehabadi, 2018).

Besides substantiating on a narration from Imam Ali (PBUH) who orders that "issuing a decree and enforcing the Hadd punishments and saying the Fridays' group prayers cannot be carried out except by Imam, the opponents express that the enforcement of the Hadd punishments is

specifically done under certain conditions which are not currently available hence there is no room for the enforcement of the Hadd punishments (Haji Dehabadi, 2018).

However, the point that has been made by Mohaqqeq Damad in the summarization of the materials is of a great importance in such a way that it has been exactly expressed by Haji Dehabadi: Islam is a collection with various dimensions, namely educational, ethical, social and managerial aspects and, more importantly, a canonical and legal system which is commonly termed canon. A perfect coherence and solidarity are sensed amongst all the various abovementioned aspects.

Now, assuming the absence of all the required conditions the most of which is the existence of the perfect human beings atop of the society's management with their effective roles in the society's instruction being well evident and clear according to the right beliefs of the Twelver Shiites, the enforcement of the canonical punishments is most likely to face dubiousness and, put differently, such punishments are to be enforced under the such conditions and statuses that the believers should immediately regret the sins they have perpetrated by the Satan's temptations as they were occasionally so fearful of the otherworldly chastisement that they asked to prove presence before the great prophet (may Allah bestow him and his sacred progeny the best of His regards) and confess to their sins so that the divine chastisement can be mitigated for them.

In such a society, the perpetrators of the crimes suffer the pain of punishment with utmost heartfelt satisfaction and without any doubt about the issuance of the sentence (Mohaqqeq Damad, 2004; Haji Dehabadi, 2018). Now that the two perspectives were investigated, it has to be stated according to those believing in the impermissibility of the enforcement of Hadd punishments in the occultation period that the transformation of Hadd to Ta'azir punishments is justifiable in regard of the idea that the criminal cannot be left alone and s/he has to be punished; but, according to those believing in the permissibility of the divine punishments during the occultation time, the transformation of Hadd punishments can be done under certain circumstances.

3. Foundations of the Ruler's Role in Transformation of Hadd to Ta'azir Punishments

The ruler can cease the enforcement of Hadd punishments or transform them to Ta'azir punishemnts under certain conditions. The followings are some foundations of such a role and authority:

3.1. Elimination of the Hadd Punishment Enforcement's Goal and Intention

The enforcement of the Hadd Punishment can sometimes cause the elimination of its goal and intention. The goal of Hadd punishments' enforcement is correcting the criminal and preventing him or her and others from perpetration of crime. Now, is it necessary to enforce Hadd punishment if the enforcement of Hadd punishment causes the criminal to fall in more transgressions and increasingly distance away from the religion and make him or her join the opponents and enemies?

Hashemi Shahroudi believes that the ruler can in such cases prevent or postpone the enforcement of Hadd punishment. He realizes narrations like the credible ones quoted by Qi āth and Abi Maryam indicating that Hadd Punishments are not imposed onto anyone in the lands of enemies as the reason for such a claim (Hashemi Shahroudi, 1999).

Of course, it has to be reminded that the use of the enemies' territories here is devoid of any special characteristics rather it has been used to signify the fear of joining the enemies in case that the individual is subjected to Hadd punishment.

3.2. Axiom of Priority

When two binding verdicts are found interfering with one another meaning that it is not possible for both of them to include the oblige for such a reason as their relative equality, the original principle is making a choice between them otherwise the superior verdict should be selected and the other should be deserted; in other words, the most important is superior to the more important and the obliger's perpetration of a violation by leaving the most important undone results in the actualization of the more important as ruled in the axiom of priority.

In the interfering cases, when the recognition of the interference and the preferring of the most important is found with no social and public consequences, the oblige to whom interference has occurred is responsible for recognizing the interference as well as the distinguishing of the most important from the others. Although the canonical ruler has expressed criteria for making the foresaid distinction, it is the Islamic ruler who is responsible for determining the interferences and the preference of the most important whenever it is found having social and public outcomes.

For example, if the preservation of the Islamic government is found suspended on banks and the existent banking system is found usurious, the necessity of the preservation of the Islamic government and forbiddance of usury will be interfering; here, the Islamic government temporarily lifts the forbiddance of the banks' usurious practices for such a reason as the importance of the preservation of Islamic government so as to design non-usurious banking system in the light of the Islamic government and, upon the actualization of the non-usurious banking system, the interference is dismissed and the verdict allowing the usurious banking is also subsequently lifted (Masjedsara'ei and Kabiri, 2015).

In the discussions on the Hadd punishments' enforcement, as well, the Hadd punishments' enforcement is occasionally interfering with the other regulations, including the preservation of the Islamic system, and it is by the ruler's recognition that the most important, i.e. the preservation of the system, is preferred to the more important, i.e. enforcement of the Hadd punishments.

3.3. No-Loss Axiom

One of the most well-known jurisprudential regulations is the axiom of no-loss which is applicable in most of the jurisprudential topics. This axiom holds that no loss is legitimate in Islam and the illegitimacy of the losses includes both the legislation and law enforcement stages (Mohaqqeq Damad, 2004).

This axiom features a general nature and it includes worships and transactions whether by the canonical ruler or the individuals; in other words, the expediencies of its general originality is that all the losses are rejected (Mohammadi, 2003).

In addition, the fundamentalists believe that the axiom of no-loss governs the proofs of the verdicts. However, a group of the fundamentalists do not consider no-loss axiom as governing the verdicts' proofs but they all consider it as superior; hence, no-loss axiom precedes the proofs of the verdicts even if it is not considered as governing them. Therefore, the divine verdicts, including the situational and obligational, have been enacted based on the denial of any losses to the people. Additionally, if the social rules and regulations' inclusion causes losses in some special cases to some by some others, those regulations are to be removed (Mohaqqeq Damad, 2004).

Based thereon, when the ruler finds out that the enforcement of Hadd punishments is accompanied by losses and mischiefs to which the canonical ruler would never agree such as the people's turning of their

faces away from Islam in its essence, outbreak of inability and looseness in the government and/or ignition of the fire of mutiny and war amongst the Islamic states with another state, he can refrain from the enforcement of Hadd punishment (Hashemi Shahroudi, 1999).

3.4. Axiom of No Hardship

Haraj [Hardship] literally means difficulty and austerity and it commonly is expressive of the idea that the difficult and hard obligations are aborted whether this hardship is suffered by a special person or group and/or by the community and the general public. There is occasionally contradiction between the axiom of no hardship and the proofs of the verdicts in which case the axiom and the proofs should be summed up either in terms of their specificities or allocations. This is while some believe in the axiom's governance in this regard, i.e. they give superiority to the aforesaid axiom over the proofs of the verdicts (Mohammadi, 2003).

Imam Khomeini, as well, has taken this axiom into account for the enforcement of the verdicts and expressed that a verdict's enforcement is avoided if it causes difficulty and hardship. In this regard and in response to the questions by the then attorney general, his highness orders that "in cases that the manager and the official in charge happen to figure out a sort of hardship, the country's attorney general can prevent the enforcement of the verdict but following the recognition and approval of the majority of the judicial Supreme Council (Khomeini, 1999).

Therefore, the Hadd punishment's enforcement can occasionally cause hardship to the people or even the Islamic system as determined by the Islamic government; thus, in such cases, the ruler can transform such verdicts. Of course, it must be stated that the ruler's verdict is limited to the expediencies.

3.5. Conditions and Expediencies of the Time and Place

Exegesis is a process carried out in the grounds of time and place. Therefore, the changes in these grounds bring about evolutions in the exegete's understanding and inference. Since the jurisprudent's job is inferring verdicts which are per se functions of the subjects, it has to be stated that the temporal and spatial expediencies are effective in the recognition of the subjects hence issuance of the verdicts.

The recognition of the subjects depends on various issues such as the environmental and sustenance-related, cultural, economic, and political properties of every time.

In this regard, Reza'ei states that "when the jurisprudent refers to the canonical texts and the concepts applied in them for the recognition of the subjects, paying of attention to the temporal and spatial conditions and expediencies and consideration of the environment of the narrations' issuance and scrutinizing the differences between the places of the narration issuance and the narrator who has asked an Imam and knowledge of the text's revelation whereabouts contribute to the gaining of a more perfect elaboration of the subject and it is by consideration of elements like time and place and their expediencies following referring for a second time to the canonical texts that the jurisprudent is quite likely to find constraints and conditions that might have remained latent till that time from his and other exegetes' eyes" (Reza'ei, 2003).

Time and place are also effective in the preservation of the social system and supply of public security and justice as Imam Khomeini believes that all the canonical verdicts are variable in respect to the verdict on the necessity of the Islamic system's preservation. The preservation of the system is amongst the most obligatory of the obligations; put it another way, there is one fixed obligatory verdict and that is the necessity of the preservation of Islam and all the situational and obligational verdicts are variable in respect thereto (Khomeini, 1999).

Now, considering the importance of the system's preservation, if it is recognized by the Islamic ruler that the enforcement of Hadd punishments causes essential disruption in an epoch of history in the Islamic system, he can rule the transformation of that punishment.

4. An example of Transforming the Hadd Punishments in the Islamic Penal Code of Law

The example that confirms the transformation of Hadd punishments is the article 225 of the Islamic Penal Code of Law, passed in 2013; in this article, the stoning is a sort of Hadd punishment hence not changeable and transformable by the implications of the jurisprudential regulations and based on the rulings of article 219 of the Islamic penal code of law but it has been transformed to execution or lacing a person's naked body. In regard of the basis for the transformation of the stoning to execution or a hundred whips of lace, the jurists believe that:

> The expression indicating the impossibility of enforcing stoning is ambiguous and it seems that the term "impossibility" here introduces a sort of absolute impossibility for such a reason as the human right and international right restrictions or for the exclusive reason of the legislator's consideration of the expediencies in line with prevention of insolence to the Islamic system and human right topics (Shokri, 2017: 60).

Conclusion

Concerning the role of ruler in the transformation of Hadd to Ta'azir punishments, it must be stated that a well-qualified jurisprudent capable of issuing decrees is firstly intended by ruler. Secondly, considering the discrepancies regarding the permissibility of the enforcement of the divine Hadd punishments during the occultation era and the absence of any consensus in this regard, the role of the ruler in the transformation of Hadd to Ta'azir punishments can be elucidated based on both these perspectives as explained below:

1) Based on the perspective of the jurisprudents who believe in the impermissibility of the enforcement of Hadd punishments during occultation period, the ruler can replace the punishment cases explicitly mentioned in the text by the punishments that are more in proportion to the time and place's expediencies because the goal of enforcing Hadd punishment is correcting the criminal and deterring him and others from such crimes and this is not exclusively achieved by the enforcement of Hadd punishments rather Ta'azir punishments are capable of accomplishing such a goal.

2) Based on the perspective of the jurisprudents who believe in the permissibility of enforcing the divine Hadd punishments in the occultation era, the ruler considers the expediencies and rules the transformation of the Hadd to Ta'azir punishments not based on the preliminary verdicts but the secondary verdicts under special conditions if the enforcement of the divine Hadd punishments is found incapable of accomplishing their goals or if it results in the criminals' fall into more transgressions or if it is found interfering with such sure axioms as no-loss and no-hardship and Islamic system's preservation; an example of such a transformation can be found in article 225 of the Islamic penal code of law in the transformation of stoning. The foundation for the transformation of stoning to execution or a hundred whips of lace is laid on the expediencies thought for the preservation of the system and prevention of the insolence to the Islamic system as well as the human right issues in the international circles.

3) The difference between the first and the second perspectives can be summarized in the following words: the first group opines the impermissibility of the Hadd punishments' enforcement based on the preliminary verdicts but the second group opines so based on the secondary verdicts..

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 502-510
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Role of Law in Creating Different Policies in Iran's Court of Justice and Punitive Court

DOI: https://doi.org/10.46398/cuestpol.38e.34

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Abstract

The principle of respecting the separation of political forces in a society gives the legal system the right to issue orders on people's complaints based on the laws approved by the legislative power. There is no question that laws, like other man-made things, have shortcomings. These decisions include the rupture and even the conflict between two or more articles of the law that provoke the creation of different policies in the court of justice and the punitive court of Iran. With a documentary methodology, this article attempts to study the conflicts between different punitive laws and their effect on the creation of different policies in the courts of Iran. It is concluded that, in many cases, due to different reasons there may be defects in the law or in the interpretation of the law that generate defect, ambiguity, clash between laws and contradiction. The existence of all these failures in different cases will cause conflicts between the judges of the criminal courts and these conflicts are the source of the creation of different legal procedures in the criminal courts and in the short time analyzed.

Keywords: Procedures unit; Justice Court; punitive court of Iran; clash of laws; legal hermeneutics.

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El papel de la ley en la creación de diferentes políticas en el tribunal de justicia y tribunal punitivo de Irán

Resumen

El principio de respetar la separación de las fuerzas políticas en una sociedad otorga al ordenamiento jurídico el derecho a dictar órdenes sobre las denuncias de las personas con base en las leyes aprobadas por el poder legislativo. No hay duda de que las leyes, al igual que otras cosas hechas por el hombre, tienen deficiencias. Estas decisiones incluyen la ruptura e incluso el conflicto entre dos o varios artículos de la ley que provocan la creación de políticas diferentes en el tribunal de justicia y el tribunal punitivo de Irán. Con una metodología documental en este artículo se intenta estudiar los conflictos entre distintas leyes punitivas y su efecto en la creación de diferentes políticas en los tribunales de Irán. Se concluye que, en muchos casos, debido a diferentes razones puede haber vicios en la ley o en la interpretación de la ley que generan defecto, ambigüedad, choque entre leyes y contradicción. La existencia de todas estas fallas en diferentes casos causará conflictos entre los jueces de los tribunales penales y estos conflictos son la fuente de la creación de diferentes procedimientos legales en los tribunales penales y en el corto tiempo analizado.

Palabras clave: Unidad de procedimientos; tribunal de justicia; tribunal punitivo de Irán; choque de leyes; hermenéutica jurídica.

Introduction

Law includes a set of bills that have been approved by the members of the parliament. Of course, in some countries special party committees (Sellier, 1999) have the responsibility of approving the laws or in some other countries the king's role has a higher authority in the approval of the laws (Madani *et al.*, 2003). However, the majority of the countries in the world including Iran, the legislation is in the hands of the parliaments; laws that are the only tools of judges in the courts to issue orders. However, in many cases, what the representatives of the parliament vote for and get them approved are totally different from the original draft.

Based on the principal necessity of the separation of the branches, even the legislative branch does not have the right the give an opinion on the matters that have been approved by the parliament other than the exceptional cases which had not much effect on anything. While in some countries such as Austria, the approval of some laws sometimes takes years

and they will be approved only after lawyers, judges and the law university professors (Katoozian, 2006). The courts' judges will have to take into consideration what has been ratified by the when they are entering their verdicts.

Of course, in recent years because of the lack of knowledge of the law by all the nation's representatives with the skills of writing the law and the principles of giving justice, the duty of approval of the laws is on the parliament's legal commission. Although, this method has its own advantages and disadvantages, the majority of the laws in the country goes back to the previous decades and as far as some of the current countless punitive laws are concerned, cutting off a hand and if the same happens again, the foot and will be determined for the thieves if 16 conditions are they were ratified about 80 years ago and they are currently still followed as valid laws at the time of issuing verdicts by the judges.

Among these cases, we can refer to the single article of conspiracy for taking somebody's possession was ratified in 1929 and or the crime of registering somebody else's possession, the subject of article 109 which is Iran's registration law of 1931 and also the law about the punishment of pouring acid ratified in 1991 which unfortunately after passing even two decades. It is executed as a pilot program and every 5 years it is ratified. Based on this, in the opinion of the writer the main roots deficiencies are in the method of ratification of the laws. Practically, the ratification of legal laws that require expertise, experience and the knowledge in the best possible way should not be done by people who lack the academic ability and the necessary experience. Although, there are problems with putting a limited number of members of the legal commission in charge of the ratification of the laws, it seems that the legislator has decided the only specialized way of ratifying the laws is to allow the representatives of the parliament to do it.

1. The flaws of the laws

Although the goal of the editors of the law is to write laws that are practical and flawless in practice, the existence of current flaws in the ratified laws have become the conduit of so many problems for judges when it comes to issuing verdicts thus cause a lot of difficulties for the judges at the time of giving their verdicts.

These flaws are the reasons that in similar cases, different verdicts will be issued by different criminal court that we call them different legal strategies (policies), These flaws are:

1. Breaking the law.
2. The silence of the law.
3. Conciseness of the law.
4. Contradiction of the law.

Here, we will examine every one of them:

Absence of the law: Dr. Naser Katoozian in his book, "An introduction to the knowledge of the law" has a quotation from Ripper and Boulange that says," the law is defective when it cannot include wisdom and justice in legal activities and legal events.

In cases like this, the judge should utilize the goal of the legislator to find the complementary of that defective verdict.

In this definition the defect of the law includes other issues. In other words, defects such as the silence or the deficiency or the ambiguity or the contradiction of the law comes under the same category. Of course, the breaking of the law can be perceived as the lack of the prediction of the law in a social inappropriate behavior. For example in a case where somebody suffering from AIDS contaminated others on purpose by letting them use his own syringe because of the lack of a law pertaining to that issue in the collection of punitive laws, each of the judges in different courts, had different opinions which is the reason different legal procedures came into existence (Sellier, 1999).

And also about another case in which 4 adult men savagely raped a 4 year old girl in which, unfortunately, there is not a ratified law, Another example is the lack of the law which is considered to be the most important defect in the legislation. The justice department administration has discussed one of the important punitive cases on page 243 of the first volume of a book that was published. As we know in our country and also most of the modern countries in the world, rape has a huge penalty, and the crime of rape is one of that most important punitive crimes. According the Islamic punitive law, conducting a sex act by using force between a man and a woman while it is against the religious decrees, require a death penalty (Madani *et al.*, 2003).

However, in a case where an 8-year-old girl was raped by adult males, no law had been ratified against it. Therefore, two reasons caused these men to go free without punishment for this ugly and inhumane act (Katoozian, 2006). First of all, the terminology "Force" did not apply to this case because the girl was only 8 and the perpetrators of the crime did not need force to commit the crime and secondly:

The legislation has not labeled this a criminal act. The more interesting thing is that even in the credible Islamic religious books, this act has not been

discussed at all. It was only Shahid Sani while referring to this negligence, attempted to present an opinion for which he has no documentation.

In such cases, where the legislation has not performed its duty and has not ratified a law pertinent to these situations, the judge will face difficult circumstances. Based on article 167 of Iran's constitution: (The judge is required to try to find verdicts for every lawsuit in the books of laws (Sellier, 1999).

Otherwise, he has to refer to Islamic credible sources or the credible ruling (FATVA) to issue a verdict and he cannot be allowed to use silence or deficiency or ignoring or contradiction to refuse issuing a verdict.)

Article 3 of the laws regarding the procedures of justice in the civil affairs ratified in 2000 and article 214 of the laws regarding the procedures of justice in the punitive issue ratified in 1999 has also referred to this subject. Of course, a single article in 1927 under the same topic has required the judges by the legislator to issue verdicts on all lawsuit, otherwise they (judges) would deserve to be punished and even prosecuted and liable for damages.

Article 597 of the Islamic punitive law states: (Any judge who is in charge of taking care of a lawsuit that was filed justly and despite the fact that it was his duty to hear the case and he refuses to do so or delays issuing a verdict, for the first time, he will be excused from the bench for 6 months up to one year and if the same thing happens again, he will be dismissed and will be sentenced to pay damages also (Madani *et al*., 2003). Here, we have to mention the point that since imposing punishment and damages against judges just because the legislation branch has not done its duties and has not ratified a complete, comprehensive and flawless law in a timely manner and put it at the disposal of the judge, it is in conflict with the fundamental spirit of the justice. Anyway, this issue is one of the most fundamental factors in the creation of different legal policies.

2. The silence of the law

Contrary to the basic flaw mentioned above, in many of criminal cases, the legislator has taken measures in identifying the crime and has even issued verdicts for punishment and has also determined certain punishment. However, in the process of identifying the scope of that crime at the time of ratifying the law has not paid enough attention, (For example, none of the laws has any verdict regarding the grace period for the execution of the law overseas and the court has to decide whether the time allowance should be allowed based on the special circumstances of the case or the articles of the law can be used to solve this problem?)

Now, by studying the criminal cases in Iran's court, different legal procedures resulting from the silence of the law, is considerably interesting. We will refer to some of these examples (Katoozian, 2006): The punishment for the crime of murder in the first degree in Islamic criminal law based on article 612 has been determined to be retribution and if the family of the murder victim gives consent, the criminal will be sentenced to three to ten years imprisonment, In a case in one of the courts in Mazandaran the verdict for the retribution of the murderer was issued and case was dismissed.

But when the retribution was about to happen, the family of the victim declared its consent and based on the law, consent will stop retribution. Now, there is a difference of opinion among the judges in Mazandaran province as whether we cancel again hear the case and issue a new written verdict convicting the murderer to a different kind of punishment which is the same 3-10 years imprisonment.

The legal commission has called this conflict in the legal system "the silence of the law" and has analyzed it in detail and believes that if the legislator gives permission for 2 verdicts to be issued the existence of two different policies in similar cases would have been prevented (Sellier, 1999) and or in another example the judges of the courts in the province of Zanjan because of the lack of fortification position in the limited theft because of the silence of the law in the determination and the issuance of verdict despite the unanimous decision among themselves based on the view of the legal commission, the view of all of them was in conflict with the view of the technical commission (Madani *et al*., 2003). It is necessary to mention the issue in discussion has been presented in the previous years too and even with the verdicts of Iran's supreme court, the same problem has continued and so far there has been no result yet and the unanimous policy in this case does not exist and for further studies we can refer to the book called the legal common punishment by Dr. Afrasiabi, page 175 and after (Katoozian, 2006).

3. The summary of the law

One of the other flaws in writing the law is when the law on the surface does not look defect, but in practice it will be interpreted differently by different judges (Afrasiabi, 1999). For example article 638 of the Islamic punitive law indicates: (Anybody who on purpose and in the public places commits an act that is taboo, in addition to punishment for the action, he/she will be sentenced between 10 days to two months and or up to 74 strokes of whip and if he/she commits an act whose nature does not docs not require punishment, but tamishes the public morality, he will be sentenced to imprisonment from ten days to two months and 1-74 strokes of whip.)

Unfortunately, Iran's legislator at the time of approving this article of the law ignored a few points: First of all terminologies such as public places and or obvious and or an act of taboo have meanings that are neither clear no standard and practically, anybody can interpret them based on their own interpretations. The same article has an approved amendment that states, (women who go into the public without the legal Hejab, will be imprisoned from ten days to two months and or a monitory punishment in the amount of 50,000 to 500,000 Rials.)

In the amendment also there is no definition of what legal Hejab is without a doubt, in such conditions it is possible a judge to interpret a legal Hejab as wearing a mask and another to consider covering the body just enough and also ne judge might consider "public" as more than 1000 people another judge to merely consider one person as the public place. Without a doubt, such a flaw can have different verdicts for two people who have committed the same crime, Other than the subject of creating different legal policies, it is also possible to interpret the law based on one's taste or to have different interpretations based on one's liking.

4. Contradiction of the laws

One of the flaws in the writing of the laws that causes the creation of conflicts in the views of different legal policies in the criminal courts is the contradiction of the laws with one another. In the definition of this flaw, it should be said that: Whenever the legislator approves two or several legal articles about a legal matter in different times or in the shape of one law, as such that the two laws contradict each other, in such a situation, the laws will have conflict with one another and neutralize one another, these laws contradict one another.

Under such conditions, practicing both laws in the same criminal act will be impossible and it will cause creation of different legal procedures in the criminal courts, Dr. Katoozian describes "contradiction of the law" this way... (In the event that the dates of the approval of the two laws are not the same, the new law abolishes the old law... but it happens sometimes that there are laws in a collection of laws that are not possible and it is obvious that it was not the intention of the legislator to implicitly abolish anyone of them because it does not sound right that the first article of the law to compose a law and the 2nd one of the same law to abolish it.)

Cases such as conditions for analysis and the approval of laws and the amount of precision and the effort of the writers and the ratified of the law and more important than anything else the knowledge and the specialty at the awareness of them of the on the collection of ratified laws and... are

generally those factors that create such conflicts (Sellier, 1999). The conflict on the laws is not pertinent to the common laws and they all the factor for the creation of such mistakes, The conflict of the laws is not pertinent to just common laws and in the constitution of the Islamic Republic also we have noticed the conflicts of the laws against one another. For example (the principle of whether a crime and its punishment is legal or not both in the constitution and also in the common law is faced with ambiguity because between principals of 36 and 167 of the constitution on one hand and article 2 of the Islamic punitive law and article 289 of correcting articles of the law of customary punitive justice of the past, on the other hand are in conflict with each other).

This example is brought up here to point out that the existence of conflict between the laws can happen even in the laws of the constitution and it is interesting to point out that in giving verdicts or votes regarding the unity of the law, we have witnessed that even two verdicts regarding the unity of procedure are in conflict with each other (Madani *et al.*, 2003).

5. The ambiguity of the law

In many cases, the existing laws do not have enough power to describe the legislator's intentions and practically they are so ambiguous that judges cannot get a clear and precise understanding of the intention of the legislator and, consequently, they issue verdicts based on their own understanding. For example, in the collection of legal sessions by the justices of the law in Chahar Mahal and Bakhtiari in February and March of 2000, two issues caused conflicts in the verdicts by the judges. The first issue was if in a first-degree offense, the adult plaintiffs give their consent but the minor ones do not, what will happen to the convict until the minor ones reach the legal age. This problem exists because of the ambiguity in the law. The second issue is whether a woman whose husband is murdered can ask for blood money as part of the whose husband is murdered can ask for blood money as part of the fine imposed on the convict, The majority of the judges said that she could not and the minority said that she could. What is interesting is that the legal commission confirmed the verdict of the minority.

In this brief study, we will see that to reach the legal unified procedure, we need more than anything else the approval of academic laws that are effective; laws that are as much as _ possible unambiguous and there are very few flaws and defects (Katoozian, 2006). Without a doubt, in order to approve better laws, the legislator should have the right qualifications and the method of writing the law should match the importance of the legislation. The last word indicates that the rate of different legal procedures in Iran's criminal courts is directly related to the characteristic of the laws that

are legislated by the parliament and are put at the disposal of the judges. The results of study and research indicate that constant legal sessions in different courts show us the existence of serious weaknesses in the method of writing the law and judges try to compensate the flaws and defects of the laws by creating legal procedures.

Conclusions

Law is one of the basic tools in the courts. In many cases, because of different reasons there might be flaws such as defect, ambiguity, conciseness, and contradiction. The existence of all these flaws in different cases will cause conflicts among judges in the criminal courts and these conflicts were the source of creating different legal procedures in the criminal courts and in this short time, attempts were made to analyze some of these defects.

With special thanks to professor Safarian who guided me in this research.

Acknowlegements:

The Author is grateful to professor Garnik Safarian to supervision and support this article at Academy of of Legal Sciences in Yerevan, Armenia.

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Cuestiones Políticas Vol. 38, Nº Especial (1era parte) 2020, 511-522
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Christian interpretation of anthropological guidelines for lawmaking

DOI: https://doi.org/10.46398/cuestpol.38e.35

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Abstract

The objective of the article is to reveal the main foundations of human creation enshrined in Christian doctrine, which serve as axiological guidelines for the elaboration of laws, providing a humanistic content of the law. The research methodology is based on dialectical, formal-dogmatic, sociological, comparative-legal and documentary methods. The results of the study demonstrate that theocentrism and anthropocentrism are not opposed to each other in Christianity, but rather are combined into an integrated theological and anthropological picture of a man. Considering this prism of legal consciousness as a reflection of the supreme law of God, the authors refute the secular-positivist view of "homo juridicus" as a soulless subject of law and emphasize the role of the Gospel commandments as a guide. for the elaboration of laws. It is concluded that the Christian vision of the synergistic interaction of the human being and the legislator through the unity of three incarnations: "homo spiritus" - "homo sapiens" - "homo juridicus" indicates the values, which are designed to ensure humanization of the law through the humanization of social relations in general.

Keywords: image of the human person; Christian doctrine; legal theology; Christian spirituality; human creation; law.

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Interpretación cristiana de las pautas antropológicas para la elaboración de leyes

Resumen

El objetivo del artículo es develar los principales fundamentos de la creación humana consagrados en la doctrina cristiana, que sirven como directrices axiológicas para la elaboración de leyes, proporcionando un contenido humanista de la ley. La metodología de investigación se basa en métodos dialécticos, formal-dogmáticos, sociológicos, comparado-legales y documentales. Los resultados del estudio demuestran que el teocentrismo y el antropocentrismo no se oponen entre sí en el cristianismo, sino que se combinan en una imagen teológica y antropológica integrada de un hombre. Considerando este prisma de la conciencia jurídica como un reflejo de la ley suprema de Dios, los autores refutan la visión secular-positivista sobre el «homo juridicus» como un sujeto de derecho desalmado y hacen hincapié en el papel de los mandamientos del Evangelio como guía para la elaboración de leyes. Se concluye que la visión cristiana de la interacción sinérgica del ser humano y el legislador a través de la unidad de tres encarnaciones: "homo spiritus" - "homo sapiens" - "homo juridicus" indica los valores, que están diseñados para asegurar la humanización del derecho a través de la humanización de las relaciones sociales en general.

Palabras clave: imagen de la persona humana; doctrina cristiana; teología jurídica; espiritualidad cristiana; creación humana; ley.

Introduction

The appeal to human dimension of law is conditioned by the need to bridge the gap between normative and value content of law, which is evident in the EU countries, as well as manifests itself in the form of a series of political and legal crises in Ukraine. We can agree with the opinion of Ogneviuk (2018) that anthropological approaches to the study of legal phenomena allow to give law a value humanistic orientation, because the connection with anthropological teaching in jurisprudence is transformed into a relationship between the implementation of legal certainty and human rights. But the path to understanding the axiological guidelines of law (both lawmaking and law enforcement), which are established in a particular socio-cultural space, lies through the understanding of the essential attributes of a man.

The pragmatics of positivist legal methodology, which represents an individual as a separate subject of law in lawmaking and thus cuts

off his (her) anthropological dimension, has caused a crisis of law as a means of resolving social conflicts. And ignoring the values defined by the Christian tradition has led to the paradoxical fact of legal protection of anthropologically incapable and even harmful to human nature phenomena (legalization of euthanasia, legal institutionalization of same-sex families, adoption and surrogacy in the interests of the latter), which contributes to the moral degradation of society. Overcoming socio and cultural and political and legal crisis must begin with a re-thinking of the teleological orientation of law-making, which has been artificially deprived of its deep spiritual content. Therefore, the study of Christian anthropological views as factors in the humanistic value orientation of the law-making process is an urgent task of modern philosophy of law.

The study of Christian anthropological heritage reveals new sides of the image of a man of the postmodern era. Its understanding proves that theology and anthropology are really interconnected, which expands the horizons of modern philosophical thought, offers humanity a way to solve urgent epistemological and anthropological problems and, last but not least, helps a person to understand himself (herself), the world and the God.

1. Materials and methods

The system of methods of scientific knowledge is chosen based on the purpose and objectives of the research. Among them are general scientific methods, methods of political science, sociology, philosophy, jurisprudence, as well as special methodological principles for studying the religious principles of development of law.

Dialectical method contributed to the study of the problem under consideration in the unity of its social content and legal form and the implementation of a systematic analysis of forms of interaction between religion and law.

With the help of historical and legal method the peculiarities of development of law under the influence of gospel commandments is revealed.

The normative basis for the religious origin of law is defined and characterized due to the formal and legal method.

Socio-prognostic method allowed to identify the features of the influence of Christianity on the formation and development of law.

Logical method makes it possible to identify and clarify the general mechanism of functioning of religion and law, as well as to reveal the

Christian vision of synergetic interaction of human-creating and lawmaking through the unity of three incarnations – "homo spiritus" – "homo sapiens" – "homo juridicus".

In the course of the research the works of Elliot (2018), Foucault (2003), Kant (1995), Levinas (1997), Marchenko (2005), Nietzsche (2015), Ogneviuk (2018), Pavlov (2016), Predko (2019) and others were used, which proved that the study of Christian anthropological heritage reveals different parts of the image of a man of the postmodern era. The comprehension of this heritage proves that theology and anthropology are really interconnected, which expands the horizons of modern philosophical thought, offers humanity a way to solve urgent epistemological and anthropological problems and, last but not least, helps a person to understand himself (herself), the world and God.

At the same time, it should be emphasized that the study of anthropological aspects of Christianity and the study of humanistic principles of law making do not intersect in modern science, so the attempt to combine these two areas of philosophical thought is a novelty of our work.

2. Results

The presented religious-synergetic concept is based on the type of human understanding, which, on the one hand, is a traditional way of describing the attributive essence of a man in Christian anthropology and determines the Christian interpretation of human creativity, and on the other hand – uses the resources of modern postmodern thought, which acknowledges the crisis of classical rationalist-secularist anthropological ideas. The methodological resource of religious-synergetic theory is also used by us as an alternative to positivism in determining the role of the values of Christianity in lawmaking. This approach reveals the Christian vision of synergetic interaction of human-creating and lawmaking through the unity of three incarnations – "homo spiritus" – "homo sapiens" – "homo juridicus".

3. Discussion

The dominant philosophical and legal paradigm in Europe grew on the ideas of the Enlightenment, which considered the person through the prism of rationalism. This view, which is based on the belief in the omnipotence of the human mind, nowadays has become strongly opposed to the religious

worldview (CC by European Values 2016). Its proponents state that the person by nature is a product of biological evolution, a species of homo sapiens (intelligent person). The secular concept assumes that the primary source of law is human mind; people themselves establish the laws of co-existence, because there is nothing else in the world except the natural space and the subjects of human rights.

However, a person as such is really absent in the system of secular rationality, because only the subject is present in it. A man and his Ego are placed in the center of the secular system of values formed on this basis. Thus, the goal of human creativity is the growth of this Ego, its self-transcendence up to the state of the superman through the improvement of mind and concentration of willpower. But concentrated individualism of secular rationalism also presupposes its reverse side – egocentrism, immorality, exploitative attitude to the world around. However, the supporters of the secular-rationalist paradigm do not notice that social system based on the absolute personal freedom of expression, which was promoted as the ideal of democracy, sooner or later becomes a zone of value-based conflicts between different social actors. That's why the critics of rationalist ideas about a man point out that the secularism has led to alienation, disappointment, lawlessness, etc., that is they argue that moral crisis is the greatest danger in the modern world. Under these conditions, philosophical and legal concepts opposing to rationalist-secularist positivism stress above all on the rethinking of anthropological principles of lawmaking.

The analysis of socio-cultural discourse shows that the classical model of a rational man, which is based exclusively on the Cartesian principle "cogito ergo sum", has failed. Modern religious philosophers argue that the following atheistic slogans such as "man is the king of nature" paradoxically lead to the dehumanization of the subject. They point out that the image of a man as homo sapiens created by classical rationalism has eventually became "a soulless computer". Following the logic of Friedrich Nietzsche (2015: 125), who predicted the inevitable "death of God" in a society of rational modernism, famous French philosopher Michel Foucault warns of the subsequent "scattering of man" (Foucault 2003: 114). And such scattering inevitably leads to the erosion of the value framework for law.

Thus, there was a need to turn to another anthropological paradigm in the philosophy of lawmaking. Defining its vector, we can agree with the conclusion of Ukrainian researcher Lyudmila Mykulanynets (2019: 49 – 50): "The anthropological crisis of the turn of the 20th – 21th manifested itself through the conflict of humanism and anti-humanism. This is the evidence of the basic ideological opposites of human existence: man – God, reason – faith, rationalism – irrationalism, tradition –innovation, etc. The problems raised in the 2nd half of the 20th century ("death of God", "death of man",

"end of history" can be solved through the reversion of a individual to the traditional religious truths of the Middle Ages: eternity of God, immortality of soul, infinity of history.

It should be emphasized that essential difference between Christian anthropology and atheistic understanding of a man lies in the belief in the soul. Thus, Christian anthropology has long been focused on the guiding principle of "credo ergo sum". According to this paradigm, the mind is used as an instrument of knowledge of the external world and oneself in it, while the immortal soul is the "gate" between God and a man. The existential difference between "reasonable self-production" as the desire to bring oneself in line with the system of spiritual values (Novik, 1999) advocated by Christian philosophy from the production of "mass man" is rooted in key biblical concepts common to Christian anthropology. It should be emphasized that the Christian tradition, like any other religious tradition, has certain basic anthropological ideas, i.e. the image of a man. The model of a human being in religious anthropology is based on the idea that human existence as personal existence is not reduced to human nature as a biological species. Christianity, unlike other religions, defends the image of a man, which in essence can be understood through its synergy. God-Father, God-Son and the Holy Spirit, who created a man, form *into a cohesive unit* only in Christian doctrine. Only Christianity reveals the image of a man as a synergistic unity of spiritual and material principles embodied in Christ. So, Christianity is the only doctrine according to which not only man ascends to God in the process of deification, but also God is embodied in man, that is, humanized.

The value core of the individual is presented primarily as homo spiritus (spiritual man) in the Christian interpretation. The essence of homo spiritus was most deeply revealed by prominent Ukrainian thinkers Hryhoriy Skovoroda and Pamfil Yurkevych, whose philosophy of the heart is based on the principles of Christian anthropology. While revealing the content of this concept, Ukrainian scientist Oleksiy Marchenko (2005: 167) notes: "The idea of God is manifested in the national religious and philosophical tradition not as a product of human thought, but as a living consciousness of the true unconditional being experienced in faith, the real image of which is the human, a living consciousness of godliness as the true purpose of human life. Hence the understanding of the search for God as a significant form of human self-determination and self-realization, the actualization of new spiritual and moral dimensions of their existence arises. Spirituality is a way of self-construction, an access to the highest value instances of one's own constitution, manifestation of the ontologically inherent desire for freedom, in which human involvement in the ultimate spiritual reality is directly manifested.

Thus, Christianity, revealing a new revelation of a man, formed an anthropology that is not based on a strictly logical, inductive approach. Christian anthropology does not aim to simply structure the existing ideas about a man; it rather serves as a guide on the path of human creativity, the goal of which Christian thinkers see in the spiritual growth, purification and salvation of a man. At the same time, the essence of human creativity, according to Christian doctrine, is expressed primarily in the ability to selfless, divine love. At the same time, Christian anthropology does not idealize a man at all, because it also points to the reality of sin and guilt in human life. However, Christian understanding of a man remains optimistic because he is granted Salvation. The Christian faith in the Resurrection and dignity of every person acquired through the Savior is the basis of the modern concept of human rights.

It is the Christian understanding of the attributive essence of a man that determined the humanistic orientation of European law. The Commandment of Christ "Whatever you want people to do for you, you do it for them!", which He proclaimed in the Sermon on the Mount, is, in fact, the forerunner of the famous categorical imperative of Immanuel Kant (1995: 224) "Act so that the maxim of your behavior could be at the same time a principle of general law". These guidelines, which underlie the principle of justice, demonstrate the classic pattern of conformity between the "image of a man" and the "image of law". At the same time, essentially synergetic Christian anthropological interpretation of the goals of lawmaking strongly opposes secular individualism, because if the goal of social institutions, including law, is a man (according to Christian thinkers), then the goal of the individual is public good. The value orientation of the Christian anthropological concept is clearly characterized in the work of Ukrainian researcher Olena Predko (2019: 36-37) "Christianity offers consideration of faith in the existential and anthropological sense: as the basis for worldview and spiritual orientation, as an existence through which a man actualizes and realizes his life-creating potential ... In this context, its core content combines moral and ethical , intellectual (cognitive) and aesthetic principles. In general, moral and ethical principles, which serve as an indicator and determines the completeness of social and individual existence, is a priority in the structural hierarchy of religious faith.

The currently popular anthropological project of postmodernism inevitably merges with the imperative of Kant, and through it – with the gospel commandments. Although some representatives of this philosophy currently renounce the "metaphysical" justifications of human behavior, but, according to the authoritative French philosopher Emmanuel Levinas (1997), ethical commands come to us from a transcendental divine source. It is clear that these views show the connection between the postmodern anthropological concept and Christian philosophy. These philosophical trends do not oppose the mind and soul, but indicate their inseparable co-

existence, as a result of which legal consciousness is formed as an awareness of natural law:

> Human mind opens the door to the soul. Our innate desire for truth may take the highest form in the moral quest when we seek for good and want to avoid evil, or at least when we understand that we must make moral choices. This moral meaning or ability is natural in order to be a human; therefore, it is defined as a natural law (Elliott, 2018: 128).

When formulating the anthropological foundations of the Christian concept of lawmaking, we proceed from these conclusions. According to this concept, theocentrism and anthropocentrism do not oppose each other, but combine in an integrated theological and anthropological image of a man. Using the theory of "synergistic anthropology" (philosophical direction, according to which the development of a new human discourse is based on these two trends), developed by Khoruzhyi (1998), we draw our conclusions based primarily on the Christology of Christian anthropology. Its cornerstone is the postulate of the union of a man and God in Christ, which is a prerequisite for a synergistic holistic interpretation of the image of a man as a whole, which combines "homo sapiens" and "homo spiritus". However, we deny the conservative thesis of theology about the hierarchical construction of a man, and, consequently, about the constant of the hierarchy of values in the process of human creation. We assume that a man is not just a predetermined linear entity: either a rational actor placed in the plane of social relations, or a spiritual ascetic who must renounce everything earthly. Man is a complex multilevel synergetic (chaotic, indefinite) set of spiritual energies and anthropological manifestations. Using the statement of John of Damascus (2009: 204), we can state that such a set is "the force of intelligent soul, which is natural and the first, the one that constantly moves". We pay particular attention to the definition of "intelligent soul", which reflects both unity and fluidity in the Christian interpretation of "homo spiritus" and "homo sapiens". Thus, a man is seen as constantly changing being, as a plurality in which material and spiritual motivations are combined through the prism of religious synergetic. It is important to pay attention, in this context, to the opinion of Abbot Benjamin (Novik) (1999), who argues that Christianity is turned to be identical to human nature in all its complexity, and therefore, in principle, everything must be rethought in the light of Christianity.

This understanding of the Christian interpretation of the image of a man and the teleology of human creativity makes it possible to present a synergetic approach to the interpretation of the values of lawmaking. The basis for this understanding is the statement of authoritative Ukrainian philosopher of law Bandura, who arguesthat, on the one hand, man is a spiritual being (2015), and on the other hand, man is a legal being (2016). It is important to emphasize that the zone of intersection of these two incarnations is a plane of morality. According to the anthropological

foundations of the Christian concept of lawmaking, man as a subject of moral consciousness, must be guided by the dictates of moral law, which is the embodiment of divine providence. Thus, the law must, on the one hand, motivate a man as a legal being to act in a way that meets the aspiration to a higher moral imperative, and on the other hand, the ethical principles of Christianity, which are perceived by a man as a spiritual being, should be higher criteria of law.

This approach opposes classical positivism in lawmaking, which is based on secular rationalism and focuses not on spiritual values but on the recognition of the legal system, which consists of legal prescriptions, and thus focuses on the structure of law as a set of regulations and court precedents. Positivism used only the institutional platform to characterize "homo juridicus" (legal being), which was naturally accompanied by the basic provisions of classical rationality. A person: "Has always been perceived as a formalized structure that acted as a legal structure with certain legal qualities and properties" in such a legal reality (Novik 1999: 330). Besides, in the matrix of positivism, which essentially imitates Hobbes, an individual realizes the need for law and order, i.e. common norms for all people, only under the threat of violence, and this threat justifies the mechanical force of artificial personality – the State. Obviously, any truly democratic legal order is out of question in this case.

Therefore, the emphasis in substantiating the goals of lawmaking is on its anthropological and axiological essence from the standpoint of postclassical philosophy of law. The content of lawmaking in the postclassical interpretation is not in the production of instruments of formal external coercion, but in the socio-constructivist development of incentives to regulate life, taking into account the inner world and human freedom, which actually determine the true goals of human creativity. Religious thinkers (we consider primarily Christian doctrine) also believe that law only manifests itself in the external, spatial and corporeal world; but unlike postmodernists, they emphasize that the scope of its implementation and operation remains human soul, in which law acts with the force of objective value. Revealing the Christian interpretation of the teleology of law, the Russian philosopher Ilyin (1993: 45) emphasized that:

> Spiritual purpose of law is to live in the souls of people, filling them with its content and thus forming internal impulses in their minds that affect their lives and their external way of action. The task of law is to create motives in the human soul for better behavior.

Human life is impossible outside the legal form, but a man must perceive this legal form independently, perceive the limits of his (her) will and maintain them as necessary and sacred, God-established limit of his (her) behavior. This self-commitment, from the point of view of the Christian interpretation of human creativity, remains the main way of life

for "homo juridicus". The practical significance of this formula is that under such conditions the respect for law will not be imposed by the State, but based on a deep personal belief in its effectiveness as a means of regulating public relations. At the same time, Christian philosophy interprets legal consciousness as a reflection of the precepts of the "highest law", because it considers law to be derived from the Divine law, as conditioned by the gospel commandments. Thus, analyzing the law-making process, the founder of Ukrainian cardiocentrism Yurkevich (1990: 346) came to the following conclusion: "The primary principles of human legal activity are the Christian moral laws as general ideas of goodness and love. Moral laws are generated by the human heart, and the mind fixes them in the form of law".

Obviously, lawmaking as a form of stimuli for the behavior of social actors, according to Christian philosophers, should be focused on the meanings and ideals that produce legal consciousness on the basis of moral values of love, mercy and charity generated by spirituality as a mutual ascent of God to man and man to God, which is the purpose of human creativity in its Christian interpretation.

Conclusion

According to Christian interpretation, the human creation of a legal being occurs through the implementation of evangelical values in the legal consciousness, to which a man ascends in the process of his spiritual development, and which a man comprehends in accordance with a particular life situation with his own mind and according to which he acts in the legal field on his own free will. At the same time, while emphasizing the service of the public good as the goal of human creativity, Christianity views lawmaking as a reasonable production of incentives and the imposition of sanctions on social actors as the objects of law. In turn, lawmaking by a person as a subject of law is based on moral values as a reflection of the higher law through faith, which is manifested by human spirit, and corresponds to the interests articulated by social actors in a rational form. Similarly, these processes occur not only at the individual level but also at the group level, including the social level as a whole. In this case, they are not dialectical but synergistic.

That is, they do not replace each other in a clear sequence, but are in a state of fluidity and turbulence, interpenetration and co-existence. This synergy of mental, spiritual and legal principles and aspirations, in our opinion, appears to be the attributive essence of a man, which is revealed by modern Christian anthropology in the context of its application by the philosophy of law. Moreover, some authors are inclined to believe that a

man is the core of the ontological sense of society, religion, State and law. It is the reliability of the interpretation of human identity, above all its axiological component, that directly determines the functioning of society and the State (Palahuta *et al*, 2020).

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POLÍTICAS

Vol.38 NºEspecial

Esta revista fue editada en formato digital y publicada en octubre de 2020, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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