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CUESTIONES POLÍTICAS

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

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

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

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.

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Presentación

¿Nos depara el futuro próximo el advenimiento nuevo orden mundial?

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Al parecer el año 2020 va a transcurrir rubricado en sus 12 meses por los estragos de la pandemia del nuevo coronavirus (COVID-19) que afecta en mayor o menor medida a todos los países por igual. Las consecuencias de esta enfermedad que se manifiesta –metafóricamente hablando– como un enemigo silencio: cercano y a la vez lejano, letal o benigno, según el paciente, que no discrimina entre clase sociales y no lo detienen las fronteras geográficas, son simultáneamente objetivas y subjetivas porque ha desarticulado los diversos estilos de vida de las distintas civilizaciones humanas que se ven en la necesidad de implementar políticas de cuarentena social, poniendo a prueba la capacidad de los Estados-nación de salvaguardar el orden en medio de la crisis que se reproduce aún más en los imaginarios colectivos del miedo.

Hay buenas razones para suponer que el COVID-19 es además la principal fuerza que genera las condiciones de posibilidad para apuntalar un "nuevo orden mundial" en esencia distinto. Esta hipótesis que presagia cambios estructural-sistémicos en el escenario internacional es más consistente cuando se hace una lectura crítica de los modelos hegemónicos que en lo político, económico y social han regido los destinos de la humanidad desde las postrimerías de la segunda guerra mundial, hasta el momento presente, con un saldo poco favorable según Parra (2020), en términos de preservación del medio ambiente, desarrollo con equidad, justicia social y conflictividad geopolítica, lo que denota el deterioro sustancial de todos estos modelos por igual y la necesidad de buscar un nuevo contrato social (Calvano, 2017; 2019; Villasmil Espinoza, 2020).

La historia nos dice que las transiciones paradigmáticas no son fáciles y que conllevan igualmente procesos traumáticos en personas y colectividades, que deben reinventarse para responder a los requerimientos que impone

en cada momento una nueva cotidianidad, en la que se visualizan nuevos o renovados procedimientos, discursos, prácticas y modos de relacionarse diferentes, entre otros aspectos. Ante esta situación surgen desde ya más preguntas que certezas, tales como: ¿el advenimiento del nuevo orden mundial genera automáticamente un nuevo orden científico? ¿representa el nuevo orden una posibilidad para mejor las condiciones de vida de los países del sur global? ¿Quiénes serán las nuevas potencias emergentes en un posible reacomodo del orden internacional? ¿uno de los signos del nuevo orden se observa en el declive del poder de ciertos países de occidente? ¿Qué rol tendrán en las sociedades del siglo XXI la inteligencia artificial, la nanorrobótica y la ingeniería genética?

No hay respuestas sencillas a ninguna de estas preguntas, no obstante, desde Cuestiones Políticas apostamos porque la ciencia en general y las elites intelectuales que hacen vida en las academias del mundo, en particular, se aboquen desde ya, a investigar y repensar en clave crítica las mejores formas de contribuir en la elaboración razonada de un nuevo orden mundial más viable y equitativos para todos. Conviene recordar que los modelos políticos, económicos y sociales no son obra de fuerzas metafísicas, sino una construcción intersubjetiva en la que interactúan distintas fuerzas y que; por lo tanto, estas fuerzas deben ser conducidas, pensadas y reorganizadas en cada momento con base a la promoción de la vida, los derechos humanos y la verdadera democracia en el mundo.

Por ventura los trabajos que se publican en volumen 38, número 65 de esta edición de Cuestiones Políticas, significan un intento fructífero de propinar ideas o soluciones a las principales problemáticas jurídicas y sociopolíticas de distintas sociedades en oriente y occidente, repuestas mucho más pertinentes en un mundo identificado por la creciente entropía de una crisis general que demanda de lecturas sosegadas, desde la óptica científica y académica, como condición de posibilidad para su resolución paulatina.

En la sección Política latinoamericana, el artículo de **Laura Alexandra Guachichullca** Ordoñez intitulado: **Mujeres, géneros y participación política en América Latina** apertura el presente número. Su sugestiva investigación tuvo por objetivo interpretar las características del protagonismo sociopolítico de las mujeres en latinoamericana, visto desde la perspectiva de la igualdad de género y de la pluralidad de discursos y prácticas que subyacen en esos movimientos sociales que reúnen solidariamente a las mujeres. En la misma sección, **Michael A. Tulnev** y colaboradores analizan la experiencia latinoamericana en garantías constitucionales y legales de libertad de los medios de comunicación en su trabajo ***Latin america Experience in Constitutional and Legal Guarantees of Freedom of the Media.*** Además, **Pasquale Sofia**, presenta su artículo **Iglesia católica y política en América Latina:**

la teología de la liberación en el que analiza la posición de la Iglesia católica como actor político en América Latina luego de la Segunda guerra mundial, hasta la década de los ochenta, con un enfoque específico sobre la Teología de la Liberación.

En la sección Derecho Público se presentan múltiples y significativas contribuciones. El trabajo **Boris V. Makogon** *y otros* ***Functional Self-Limitation of State Authority*** analiza la autolimitación de la autoridad del Estado en la teoría y en la realidad concreta desde una perspectiva que considera aspectos teóricos generales e históricos orientados al estado actual del problema en la federación rusa. Del mismo modo, la investigación de **Evgeniy A. Ignatenko** y colaboradores intitulado: ***International Standards for the Safety of Persons Assisting in Criminal Justice*** propone distintos enfoques para la formación de normas en función de garantizar en cada momento la seguridad de las personas que contribuyen a la realización de la justicia penal.

De seguida en la misma sección, por una parte, el trabajo ***Implementation of State Policy in the Field of Guardianship and Trusteeship: Regional Aspect*** de la autoría de **Elvira V. Koroleva** y **Yana A. Volynchuk** analiza los procesos de implementación de la política estatal en el campo de la tutela y tutela efectiva. Por la otra, **Elena A. Kupryashina** y colaboradores presentan su trabajo ***Extradition Under the Legislation of the Russian Federation and Member States of the European Union*** el cual tuvo por objetivo analizar la legislación de la Federación de Rusia y los estados miembros de la Unión Europea sobre extradición desde el punto de vista de su cumplimiento con el Convenio Europeo de Extradición.

También se presenta aquí, el trabajo de **Sergey V. Novikov** y colaboradores titulado: **Hemerografía de temas económico-políticos en una revista científica Latinoamericana,** el cual tuvo por objetivo elaborar un balance hemerográfico de una muestra de los artículos sobre economía publicados en la Revista Amazonia Investiga en el periodo 2019. Del mismo modo, el artículo de la autoría de **Zoya Ivanovna Latysheva** y colaboradores: ***Improving the State Regulatory System of The Agribusiness*** tuvo por objetivo apuntalar una propuesta en términos de políticas públicas para mejorar el sistema regulatorio estatal de los agronegocios. Por su parte, **Anna A. Bezuglya** y otros, presnetan una investigación titulada: ***European Experience in Constitutional and Legal Guarantees of Freedom of the Media*** que tuvo por objetivo exhibir los resultados de un análisis legal comparativo dedicado a las constituciones de los estados europeos con respecto a la identificación de normas que garanticen la libertad de los medios de comunicación social.

Igualmente, en la sección Derecho Público **Olena V. Kovalova** y otros en su trabajo ***The Role of Public Organizations in Ensuring National Security of Ukraine*** identifican las formas de participación

de las organizaciones públicas en la seguridad nacional y destacan las posibles modos de mejorar el papel de las organizaciones públicas para garantizar la seguridad nacional en Ucrania. Asimismo, el trabajo de **Serhiy S. Kudinov** y otros ***International Experience of Legal Service Relations in the National Security Sphere: Issues of Implementation in Ukraine*** estudia la experiencia internacional del desarrollo y funcionamiento de las relaciones de servicio legal en el ámbito de la seguridad nacional y, al mismo tiempo, elaboran propuestas para la adopción de sus mejores prácticas en la materia en Ucrania.

Mychailo V. Kostytsky y colaboradores en su trabajo ***The Analysis of the Essence on the Information Society in the Legal and Philosophical Context*** analizan los principales enfoques conceptuales para comprender un nuevo tipo de sociedad de la información. Del mismo modo, **Illya D. Shutak** y colaboradores en su investigación intitulada: ***Civil law enforcement of the rights of the patients with mental disorders: Ukrainian legislation and international practice*** se plantean por objetivo determinar el estado del paciente con trastorno mental en las relaciones de derecho civil, entre él y la institución médica, mediante el examen de la literatura legal respectiva, la jurisprudencia del Tribunal Europeo de Derechos Humanos y los Actos jurídicos nacionales e internacionales.

Asimismo en la sección Derecho Público, **Anna V. Lebed** y colaboradores en su trabajo ***Implementation of inclusive education under the Convention on the Rights of Persons with Disabilities: a comparative legal aspect,*** presentan un análisis comparativo de la formación de educación inclusiva en la Federación de Rusia, Alemania e Italia basado en el análisis de las disposiciones de la Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad, relacionadas con el desarrollo de la educación inclusiva en los países miembros. Del mismo modo, **Aleksej P. Treskov** y otros analizan los principios del poder judicial en las constituciones de los estados africanos en su artículo ***Judicial Power Principles in the Constitutions of African States***.

También, en esta sección, **Alina V. Steblianko** y otros muestran su trabajo ***International Law Enforcement Cooperation against Money Laundering*** el cual tuvo por objetivo describir algunos modos de fortalecer la interacción de las agencias de aplicación de la ley de varios estados y, resaltar el papel de las instituciones financieras en este proceso. Por su parte, **Ruslan Serbyn** y otros en su artículo ***Administrative and Legal Mechanism for Ensuring the Rights of Civil Servants in Ukraine and the Developed Countries of the World*** determinan científicamente el estado de la actividad y el funcionamiento del movimiento sindical en la administración pública de Ucrania y ciertos países en desarrollo.

Yuriy Harust y otros en un interesante trabajo intitulado: ***Administrative-Territorial Reform: The Experience of the Countries of Western Europe*** realizan un estudio de investigación sobre el mecanismo de introducción de institutos de prefectos en Ucrania, basado en la experiencia de los principales países de Europa occidental. Del mismo modo, **Alexander Vladimirovich Rostokinsky** y otros exponen en esta oportunidad su investigación ***Application of the Rules on the exemption from criminal liability with the imposition of a judicial fine: problems, characteristics and experiences*** con el objetivo de examinar el marco legal y los aspectos prácticos del uso de la exención de responsabilidad penal con la imposición de una multa judicial.

Por último, en la sección Derecho Público **Viktor Victorovich Pushkarev** y otros presentan su trabajo intitulado: ***The Adversarial Approach in the Pre-trial Phase of Prosecution*** que tiene por objetivo demostrar la importancia de analizar los problemas teóricos y prácticos de la extensión del enfoque de confrontación a la fase de enjuiciamiento previa al juicio. Por su parte, en ***Investigating the Realism or Idealism of Iran's Legislative Criminal Policy,*** **Ahmadreza Vanaki** y otros abordan ciertos problemas y preguntas que surgen sobre el realismo o el idealismo en el contexto de la política penal de la doble legislatura en Irán, con el objetivo de revelar las habilidades y capacidades disponibles de las leyes que rigen la materia penal en el país persa.

En la sección Ciencia Política, el artículo **Pilares de la estabilidad de los regímenes autocráticos: análisis del caso de Venezuela** de la autoría de **Verónica Medina** y **Víctor Carrillo** tuvo por objetivo analizar los determinantes de la estabilidad autocrática del régimen venezolano. Asimismo, el trabajo de **Muntasser Majeed Hameed** intitulado: ***Political structure and the administration of political system in Iraq (post-ISIS)*** se planteó por objetivo analizar las estructuras política y administrativa del sistema político en Iraq (post-ISIS). Por su parte, el trabajo de **Masoud Gerami** y otros, intitulado: **The Impact of Social Justice and Alienation on Political Participation in Jahrom City** se planteó por propósito estudiar el impacto de la justicia social y la alienación en la participación política de las personas en de la ciudad de Yahrom, en Irán.

En la misma sección, **Mikhail Y. Zelenkov** y otros publican los resultados de una investigación que tiene por título ***Identification of Advertising Trends in The Mass Media and On the Internet Used by Modern Terrorism*** con el objetivo de analizar los medios de comunicación de masas y la cobertura de ataques terroristas en Internet y evaluar su impacto en el creciente número de terroristas en el mundo basándose en este análisis.

En la sección Teoría Política **Mikhail V. Vinichenko** y otros presentan una interesante investigación intitulada: ***The Influence of Artificial Intelligence on the Human Potential Development:***

The Views of Orthodox Clergy and Parishioners con el objetivo de discutir la naturaleza de la influencia de la inteligencia artificial en el desarrollo del potencial humano desde el punto de vista del clero ortodoxo y sus feligreses. También, **Ashraf Ghavamabadi** y colaboradores exponen su investigación ***Implementing Cultural Policies With A View of Capacity-Building at University*** que tuvo por objetivo identificar los componentes de la implementación de políticas culturales para analizar el desarrollo de capacidades en las universidades y priorizar sus dimensiones.

En la misma sección, **Oksana M. Myronets** en ***Current Issues and Prospects of Modern Higher Legal Education in Conditions of the Fight against COVID-19*** determinan los problemas actuales, las posibles direcciones del desarrollo y la mejora de la educación jurídica superior en los modernos desafíos y condiciones de la pandemia y post pandemia de COVID-2019 del nuevo orden mundial. Para finalizar, Elena V. Mischenko y otros estudian las características de las actividades de ocio de los jóvenes en condiciones de autoaislamiento durante la pandemia de coronavirus en su trabajo intitulado ***Young People Leisure Activities Transformation During Quarantine Self-Isolation: Characteristics and Regulation Problem***.

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Política Latinoamericana

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Mujeres, géneros y participación política en América Latina

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Laura Alexandra Guachichullca Ordoñez *

Resumen

Reflexionar sobre la trascendencia histórica que representa la presencia protagónica de las mujeres latinoamericanas en estos tiempos, es una urgencia, tanto para entender su situación, como para alumbrar el decurso que, tras siglos de discriminación les ha permitido esa actualidad. Ha sido, obviamente un camino denso y espinoso, lleno de obstáculos, culturales, religiosos, sociales, económicos, pero, sobre todo, políticos. Todos ellos los ha ido superando, desde su participación casi anónima en los procesos independentistas, hasta la empinada gesta jurídico-normativa en los organismos de carácter multinacional que les ha permitido superar, al menos desde el punto de vista formal, todo tipo de discriminación. Concretamente, desde la investigación que resulta en este artículo, se plantea como objetivo, interpretar las características del protagonismo sociopolítico de las mujeres en latinoamericana, visto desde la perspectiva de la igualdad de género y de la pluralidad de discursos y prácticas que subyacen en esos movimientos sociales que reúnen solidariamente a las mujeres. Metodológicamente, la guía es una investigación documental, apoyada en un ejercicio hermenéutico y crítico. Se puede concluir que el papel de las mujeres en la organización sociopolítica de la sociedad latinoamericana, aún debe ser reivindicado pero sus bases jurídicas y hasta culturales ya están hechas.

Palabras clave: Mujeres; Géneros; participación política; militancia; igualdad

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Women, Gender and Political Participation in Latin America

Abstract

Reflecting on the historical significance of the leading presence of Latin American women in these times is an urgency, both to understand their situation, and to shed light on the course that, after centuries of discrimination, has allowed them to do so today. It has obviously been a dense and thorny path, full of obstacles, cultural, religious, social, economic, but above all, political. All of them have been overcome, from their almost anonymous participation in the independence processes, to the steep legal-regulatory feat in multinational organizations that has allowed them to overcome, at least from a formal point of view, all kinds of discrimination. Specifically, from the research that results in this article, the objective is to interpret the characteristics of the sociopolitical leadership of women in Latin America, seen from the perspective of gender equality and the plurality of discourses and practices that underlie these movements. social that unite women in solidarity. Methodologically, the guide is a documentary investigation, supported by a hermeneutical and critical exercise. It can be concluded that the role of women in the sociopolitical organization of Latin American society has yet to be vindicated, but its legal and even cultural bases have already been established**.**

Keywords: Women; Gender; political participation; militancy; equality

Introducción

La participación política de las mujeres latinoamericanas es un hecho sociopolítico que ha seguido un camino intrincado y que, hasta el día de hoy, requiere fuertes estímulos tanto desde los organismos internacionales como de las instituciones de cada país para poder aprovechar las puertas que han abierto las diferentes herramientas normativas que se han activado para tal fin. Además, desde las perspectivas de las ciencias sociales, es un tema bastante complejo para el análisis, pues, incluso respecto a la forma en que deben ser tratados los movimientos sociales que han impulsado esa participación, todavía se debate: ¿se trata de movimientos por la igualdad de género o géneros? ¿son movimientos de mujeres por su reivindicación?, o, ¿son organizaciones no gubernamentales (ONG), luchando contra la discriminación de las minorías?

De cualquier manera, lo más importante a inicios de la segunda década del siglo XXI, es entender que las mujeres, así en plural, representan un

sujeto histórico que ha adquirido su propio sitial en la dinámica sociopolítica del subcontinente a fuerza de tesón para la lucha por la igualdad de géneros, pero también por méritos que van más allá de una mera concesión del patriarcalismo cultural, que domina ese ámbito. Las mujeres tienen una estatura sociopolítica propia que comenzó a gestarse siglos atrás y que hoy ha encontrado mayores espacios para su consolidación.

La investigación que deriva en este artículo, tiene como objetivo interpretar las características del protagonismo sociopolítico de las mujeres en latinoamericana, visto desde la perspectiva de la igualdad de género, pero sin descuidar la pluralidad de discursos y prácticas que subyacen en los movimientos sociales que han empujado hacia una concepción de la participación política de las mujeres, con menos atavismos culturales y mayor apertura hacia la configuración de espacios multidiversos donde sean descartados los rasgos que tienen que ver el género o el sexo, para evaluar la capacidad de liderazgo político de las personas.

Desde el punto de vista metodológico las reflexiones desarrolladas aquí, son el resultado de un proceso investigativo de carácter cualitativo, que estuvo guiado por las técnicas de investigación documental, y la interpretación critico-hermenéutica. La ubicación y acopio de las fuentes documentales, se realizó mediante una búsqueda sistemática en las plataformas académicas: Google Scholar, Redalyc, Scielo, Dialnet entre otras; que permitió analizar y contrastar teorías, leyes, reglamentos, normativas y resultados de investigaciones, relacionadas con el tema. Igualmente, los criterios de inclusión de las fuentes documentales consultadas fueron pertinencia, exhaustividad y actualidad, y se excluyeron aquellas fuentes que no cumplieron, al menos con dos de los criterios de inclusión.

En cuanto a su estructura, el desarrollo de este documento presenta, en un primer apartado lo que tiene que ver con la evolución histórica de la participación política de las mujeres en latinoamericana, vista desde inicios del siglo XX. Luego se encuentra una reflexión acerca de las características de la militancia y liderazgo político de las mujeres en la región, para así, finalmente desarrollar una aproximación a los progresos jurídicos en para el ejercicio de la participación política representatividad de géneros en cargos públicos.

1. Retrospectiva histórica del protagonismo sociopolítico de las mujeres latinoamericanas

Reflexionar en torno al lugar que ocupa la mujer hoy en día, en el espectro político latinoamericano, pasa, necesariamente, por la auscultación del

pasado reciente y no tan reciente, pues, ciertamente, es ya común en el contexto de este subcontinente, encontrarse con una activa participación femenina tanto en el debate como en el ejercicio del poder político. Sin embargo, entender esté presente, es en principio una tarea retrospectiva, en el sentido de rastrear como se ha dado ese camino, siempre espinoso de la lucha de género en la arena política latinoamericana, y es que la mujer ha alcanzado esa posición luego de muchas refriegas, muchos altibajos y todavía se enfrenta a esa imagen estereotipada de ser débil en el ejercicio del poder o, cuando menos, poco consecuente con la acción gubernamental sostenida. Y es que, tanto los medios de comunicación como los escenarios de interacción social, aún se mantienen algo escépticos a brindar los espacios de participación en igualdad de condiciones para mujeres y hombres (Rincón, 2015).

En lo que sigue, se intenta un breve recorrido por lo que ha sido el devenir sociopolítico de las mujeres latinoamericanas, el cual es resultado de un complejo proceso de posicionamiento que, por supuesto no ha sido, ni lineal ni lento, por el contrario, ha ido configurándose como todos los cambios culturales, de manera acompasada con otros cambios de dimensiones civilizacionales como el tema de la tecnología o el de los medios de comunicación. En ese proceso son muchos los elementos que el análisis debe privilegiar y, conviene para ello aproximarse de forma gradual, tal como el fenómeno se ha dado (Morán, 2011).

1.1. El siglo XX

No hay una manera adecuada para subsumir la historia de las mujeres latinoamericanas en un solo haz analítico o histórico, sin ser injustos con algunos contextos y movimientos. Se trata, por eso, de poder superar esa visión que unifica a la fuerza y que en esa unificación deja de lado las características que podrían ser más significativas en cada territorio, llámese Ecuador, Colombia o Venezuela. Es así, de suma importancia para los intereses de este estudio mantener una mirada al fenómeno global sin perder de vista lo particular, en sintonía con la propuesta de Kirkwood (1986), los inicios del siglo XX para las latinoamericanas, estuvo signado por el auge de los movimientos obreros, pero en todos los países no hay mucha presencia femenina porque el mundo del trabajo era un feudo de los hombres.

No obstante, los albores del protagonismo sociopolítico de las mujeres en Latinoamérica tuvieron sus matices, por ejemplo, de acuerdo con Bonilla (2007) es en Argentina donde se encontrarán las iniciativas de organización feminista más pronunciadas a inicios de ese siglo. Un país en donde la incorporación de la mujer a la industria ya era importante en esa época

y aunque eso pudiera no traducirse en su presencia político partidista, lo cierto es que le permitía hacerse notar en la cotidianidad del país que al final es un paso previo.

En ese proceso evolutivo, en el caso mexicano, una de las autoras que se ocupó con mayor ahínco de recuperar la historia de la presencia femenina fue Asunción Lavrin, esta mujer de origen cubano, pero con toda una trayectoria en universidades estadounidenses, considera determinante el papel jugado por la religión en la trayectoria del patriarcado en México (Escandón, 2011). Lavrin, fue construyendo la noción de los estudios de género y abonó el terreno para edificar una reflexión en cuanto al control social ejercido por la iglesia sobre la condición de las mujeres.

La realidad de las mujeres mexicanas a principio del siglo XX es también una mixtura de las características que derivan de la imagen revolucionaria. Siendo la rebeldía una actitud puesta de moda en aquel momento, lo concreto es que las mujeres fueron erigiéndose como seres con autonomía que eran capaces de pensar y debían ser pensadas para la construcción de una sociedad más equilibrada y justa.

Además de México y Argentina, los movimientos feministas tuvieron presencia durante las tres primeras décadas del siglo XX en todo el continente, con sus altibajos, pero manteniendo como signo común la necesidad de reafirmar el protagonismo de las mujeres en la lucha por derechos cívicos y culturales. En Cuba, por ejemplo, se recuerda el surgimiento organizacional del movimiento "Rosa Luxemburgo", con su evidente tendencia ideológica y, en el caso venezolano, la agrupación femenina de mayor fuerza pública tuvo como inspiración la lucha contra la tiranía de Juan Vicente Gómez, que lideraron, una vez caída la dictadura, varias iniciativas de modificación del Código Civil, para lograr más igualdad ante la ley (Vitale, 2020).

En general son varios los eventos, organizaciones y protagonistas que apuntalaron el rol que van a desempeñar las mujeres en el desarrollo del siglo XX. Argentina, Cuba, Colombia, Venezuela, entre otros, son escenarios de un fuerte movimiento social que conducirá dialécticamente de a poco a las mujeres a posicionarse en el mundo que le había sido esquivo, al menos formalmente, hasta la llegada de las dictaduras en Latinoamérica.

La sacudida de los ochenta. La década de 1980 quedará marcada en la historia como una de las que mayor número de transformaciones sociales albergó en todo el mundo, especialmente en Latinoamérica. Se inicia en varios países un movimiento feminista que tiene como consigna la emergencia de las mujeres como nuevo sujeto político, afirmando la perentoriedad de hacer una praxis de lo público distinta, con una nueva nomenclatura para pensar, llegar y ostentar el poder, superando los esquemas democráticos tradicionales surgidos luego de la caída de las dictaduras.

La particularidad de este movimiento de mujeres en los 80', estriba en el énfasis que coloca por colonizar los pequeños espacios. Logrado el reconocimiento macro a través del sufragismo, las mujeres enfilan sus fuerzas hacia el reconocimiento de su individualidad, de sus capacidades para dirigir tanto en lo público como en lo privado, logrando imponer la consigna "lo personal es político" (De Giorgi, 2016: 14).

En esta perspectiva, la década de los ochenta, del siglo XX termina por ser para las mujeres en Latinoamérica, una rebelión cultural sin precedentes, la neoidentidad femenina procura la superación de los signos modernos que elevaron al sujeto "hombre" como centralidad civilizacional. Se trata entonces de lograr el reconocimiento y la legitimidad social por encima del viejo sistema de creencias modernas, afincado en el esquema de pensamiento patriarcal.

2. Presencia y acción política de las mujeres latinoamericanas: liderazgo y militancia

La comprensión integral de la relación entre mujeres, géneros y política es compleja pero posible en la medida en que se agreguen los elementos que, conjugadas pueden acrisolar la mirada sobre los acontecimientos, eventos, corrientes, y hasta personalidades que han contribuido a enriquecer esa historia del devenir de las luchas de las mujeres en la región por hacerse sentir y hacerse incluir.

2.1. Liderazgo y militancia en Organizaciones sociales

En ese construirse y mostrarse como un nuevo sujeto, algunos estudiosos como Bartra (1992), sugieren el estudio de una serie de indicadores que arrojan claridad al proceso que implica el nuevo rol de las mujeres en el marco de las organizaciones sociales. En sus iniciativas de organización social, las mujeres de finales del siglo pasado se encuentra frente a la necesidad de vincularse a dos niveles organizativos y de lucha; por un lado, deben involucrarse en la consecución de los recursos que le permitan la subsistencia de ellas y de sus familias, de allí su creciente dinámica económica en las áreas de la economía, formal o informal y; por el otro, las mujeres se encuentran encabezando las organizaciones barriales que se proponen el rescate de los servicios públicos y la armonización de la convivencia comunitaria.

Visto de una manera global, los nuevos elementos que se encuentran en la génesis del liderazgo de las mujeres en las organizaciones sociales latinoamericanas, se muestran en la figura 1.

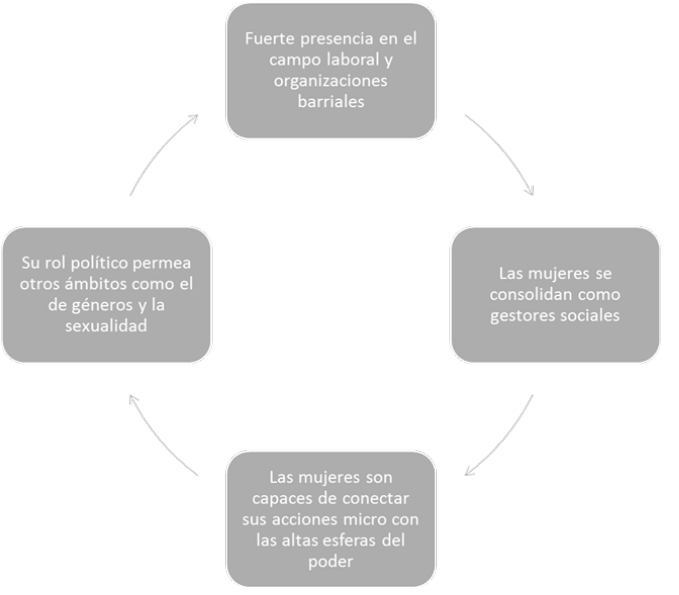

Figura 1. Elementos para el surgimiento del liderazgo de las mujeres en las organizaciones sociales

Fuente: (Elaboración propia).

2.2. Liderazgo y militancia en organizaciones con fines políticos

La integración a los partidos y organizaciones con fines políticos, supuso para las mujeres un paso importante para acercarse al poder y pensar en acceder a las instancias de decisión política, ya sean las dependencias locales, o las nacionales, en ámbitos como el poder legislativo, judicial o ejecutivo. Si cabe alguna duda al respecto solo hay que mirar, finales del siglo pasado e inicios de este los casos de mujeres no solo militantes sino líderes de sus organizaciones y logrando la cima del poder como: Michelle Bachelet, Cristina Fernández y Dilma Rousseff. En esos casos, el liderazgo de las mujeres se ha construido en un constante dialogo/confrontación con el discurso patriarcal dominante, y como resultado de una relación de iguales, no en el marco de las relaciones de géneros como algo reivindicativo de las

mujeres sino como un proceso de reconocimiento de las diferencias mutuas entre personas que ejercen funciones de liderazgo (Rostagnol, 2017).

En la figura 2, se muestran los rasgos estereotipados que enfrentan las mujeres para desarrollar su militancia y alcanzar liderazgo en los partidos políticos de América Latina.

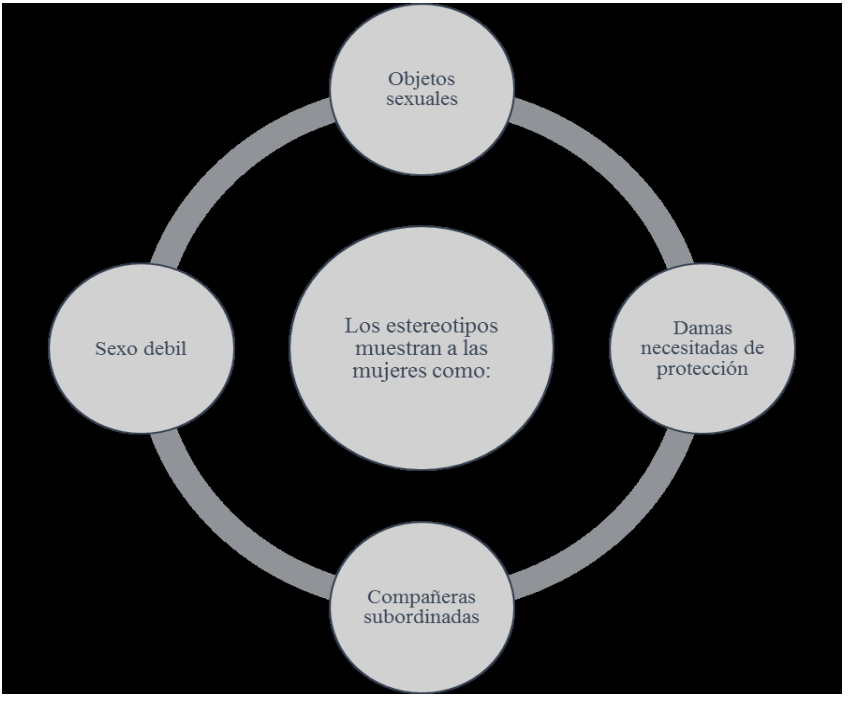

Figura 2. Los Estereotipos enfrentados por las mujeres en su participación en organizaciones políticas

Fuente: (Elaboración propia).

Con todo y los estereotipos, con la incursión, permanencia y éxitos de las mujeres en el seno de las organizaciones con fines políticos se produce un repensar del poder tanto de estas organizaciones como del Estado, la acción de los movimientos de mujeres y de algunas particularidades, mostrando que el poder no es un instrumento que se posee y usa solo en, desde y por el Estado, por el contrario, el poder es una especie de magma que se filtra a todas las relaciones, incluyendo las de género y condiciona las prácticas y los discursos que construyen realidades, llámese militancia o liderazgo (Piedra, 2004).

3. La participación política de las mujeres y sus progresos jurídicos

Comprender la ruta que ha conducido a la consolidación del rol de las mujeres en la dinámica sociopolítica de América Latina, pasa también por examinar cuales han sido los progresos desde el punto de vista jurídico de ese rol. En este tema hay que distinguir dos iniciativas claras que marcan el progreso jurídico favorable a ampliar las posibilidades de participación política de la mujer, una que se libra desde los organismos internacionales, la Organización de las Naciones Unidas (ONU), especialmente, y las experiencias locales que se desarrollan en función de la realidad particular de cada país.

3.1. La legislación e iniciativas internacional favorables a la participación política de las mujeres

En el marco de las iniciativas internacionales sobre los derechos a la participación política de las mujeres hay un amplio repertorio de leyes, normas, consensos y pactos que engloban desde los derechos humanos como contexto normativo más amplio, hasta los aspectos jurídicos multilaterales de organismos regionales y sub-regionales. Esto significa que las mujeres, como tales, están protegidas por una gran cantidad de instrumentos que en la normativa internacional regulan la posibilidad que tienen todas las personas, independientemente de su sexo, edad, raza o religión a involucrarse activamente en los espacios de participación política que conduzcan también a la obtención de cargos en los poderes públicos.

Para la reseña de estos avances en materia internacional de las normativas favorables a la inclusión de las mujeres en la vida política y pública, se toma como referencia principal el documento del PNUD, específicamente de ONU mujeres (2014), esta organización funciona como un dispositivo de apoyo de las Naciones Unidas para impulsar la paridad de género en las participación política, en tanto, promueve y asesora la instauración de normas ese orden. Igualmente, desde ONU Mujeres, se respaldan ciertos procesos que procuran la igualdad de género en áreas prioritarias como: el incremento del liderazgo de las mujeres en organizaciones políticas, la eliminación de la violencia contra las mujeres; el progreso económico de las mujeres; y la incorporación de la paridad de género como enfoque de la planificación del desarrollo en la región.

En tal documentación se encuentra una amplia perspectiva de estos progresos jurídicos, entre los cuales se registran: a) la Convención interamericana sobre la concesión de los derechos políticos de la mujer, con

una perspectiva de carácter universal; b) Convención sobre los derechos políticos de las mujeres, donde se establece que además del derecho al voto, tienen derecho a ser elegibles para todos los organismos públicos y a ocupar cargos públicos (Asamblea General de las Naciones Unidas, 1954); c) La Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer (conocida como CEDAW, por su sigla en inglés) y; d) Declaración y Plataforma de Acción de Beijing de 1995.

Todas estas normativas internacionales juegan el rol de referencias marco para lo que son los marcos jurídicos nacionales de cada país. En ánimos de facilitar en una sola mirada las características de estos documentos, se puede observar la tabla 1.

Tabla 1. Cuadro síntesis de las iniciativas jurídicas favorable al protagonismo político de las mujeres

Documento y fecha	Idea fuerza
Convención interamericana sobre la concesión de los derechos políticos de la mujer (1948)	Afirma el derecho al sufragio de las mujeres y prohíbe cualquier acto de discriminación que les obstaculice el goce de ese derecho
Convención sobre los derechos políticos de las mujeres	Se centra en el derecho al sufragio de las mujeres, ya no solo en sus posibilidades como electora sino también en las de ser elegida y ejercer cargos públicos
La Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer	Se considera el instrumento jurídico más importante en cuanto al establecimiento de garantías de igualdad de género, se le reconoce su amplitud y la fuerza que imprime a los procesos de seguimiento y sanción a aquellos países que infringen la normativa
Declaración y Plataforma de Acción de Beijing de 1995	Presenta una amplia perspectiva acerca de los derechos y garantías que deben recibir las mujeres, en una síntesis cualitativa que va desde lo electoral, pasando por lo laboral hasta lo sexual y étnico
Consenso de Quito	Consolidó un foro abierto para la discusión y acciones frecuentes en procura de la ampliación de la democracia desde la perspectiva del enfoque de género y sobre la base de la paridad de la participación política.

Fuente: Elaboración propia basada en los documentos citados.

3.2. Algunos países y su realidad en cuanto a garantizar la participación política de las mujeres por la vía jurídica u otras vías institucionales

El término "Latinoamérica" pretende, de manera muy ambiciosa, abarcar una gran cantidad de realidades sociales, culturales, económicas y políticas que, en este caso, ilustran en una "unidad diversa", las situaciones que les corresponde enfrentar a las mujeres de varios países. La intención aquí es, una vez reseñada a grandes rasgos la dinámica jurídica bajo la cual se ha constituido la historia de la participación política de las mujeres en esta región, se focalizarán algunos de esos países que, en forma particular también han avanzado en los que se conoce como la paridad electoral y el enfoque de género para la democracia.

Venezuela. El caso venezolano es bastante singular en la región pues desde finales del siglo pasado vive un proceso autocalificado como "Revolución Bolivariana", impulsado originalmente por el liderazgo mesiánico y antipolítico de Hugo Chávez, el cual, ante la inminencia de su muerte designo a su sucesor Nicolás Maduro que aun hoy se mantiene en el poder. Chávez llega al poder luego de una intentona golpista contra el expresidente, también fallecido, Carlos Andrés Pérez con la impronta de un nuevo liderazgo, preconizando una democracia de nuevo tipo, participativa y protagónica, frente a lo que él llamaba, el viejo modelo de la partidocracia, que era eminentemente representativo.

En el ámbito legislativo, Mota (2017), considera que ha habido avances importantes como la aprobación de la Ley de trabajadoras y Trabajadores en la que hubo un largo debate nacional con la activa participación de las mujeres organizadas en colectivos sociales; La Ley Orgánica para el Derecho de las Mujeres a una Vida Libre de Violencia, aprobada en el año 2007 mediante la cual se esclarecen una gran cantidad de formas de violencia contra las mujeres, muchas de ellas hasta ese momento ocultas y sin justicia; y, la norma oficial para la atención integral de la salud sexual y reproductiva, una norma novedosa que contempla los procederes metodológicos para la preservación de estos derechos tan complejos a veces. El caso de Venezuela es también emblemático si se considera el hecho no menor de la presencia de mujeres en muchos de los principales poderes del país, como lo son, el Consejo Nacional Electoral (CNE), la Fiscalía General de la Republica y hasta el Tribunal Supremo de Justicia, en varias ocasiones. Asimismo, la Revolución Bolivariana ensalzo lideresas importantes en cargos de elección popular como la Asamblea Nacional y las gobernaciones de varios estados del país.

Colombia. Este es otro país latinoamericano que le han tocado vivir episodios y periodos sociopolíticos turbulentos, cruentos en muchas ocasiones e, igualmente, con un papel protagónico de las mujeres, prácticamente en todas las áreas de la vida pública. La etapa de violencia

armada, tanto por parte de la llamada Guerrilla colombiana como desde el Estado generó un contexto, hasta hace poco tiempo lleno de convulsión política en el que la lucha de las mujeres no fue ajena.

Puede decirse que en este país, como en los demás que integran la región se han dado dos ámbitos de lucha: el informal, algo difuso, cotidiano para más señas, que se libra todos los días en el proceso de socialización y que se desarrolla en escuelas, iglesias, instituciones y, por supuesto en las familias, una lucha que por tener implícitos una serie de rasgos culturales que se modifican con mucha lentitud y no siempre de manera lineal, y, el ámbito formal-institucional que, entre otras cosas tiene relación con instrumentos jurídicos, institucionales y organizacionales.

En el ámbito constitucional, la realidad de las mujeres colombianas comienza a tomarse en cuenta, al menos desde el punto de vista formal, en la Constitución de 1886, donde por primera vez se avanza normativamente para el establecimiento de los derechos al sufragio, a la educación superior a la abolición de la potestad marital del hombre sobre la mujer, así como la libertad para que las mujeres casadas puedan administrar sus bienes. Aunque en la práctica no es sino hasta 1954 cuando, se aprueba el sufragio de las mujeres y su derecho a ser elegidas, mediante el Acto Legislativo número 03 (Cardona *et al,* 2019).

En suma, en aras de mantener la "economía analítica" propia de un esfuerzo de investigación como este, en el cuadro sinóptico (tabla 2), se muestra ahora, los preceptos normativos, básicamente constitucionales, de otros países de la región.

Tabla 2. Cuadro síntesis de los principios constitucionales que coadyuvan a la igualdad de géneros en otros países de Latinoamérica

País	Principios (artículos)
Argentina	Más que la Constitución se debe destacar la reforma constitucional del año 1994, en la cual se elimina toda discriminación de las mujeres y promueve acciones que garanticen la igualdad real de oportunidades y de trato. (Iturrez, s/f)
Perú	En la Constitución peruana, se contempla explícitamente la no discriminación por motivos de raza, sexo, idioma, ya sea en los procesos políticos, como en la dinámica laboral del país. (Comisión Interamericana de Derechos Humanos, 2000)

Chile	Chile, siendo signatario de la mayoría de tratados a favor de los derechos de la mujer, y habiendo sido gobernada recientemente por una mujer, no presenta en su texto constitucional una clara alusión a ese tema, pero es parte de su discusión actual por una Constituyente
Uruguay	Como en el caso peruano, el principio de no discriminación se encuentra contemplado en el artículo 8 de la Constitución uruguaya y desarrollada en otros instrumentos jurídicos

Fuente: Elaboración propia basada en documentos citados en la tabla.

Como se ha mostrado a lo largo de esta sección, la participación política de las mujeres y sus progresos jurídicos no han sido ni lineales, ni homogéneos, ciertamente, desde finales del siglo XX y en estas dos primeras décadas del XXI, todos los países en América Latina al menos desde el punto de vista declarativo, han apoyado los avances en materia normativa para el resguardo y/o expansión de los derechos de las mujeres, tanto en el ámbito político como en otros temas igualmente álgido. Hay que aclarar, eso sí, que el trazo analítico dibujado no pretende ser, de ninguna manera una mirada desde la jurisprudencia, por el contrario, ha intentado detenerse en una buena cantidad de variables que son imprescindibles para comprender de manera integral la situación en estudio.

Conclusiones

Sin duda, el protagonismo sociopolítico de las mujeres en Latinoamérica termina siendo una larga sucesión de aventuras y desventuras en donde el azar no tiene ningún peso. Las luchas de género, los movimientos en múltiples áreas y dimensiones, pero, sobre todo, la tenacidad propia de las mujeres cuando les corresponde enfrentar la adversidad, han sido solo parte de ese, ganarse a pulso de las mujeres, un lugar en la historia social y política de América Latina.

De este recorrido histórico, teórico y jurídico, queda la idea firme que, el contexto latinoamericano del siglo XX y principios del XXI esta pleno de nuevas categorías sociopolíticas propias de un discurso que reivindica, desde las diferentes corrientes ideológicas, la visión plural de la sociedad. Pero en esa pluralidad, destaca un discurso de ciudadanía y libertad para alumbrar los procesos de inclusión de las mujeres primero como parte de la tendencia sufragista, pasando por la necesidad de impulsar su militancia política y liderazgo, hasta llegar a reforzar el derecho que tienen las mujeres a ejercer cargos de elección popular.

Del mismo modo, conviene saber que cuando se trata de rastrear los avatares de los escenarios sociopolíticos que le ha tocado trascender a las mujeres latinoamericanas para llegar a ocupar el lugar que hoy les corresponde, hay que profundizar en el origen de las luchas independentistas, las gestas de las madres que defienden a sus hijos sin importar la dimensión de sus enemigos, la entereza de las campesinas que han labrado las tierras para producir el pan que se consume en la mesa de muchos hogares latinoamericanos y el fragor de las mujeres obreras que desde las primigenias organizaciones de ese tipo, confrontaron de frente el poder omnímodo de los hombres en un mundo social creado por ellos, para ellos.

Finalmente se logra constatar, a lo largo de este ejercicio ensayístico, la importancia que tiene para todos los estudiosos de este tema adoptar una concepción compleja e integral. Compleja para que no caer en la tentación de las simplicidades que a veces conducen a creer que las luchas por la igualdad de las mujeres, es una simple lucha de género o, un forcejeo de las organizaciones por alcanzar cuotas de poder político-partidista; e integral, para poder lograr una interpretación convergente, en la que se muestren, sino todas, si la mayoría de las corrientes sociales que confluyen en la preocupación por construir categorías de análisis adecuadas al tema de las mujeres, los géneros y la política en América Latina

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Latin American Experience in Constitutional and Legal Guarantees of Freedom of the Media

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Abstract

The objective of the research was to analyze the Latin American experience in constitutional guarantees regarding freedom of expression in the media. The document summarizes the results of a comparative legal study dedicated to the texts included in the constitutions of the Latin American states regarding the identification of norms that guarantee the freedom of the media in them. It has been established that most of the declared constitutions contain traditional guarantees of media freedom expressed in the legalization of this substantive freedom, its implementation without censorship and restrictions under the threat of responsibility for its abuse. Methodologically, the study was built on the basis of a dialectical approach for the dissemination of legal phenomena and processes using general scientific methods (systemic, logical, analysis and synthesis) and particular. In conclusion, it is evident that it is typical that the constitutions of Latin American states combine freedom of thought, expression and media in a single provision. In all other aspects, the list of identified guarantees is variable and in many countries they have no impact on the concrete reality.

Keywords: Latin American constitutionalism; human rights and substantive freedoms; freedom of expression in the media;

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rule of law guarantees; censorship.

Experiencia latinoamericana en garantías constitucionales y legales de libertad de los medios

Resumen

El objetivo de la investigación fue analizar la experiencia latinoamericana en garantías constitucionales concernientes a libertad de expresión en medios de comunicación social. El documento resume los resultados de un estudio jurídico comparativo dedicado a los textos incluidos en las constituciones de los estados latinoamericanos con respecto a la identificación de normas que garanticen la libertad de los medios en ellos. Se ha establecido que la mayoría de las constituciones declaradas contienen garantías tradicionales de libertad de los medios expresadas en la legalización de esta libertad sustantiva, su implementación sin censura y restricciones bajo la amenaza de responsabilidad por su abuso. En lo metodológico el estudio se construyó sobre la base de un enfoque dialéctico para la divulgación de fenómenos y procesos legales utilizando métodos científicos generales (sistémicos, lógicos, de análisis y síntesis) y particulares. Como conclusión se evidencia que es típico que las constituciones de los estados latinoamericanos combinen la libertad de pensamiento, expresión y medios en una sola disposición. En todos los demás aspectos, la lista de garantías identificadas es variable ni en muchos países no tienen ninguna incidencia en la realidad concreta.

Palabras clave: constitucionalismo latinoamericano; derechos humanos y libertades sustantivas; libertad de expresión en los medios de comunicación; garantías del estado de derecho; censura.

Introduction

The modern stage of social development which is increasingly characterized as an informational one (Beniger, 2009; Lyon, 2013; Martin, 2017; Webster, 2014), objectifies the study of the issues concerning legal regulation of freedom of the media and its guarantee (Czepek et al., 2009; Gelunenko et al., 2019; Klimkiewicz, 2010; Minasyan et al., 2017). The basic place here, of course, is occupied by constitutional norms. Their consideration in the comparative legal aspect of the Latin America countries is the subject of this work (https://constitutions.ru/) (https://worldconstitutions.ru/).

In order to remark on the further presentation of "the results of the comparative legal analysis, we point out that typically the guarantees of freedom of the media are associated, on the one hand, with positive legal regulation and, on the other, with prohibitions (censorship, other restrictive measures). In addition, we believe that the basic ones in this sense should be considered the constitutional provisions recognizing (guaranteeing) precisely freedom of the mass media in any form (for example, freedom of the press)" (Tulnev, 2019).

The strict following of the procedural form (Makogon et al., 2019), is the important point in the legal process (Makogon et al., 2017) on the basis of a broad understanding of legal responsibility (Makogon *et al*, 2017), as well as state responsibility (Belyaeva *et al*, 2017).

1. Methodology

The study was built on the basis of a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and particular scientific methods. Among the latter are formal-legal, linguistic-legal, and comparative-legal which were used together to identify guarantees of freedom of the media.

2. Discussion and Results

The required norms of all the provisions examined were not identified only in the constitution of Nicaragua. Particular attention will be paid to the constitutions of the Dominican Republic, Haiti and Costa Rica.

So, in Article 6 of the Constitution of the Dominican Republic, there is the right to express thoughts without prior censorship among the inalienable human rights. In relation to this work, we distinguish between norms on freedom of the mass media from freedom of thought and speech, although, of course, we do not deny their basic nature for freedom of the media. In this regard, we note that the Dominican version of constitutional legalization still concerns the freedom of thought and speech, including the prohibition of censorship. As will be demonstrated below, this approach is common for the focus group of constitutions. This is evidenced by Article 19 of the Haitian Constitution (Chapter II, "Public Law"), in virtue of which everyone has the right to express his/her opinion on any matter by any means at his/her disposal.

The expression of thought, in whatever form this may take place, cannot be censored, unless war was declared. Abuses of the right to express thoughts are determined and punished by law. Thus, in a direct semantic interpretation, Article 19 of the Constitution of Haiti, of course, formalizes the right of thought with the prohibition of censorship and liability for abuse of this right. However, the mention of any available means of expression is comparable to the media. In such a broad interpretation, it can be considered that the Haitian Constitution also included guarantees of freedom of the media.

In a similar aspect, Article 29 of the Constitution of Costa Rica (Part IV, "Personal rights and guarantees") could be assessed: everyone has the right to disseminate their views orally or in writing and to publish them without prior censorship, but is also liable in cases and in the manner prescribed by law for abuse which can be committed using this right. The difference from Article 19 of the Haitian Constitution is that the Constitution of Costa Rica refers to the dissemination of their views in specified verbal or written forms, without mentioning the press and the media.

Opposed to versions mentioned above is the laconic version of Article 14 from the Constitution of Argentina (Chapter One. Principles, rights and guarantees) clarifying the dissemination of their ideas in the press without prior censorship ... It is thanks to the mention of the press this norm should be considered legalized freedom of the media with good reason.

In continuation of the Argentinean version, it is logical to indicate the norms of the Constitution of Honduras (Chapter III, "Freedom"). According to Article 59 of this constitution, everyone can freely, without prior censorship, express their opinions, orally or in writing, through the press or in any other way, which does not exclude liability for crimes and abuses committed in the exercise of this right, in the manner and cases provided by law.

A printing house or its equipment may be in no case confiscated as an instrument of crime. Thus, in the Constitution of Honduras, using the term "censorship" is the addition of an explicit guaranteeing triad (freedom of the media, prohibition of censorship and statutory liability for its abuse) to be further supplemented in the form of a ban on confiscation of a printing house or its equipment as an instrument of crime; the last is thoroughly considered as implementation of the term "censorship".

The norms of the Constitution of Guatemala have also been constructed in the format under consideration for the Constitution of Honduras. In Chapter I "Personal guarantees", Article 57, it is established that thoughts could be expressed freely, without prior censorship. Anyone who abuses this right without respect for privacy or morality is responsible before the

law.

Printing houses, radio and television stations or any other media, as well as their equipment and furnishings cannot be confiscated. They cannot be seized or be subjected to coercive forced economic sanctions; they cannot be closed in connection with the charge of a crime or omission in transmitting any thoughts; their activities cannot be suspended.

In addition, the guarantees already identified are supplemented by the determination that cases of crimes or omissions referred to in Article 57 are considered exclusively by jury. Note that the considered Article 57 of the Constitution of Guatemala literally set free expression of thoughts. However, the following provisions of the norm are comparable with the media; therefore, it would be reasonable to consider the combined text of Article 57 as constitutional guarantees of freedom of the media.

We also regard Article 7 of the Constitution of the United Mexican States (Chapter I, "On Guarantees of Personal Rights") as a guaranteeing increment: it represents the freedom to write and publish the written on any subject as an inviolable matter. No law or authority can establish preliminary censorship, require a guarantee from authors or publishers, or restrict the freedom of the press. The limitations of this freedom are determined only by due respect for private life, morality and public peace. A printing office may in no case be arrested as an instrument of crime.

The establishments of the above norm are together considered a guarantee of freedom of the media. The legalization of the inviolability of freedom to write and publish, claims for surety from authors or publishers, and restriction of this freedom on the basis of due respect for private life, morality and public peace are specific.

The Constitution of the Bolivarian Republic of Venezuela and the Political Constitution of Peru are distinguished by the numerous guarantees sought. Note that the Constitution of Venezuela separates freedom of speech and freedom of the media. The first is legalized in Article 57, and the second in Article 58 (Chapter III, Civil Rights). On the basis of the Constitution, the media are independent and base their activities on the principle of pluralism, as well as bear responsibility established by law. Everyone has the right to receive timely, truthful and impartial information without censorship in accordance with the principles of this Constitution, as well as to refute and correct information in case of direct influence by the media through reporting in inaccurate or offensive form.

Thus, in comparison with the constitutional guarantees of freedom of the media already considered (statutory liability and lack of censorship), the principles of independence and pluralism of activity should be considered in Venezuela; refutation and correction of information in the event of direct influence by the media through the reporting of information in inaccurate

or offensive form.

In addition, Chapter VI "On Rights in the Field of Education and Culture" of the Venezuelan Constitution sets forth guarantees of freedom of the media in relation to this area.

So, according to Article 101, the state guarantees the transmission, receipt and dissemination of information in the field of culture. The duty of the media is to promote the dissemination of the values of folk traditions and the works of artists, writers, composers, cinematographers, scientists, and other creators of the country's cultural values. Television media must include subtitles and sign language interpretation for people with hearing problems.

In accordance with Article 108, the public and private media must contribute to the civic formation of an individual. The state guarantees public services of radio, television and a network of libraries and computer science in order to allow universal access to information. Educational centres should use the achievements of new technology innovations in accordance with the requirements established by law.

Note that the provisions enshrined in Articles 101 and 108 of the Constitution of Venezuela are single and are no longer found in any of the constituent laws considered. We may note in an approximate sense only Article 14 of the Political Constitution of Peru: the media should cooperate with the state in education and moral and cultural formation.

In all other respects, the aggregate provisions of Article 2 from the Constitution of Peru (Section I "Fundamental Rights of a Person") are traditional in securing the right of everyone to freedom of information, opinion, expression and dissemination of ideas, either verbally, in writing, visually, or by other similar means of social communication without prior approval, censorship, or obstacles in accordance with the law.

This article also clarifies that crimes committed through books, the press and any other media are defined in the Criminal Code and are considered by the courts. Any action that suspends or eliminates any means of expression or prevents their free circulation constitutes a crime. It is important to note the semantic link between freedom of speech and the freedom of media, which was formalized by the Constitution of Peru and consists in that the right to information and opinion includes the right to create means of communication.

It is advisable to refer to Article 61 from the Constitution of Peru: the press, radio, television and other media, and, in general, enterprises, goods and services related to freedom of speech and communication cannot be the subject of exclusive right, monopoly or excessive accumulation, direct or indirect, of the state or private parties. Note that this kind of antimonopoly

position was found only in the Constitution of Cuba, but taking into account its political regime and economic formation.

So, its Article 52 (Chapter VI, "Fundamental Rights, Obligations, and Guarantees") provides that "citizens have freedom of speech and press in accordance with the goals of a socialist society. The material conditions for its implementation are that the press, radio, television, cinema and other mass media are state or public property and in no case can be subject to private ownership, which ensures their use exclusively in the service of the working people and in the interests of society.

The law governs the exercise of these freedoms" (Article 52). On the one hand, the lack of mention of censorship, the activities of the media in accordance with the goals of a socialist society, and their belonging to the state and society do not indicate freedom of the media. But as a positive guarantee we evaluate the fact of constitutional legalization of the mentioned institutions. Next, we present a characterization of the constitutions of Bolivia, Brazil, and Colombia in the necessary aspect, clarifying the fragmenting nature of the required guaranteeing standards.

Thus, the Constitution of Bolivia does not directly act as a source of guaranteeing freedom of the media in ordinary conditions. However, there are provisions within the framework of the protection of public order (Section Three) when, for the period of a declared state of siege, censorship of general correspondence may be introduced...

In the event of a war with a foreign state, censorship is established over correspondence and all means of publication (Article 35).

Thus, freedom of the mass media without censorship is presumed outside special regimes, and censorship is allowed in a state of siege and martial law.

Note that the regulation of freedom of the media in special regimes is also characteristic of the Brazilian Constitution, in which Article 139 (Section II "On the state of emergency") it is determined that measures may be taken under the state of emergency, such as restrictions on ... the transmission of information and freedom of the press, radio and television broadcasts in accordance with the provisions of the law.

We draw attention to the fact that in the above norm there is no mention of censorship, but we are talking about legislative restrictions on freedom of the press, radio and television programs. It is noteworthy that the Brazilian Constitution does not mention the term "censorship" at all.

Chapter V "On Social Communication" of the Brazilian Constitution states that the expression in any form of ideas, creativity, images and information, and in whatever way they are distributed, are not subject to any restriction; constitutional provisions must be respected (art. 220). We

believe that the above norm is one of the examples typical of Latin American constitutions in terms of combining freedom of thought, speech and mass media in one constitutional provision.

Paragraph 1 in the article legalizes that no law can contain provisions that could become an obstacle to the complete freedom of journalists to receive information in any way of social communication without prejudice to constitutional provisions. Thus, a special constitutional guarantee of freedom of the media is nevertheless enshrined: the prohibition of damage to the Constitution and the impossibility of legislative norms to limit the complete freedom of journalistic activity.

Article 38 of the Constitution of Colombia (Part 3 "On civil rights and social guarantees") differs in its fragmentation in a restrictive aspect: mailing of print media may be taxed, but may not be prohibited in peacetime.

Conclusions

Of all the provisions examined, only in the Constitution of Nicaragua there are no guarantees of freedom of the media identified. The desired freedom is not legalized in the constitutions of the Dominican Republic, Haiti and Costa Rica. However, the basic version contains the right to express thoughts (Dominican Republic, Haiti) / to disseminate one's views (Costa Rica) without prior censorship (Dominican Republic, Haiti), except in cases of declaration of war (Haiti); and there is statutory liability for abuse of law (Haiti, Costa Rica).

The constitutions of Bolivia, Brazil and Colombia are characterized by fragmentary guarantees of freedom of the media formalizing only:

- The combination in one provision of freedom of thought, speech and the media (Brazil);

- Censorship of general correspondence during a period of declared siege or martial law (Bolivia);

- Restrictions on the transmission of information and freedom of the press, radio and television broadcasts during a state of emergency (Brazil);

- The prohibition of damage to the Constitution and the impossibility of legislative norms to limit the complete freedom of journalistic activities (Brazil);

- The prohibition of sending print media in peacetime (Colombia).

Most constitutions examined provide traditional guarantees of freedom of the media expressed in the legalization of this freedom (Argentina,

Honduras, Guatemala, Cuba, Mexico, Peru), its implementation without censorship (Argentina, Venezuela, Honduras, Guatemala, Mexico, Peru) and restrictions (Mexico, Peru) under the threat of statutory liability for abuse (Venezuela, Honduras, Guatemala, Peru) and the inability to confiscate the printing press or its equipment (Honduras) as tools of crime.

The rest of the list of guarantees sought is varied and presented in the following varieties:

- Independence and pluralism of activity; refutation and correction of information in case of direct impact from the media by reporting inaccurate or offensive form; guarantees of freedom of the media in relation to education and culture (Venezuela);

- Exclusive consideration by a jury of crimes or omissions related to freedom of the media (Guatemala);

- The inviolability of freedom to write and publish; a guarantee requirement from authors or publishers; restriction of this freedom on the basis of due respect for privacy, morality and public peace (Mexico);

- The prohibition of the media as an object of private property, which ensures their use exclusively in the service of the working people and in the public interest (Cuba)

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Iglesia católica y política en América Latina: la teología de la liberación *

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Resumen

El trabajo analiza la posición de la Iglesia católica como actor político en América Latina luego de la Segunda guerra mundial hasta la década de los ochenta, con un enfoque específico sobre la Teología de la Liberación. Es una investigación analítico crítica con base documental, donde se consideran los elementos teológicos y filosóficos que han engendrado esta teología política. En ella, se produce una narrativa de los textos sagrados cristianos a partir del hombre concreto en situación de pobreza en esta región, con un enfoque denominado "recentramiento antropológico". Su carácter político en general, se expresa en la "opción preferencial por los pobres" enmarcada en el Concilio Vaticano II y en la *Populorum Progressio* de Pablo VI. Hay ramas moderadas como la Teología del Pueblo y otras más radicales que se fundamentan en el método marxista de la "lucha de clases" y de la "vía violenta", como medios para solucionar la causa social. El resultado es un enfrentamiento entre el método marxista y el método de la Doctrina social de la Iglesia para la solución de los problemas de la pobreza e indirectamente de la dependencia, donde se evidencia la "inconciliabilidad epistemológica" entre la doctrina marxista y la doctrina cristiana.

Palabras claves: Iglesia católica; teología de la Liberación; América Latina; marxismo; política.

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Catholic Church and Politics in Latin America: Liberation Theology

Abstract

The work analysis the position of the Catholic Church as a political actor in Latin America after the Second World War until the eighties, with a specific focus on Liberation Theology. It is a documentary-based critical analytical investigation, where the theological and philosophical elements that have engendered this political theology are considered. In it, a narrative of the Christian sacred texts is produced from the concrete man in a situation of poverty in this region, with an approach called "anthropological re-centering". Its political character in general is expressed in the "preferential option for the poor" framed in the Second Vatican Council and in the Populorum Progressio of Paul VI. There are moderate branches such as People's Theology and other more radical ones that are based on the Marxist method of the "class struggle" and the "violent way", as means to solve the social cause. The result is a confrontation between the Marxist method and the method of the Social Doctrine of the Church for the solution of the problems of poverty and indirectly of dependency, where the "epistemological irreconcilability" between Marxist doctrine and Christian doctrine is evidenced.

Keywords: Catholic Church; Liberation theology; Latin America; Marxism; politics.

Introducción al contexto histórico latinoamericano post Segunda guerra mundial. Entre Desarrollismo y Modernización

Al finalizar la Segunda guerra mundial, América Latina lidiaba entre la modernidad versus la ruralidad, la modernización versus el subdesarrollo. Todo ello en medio del juego político y geopolítico de las dos superpotencias antagónicas del planeta, Estados Unidos de América y la U.R.S.S., quienes habían generado la nombrada Guerra Fría. En ese contexto, la Iglesia católica latinoamericana debía confrontar situaciones políticas diversas de país a país en el continente, que se desplazaban entre momentos de autoritarismo, momentos de dictadura, frágiles democracias (décadas del 50 al 80) hasta los "gloriosos 90", periodo de importantes reformas políticas y de recuperación de la democracia. Todas estas situaciones de enfrentamiento político y ambientes muy radicalizados ideológicamente al interior de los países de América Latina, se reflejaban en divisionismo en la Iglesia y en su papel evangelizador.

Los índices elevados de pobreza y miseria al sur del Rio Grande, priorizaban explicaciones e intervenciones públicas desde teorías económicas con impacto social favorable. *Desarrollismo* y *modernización* fueron las teorías dominantes. Entre Marx y Keynes se debatían las tesis del desarrollismo económico en América Latina, apareciendo con vigor al inicio de la década de los Cincuenta el *Manifiesto de la Habana* de Prebisch y Singer (1950).

El documento, presentado por Raúl Prebisch, primer Secretario Ejecutivo de la Comisión Económica para América Latina y el Caribe (CEPAL), organismo regional de la ONU, se apoyaba en las tesis del economista Hans Singer quien describió, con método estadístico, el inicuo intercambio de los países exportadores de materia prima y los países manufactureros del primer mundo. Este tipo de intercambio expresaba la dependencia y el retardo que la región tenía respecto a sus *partners* norteamericanos y europeos, a los cuales estaban destinadas las materias primas producidas, lo cual generaba una comercialización desigual. El *Manifiesto de la Habana* asumió así no solamente una valencia científica económica y social relevante, sino también ética, entre un centro industrializado y una periferia proveedora de materia prima. El ideario generado por el documento constituyó la punta de lanza para los movimientos políticos de izquierda de Latinoamérica. La tesis Prebisch-Singer fue apoyada en toda América Latina por economistas anticapitalista como: Cardoso, Dos Santos, Faletto, Pinto Santa Cruz, Frank, Urquidi, Ferrer, entre otros; algunos de los mencionados, en los años Noventa, revisaron sus posturas radicales hacia visiones más progresistas.

Así que, en línea con el relativo éxito ya experimentado por la teoría de Keynes, al final de los años 60 se insistía en la intervención del Estado y en su control y regulación sobre las políticas fiscales y la dirección de la economía, institucionalizando el capitalismo de Estado; esto conllevaría la creación de empresas estratégicas y nacionalización de las que eventualmente ya existían, además de la regulación bancaria. En el tiempo este modelo económico se asociaría a hiperinflación y consiguientes crisis económicas e inestabilidad política en América Latina.

Como un desafío a la teoría de la Dependencia se desarrollaría la teoría liberal de la Modernización (años 50 y 60), que se concretaría en el famoso plan de financiamiento a las economías de América Latina, denominado *Alianza para el Progreso* (1961-1970), del presidente Kennedy. Tal teoría se anclaba en las cinco tesis de Walter W. Rostow descritas en su texto *Las etapas del crecimiento económico* (1960), para el crecimiento económico basado en capitalismo y empresa. Si bien el proyecto *Alianza para el Progreso* promovía la evolución económica y el desarrollo de la democracia en el continente latino, al igual que la propuesta dependentista, no produjo los resultados esperados.

En esta dialéctica de desarrollo y subdesarrollo un hecho político importante lo constituyó la alineación de la revolución cubana con el marxismo leninismo. Por primera vez el continente sería el epicentro de la amenaza de un conflicto nuclear entre EUA y URSS (Crisis de los misiles, 1962). Con este evento la política reconquistaría frente a la economía, su centralidad en América Latina y en el mundo, así como la misma América Latina entra en la estrategia global de las potencias.

1. El Catolicismo Social y la Teología de la Liberación

Los filósofos franceses Jacques Maritain y Manuel Mounier, de forma diferente, han tenido gran influencia en los movimientos católicos latinoamericanos del siglo pasado. Ambos pensadores proponen un cambio de perspectiva a partir del ser humano y de la misma Iglesia, como exigencia existencial e interpretativa frente a los "signos de los tiempos".

Los partidos democratacristianos hacen de los textos de filosofía política de Maritain su Biblia, planteando reconstruir las sociedades a través de un renovado humanismo integral anclado en los valores cristianos originarios y adaptados a las necesidades del hombre contemporáneo. Mounier, por su lado, era partidario de un cambio radical en la filosofía del Estado y del papel teleológico-pastoral de la Iglesia, que desembocarían en una alianza entre fe y acción. El modelo de la nueva cristiandad, el nuevo lazo entre fe y razón-acción, debía realizarse, para él, en unión del ideal cristiano con el ideal socialista, directo heredero terrenal del empeño y anhelo cristiano. Para Mounier, la fe se transforma además en instrumento de acción humana, de liberación de la "servidumbre egipcia" del pueblo de Dios, como lo expresara San Lucas. El evangelista refiere que Jesús, leyendo del libro del profeta Isaías, dice que ha venido "para llevar la buena noticia a los pobres; a anunciar libertad a los presos y a dar vista a los ciegos; a dar libertad a los oprimidos" (Lc. 4, 18). Mounier historiza las palabras de Jesús en el siglo XX y lo dirige hacia el rescate de los proletarios y de los pobres, como lo anuncia en su propuesta para la constitución de un socialismo personalista.

Los dos pensadores coinciden en exigir un verdadero cambio estructural en el pensar y actuar de los católicos, dando inicio al surgimiento de una "teología de la acción", que propiamente en América Latina encontrará terreno fértil en buena parte de las comunidades eclesiales, hasta ser reelaborada en clave crítica autóctona, en función de las realidades peculiares de la sociedad latinoamericana. Iniciada antes del Concilio Vaticano II, la reflexión eclesiológica sobre la función de la teología da inicio a movimientos internos a la Iglesia católica que hasta el presente inspiran el *quehacer* a los católicos, frente a los acontecimientos históricos en esta parte del mundo.

Desde estos debates sobre la interpretación de la relación Dios/hombre, y entre Iglesia/política/sociedad, varios fueron los teólogos del pre y post Concilio que comienzan la arquitectónica conceptual de movimientos latinoamericanos de renovación eclesial y político. De estos fermentos surgirían, por un lado, partidos políticos y, por el otro, el movimiento teológico de renovación denominado *Teología de la Liberación*. Al respecto señala el jesuita Martin Maier, "Hablar de la teología en América Latina después del Concilio Vaticano II es hablar de la teología de la liberación" (Maier, 1999: 146). Movimiento vasto y no uniforme, que hace referencia con su nombre a la *liberación* integral del hombre de sus condiciones de pobreza y miseria, de exclusión, de abandono y sumisión, y que promueve un rol más activo de la Iglesia en la sociedad de América Latina y del mundo.

Se trata no sólo de la liberación del pecado –misión primaria de la evangelización–, sino también "liberación" de las estructuras políticas y sociales injustas, generadas por el mismo pecado del hombre. De esa manera, y continuando la línea ya adelantada por los primeros frailes desembarcados en el continente, se aspiraba a una nueva Iglesia que, con sus fieles, luchase por la trasformación de la realidad que oprime, tiraniza y humilla al ser humano. Dividida entre una matriz católica y protestante, esta teología no ha tenido una línea única ni ha expresado siempre coherencia, siendo el resultado de una multiplicidad de situaciones nacionales de América Latina y de influencias europeas a veces en contraste entre ellas. Saranyana a tal propósito nota:

> La TL (Teología de la Liberación) ha tenido diversas etapas, como todos reconocen; ha habido TL católica y TL protestante; y, además, los cultores de la TL han expresado tesis teológicas diversas y, sobre todo, han tenido intereses teológicos dispares e incluso contradictorios. Todo ello complica un tanto la especificación de este marco teológico. Por ello, quizá sea exacto hablar de un conjunto de teologías latinoamericanistas –unas más próximas a la TL que otras, aunque todas con una fuerte carga soteriológica y reivindicativa– (…) (Saranyana, 2002: 256).

Surge así una distinta interpretación de la función de la fe en la historia, que en varias ocasiones y países de Latinoamérica asumiría formas extremas y radicales, según la más o menos estricta alianza con el ideal y método marxista de la revolución o por la oposición a regímenes militares despóticos, que conllevaría a varios sacerdotes a involucrarse en la lucha armada para generar los cambios dentro de las sociedades del continente. Este nuevo fermento dentro del catolicismo latinoamericano tiene la intención de llevar la teología a la praxis histórica, creando una *teología de la praxis*.

Si bien esta teología aparece formalmente luego de la Segunda reunión del CELAM en Medellín (1968), donde se trató más específicamente de la reconversión de la teología, su gestación ha sido anterior; derivaba como se

ha visto, de las inquietudes del existencialismo cristiano, del neotomismo, de la Doctrina Social, de los varios Concilios provinciales y diocesanos, cuyas raíces hermenéuticas se hallan en el Éxodo y en las palabras de Jesús.

2. Entre fe y razón, teoría y praxis

Centrados en las palabras de Jesús, el vino "a poner en libertad a los oprimidos" (Lc. 4:18) se inicia la nueva reflexión y problematización de la dialéctica fe-realidad. Es éste el punto de partida de la Teología de la Liberación. Jesús no sólo libera al hombre del pecado, no sólo salva su alma, Él salva al hombre integral, formado de espíritu y cuerpo, por ende, lo libera de la esclavitud y del dominio de un hombre sobre otro. La misión del sacerdote y de la Iglesia no es exclusivamente soteriológica respecto al alma, sería también la de salvar al hombre de todos aquellos vínculos –opresión, pobreza, exclusión– que impiden su desarrollo espiritual y material, para conducirlo hacia la tierra prometida de la liberación, como hizo Moisés con el pueblo hebreo en el (Éxodo).

Esta teología tiene una larga retrospectiva histórica. Desde Erasmo de Rotterdam, pasando por el sermón de Montesinos, por las Leyes de Burgos, por las doctrinas de la Escuela de Salamanca, hasta Juan Germán Roscio. Erasmo situó una base importante: educaba a príncipes y pueblo, para crear mentes analíticas y críticas frente a instituciones y doctrinas. El sermón del padre Montesinos ha sido considerado el primer grito de rebeldía contra una situación de degradación moral de los colonos españoles en América. Las Leyes de Burgos, productos de la acción del mismo fraile dominico, garantizaban los derechos naturales básicos de los indios, en tanto, la Escuela de Salamanca con sus doctrinas, apoyaría la causa indígena. Todo lo cual fortalecería las teorías de Suárez y Mariana en torno al derecho a la resistencia contra la opresión, y al tiranicidio como eventual respuesta frente al despotismo. Igualmente cuestionarían el origen divino del monarca, su soberanía y su derecho a gobernar contra la voluntad del pueblo. J. G. Roscio (1763-1821), a partir de la revisión de las Escrituras "con miras puramente políticas", demostraría en su obra *Triunfo de la libertad sobre el despotismo* (1791), que el poder despótico no podía conciliarse con el cristianismo.

> (…) me entregué a la lectura y meditación de la Biblia, para instruirme de todos los documentos políticos que en ella se encuentran. (…) Mis miras puramente políticas, nada tenían que hacer con el dogma y demás concernientes al reino de la gracia y de la gloria. Mi fe era invariable en estos puntos (Roscio, 1996: 7).

Con su estudio Roscio introduce la hermenéutica política de los acontecimientos bíblicos, insatisfecho de los comentarios artificiosos

sobre las Escrituras, que complicarían su sencillez (Roscio, 1996: 7), como él mismo afirma. Este procedimiento reinterpretativo sentaría las bases anticipatorias del método a emplear por los teólogos del desarrollo y de la liberación.

3. Desarrollo y liberación

Dos tendencias dominaron el escenario de la teología en los años Sesenta, la teología del desarrollo y la teología de la liberación. Ante la situación de pobreza y atraso socio-económico del continente latinoamericano, una pionera y significativa respuesta fue la "Teología del desarrollo"[3], iniciada por el dominico Louis-Joseph Lebret (1897-1966), quien se enfocaría a sensibilizar en la Iglesia católica las temáticas del "desarrollo integral del hombre" y de la humanidad.

Para responder al subdesarrollo de los países el padre Lebret, quien mucho trabajó en América Latina desde 1947, no sólo confiaría sus ideas a la pluma, sino que las concretaría en instituciones como el Centro de Investigación y Acción Economía y Humanismo fundado en 1941, para humanizar la economía; y el Instituto Internacional para la Investigación y de Formación, Educación y Desarrollo (IRFED) fundado en 1958, para enseñar métodos y técnicas de investigación a técnicos y políticos provenientes de los países subdesarrollados.

Para el teólogo, nuestra civilización produce una economía política que no está dirigida al ser humano, al contrario, lo ha materializado y esclavizado. De tal manera el padre Lebret crea el ideal de una *Economía Humana* –de la cual derivaría el movimiento *Economie et Humanisme* (1941)– como respuesta al economicismo (contra el capitalismo explotador y materialista, no propiamente contra el capital), donde se propone la economía al servicio del hombre y no al revés. Idelfonso Camacho sostiene que el pensamiento de Lebret es relevante por dos razones: "Porque desde sus inquietudes pastorales, fue uno de los pioneros en tema de desarrollo; y porque fue el autor del primer borrador de la *Populorum Progressio*" (Camacho, 1998: 127). La acción del padre Lebret influye en el cuestionamiento en el seno de la teología respecto a su papel en la historia social del hombre, creando muchos seguidores en toda América Latina, en especial destacan los católicos incorporados al movimiento *Acción Católica*.

El padre Lebret llegarían a ser considerado como un profeta (Löwy, 1999: 182), dada su posición frontal contra el capitalismo y las realidades

3 Junto a esta teología más dominante se formularon teologías paralelas como la teología de la revolución, la teología de la violencia o la teología del trabajo, con mismas finalidades hacia el desarrollo del hombre integral y la tentativa de acercar los valores del cristianismo al marxismo.

infrahumanas que se habían generado en el continente, en particular en Brasil donde vivió siete años. Para el padre Lebret lo más grave no era la miseria de los pobres, sino la inconsciencia de los ricos y el escaso interés de la élite política para encontrar soluciones adecuadas. Ante estas consideraciones sobre el capitalismo y la conducta de las élites políticas, el teólogo denuncia además la persistencia del problema de la pobreza al no atacarse sus causas profundas; a partir de estos argumentos, el dominico intenta un acercamiento con la doctrina marxista. Como releva Michael Löwy, el padre Lebret logra "desatanizar" el marxismo frente a muchos católicos brasileños (Löwy, 1999: 182). Si bien él rechazaba por igual el marxismo y el capitalismo, Löwy reporta que, en varias conferencias y cursos dictados sobre todo en Brasil, se expresa sobre el marxismo de la siguiente manera:

> No es ni una teoría sin consistencia ni una organización sin pensamiento. Es la expresión en parte admirable y en parte dudosa de una corriente bien caracterizada de aspiraciones de multitudes desorientadas que quieren retomar esperanza (...). El mayor número de reproches que se le hacen caen a un lado; pocos hombres se han tomado el tiempo de analizarlo con seriedad; demasiado pocos son capaces de corregir sus desviaciones y sus defectos" (*L'economie humaine*, curso dictado en la Escuela Libre de Ciencias Sociales y Política de Sao Paulo, 1947) (Löwy, 1999: 183).

Dentro del debate teológico sobre el desarrollo y el subdesarrollo, emerge también el sacerdote François Houtart quien escribe *Hacia una teología del desarrollo* (1967). Titulo ya explícito del contenido que va a desenvolver, asumiendo el tema del desarrollo material del hombre dentro de la teología y considerando la doctrina marxista como la base para la lucha al capitalismo imperante. La mencionada teología entra en la disputa entre desarrollo y subdesarrollo, en antagonismo con la teoría de la modernización de las décadas Cincuenta y Sesenta, para encontrar vías de solución a la atávica condición de la pobreza.

El método marxista de la revolución como posibilidad de cambio real, sería elegido por los teólogos del desarrollo como el único camino para realizar el profundo cambio que urgía en la región. Con referencia al marxismo, el teólogo Joseph Comblin en su obra *Théologie de la Révolution* (*Teología de la revolución*, 1970), asume la revolución como tema teológico, llegando a concluir que lamentablemente no hay otra vía, conectando directamente el subdesarrollo con la salida revolucionaria. El dominico Alex Morelli contrario al uso de la violencia, en su texto *Libera a mi pueblo* (1971), se refiere a la liberación de las sociedades subdesarrolladas, optando por una "revolución liberadora" *no-violenta*.

Fueron varios los teólogos vinculados a la Teología del desarrollo que comenzaron a cuestionarse y tomar inspiración para la discusión en América Latina de las teorías del desarrollo y de la dependencia; esta última

prospectando soluciones de transformación político-económicas en la línea marxista, frente al tema de la modernización. Estas teologías constituyen un preámbulo de la Teología de la Liberación, y la teología del desarrollo marca buena parte de su contenido.

La Teología de la Liberación expresa el compromiso pastoral de la Iglesia latinoamericana con la historia, concentrándose en el ideal de liberación del hombre de las estructuras de dominio, cumpliendo un viraje importante sobre la relación historia del hombre y teología. Estas nuevas inquietudes teológicas en América Latina, desde el punto de vista teórico recibirán influencia de la nueva "Teología Política" de Johann Baptist Metz (1928-2019), quien a su vez se inspiró en su maestro Karl Rahner (1904-1984) exponente de la *Nouvelle Théologie*, y en el teólogo luterano Dietrich Bonhoeffer (1906-1945). Ellos aspiraban reconstruir una hermenéutica teológica diferente de la tradicional, más aferrada a la historia política y social del hombre.

Metz acoge de Rahner la teoría del "recentramiento antropológico", en la cual se postula una nueva teología de la praxis histórica en conexión con el mundo real y con la cultura moderna, es decir, en conexión con el hombre. ¿Cómo puede un cristiano hablar adecuadamente de Dios, si no habla al mismo tiempo del hombre? Sería la cuestión central de Rahner. El cristiano según su visión, está en el mundo y es corresponsable en su construcción; está enlazado a la historia inexorablemente. Para Rahner, el Concilio Vaticano II sería la oportunidad de toma de responsabilidad de la Iglesia frente a las inquietudes espirituales y temporales del cristiano contemporáneo. El Concilio aportaría una profunda transformación en la Iglesia católica, pasando de una condición oclusiva hacia la realidad socio-política, al reinicio del caminar con la sociedad y dentro de la sociedad.

Se transitaría pues, del centralismo auspiciado por el Concilio Vaticano I (1869), a la promoción de la descentralización, otorgando y reconociendo autonomía a las Iglesias locales, tal y como se enuncia en la constitución dogmática *Lumen Gentium* (n. 23, 1964) (Maier, 2005: 396). De tal manera que, como afirma Martin Maier, las Iglesias locales luego del Concilio, no serían consideradas ya como simples filiales de Roma (Maier, 2005). La Iglesia universal es una comunidad de Iglesias, o como dice Maier: "Una comunidad de muchas Iglesias locales en comunión", que expresan la unidad en el respeto de las diferencias culturales nacionales. En la *Lumen Gentium* se afirma en consecuencia:

> Por su parte, los Obispos son, individualmente, el principio y fundamento visible de unidad en sus Iglesias particulares [67], formadas a imagen de la Iglesia universal, en las cuales, y a base de las cuales se constituye la Iglesia católica, una y única (n. 23).

Respecto a la contribución de Bonhoeffer, Metz toma la idea de que la religión no se convierte en evasión del mundo. En Berlín, en 1932, Bonhoeffer tituló una conferencia *Venga a nosotros tu Reino*, en la cual reafirmaba la conciencia terrenal del hombre inspirado en Cristo. Sostuvo que Cristo no intenta alejar al hombre de la tierra, o como él mismo dice, "A mundos ideados por la evasión religiosa" (Bonhoeffer, 1985: 102). Al contrario, quiere que viva la terrenalidad a la luz del mensaje divino, reinterpretado luego del paréntesis medieval, afirmando que, a Cristo, Dios: "Lo devuelve a la tierra como hijo fiel" (Bonhoeffer, 1985: 102), donde se manifiesta como amor que no necesita ser impuesto, sino que es un camino del hombre a la exploración de los frutos divinos (Bonhoeffer, 1985: 102-103).

Para la teología tradicional, siendo la realidad socio-política expresión de lo temporal, transitoria y mutable, no es relevante frente a la eternidad del espíritu. Ante esta situación, el rol que asume la nueva teología de la acción según Metz, es de *correctivo crítico* del modelo metafísico tradicional, demasiado pasivo, acomodador y hasta insensible con la exigencia del hombre en su realidad cotidiana y existencial, lo cual ha generado una separación entre religión y sociedad (Metz, 1969: 1232-1240).

En su obra *Teología del Mundo* (1970), que contiene el manifiesto programático de la *Teología Política*, se expresa la relación que debería concretarse entre la Iglesia y el mundo, donde "mundo" tiene el significado de sociedad en camino, en evolución. El teólogo desea salir del aislamiento y "ensimismidad" en la cual estaba recluida la teología clásica, reconociendo la historia, la política y la sociedad a la cual asocia el sentido de la salvación. El apoyo a las nuevas tendencias teológicas y filosóficas latinoamericanas sería relevante por parte de Metz, tanto, que define la II Conferencia de Medellín como cuna de la Teología de la Liberación, y a la teología como conectivo crítico frente a la privatización de la religión.

4. Los jesuitas y la nueva tendencia teológica latinoamericana

Los jesuitas, como se ha expuesto, han representado un empuje ascendente en la teorización de la nueva manera de interpretar la fe y su relación con el mundo. El padre Jean-Baptiste Janssens, 27° General de la Compañía de Jesús, en 1949 publicó *Instrucción sobre el apostolado social* (Janssens, 1997: 24-34), donde estimula a sus sacerdotes a intervenir en el ámbito social saliendo de los claustros y a vivir con la gente para entender sus problemas. En dicho documento advierte a la Compañía sobre varias amenazas que van del neo-paganismo a la indiferencia religiosa que se transforma en ateísmo, la cual penetra con facilidad en la clase proletaria, problemas que incumben tanto en Europa como en América Latina. De

igual manera en el ámbito social, observa, por un lado, al liberalismo como incapaz de rescatar de la miseria a los pobres, categoría universalmente extendida; por el otro, señala el peligro del avance del comunismo siempre más organizado y penetrante, sobre todo ante las condiciones de miseria e ignorancia.

> Y frente por frente del comunismo ateo está esa otra forma de materialismo, llamado «liberal»; la de los ricos y capitalistas que, sin fe en Dios y en Cristo, o al menos arrinconando o negando esa fe en su vida práctica, sobre todo pública, fomentan sus propios intereses y privilegios más que el bien común de toda la humanidad. (…) A menudo, en vez de la tiranía de un partido político o del Estado, con la que el comunismo se burla de los proletarios, pone el capitalismo la tiranía de poderosísimas sociedades que dejan que el hambre y la miseria atenace a naciones enteras antes que consentir un descenso o una tregua en sus propios ingresos (Janssen, 1997: 3).

Si bien las raíces del *apostolado social* atraviesan dos milenios de vida cristiana, dice el teólogo, esto es poco tiempo si se mide en función de los diferentes escenarios del mundo del siglo XX. En la *Instrucción* que proclama como Superior General, alerta a sus cofrades a entrar en la contienda social, solicitando asumir una "actitud diferente", para interpretar más adecuadamente las exigencias y el tormento de la humanidad y, sobre todo: "A capacitarse en aquella caridad activa y sincera que hoy se llama ‹actitud social› o ‹mentalidad social›" (Janssen, 1997: 27).

> (…) juntando la teoría con la práctica, se les orienta a los Padres en los ministerios propios de la Compañía. (…) incumbe dirigir las primeras experiencias de los Padres en los ministerios que durante esta probación han de ejercitarse, sobre todo entre los humildes y proletarios. (…) más fácilmente que a los Novicios, concederé, donde los Instructores me lo propongan, que vayan a las fábricas, ya para su ministerio puramente espiritual, ya también para ejercer un oficio manual entre los obreros, pero cuidando de no olvidar nunca su dignidad sacerdotal. Visiten, desde luego, a los obreros y a los pobres, tanto en los Hospitales y Asilos como, con las debidas cautelas, en sus propias casas. Conozcan de vista la miseria de la vivienda, del vestido, del alimento de los pobres. Conozcan su ignorancia e inurbanidad por falta de educación. (…) Es preciso que no pocos de nuestros ministerios sean dirigidos, más eficazmente al proletariado (Janssen, 1997: 12-17).

Según el padre Janssens, para bien interpretar la realidad se precisa conocerla directamente, aprendiendo lo que significa vivir en el medio de las incomodidades e injusticia, del hambre y el desprecio que las situaciones socio-políticas reservan a la mayoría de las personas en todo el mundo. Los hombres de la "periferia del mundo" son la gran mayoría. Por tal motivo, comenta el jesuita Michael Campbell-Johnston, la Congregación no debía solamente proveer lo necesario o fundamental para la sobrevivencia de los pobres, sino principalmente: "Configurar las estructuras mismas de la convivencia humana de modo que alcancen éstas una expresión de mayor justicia y caridad" (Campbell-Johnston, 1997: 9).

En 1955 el Padre General decide intervenir más directamente en América Latina «*de re sociali*» (sobre asuntos sociales), para no dejar espacio a los comunistas, según expresa en las *Instrucciones*, "Si nosotros, incitados por la caridad de Cristo, no trabajamos con denuedo por mejorar esas condiciones de vida, preparamos el camino al comunismo ateo (…)" (Janssen, 199)7: 24). Así en pocos años se crearon varios institutos de estudios y acción sociales –Centro de investigación y acción social, CIAS– en la mayoría de los países de Latinoamérica, donde muchos jóvenes jesuitas y laicos comenzarían a estudiar las ciencias sociales.

En Lima en 1966, el Padre Pedro Arrupe, nuevo General de la Compañía, sustituto del Padre Janssen fallecido en 1964, convocó reunión de los CIAS[4] de América Latina, con la finalidad de enfocar estructuralmente las acciones a realizar; siguiendo la línea de su predecesor, declaraba que el objetivo de esta organización sería la transformación de la mentalidad y de las estructuras sociales, con sentido de justicia social preferentemente en el sector de la promoción popular (Campbell-Johnston, 1997: 11-12).

El padre Arrupe desde el primer momento demostraría su opción de dar a los jesuitas un poderoso impulso, haciéndoles sentir artífices de un nuevo sistema social. En su misión el padre Arrupe expresaría carisma, decisión y claridad, que manifestaría también al apoyar al papa Pablo VI en su camino de renovación eclesial, a la luz del Vaticano II. Es así como se cruzan dentro de la Iglesia dos grandes reformadores: Pablo VI como *Pontifex Maximus* de los católicos y Pedro Arrupe, como General de una de las más poderosas y transformadoras congregaciones religiosas, que tiene la finalidad de la salvación y perfección de los prójimos. Arrupe, luego de su elección manifestó prontamente el apoyo de la Compañía a la vía ya trazada por el Padre Janssen, respeto al empeño marcadamente social de guerra a la pobreza y a las estructuras que la generan, frente a una posición más conservadora de una parte de los jesuitas[5].

En mayo de 1968 los Provinciales jesuitas de América Latina se reunieron con el Padre Arrupe, en Rio de Janeiro. En esa ocasión se produjo la *Carta de Rio* dirigida a los jesuitas del continente y con la ocasión, se fundó en la misma Curia romana el Secretariado para el Desarrollo Socio-Económico (JESEDES). La *Carta*, influida también por el contenido altamente polémico de la encíclica *Populorum Progressio* (1967) frente a los temas de la pobreza y del subdesarrollo de los pueblos, fue el compromiso de la Compañía con el mundo latinoamericano. Fue sin duda una ulterior incitación al empeño integral, comunitario y personal para la causa social, y al final los Provinciales declararon que:

4 Ya en 1966 se contaban 24 CIAS en América Latina.

5 Se recuerda que Pedro Arrupe, ganó las elecciones como General de la Compañía de Jesús compitiendo con el ala conservadora de los Jesuitas, representados por el ex rector de la Pontificia Universidad Gregoriana de Roma, el padre Pablo Dezza.

> Quisiéramos insistir sobre la conversión íntima que supone en cada uno de nosotros nuestra participación en la creación de un nuevo orden social. (…) Nunca llegará la construcción de una sociedad más humana, si somos incapaces de llevar este aporte divino, sin el cual toda construcción social vuelve a ser inhumana: ése es el aporte que el mundo espera principalmente de nosotros, sacerdotes y religiosos (punto 10).

En la *Carta* está explicito el análisis sobre la situación de pobreza y de injusticia social en las cuales viven los latinoamericanos, expresando igualmente una voluntad de cooperación más amplia con el clero y laicos comprometidos, para una pastoral conjunta. Se afirma:

> En toda nuestra acción, nuestra meta debe ser la liberación del hombre de cualquier forma de servidumbre que lo oprima: la falta de recursos mínimos y de alfabetización, el peso de las estructuras sociológicas que le quitan su responsabilidad en la vida, la concepción materialista de la existencia. Deseamos que todos nuestros esfuerzos confluyan hacia la construcción de una sociedad, en la que el pueblo sea integrado con todos sus derechos de igualdad y libertad, no solamente políticos, sino también económicos, culturales y religiosos (punto 3).

Para realizar esa integración es importante que la Compañía en su acción de concientización llegue igualmente a:

> Los adultos, que deben ser también los promotores del cambio social: intelectuales, empresarios, dirigentes sindicales, artistas, hombres de negocios, profesionales, hombres políticos. Debemos ayudarles a ser auténticos cristianos en su vida profesional y pública, o auténticos profesionales al servicio de la sociedad (punto 8).

Bajo estos presupuestos la Congregación ignaciana se empeña difundir en el continente americano: "La predicación del evangelio de los pobres" (punto 4), y promete actuar en el tejido social según la enseñanza de la *Populorum Progressio*.

> Entiéndasenos bien: la situación presente tiene que afrontarse valerosamente y combatirse y vencerse las injusticias que trae consigo. El desarrollo exige transformaciones audaces, profundamente innovadoras. Hay que emprender, sin esperar más, reformas urgentes. Cada uno debe aceptar generosamente su papel, sobre todo los que, por su educación, su situación y su poder tienen grandes posibilidades de acción (punto 32).

Cuanto se afirma en la *Populorum Progressio*, se proclama como única manera para alcanzar la paz social (punto 4). Para intervenir dentro de las estructuras sociales es urgente la formación de mentalidades para la acción, sea intelectualmente, sea en la formación de líderes campesinos y obreros, que "protagonicen su propia liberación" (punto 6).

La *Carta* también invita a los jesuitas a compartir la vida del mismo pueblo para comprenderlo y penetrar dentro de sus necesidades legítimas y reales, para educarlo en sus derechos y en la fe cristiana.

> Nuestros centros de educación deberán ir formando una conciencia de que la colectividad entera se beneficia de sus servicios (…). Infundir en nuestros alumnos primariamente una actitud de servicio a la sociedad, en cuya transformación deben colaborar, y una eficaz preocupación por los marginados, en cuya promoción deben trabajar (punto 7).

Sin embargo, para inicio de la década de los Ochenta, el padre Arrupe da cuenta de la postura asumida por buena parte de sus sacerdotes en América Latina, en el sentido de radicalizar su pensamiento en la línea marxista y aceptar el uso del método de la misma doctrina para la promoción de la justicia. En 1980, envía un *comunicado* a los provinciales jesuitas de América Latina, en el cual les advierte sobre el uso no conforme a la doctrina cristiana de tal método e inspiración teórica, afirmando:

> (…) El adoptar el 'análisis marxista' rara vez significa adoptar solamente un método o un 'enfoque'; significa generalmente aceptar también el contenido mismo de las explicaciones dadas por Marx acerca de la realidad social de su tiempo, aplicándolas a las de nuestro tiempo [...] Llegamos ahora al núcleo de la cuestión ¿se puede aceptar el conjunto de las explicaciones que constituyen el análisis social marxista, sin adherirse a la filosofía, a la ideología, a la vaticano política marxista? (...) Con mucha frecuencia el materialismo histórico se entiende en sentido reductor (...) debemos evitar un análisis que suponga la idea de que lo económico, en ese sentido reductor, decide sobre todo lo demás (...) (Arrupe, 1980: 331-338).

Si la producción fuese el fulcro de la vida y de la relación humana como lo expresan los marxistas, la religión y el cristianismo perderían su sentido, se relativizan y hasta aparecerían como inútiles, y la sociedad se convertiría en atea, dice el Padre Arrupe, resaltando la inconciliabilidad epistemológica entre marxismo y cristianismo.

> (...) En suma, aunque el análisis marxista no incluye directamente la adhesión a la filosofía marxista en todo su conjunto –y menos todavía al 'materialismo dialéctico' en cuanto tal– sin embargo, tal como se lo entiende de ordinario, implica de hecho un concepto de la historia humana que no concuerda con la visión cristiana del hombre y de la sociedad y desemboca en estrategias que ponen en peligro los valores y las actitudes cristianas (Arrupe, 1980: 331-338).

A pesar de este llamado de advertencia, los jesuitas se pusieron en primera línea frente a las injusticias sociales y al militarismo del siglo XX en América Latina, con el mismo aflato y coraje con los cuales crearon las "reducciones" del siglo XVII, para rescatar a los indios del yugo de los terratenientes coloniales. Pues así, pensaron, estructuraron y practicaron una actualizada evangelización en fiel continuidad con el Concilio Vaticano II. Sustentándose en la *Gaudium et Spes*, en la cual se afirma que:

> Es deber permanente de la Iglesia escrutar a fondo los signos de los tiempos e interpretarlos a la luz del Evangelio, de forma que, acomodándose a cada generación, pueda la Iglesia responder a las perennes interrogantes de la humanidad sobre el sentido de la vida presente y de la vida futura y sobre la mutua relación de ambas (GS n. 4).

En esta novedosa doctrina se encontraron las bases del apoyo doctrinal y moral irrefutable para reformular las condiciones de la lucha ante las injusticias y las estructuras inicuas y perversas de poder. Si bien la *Carta de Rio* representa el propio carácter jesuita, aquel *probabilismo* que caracteriza el empeño sin repensamientos, la lucha frontal es contra lo que se identifica ser el "mal". Ningún compromiso pues con la política y la economía que no tenga en su visión la derrota de las reiteradas situaciones de injusticia y pobreza del continente. Por otro lado, el *comunicado* posterior del padre Arrupe representa un freno al entusiasmo hacia el análisis y el método marxista.

Conclusiones

Luego de la Segunda guerra mundial, en América Latina se manifiesta un contexto político dividido entre autoritarismo, dictaduras y frágiles democracias, en el cual se hacía evidente una situación de dependencia y pobreza, según la mirada crítica de la CEPAL (Comisión Económica para América Latina y el Caribe). La Iglesia católica nace con la finalidad de redimir al hombre del pecado, intención con la cual Cristo la había creado. Ante los fenómenos de la pobreza y de la dependencia, para algunos teólogos como los de la Teología de la Liberación, Cristo vino también para romper las cadenas físicas que mantienen oprimido al hombre de este hemisferio. Por tal finalidad y haciendo hincapié en la "Teología del Éxodo" (la liberación de los judíos por obra de Moisés, de la esclavitud en Egipto), símbolo de la liberación política y en las palabras de Jesús: "Me ha enviado a... poner en libertad a los oprimidos" (Lc 4:18), estaría centrada la dialéctica fe/realidad, que abre la puerta a la teología de la praxis y de la liberación.

Si bien oriunda de América Latina, en el sentido de ser la expresión concreta de la situación socio-política del continente, sus pródromos más cercanos se encuentran en la visión y en la acción, mayormente de la Compañía de Jesús, ante la historia local del hombre. De hecho, en 1949 el General de los Jesuitas, Jean-Baptiste Janssens publicó la guía *Instrucciones sobre el apostolado social*, donde se instaba a sus sacerdotes en América Latina a la acción social planteada sobre justicia y solidaridad cristiana, para cambiar las estructuras de la convivencia.

A la luz de este planteamiento, se crearon en este hemisferio varios Centros de Investigación y Acción Social (CIAS), con la finalidad de enfocar estructuralmente las acciones a realizar, surgiendo desde estos centros muchas expectativas de cambios en estas sociedades. Es de resaltar la importante figura del Padre Pedro Arrupe, sucesor de Janssens, quien instaría a sus sacerdotes a modificar la mentalidad y las estructuras sociales

de América Latina, en dirección hacia la justicia social. Arrupe, por medio de la *Carta de Rio* (1968), influenciada por la polémica encíclica de Pablo VI *Populorum Progressio* de 1967 ante los temas de la pobreza y del subdesarrollo de los pueblos, afirmaría el compromiso de la Compañía con el mundo latinoamericano. La Carta fue sin duda una ulterior incitación al empeño integral, comunitario y personal por la causa social.

Otros, desde el punto de vista teórico, como el jesuita Karl Ranner plantaba el "recentramiento antropológico" de la teología, es decir regresar por parte de esta a ocuparse no solo de la salvación del hombre, misión central del cristianismo, sino también de la historia del hombre, de su vida relacional, social y política. Su alumno, el teólogo Metz, reinterpreta la Biblia a partir de la historia política del hombre, "desprivatizando" la teología para abrirla al mundo real.

No faltaron otras teologías como antesala o mejor como constituyentes de la Teología de la Liberación, que han contribuido quizás en estimular su forma más radical, como ha sido la "Teología del desarrollo", del sacerdote dominico Louis-Joseph Lebret, que contiene el ideal de una economía al servicio de la humanidad y no para el dominio de esta última. O como la propuesta del sacerdote François Houtart quien escribe *Hacia una teología del desarrollo* (1967), donde se asume el tema del desarrollo material del hombre dentro de la teología y considerando la doctrina marxista como la base para la lucha al capitalismo imperante.

Las mencionadas teologías entran en la disputa entre desarrollo y subdesarrollo, en antagonismo con la teoría de la modernización de las décadas Cincuenta y Sesenta, para encontrar vías de solución a la atávica condición de la pobreza. Así como también el sacerdote Joseph Comblin en su obra *Teología de la revolución* (1970), asume la "revolución" como tema teológico, llegando a concluir que lamentablemente no hay otra vía, conectando directamente el subdesarrollo con la salida revolucionaria. En el texto *Teología de la práctica de la revolución* (1979), Comblin considera que, si bien el concepto de "liberación" es más amplio que el de "revolución", ambos se funden ante la lucha revolucionaria por la emancipación del imperialismo de los países industrializados; y la lucha no puede ser tampoco individual a manera de una guerra de independencia, sino que debe ser Global e involucrar a todos los países sometidos.

En América Latina, además de la Iglesia mística como la anunciaba San Pablo, se manifiesta una Iglesia política y en algunos casos hasta revolucionaria, que ha sido el resultado de una reflexión teológica y filosófica profunda dentro de la misma Institución. Si bien la inquietud de muchos clérigos aparece antes del Concilio Vaticano II (Constitución Pastoral *Gaudium et Spes*, 1965, promulgada por Pablo VI) y de la encíclica *Populorum Progressio*, estas han dado base al contenido doctrinal de la Iglesia política latinoamericana. Finalmente, entre las tendencias teológico-

políticas de la Teología de la Liberación, se hallan, por un lado, las de un frente radical revolucionario que hace hincapié en el método marxista para solucionar los problemas anunciados y, por el otro, las de un frente más equilibrado que apoya una posición no-violenta para resolver los problemas sociales. Ello evidencia una inconciliabilidad doctrinal y de medios políticos entre la doctrina política cristiana y el marxismo.

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Functional Self-Limitation of State Authority

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Abstract

Based on the analytical and synthesis study of a wide range of published documentary sources, the article presents the authors' approach to the issue of self-restriction of state power. General theoretical aspects, historical and oriented to the current state of the problem were considered in order to analyze the self-limitation of the authority of the State in theory and in concrete reality. Methodologically, it is a study that uses in equal conditions the qualitative analysis of the systems and processes that emerge from the exercise of the authority of the State, with the hermeneutic reading of the legal doctrine that accounts for the matter. It is concluded that, in the considered context of the Russian Federation, the problem of the constant and continuous improvement of the system of separation of state power often seems to manifest itself satisfactorily. Theoretically, at first sight, once regulated, the corresponding system a priori acquires a constant and stable character, however, there is still a long way to go to achieve the foundation of a sustained dynamic of self-limitation and self-regulation of state power in in line with the principles of the rule of law.

Keywords: state power; public powers in Russia; separation of powers; restriction of state power; self-limitation of state power.

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Autolimitación funcional de la autoridad estatal

Resumen

Basado en el estudio analítico y de síntesis de una amplia gama de fuentes documentales publicadas, el artículo presenta el enfoque de los autores sobre el tema de la autorestricción del poder estatal. Se consideraron aspectos teóricos generales, históricos y orientados al estado actual del problema con el objetivo de analizar la autolimitación de la autoridad del Estado, en la teoría y en la realidad concreta. Metodológicamente se trata de un estudio que empleo en igualdad de condiciones el análisis cualitativo de los sistemas y procesos que emergen del ejercicio de la autoridad del Estado, con la lectura hermenéutica de la doctrina jurídica que da cuenta sobre la materia. Se concluye que, en el contexto considerado de la federación rusa, el problema de la mejora constante y continua del sistema de separación del poder estatal a menudo parece manifestarse satisfactoriamente. Teóricamente, a primera vista, una vez regulado, el sistema correspondiente *a priori* adquiere un carácter constante y estable, no obstante, aun falto mucho camino por recorrer para el logro de sentar las bases de una dinámica sostenida de autolimitación y autorregulación del poder estatal en consonancia con los principios del estado de derecho.

Palabras clave: poder estatal; poderes públicos en Rusia; separación de poderes; restricción del poder estatal; autolimitación del poder estatal.

Introduction

It is recognized that the system of power separation is the brainchild of the so-called “mixed constitution” concept, separating the executive power of the monarchical system and the legislative power belonging to the people. Under such conditions, prerequisite appear for the genesis and development of an independent court system, including constitutional justice, which is on a par with the legislative and executive systems, and the classical separation of powers acquires three organizational and functional branches that establish mutual control in order to achieve state balance, which appears as a socio-political asset (Makogon *et al.*, 2018).

In modern times, having perceived and developed these ideas that took shape in antiquity, John Locke and Charles Louis Montesquieu raised from them one of the pillars of the rule of law in its modern sense. For an authority that is elected by the people and adopts generally binding abstract prescriptions (laws), its associations with executive and administrative power and, especially, direct identification with the latter are unacceptable.

Incarnated in the system of executive bodies, this administrative power externally acts through individual and specific measures regulating a particular case as an expression of specificity sign, and the measures relating to a clearly defined number of subjects. In the event of a contentious situation within the context of whether an adopted act implements (expresses) the legislator's will, independent courts are responsible for its resolution.

Montesquieu was the second European author who worked at the turn of the Middle Ages and the New Age on the issue of guaranteeing freedom within the state, although, it seems, both scientists were most likely mistaken about the exemplary separation of powers that had prevailed in Britain at that time, which ensured such freedom. With a clear legal division of state power, initially understood as absolutely unified, into three branches-parts, a state-power entity receives moderate statehood with fairly firm guarantees of freedom. Thus, during registration of all catalogs of fundamental rights and freedoms, their guarantee does not become as important as the achievement of that very moderate statehood, which is the ultimate goal. Montesquieu in his opinions was so bold that he saw a certain higher and universal freedom in the mutual blocking of the power branches, which, perhaps, could lead to active statehood paralysis in its extreme form.

If the presence of power separation system was still not clearly presented as one of the main signs of a rule of law state in the work "On the Spirit of Laws" (Montesquieu, 1949), (which, however, is not surprising, because the term "rule of law state" was absent in scientific terms), then during the nineteenth century, in the conditions of the constitutional monarchy, almost no one had any doubts about this. The fact became obvious, as the sanction of the law and control by an independent court became unchanged satellites of the monarch's intervention in the bourgeois sphere of rights.

1. Methodology

During the study process, they used the classical methodology of a qualitative analysis of systems and processes, in particular, a system-analytical approach to the study of research objects. Besides, the research methodology is presented by modern tools. The study was conducted on the basis of the dialectical, as well as the widespread use of general scientific (analysis, synthesis, induction, deduction, analogy) and private scientific methods of reality cognition. The use of general scientific methods allowed the authors to comprehend the development of scientific ideas about the functional self-restriction of state power, to determine the factors affecting the content of a claimed subject, to formulate provisions regarding the subject and meeting the requirements of modern conditions.

The use of private scientific methods contributed to the study of the subject in order to systematize the source array regarding the factors of public authority self-restriction. The use of such special methods as comparative legal method, the method of legal forecasting allowed us to comprehend and reveal the work subject comprehensively.

2. Results and Discussion

It is noteworthy that states with different forms of government tried to unambiguously implement the principle of separation of powers one way or another, however, they received certain differences in this area as was expected. For example, if the separation of powers is especially clearly defined in the US Constitution that provides the president with the highest executive power, then in the parliamentary republics the above separation is less defined. In this regard, the jurisdiction and activities of administrative courts, which partly make up for a possible lack of resources of the rule of law, are of great importance.

Since the time of the French Revolution, the horizontal separation of powers has been supplemented and accompanied by a vertical one, which implies the establishment of a special level called "municipal authority" under the level of the central state. Although, to be fair, let's note that the basic idea regarding this level of power appeared long before the French Revolution, as evidenced by the emergence and development (in Germany in particular) of two types of communities: urban and rural.

So, the functioning of the branches of power only within the framework of a certain sphere is their fundamental purpose in accordance with the principle of separation of powers. A state body belonging to a particular branch of power cannot solve the tasks (exercise authority) of another branch, acts strictly within the framework of the relevant competence. In this vein, a complex of determinate constraints is drawn up (Makogon *et al.*, 2019).

In particular, the legislative process has been legally established for the legislative power, including the legal regulation of its stages. The system of executive authority is characterized by restrictions within the framework of departmental rulemaking, as well as special prohibitions on legal act adoption that invade the exclusively legislative subject of legal regulation. In solidarity with A. V. Malko (2004), we also note here the statutory deadlines for the president to exercise his power, the fixed procedures for his removal from office, for a vote of nonconfidence expression in the government, etc.

At the same time, the state-legal systems with legal and de facto separation of competences between the bodies belonging to different branches of

government, have also a significant number of "checks and balances". However, it should be noted that, recognizing the division of competences between the highest bodies of different branches of government, the state can implement the principle of state power unity, denying the traditional separation of powers (for example, as it was in Jacobin France, the Soviet Union) (Muravsky, 2010).

Overbalances or limitations appear to be the result of the mutual influence of decision and existence autonomy. If the executive branch has the ability to legislate within a certain subject, if it is able to impose its will on the legislative power, if the latter cannot effectively realize its will through lawmaking, it does not matter how "delimited" it is.

In the framework of "checks and balances" concept within the current legislation of states, there are often the norms that give authority to make decisions on the creation of separate judicial bodies, on the appointment of judges (without the authority to remove these judges), and other branches of government. Although the judicial authorities in their current activities, in general, are not dependent on the legislative and executive authorities, they nevertheless operate within the framework of the "game rules", which are established by other branches. Similar features can be seen in relation to each of the power branches.

In modern federations, for example, in Russia, there is the limitation of vertical power. It should be noted that Russian federalism, which took shape in accordance with the current Constitution, goes through an important stage of its development during the modern period of Russian statehood development. Having gone through the centuries-long phase of conceptual searches, many decades of verbal-declarative recognition with almost complete rejection of state-building practice, the most difficult cardinal transition to a completely new value system in a multinational country, Russian federalism has moved on to the stage of its improvement (Butko *et al.*, 2017).

The principles of the rule of law impose imperative requirements for the continuous delineation of reference subjects at all stages of federal construction in order to create an optimal state structure. However, given that the rule of law state is in development (Duguit, 1917), it has not yet been possible to do everything possible to include the full range of its resources in the process of federalization of Russia.

The federalization process, of course, seems to be the factor of the rule of law improvement, because all measures that serve the implementation of federalism are carried out within the framework of the legal field. Accordingly, the distinction between the federation and its subjects of jurisdiction opens up opportunities for the development of the rule of law to the same extent, like perfectionism (not idealism) in the field of separation

of powers, problem area identification of power structure functioning, the competence of bodies and officials of law enforcement agencies. A more complicated situation, also in practice, is emerging with the issues related to the subjects of joint jurisdiction, which will continue to cause controversy until the mechanism of the federal structure acquires the necessary, stable inertia.

It should be noted that the influence of federal relations has certain specificity on the formation and development of the rule of law at the regional level.

Conclusions

In the considered context, the problem of constant, continuous improvement of state power separation system often seems to be manifesting itself. Theoretically, at first glance, once regulated, the corresponding system a priori acquires a constant, stable character.

However, when a multi-aspect, multi-factor transitional period comes along with the transformation of legal forms of state activity in globalized world to become a full-fledged federation of a multinational state, the situation changes. The formation of the federal structure, the emergence of new authorities, general socio-economic metamorphoses - all this causes a chain of transformations in the systems of state legal principles and institutions.

During such a period, all the subjects of the Federation deeply feel this on themselves in relation to all three traditional spheres of power. This is a sign of a crisis transition period in state-legal development, overcoming of which is seen as a priority area of public-power policy.

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International Standards for the Safety of Persons Assisting in Criminal Justice

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Abstract

The objective of the research was to analyze some international standards for the safety of people who attend criminal justice from different approaches and perspectives of analysis. Based on a meaningful analysis of the provisions of international and regional regulatory legal acts, the document presents approaches to the formation of standards to ensure the safety of persons who contribute to criminal justice. Methodologically, the work applied the provisions of dialectics, general, special and particular scientific methods. In the course of the study, scientific-historical, formal-legal, formal-logical, systemic and comparative methods were also used. It is concluded that the system of security measures for people who cooperate with criminal justice has significant differences in the different national criminal justice systems, which complicates international relations and cooperation in this area and does not allow the international community to advise effectively and comprehensively, while continuously generating challenges and threats.

Keywords: security in criminal proceedings; protection of witnesses and victims; criminal proceedings; International cooperation; comparative law.

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Normas internacionales para la seguridad de las personas que asisten a la justicia penal

Resumen

El objetivo de la investigación fue analizar algunas normas internacionales para la seguridad de las personas que asisten a la justicia penal desde distintos enfoques y perspectivas de análisis. Basado en un análisis significativo de las disposiciones de los actos jurídicos reglamentarios internacionales y regionales, el documento presenta enfoques para la formación de normas para garantizar la seguridad de las personas que contribuyen a la justicia penal. En lo metodológico el trabajo aplicó las disposiciones de dialéctica, métodos científicos generales, especiales y particulares. En el curso del estudio, también se utilizaron métodos científicos métodos histórico-legales, formales-legales, formales-lógicos, sistémicos y comparativos. Se concluye que el sistema de medidas de seguridad para las personas que cooperan con la justicia penal tiene diferencias significativas en los distintos sistemas nacionales de justicia penal, lo que complica las relaciones y la cooperación internacional en esta área y no permite a la comunidad internacional asesorar de manera efectiva e integral, al tiempo que genera continuamente desafíos y amenazas.

Palabras clave: seguridad en procesos penales; protección de testigos y víctimas; procesos penales; cooperación internacional; derecho comparativo.

Introduction

The problem of international cooperation in the field of criminal justice is very urgent, since transnational organized crime and international terrorism pose a serious threat to both international and national safety of any state. The international community takes concerted measures to coordinate cooperation in the field of crime prevention and detection, which includes, among other things, measures to protect persons assisting in criminal justice. Current international legislation plays the role of integration mechanisms that facilitate the implementation of the most effective methods on protecting participants in criminal production in national legal systems.

The systematization of foreign and domestic experience in studying this issue allows us to make a conclusion that there is no single approach to the definition of the concept of “safety” in the context of the problem under consideration: some authors consider safety as a state of protection

of a person who promotes criminal justice (Kondrat, 2013), others consider it as the existence of an effective system of guarantees for participants in procedural activities (Bakowski, 2013; Zhurkina y Stolboushkin, 2017); and the thirds include in the concept of "safety" the identification of all relevant sources of threats (Fyfe y Sheptycki, 2006 ; Slate, 1997; Van Puyenbroeck y Vermeulen, 2011).

Such variability of modern scientific approaches to the theoretical justification of the concept of "safety of persons assisting criminal justice" and its substantial characteristics hinders the solution of the problem on unification and consolidation of international and national legislation in the field of state protection of participants in criminal proceedings.

1. Methodology

The work applied the provisions of dialectics, general scientific, special and particular scientific methods. In the course of the study, private-scientific methods were also used: historical-legal, formal-legal, formal-logical, systemic, and comparative methods.

2. Discussion and Results

One of the first international acts in the field of ensuring the safety of participants in criminal proceedings is the "Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power", which justifies the need to establish national judicial and administrative mechanisms. They made it possible for victims to be compensated through formal and informal procedures that were operational, fair, affordable and accessible. Victims seeking compensation through such mechanisms are required to be informed of their rights (UN, 1985; paragraph 5).

The Congresses held within the framework of United Nations on the Prevention of Crime and the Treatment of Offenders, and the international acts adopted as a result of them make a significant contribution to the development of a consolidated position of the international community in the field of protection of persons contributing to criminal justice.

So, in 1990, in Havana, at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, "Measures to Combat International Terrorism" (http://docs.cntd.ru/document/901809394), and "Guidelines for the Prevention and Combating of Organized Crime" were developed and adopted (Docs cntd, 2020: 45). The documents emphasize that the

international community needs to achieve full general agreement on the measures necessary to prevent the harmful effects of acts of terrorist violence and to combat them. The tasks are also set to ensure the uniformity of laws and practice of states regarding criminal jurisdiction, the effectiveness of the implementation of international extradition treaties, mutual assistance in criminal matters, as well as the cooperation of states in implementing measures to protect judges and criminal justice workers, victims of terrorist acts, as well as victims and witnesses.

In order to ensure greater efficiency, consistency and fairness of national criminal justice systems, the "Guidelines" offer the development and widespread use of procedures for protecting witnesses from violence and intimidation; the procedures include ensuring the protection of a witness' human person from the accused and his/her lawyer, the provision of protected housing and personal protection, and also relocation and financial assistance (Docs cntd, 2020, paragraph 11).

The legal justification for the possibility of using the testimony of anonymous witnesses in criminal evidence was enshrined in the provisions of the Rome Statute of the International Criminal Court (Docs cntd, 2020). It provides "a procedure for the submission of evidence by electronic or other special means, as well as the possibility of non-disclosure of information about the identity of the witness or members of his/her family, if such disclosure could entail a serious threat to their safety" (Council of Europe, 2006).

Separately, the UN Convention against Transnational Organized Crime (UN, 2020; paragraph 3), should be noted. It significantly expands the possibilities of international cooperation on the protection of victims and witnesses for crimes covered by the Conventions, and, in addition to relocation, provides non-disclosure of information about protected persons and the use of communications to testify (UN, 2020; paragraph 2 of article 24), also the possibility of states-participants to conclude agreements or arrangements with other states regarding the relocation of these persons (UN, 2020; paragraph 3 of article 24).

Despite the generalized nature of the Convention against Transnational Organized Crime, an analysis of the provisions of Article 24 (Witness protection), Article 25 (Assistance to victims and their protection), as well as the content of Article 26 and 27 (Measures aimed at expanding cooperation with law enforcement agencies and Cooperation between law enforcement agencies) allows us to conclude that an effective fight against transnational crime is possible only within the framework of cooperation between the activities of law enforcement, judicial and other bodies of various states, which in turn requires either the conclusion of a large number of bilateral agreements (which may be the cause of legal conflicts), or the unification of national laws, including also criminal justice safety standards for persons

assisting in criminal proceedings.

The development of new information technologies and their widespread use, including in the implementation of witness and victims protection programs, has found its legislative consolidation in the provisions of the Doha Declaration which recommends that in order to effectively combat corruption and terrorism by national criminal justice systems, to legislatively secure the possibility of using not only traditional, but also new information and communication technologies when developing protection programs for witnesses and victims (UN. 2019).

The main European standards in the field of ensuring the safety of persons in criminal proceedings are contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Recommendation No. R (85) 11 made by the Committee of Ministers of the European Council "On the situation of a victim within the frameworks of criminal law and process, Recommendation No. R (2005) 9 issued by the Committee of Ministers of the European Council "On the Protection of Witnesses and Persons Cooperating with Justice" (European Court of Human Rights, 2020).

In the EU countries, the activities of the national law enforcement agencies of the EU Member States are coordinated by Europol which makes practical recommendations for ensuring the safety of persons cooperating with criminal justice.

However, the current European witness protection program is not universal, as the national criminal procedure and specialized regulations in this area are not unified. For example, the grounds for applying safety measures are different: in some countries (Italy, Belgium), the program is valid only for certain types of serious crimes, and it does not apply for other criminal cases.

The EU does not have a unified approach to the system of safety measures. For example, in Austria it is not allowed to use information technology to testify protected persons in court, since this violates the defendant's right to defence, which directly contradicts the provisions of international declarations and resolutions of the UN Congress on the prevention of crime and the treatment of offenders, which "recommend that states widely use information technology in order to protect the life and health of participants in criminal proceedings" (Fijnaut, 2000).

There is no single body on the territory of the entire European Union that implements safety measures: in Austria and the UK, the police deal with these issues, in the Netherlands it is the prosecution authorities, and in Italy the ministry of justice. European legislation in the field of ensuring the safety of persons assisting criminal justice on the issues of jurisdiction of solving this issue is not unified: in some states, decisions are made by the

court, in others - by the prosecutor's office or specially created commissions.

The circle of subjects for which safety measures are applied is also not unified: in some countries it includes only direct participants in criminal proceedings who personally testify (Germany, Italy), while others include confidants (Austria, Latvia, and The Netherlands).

The lack of a unified approach to regulating the institution of state protection in European countries makes it difficult for them to cooperate in the fight against crime and reduces the effectiveness of implementing programs to protect witnesses and victims.

Conclusions

A study of international law and the experience of European states' cooperation in the field of state protection of participants in criminal proceedings allow us to conclude that it is necessary to develop and adopt international standards to ensure the safety of persons who promote criminal justice and unify national laws in accordance with the developed international standards.

Given the specific nature of crimes of a transnational nature, the participation of witnesses and victims may be required in several trials, each of which will be regulated by its own national legislation, and which in turn may lead to a violation of the safety guarantees of persons contributing to criminal justice due to differences in national standards.

In our opinion, the unification of standards for ensuring the safety of witnesses and victims at the international and national levels will be facilitated by the development of a universal model containing the following elements: definition of the concept of "safety of persons assisting criminal justice; unified safety system; safety principles; grounds and conditions for the application of safety measures; selection criteria and training of employees of bodies implementing safety measures; the circle of persons with respect to whom safety measures may be applied; rights and obligations of bodies implementing safety measures; rights and obligations of protected persons.

We believe that in order to eliminate existing legal conflicts and increase the effectiveness of combating transnational organized crime and international terrorism, it is necessary to develop new approaches to the regulation of minimum guarantees and procedures in the field of ensuring the safety of persons promoting criminal justice and international cooperation in this field.

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Implementation of State Policy in the Field of Guardianship and Trusteeship: Regional Aspect

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Abstract

The objective of the work is to review the implications of the implementation of state guardianship policy in the Primorsky territory of the Russian Federation. The institution of the family is the most important factor for the development of the child's personality; its role is constantly growing in the development and education of children. Without a doubt, the family is a natural educational environment for a child who leaves his mark on his behavior and character. A special place in the modern legal system is occupied by the aspect of the right of the child and the protection of the interest that is left without the care of the parents. Methodologically, use was made of the documentary research technique close to legal hermeneutics. It is concluded that the guardianship and guardianship bodies perform a series of important functions for any civilized state, namely: identification of people who need to establish one of the forms of guardianship (adoption); adoption of such persons, as well as increased supervision of the guardian, the activities of the adoptive parents and of persons authorized by the state to care for those who need their help.

Keywords: family arrangement; guardianship; adoption; guardianship authorities; Primorsky territory.

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Implementación de la política estatal en el campo de la tutela: aspecto regional

Resumen

El objetivo del trabajo consiste en revisar las implicaciones de la implementación de la política estatal de la tutela en el territorio de Primorsky de la federación rusa. La institución de la familia es el factor más importante para el desarrollo de la personalidad del niño; su papel crece constantemente en el desarrollo y la educación de los niños. Sin lugar a dudas, la familia es un entorno educativo natural para un niño que deja su huella en su comportamiento y carácter. Un lugar especial en el sistema jurídico moderno está ocupado por el aspecto del derecho del niño y la protección del interés que se deja sin el cuidado de los padres. Metodológicamente se hizo uso de la técnica de investigación documental próxima a la hermenéutica jurídica. Se concluye que, los órganos de tutela y tutela desempeñan una serie de funciones importantes para cualquier estado civilizado, a saber: identificación de personas que necesitan establecer una de las formas de tutela (adopción); adopción de tales personas, así como una mayor supervisión del tutor, las actividades de los padres adoptivos como de las personas autorizadas por el estado para cuidar a aquellos que necesitan su ayuda.

Palabras clave: arreglo familiar; tutela; adopción; autoridades de tutela; territorio de Primorsky.

Introduction

The state considers the family as one of the most important foundations of our society and directs its policy towards its further strengthening, its material well-being improvement, and favorable condition creation for cultural, spiritual and moral development of people, for raising children. The initial life attitudes, the foundations of character - all this is developed by the family (Uskova, 2017; Volynchuk & Kustov, 2018). The family largely determines the attitude of children to work, the culture of their behavior, initiative and activity, discipline and a number of other personality qualities (Gurkina, 2017).

Unfortunately, not all children have the opportunity to be raised in a family. And this situation is explained by some reasons. Such reasons may include deprivation or restriction of parental rights, recognition of parents as legally incompetent, failure to raise and maintain a child on the

part of his legal representatives, refusal of parents to take their children from educational organizations, medical organizations, social service organizations, or similar organizations, death of parents, action or inaction of parents, which entails the creation of a threat to a child's life and health, his socially dangerous position and many other reasons.

In 2018, the number of orphans left without parental care in Russia decreased by 15 percent, based on information provided by the federal data bank on children. But the problem continues to be acute. Besides, there is still no consensus on the nature of adoption, the only indisputable fact is that adoption gives rise to legal relations. Current legislation does not give a clear answer as to whether this relationship is parental or similar to parental. It seems possible to consider that this is a special type of legal relationship. It is difficult enough to call them similar parental relationships (Smirnova, 2017; Tretyakova, 2018).

Today, custody and guardianship are the most common form of family placement of orphans and children without parental care. Guardianship and trusteeship is only an intermediate form of minor citizen placement before adoption, since a ward does not become a full member of the family as during adoption, however, certain elements of family education are present in this case.

1. Legislative Basis of Guardianship and Trusteeship Institution in the Russian Federation

Federal Law No. 48-FL (April 24, 2008) on Guardianship and Trusteeship distinguishes the following two forms of guardianship (trusteeship):

1. custody in general order.

2. preliminary (temporary) custody (The federal law no. 48-fl, 2008).

Guardianship, appointed in a general manner, requires the implementation of a standard procedure - the collection of all documents, passing a medical commission, attending foster parents' school, conducting a survey of the living conditions of a citizen who has expressed a desire to become a guardian or a trustee. At the same time, preliminary guardianship can be established only with a passport, a statement from a citizen and an act of inspection of the living conditions of a candidate for guardians (trustees). But at the same time, its duration can be no more than 6-8 months.

It should be noted that preliminary guardianship is drawn up solely in the interests of a child and so that, during the course of its operation, the guardian (the trustee) collects a full package of documents for guardianship

registration in general order. The validity of preliminary guardianship (curatorship) is established individually by the body of guardianship in each case individually, taking into account all circumstances. If necessary, the duration of the preliminary guardianship may be extended.

The RF Civil Code defines a whole list of requirements for guardians (trustees). The task of guardianship authorities is to ensure that all these requirements are taken into account when guardianship or trusteeship of a minor is established in order to avoid adverse consequences (Civil code of the Russian federation, 1994). If the establishment of guardianship (trusteeship) of a child by his next of kin is impossible, then any other person has the right to assume these responsibilities, provided that he meets all the requirements and conditions that the legislation imposes on this issue.

Adoption is considered the highest priority form of family placement for children. The adoption process takes place exclusively in court, by filing a statement of claim. When adoption is established, the opinion of a child who has reached the age of ten years is necessarily taken into account, as well as when guardianship or trusteeship is established. Cancellation of adoption also occurs by filing a statement of claim to the court to cancel the adoption.

2. Activities of Trusteeship and Guardianship Authorities: Regional Aspect

All territorial departments of guardianship are under the jurisdiction of Education and Science Department of the Primorsky Territory, which in turn is included in the Government of the Primorsky Territory.

The guardianship authorities perform a number of functions:

- registration of existing orphans, as well as the children who were left completely without parental care, their detection.

- creation of a database in which future guardians, trustees and/or adoptive parents are listed.

- placement of orphans in special institutions (orphanages, boarding schools, etc.) and in foster families.

- protection of minor rights.

- control over the management of their ward property and some others.

Primorsky Territory has 1651 profiles of children who need a family. It should be noted that the number of children who still need a family is significantly reduced due to the activities of the guardianship and trusteeship

of the Primorsky Territory. So, for example, at the end of 2016, the federal databank of children in the Primorsky Territory had 2974 profiles, at the end of 2017 - 2592 profiles, at the end of 2018 - 2080 profiles.

Along with the data on the family structure of minors, there is also evidence concerning the cancellation of child adoption decision to the families of the Primorsky Territory. For example, in 2015, the amount of such decisions made 143, in 2016 – 84, in 2017 – 106, in 2018 – 158.

These data include decisions on the removal of guardians and trustees from the performance of their duties, due to the fact that they cannot cope with their implementation, the decisions on the removal of guardianship or trusteeship from a child due to the guardian, foster parent or child desire, as well as at the initiative of the guardianship and trusteeship authorities, as the case may be. Also, these figures may indicate the abolition of adoptions in relation to minors by the courts of the Primorsky Territory.

3. Regional Projects

Since 2015, the "Children of Primorye" program has been implemented in the Primorsky Territory, organized on the initiative of the Administration of the Primorsky Territory. It combined the efforts of government, business, society and the media to help children from the centers for family adoption promotion.

The social project "Children of Primorye" is the initiative of journalists and social activists of the Primorsky Territory. Its goal is to attract the attention of the regional residents to the problem of social orphanhood, when children are left without family attention with living parents and close relatives, to help put minors of social institutions of the region into families and guardianship, to convince active Primorye people that they should return a family to a child - a serious step, responsible, but still not difficult.

For the fourth year in the framework of the campaign "Children of Primorye," we have been helping families to find hundreds of young pupils of the Family Centers, and any resident of Primorsky Krai may give a New Year's gift to these children. The project operates in several directions. The campaign "Vacations in the family" allows almost any family to pick up a child from the assistance center to their home during holidays. After such communication, many parents seriously think about the adoption or registration of guardianship (trusteeship) for a child.

It is worth noting that a child can be taken not only for the holidays, but also for the weekend, there is also the opportunity to do this regularly, to

take the child home every weekend. Sometimes families are afraid to take their children on vacation for ethical reasons, since they believe that this implies adoption or guardianship (trusteeship) in the future, but this is not the case. You can just take a child home on vacation and a weekend, thus providing support.

Another area is the collection of New Year's gifts in the regional retail chains. The campaign is supported by ordinary citizens, and the representatives of large companies and industries of the region.

Also, to attract the attention of citizens to the problem of social orphanhood, a telethon is held on the Primorye Public Television, and the viewers learn the stories of children who can and should be helped.

"Let's Go Home" program takes place for those babies who were refused by their parents immediately after birth. The program is made on the basis of the Maternity Hospital No. 3 of the Vladivostok City District, which is located in the Pervomaisky District of the Vladivostok City District. According to the Department of Health, thanks to the joint work of the employees of the "third" maternity hospital and the guardianship and trusteeship authorities of the Primorsky Territory, children are sent directly to foster care from the maternity hospital. The program "Let's go home" annually shows positive results: more and more babies left by blood parents are discharged from the institution directly to foster care.

It should also be noted that there is a school of foster parents in the Vladivostok city district, on the basis of KSKU "TSSU No. 1 of the city of Vladivostok", where future candidates for guardians (adoptive parents) and adoptive parents must be trained before they have a positive opinion on the possibility of becoming a candidate, and before they start looking for the right child for them. The same school exists on the basis of a social organization for the socio-psychological support of families in the Primorsky Territory.

4. Problem Points in the Field of Guardianship and Trusteeship in Primorsky Territory and the Mechanisms of their Resolution

According to the data at the end of 2019, the federal database on the children of the Primorsky Territory has 1651 profiles of children who need a family. The number is quite large, and there are explanations for this. There are several categories of children that are difficult to arrange for families.

The first category is the children with health problems. When they choose a child, all candidates for adoptive parents, guardians and trustees

are guided by the state of child's health whom they would like to take to their family. Before issuing an opinion on the possibility of becoming a candidate for guardians, trustees or adoptive parents, they specifically prescribe health groups in statements, within which they would like to choose their children.

The second category of children who are difficult to arrange for families are the children who have brothers and sisters. And the existing principle, thanks to which the separation of brothers and sisters is unacceptable, has not been canceled.

The third category of children is adult children. As practice shows, citizens want to take young children up to about ten years old for their upbringing. Adolescents are the most difficult group for foster parents.

Working "with adult orphans" is much more difficult. At the age of ten - eleven years the chances of finding a new family for a child tend to zero. Adolescents are less adopted and taken under guardianship (trusteeship), and their groups are the most numerous in state institutions. That is, children who were in state institutions as adults have almost no chance of raising in a family.

Such sad statistics, behind which the fates of many, many children left without parental love and care, require active work to provide a family for these children. Employed categories of children can live in family support centers and child care centers for several years, and often graduate from them into adulthood, without knowing what it means to live in a normal loving family.

Also, the territorial departments of guardianship of the Vladivostok city district, as well as some departments of guardianship in the Primorsky Territory, which have a large number of children under guardianship and wards, there have the problem of control over ward families.

There are other points on which it is necessary to exercise control over the ward families, but this is also difficult because one expert has to study the files of each child constantly in order to track all the necessary information about him.

In order to increase the number of children placed in families from the abovementioned categories, it is necessary to introduce a new form of family arrangement in the territory of Primorsky Krai. This form may be represented by foster care. This form of arrangement exists in the territories of 42 constituent entities of the Russian Federation, but has not been mastered yet in the Primorsky Territory. Thanks to foster care, the level of family structure in the Primorsky Territory will be increased; more children will have the opportunity to be raised in families. Disabled children, the children with brothers and sisters, and the children over ten years old will

have a chance to leave the walls of state institutions and be brought up in a professional and loving family.

Another proposal to improve the activities of the guardianship and trusteeship bodies of the Vladivostok city district in terms of family arrangement is the creation of an all-Russian database of citizens deprived or limited of parental rights. Thus, it will always be possible to check the candidates for guardians, trustees or adoptive parents whether citizens have previously been deprived of, or if they were limited in parental rights by their own fault.

Also, this database should include the citizens who were suspended from custody or guardianship of minors, as well as information on citizens whose child adoption was canceled. Such a database would help the employees of guardianship agencies throughout Russia to identify citizens who cannot be candidates for guardians, trustees or adoptive parents at the stage of drawing up conclusions for these citizens. Perhaps such a measure of future candidate check would reduce the number of canceled decisions on the transfer of minors to families.

Indeed, at the moment, the experts of guardianship and trusteeship authorities do not have such an opportunity. For example, any citizen residing in the territory of the Primorsky Territory who has previously been suspended from custody or guardianship, or who has lost parental rights, may receive a conclusion from the guardianship authority of another subject of the Russian Federation on the possibility of becoming a candidate for guardians, trustees or adoptive parents, and also take the child to the family. It is not known how this citizen will treat the child and how he will fulfill his responsibilities in the upbringing and maintenance of the minor.

Another proposal to improve the selection of citizens who claim to become guardians, trustees or adoptive parents is to develop testing at the stage of their education in foster parents' schools.

Specially created tests with the questions about the adoption of orphan children into a family would help screen out those citizens who are not psychologically ready to accept a child in their family. This procedure would also help to reduce the number of canceled decisions on transfer children to families in the future, as those citizens who did not pass this test would not be allowed as the candidates for guardians, trustees or foster parents. Besides, they should increase the number of candidate training days. Currently, training lasts one month and takes place exclusively on weekends. We believe that this period is not enough to understand whether a person is ready for such a serious step as the adoption of a child in his family.

The database of guardians and trustees will improve the work of guardianship and trusteeship authority experts to control families into

which minors have been brought up for education, respectively, will allow more frequent contact with guardians and trustees, and possibly also reduce the number of canceled decisions on the transfer of minors to families, as the problems that originate in families will be identified earlier and perhaps they will find their own solution that will save the family for the child.

Such a database can be created as All-Russian, to divide it into subjects and municipalities, or by education, on the basis of the "Aist" child database, which is now available in all departments of guardianship and trusteeship bodies.

The abovementioned recommendations for guardianship authorities will increase the number of children placed in families both in the territory of the Vladivostok city district and throughout the Primorsky Territory, as well as will improve control over families who raise orphans and children left without parental care, which will reduce the number of canceled decisions on the transfer of children to foster families (Zaripova, 2017).

Conclusions

The existence of guardianship authorities is a very important component of Russian law. They perform the functions that are very important for any civilized society: they identify individuals who need to establish one of the forms of guardianship or trusteeship over them, are engaged in placing such persons under guardianship (trusteeship) or adoption, and also further monitor the activities of guardians (curators) and adoptive parents as the persons authorized by the state to take care of those who need their help.

The number of orphans in the Primorsky Territory is decreasing and this became possible thanks to the enormous work of government bodies and society, namely, to indifferent people who are ready to help orphans and children left without parental care, the people who are ready to take such children to their families. The authorities pursue the policy of public attraction to this problem, which is currently extremely acute throughout the Russian Federation.

New, interesting, and most importantly productive programs are being developed that allow orphans and children left without parental care to find families, and to feel the joy of motherhood and fatherhood by the people who have long dreamed of children. At the same time, the problem of the family structure continues to remain unresolved in full measure, both on the territory of the Vladivostok city district and on the territory of the Primorsky Krai and the Russian Federation.

At that, the problem of the family arrangement is not fully resolved and is acute. There is still a need to develop new programs and forms of child placement in families, to make new proposals and adjustments. It defines in a child's life. Since family education in Russia is a priority, the main task of the entire state and local authorities is to provide all possible assistance in placing children who need families (Miroshnikova *et al.*, 2016).

But first of all, it is nevertheless necessary to work with the families in a socially dangerous situation, to help them by any means and not allow the child to lose a blood family, if possible, and also, if necessary, to prevent the child from being in the family which creates the threat to his life and health.

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Extradition Under the Legislation of the Russian Federation and Member States of the European Union

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Abstract

The document analyzes the legislation of the Russian Federation and the member states of the European Union on extradition from the point of view of its compliance with the current European Convention on Extradition. It also makes proposals to improve the rules of the Criminal Procedure Code of the Russian Federation that regulates the extradition procedure. Methodologically, the work uses scientific methods of analysis and synthesis, as well as the historical, comparative method, all in an integrated approach. Among the conclusions, the fact that for the previous legal provisions to work, its consolidation only in the Code of Criminal Procedure of the Russian Federation is insufficient. The first step to put them into practice could be to discuss the issue of making the necessary amendments to the Convention on Legal Assistance and Legal Relations in Civil Matters, as well as in the Family and Criminal Affairs regulations of January 22, 1993, of which the countries of the European Convention on Extradition are parties.

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Extradición bajo la legislación de la Federación Rusa y los Estados miembros de la Unión Europea

Resumen

El documento analiza la legislación de la Federación de Rusia y los estados miembros de la Unión Europea sobre extradición desde el punto de vista de su cumplimiento con el Convenio Europeo de Extradición vigente. También formula propuestas para mejorar las normas del Código de Procedimiento Penal de la Federación de Rusia que regula el procedimiento de extradición. En lo metodológico el trabajo se sirve de métodos científicos de análisis y síntesis, así como del método histórico, comparativo, todo en un enfoque integrado. Entre las conclusiones destaca el hecho de que, para las disposiciones legales anteriores funcionen, su consolidación solo en el Código de Procedimiento Penal de la Federación de Rusia es insuficiente. El primer paso para ponerlos en práctica podría ser discutir el tema de hacer las enmiendas necesarias a la Convención sobre Asistencia Legal y Relaciones Jurídicas en lo Civil, así como en la normativa de Asuntos Familiares y Criminales del 22 de enero de 1993, de los cuales los países de la Convenio Europeo de Extradición son partes.

Palabras clave: enjuiciamiento penal; Código de Procedimiento Penal de la Federación de Rusia; Convención Europea sobre Extradición; motivos y condiciones para la extradición; orden de detención europea.

Introduction

The socio-political changes that have occurred in the Russian Federation and in the Member States of the European Union have not only positive, but also negative consequences. This applies, in particular, to the phenomenon of "transparency of borders", which is a factor contributing to the evasion of criminal prosecution for crimes committed.

Member States of the European Union are no exception in this regard. The transformation of the European Union into a territory without internal

borders contributes to the process of internationalization of criminality, and enhances its negative consequences. As some European researchers note, the territory of the European Union is a "criminal paradise" in which, in order to avoid justice, it is enough to cross a border (Rance and Baynast, 2001).

In this situation, the institution of extradition i.e. the state's actions provided by the norms of national legislation and international legal acts to take measures to return to the country of its citizens who have committed crimes for further criminal prosecution or the execution of a sentence over them, is of particular relevance.

Despite the fact that extradition issues are among the priority studies in various branches of legal science, many aspects of extradition require further reflection in order to find ways to increase the effectiveness of this criminal procedure institute. One of these aspects is the study of the procedure for the execution of requests for extradition, which is problematic in the practical activities of criminal justice authorities.

The purpose of this work is to analyse the norms of the Russian criminal procedural legislation regulating the extradition procedure in terms of their compliance with international legal acts, as well as the legislation of foreign states on extradition, and develop proposals for improving the Criminal Procedure Code of the Russian Federation based on the results obtained.

The methodological basis of the work is scientific methods of analysis and synthesis, as well as private scientific methods, such as historical, comparative method and an integrated approach.

1. Discussion and Results

Extradition in international law is one of the most important and ancient institutions dating back to slave-owning times.

The first documented mention of the extradition of persons is found in the Peace Treaty signed in 1268 BC by Pharaoh Ramses II and the Hittite king Hettushil III. The most ancient extradition treaties include the 1242 AD treaty concluded between the Dutch prince Wilhelm II and the Count of Brabant Henry II, the 1376 treaty between King Charles V and the Count of Savoy, the 1303 treaty between the English king Edward III and the French king Philip the Beautiful (Rolin,1923).

In the Middle Ages in France, a special idea of extradition was formed. Initially, French law adhered to the fact that it was impossible to extradite

one's own subjects and that a king had the responsibility to protect their interests; we could only talk about the extradition of foreigners (Holtzendorff, 1884).

The extradition institute did not bypass the declarations of the Paris Parliament of 1555 and 1778, which also touched upon the issue of surrender their own subjects (Billot, 1874).

As for Russia, the first signs of the emergence of this legal institution can be found in the agreements of Prince Oleg (911) and Prince Igor (944) with Byzantium. So, according to these agreements, "the Russians who committed a crime in Byzantium should be extradited for punishment to the motherland," and, conversely, the Greeks should be sent to Byzantium" (Khuruhnova, 2001).

The beginning of the formation of the national legislation in the Russian Federation on extradition as in a sovereign state is the adoption in 2001 of the Code of Criminal Procedure of the Russian Federation (Official Internet portal of legal information, 2020), the structure of which includes chapter 54 "Extradition of a person for criminal prosecution or execution of a sentence" (Lyudmila *et al.*, 2017). An analysis of the norms included in Chapter 54 of the Code of Criminal Procedure of the Russian Federation leads to the conclusion that the content of this chapter was influenced by bilateral legal assistance treaties concluded by the Russian Federation with a number of foreign states in 1992-2000, as well as existing legal assistance treaties concluded between the USSR and other foreign states. However, it should be recognized that the most significant influence on the formation of Chapter 54 included in the Code of Criminal Procedure of the Russian Federation was provided by the 1957 European Convention on Extradition (Ministry of Justice of the Russian Federation, 2020).

A comparative analysis of the content of the norms included in chapter 54 of the Code of Criminal Procedure and the provisions of the Extradition Convention leads to the conclusion that there is a close correlation between them, which consists in the fact that the provisions of the Extradition Convention are fixed and specified in the norms of chapter 54 from the Code of Criminal Procedure of the Russian Federation.

Since it is impossible to carry out a comparative analysis of the entire contents of chapter 54 included in the Code of Criminal Procedure of the Russian Federation and the Convention on Extradition within the framework of the paper, we note that the norms enshrined in this chapter establish the procedure for sending a request to a foreign state to extradite a person located in its territory (Article 460), the order of executing the request for extradition of a person located in the territory of the Russian Federation (Article 462), as well as the grounds for refusing extradition (Article 464) basically correspond to the provisions formulated in Articles

2, 3, 6, 7, 8, 9 10, 14 and the Convention on extradition. However, this does not mean a complete absence of discrepancies between individual norms of the Code of Criminal Procedure of the Russian Federation and the provisions of the Extradition Convention.

So, for example, in the Extradition Convention extradition is not carried out if the crime in respect of which it is requested is considered by the requested Party as a political crime or as a crime related to a political crime. However, in this article of the Convention on Extradition, there is no definition of a political crime, but there is only a reference to crimes specified in some international conventions of a crime that are not considered political. In this regard, in paragraph 2, Part 1 of Art. 464, the Code of Criminal Procedure of the Russian Federation, a norm has been enshrined in accordance with which "extradition of a person is not allowed if ... the person in respect of whom a foreign state has requested an extradition is granted asylum in the Russian Federation due to the possibility of persecution in that state on the basis of race, religion, citizenship, nationality, membership of a particular social group or political opinion" (Burtsev *et al.*, 2018).

In addition, the Code of Criminal Procedure of the Russian Federation enshrines the norm according to which extradition of a person is not allowed if the act in connection with which the request for extradition was sent, was committed on the territory of the Russian Federation or against the interests of the Russian Federation outside its territory, and the provision formulated in the Extradition Convention, according to which, in cases where the crime in respect of which extradition is requested was committed outside the territory of the requesting Party, is not accepted. Extradition can only be refused if the requested Party does not allow prosecution for the same category of offense when committed outside the latter's territory or does not allow extradition for the offense.

In contrast to the Convention on Extradition, the Code of Criminal Procedure of the Russian Federation enshrines the rules according to which extradition can be refused on the following grounds:

- There is a court decision of the Russian Federation that has entered into legal force on the existence of obstacles to the extradition of this person in accordance with the legislation of the Russian Federation;

- The act that served as the basis for the request for extradition is not a crime in accordance with the criminal legislation of the Russian Federation (paragraph 6, part 1).

- The criminal prosecution of a person in respect of whom a request for extradition is being sent is instituted as a private prosecution (paragraph 4, part 2). The Convention on Extradition does not have a similar provision, however, such grounds for refusing extradition are enshrined in agreements on mutual legal assistance in civil, family and criminal matters concluded

by the Russian Federation with Azerbaijan, Iran, Latvia, Lithuania, Kyrgyzstan, Moldova, Poland, Estonia and other foreign states.

Legislation on the extradition of other States-parties to the Extradition Convention was formed somewhat differently. When signing and ratifying the Convention, a number of countries took advantage of the provision of the Extradition Convention that any Negotiating party may, when signing this Convention or depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention. The use of this provision seems to have become so widespread that the Committee of Ministers of the European Council has adopted a resolution in which it noted the large number of reservations made, and recommended that the governments of the member states that are Contracting Parties limit the scope of the reservations or withdraw them ... (Certificate of the Ministry of Natural Resources and Trade of the Russian Federation, 2020).

In 1980, the Committee of Ministers of the European Council recommended that the governments of member states that are not Negotiating Parties to the Extradition Convention "ratify it as soon as possible" and that those who are Negotiating Parties should be guided by the principles developed by the Committee regarding the use of extradition, procedures for extradition, simplified extradition and provisional arrest in their practical application (http://www.consultant.ru/).

At the same time, the Committee of Ministers of the European Council recommended that the governments of the member states "not to extradite when the request for extradition comes from a state that is not a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and when there are significant grounds to believe that the request was made for the purposes of criminal prosecution and punishment of a person because of his\her race, religion, nationality or political opinion, or that his\her position could be harmed on any of these grounds " (http://www.consultant.ru/).

In our opinion, the given recommendations were prerequisites for differentiating the extradition legislation of the European states, which was enshrined in the Council of the European Union Framework Decision on the European Arrest Warrant and Procedures for the Transfer of Persons between Member States of June 13, (2002).

The preamble to the Framework Decision states that "from the moment the Framework Decision of the European Union enters into force, the provisions of the European Convention on Extradition, signed in 1957 will cease in relations between the member states within the framework of the Council of Europe. This also explains the reasons for the adoption of the Framework Decision: to eliminate such features inherent in the current extradition procedures as the complexity and danger of delays. To this

end, the classic cooperation relationship between the EU member states should be replaced by a system of free movement of court decisions in criminal matters (including both final decisions and decisions taken before sentencing) within the space of freedom, security and justice.

The advantages and disadvantages of the Framework Decision have been and remain the subject of discussion both in Russian (Biryukov, 2010; Voynikov, 2011; Alekseeva, 2014; Idiev & Radzhabov, 2015; Klyuchnikov, 2017), and in foreign literature (Peers, 2004; Sievers, 2006; Tomuschat, 2006), so we only note the consequences of the adoption of this document.

Fulfilling the injunction of the Framework Decision on bringing domestic law into line with the European arrest warrant no later than on December 31, 2003, the European Union Member States established two procedures for the extradition of a person for criminal prosecution or execution of a sentence in their criminal procedural law: 1) at the request of a foreign a state that is not a member of the European Union and 2) on a European arrest warrant, i.e. according to a court judgment issued by a Member State of the European Union for the purpose of detaining and transferring a wanted person to another member state of the European Union for criminal prosecution or the execution of a sentence or security measure related to deprivation of liberty (paragraph 1, article 1 of the Framework decision).

For example, chapter 65 of the Code of Criminal Procedure in Poland establishes the first type procedure for the extradition of a person, and chapter 65b establishes the second type procedure (ArsLege, 2020).

Conclusion

The analysis carried out leads to the conclusion that the Code of Criminal Procedure of the Russian Federation with regard to the regulation of the extradition procedure is generally consistent with the 1957 European Convention on Extradition, which allows for cooperation with foreign states - parties to this Convention on extradition issues.

At the same time, the following provisions of the Framework Decision on a European arrest warrant and procedures for the transfer of persons between Member States dated June 13, 2002, deserve attention and need further reflection in terms of improving both national and international legislation:

- The provision according to which the decision to extradite a person with regard to a European arrest warrant is executed without checking for double criminality the acts listed in this paragraph (participation in a criminal organization, terrorism, human trafficking, etc.), if they are

punished in the state that issued the European warrant of arrest, or there are punishment or security measure related to imprisonment with an upper limit of at least three years (paragraph 2, Article 2);

- The provision that a judicial authority executing European arrest warrant refuses to execute it, if the crime serving as the basis for issuing the European arrest warrant is subject to amnesty in the state executing the warrant, and if the latter had the right to prosecute this crime according to own criminal law (paragraph 2, Article 3);

– The norm according to which a European arrest warrant can be sent directly to the judicial authority executing the warrant, provided that the location of the wanted person is known (paragraph 1, Article 9);

- The provision that "at the request of the judicial authority issuing the warrant, its assignment may be performed through a secure telecommunication system within the framework of the European network in the field of justice" (paragraph 2, Article 10);

- The rules that establish the following rights of any wanted person in the event of his/her detention: a) to give his/her consent to his/her transfer to the judicial authority that issued the warrant, as well as the right to use the services of a lawyer and translator (Article 11) and b) to be heard by the judicial authority, executing the warrant, in case of disagreement on his\ her transfer (Article 14);

- The provision according to which "the European arrest warrant is subject to review and execution in a proceeding of special urgency" (paragraph 1, Article 17).

In order for the above provisions to function, their consolidation only in the Code of Criminal Procedure of the Russian Federation is insufficient. The first step to putting them into practice could be to discuss the issue of making the necessary amendments to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993, to which the CIS countries are parties.

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Hemerografía de temas económico-políticos en una revista científica Latinoamericana

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Resumen

Los temas económicos siguen ocupando un lugar destacado en la producción de artículos científicos que se publican en revistas arbitradas, tanto en revistas especializadas en economía, como en revistas multidisciplinarias o enmarcadas en la ciencias sociales y humanas, de modo que los problemas económicos siguen siendo un asunto trascendental para académicos y diseñadores de políticas públicas en general. El objetivo de esta investigación fue elaborar un balance hemerográfico de una muestra de los artículos sobre economía publicados en la Revista Amazonia Investiga en el periodo 2019. Metodológicamente se trata de una investigación de base documental que se sirvió de la técnica del balance biblio-hemerográfico, con el propósito de mostrar un estado del arte útil, para efectuar una lectura panorámica del discurso científico sobre economía, producido por economistas y otros científicos, en un órgano divulgativo de alto impacto. Del proceso indagativo emergen algunas conclusiones relevantes, por un lado, las fronteras que dividen a la ciencia política y la economía se diluyen en los textos revisados, porque la economía es, a su modo, una disciplina que se ocupa igualmente del poder y sus interrelaciones, por el otro, se observa como la economía es una ciencia flexible que se cultiva de forma interdisciplinaria.

Palabras clave: Amazonia Investiga; temas económicos; producción científica; balance hemerográfico; revistas de alto impacto.

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Hemerography of economic-political issues in a Latin American scientific Journal.

Abstract

Economic issues continue to occupy a prominent place in the production of scientific articles that are published in peer-reviewed journals, both in journals specialized in economics, and in multidisciplinary journals or framed in the social and human sciences, so that economic problems continue to be a Transcendental issue for academics and public policy makers in general. The objective of this investigation was to prepare a hemerographic balance of a sample of the articles on economics published in the journal Amazonia Investiga in the period 2019. Methodologically, it is a documentary-based investigation that used the bibliographic-hemerographic balance technique, with the purpose of showing a useful state of the art, to carry out a panoramic reading of the scientific discourse on economics, produced by economists and other scientists, in a high impact informative body. From the investigative process some relevant conclusions emerge, on the one hand, the borders that divide political science and economics are diluted in the revised texts, because economics is, in its own way, a discipline that also deals with power and its interrelations On the other hand, it is observed how the economy is a flexible science that is cultivated in an interdisciplinary way.

Keywords: Amazonia Investiga; economic issues; scientific production; hemerographic balance; high impact magazines.

Introducción

Desde sus orígenes la economía o *economía política*, tal como la definían autores clásicos de la talla de Adams Smith (1723-1790), David Ricardo (1772-1823) y los fisiócratas, entre otros, se ha ocupado del estudio sistemático de las relaciones de producción encauzadas a garantizar la materialidad de la existencia individual y colectivamente, para lo cual ha tenido que intentar resolver una cuestión básica que, de una u otra forma, afecta a todas las sociedades humanas en su movimiento histórico, esto es ¿Cómo atender a la crecientes necesidades sociales mediante la administración eficiente de recursos escasos?

Motivada por esta misma pregunta y por otras similares, en el siglo XXI la ciencia económica adquiere un rol preponderante no solo para los economistas y científicos sociales en general, sino específicamente para los hacedores de políticas públicas en todos los países del orbe, que, más

allá de sus particulares ideologías e intereses de poder, están obligados a la satisfacción de las necesidades sociales como condición de posibilidad para garantizar unos niveles mínimos de legitimidad por desempeño que les permita gobernar, en un clima de desarrollo sostenible, distribución equitativos de los ingresos y equidad social. Por están circunstancias, los temas económicos ocupan un lugar destacado en las revistas científicas de mayor divulgación internacional.

El objetivo de esta investigación fue elaborar un balance hemerográfico de una muestra de los artículos sobre economía publicados en la Revista Amazonia Investiga en el periodo 2019. Metodológicamente se trata de una investigación de base documental que se sirvió de la técnica del balance biblio-hemerográfico, con el propósito de mostrar un estado del arte útil, para efectuar una lectura panorámica del discurso y del debate científico sobre economía, producido por economistas y otros científicos, en un órgano divulgativo de alto impacto como lo es Amazonia Investiga.

En el primer apartado, se presenta para conocimiento de los lectores, el alcance, significados y límites que se le asigna al problema de investigación, al tiempo que se da cuenta de los referentes teóricos que estructuraron el aparato analítico para el procesamiento adecuado de las fuentes a nuestra disposición, ordenadas alfabéticamente en la sección de Referencias Bibliográficas; en el segundo, se describen los procesos metodológicos desplegados para el logro satisfactorio del objetivo general de la investigación; mientras que, en el tercero, se muestran los hallazgos más relevantes del ejercicio hemerográfico de temas económicos publicados en Amazonia Investiga[4], para arribar a las conclusiones más relevantes del trabajo en el último apartado.

1. Problema de investigación y referencias teóricas

El problema de investigación está enmarcado en los estudios bibliográficos y documentales que intentan comprender en sentido hermenéutico, las características, ideas, conceptos, discursos y significados de la producción científica que se desarrolla, en este caso, en la modalidad: artículo arbitrado y que se expresa como un específico género discursivo (Artículo científico) que busca comunicar los resultados de investigaciones

4 La Revista Amazonia Investiga, es un órgano de divulgación científica adscrito a la Universidad del La Amazonia en Colombia. En su página web se indica taxativamente que: "(...) es una revista científica multidisciplinaria con circulación mensual, con difusión virtual que pretende ser un medio para difundir los resultados de la investigación y la producción intelectual en el campo de las Humanidades, las Ciencias Sociales, la Educación, las Tecnologías de la Información y la Comunicación, la salud y la Cultura Ambiental". Para mayor información se recomienda consultar (https://amazoniainvestiga.info/index.php/amazonia).

o reflexiones en un ámbito académico y, al mismo tiempo, fomentar un debate sobre la utilidad, veracidad y contribuciones de los mismos (Sánchez Upegui, 2011; Mari-Mutt, 2012; Molero de Cabeza, 2007).

No debe confundirse este trabajo con un estudio bibliométrico encauzado a cuantificar o medir el volumen de artículos científicos publicados o citados sobre un ámbito disciplinar determinado en una revista arbitrada o, en un conjunto de revistas arbitradas de prestancia, lo que no significa que esta investigación no pudiera servir posteriormente como insumo inicial para estudios bibliométricos sobre el tema económico-político. De lo que se trata aquí es de escudriñar, con base a ciertos criterios que serán explicitados en el apartado que sigue, las tendencias, preocupaciones o interés temáticos y/o problemáticos que definen a los investigadores que figuran en la muestra seleccionada, sin ninguna pretensión de proceder deductivamente para generalizar datos en un contexto teórico más amplio; por el contrario, tal como sucede en las investigaciones estructuradas con base al paradigma cualitativo, se procedió inductivamente, razón por la cual las conclusiones de este estudio preliminar, muy seguramente, solo son válidas para esta muestra.

Conviene enfatizar que el *género artículo científico* también funciona como espacio simbólico para legitimar los saberes económicos en los imaginarios colectivos de las elites intelectuales y, está estrechamente vinculado a los dominios hegemónicos del discurso científico que, en occidente en particular y en el mundo moderno en general, se ha perfilado como la única forma valida y racional de conocer la realidad y de responder a las necesidades humanas en todos los ámbitos de la vida social. De hecho, este discurso rebasa los linderos de la ciencia y se expresa en el ámbito político como una narrativa tecnocrática: "El discurso tecnocrático se asocia con el científico porque defiende una sociedad en donde quienes toman las decisiones son los científicos o expertos técnicos; estos, además, sustentan sus posiciones a través de la argumentación racional o del pensamiento crítico" (Uribe, 2015: 131).

De todas las ciencias sociales, muy seguramente, la que mejor se adapta a los requerimientos del poder vinculante es la economía, ya que como argumenta (Cuadrado Roura, 2006), es, en este campo del saber, donde se definen las prioridades socioeconómicas y se elaboran las políticas concretas, así como sus fases de implementación y los agentes que participan en las mismas, su contenido y sus objetivos. De igual modo, es mediante un cálculo económico que se logra precisar a ciencia cierta, los medios e instrumentos que están a disposición del gobierno, la consistencia e inconsistencia de los fines perseguidos, el análisis de los efectos directos e indirectos de las políticas implementadas, así como los niveles de bienestar y desarrollo general alcanzado por una sociedad mediante la implementación de las políticas fiscales, monetarias y de fomento adecuadas a su realidad.

2. Metodología

La investigación se desarrolló en un contexto epistemológico postpositivista. Específicamente nos apegamos a una postura constructivista de la ciencia según la cual, el conocimiento en todas sus expresiones y modalidades discursivas, significa una construcción social que da cuenta de los desafíos colectivos y de las especificidades del tiempo y espacio donde se produce y reproduce el mismo. Al decir de (Barrera Morales, 2010):

> El constructivismo considera que la razón de ser del conocimiento estriba en una configuración que está por hacerse, en una construcción que se refleja en la realidad, que puede ser reflejo de los hechos, de las cosas, pero de naturaleza mental, sobre lo cual se organizan los procesos y a partir de la cual se construye tanto el conocimiento como la realidad por conocer (2010: 99).

Desde estas reflexiones se infiere que, existe una relación muy íntima entre la realidad y el conocimiento, una relación en la que interactúan en simetría de condiciones: lo objetivo y lo subjetivo, lo teórico abstracto con lo concreto y particular de cada texto y contexto, en un complejo proceso intersubjetivo en el cual la realidad es construida intelectualmente por el sujeto investigador, sea este individual o colectivo, al tiempo que el conocimiento científico es un reflejo de su realidad, hasta el punto que realidad y conocimiento pueden llegar a confundirse, situación que no niega lo parcial y limitado de toda forma de saber y de poder (Foucault, 1980; 2002).

De conformidad con la naturaleza textual del tema, se empleó un diseño de investigación documental y descriptivo en función de ordenar, sistematizar, analizar e interpretar la muestra de artículos científicos recadaba –intencionalmente– mediante arqueo de fuentes primarias y secundarias. A modo de técnica de investigación se optó conjuntamente por el balance hemerográfico que, siguiendo los aportes (Arbeláez-Campillo y Rojas-Bahamón, 2020), implica la elaboración de un estado del arte a partir de, al menos, de cinco (05) criterios básicos, que se presentan a continuación adaptados ahora a las características del objetivo planteado en este nuevo trabajo:

Objetivo general: Elaborar un balance hemerográfico de una muestra de los artículos sobre economía publicados en la Revista Amazonia Investiga en el periodo 2019.	
Criterios o unidades de análisis:	**Formulación del problema:**
a) tema investigado.	¿Qué temas económico-políticos se investigan?

b) metodologías y técnicas de investigación.	¿Cuáles metodologías y técnicas de investigación se emplean?
c) fuentes empleadas y referentes teóricos.	¿Qué tipo fuentes se utilizan y con qué referentes teóricos se interpretan?
d) aportes para el desarrollo de la economía.	¿Qué aportes teóricos y/o metodológicos se observan en los artículos revisados?
e) Observaciones o comentarios.	¿Qué observaciones o comentarios se pueden efectuar a los artículos revisados?

Cuadro No 1. Sistematización de la técnica de investigación con base al objetivo planteado. Elaboración propia (2020).

En consecuencia, todos y cada uno de los artículos revisados fueron leídos con el propósito de responder a las interrogantes/criterios que se muestran en el cuadro, actividad hermenéutica que adicionalmente dio cuenta, de algún modo, de las tendencias generales de estas investigaciones, de sus limitaciones y contradicciones internas, así como de los intereses académicos y preocupaciones de sus autores, entre otros aspectos de interés cuando se trata de describir e interpretar la información contenida en repositorios documentales de acceso abierto. Por lo demás, la investigación de desarrollo en cuatro (04) etapas o momentos particulares:

- **Planteamiento y formulación del problema**: momento en el cual se definió el tema a desarrollar y el objetivo de la investigación con arreglo a los referentes teóricos y metodológicos que nos identifican como investigadores activos.
- **Arqueo de fuentes documentales**: de seguía, como es lógico en estas pesquisas, se seleccionó de forma intencional y no aleatoria todos los artículos que componen la muestra, publicados en la revista Amazonia Investiga en 2019.
- **Interpretación y procesamiento de la muestra**: este momento es el más importante de proceso de investigación y reflexión porque permitió efectuar el estado del arte que, entre otras cuestiones, permitió resolver el objetivo planteado junto a sus variadas aristas.
- **Redacción y publicación del artículo de investigación**: luego de finiquitadas las fases anteriores se procedió a elaborar el artículo para evaluación de los árbitros y posterior publicación.

3. Hemerografía de temas económicos en Amazonia Investiga

(Bannikova, 2019) abordó el tema de socialización profesional de estudiantes técnicos (futuros ingenieros). Para el proceso de recabar información se utilizó una encuesta realizada a estudiantes como parte de la séptima etapa de monitoreo sociológico de alumnos del Distrito Federal del Ural (licenciados en programas educativos de ingeniería). Sus aportes van dirigidos a todas las personas que se dedican a impartir la ciencia de la ingeniería, de manera que puedan incentivar al estudiante a sentirse interesado motivacionalmente por la carrera, para que no solo estudien (ingeniería) porque sus padres así lo quisieron, por poner un ejemplo.

El artículo de (Dmitriev y Novikov, 2019), aborda el concepto de doctrina de gestión estatal desde la perspectiva de la economía política. A pesar de que no se redacta claramente cuál es el objetivo de la investigación, todo indica que se trata de discutir distintos conceptos de doctrina de gestión a la luz de lo que significa una visión innovadora que busca implementar mejoras continuas en el sistema de gestión del que emergen las políticas públicas en general. De igual modo, no se enuncia de forma clara cuál fue el método o los métodos implementados para obtener los resultados de la investigación, aunque el artículo cuente con un apartado de metodología, en este sentido se infiere que se trata de un diseño documental de investigación por las formas de proceder en el manejo de la información recabada.

En cuanto a los referentes teóricos que se manejaron para el desarrollo del aparato analítico de la indagación, se mencionan la doctrina militar y la doctrina de seguridad nacional. Entre los aportes de la investigación se enfatizan las informaciones de importancia que buscan alertar sobre las consecuencias del bajo nivel de desarrollo de la gestión en la Federación de Rusia y su posible colapso de la gestión y su degradante transformación en una localización atomizada, dedicada, en tal caso, a la agricultura de subsistencia de baja estructura tecnología.

Así mismo, el artículo de (Pinkovetskaia (*et al.,* 2019), aborda la evaluación de los niveles de actividad empresarial de las mujeres en Rusia, sus preferencias motivacionales. El estudio se basa en el análisis económico y estadístico de los datos sobre Rusia en 2015-2017, presentado en el informe Global Monitor de emprendimiento y en el Índice de actividad empresarial femenina en Rusia. En las fuentes acuden a datos estadísticos y económicos sobre Rusia.

Por su parte, (Balysh, 2019), explora el tema sobre las Materias primas para la producción de trotilo en el contexto de los problemas de desarrollo de la industria petrolera soviética en los años 1920-1940, con el objetivo de estudiar los datos existentes sobre los volúmenes de producción e

importación de explosivos en la URSS durante la Segunda Guerra Mundial y analizar, de igual manera, las características del desarrollo de la industria petrolera soviética en esa década. Metodológicamente, se trata de una investigación histórica en la que se analizan datos económicos de carácter estratégicos. En las fuentes se conjugan la información historiográfica y datos estadísticos sobre volúmenes de producción. Entre las contribuciones más interesantes se destaca como el liderazgo soviético de la época desarrollo alianzas con los EEUU para subsanar mediante préstamos económicos las carencias en materiales de guerra como el trotilo y vencer a los nazis.

En otro orden de ideas, (Novikov, 2019) trabajó la base económica sobre la Regulación estatal y estimulación de industrias de alta tecnología y, como objetivo, pretendió estudiar la planificación estratégica y la regulación de desarrollos de alta tecnología y soluciones técnicas innovadoras. Como en casos pasados, el apartado metodológico no se planteó con mucha claridad, no obstante, todo indica que utilizaron el método del diseño documental de investigación. Los datos fueron recabados a partir de fuentes documentales de revistas especializadas en el ámbito económico y de información del Estado. Las contribuciones radican, desde el punto de vista práctico, en su utilidad en la teoría y ejecución del análisis de I & D; y, desde su mirada teórica, es una información util para gerentes de organizaciones que participan en la innovación, como también para estudiantes de maestría y postgraduados de áreas financieras y económicas que realizan investigación en este campo.

El trabajo de (Dmitriev y Novikov, 2019) sobre el concepto de organización y funcionamiento de la *infoesfera* electrónica integrada de informar sobre los resultados de los trabajos de I + D, se propone indagar el problema de la fragmentación e inaccesibilidad de los resultados de las investigaciones en varios niveles jerárquicos: a nivel mundial, a nivel estatal, en las industrias, en las empresas, etc., en términos de donantes y receptores de información. En lo metodológico se trata de una investigación que se sirvió de evidencia empírica concreta recabada de nodos de información y de fuentes documentales. Referenciando sus aportaciones, a raíz de la investigación proponen introducir una descripción unificada de los conocimientos, además, plantea la necesidad posicionar los resultados de las investigaciones como objetos de propiedad intelectual para fijar los derechos en relación a ellos y evaluar las características de valor.

Asimismo, (Arsenieva *et al.,* 2019) abordaron la temática de los problemas modernos de diversificación de las actividades de las empresas de alta tecnología en el contexto del crecimiento económico, entendiendo que su propósito va destinado a resaltar los problemas modernos de diversificación de la producción en el contexto del concepto general del crecimiento económico y la competitividad de las empresas de ingeniería. Se trata de un diseño documental de investigación en la que también se

intentó interpretar las complejas realidades empresariales del mundo de hoy. En su gran mayoría las fuentes citadas son artículos de revista de alto impacto. Como aporte fundamental, enfatizan la obligación de desarrollar métodos que analicen los aspectos económicos de los tipos de diversificación en empresas de construcción de maquinaria.

Seguidamente, (Novikov *et al.,* 2019) apostaron por estudiar el desarrollo de un sistema de motivación y apoyo al éxito de las interacciones internas y externas del grupo de proyectos de red, con la misión de desarrollar un sistema de motivación y mantener el éxito de las interacciones internas y externas. En el marco de las metodologías cualitativas utilizan la observación y el análisis comparativo para reunir y analizar información significativa. Como material de apoyo se basan en trabajos similares realizados con anterioridad, de igual forma, este artículo es de utilidad práctica, puesto que, permite aumentar el grado de incentivos para los empleados en la secuencia de aprobación de pasos que aumentan el interés y la participación de los mismos en la resolución de problemas durante el proyecto o proyectos similares.

Del mismo modo, (Novikov, 2019) y su publicación en base a la poliestructura organizacional y económica de la implementación de proyectos innovadores. Tienen la finalidad de formar una estructura organizativa y ejecutiva especializada en la implementación de proyectos en el marco de un sistema de integración de los participantes o ejecutores de proyectos. Como en otros casos, el autor hace uso de información extraída y seleccionada por medio de la observación documental. Las fuentes que sirvieron para la realización del trabajo, recaen sobre los datos expresados en artículos de economía y otros de finanzas. Logran proponer un sistema de legitimidad, políticamente más correcto en el marco de la legislación existente, teniendo en cuenta que, el anterior carecía de un procedimiento de selección de implementación de proyectos de alta tecnología.

Por su parte, (Novikov *et al.,* 2019) indagaron en lo concerniente al desarrollo del mecanismo de formación de capacidades adicionales del equipo de diseño de redes, como base a las ventajas competitivas de las empresas de TI. Todo ello, con el objetivo de estudiar la construcción de un mecanismo para la creación de nuevas capacidades de los equipos de proyectos en red para aumentar las ventajas competitivas; en concordancia con su objetivo, se emplearon una amplia gama de métodos científicos, como: los modelos Porter, gestión de mando adhocrático, la creación de estructuras de diseño de red, flexibilidad y manejo situacional y métodos de sistema y análisis situacional.

Teóricamente, se apoyaron en los resultados de los experimentos realizados por Jonathan Cummings y Carol Fletcher luego de observar el trabajo de varias estructuras de diseño exitosas y fallidas en el contexto de la creación de nuevos productos, la comunicación con los clientes y el

trabajo para aumentar los indicadores operativos. En sus contribuciones se encuentran el desarrollo de un esquema de respuesta de la estructura de red a los impactos externos que, en el futuro ayudaran a determinar las ventajas competitivas de las estructuras de diseño de red mediante la producción de nuevas competencias.

Economía de la innovación: aspectos de seguridad económica y de la información en innovación logística, es el título que lleva la investigación de (Boyar-Sozonovitch *et al.,* 2019) donde intentan destacar los principales problemas de apoyo a los recursos de la economía innovadora. En lo metodológico se trata de una investigación analítica y descriptiva que se sirvió en su mayoría de artículos científicos de gran relevancia. Las fuentes utilizadas se encuentran disponibles en los datos de economía existentes en los artículos. Por lo demás, esta contribución mismo ayuda en la toma de decisiones favorables sobre la mejora de los enfoques logísticos existentes desde el punto de vista de la seguridad.

Finalmente, (Shamishev y Toktamysov, 2019) exploran lo concerniente a la Unión Económica Euroasiática en el contexto de la política de sanciones y, realizan un análisis de la política de sanciones en relación con las economías de los países de la Unión Económica Euroasiática (UEE). El artículo se desarrolla en la perspectiva de la economía política, para la cual el análisis económico se combina con las relaciones geo-políticas de poder que explican las sanciones. Metodológicamente se trata de una investigación analítica con base documental. Como fuentes utilizaron artículos científicos de expertos en la materia. Contribuyen en establecer el importante papel de la UEE en el desarrollo de las economías nacionales de la región euroasiática, en la convergencia de las economías y en los sistemas de gestión de los Estados miembros.

Conclusiones

A partir de la elaboración un balance hemerográfico de una muestra de los artículos sobre economía publicados, en este caso, en la Revista Amazonia Investiga en el periodo 2019, se puede valorar el contenido de los trabajos, sus limitaciones formales y sus principales contribuciones. En regla general, se trata de artículo de interés científico, tecnológico, político y económico que vienen a ratificar, por un lado, que las fronteras que dividen a la ciencia política y la economía se diluyen en la mayoría de los textos revisados, porque la economía es, a su modo, una disciplina que se ocupa igualmente del poder y sus interrelaciones, por el otro, se observa como la economía es una ciencia flexible que se cultiva de forma interdisciplinaria.

Entre las principales limitaciones de la muestra que figura en el balance destaca que, en algunos casos, no hay suficiente claridad en la definición del objetivo de la investigación o en la metodología empleada para procesar la información, pero esto se trata de un aspecto formal en lo concerniente a redacción adecuada de textos científicos que, muy seguramente, puede ser solventado con una estrategia de arbitraje más eficaz donde se señala a los autores los aspectos a mejor de sus textos.

Entre sus principales contribuciones resaltan en mayor o menor medida: el manejo adecuada que se hace de temas económicos de interés internacional; la capacidad para articular la económica con otras ciencias o disciplinas a fines, en un ejercicio de inter o transdisciplinariedad que fomenta el diálogo franco entre saberes diversos, así como la habilidad para sintetizar en el formato *artículo científico* resultados de investigaciones más amplias para conocimiento, debate y difusión en las comunidades de especialistas que ven en Amazonia Investiga un espacio idóneo cuando se trata de publicar trabajos de alto impacto, amplia visibilidad y citación entre pares.

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Improving the State Regulatory System of the Agribusiness

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Abstract

The article aims to improve the state agribusiness regulatory system. It is established that the state regulatory system for agribusiness must be based on the application of a reasonable protectionism policy, guaranteeing food security through a system of tariffs and customs taxes on imported food products. The authors demonstrate the need to create a favorable climate for foreign investors, establish joint ventures in the agricultural business, provide state guarantees to foreign creditors by importing advanced equipment and technology, as well as finance key areas of science on business problems. agricultural. The theoretical and methodological basis of this study is an abstract logical method, induction, deduction, analysis, synthesis and systematization methods; as well as the statistical, economic and graphic methods used to study the levels and trends of change in the parameters of agricultural development in the current stage. In conclusion, it is revealed that parities in agricultural prices must include parity with

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consumer prices. for rural residents. The wages of employees in rural areas must guarantee the reproduction of the labor force and the development of the social sphere.

Keywords: state regulation of agribusiness; parity economy; state guarantees; farming; agricultural products**.**

Mejoramiento del sistema regulador estatal de los agronegocios

Resumen

El artículo apunta a mejorar el sistema regulatorio estatal de los agronegocios. Se establece que el sistema regulador estatal de los agronegocios debe basarse en la aplicación de una política de proteccionismo razonable, garantizando la seguridad alimentaria a través de un sistema de aranceles e impuestos aduaneros sobre los productos alimenticios importados. Los autores demuestran la necesidad de crear un clima favorable para los inversores extranjeros, establecer empresas conjuntas en el negocio agrícola, proporcionar garantías estatales a los acreedores extranjeros al importar equipos y tecnología avanzada, así como financiar áreas clave de la ciencia sobre los problemas del negocio agrícola. La base teórica y metodológica del presente estudio es un método lógico abstracto, métodos de inducción, deducción, análisis, síntesis y sistematización; así como los métodos estadísticos, económicos y gráficos utilizados para estudiar los niveles y tendencias de cambio en los parámetros de desarrollo agrícola en la etapa actual A modo de conclusión se revela que las paridades en los precios agrícolas deben incluir la paridad con los precios al consumidor para los residentes rurales. Los salarios de los empleados en las zonas rurales deben garantizar la reproducción de la fuerza de trabajo y el desarrollo de la esfera social.

Palabras clave: regulación estatal de agronegocios; economía de paridad; garantías estatales; agricultura; productos agrícolas.

Introduction

One of the ways to overcome the crisis in the Russian Federation is to strengthen state regulation of the agribusiness. Therefore, to counteract negative processes in the development of agribusiness, it is necessary to implement measures to stabilize agro-industrial production. The

main efforts in planning and forecasting the effective operation of the agribusiness should be focused at the regional level. This work is already ongoing, and certain results have been reached so far. Thus, a system of budget subsidies for livestock products supplied for state needs has been already implemented; subsidies to support elite seed breeding have been allocated, partial compensation of agricultural organizations' costs for the purchase of mineral fertilizers and chemical plant protection products, feed, and other resources has been provided.

At the same time, due to insufficient budget funds, it is important to concentrate financial resources in the most important strategic areas, i.e. in those sectors of agricultural production where one can count on a relatively rapid increase in production, and maximum profit. Work should be done where there are opportunities to displace food imports and occupy this niche of the food market. These industries should primarily include the production of vegetables, fruits, feed, milk, and dairy products, as well as pig farming, poultry farming, and fish farming.

The study of issues related to the development of the agribusiness is reflected in the works of N.F. Kolesnik et al. (2020), Ya.V. Maltseva (2019), Yu.Ya. Rakhmatullin et al. (2020), E.G. Semyashkin (2019), A.S. Teunaev (2019), R.R. Yunyaeva and Klemanov (2020), and other authors. At that, currently, there are no clear determinants of the state regulatory system, whose definition would determine the development prospects of the agribusiness for a long period.

1. Methods

The theoretical and methodological basis of the present study is an abstract-logical method, methods of induction, deduction, analysis, synthesis, and systematization, used to justify approaches to modeling agribusiness development; as well as statistical-economic and graphical methods used to study the levels and trends of change in agriculture development parameters at the current stage.

The information base of the article includes statistical data of state bodies, legislative and regulatory documents governing the economic and legal aspects of the agricultural products market regulation, assessment of the effectiveness of the agribusiness under recessional conditions, as well as the results of conducted scientific research (Demkina, Kostikov, Lebedev, 2019; Nikolskaya et al., 2018; Shakhmametev, Strelets, Lebedev, 2018).

In the course of the study, it is planned to systematize the economic aspects of agribusiness functioning, develop measures for coordination of activities between the main players in the agricultural products market,

improve the Russian model of agribusiness, and determine its individual features in the current context.

2. Results

Studies show that an important component of the country's agribusiness is the food industry, which is potentially the most flexible, quickly restored, and organized production. The food market is vital for ensuring the health and capacity of the nation and stimulating the development of other industries. Therefore, success or failure in meeting consumer demand for food products has clear political consequences.

Under these circumstances, Russia cannot receive foreign exchange resources regularly and in the required volumes which are necessary for updating and developing the technological base of the food industry. At the same time, one of the country's strategic priorities should be the production of a full range of equipment that would meet the highest contemporary requirements, which the food industry urgently needs. The food industry is still characterized by the highest investment attractiveness.

Besides, the development of food and processing industries is an essential condition for the country's economy to recover from the socio-economic crisis. Solving this problem objectively requires strengthening state regulation of economic and financial processes without abandoning the general course of market transformation, and ensuring an unconditional balance of supply and demand in the consumer market. To meet the needs for technical resources, it is necessary to create conditions for the development of capacities of those organizations which provide tractors and agricultural machinery taking into account the zonal specifics and demand. Relevant unions, the development of leasing activities, and their demonopolization can play an important role in this process.

For rational use of state financial resources directed to the development of the material and technical base of the agribusiness, it is necessary to concentrate them in the existing special fund. The use of means from the state leasing fund will be made with the mandatory involvement of private financial resources and the selection of operators on a competitive basis. Part of the leasing fund should be allocated for equipping machine-technological stations.

With international corporations developing the Russian market, there is a need to advance the production of spare parts moving the maximum portion of the production process to the territory of Russia. As for agricultural producers, they have been granted significant tax benefits. Preferential tariffs have been established for electricity used by agricultural organizations and enterprises for production needs, as well as restructuring

processes and deepening the specialization of agro-industrial production dictated by market demand in the food market are being carried out.

Agricultural producers are increasingly adapting to market conditions. In recent years, the acreage for wheat, which is the main food crop, has been expanded. An issue of rational filling of crop rotations with crops, such as sugar beet, soy, corn, and perennial grasses is currently disputed. Despite economic woes, work is underway to implement resource-saving and soil-protecting technologies into the agribusiness and create modern production facilities. The processes of cooperation and agro-industrial integration of agriculture and the processing industry, service industries, as well as trade and banking organizations are getting more and more developed.

Studies show that the main source of investment in the agribusiness at the federal level is fund allocations from the development budget on a repayable basis under the guarantees of the government of the Russian Federation, provided on a competitive basis. In this case, there should be strict requirements for evaluating the effectiveness of investment projects and deadlines for documents being under consideration in federal ministries and departments. However, under the established regulations, many agricultural organizations, enterprises, and peasant economies may have no access to these funds.

Therefore, it is advisable to establish a special fund for long-term lending to agribusiness enterprises and organizations. At that, international investment should play an important role, and all the necessary conditions should be created to attract such investments. It should be noted that the agribusiness makes a significant contribution to the formation of the country's gross domestic product and the revenue part of the federal budget being not just a consumer of budget funds. These funds mainly support elite seed, breeding, and other farms that determine scientific and technical progress in the industry (Fig. 1).

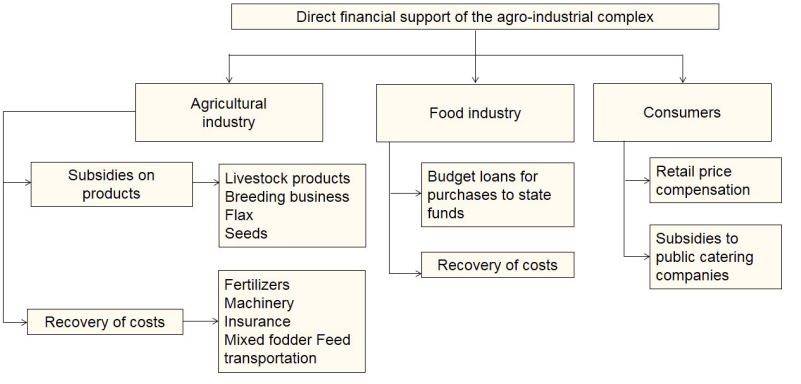

Figure 1. The system of direct financial support to the agribusiness in the Russian Federation. (Own elaboration).

Recognizing the need to save public expenditures, it seems appropriate to align the allocation of funds to the agribusiness, its contribution to the creation of the country's gross domestic product. Besides, solving the problem of price disparity will affect not only financial stabilization in rural areas but also the revival of investment activity in the agribusiness, the restoration and further development of domestic agricultural machinery and chemical industry.

The regulation of rates of import customs duties and the establishment of food quotas are one of the measures of state support and protection of agricultural producers. The introduction of compensatory customs duties on certain food products and the simultaneous reduction of customs rates on imports of advanced technologies, new machinery and equipment are provided for in the relevant statutory and regulatory enactments. Large reserves for the developing production, reducing costs, and increasing revenues are also available to very commodity producers, who can solve their problems by creating various integration structures, from simple forms of integrating enterprises and organizations to the creation of holdings, as well as financial and industrial groups.

Recently, the integration of livestock producers with processing and feed enterprises, service organizations, trade, and financial structures have gained traction. Crop insurance is also an important factor in sustainable agriculture. Due to the lack of an effective insurance system and insurance reserves of agricultural enterprises and organizations, their overdue accounts payable increases significantly. Lean years are characterized by difficulties in placing credit resources, and the repayment of loans is not provided.

The practice has shown that the country's food security is directly dependent on strategic issues of agribusiness development, which include strengthening the state support of agricultural production, protection of the internal market, engineering and technological renewal of enterprises, and development of investment activities. Besides, economic growth in agriculture will revive the work of enterprises in other industries. Avoiding a collapse in agricultural production and food production is possible largely due to the rational use of agribusiness regulation forms and methods (Fig. 2).

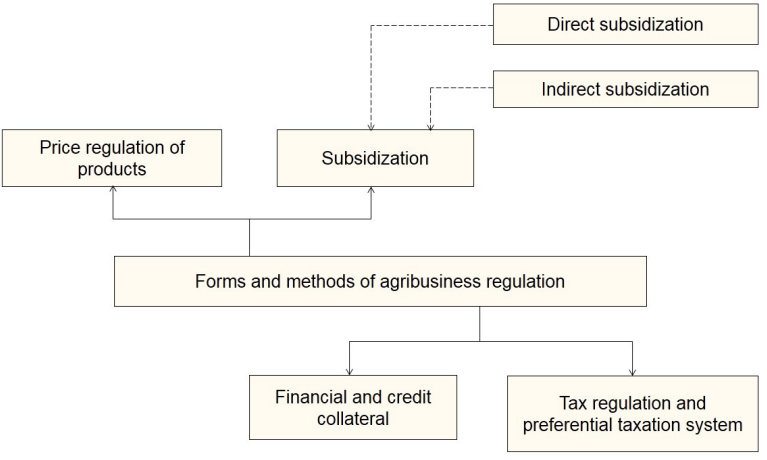

Figure 2. Main forms and methods of agro-industrial production regulation (Own elaboration).

Thus, with the general decline in the role of the state in the formation of market relations in the country, the agricultural sector of the economy should remain in the scope of state levers and market incentives. Besides, the government of the Russian Federation needs to develop a state target program for restoring and improving land fertility. The formation of effective land management models depends on these documents. At the same time, other conditions being equal, peasant farms are economically efficient, but at present small peasant farms are not able to fully utilize advanced equipment and the latest technologies.

Research shows that large-scale agricultural production is more efficient since it uses all factors of production based on labor-, resource-, and energy-saving technologies. In developed countries, the agricultural sector is undergoing processes of production cooperation and integration. The authors are also convinced that Russia needs the development of large agricultural organizations, the creation of agricultural holdings, and concurrent strengthening of peasant farms.

However, in recent years, agribusiness has been focused on the development of the small-scale sector rather than large farms. Positive results were obtained only in the production of potatoes, vegetables, fruits, and milk. In the main, mistakes were made yet during the transformations,

which negatively affected the results of the agribusiness. Many peasant farms have become involved in crop rotations of large organizations, using their infrastructure without participating in its restoration. Besides, these processes were accompanied by a violation of relations between agricultural and processing organizations, and deterioration in investment activity.

The reduction of production in the agribusiness has led to the deterioration in the population's nutrition. Given the reduction in per capita food consumption, the balance of food resources in the country is currently quite tense. To maintain a stable position in the food market, Russia needs imports. In this case, it is necessary to develop a program that should ensure the formation of the food market, taking into account, first of all, the possibilities of in-house production.

Shortly, domestic production will fully support domestic consumption of poultry meat, eggs, milk and dairy products, potatoes and vegetables. It is necessary to take measures to form specialized zones for the production of these products and implement reasonable trade protectionism that does not allow dumping prices from foreign importers on the domestic market. The government of the Russian Federation should support the technological re-equipment of organizations in the processing industry. This will help to increase the competitiveness of agricultural products.

In the short term, the Russian Federation will still need to import a variety of food, such as meat and meat products, sugar, and several others. However, even in this area, the situation can be improved. In this case, it is necessary to develop a strategy that would provide for improving land relations. It is planned to develop a targeted state program for restoring soil fertility focusing only on eco-friendly technologies. Therefore, agricultural policy should be based on strategic goals aimed at ensuring the transition from a decline in agricultural production to stabilization and growth, as well as the transformation of the country from importer to exporter of certain types of products and agricultural raw materials.

3. Discussion

The reliability of the presented approaches is confirmed by the fact that in the Russian Federation, in the course of implementing the agrarian reform, the resource, raw material, and food markets have become strongly monopolized (Mukhlynina et al., 2018; Nikiforov et al., 2018; Zavalko et al., 2018). The monopoly of the related industries of agriculture, a significant number of intermediaries in the non-intervention of the state have led to a sharp price disparity, redistribution of the surplus product created in the agriculture in favor of monopolists, intermediaries, and eventually to the

decline in the rehabilitation of production in the basic sector of agriculture.

At the same time, the formation of a competitive environment in all agricultural markets will contribute to the redistribution of the final income of the agribusiness in proportion to the costs of all constituent links. Besides, a legislative framework is needed to strengthen the role of the state in regulating the activities of organizations in the energy sector, transport, and communications to eliminate price disparity. The operation of the commodity exchanges should be restored as well.

It is also necessary to support the sustainable economic growth of the agribusiness, create conditions for the adaptation of producers to market conditions. An important function of state regulation in this regard is to maintain a consistent demand for food and agricultural raw materials. The country's budget should provide for the financing of investment projects. First of all, these should be projects aimed at the development of viticulture and winemaking, processing of crop and livestock products, selection and seed production, restoration of soil fertility, as well as agricultural engineering. The state should contribute to the formation of effective demand of the population, affecting the formation of incomes of the main groups of the population through the regulation of the price system for agricultural products, state orders, and food purchases to federal and regional food funds.

Conclusion

Summing up, one should note that the state regulatory system of the agribusiness should be based on pursuing a policy of reasonable protectionism, ensuring food security through a system of customs tariffs and taxes on imported food products. It is necessary to create a favorable climate for foreign investors, as well as joint ventures in the agribusiness, and provide state guarantees for foreign creditors when importing advanced equipment and technology, as well as finance key areas of science on the problems of the agribusiness.

Besides, agricultural price parity should include parity with consumer prices for rural residents. Wages of employees in rural areas should ensure the reproduction of labor power and the development of the social sphere. At the federal level, it is necessary to regulate prices for basic agricultural products, such as meat, milk, flour, and eggs. Prices for vegetables, fruits, and other agricultural products should be set at the municipal and city levels.

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European Experience in Constitutional and Legal Guarantees of Freedom of the Media *

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Abstract

The document presents the results of a comparative legal analysis dedicated to the constitutions of the European states regarding the identification of norms that guarantee the freedom of the social media in them. Methodologically The study was built on the basis of a dialectical approach to the dissemination of legal phenomena and processes using general scientific methods (systemic, logical, analysis and synthesis) and particular. By way of conclusion, all the evidence shows that, in the most common version, the constitutional regulation of guarantees is concise and includes only the recognition or guarantee of the freedom of the media together with the prohibition of censorship. In more detailed versions, prohibitive or regulatory rules may indicate specific types of liability, administrative procedures, etc. For federal states, it is typical to pay special attention to press matters within the scope of jurisdiction issues.

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Keywords: freedom of the media; guarantee; prohibition; restriction; censorship.

Experiencia europea en garantías constitucionales y legales de libertad de los medios

Resumen

El documento presenta los resultados de un análisis legal comparativo dedicado a las constituciones de los estados europeos con respecto a la identificación de normas que garanticen la libertad de los medios de comunicación social en ellos. En lo metodológico El estudio se construyó sobre la base de un enfoque dialéctico para la divulgación de fenómenos y procesos legales utilizando métodos científicos generales (sistémicos, lógicos, de análisis y síntesis) y particulares. A modo de inconclusión toda la evidencia muestra que, en la versión más común, la regulación constitucional de las garantías es concisa e incluye solo el reconocimiento o la garantía de la libertad de los medios junto con la prohibición de la censura. En versiones más detalladas, las reglas prohibitivas o regulatorias pueden indicar tipos específicos de responsabilidad, procedimientos administrativos, etc. Para los estados federales, es típico prestar especial atención a los asuntos de la prensa dentro del alcance de los temas de jurisdicción.

Palabras clave: libertad de los medios de comunicación; garantías; prohibición; restricción; censura.

Introduction

In modern society and the state, the influence of the media on various spheres of collective activity, as well as the formation of individual opinions is indisputable (Bibik et al., 2014: 111-113; Zhezheleva, 2018: 129-131; Graber, 1997: 5-9). Despite the widespread constitutional formalization of freedom of the media (Basharatyan, 2007; Karakotov, 2013; Fenwick & Phillipson, 2006; Leeson, 2008: 155-169; Bhattacharyyaa & Hodler, 2015), the actual mechanisms of its guarantee remain relevant (Frolova, 2012; Kulikova, 2019; Lyudmila, 2018: 3682-3685), which we also associate with constitutional norms in their basic variation. Their consideration in the comparative legal aspect of European countries is the subject of this work. The texts of the latter were taken from the works.

Of all the provisions examined, the required norms are not revealed only in the constitutions of Monaco, the Netherlands, San Marino, as well as in the constitutional acts of Great Britain.

Anticipating the presentation of the comparative legal analysis results, we will clarify that typically norms and guarantees of freedom of the media are associated, on the one hand, with positive legal regulation and institutional assistance, and on the other, with prohibitions (censorship, other restrictive measures). In addition, we believe that the basic ones in this sense should be considered the constitutional provisions that recognize (guarantee) precisely the freedom of the mass media in any form (for example, freedom of the press). Moreover, in relation to this work, we distinguish these norms from freedom of thought and speech. Although, of course, we do not deny their basic nature for freedom of the media (Tulnev, 2019: 66-69).

1. Methodology

The study was built on the basis of a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and particular scientific methods. Among the latter are formal-legal, linguistic-legal, comparative-legal, which were used together to identify the principles of the judiciary.

2. Discussion and Results

The Austrian Constitution, taking into account the laws amending it, in its Article 13 formalized the right of everyone within the law to express their opinion orally, in writing, through print and artistic images. In the norm itself, it is established that printing materials cannot be subject to censorship or restrictions by means of an authorization system. Domestic printed works are not subject to administrative postal bans. Thus, the prohibition of Caesura, the use of administrative mail prohibitions, as well as the restrictions of the licensing system for printed works are regarded as special guarantees of freedom of the media. We make a remark that we nevertheless identify constitutional norms similar to Article 13 formalizing the right / freedom of expression in the press, and in writing at all, as freedom of the media.

Given the federal political and territorial structure of Austria, the norm of Part 1 of Article 10 is logical; it clarifies that the jurisdiction of the Federation includes legislation and executive activities related to the press. In its continuation, Part 2 of Article 102 determines that within the framework of the competence established by the Constitution, the federal bodies can directly engage in execution on issues related to the press.

Therefore, we believe that we can thoroughly talk about institutional guarantees of freedom of the media, involving the participation of state bodies at various levels in them.

The German Constitution in its chapter on fundamental rights guarantees freedom of the press and information through radio and films. Moreover, censorship does not exist (paragraph 1 of Article 5).

In Article 18 it is defined: one who abuses freedom of opinion and, in particular, freedom of the press (paragraph 1 of Article 5) with the purpose to fight against the foundations of a free democratic system, is deprived of these fundamental rights. The deprivation of these rights and its scope are determined by the federal constitutional court. Thus, a specific guarantee of the freedom in question was implemented in case of its violation, but on the basis of the law and by an authorized entity.

By analogy with Austria, by virtue of the federal political and territorial structure of the state, paragraph 1 of Article 75 of the German Constitution defines the Federation's right to issue model regulations for land laws on issues of press and films.

Summarizing, we note that in comparison with Austria, Germany fully formalizes guarantees of freedom of the media through press and information through radio and films. Prohibitive and positive guaranteeing legal constructions are set out in details.

Next, we present a block of European constitutions in which the sought-after norms are convicted of concise establishments. Thus, the Andorran Constitution in Chapter III, "Fundamental Rights of the Person and Public Freedoms," briefly formalizes the recognition of freedom of expression, communication, and information. In addition, it was recorded that preliminary censorship or any other method of ideological control by public authorities is prohibited (Article 12). It seems that the wording "recognition of freedom of expression, communication and information" is ambiguous; we can regard it as the basic norm for guaranteeing freedom of the media in Andorra.

In the Belgian Constitution, the required norms are also located in Part II "On the Belgians and their rights". Article 25 reflects the provision on freedom of the press (most clearly applicable to freedom of the media), and also that censorship can never be established; no requirements on collateral from writers, publishers or printers is allowed.

Brief wording is inherent in the Constitution of Denmark. According to its Article 77, everyone has the right to freely express their thoughts in the press, in writing and orally, provided that they can be prosecuted in court. Censorship and other preventive measures will never be restored. Thus, in the guaranteeing vein here, we can regard the very establishment

of freedom of thought in the press, prohibition of censorship, and judicial responsibility.

Article 11 of the French Constitution contains a similar norm without prohibition of censorship: all citizens are free to speak, write, print, bearing responsibility for the abuse of this freedom in cases established by law.

Similarities with Danish constitutional provisions are also found in the Constitution of the Principality of Liechsteinstein. Its Chapter VI "Fundamental Rights and Obligations of Citizens" enshrines the right of everyone to freely express their opinions and their thoughts orally, in writing, in print or by image, within the limits of the law and moral requirements. Censorship can only be established in relation to public performances and exhibitions. Let us clarify that the second part of the indicated constitutional norm is original: the only option is the legalization of censorship in relation to public performances and exhibitions.

According to Article 73 of the Constitution of Iceland, everyone has the right to freely express their thoughts, but must be prepared to bear responsibility for them in court. Censorship and other similar restrictions on freedom of speech are prohibited. However, freedom of speech, but not of the mass media, is formalized in it, and the prohibition of censorship has been declared in relation to it. Of course, the abstract interpretation suggests in this regard that the Constitution of Iceland guarantees freedom of the media, but in the literal sense, we deny this approach within the framework of our study.

It is appropriate to clarify that the Finnish Constitution in its § 12 also identified freedom of expression and freedom of information without a direct link to the press and the media. However, the same norm consolidates that the law may establish prescriptions for such restrictions on video programs that are necessary to protect children. Thus, the Finnish Constitution nevertheless presents the guarantee of freedom of the media partly in its prohibitive aspect.

The provision of Article 24 being a part of the Constitution of Luxembourg is already more detailed in the concise versions considered. Let us clarify that it is also placed in the chapter on Luxembourgers and their rights. So, this norm guarantees freedom of the press while retaining responsibility for offenses committed while using this freedom. There are also a number of guaranteeing provisions:

- Censorship can never be established;

- The requirement of a pledge from authors, publishers or printers is not allowed;

- The stamp duty of local magazines and periodicals is cancelled;

- No prosecution can be brought against publishers, printers or distributors if the author is known, if he/she is a Luxembourger and resides in the Grand Duchy.

The options for the sought guarantees in the constitutions of Ireland, Malta and Norway are interesting from the point of view of their wording. So, in accordance with Article 6.1 of the Irish Constitution, the creation of public opinion is the most important issue for the common good, therefore the state will make efforts to ensure such manifestations of public opinion as radio, press, cinema, preservation of their legitimate freedom of expression, including criticism of Government policy, but it should not be used to undermine public order or morality or authority of the state. We believe that the application of the efforts of the state to ensure the freedom of radio, the press, and cinema is the guarantee of freedom of the media with the specification of the limits of such freedom (criticism of the Government).

The constitutional provisions of Malta are authentic in various aspects. It is defined in its part 3 of Article 41 "Expression of Thoughts and Words" that anyone who is resident of Malta may publish or print a newspaper or magazine, daily or periodically, provided that an order can be created by law on:

(a) Protecting or restricting the publication or printing of any such newspaper or any such magazine by persons under the age of twenty-one years; and

(b) Requiring any person who is the publisher or typographer of any such newspaper or magazine to inform the prescribed authority about the results of his/her activities and age, as well as his/her place of residence.

Thus, formalized law is limited by qualifications of both implementing entities and those who may be affected by print media.

In addition, part 4 of the same article establishes a mechanism for the police to arrest any publication or newspaper as the way in which the crime was committed. Within twenty-four hours of arrest, the police must bring the fact of the arrest to the attention of the competent court, and if this court does not find that the case is primarily about such a crime, this publication must be returned to the person where it was arrested.

Norms of this kind are procedural guarantees of freedom of the media.

Paragraph 100 of the Norwegian Constitution formalizes freedom of the press, as well as the rule that no one can be punished for any work he/she has submitted for printing or published, regardless of the content, unless he/she consciously or openly displays disobedience to laws, contempt for religion, morality or the constitutional authorities and resistance to their orders, does not incite others to this, or does not raise false or disgraceful accusations on anyone. This Constitution does not contain a prohibition of censorship.

The provisions of the Portuguese Constitution are perhaps the most substantive and comprehensive from the point of view of reflecting the variety of guaranteeing institutions of freedom of the media. Chapter 1 is devoted to personal rights, freedoms and guarantees; its Article 37 formalized freedom of speech and information, and Article 38 separately enshrined freedom of the press and speeches in the media. Moreover, freedom of the press is precisely guaranteed (part 1). Further, we consider Part 2, Article 38, valuable in the essential aspect: it clarifies that freedom of the press means:

a) Freedom of speech and creativity of journalists and men of the pen, as well as the impact of journalists on the content-stylistic orientation of the relevant media, with the exception of cases where the latter belong to the state or are of a doctrinal or confessional nature;

(b) The right of journalists to access, within the framework of the law, sources of information and to protect independence and professional secrets, as well as the right to elect editorial boards;

c) The right to establish newspapers and any other print media that does not require the permission of the administration, surety, or prior recognition of authority.

The variety of guaranteeing norms is represented by institutional, procedural and material varieties in the following legal constructions:

- The law provides in general terms the distribution of the amounts and means of financing mass media (part 3).

- The state ensures the freedom and independence of the media in the face of political and economic power consistently pursuing the principle of specialization of enterprises producing print media; the state takes care and supports them without discrimination and prevents their concentration in the same hands, in particular by increasing the number of participants in such enterprises or by cross participation (Part 4).

- The state ensures the existence and activities of the public radio and television service (Part 5)

- The structure and functioning principles of state-owned mass media should ensure their independence from the Government, state administration and other public authorities, as well as guarantee the possibility of expression and clash of different opinions (Part 6);

- Radio and television transmitting stations can operate only if there is a license issued on the basis of an open tender, in accordance with the provisions of the law (Part 7).

We regard Article 39 of the Portuguese Constitution on high media leadership in a similar institutional and guaranteeing aspect. In accordance with it, the high leadership of the media ensures the right to information, freedom of the press and freedom of speaking in the media in the face of political and economic power, as well as the possibility of expression and clash of various views and the exercise of the right to broadcast, to answer and to political statement. Constitutional norm of Article 39 also consolidated the functionality of high-level leadership of the media, including areas of guaranteeing freedom of the media.

One can point out the absence of a prohibitive norm of censorship of the media as a drawback of the Portuguese Constitution concerning the subject of research.

Conclusions

We associate the European constitutional experience of guaranteeing freedom of the media with the recognition / guarantee of freedom of the media in conjunction with prohibitions (censorship, other restrictive measures) or positive legal regulation, and institutional assistance.

In the most common version, constitutional regulation is concise and includes only the recognition / guarantee of freedom of the media in conjunction with the prohibition of censorship. At the same time, the prohibition of censorship is almost universal, although an exception has been found. The Liechtenstein Constitution has legalized censorship of public performances and exhibitions.

In more detailed versions, prohibitive or regulatory norms may indicate specific types of responsibility, administrative procedures, etc. For federal states, it is characteristic that special attention be paid to press issues as part of the subjects of jurisdiction.

In addition, a number of constitutions have been identified (Ireland, Malta and Norway), in which the sought guarantees in the original legal constructions are formulated.

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The Role of Public Organizations in Ensuring National Security of Ukraine

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Abstract

This article aims to identify the forms of participation of public organizations in national security. The basic methodological approach of the research is the analysis and generalization of the normative legal support and the scientific works that allowed to systematize and characterize the existing forms of participation of public organizations to guarantee the national security of Ukraine. The article emphasizes the importance of the influence of public organizations in the state of national security and the importance of a comprehensive and coordinated approach to involve public organizations in national security, generalizes and describes the forms of participation of public organizations to guarantee national security through the lens of the main forms of their interaction with the authorities of the organizations (information, control, consultation, active participation), the legal and organizational directions to strengthen the role of civil organizations in guaranteeing the National security. It is concluded that this type of research has practical value for representatives of the authorities and the public sector on possible ways to improve the role of public organizations to guarantee national security.

Keywords: public organizations in Ukraine; National security; institutional interaction, forms of participation, comprehensive approach.

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El papel de las organizaciones públicas en garantizar la seguridad nacional de Ucrania

Resumen

Este artículo tiene como objetivo identificar las formas de participación de las organizaciones públicas en la seguridad nacional. El enfoque metodologico básico de la investigación es el análisis y la generalización del apoyo legal normativo y los trabajos científicos que permitieron sistematizar y caracterizar las formas existentes de participación de las organizaciones públicas para garantizar la seguridad nacional de Ucrania. El artículo enfatiza la importancia de la influencia de las organizaciones públicas en el estado de la seguridad nacional y la importancia de un enfoque integral y coordinado para involucrar a las organizaciones públicas en la seguridad nacional, generaliza y describe las formas de participación de las organizaciones públicas para garantizar la seguridad nacional a través de la lente de las principales formas de su interacción con las autoridades de los organismos (información, control, consulta, participación activa), las direcciones legales y organizativas para fortalecer el papel de las organizaciones civiles en garantizar la seguridad nacional. Se concluye que este tipo de investigaciones poseen valor práctico para los representantes de las autoridades y el sector público sobre las posibles formas de mejorar el papel de las organizaciones públicas para garantizar la seguridad nacional.

Palabras clave: organizaciones públicas en Ucrania; seguridad nacional; interacción institucional, formas de participación, enfoque integral.

Introduction

Ensuring national security, that is, protecting state sovereignty, territorial integrity, democratic constitutional order and other national interests from real and potential threats, is one of the priorities of every modern country. In an age of globalization, as the world becomes more interconnected and interdependent, new challenges are rapidly becoming universal and posing real threats to national security (Vlasiuk, 2017). The range of threats and challenges to national security is constantly expanding, in particular, globalization processes have exacerbated issues such as the fight against terrorism, pandemics, organized crime, and trafficking in human beings (Pavliuk, 2012). For some countries, including Ukraine, the issue of preserving territorial integrity and sovereignty has become more acute.

Describing the national security system as a set of state and non-state institutions, united by goals and objectives for the protection of national interests, domestic and other researchers from post-Soviet countries give the most important role in this system to public authorities (Korniievskyi, 2008). However, the authorities responsible for national security today are clearly unable to adequately counteract the diversity of the 21st century's dangers. In general, there is no harmonized mechanism for ensuring national security in the system of central executive authorities today, there are no links and interaction regarding its security (Stroianovskyi, 2017). In such circumstances, the role of democratic civilian control, which is an indicator of the maturity of society itself, is enhanced (Vlasiuk, 2017). As the experience of democratic states shows, it is the development of civil society with systematic state support that allows to attract additional human, organizational, financial and technical resources to provide social and other socially significant services, as well as to reduce public expenditures (Decree of the President of Ukraine, 2016). In addition, public organizations are more effective in responding quickly to national security threats.

The events of recent years have convincingly demonstrated that in certain critical situations where public institutions are disorganized and weakened, spontaneously by nature self-organization of citizens is capable of responding to internal and external threats to national security (Yablonsky *et al*, 2016). Thus, the military aggression of the Russian Federation against Ukraine, which led to the annexation of Crimea and the occupation of certain regions of Donetsk and Luhansk regions, created a new space for active activity of public organizations in the field of national security, the key areas of which are human rights activities, enforcement of rights monitoring, provision of rights monitoring and psychological assistance to volunteers and military and civilian victims, search for prisoners, hostages, and victims (Yablonsky *et al,* 2016). During the COVID-19 pandemic, civil society organizations themselves were the first to implement various projects aimed at protecting national interests and became a driving force in national security. On the growing influence of public organizations, including in the area of national security, shows rising confidence in them (Ukraine 2019-2020: Wide Opportunities, Contradictory Results, 2020). However, the overall level of involvement of the citizens themselves in the activities of non-governmental institutions remains paradoxical. Thus, only 7.5% of Ukrainian citizens are involved in active civil activity. Almost the share of those who participate in the work of public organizations and associations has not changed: in 2019 90% of the citizens of Ukraine did not belong to any of the organizations, associations or parties, in 2013 – 85.5% (Civil Society in Ukraine: The View of Citizens, 2019).

Interestingly, as national security threats increase, the number of public organizations increases. Thus, in Ukraine at the beginning of 2017, 76 thousand were registered, in 2018 – 80.5 thousand, in 2019 – 84.6 thousand

public organizations (Ukraine In Numbers 2018: Statistical Collection, 2019). However, increasing the number does not indicate an improvement in the quality of the activity. Many public organizations areas and activities are duplicated, potentially reducing the efficiency of their resources. In addition, the cooperation of public organizations and authorities in ensuring national security often depends on situational moments, personal factors, a set of other subjective moments (Pavliuk, 2012). Of course, without the help of the public, no state would be able to cope with national security in an emergency situation. At the same time, without a comprehensive and coordinated approach to national security, the potential of the public sector is being misused. For example, some scholars have quite rightly criticized indentured volunteers, who are often unprepared and can duplicate the actions of each other and the authorities, thereby wasting resources (Chan, 2020).

That is, on the one hand, the range of instruments of influence of civil society on the formation and implementation of state policy in the field of national security is expanding, and corresponding changes are made to the legislation. On the other hand, the question remains of the effectiveness of the new institutional and procedural capacities of civil society actors to ensure national security, to identify possible forms of their participation in this field. Research on forms of involvement of public organizations will help to identify ways to strengthen the role of the public sector in ensuring national security. At the same time, it is clear that in the conditions of globalization, when numerous external and internal threats to national security in various spheres appear annually, the issue of strengthening the role of public organizations in ensuring national security, creation of proper conditions for their effective activity in this area, formation of new approaches and the mechanisms of their cooperation with the authorities become extremely relevant.

1. Literature review

The issue of national security and its security has been the subject of many scientists' attention for a long time. Predominantly, scientists are researching individual components of national security. Thus, O.A. Mashkov paid attention to environmental security as a component of national security (Mashkov and Mamchur, 2018), economic security – O.S. Vlasiuk (2017) and others, civil defense – Yu.Ye. Kharlamova (2018). The conceptual view of national security as a multifaceted phenomenon, whose components are foreign and domestic political, military, economic, social, humanitarian, scientific, technological, environmental, information and other components of national security in general, is common among

scientists (Korniievskyi, 2008). At the same time, in developed foreign countries, national security is classified as military and national security; issues of ensuring the security of the individual and society, especially in the social, economic and environmental spheres, are not actually taken care of by the governmental structures of these countries (Korniievskyi, 2008). Some scholars divide modern security threats into "hard security" and "soft" threats according to two types of security – "hard" and "soft" (soft security). Hard security includes the military and defense aspects of national security, while soft security focuses on potential political, social and economic challenges to national security (Vlasiuk, 2017). Therefore, it is possible to speak about the existence of a narrow and broad understanding of national security and its security, depending on what threats are the focus of its attention. The narrow approach assumes that national security is aimed at identifying and combating "cruel" threats to the military and defense aspects. Ensuring national security in its broad sense includes activities to identify and overcome both "hard" and "soft" security threats.

As a rule, researchers are exploring the role of public organizations in providing individual components of national security, without a comprehensive approach. Thus, contemporary researchers pay particular attention to the issues of public organizations' activities in the system of information security of Ukraine (Sipailo and Sipailo, 2017; Lisovska, 2014; Zakharenko, 2015; Blaha *et al,* 2017; Holovka, 2016). Among the research studies highlighting the issues of involvement, shaping the ability of civil society to counter crime and terrorism in the context of an anti-terrorist operation, one should mention the publications on the work of jurists of Yu. Nikitin (2014), I. Ryzhov and V. Strohoho (2015), Yu. Opalko (2016), A. Rudenko (2018). Schneiker (2020) explored the peculiarities of establishing cooperation between public organizations, including in the field of national security, which noted that public organizations have a mutual benefit (Schneiker, 2020). K. Pavliuk (2014) also drew attention to the growing tendency for the association of public organizations in the community, which contributes to the development of effective interaction between them. Indeed, cooperation between public organizations continues to gain momentum. Thus, in 2015, there was an All-Ukrainian gathering of representatives of public associations of veterans and participants of anti-terrorist operation, the purpose of which was to hold a dialogue between the authorities and public associations of war veterans. In 2016, the All-Ukrainian Meeting of Search Engines was held, dedicated to the results of the work of the humanitarian mission "Evacuation 200" on search, exhumation and removal of soldiers killed in the ATO area. As an example of pooling the resources of public organizations, you can also give the All-Ukrainian Coalition of Non-Governmental Organizations for Combating Trafficking in Human Beings, which includes regional and local non-governmental organizations active in combating trafficking in human beings.

L. Sipailo and N. Sipailo (2017) as a result of research of forms of interaction between non-governmental and state organizations on national security, distinguished the following: holding general press conferences, round tables, speeches in the media; providing each other with information on the provision of services to coordinate efforts; holding joint actions, meetings; teaching partners the basics of social work, sharing experiences; the provision of services that supplement the services guaranteed by law; conducting collaborative (or custom) research on the problem. These forms of interaction were divided into four main groups: information, control, consultation and active involvement of public organizations (Sipailo and Sipailo, 2017). In accordance with this concept, we develop the opinion of the authors and systematize the forms of participation of public organizations in ensuring national security based on their separate forms of their interaction with the authorities.

Forms of participation of public organizations in ensuring national security were fragmentally investigated by K. Pavliuk (2014), who noted that in fact the main forms of activity of public organizations in modern Ukraine are as follows: holding rallies and demonstrations; conducting exhibitions, meetings, conventions, meetings, conferences, lectures, seminars; organization of sports, wellness and fundraising activities; organizing celebrations to celebrate national and city holidays, etc. However, this is too narrow an understanding of the forms of participation of public organizations in ensuring national security, which envisages only active participation of public organizations, but does not cover such forms of interaction between state and non-state actors as information, consultation, control.

The involvement of public organizations in national security should be considered not only at the national level but also at the regional and local levels. After all, every region and locality has, in addition to national, regional and local interests and needs that are a subject of security. As a rule, a significant role is played by the public in the implementation of integrated or highly specialized (targeted at specific aspects of security) regional and local programs. Although public organizations appear to be implementing these programs by consent, they are generally the driving force behind their implementation and carry out the lion's share of program activities. Therefore, further research into the role of public organizations in national security may focus on their role in regional and local security.

The position of some scholars regarding the threat to national security in the activity of foreign and international non-governmental public organizations is somewhat unfounded (Pavliuk, 2012). In fact, the activities of Ukrainian public organizations would not have been possible without the support of international donors, in particular: EUAM (The European Union Advisory Mission), Friedrich Ebert Stiftung, Delegations of the European

Commission to Ukraine, Freedom House, USAID Agency, International Renaissance Foundation, UNDP Eurasia Foundation, Embassies of the United States, United Kingdom, Netherlands, Canada, etc. The role of the OSCE Project Coordinator in Ukraine, who since 1999 has been planning, implementing and monitoring the implementation of projects to help Ukraine strengthen its security and improve legislation, institutions and practices in line with democracy standards, should be noted separately. Projects can cover all aspects of OSCE activity and involve both governmental and non-governmental organizations in Ukraine (Memorandum of Understanding Between the Organization for Security and Co-Operation in Europe (OSCE) And the Government of Ukraine on the Establishment of a New Form of Co-Operation, 1999). The OSCE cooperates with many national security actors in Ukraine.

Thus, during 2018, the Ministry of Defense co-operated with the OSCE in several areas in the field of national security (White Paper, 2019). In today's context, special attention is paid to the activities of the OSCE Special Monitoring Mission in Ukraine, which was created to help reduce tensions and promote peace, stability and security. OSCE Observers are also present at the Gukovo and Donetsk checkpoints, which are tasked with monitoring and reporting on the situation at the Donetsk and Gukovo checkpoints, as well as moving across borders (Survey of OSCE Field Operations, 2019).

It should also be noted the role in ensuring the national security of Ukraine of the Red Cross Society of Ukraine, whose main purpose is to protect human life, prevent and alleviate human suffering during armed conflicts, natural disasters, catastrophes and accidents, assist the Armed Forces medical service and health authorities assistance to the state authorities of Ukraine in their activities in the humanitarian sphere (Krasiy and Palivoda, 2019). However, often donor assistance is situational, project-based, non-systematic, and a coherent approach to its use. For example, as part of improving the effectiveness of domestic violence response, both the OSCE and the UNPF and the EUAM have trained police mobile brigades to respond to domestic violence. At the same time, local public organizations also trained the specialists of such mobile crews. The haphazard, uncoordinated approach to the distribution of donor assistance resulted in police being trained several times on the same issue, while donor assistance was also indispensable for the logistical support of mobile brigades.

This implies the importance of a coordinated approach to the use of donor assistance resources. At the same time, despite the large number of studies on national security, the complex issue of the role of public organizations in ensuring national security, in particular the forms of their involvement, as well as the ways of enhancing their participation in national security, remains poorly understood, which makes the research relevant.

2. Materials and methods

The methodological framework of the research is a system of general scientific methods and approaches, among which the leading methods are analysis and generalization, allowing to highlight narrow and broad approaches for understanding national security, systematize the existing forms of non-governmental organizations involvement in national security of Ukraine, clarify the deficiencies in their organizational and legal support and suggest the ways to strengthen the influence of non-governmental organizations in the sphere of national security. The method of induction allowed the authors to proceed from the position of the need to engage not only authorities but also non-governmental organizations for ensuring national security, as the axiom that is common to various ideological doctrines and theoretical concepts, which sometimes advocate opposing principles and approaches in modern democratic societies. The method of synthesis allowed to represent the role of non-governmental organizations in ensuring national security in the organic integrity of its components, and the systematic method helped to research the interaction of abovementioned organizations with the authorities in ensuring national security as a systemic phenomenon with logically interconnected elements. Formal and logical methods allowed to identify the most common forms of non-governmental organization participation in the field of ensuring national security and focus on those which require the improvement of their organizational and legal support.

In the course of writing the article, a significant array of data from national sociological surveys, official statistics, regulatory acts, expert assessments and recent research works on this issue were analyzed. The method of generalization allowed the authors to conclude that mostly scientists study certain components of national security (environmental, economic, informational, civil etc), but the role of non-governmental organizations in ensuring national security has not been comprehensively studied. The research is based on previously developed theoretical provisions, which are clarified or supplemented by new arguments, built using the method of observation, taking into account own experience of involving the authors in the activities of NGOs (NGO “All-Ukrainian Public Center “Volunteer””, NGO “Faith, Hope, Charity”), as well as international donor organizations (the United Nations Population Fund (UNFPA), Project Coordinator of OSCE in Ukraine, UN Children’s Fund (UNICEF), The European Union Advisory Mission (EUAM).

The statistical method was applied by the authors to assess the dynamics of the creation of non-governmental organizations depending on the socio-political situation in the country and the influence of threats to national security on the state of involvement of non-governmental organizations

in the activities of citizens. The method of hermeneutics allowed to study the content of regulations governing the activities of non-governmental organizations in Ukraine, including their participation in ensuring national security.

Formal legal, concrete sociological, comparative and dialectical methods were also used to study the state of involvement of non-governmental organizations in ensuring the national security of Ukraine and the prospects for the development of public sector in Ukraine. As a methodological limitation of the research, it should be noted the potential presence of the features of forms of non-governmental organizations involvement in ensuring national security, depending on the level of activity of this organizations – national, regional, local. However, as part of the research, this aspect has not been studied.

3. Results and discussion

Public administration of national security should be built taking into account the peculiarities of organizational forms, orientation and nature of work of public associations, their real and potential capabilities (Pavliuk, 2014). In developed countries, the main forms and models of interaction of public organizations with the state have a clear regulatory framework (Konstantinovskaya, 2016). The Law of Ukraine "On National Security of Ukraine" stipulates that public associations, registered in accordance with the procedure established by law, are guaranteed the opportunity to: 1) restricted access; 2) carry out research on national security and defense issues, publicly present their results, create public funds, centers, teams of experts, etc.; 3) carry out public examination of draft laws, decisions, programs, submit their conclusions and proposals for consideration to relevant state bodies; 4) participate in public discussions and open parliamentary hearings on the activities and development of the security and defense sector. That is, this law only identifies four possible forms of participation of public organizations in ensuring national security (The Law of Ukraine, 2018).

Table 1. Form of participation of public organizations in national security

Forms of interaction between authorities and public organizations on national security	Forms of participation of public organizations in ensuring national security
Informing	Information requests (access to public information)
	Authorities' reports
Control	Public monitoring
	Public examination
	Public councils
	Analytical research
Consultations	Public hearings
	Dialogue platforms
	Admission to the advisory and advisory bodies
Active participation of public organizations	Social project contests (social order)
	Training, retraining and training
	Autreach activities

(Own elaboration, 2020).

However, the analysis of other legal acts and practices of public involvement in national security allows to distinguish other forms. As a whole, as a result of the conducted research, considering that the key subjects of national security are the authorities, we believe that the forms of participation of public organizations in ensuring national security can be systematized depending on their forms of interaction with the authorities (informing, monitoring, consulting and active participation) (Table 1).

Let's look at some of these forms of participation of public organizations in ensuring national security, which, in our opinion, is in need of improvement. Thus, an important element of the mechanism of public control is the systematic preparation and publication of reports by the authorities on activities in the field of national security. For example, in order to systematically inform the public about the activities of the security and defense sector of Ukraine, the state of implementation of measures for the development of the security and defense sector periodically, but not less than every three years, White Paper bodies or other analytical documents (Law of Ukraine, 2018). Thus, the Ministry of Defense annually publishes "White Book" (2019), which is a kind of report to the public on what has been going on in the army for the year. It would be advisable in such a format

to report on all issues related to national security to the authorities, as reporting to the authorities helps public organizations identify problematic aspects of the activities of the authorities and, if possible, direct their resources to address them.

An important tool for public control over government action is analytical research conducted by non-governmental think tanks. The largest number of think tanks is in Europe – 27.2%, among which Ukrainian think tanks play a significant role (Global Go to Think Tank Index Report, 2019). At the same time, Ukraine lacks domestic sources of funding for think tanks (Pavliuk, 2014).

In accordance with the legislation of Ukraine, scientific and expert support for coordination and control of activities in the field of national security and defense is carried out by the National Institute for Strategic Studies with the involvement of leading scientific, analytical and expert institutions of Ukraine and civil society institutes. However, the lack of cooperation between state and non-state think tanks is situational, the lack of joint long-term projects, which negatively affects the performance (Vlasiuk, 2017). Therefore, in order to improve the cooperation of state think tanks with non-state organizations, it is necessary to transform the practice of deliberative situational cooperation into the practice of continuous coordination and strategic interaction.

It is noteworthy that the procedure for holding public hearings has a different approach to normalization, in particular depending on the level of their conduct. Thus, public hearings at the local level are envisaged in accordance with the Law of Ukraine "On Local Self-Government in Ukraine" (Law of Ukraine, 1997). At the national level, the order of public hearings is standardized depending on the subject of the hearing. For example, individual Resolution of the Cabinet of Ministers of Ukraine (1998) regulate the procedure of holding public hearings on nuclear energy and radiation safety, the procedure of holding public hearings in the process of environmental impact assessment (Resolution of the Cabinet of Ministers of Ukraine, 2011). In our view, such a scattered approach to rulemaking is not rational.

One of the newest forms of addressing urgent national security issues in Ukraine at the national and regional level is the Dialogue Platforms, which are organized by the Regional Offices of the European Consultative Mission in Ukraine (EUAM), and which facilitate the establishment of mutual understanding between the authorities and public organizations on security issues and public organizations. developing a common position and action plan for national security at regional level. Information on the results of the dialogue platforms conducted is published on official websites of the authorities. However, it draws attention to the fact that the authorities, by demonstrating public interaction, primarily resort to finding facts of

direct or/and indirect consultations with the public. In the meantime, the information on the received and taken into account proposals or the reasons for their rejection are mostly missing, which complicates the detection of the effectiveness of such measures. In this regard, it is difficult to determine how public consultations, as well as public discussions and hearings have influenced the final decisions of public authorities (Public Activity of Citizens of Ukraine, 2019). Without this component, public consultation is of a formal nature.

The results of the analysis and generalization of the existing legal support and the available scientific researches on the participation of public organizations in national security allow to distinguish the legal and organizational directions of strengthening their influence on the state of national security. The legal direction envisages the improvement of legal support for the functioning of public organizations in the field of national security. Thus, the National Security Strategy of 2015 is still in operation in Ukraine, in which the role of the public is mentioned only a few times: first, civil society involvement is envisaged to improve professional security training in information security and implementation of national educational programs in media culture; secondly, the involvement of leading scientific, analytical and expert institutions of Ukraine and civil society institutes is provided for scientific and expert support of coordination and control of activities in the field of national security and defense, which is directly carried out by the National Institute for Strategic Studies. Given the variety of possible forms of public participation in national security, this approach appears to be limited and incomplete in the National Security Strategy.

Therefore, it is necessary to speed up the process of adopting a new National Security Strategy, with due regard for the proposals of public organizations received in consultation with the public, as well as enhancing their impact on national security in all areas of identified threats and challenges. In addition, it is recommended that a unified form of reporting on the implementation of action plans for the implementation of the National Security Strategy be implemented in all regions and all national security actors, including public organizations. Unfortunately, many strategic documents in Ukraine and annual Action Plans remain largely declarative and do not meet the set goals (Monitoring Study, 2019). The same can be said about the agreements and memoranda signed on cooperation and cooperation between the authorities and non-governmental organizations. Therefore, it is important to monitor the implementation of the declared tasks in the relevant agreements and memoranda, and to provide for the liability of the responsible entities for the failure or improper or untimely performance of the tasks stipulated in the strategic documents and plans for their implementation. In order to ensure a comprehensive and coordinated approach to the involvement of public organizations in national security, it is appropriate to define more specifically the role and place of public

organizations in the national security system in the Law of Ukraine on National Security, to clearly identify all possible forms of their participation in national security and peculiarities of their interaction with the authorities (Law of Ukraine, 2018).

The organizational direction of improving the influence of public organizations on the state of national security provides, first and foremost, an increase in the level of coordination of activities of authorities and non-governmental organizations in identifying, assessing and forecasting threats to national security, and implementing international cooperation on these issues. It is well known that public organizations have to spend part of their resources to raise funds to achieve their humanitarian goals. However, the limited number of donors and contributions received leads to competition among public fundraising organizations. It is therefore very important to manage the relations between these organizations and donors, to coordinate this process, which will facilitate a comprehensive approach to national security. It is advisable to create an appropriate focal point, which will summarize information on existing public organizations relevant to national security, keep a register of them, organize it into the directions and forms of activity of organizations, display in it links to the official sites of organizations and provide public access to it.

At present, the system of accounting of public organizations in Ukraine makes it impossible to obtain information on civil society organizations, their numbers, activities, contributions to national security, etc. The lack of access to quality information about NGOs and their activities does not allow to analyze the contribution of organizations to society and to carry out their comparative analysis (Palivoda *et al*, 2016). Such a registry will potentially help coordinate efforts of public organizations, exchange information, facilitate their cooperation, and address their funding, including from foreign and international donors. Thus, one of the tasks of such a focal point should be to communicate with donor organizations that promote national security in order to distribute resources equally and to identify rational and effective ways of using their assistance.

In addition, it is this body that can control the spending of donor assistance on the most urgent challenges and threats to national security. For this purpose, it is important to create an appropriate registry of threats as part of the National Security Strategy of Ukraine. A similar register exists in the United Kingdom (National Risk Register, 2017). The registry should also contain a description of the possible consequences of the occurrence of a specific threat, determine the areas of responsibility and the order of response of the competent authorities and public organizations.

Creating a common platform for public organizations will facilitate their effective cooperation and enhance their role in national security. It is interesting that in the current conditions of counteracting the coronavirus

as a threat to national security, the authorities have declared the creation of a unified mechanism for coordination of providing international assistance to Ukraine, which should make it possible to accelerate communication of Ukraine with international partners and organizations willing to provide humanitarian, financial and logistical assistance. (Pristaiko, 2020). However, this decision is a situational response to the inherent threat to national security. It is important to institutionalize such a mechanism on an ongoing basis and broaden its scope for national security in a broad sense. It may be an optimal solution to set up a national agency, such as the United States Agency for International Development (USAID), the Canadian International Development Agency (CIDA), but whose activities would focus on internal tasks rather than external ones. like these organizations. The tasks of such a focal point should also include coordination of activities, sharing of information and experience, establishing horizontal links, combining efforts and supporting the most promising civil initiatives of all parties involved in national security.

Narrow and broad approaches to understanding national security can be distinguished. The narrow approach covers exclusively the military and defense aspects of national security. Ensuring national security in the broadest sense also includes responding to potential political, social, information, environmental, economic and other challenges to national security. However, a narrow and broad approach presupposes that ensuring the national security of the state is a matter not only of public authorities, but of the entire society, and the existence of an effective network of modern public organizations becomes one of the conditions for ensuring national security and the regularity of public administration in a democratic society. In today's context, public organizations, as an integral part of civil society, are not sufficiently involved in the implementation of national security policy, despite the fact that they have considerable potential and are actively involved in this process.

Thus, interaction between the public sector and the authorities is an important aspect of national security policy and determines its effectiveness. At present, the adoption of a number of pieces of legislation makes it possible to speak of an extension of the legal field for cooperation between public authorities and civil society institutions. At the same time, given their scattered and novelty, it is too early to talk about the systematic and effective interaction practices. Ukraine is in the process of developing tools and practices for cooperation in this area, adapting legislation to European standards. At the same time, it is important not only to promote the development of public movements aimed at ensuring national security, but also to ensure the efficient use of their resources and potential through a comprehensive and coordinated approach.

Mechanisms of interaction between the state and society need

improvement, including on the basis of systematic information on possible forms of involvement of public organizations in ensuring national security and their high quality legal and organizational support. The main forms of participation of public organizations in ensuring national security include: information requests, reports from authorities, public monitoring, public examinations, public councils, analytical studies, public hearings, dialog platforms, joining advisory and advisory bodies, participation in social project contests, training, retraining, training, information and education activities. Of course, this list is not exhaustive, and with the development of society and the mechanism of national security, it may include other forms of public organizations involvement.

Conclusion

The results of the analysis and generalization of the current legal support and the available scientific and analytical studies on the participation of public organizations in national security allow to distinguish the legal and organizational directions of improving their influence on the state of national security. The legal direction envisages the improvement of legal support for the functioning of public organizations in the field of national security. The organizational direction of improving the impact of public organizations on the state of national security presupposes, first and foremost, an increase in the level of coordination of activities of state bodies and non-governmental organizations in identifying, assessing and forecasting threats to national security, preventing such threats and ensuring their elimination, international cooperation on these issues.

The results of the study can be used in further discussions about the role of public organizations in ensuring national security, exploring the effective forms of their participation in this activity. Further studies may focus on the involvement of public organizations in national security at national, regional and local levels, each of which has a specific character. Strengthening the role of public organizations in ensuring national security requires a comprehensive approach that includes legal and organizational lines. Within the legal direction it is necessary to: 1) establish requirements for reporting by the authorities on the considered proposals from public organizations or grounds for their rejection; 2) eliminate the scattering of legal norms regarding the procedure of holding public hearings on various legal acts; 3) accelerate the process of adopting the new National Security Strategy, with due regard for the proposals of public organizations, as well as enhancing their impact on national security in all areas of identified threats and challenges; 4) develop and approve a single form of reporting on the implementation of action plans aimed at implementing the National

Security Strategy; 5) in the Law of Ukraine "On National Security of Ukraine" it is more specific to define the role and place of public organizations in the system of national security, to fix the forms of participation of public organizations in ensuring national security and the peculiarities of their interaction with the authorities (Law of Ukraine, 2018); 6) to provide for the occurrence of responsibility of the subjects for non-fulfillment or improper or untimely fulfillment of the tasks in the field of national security provided by the strategic documents and plans for their implementation.

Within the organizational direction, it is necessary to: 1) ensure the implementation of the legislation on systematic reporting on national security within the competence of each of the state entities involved in national security; 2) establish, by a single standard, continuous monitoring of the implementation of agreements and memoranda on cooperation in the field of national security between the authorities and public organizations; 3) to transform the practice of advisory situational cooperation into the practice of continuous coordination and strategic cooperation in the field of national security; 4) create a single registry of threats as part of Ukraine's National Security Strategy; 5) to improve the register of public organizations, in particular, to organize them into directions and forms of activity, to display links to official sites of organizations and to provide public access to it; 6) Introduce an effective mechanism for coordinating the involvement of public organizations in national security and providing them with donor assistance through the creation of a single focal point for public organizations' involvement in national security.

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International Experience of Legal Service Relations in the National Security Sphere: Issues of Implementation in Ukraine

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Abstract

The purpose of the document is to study the international experience of the development and operation of legal service relations in the field of national security and, furthermore, to elaborate proposals on the adoption of its best practices in Ukraine. The document aims to identify problems and improve current Ukrainian legislation dealing with public service and legal service relations in the field of national security. The main method was comparative. The following proposals are developed: the adoption of a single codified normative act to regulate legal service relations between all categories of public servants; the introduction of an open competition system for high-ranking officials; depoliticization of public service; implementation of international experience of legal regulation of service relations in the field of national security of Ukraine. In conclusion, the document materials can be of theoretical and practical value for academics investigating various aspects of the implementation of legal service relations and the sphere of national security in general, experts in the security and defense sector of Ukraine.

Keywords: legal service relationships; Ukrainian national security; public service; comparative law; elaboration of proposals.

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Experiencia internacional de las relaciones del servicio jurídico en el ámbito de la seguridad nacional: problemas de implementación en Ucrania

Resumen

El propósito del documento es estudiar la experiencia internacional del desarrollo y funcionamiento de las relaciones de servicio legal en el ámbito de la seguridad nacional y, además, elaborar propuestas sobre la adopción de sus mejores prácticas en Ucrania. El documento tiene como objetivo la identificación de problemas y la mejora de la legislación actual de Ucrania que se ocupa del servicio público y las relaciones del servicio legal en el ámbito de la seguridad nacional. El método principal fue el comparativo. Se desarrollan las siguientes propuestas: la adopción de un acto normativo único codificado para regular las relaciones de servicio legal entre todas las categorías de servidores públicos; la introducción de un sistema de competencia abierta para funcionarios de alto rango; despolitización del servicio público; implementación de la experiencia internacional de la regulación legal de las relaciones de servicio en el ámbito de la seguridad nacional de Ucrania. Como conclusión los materiales del documento pueden ser de valor teórico y práctico para académicos que investigan diversos aspectos de la implementación de las relaciones del servicio legal y la esfera de seguridad nacional en general, expertos del sector de seguridad y defensa de Ucrania.

Palabras clave: relaciones de servicio legal; seguridad nacional de Ucrania; servicio público; derecho comparado; elaboración de propuestas.

Introduction

Legal service relations arise, function and terminate while the citizens exercise their right to public service. That is, legal service relations exist within the public service. The public service is relevant for the national security sphere of Ukraine. Thus, the Code of Administrative Procedure of Ukraine (2005) defines the concept of public service as: "an activity in public political capacities, in state collegial bodies, professional activity of judges, prosecutors, military service, alternative (non-military) service, other public service, patronage service in state bodies, service in the authorities of the Autonomous Republic of Crimea, local self-government bodies". The connection between the public service and national security of Ukraine in this definition is considered from the perspective of public service subjects who, according to the Law of Ukraine "On National Security", are the

subjects of its support. Legal service relations in this context are the main component of public service (Law of Ukraine, 2018).

The problem of legal regulation of public service on the whole and legal service relations in the national security sphere of Ukraine in particular consists in high diversity, imperfection and lack of systematization of the legislation in this sphere. Legal service relations between the security and defense sector bodies are regulated by different normative and legal acts. Therefore, such situation does not provide for a uniform functioning of such legal relations. However, it is worth mentioning that automatic adoption of foreign experience in organization and regulation of legal service relations in the national security sphere into Ukrainian reality cannot guarantee an unconditional result. To our mind, it is necessary to analyze such experience and use it in the mental and legislative field of our country.

The issue of legal service relations in the national security sphere of Ukraine is, in our opinion, of utmost importance in the process of developing a rule-of-law, democratic state, public demand for social justice, taking into consideration the military aggression against the state, low living standards, political and petty corruption, as well as many other factors. That is why, the experience of rational development and proper functioning of legal service relations in foreign countries and its application into the national security sphere of Ukraine is very important for the reformation of public administration system of Ukraine. Thus, the proper functioning of legal service relations will promote the efficiency of national security protection.

Various issues of legal service relations in the national security sphere of Ukraine were investigated by G.V. Atamanchuk (2014), O.O. Grishkovets (2015), M.I. Inshin (2002), V.A. Lipkan (2008), A.F. Nozdrachev (2017), Yu.M. Starilov (1996) and others. Foreign experience of legal service relations was studied by I.A. Vasilenko (2001), M.P. Gray (2008), Pukhtetska (Gritsenko *et al,* 2015), V.P. Tymoshchuk (2007), N.V. Yanuk (2010) and others.

However, the issue of implementing the international experience of legal service relations in the national security sphere of Ukraine still remains scantily explored. In view of the above-mentioned, it is necessary to analyze the international experience of legal service relations and to develop proposals for their further implementation in Ukraine.

1. Materials and methods

The following methods were used in the research: theoretical (modeling, analysis, synthesis, comparative-legal, special-juridical). Experimental base of the research was the National Academy of the Security Service of Ukraine. The study of the problem was conducted in three stages:

At the first stage there was a theoretical analysis of existing approaches in the legal literature, legislation, dissertations, monographs on the problem; the problem is highlighted, which is the lack in Ukraine of a perfect legal framework for the implementation of official legal relations in the field of national security of Ukraine, which, in turn, negatively affects the national security of Ukraine; purpose, namely the study of the experience of foreign countries in the construction and implementation of official relations, as well as training in the field of national security and development of proposals for use in Ukraine and research methods such as modeling, analysis, synthesis, comparative law, special law.

At the second stage, complex problems of implementation of official legal relations in the field of national security of Ukraine were revealed and proposals for improving the regulatory framework in the security and defense sector were substantiated, international experience in solving such problems was analyzed, specific models of effective implementation of official legal relations in the field of national security were studied. foreign countries; the conclusions obtained as a result of theoretical and practical work were analyzed and specified. It is stated that the subjects of official legal relations in the security and defense sector of Ukraine are guided in their activities by various regulations. Entities related to the executive branch - the legislation on civil service, entities related to law enforcement agencies and military formations – statutes, regulations, orders, instructions. This introduces a serious imbalance in the functioning of the security and defense sector as a whole. Therefore, the creation of a single regulatory framework for the security and defense sector will ensure the effective detection and response to external and internal threats facing Ukraine. The use of international experience, study of foreign legislation on this issue, implementation in domestic legislation, comparison of models of training of foreign specialists in security and defense, as well as the use and introduction of new elements of training such specialists will significantly improve the security and defense sector of Ukraine.

At the third stage the theoretical work was completed, theoretical and practical conclusions were specified, the obtained results were generalized and systematized. With the help of methods of scientific knowledge, proposals were developed to improve the legislation of Ukraine on the regulation of official relations in the field of national security of Ukraine. The comparative legal method was used to study the legislation of other countries in the field of national security on the implementation of official relations. On this basis, proposals were made to improve the training process for Ukraine's national security sector, namely the security and defense sector. The special legal method facilitated a detailed analysis of the current state of legislative provisions, thanks to which proposals were developed to overcome the existing theoretical, practical and legal contradictions, as well as conflicts in legislative acts. Using the modeling

method, positive properties were identified in the training systems of specialists in the field of national security of foreign countries, which made it possible to make proposals to improve the training system of specialists in the security and defense sector in Ukraine. The method of analysis was used to study in detail the individual elements of official relations in order to determine the effectiveness of their impact on the training process in the field of national security, namely the subjects of the security and defense sector of Ukraine. The method of synthesis was used to unite the elements of official legal relations into a single whole in order to build a holistic system of training in the security and defense sector of Ukraine, taking into account international experience.

Since the current legislation regulating the conduct of public and other types of service is numerous and not properly systematized, usually regulated by bylaws, it is necessary, in our opinion, to develop and adopt a single normative act at the level of Ukrainian law that will regulate all aspects of public service. Such a law should include provisions on the specifics of civil service, service in local self-government bodies, military service and service in law enforcement agencies. In our opinion, it is quite important in this law to single out the peculiarities of service by subjects of the security and defense sector of Ukraine in comparison with the general civil service, namely to provide regulation of specifics of selection of candidates for service, their certification during service, special examination of candidates for service, features of promotion, retraining, advanced training of employees, termination of service.

Ukraine should develop a model for building a public service in the security and defense sector that responds to current threats and challenges, is able to effectively identify such threats and actively address them. This is possible only with a clear organization of entry and service by employees of the security and defense sector, as well as proper interaction of the latter with other state bodies that have the authority to ensure the national security of Ukraine. To achieve this goal, it is necessary to constantly study and take into account the positive aspects of the functioning of official legal relations in the field of national security of foreign countries, as well as to carry out a constant practical exchange of experience.

The materials of the article can be useful for teachers of higher education institutions that train employees of the security and defense sector of Ukraine, practitioners of the security and defense sector to use international experience in regulating official relations in the field of national security of Ukraine. In the process of research, new issues and problems have arisen that need to be addressed. It is necessary to continue the study of the implementation of official legal relations in the field of national security of Ukraine at the theoretical and practical levels.

2. Results and discussion

According to the current legislation, the security and defense sector of Ukraine includes quite a large number of subjects. Among them: the Ministry of Defense of Ukraine, the Armed Forces of Ukraine, the State Special Transport Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Department of the State Guard of Ukraine, the State Service of Special Communication and Information Protection of Ukraine, the National Security and Defense Council of Ukraine, the intelligence agencies of Ukraine, the central executive authority that provides for the formation and implementation of state military and industrial policy. Other state and local self-government bodies perform their national security functions in cooperation with the bodies that comprise the security and defense sector (Law of Ukraine, 2018). The legal relations between civilian subjects of national security protection are mainly regulated by the Law of Ukraine "On Civil Service" (Law of Ukraine, 2015). On the other hand, the law enforcement and military service activities are regulated by a number of laws and regulations (statutes, provisions, orders, instructions).

Legal service relations are viewed by scholars as the relations between public servants whose official duties imply direct or indirect participation in the realization of public authority rights or protection of rights, freedoms and legal interests of physical and legal entities (Movchun, 2015). Legal service relations can be considered as public-law civil relations subject to legal regulation of a public service between a state (territorial community) acting through its bodies and a physical entity starting with the assignment to a position, in the process of performing duties as a civil servant and in case of employment termination (Anischenko, 2015).

The legal service relations in the system of state power bodies of Ukraine, including the relations of the organizational and functional structure of public bodies, can be viewed as: the system of legal service relations that arise within a state body due to a special procedure of recruitment, service based on the special principles of organization and functioning; their special legal status as the representatives of public authority and the peculiar features of their professional education and professional environment, caused by their specific professional duties, rigid discipline requirements, certain restriction of rights and freedoms; special responsibility for non-fulfillment or improper fulfillment of their obligations; their special legal and social protection and a special procedure of service termination for corresponding categories of civil servants and employees (Stolbovyi, 2019).

Based on the analysis of the views of the above-mentioned scholars on the definition of "legal service relations", the following basic elements of such relations can be distinguished: recruitment to public service, service career and its termination. Moreover, it should be emphasized that recruitment to public service (military, law enforcement) is an important element of future effective fulfillment of an employee's direct duties. Whereas, the improper implementation of this element of legal service relations may adversely affect the employee's future performance (corruption, disciplinary violation, premature dismissal, negative psychological climate in the team, etc.).

Now let us consider the experience of other countries dealing with the issue of recruitment, as an element of legal service relations. Thus, in the US, the general requirements for FBI candidates are: 1) American citizenship or citizenship of the Northern Mariana Islands; 2) age from 23 to 37 years; 3) college or university education (bachelor's degree); 4) three years of professional experience; 5) valid driver's license (Buhaichuk *et al,* 2016).

The training process at the FBI National Academy starts at 8 am and ends at 5 pm with 1-hour lunch break. The daily workload is usually 8 academic hours, each 50 minutes long. Much attention is paid to practical training, when everything is as close to the real situation as possible. Very often, business games are practiced in the classroom to ensure better understanding and communication. It is worth mentioning that there is no military discipline at the FBI Academy. The communication is sincere and human. Everyone is called by name. Considerable attention at the Academy is paid to physical education. Everyone who arrives to take courses is supposed to pass a fitness test, which determines the level and type of future workload. The trainees are divided into groups depending on their fitness level and get appropriate (according to their group) physical exercise (Buhaichuk *et al,* 2016).

Shortlisting to the German police is carried out by a selection board, which carefully examines the candidate's credibility and checks the absence of compromising materials against him. For instance, in Bavaria (Germany) the entrance examinations include an essay-writing, fitness check, medical screening and an interview. The first year of study includes the theory and practice of police operations, followed by a year of service in the operating units with another six months of theoretical training ending with an examination. The selection of candidates for police service in the Baltic States is carried out by local recruitment units on a competitive basis, in order to verify the person's ability to perform police functions and to avoid recruiting those who may act in bad faith in future (Buhaichuk *et al,* 2016).

Therefore, global experience suggests that nationwide professional education systems for civil servants play an important role in their professional and career development in terms of global and regional

integration, national differentiation and acceleration of social change. Such special professional education systems should be functionally capable in equal, sectoral, institutional and uninterrupted manner to meet the diverse professional needs of both civil servants and public authorities, as well as provide various forms of educational services. According to the two polar types of recruitment to civil service (elitist or closed and public or open) national educational systems of professional training for civil servants are characterized by a different degree of commonality-corporativity, public openness-closeness. However, for any of these types, according to the requirements of modern competency approach, it is important that professional education and improvement will not focus only on the requirements of the organization, but also meet the needs of staff, their aspirations and the potential for self-fulfillment (Sliusarenko, 2007).

Turning back to the issue of advanced training and development of civil servants in Ukraine, it is important to introduce short-term training courses and programs that will allow civil servants to acquire new knowledge and skills in a short period of time to effectively fulfill their duties. The development of pilot projects and programs will save costs for their organization and ensure their efficiency, taking into account current trends in public administration (Kovbasiuk *et al,* 2012). With regard to such an element of legal service relations as performing service, it should be emphasized that it is the largest element, which includes direct fulfillment of duties, promotion (career), certification, application of awards and penalties, etc.

In all modern states, one of the three main models of public service is used – career, position and mixed one, which combines elements of career and post models. Most countries of the European Union have developed their public service on the basis of a career model where an employee can move up the ranks, if he receives the necessary education, undergoes training, has sufficient work experience. Such career model is widely used in France, Germany, Denmark and Spain. The position model is common in Sweden and the Netherlands, while the mixed model is used in Italy and the United Kingdom. Among new EU members there are those who adhere to the career model (Bulgaria, Cyprus, Romania, Slovakia, Slovenia) as well as those who prefer a mixed one (Latvia, Lithuania, Malta, Poland, Hungary, Czech Republic). The exception is Estonia, where a position model prevails (Ziller, 1996).

In respect to Austria, a characteristic feature of its civil service system is promotion. Promotion means, first and foremost, the appointment to higher positions. Only those of civil servants who fulfill top-level and more complex tasks can be promoted to senior positions. In order to be appointed to a higher position, civil servant should wait for a certain amount of time, that is the so-called “waiting period”. The length of this period depends

on the position rating and the employee's performance evaluation. There are no legal norms for promotion; internal promotion regulations and directives are approved. As for the salaries, civil servants receive 14 salaries a year. The federal government acts as a major employer and covers a wide range of activities: from teachers, police officers, judges or state attorneys and prosecutors to financial sphere professionals (Kovbasiuk *et al,* 2012).

In Italy, there is a well-established and regulated state and administrative apparatus, whose efficiency, as a rule, does not depend on a change of state power. Although formally everyone working in the public sector can be considered as a civil servant, in practice there is a rather clear distinction between employees of state-owned enterprises and civil servants. Thus, the legal status of the latter ones is regulated by special normative acts. In particular, the constitution states that only those who work in the public administration are civil servants.

The constitution is the basic act that determines the role and place of civil servants in the system of administrative and legal institutions. According to the constitution, civil servants are supposed to serve the people. Therefore, in Italy, the civil service and political power are separated from each other. Most line-level employees are recruited directly after graduating from high school and receive work-oriented training already from the very beginning. As a rule, senior executives are appointed from among those who have started their careers in local government bodies. Employees and their senior executives who neglect their responsibilities may be subject to various disciplinary sanctions. In case of proper fulfillment of their duties, employees have the right to retain their positions and get career promotion (Kovbasiuk *et al,* 2012).

According to the legislation on the civil service of the Republic of Kazakhstan, after three years in office the administrative civil servants are certified in order to determine the level of their professional competence, legal culture and ability to work with citizens. The certification procedure involves the submission of a civil servant's efficiency report by his direct supervisor, where his professional, personal qualities and performance are reflected. However, nowadays there is a need to improve the certification procedure by focusing it on assessing the quality and final results of the activity of civil servants in order to ensure the correlation between their performance and career promotion. In Kazakhstan, there is a unified remuneration system for civil servants, whose salaries are paid from the state budget and from the budget of the National Bank of the Republic of Kazakhstan. The system is based on coefficients and allows to take into account the duration of service and the category of occupied administrative state position. The bonus award criteria, financial assistance and salary increments for the civil servants are provided from the state.

In Kazakhstan's 2030 Development Strategy the priorities of the civil service development are defined: "improving the system of recruiting, training and promotion of the personnel", "civil service serves for the nation", "creating and maintaining a high reputation of the civil service". These are the basis for the development of a new civil service model of the Republic of Kazakhstan (Kovbasiuk *et al,* 2012).

The analysis of international experience allows us to distinguish the following approaches, which can be used for the improvement of legal service relations in the national security sphere of Ukraine:

1) improvement of the legal framework, which should provide for the differentiation between administrative and political positions in accordance with European principles. Adoption of a single codified legal act that would regulate legal service relations between all the categories of public servants; introduction of an open competition system for top-rank civil servants, depoliticisation of public service; development of uniform criteria for public servants' evaluation and promotion;

2) revision of the training programs for students of specific educational institutions (military and law enforcement) in order to expand practical training, probation at the future workplace for at least one year during the training period, which will allow to "avoid studying while fulfilling professional functions" and, to perform their duties effectively and on the proper level;

3) improvement of the operation of personnel departments of territorial bodies the security and defense sector, which implies the rigorous selection of candidates for public service (in military and law enforcement agencies) in order to avoid recruiting persons inclined to violation of service discipline, possible acts of corruption, other offenses, persons with low morale and psychological qualities;

4) fitness level differentiation for students in the process of education by dividing them into corresponding groups for an efficient physical load distribution, and also avoiding equal qualifying standards in physical training for different categories of students;

5) introduction of amendments to legal acts in the sphere of public service in terms of implementing provisions that will regulate gradual promotion of public servants in accordance with the hierarchical principle, in order to prevent non-experienced and non-professional persons from occupying executive positions.

Conclusion

Since the current legislation regulating the conduct of public and other types of service is numerous and not properly systematized, usually regulated by bylaws, it is necessary, in our opinion, to develop and adopt a single normative act at the level of Ukrainian law that will regulate all aspects of public service. Such a law should include provisions on the specifics of civil service, service in local self-government bodies, military service and service in law enforcement agencies. In our opinion, it is quite important in this law to single out the peculiarities of service by subjects of the security and defense sector of Ukraine in comparison with the general civil service, namely to provide regulation of specifics of selection of candidates for service, their certification during service, special examination of candidates for service, features of promotion, retraining, advanced training of employees, termination of service.

Ukraine should develop a model for building a public service in the security and defense sector that responds to current threats and challenges, is able to effectively identify such threats and actively address them. This is possible only with a clear organization of entry and service by employees of the security and defense sector, as well as proper interaction of the latter with other state bodies that have the authority to ensure the national security of Ukraine. To achieve this goal, it is necessary to constantly study and take into account the positive aspects of the functioning of official legal relations in the field of national security of foreign countries, as well as to carry out a constant practical exchange of experience.

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The Analysis of the Essence on the Information Society in the Legal and Philosophical Context

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Abstract

This article analyzes the main conceptual approaches to understand a new type of information society. The methodology used in terms of intellectual operations to process information combined the dialectical method, historical method, comparative method, systemic and functional method, formal and logical method. The formation of the information society is the result of the new global social revolution that is based on the explosive nature of development and the convergence of information and communication technologies. It is a knowledge society, where the main condition for the well-being of each person and each state is the knowledge acquired due to free access and the ability to work with information. By way of conclusion, everything indicates that the main value of the information society is the formation of open access information spaces that improve the quality of life and human capacities, and promote the development of open societies.

Keywords: information society; network society; knowledge society; communicative society; information policy.

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El análisis de la esencia de la sociedad de la información en el contexto legal y filosófico

Resumen

Este artículo analiza los principales enfoques conceptuales para comprender un nuevo tipo de sociedad de la información. La metodología utilizada en términos de operaciones intelectuales para procesar la información combinó el método dialéctico, método histórico, método comparativo, método sistémico y funcional, método formal y lógico. La formación de la sociedad de la información es el resultado de la nueva revolución social global que se basa en la naturaleza explosiva del desarrollo y la convergencia de las tecnologías de la información y la comunicación. Es una sociedad del conocimiento, donde la condición principal para el bienestar de cada persona y cada estado es el conocimiento adquirido debido al libre acceso y la capacidad de trabajar con la información. A modo de conclusión todo indica que, el principal valor de la sociedad de la información es la formación de espacios de información de libre acceso que mejoren la calidad de vida y las capacidades humanas, y promuevan el desarrollo de sociedades abiertas.

Palabras clave: sociedad de la información; sociedad de red; sociedad del conocimiento; sociedad comunicativa; política de información.

Introduction

The term “information society” is widely used in sociology, futurology and globalism today. It is used to identify some crucial changes in modern society for human life, caused by the intensification of information flows in it on the basis of the development of information and computer technology.

Information society is a sociological concept of post-industrial society; it is a new historical phase of the society development, in which the production, use and consumption of information becomes a defining way of activity in all spheres of social life (economy, politics and culture). The peculiarity of this type of society is the crucial role of information and communication technologies (ICT), the production of information and knowledge, so quite often the concept of “information Society” in the economic sphere is supplemented by the concept of “knowledge economy”. The essential aspects of the information society are: the growing role of information, knowledge and information technology in society; a significant number of people involved in information technology and

communications, a large share of production of information products and services in GDP (according to some international indicators, more than half of GDP); wide informatization of society with the use of radio, television, Internet (global telecommunication network of information resources), traditional and electronic media; creating a global information space that provides effective information and communication interaction of people, their access to global information resources, as well as meeting the needs of information products and services.

The information revolution taking place in modern society is associated not only with the formation and development of global information and telecommunications networks, but also with the radical transformation of individual's life, society and State. There are qualitatively new opportunities for socialization of an individual in the information society, access to the accumulated knowledge of mankind, public administration reform based on the formation of e-government and the implementation of State information policy to ensure openness and transparency. All these processes are summarized in socio-philosophical, economic, political concepts, generally accepted principles and norms of international law, during the formation of public policy. At the same time, the diversity of approaches to understanding the essence of the information society, the lack of a single terminological basis necessitates the study of the genesis and institutionalization of this category. The purpose of the study is to analyze the main conceptual approaches to defining the concept of information society and its essential components.

1. Methodology

Research methods are based on methodological tools, conceptual approaches developed by legal science.

The research was carried out on the basis of philosophical, general scientific and special scientific methods.

In particular, the dialectical method allowed to analyze the dynamics of the information society, to reveal the basic patterns of its formation, as well as the factors influencing the process of its functioning.

The historical method was used in studying the genesis of the information society, as well as the process of its transformation. This approach also allowed to predict the prospects for its further development.

The comparative method helped to explore and to compare international and universal, international and regional, as well as national models of legal regulation of the information society. Using this approach, the possibility of adapting national legislation to European standards was analyzed.

The systemic and functional method was useful in considering the information society as a holistic system consisting of certain components, which, in turn, are the part of more complex structure associated with more complex system – the system of society. The use of this method allowed to focus on the national characteristics of the information society.

With the help of the formal and logical method, a conclusion was made on the formation of the basic concepts of the content of the information society.

2. Literature review

The first attempts to analyze the impact of informatization of human activity on public life were made in the early 1960's by the American researcher F. Machlup (1962). He, in particular, conceptually highlighted professional activities related to the production and practical implementation of knowledge and information, among other forms of professional activity and, based on certain qualitative criteria for such separation and simplified economic calculations, tried to determine what part of US GDP is generated in the "knowledge industry". His research has led him to argue that creating "cheap, reliable, fast, and publicly available information" will have "as powerful consequences for the society as the invention of electricity".

The futurists became interested in the problems of informatization in the 1970's, but not only in production, but in public life in general. Understanding these problems, the American sociologist D. Bell (1974), in particular, concluded that "new decision-making technologies" will come to the forefront of social life in the nearest future and the main "social actors" will be professional technocrats who will operate with knowledge and information. This will lead to a qualitative change in society – its entry into the "information age". After the publication of the book by J. Naisbitt "Megatrends" (1984), the term "information society" became generally accepted. Since then, one of the main issues that have become central in the discussions about the information society as such is the issue of the change in the status of an individual in a social life. Decentralization of communications strengthens the communication potential of the individual and causes, in particular, the virtualization of his (her) physical presence at the work place or in any other place, which can lead to a crisis of his (her) social identity.

A new stage in the development of the concept of "information society" was the development of the concept of "network society" (Castells, 1996), which focused on the fact that, firstly, the development of the society in the future will depend less on physical resources, and secondly, the widespread

use of information and computer technology will lead to fragmentation of social time, which can be either further accumulated through augmentation of information, or wasted because of active but ineffective communication.

The critic of information society theories, in particular F. Webster (2014) notes that information and computer technology is a non-social phenomenon, and therefore they cannot change the foundations of the society. He also argues that the concepts used by the supporters of the information society theory are vague and their quantitative calculations are unreliable. According to the view of Webster the supporters of this idea have not developed a clear categorical apparatus that would allow them to distinguish between those employees who deal with the information itself as such, and those who only use information equipment. This means that counting the number of "information workers" does not provide the understanding the real social hierarchy and the associated power.

The study of the process of entry of human civilization into a new stage of development, i.e. the stage of the information society, is reflected in the scientific works of domestic scientists, who have developed their own approaches to defining the essence and outlining the problems of the information society. Among them are: I. L. Bachylo (2001), D. V. Dubov (2010), A. V. Kolodiuk (2004), O. M. Seleznova (2013), O. Vorobiova (2010), etc.

3. Results and Discussion

The emphasis on the role of technological progress and systematization of theoretical knowledge as the decisive factors in the formation of new society naturally led to the emergence of theories, in which these factors appeared not only as systematically important, but also as the solely noteworthy features of modern society. The recognition of the decisive role of information and knowledge in public life contributed to the consolidation of the concept of "information society".

There are various directions and trends that focus on various aspects of social relations and its social prospects within the ideology of the information society. The most developed is the concept of information society by M. Castells (1996, p. 243), which he outlined in his three-volume work "Information Age: Economy, Society and Culture". The study provides a thorough analysis of the role of information in the modern era; in particular, the theory of network society was developed. The author does not use the usual terminology, noting that the term "information society" only emphasizes the role of information in society. In his view, information as a transfer of knowledge in the broadest sense of this word was important

in all societies, including medieval Europe. The term "information" in the work of the philosopher indicates an attribute of a specific form of social organization, in which the generation, processing and transmission of information have become fundamental sources of productivity and power due to new technological conditions. Social and technological forms of social organization cover all spheres of activity, starting on the dominant ones and ending with the objects of everyday life in this type of society.

The concept of network is one of the M. Castells' key concepts. According to him, modern capitalism is organized on the model of the Internet – a global information network that covers all countries, regardless of political and State borders. The basic structural model of social interaction in such a society is a network project created not by a separate group, but by network members. Everything is decided by information and the control over it: "In a new, informational way of development, the source of productivity is available in the technological generation of knowledge, information processing and symbolic communication. Specific for the information method of development is the impact of knowledge on their own knowledge as the main source of productivity" (Castells, 1996: 39). However, the main feature of the network society is not even information or knowledge, but a change in the way of their use, as a result of which global network structures become particularly important in peoples' lives, displacing previous forms of personal and material dependence. M. Castells emphasizes: "Not all social dimensions and institutions correspond to the logic of a network society, just as industrial societies have been including numerous pre-industrial forms of human existence for a long time. But all societies of the information age are really permeated (with varying intensity) by the ubiquitous logic of the network society, whose dynamic expansion gradually absorbs and subdues previous social forms" (Castells, 1996: 505).

The dynamism of the social structure of the network society, its global nature, caused by financial markets and information flows, makes it a system that is constantly expanding, penetrating in all communities in different ways and with different intensity. According to M. Castells, network society is not a model of success, it is rather a general characteristic of the new social structure. He argues that the centralized decision-making system from the metropolis to the periphery gives way to the networks based on the principles of decentralization and joint coordination of self-programmed and self-directed entities (Castells, 1996: 163).

Network organizational principles are used not only by transnational corporations, but also by States, as they develop in conditions of dependency on macroeconomic factors. A thorough study of industrial society is presented in the work of British sociologist F. Webster "Theories of the Information Society", in which the author tries to analyze both the advantages and disadvantages of the concepts of the information society.

He notes that, despite the differences in views, interpretive schemes, attention to certain aspects of society, all researchers acknowledge the importance of information and information technology, their special role in the modern world. The researcher identifies six main criteria for characterizing the information society: technological, economic, spatial, cultural and qualitative. The basic principle of the first five criteria is the belief that quantitative changes in the area of information lead to the emergence of a qualitatively new type of social system – the information society. F. Webster formulates a new definition of this phenomenon, which is based on a qualitative criterion, due not to the fact that "there is much more information in the modern world, its nature has changed the image and lifestyle of people" (Webster, 2014: 7-14).

A similar approach assumes that the basis of modern human behavior is theoretical knowledge and information. F. Webster also believes that in such a society the key are the humanistic principles of society, based on the transparency of government, universal access to information, democratic public decision-making. Many researchers, paying attention to the philosophical and legal issues of the information society, argue that it will present a new system of regulation of social relations – responsible self-regulation as a more complex form of control of socially significant actions, which will not have direct directive management inherent in positive law.

The information society, based on the recognition of the unconditional importance of each of its participants, denies directive management, which pre-limits the interaction of government administrative inequality, suppressing freedom, natural movement and the formation of the information space. M. K. Mamardashvili (1994: 53) emphasizes that the transition to the new level of socio-legal development is possible only in case of awareness of the law by the object, which, accordingly, forms a mindset to "refusal to recognize the existence of a certain world with ready laws and essences" on the basis of the realization that "something cannot be predicted in the form of law, but can only be established as law". According to Mamardashvili's concept, it is necessary to radically change the mental attitude to the law as a presumed punitive force, operating in the format of "power – subordination" in order to solve this problem. The awareness of the deep foundations of legal phenomena allows to highlight the regulatory, rather than protective, function of law, which is the feature of the information society.

In this context, I. Bachylo's (2001) view on the information society as the most organized social system, which provides not only intensive circulation of information, but also a higher degree of regulation of these relations, including the necessary restrictions in this area that can be ensured primarily through legal basis, is quite reasonable.

Ukrainian researcher N. B. Novytska (2012) emphasizes that the formation of the information society is also based on humanitarian and legal components in addition to the technological component. This approach is especially important given the study of legal issues of the global information society.

Theoretical and practical aspects of the creation and development of this society, its current trends and dominants, challenges and threats are now actively explored by domestic scientists. Thus, considering the origins of the information society, M. Zghurovskyi (2005) identifies three periods (concepts) of its development at the turn of the 20th –21st centuries: communication, information and knowledge society.

It is worth noting that there was a transformation of important information for people in digital form, the creation of archives for its preservation, its transmission over long distances using new technology, as well as the development of the global computer network Internet" in the communication society of the 80's – early 90's. Information became a commodity that could be sold and bought in the information society of the second half of the 1990's. At the same time, it has not yet become knowledge; it has not acquired a personal dimension.

Information and communication technologies must be truly combined with the human, creative component in a knowledge-based society. Considering the concept of informationalism, A. Kolodiuk (2004: 18) notes: "Examining the theory of information society as a paradigm of social development, one can say that it in some way combines all the best achievements of mankind, gave impetus to positive changes in all other non-technical spheres of human life, and became the basis for the development of human potential, the widest possible realization of civil rights and freedoms of an individual, by setting the related relations to a whole new level of existence".

At the same time, O. Vorobiova (2010) draws attention to the fact that the problems of the information society in Ukraine were initially formulated within various cybernetic theories. The researcher notes that the information society "provides a comprehensive and organic human development, creates the necessary conditions for spiritual progress, ensures the accumulation of national human capital as the basis for the development of a new type of social organization".

In determining the essential features of the information society, O. Seleznova (2013) concludes that it is not a permanent concept, as now only "it is only possible to observe its formation, because the characteristics of the information society are just being formed".

Domestic scientists consider the formation of an open information society to be one of the priority goals of Ukraine. The process of forming

such a society in Ukraine from information secrecy to the presumption of information openness is quite complex in situations of transition. It is obvious that our State is only at the beginning of this process and does not keep pace with the developed countries of the world. Thus, a number of researchers note that "the informational society, unfortunately, in many respects remains just a popular slogan from the lexicon of European declarations rather than real practice for the countries similar to modern Ukraine, which are still in a state of civilizational uncertainty". This assessment is explained by the fact that in progressive countries the information society is defined as: "A humanitarian category that describes qualitative social transformations, shifting the emphasis from productive to non-productive spheres, changing the nature of information flows, group and individual identities" (Dubov, 2010: 20).

Public policy focuses on doctrinal approaches, which help to control social changes caused by telecommunications technology in information-developed countries. We have previously noted that the Internet in Ukraine is one aspect, and the promotion of its development through the creation of appropriate legislation and certain measures by the government and other public authorities is a completely different aspect (Kushakova-Kostytska, 2003).

An important problem in the development of the information society in Ukraine is that the State does not play a leading role in this process: institutional instruments for implementing public policy are ineffective. One of the measures to overcome this situation is the Law of Ukraine "On the basic principles of information society development in Ukraine for 2007 – 2015", the content and philosophy of which generally meet the needs of Ukrainian society and the State.

The Law defines the essential features of the information society: transparency, focus on the interests of people, free access to information, knowledge, realization of human potential, social and personal development, improving the quality of life. This definition is broadly in line with the Declaration of Principles of the Information Society, first published in Gazette (2004), which highlights the following basic principles of the society: freedom of expression, quality education for all, universal access to knowledge and information, respect for cultural and linguistic diversity.

The UNESCO concept also focuses "not on global uniformity, but on liberating diversity, pluralism and universal participation". The point is that new technologies open up considerable opportunities for accelerating development, promote the active participation of people in the management of society. The foundation of a new type of society should be respect for human rights and fundamental freedoms, in particular freedom of expression. The Declaration of Principles defines the general vector of many theoretical ideas and political aspirations of representatives of different

countries, reflecting a set of philosophical, socio-political, sociological, cultural and technological ideas about the future of the information society. This document is designed to become the basis for the formation of the fundamentally new information policy that will take into account not only technical and technological aspects of the problems of the information society, but also the humanitarian ones.

The information society as a constructive idea for the implementation of a set of civilizational transformations began to be actively used to initiate government programs around the world, but the ways to realize the potential of such a society in different countries acquire specific features.

This happens for certain reasons. Any sovereign State independently determines the strategy of its own development in general and the policy of development of individual spheres of activity, taking into account the need to realize national interests and goals. Thus, the concept of the global information society is a set of national concepts to enter the global information and communication space, which takes into account the cultural identity of each nation.

A State striving for equal integration into the global information space should develop and gradually implement an effective national information policy, which should be recognized as a priority of public administration to ensure the transition to the information society. It should be noted that Ukraine has currently developed a certain legislative and legal framework in the area of information society (regulations, national programs, ratified international documents).

The key areas of implementation of the information society development strategy in Ukraine within the current legislation are:

- accelerating the development and implementation of the latest competitive information and communication technologies (ICT) in all spheres of public life;
- ensuring computer and information literacy of the population;
- development of national information infrastructure and its integration into the world infrastructure;
- State support for new “electronic” sectors of the economy;
- creation of national information systems;
- preservation of the cultural heritage of Ukraine through its electronic documentation;
- State support for the use of the latest ICT in the media;
- the use of ICT to improve public administration, relations between

the State and its citizens, the formation of electronic forms of interaction between public authorities and local governments, individuals and legal entities;

- effective participation of all regions of the country in the processes of formation of the information society;
- protection of the information rights of citizens regarding the availability of information, protection of personal information;
- improvement of legislation regulating information relations;
- improving information security, etc.

According to L. Perevalova (2012), the difficulties of this project are related to "insufficient technical base, complex financial support of this process, inadequate legislative support, as well as lack of thorough research on the process of forming the information society and its components taking into account the best foreign experience".

Conclusions

The researchers identify a number of key issues in the process of formation of the information society in Ukraine. These are, first of all, ineffective system of State regulation of media space, lack of unified view on the further development path, insufficient information presence of Ukraine in global media space, information dependence on foreign States and media structures, unsatisfactory condition of cable broadcasting network, outdated technological equipment of Ukrainian TV and radio companies, underdevelopment of the newest means of communication, monopoly of cable broadcasting, extremely slow transition to digital broadcasting, market anarchy of telecommunications networks and computerization, unregulated training and employment of IT specialists within the State, insufficient number of government programs related to the formation of the information society (Nesteriak, 2014).

The information society as a certain stage of the development of human civilization aims to give an opportunity to the society to create a tool for effective solution of their problems by qualitatively new means. The information society is a society of a new type, the formation of which occurs as a result of a new global social revolution, which provides for the accelerated development and convergence of information and communication technologies; a knowledge society, in which the main condition for the well-being of each person and each State is the knowledge gained through free access and the ability to work with information; a

global society, in which the exchange of information is not hindered by temporal, spatial or national borders; a society that, on the one hand, promotes the interpenetration of cultures and, on the other hand, provides new opportunities for self-realization.

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Civil law enforcement of the rights of the patients with mental disorders: Ukrainian legislation and international practice

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Abstract

There is a need to determine the patient's condition in the process of establishing legal relationships with the medical institution, as well as guaranteeing their human rights. The issue of guaranteeing the rights of patients with mental disorders has become particularly acute, which has led to the relevance of this study. For this reason, the objective of the article is to determine the status of the patient with mental disorder in civil law relationships, between him and the medical institution by examining the respective legal literature, the jurisprudence of the European Court of Human Rights and the Acts. national and international legal. In the course of the study the following methods were used: dialectical, structural and systemic, analytical and synthetic, analytical and synthetic, comparative and legal, formal and legal, sociological. The study found that reform of existing legislation has led to a new regulatory policy in the area of healthcare. There are no specific rules in civil law that determine the status of the patient with a mental disorder, as well as the possibilities and methods of protection of their rights. Furthermore, mental health services, given their details, need to be further regulated at the legislative level.

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Keywords: patient with mental disorder; protection of rights; personal non-property rights; medical institutions; legal regulation.

Aplicación de la ley civil de los derechos de los pacientes con trastornos mentales: legislación ucraniana y práctica internacional

Resumen

Existe la necesidad de determinar el estado del paciente en el proceso de establecer relaciones legales con la institución médica, así como garantizar sus derechos humanos. La cuestión de garantizar los derechos de los pacientes con trastornos mentales se ha vuelto particularmente aguda, lo que ha llevado a la relevancia de este estudio. Por esta razón, el objetivo del artículo es determinar el estado del paciente con trastorno mental en las relaciones de derecho civil, entre él y la institución médica mediante el examen de la literatura legal respectiva, la jurisprudencia del Tribunal Europeo de Derechos Humanos y los Actos jurídicos nacionales e internacionales. En el curso del estudio se utilizaron los siguientes métodos: dialéctico, estructural y sistémico, analítico y sintético, analítico y sintético, comparativo y legal, formal y legal, sociológico. El estudio encontró que la reforma de la legislación existente ha llevado a una nueva política reguladora en el área de la atención médica. No existen reglas específicas en el derecho civil que determinen el estado del paciente con trastorno mental, así como las posibilidades y métodos de protección de sus derechos. Además, los servicios de salud mental, dados sus detalles, deben regularse aún más a nivel legislativo.

Palabras clave: paciente con trastorno mental; protección de derechos; derechos personales no de propiedad; instituciones médicas; regulación legal.

Introduction

According to Art. 12 of the International Covenant on Economic, Social and Cultural Rights (1966), everyone has the right to medical care and medical care in case of illness. This human right is also reflected in Part 1, Art. 49 of the Constitution of Ukraine (1996), according to which everyone has the right to health care, medical assistance and medical insurance.

The issue of public health and the improvement of health care is one of the global problems of mankind. The implementation of legislative measures aimed at creating appropriate conditions for effective and accessible to all citizens medical care is an extremely important task for Ukraine, whose population is in unfavorable socio-economic conditions. The society and the State are responsible to present and future generations for the level of health and preservation of the gene fond of the people of Ukraine; they should ensure the priority of health care in the State, improve working conditions, education, living and recreation, health care system, solve environmental problems and the introduce a healthy lifestyle. The issues related to the legal regulation of public health in Ukraine have been studied by many scientists. However, a number of problematic issues need more detailed research.

Modern reforming of the health care system faced certain collision. On the one hand, radical changes, as well as new technologies in medical sphere have resulted from the expansion of knowledge, treatment methods that enable the provision of effective medical services. On the other hand, the question arose of determining the status of a patient in legal relations with a medical institution, as well as guaranteeing his (her) rights. Particularly acute is the question of ensuring the rights of patients with mental disorders. So, the aim of this scientific work is to compare to compare legal means of protection of the rights of patients with mental disorders in Ukraine and other European countries based on of the study of relevant regulatory acts.

1. Theoretical basis

The theoretical basis for the research is the international and European acts, which regulate the issues of patients' rights protection, in particular:

- Convention on Human Rights and Biomedicine (1999);
- European Charter of Patients' Rights (2002);
- Recommendations of the Committee of Ministers to States Parties regarding the legal protection of persons suffering from mental disorders forcibly placed as involuntary patients (2005);
- Un Principles for the Protection of persons with mental illness and the improvement of mental health care (1991);
- WMA Declaration of Lisbon on the Rights of the Patient (1981).

In the course of the research the works of the scientists, who have considered the issues under consideration, were examined. For example, Herbert E.G.M. Hermans (1997) determines two levels of relation between

a patient and health care provider: horizontal and vertical ones. The horizontal level is the ground for the civil right of a patient to receive appropriate treatment. The vertical level is the basis for the interaction between a patient and government, or an authorized body authority to implement policies in medical sphere. Naturally, there are international documents, which regulate general issues of provision of medical services to the patients and the protection of their rights, but at the same time each EU State should adopt their own legal acts that would govern specific situations.

Brendan D. Kelly (2016), having studied the concept of 'natural' rights, considers that the latter provides a solid backdrop to our appreciation of the late emergence of a recognition that those with mental illness were at risk of their rights being trampled upon, with often interminable detentions in unsuitable Asylums across Europe. It was not until well into the 20th century that specific laws were enacted across Europe to protect those with mental illness from abuse. These had their roots in the Universal Declaration of Human Rights (1948) and culminated in the United Nations Convention of the Rights of Persons with Disabilities (2006).

The object of the work of Martin Dlouhy (2014) is to study the mental health policies in seven Posy-Soviet countries: Bulgaria, the Czech Republic, Hungary, Moldova, Poland, Romania, and Slovakia. The author says that the processes, which took place in the 1990s led to the substantial changes in mental health policy formulation, passing new legal acts, which enshrine the rights of patients, including those with mental disorders, and improve the provision of medical services.

As for Ukrainian scientists, D. Chernushenko (2014) states that the patients treated in psychiatric institutions or seeking help should be protected by the same legal and ethical rules as patients with any other illness in accordance with international health standards. At the same time there are some disadvantages of the concept of "capacity", which consists of two criteria: medical criteria (chronic, persistent mental disorder) and psychological one (awareness of the importance of their actions and (or) their guidance). The combination of these two aspects gives rise to legal uncertainty in legislation, promotes subjectivity in understanding the problem and thus creates the conditions (both material and procedural) for violations of rights of the patients with mental disorders, as well as creates grounds for human rights violations using a psychiatric diagnosis.

D. Molchanov (2015) considers people with mental disorders to be the most vulnerable segment of the population. The recent amendments to the Code Civil Procedure of Ukraine have improved the access to justice for this category of citizens. Article 300 of this legal act stipulates that an application for review of a decision to declaration a person legally incapable may be filed by the person himself (herself). Besides, Part 6 of the same article of

the CPC, which restricts the term of the decision to limit civil capacity or incapacity for two years, is also designed to protect the interests of legally incapable or partially incapacitated persons. However, these changes cannot be considered complete, as the legislator has not made appropriate changes to Article 42 of the Civil Code of Ukraine, which also regulates the procedure for restoring legal capacity. Currently there is a conflict in the legislation, because the Civil Code of Ukraine states that the resumption of civil capacity takes place only at the request of the guardian or tutorship and guardianship agency.

2. Methodology

Research methods are determined by the theme of the research, its goal and objectives. The methodological basis for the article is a set of philosophical, general scientific and special scientific methods, which provided an objective analysis of the subject.

In the course of the study the following methods were used: dialectical method helped to clarify the nature of relations arising in the process of civil regulation of the rights of patients with mental disorders in Ukraine, substantiation of basic concepts, study of legal phenomena in the context of their development and relationship.

The structural and systemic method was applied to characterize the features of civil regulation of the rights of patients with mental disorders in Ukraine and worldwide.

The analytical and synthetic method was helpful in analyzing scientific and normative sources, establishing their features and value in regulation of relations in the area of ensuring the rights of the patients with mental disorders.

The comparative and legal method was used for the purpose of comparative analysis of the norms of Ukrainian law, international and European standards in the area of ensuring the rights of the patient with mental disorders.

With the help of formal and legal method the provisions of regulations governing the relations in the studied area were examined.

The sociological method was applied when considering the case law concerning the protection of the patients' rights.

Such categories and methods of formal logic as concept, definition, proof, judgment, analysis, synthesis, comparison, generalization was also widely used.

3. Results and Discussion

Reforming current legislation has led to the new regulatory policy in health care. There are no specific rules in civil law, which determine the status of a patient with mental disorder, as well as the ability and methods to protect his (her) rights. Besides, medical services for the protection of mental health, given their specificity, need additional regulation at the level of legislation.

In many countries, the right to provide medical assistance to a patient is based on the rights set out in the Constitution, while forming a vertical legal relationship between a State and a patient. But an important role in protecting the rights of patients is played by civil courts, which determine the rights of patients, since it would be impossible in administrative detention.

The practice of contractual regulation is applied in the Netherlands; the Civil Code of 1995 contains a provision on medical contracts. Another legal mechanism exists in Finland, where the regulation of patients' rights protection is carried out through the application of the norms of the Law «On the Rights of the Patient» (Hermans, 1997: 15).

In Ukraine, the patient acts as a subject of civil law relations. Since 2018, every Ukrainian has entered into an agreement with a family doctor, which specifies the rights and obligations of the parties. Despite the broad legal framework and the gradual development of medical law, patients' rights are not sufficiently guaranteed at the level of legislation and not all legal acts comply with international standards.

One of the first normative acts, which were seen through the concept of the patients' natural rights ware the United States Declaration of Independence 1776 and the French Declaration of the Rights of Man and the Citizen 1789. It was not until the twentieth century that the first specific European laws were adopted to protect persons with mental disorders from abuse. The first regulatory act was the Universal Declaration of Human Rights, adopted in 1948 (Kelly, 2011).

The Lisbon Declaration on the Rights of the Patient, adopted much later – in 1981 by the World Medical Association for the Rights of Patients, says about guarantees, autonomy and fair treatment of a patient, and also lists the rights that each patient should possess.

In 1991, the General Assembly adopted Resolution 46/119 «Principles for protection of people with mental disorders and the improvement of mental health», the main provisions of which represent the rights to access to mental health care, to human and respectful treatment. All people with mental disorders have the right to live, to work and to receive treatment in

the community to the extent possible. Mentally disabled should be well-resourced and agencies to consult with mental health professionals should be neutral.

In 1997, the Council of Europe adopted the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine. The provisions of the Convention define the basic principles on patients' rights: an equal access to medical care and protection of the right to informed consent, privacy and the right to information.

The European Union Charter of Patients' Rights (2002) is of recommendation nature, nevertheless it lists and interprets the rights of patients, and therefore it serves as a good guide for the health system of other states.

These international legal acts, and many others that directly relate to the rights of patients, demonstrate the importance of the issue under consideration not only in specific countries, but also at the global level.

The Law of Ukraine «Fundamentals of the legislation of Ukraine on health care» (1992) states that everyone has natural inalienable and permanent right to health protection, based on which it can be concluded that no one is allowed to restrict this right.

It should be noted that so far there remains an unresolved issue regarding the rights of patients with mental disorders, to whom compulsory medical measures are applied. In 2015, the Ukrainian Helsinki Human Rights Union initiated a public examination of the situation with the observance of human rights in psychiatric institutions. It was defined that 1 700 000 people were under psychiatric observation. During the examination it was determined that the current legislation does not contain obligations for the regulation of activities related to the implementation of international documents in the field of human rights. Based on the results of the examination it was noted that respect for human dignity, patient's equal rights and opportunities are not proclaimed the main value in the management of psychiatric institutions, and there are no measures to prevent discrimination. Besides, existing regulations do not protect patients from the arbitrariness of the health care institution.

Based on statistical indicators of the number of hospitalized by court orders, the Union suggested that in some regions there is bad faith on the part of medical workers during the provision of this type of medical services. Doctors do not take into account the informed consent of the patient to hospitalization and recommend a person who is not able to understand the significance of his (her) actions to sign the consent to treatment, but at the same time they have no intention to apply to court with an application for involuntary commitment (Helsinki Human Rights Union, 2016).

Mental health legislation is needed for protection the rights of people with mental disorders who are a vulnerable and defenseless group.

The Law of the World Health Organization «On the Protection of Mental Health» (2018) defines the basic principle that can be taken into account during the formation of legislation on mental health. These standards are not legally binding for other states, but they reflect international agreement on what should be proper regulation in the field of mental health care (World Health Organization, 2018).

In some Eastern European countries, for example, in Poland, Romania, and Slovenia, there are problems connected with the violation of rights of individuals, who suffer from psychological disorders.

In Moldova, the National Mental Health Program had been operating, which policy was aimed at reducing the level of mental illnesses among the population, by placing people with mental illnesses in families and in the community. Thus, the State tried to pay as much attention as possible to the rights of this category of people, marking them as patients with special status.

More than once one could observe violations of mental patients' rights in different countries, since they are constrained from society and there is no control and protection of their rights. In Hungary, an incident was recorded in 1997, when some people were placed in cells that were made of a metal frames, or supporting clothes or wire meshes were installed over their beds (Knapp, McDaid, Mossialos & Thornicroft, 2007). In 2000, a similar situation occurred in one of the medical institutions in England. Patients were in the cold, while not having appropriate clothing (Dlouhy, 2014).

According to the World Health Organization (WHO), the United States of America ranks third among the countries that face the greatest mental health problems and mortality in patients with mental illness. Having a rational legislative approach, the mental health system of Germany is one of the leading countries in terms of treatment and integration in the field of mental health, despite the general gap in treatment of people with mental illness in Europe (Rodriguez-Cauro, 2017).

According to the Preamble to the Indian Constitution, the State is obliged to ensure equal treatment and equality of opportunity and status to all citizens. Every person with mental illness has the same fundamental rights as all other people, in particular, including the rights enshrined in the International Covenant on Civil and Political Rights and the rights recognized in the Declaration on the Rights of Disabled Persons. Besides, it has been determined that discrimination on the basis of mental illness is not allowed and the right to be recognized as a person before the law should be granted to mentally disabled individuals (Poreddi et al., 2013). It

should be noted that the role of the family in the rehabilitation of patients is much higher than coercive measures, so the State, given the number of populations, as well as the lack of qualified health workers, creates the most conditions for ensuring the rights of mental patients.

During the interview in New Zealand, one in five interviewed patients reported that they had experienced discrimination more than once from other students, teachers or lecturers in terms of education or training (Debbie Peterson Mental Health Foundation, 2005).

In 2007 a new Mental Health Act (1983) was introduced, which that defined mental disorder as «mental illness, severe dementia or significant intellectual disability». The provisions of this Law stipulate that the patient's consent to treatment is obligatory, unless the patient cannot consent, and the psychiatrist believes that the treatment is necessary to protect the patient's life, to restore his health or to alleviate his or her sufferings. The Law specifies two types of patients with mental disorders – voluntary ones, who asks for a doctor's permission in cases he (she) wants to leave medical institution and forced ones (Kelly, 2016).

Article 3 of the Law of Ukraine «Fundamentals of the Legislation of Ukraine on Healthcare» (1993) determines that the patient is a natural person who applies for medical care and/or who receives such care. Thus, people to whom the indicated measures are applied or those who receive psychiatric assistance have the status of patients who are in need to be provided with additional rights due to the following circumstances.

According to Article 7 of the United Nations General Assembly Resolution on the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991), the decisions on involuntary admission of a person to a psychiatric institution should be passed by a judge with the establishment of temporary borders for such an admission. The Resolution states that involuntary admission or detention of patients should initially take place over a short period of time, determined by national legislation, for examination and prior treatment before considering such hospitalization by a supervisory authority, such as a court or other independent and impartial body.

The provisions of Article 4 of the Recommendations of the Committee of Ministers to States Parties regarding the legal protection of persons suffering from mental disorders forcibly placed as involuntary patients, no. R (83) 2 Adopted by the Committee of Ministers on February 22, 1983 at the 356th meeting of the Deputy Ministers, determines that the decision on detention should be made by judicial or other relevant authorities determined by the law. In case of emergency, the patient can be immediately hospitalized and retained in the institution by the decision of the doctor, who must immediately inform the competent judicial or other authorities, which

should make their decision. It also states that every decision of a competent judicial or other authority must be made for medical reasons and by means of summary and quick procedure.

The decision of the Constitutional Court of Ukraine dated from June 01, 2016 no. 2-rp/2016 (2016) determined that judicial control over the admission of an incapacitated person to a psychiatric institution is the necessary guarantee for protection of his (her) rights and freedoms enshrined in Articles 29 and 55 of the Constitution of Ukraine. After an independent and impartial consideration of the issue of admission of an incapacitated person to a psychiatric institution the court should decide on the legality of limiting the constitutional right of such a person to liberty and security.

Nowadays, there are more than eighty psychiatric medical institutions operating in Ukraine, where over two thousand people are observed every year. According to the data of the Prosecutor's office, in the course of half a year on average there are more than sixty acts of prosecutorial response and more than seventy medical workers are held accountable. It should be noted that, despite this practice, the rights of patients remain unprotected. Violations of such rights were recorded: the right to information, the right to receive medical services, the restriction of the rights to personal development. Moreover, human rights are violated: patients are limited in nutrition, material and everyday support (Molchanov, 2015).

It should be noted that the current Civil Procedure Code of Ukraine (2004) was amended, and now Chapter 10 determines that court directly resolves the issue of summons of a person in respect of whom the case is tried taking into account his (her) health status. Besides, the court may order an examination to determine the actual ability of a person to take part in court proceedings and to provide his (her) explanations on the case in person. The court may also decide on the participation of the person in the session via video conference in the psychiatric institution, where he (she) is held.

Analyzing the current legislation of Ukraine, it should be noted that incapacitated persons cannot independently exercise property and personal non-property rights, perform their duties and bear legal responsibility for their actions.

Article 39 of the Civil Code of Ukraine (2003) defines the reasons and procedure for recognizing a person with psychological disorders as having no legal capacity, but does not in any way indicates the presence of other rights of this category of patients. Thus, it is necessary to provide Chapter 21 of the Civil Code of Ukraine with the article, which will incorporate the right of this category of patients to correspondence, the right to access telephone calls, and the right to receive free legal assistance. Guarantee these rights

will help to avoid situations when a person is wrongly diagnosed, as well as to prevent abuse on the part of medical officers in this area. Indeed, according to Article 29 of the Constitution of Ukraine (1996), every person has the right to personal freedom, therefore, violation of this right should not be allowed, despite the psychological state of the patient.

Mention should also be made of the rights of minors who are forcibly provided with psychiatric care. In Ukraine, the Procedure for the provision of psychiatric care to children is approved by the Order of the Ministry of Health Care of Ukraine of May 18, 2013, no. 400. Part 3 of clause 3.5 of this Provision determines that in the absence of parents or legal representatives, an admission in a psychiatric institution is carried out by decision (consent) of the guardianship and trusteeship authority, which can be appealed to court. But the question is who can appeal the decision if the child has no one, and the guardianship authorities initiated the involuntary placement in a medical institution. In our opinion, law enforcement agencies, for example, a juvenile justice department, which would supervise the legality of such matters, should be additionally reported. This practice will help to protect each child from abuse on the part of employees of guardianship and medical institutions.

In Europe, the practice of protecting human rights by an ombudsman has been long operated. Norway was the first country, which introduced a post of a commissioner or ombudsman in 1981, with statutory powers to protect children and their rights. In 1997 the European Network of Ombudspersons for Children was found – a non-profit association of independent institutions for protection of children's rights. We should agree with the committee's recommendation that each state needs an independent human rights institution, which will monitor and will be responsible for protecting of children's rights (European Network of Ombudspersons for Children, 2018).

Strengthening the protection of the rights of children suffering from psychological disorders is not only the problem of Ukraine. Bulgaria has never conducted epidemiological studies on children's mental health problems, and therefore no assessment was made of the number of children who may need specific mental health services, as well as the nature of their disorders or mental health problems. Therefore, there are no specific norms in the legislative framework, which can protect personal non-property rights of this category of children. Mental health services are decentralized and are provided through organizations delegated by a State.

Maintaining patient's contact with the outside world is important not only to prevent abuse, but also in terms of therapy. Patients should have the right to send and to receive correspondence, the right to access telephoning and the right to be visited by their families and friends. The right to confidential communication with a lawyer should also be guaranteed and an access to justice should be available.

Additional attention should be paid to other categories of patients who, having a special status, cannot adequately defend their rights. These are people who are detained, as well as patients with incurable diseases. It is necessary to create conditions, in which this category of patients will not lose social cohesion, and legislation will direct forces to protect their rights.

On February 27, 2018, the European Court of Human Rights published the decision in the case of Shatokhin v. Russia (no. 50236/06) (2018), in which it found a violation of the requirements of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms because of the solitary confinement camera, despite the recommendation of his psychiatrist about not applying such a measure. The actions of the administration were deemed illegal and thereby violated the patient's right to access to medical care.

In the case of Winterwerp v. the Netherlands (1979), the applicant complained that, having being a patient in a psychiatric clinic, he was not able to manage his property, to participate in property management processes through a representative. What the European Court pointed out is: «Whatever the justification for depriving a person of unsound mind of the capacity to administer his property, the guarantees laid down in Article 6 para. 1 (art. 6-1) must nevertheless be respected. Although mental illness justifies some of the restrictions associated with the right to appeal to court, these restrictions cannot be expressed in the complete absence of such right».

Conclusions

There are many different relationships in society, among which medical legal relationships occupy a special place. Legal relations are the result of the requirements of the law on relations between different subjects of medical relations. They have a number of features that together make them similar to the other types of social relations. Thus, there are some features of legal relations, which are characteristic to medical legal relations. Besides, we can name the following features of civil law relations, which are particular to the provision of medical care:

1. legal equality of the parties, which are the patient and the medical institution;
2. the patient's free choice of doctor and the methods of treatment;
3. the existence of subjective civil rights and obligations, which cannot be violated;

4. legal relations for the provision of medical care are governed by the rules of civil law and the contract.

One can see the trend in many European countries that the state policy is aimed at creating a clear mechanism for protecting the rights of patients with mental disorders. But, despite all international principles and standards, there are countries in which the rights of this category of patients remain formally regulated. This is evidenced by the numerous appeals of patients or their representatives.

The special nature of legal relations with patients who have mental disorders lies in their uncertain status in civil law relations. Rehabilitation measures should be applied to each patient with mental disorders; it is necessary to create a program within which these people can exercise their rights as patients and individuals, for example, such as the right to education, the right to work, etc. Restrictions on the legal capacity of this category of persons should not affect their right to proper medical services, as well as their status as patients.

At present, the work is carried out in Ukraine to peform the legal regulation of public health. However, despite the measures already taken to improve the legal status of patients with mental diorders in Ukraine, there are still many problems that require further legal regulation. Therefore, it is advisable to combine the efforts of lawyers and health professionals to solve the problems that exist in the area of health care in Ukraine.

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Implementation of Inclusive Education Under the Convention on the Rights of Disabled People: A Comparative Legal Aspect

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Abstract

The article presents a comparative analysis of inclusive education training in the Russian Federation, Germany and Italy based on the analysis of the provisions of the United Nations Convention on the Rights of Persons with Disabilities, also related to the development of inclusive education in member countries. At a methodological level, the study was built on the basis of a dialectical approach to the study of legal phenomena and processes, using a general intellectual process for the processing of sources of type: (systemic, logical, analysis and synthesis), all within the framework of documentary observation close to legal hermeneutics. The study of the concluding observations on the initial report of the states participating in the Convention mentioned above allows concluding that the approaches to inclusion are heterogeneous in different countries of Western Europe before signing and ratifying the United Nations Convention on the rights of People with disabilities. Furthermore, the document sought to determine the level of development of inclusive education, its problems and prospects in Russia compared to the states of Western Europe.

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Iimplementación de la educación inclusiva en virtud de la Convención sobre los derechos de las personas con discapacidad: un aspecto jurídico comparativo

Resumen

El artículo presenta un análisis comparativo de la formación de educación inclusiva en la Federación de Rusia, Alemania e Italia basado en el análisis de las disposiciones de la Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad, relacionadas además con el desarrollo de la educación inclusiva en los países miembros. A nivel metodológico el estudio se construyó sobre la base de un enfoque dialéctico para el estudio de fenómenos y procesos jurídicos utilizando un proceso intelectual general para el procesamiento de las fuentes de tipo: (sistémico, lógico, de análisis y síntesis) todo en el marco de la observación documental próxima a la hermenéutica jurídica. El estudio de las observaciones finales sobre el informe inicial de los estados participantes a la Convención mencionados anteriormente permite concluir que los enfoques de inclusión son heterogéneos en diferentes países de Europa occidental antes de firmar y ratificar la Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad. Por lo demás, el documento buscó determinar el nivel de desarrollo de la educación inclusiva, sus problemas y perspectivas en Rusia en comparación con los estados de Europa occidental.

Palabras clave: Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad; educación inclusiva; Comité de Derechos de las Personas con Discapacidad; derecho comparado; federación rusa.

Introduction

The result of analysis of domestic regulation of inclusive education in Russia, Germany and Italy, was a conclusion that the approaches to inclusion in Russia and Germany were similar at the time they ratified the UN Convention on the Rights of Persons with Disabilities and the differences in the Italian model of inclusive education in relation to the above states (Shengalts, 2016: 135; Bondarenko & Karanova, 2018: 1).

Italy is one of the first states to have chosen the path of development of education for people with disabilities in educational institutions together with students who do not have developmental features. The development course of the Italian education system for people with disabilities remains unchanged, gaining additional guarantees for its development after ratification of the UN Convention on the Rights of Persons with Disabilities. For determination the similarities and differences in approaches to an inclusive education system in Russia, Italy, and Germany, we will analyze the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the initial reports of these states, and identify the areas for improving inclusive education in Russia.

1. Methods

The study was built on the basis of a dialectical approach to the study of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods. The latter comprise formal legal, linguistic legal, comparative legal. These methods were used in combination to study the texts of legislative and regulatory acts of Russia, Italy and Germany, the UN Convention on the Rights of Persons with Disabilities, and the Concluding Observations of the Committee on the Rights of Persons with Disabilities on the initial reports of these states. The choice of states for comparative analysis is conditioned by the similarity of the Russian and German approaches to the education of persons with disabilities, and directly opposite, contrasting, to some extent, exemplary methods of regulating inclusion in Italy. The comparison is made in the context of the impact of the ratification of the UN Convention on the Rights of Persons with Disabilities on their education systems in Russia and Western European countries.

2. Discussion and Results

The development of inclusive education in the Russian Federation is a topical theme for theoretical and practical research in a wide range of scientific disciplines. From the point of view of the legal analysis of inclusion in education, we note that the Russian Constitution (2014), which guarantees the right to education (Article 43) and social protection in the event of disability (Article 39), was the basis for constructing the current model of inclusive education.

Article 24 of the United Nations Convention on the Rights of Persons with Disabilities ratified by the Russian Federation (2012), states that "member countries recognize the right of persons with disabilities to education. In order to realize this right without discrimination and on the basis of equal opportunities, member countries shall provide inclusive education at all levels and lifelong learning."

In the year of ratification of the UN Convention on the Rights of Persons with Disabilities, the Federal Law "On Education in the Russian Federation" was adopted, which enshrines the concept of inclusive education as "ensuring equal access to education for all students, taking into account the diversity of special educational needs and individual opportunities." One of the principles of state policy and legal regulation of relations in the field of education enshrines "ensuring the right of *everyone* to education, *non-discrimination* in the field of education" in the law (Federal Law of December 29, 2012).

With a view of ensuring the implementation of the right to education of students with disabilities, "federal state educational standards for the education of these persons are established or special requirements are included in federal state educational standards" (Federal Law of December 29, 2012).

The federal state educational standard for primary general education of students with disabilities was approved by order of Ministry of Education and Science of the Russian Federation of December 19, (2014).

Thus, during the period under review, basic regulatory mechanisms were formed for equal access to education for all students in the Russian Federation, taking into account the diversity of special educational needs and individual opportunities.

The purpose of this study is to conduct a comparative analysis of the development processes of inclusive education in states that have ratified the UN Convention on the Rights of Persons with Disabilities at the periods comparable to the date of ratification of the Convention by the Russian Federation.

For comparison with the legal regulation in the Russian Federation, we chose the West European states Germany and Italy, which ratified the UN Convention on the Rights of Persons with Disabilities three years earlier than Russia.

It should be noted that it is advisable to compare inclusive education in Russia and Germany in connection with comparable trends in its development. So, before the introduction of the social model of disability in these states, the degree of segregation of children with disabilities was high; in both states, correctional education in specialized educational institutions

was widely developed. State that today, Germany's inclusive education in line with Russia's is characterized by uneven, fragmented development, depending on the policy of supporting children with disabilities in various federal states (Klemm, 2015: 7).

Another example of the development of inclusive education in Western Europe can be considered by the example of Italy, which ratified the UN Convention on the Rights of Persons with Disabilities on May 15, 2009. Inclusion in Italy has deep roots, and in fact, its implementation has begun long before the signing and ratification of the UN Convention on the Rights of Persons with Disabilities.

Since years 60s of the 20th century, active work to consolidate at the legislative level the right of students with special needs to receive compulsory education in secondary schools has been initiated in Italy. The principles of inclusion for all students with special needs between the ages of 6 and 14 have been established by Act 517 of 1977. The right of all students, including those with severe developmental disabilities, to receive education in secondary schools was confirmed in 1987 by a decision of the Italian Constitutional Court № 215. It can be stated that Italy's regulatory policy in the field of education is an exceptional example of an anti-discrimination approach to the education of people with disabilities (Ferri, 2018). The ratification of the UN Convention on the Rights of Persons with Disabilities for inclusive education in Italy was more likely to be of verification value, without introducing fundamental changes in the education system of citizens with disabilities.

The implementation of international legal standards for the education of persons with disabilities in states that have ratified the UN Convention is accompanied by certain control procedures by the UN Committee on the Rights of Persons with Disabilities. States must prepare the first report within two years after they become parties to the Convention, and subsequently submit reports at least once every four years or at other dates fixed by the Committee (The Convention on the Rights of Persons with Disabilities, 2006).

Civil society actors, in particular non-profit organizations, may submit to the Committee information on serious, gross or systematic violations of the Convention (The Convention on the Rights of Persons with Disabilities, 2006). This information must be reliable and indicate that a participating state systematically violates the rights contained in the Convention.

The comments of the UN Committee on the Rights of Persons with Disabilities to the reports of Germany, Italy and Russia were submitted respectively in 2015, 2016, 2018.

According to the Concluding Observations on the initial report of the Russian Federation (2018), the Committee on the Rights of Persons with

Disabilities "is concerned that the practice of segregated education persists despite the increase in the number of children with disabilities in the main education system in accordance with the concept of inclusive education." It also expresses concern about the non-transparency of the allocated financial resources and the lack of mechanisms necessary to ensure equal conditions and support guaranteed by federal law to all persons with all types of violations in the general education system. In addition, the Committee is concerned about regional differences due to different conditions and the amount of available financial resources in different regions."

The Committee encourages the Russian Federation to persevere with promotion and practical application of the concept of inclusive and quality education in accordance with General Comment № 4 (2016) on the right to inclusive education. In particular, in order to ensure access to inclusive and quality education for all people with all types of disabilities, the Committee recommends for adoption of a long-term inclusive education roadmap and action plan, imposition of deadlines and criteria for their implementation, and allocation of an appropriate transparent budget.

The Committee on the Rights of Persons with Disabilities, in its Concluding Observations on the initial report of Germany, published in 2015, notes the concern that "the state party has an education system in which most students with disabilities attend separate schools for students with special needs" (Concluding observations of the UN Committee on the Rights of Persons with Disabilities on Germany's initial report of May 13, 2015).

The Committee recommends that the participating state:

a) immediately develop a strategy, plan of action, timelines and targets to ensure access to a high-quality and inclusive education system in all lands, including the availability of the necessary financial resources and staffing at all levels;

b) reduce the number of segregated schools in order to develop their inclusive orientation, to ensure compliance with the right of children with disabilities to study in secondary schools, including their immediate school enrollment in accordance with their choice;

c) ensure reasonable accommodation at all levels of education, including the possibility of its actual implementation and judicial protection;

d) ensure the preparation of all teaching staff for inclusive education, expand access for persons with disabilities to the school environment, educational materials and programs, as well as ensure the use of sign language in secondary schools.

The conclusion about a higher level of development of inclusive education in Italy can be drawn from the Concluding Observations on

the initial report of Italy (2016). They note that the UN Committee on the Rights of Persons with Disabilities is concerned about the lack of data and criteria to monitor the quality of education and the inclusion of students with disabilities in secondary schools and classes. There is no control over the quality of education of teachers, including their preparation for work in the system of inclusive education. The Comments emphasize the improper implementation of legislative and other regulatory legal acts in the field of inclusive education.

The Committee recommends that Italy develop an action plan aimed at monitoring the implementation of legislative and other normative legal acts, the purpose of which is to improve the quality of inclusive education, provisions on the training of teaching staff for the implementation of inclusive education at all levels.

The Committee recommends that the participating state monitor and provide highly qualified sign language translators for deaf children in accordance with their requests, and refrain from recommendation of communication assistants as an alternative.

The Committee is concerned about the lack of available learning materials and the lack of assistive support technologies, which does not contribute to improving the quality of education under ordinary conditions.

The Committee recommends that the participating state, through legislative and other measures, including the recently developed decree on education, ensure the availability of adapted teaching materials and the timely provision of learning support technologies in order to guarantee the inclusiveness of education in the mainstream environment.

Based on the above points, it should be noted that the Comments of the Committee on the Rights of Persons with Disabilities for Italy are of a point-like nature and are related to the resolution of specific practical problems of the implementation of inclusive education. If in the comments for Germany and the Russian Federation the UN Committee raises the question of developing a strategy, concept, roadmap for the development of inclusive education, then Italy already has an integrated working system in which it is necessary to regulate the practical work of individual security arrangements.

Let us consider what measures are being taken by the Russian Federation to implement the recommendations set forth in the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities.

The long-term roadmap and the action plan for the implementation of inclusive education recommended by the Committee have not yet been developed.

In the Concluding Observations of the Committee on the Rights of

Persons with Disabilities on the initial report of the Russian Federation of April 9, 2018, it is stated that the official translation of the term "persons with disabilities" into Russian by the word "people with disabilities" does not reflect the human rights model. However, terminological transformations, in the first place, affected the sphere of education. Thus, the draft Federal Law "On Amending Certain Legislative Acts of the Russian Federation Regarding Ensuring the Right to Education of Persons with Special Educational Needs" provides for the substitution of the term "student with disabilities" for "student with special educational needs".

Note that the proposed term does not contain a semantic charge identical to that in the term "student with disabilities", and can be interpreted much more broadly. The draft Federal Law contains a significant number of innovations, and the purpose of its adoption is to improve the provisions of the Federal Law "On Education in the Russian Federation" (2012) taking into account the provisions of the Convention on the Rights of Persons with Disabilities (2006), and to fill the gaps and to resolve related problems of law enforcement practice.

The Ministry of Labor and Social Development of the Russian Federation, in pursuance of the recommendations stated in the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the initial report of the Russian Federation on the observance of the Convention on the Rights of Persons with Disabilities has developed a draft Concept for the development of a system of comprehensive rehabilitation and habilitation of handicapped persons and handicapped children and support in organizations of their living arrangements until 2025. According to the draft Concept, in the basic education system there are being created the centers for psychological, pedagogical, medical aid and special need facilities, the activities of which are regulated by the Federal Law "On Education in the Russian Federation", as well as federal resource centers. Amendments to the Federal Law "On Education in the Russian Federation" have been prepared in terms of introducing the concept of psychological and pedagogical rehabilitation, determining the procedure for its implementation and the authority on its organization.

As part of psychological and pedagogical rehabilitation for children with disabilities studying in schools, it is planned to implement an intervention program, including various correctional and developmental courses and after-hours individual tuition programs aimed at socializing children with disabilities (additional education, sports and leisure activities).

Children with disabilities can acquire vocational education in vocational educational organizations and educational organizations of higher education, as well as in organizations engaged in educational activities under the main vocational training programs in which academic accommodations must be created.

In 2019, the State Program of the Russian Federation "Accessible Environment" (2019), was approved, it will have been implemented by 2025.

Among the expected results of the program, there is an increase preschool and educational institutions as a proportion of educational organizations in which a universal barrier-free environment for inclusive education of children with disabilities is created.

Final thoughts

Taking into account the provisions of the UN Convention on the need to ensure inclusive education at all levels and lifelong learning, we note that in the sphere of regulating inclusive education in Russia, positive tendencies are emerging, and domestic documents are being developed in accordance with the recommendations of the UN Committee on the Rights of Persons with Disabilities. This is greatly facilitated by the study of the inclusion development practice in the member countries of the Convention, their comparison with Russian approaches to the implementation of inclusive education. At the same time, quite a few acute problems remain, such as vocational education and vocational training of various separate categories of citizens, in particular people with mental and intellectual disabilities, their employment and adaptation in society. To solve these problems, it is necessary not only to reassess the system of legal regulation of this sphere, but also to take a long process of changing the attitude of society towards people with disabilities.

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Judicial Power Principles in the Constitutions of African States

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Abstract

The objective of the research was to study the principles of the judiciary in the constitutions of some African states. The modern constitutional development of African states is mediated by the complex history of the continent, as well as by ongoing political processes. The emergence of basic laws in these states has become the basis not only for the establishment of constitutionalism, but also for the establishment and functioning of key public authorities. According to the functional division of state power, the organization and activities of the judicial authorities are inalienable. The source of such institutionalization and organization, of course, is its constitutions. In this sense, in the framework of this work, attention is paid to research to the analysis of the principles of the judiciary in the constitutions of African states. Formal-legal, linguistic-legal and comparative-legal methodology were used, which were used together to identify the principles of the judiciary. It is concluded that the analysis carried out showed that most of the constitutional principles sought are formalized in the special structural parts of the constitutions dedicated to the court of various instances.

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Principios del poder judicial en las constituciones de los estados africanos

Resumen

El objetivo de la investigación fue estudiar los principios del poder judicial en las constituciones de algunos estados africanos. El desarrollo constitucional moderno de los estados africanos está mediado por la compleja historia del continente, así como por los procesos políticos en curso. La aparición de leyes básicas en estos estados se ha convertido en la base no solo para el establecimiento del constitucionalismo, sino también para el establecimiento y funcionamiento de las autoridades públicas clave. Según la división funcional del poder estatal, la organización y las actividades de las autoridades judiciales son inalienables. La fuente de tal institucionalización y organización, por supuesto, son sus constituciones. En este sentido, en el marco de este trabajo, se presta atención a la investigación al análisis de los principios del poder judicial en las constituciones de los estados africanos. Se empleó la metodología formal-legal, lingüístico-legal y comparativo-legal, que se usaron juntas para identificar los principios del poder judicial. Se concluye que el análisis realizado mostró que la mayoría de los principios constitucionales buscados se formalizan en las partes estructurales especiales de las constituciones dedicadas a la corte de varias instancias.

Palabras clave: poder judicial en África; principios del poder judicial; independencia de la organización judicial; procedimientos judiciales; constitucionalismo africano.

Introduction

Having acted as an integrative constitutional and theoretical category, the judicial power principles are an object of constitutional law science from the point of view of their meaningful interpretation (Makogon et al., 2019; Molot 2004), as well as the specifics of formalization (Burley & Walter, 1993; Carrubba, 2005), including the comparative legal aspect (Zakharov et al., 2019; Treskov, 2019a). In this regard, the subject of the study was the norms of the constitutions of African states (Treskov, 2019b). The texts of

the latter were taken from the book of R.V. Pashkov "The Constitution of African countries. Volume 3. M. 2018".

1. Methodology

The study was built on the basis of a dialectical approach to the disclosure of these legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and particular scientific methods. Among the latter are formal-legal, linguistic-legal, and comparative-legal methods, which were used together to identify the judicial power principles.

2. Discussion and Results

In the constitutions of the Comoros and the Kingdom of Morocco, the judicial power principles are found exclusively in special structural units ("On Judicial Power" and "On Constitutional Court", as well as "Judicial Power" and "Constitutional Court", respectively).

In the constitutions of Côte d'Ivoire, Mali and the Constitutional Declaration of the Libyan Republic in Transition, the principles are formalized in specialized sections with a standard name for the judicial power and only Section VII of the Constitution of Mauritania is named "Judicial Proceedings".

In other constitutions, specialization has manifested itself in varying structural components: "Judicial institutions related to the judicial system", "Administrative judicial institutions", "Military Tribunals", and "On the Constitutional Court" in the Democratic Republic of the Congo; "The Judicial power" in Liberia; "Judicial Power", as well as "Constitutional Court on Administrative and Financial Issues", "Supreme Court", and "High Court of Justice" in the Malagasy Constitution.

Note that the principles sought are formalized not only in the special structural sections of African constitutions. However, within the framework of this work, we will clarify the specific number of judicial power principles precisely in the declared sections. The catalogue formed by us in the course of comparative legal analysis looks as follows.

Independence of the judicial power from the legislative and executive ones (Article 31 of the Libyan Republic's Constitutional Transitional Declaration, Article 28 of the Constitution of the Comoros, Article 101 of the Constitution of Côte d'Ivoire, Article 89 of the Constitution of Mauritania,

Article 81 of the Constitution of Mali, Article 107 of the Constitution of Morocco). Moreover, according to Moroccan regulations, the King is the guarantor of the independence of the judicial power.

Organization of justice on the basis of organic law (Articles 153 and 155, Article 28 of the Constitution of the Democratic Republic of the Congo, Constitution of the Comoros, Articles 102 and 103 of the Constitution of Côte d'Ivoire, Article 82 of the Constitution of Mali). In particular, this principle is provided specifically for them in chapters devoted to independent higher judicial instances. A concretization of the principle of legality of authority, and rules of work and the procedure for the appointment of judges of the High Court are provided for in the Constitution of Côte d'Ivoire. In relation to the Supreme Council of Justices of the Peace, these are provided for in Mauritania, and to various courts in Mali.

In addition to general norms, the constitution of the Democratic Republic of the Congo formalized also the principle sought for special courts.

In paragraph 4, "Military Tribunals" of the Constitution of the Democratic Republic of the Congo, organic law is the basis not only for the organization and activities of military tribunals, but also for jurisdiction (Article 156).

According to paragraph 5 "On the Constitutional Court", its organization and activities are carried out on the basis of an organic law (Article 169, the Constitution of the Democratic Republic of the Congo).

Article 110 of the Constitution of Morocco is narrow with a view of its content: it indicates the principle of the legality of the election procedure, organizational structure and functioning of the Supreme Court only.

Administration of justice is executed by courts of last resort (Article 102 of the Constitution of Côte d'Ivoire); by the Supreme Court, as well as other courts and tribunals (Article 81 of the Constitution of Mali).

Mandatory are the impossibility of appealing, as well as the enforcement by the legislative or executive branch, and by all territorial jurisdictions of the decisions of the Supreme Court in Article 29 of the Constitution of the Comoros. In a similar vein, the norms of Article 65 of the Liberian Constitution and Article 125 of the Constitution of Morocco are carried out.

With regard of their specialization, we note the recognition of decisions of the Constitutional Court by any authorities, including judicial authorities (Article 35 of the Constitution of the Comoros, Article 131 of the Constitution of Morocco).

The Constitution of the Democratic Republic of the Congo (Article 168), as applied to the decisions of the Constitutional Court, legalizes such principles as the impossibility of appealing against its decisions; immediate execution, and obligatoriness for all administrative, civil, military and

judicial authorities, as well as for private individuals.

The judges are subordinated only to the law (Article 28 of the Constitution of the Comoros, Article 110 of the Constitution of Morocco).

There is independence of judges (Article 31 of the Constitutional Declaration of the Libyan Republic in transition) with its guarantee by the President (Article 103 of the Constitution of Côte d'Ivoire, part 2 of article 89 and part 1 of article 90, the Constitution of Mauritania) and subordination of judges only to the law (Part 1 of Article 90, the Constitution of Mauritania) / law and conscience (Article 31 of the Constitutional Declaration, the Libyan Republic in Transition). Part 2, Article 90 of the Constitution of Mauritania specified that in the performance of their duties, judges should be protected from all forms of pressure that weaken their free will.

We believe that the norms of the Constitution of Morocco, which provide for the following principles addressed to judges, deserve special attention. Article 108 secured the independence of judges, and in Article 109 the explanations are given on the independence of both the judicial power and judges. Thus, any interference with the activities of justice is prohibited.

Each time a judge concludes that there is a threat to the independence of his activity he is obliged to notify the Supreme Court of this.

The lack of independence and impartiality of a judge is a serious professional violation, and they entail liability.

Thus, we believe that the constitutions under consideration consolidated not only the independence of judges, but also their impartiality. Moreover, further on in Article 111 these principles are emphasized as a need to comply with the formalization of the right of judges to join and create professional associations.

Election of judges of the High Court from among the deputies of the National Assembly in Côte d'Ivoire was introduced. Under Section VIII of the Constitution of Mauritania on the High Court of Justice, the principle of the election of its members by the National Assembly and the Senate is formalized. It also reflects the principle of legality in determining the composition of the High Court of Justice, managing its work and procedures (Article 92).

Urgency and appointment of judges was introduced in Article 158, the Constitution of the Democratic Republic of the Congo).

According to Article 91 of the Constitution of Mali, the term of office of judges included into the composition of the Constitutional Court is 9 years, and they are appointed by the President of the Republic, the National Assembly and the Supreme Court of Magistracy. According to Article 96, the principle of the appointment of judges becoming members of the High

Court of Justice elected by the National Assembly with each change in its composition is deduced.

In the Kingdom of Morocco, the principle of the appointment of judges by the King is reasonably established, taking into account the form of state government (Article 115). And Article 28 of the Constitution of the Comoros sets out the principle of lifelong appointment of judges.

In relation to the norm of Article 68 of the Liberian Constitution, it is fair to talk about the legalization of the judge appointment principle: The President of the Republic appoints a supreme judge and four jury judges with the consent of the Senate.

It is established that in the Moroccan Constitution, the catalogue of the judicial power principles is quantitatively and meaningfully wider, therefore, we additionally list the principles found in it conditionally dividing them into the court organization and legal proceedings types.

Among the first, the prohibition of the creation of extraordinary judicial instances is important (Article 127).

In particular, Article 116 formalizes the principles of administrative and financial autonomy of the Supreme Court of Morocco.

The aforementioned principles of legal proceedings were supplemented by the Constitution of Morocco with the law and impartiality of court decisions (Article 110); equal trial and fair judgment (Article 120); the publicity of court hearings (Article 123); the motivation of the sentence, as well as its public announcement (Article 125).

It is interesting that these principles are legalized as part of a separate block of legal rights and the rules being a part of the justice system functioning. This can be used to explain the contextual consolidation of some of these principles within the framework of the subjective rights of citizens. For example, according to Article 120 of the Moroccan Constitution, every citizen has the right to a fair trial and a justified adjudication within a reasonable time.

Previously, Article 119 reflected the principle of the presumption of innocence among the legal rights and rules of the functioning of the justice system (by analogy with Article 120, through subjective law).

Based on Article 124 of the Constitution of Morocco, sentences are pronounced and executed in the name of the king and the law.

Conclusions

The constitutions which reflected the judicial power principles exclusively in special sectoral sections (Comoros, Morocco), include three minimal varieties of such principles regarding the judicial system, legal proceedings, as well as the status of judges.

The constitutions of Côte d'Ivoire, Libya, Mauritania and Mali are distinguished by a variety of judicial principles, as well as basic provisions for judges. However, their texts did not reveal principles on legal proceedings. This provision, of course, can be regarded as a defect. However, the conditions for the adoption of constitutions in African countries, the orientation of their texts on the humanitarian vector explain the fixation of global organizational principles of power and the gaps in the procedural fundamental aspects.

The special sections on the judicial power included in the constitutions of the Democratic Republic of the Congo, Liberia and Madagascar noted the variability of principles, their prevailing number within the framework of the judicial aspect, as well as the status of judges.

We believe that the presence and diversity of the principles sought in African constitutions is a progressive fact, but the logic of their formalization is subject to objective criticism.

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6 [*] Although the regulations for the authors of this journal require the full names of the authors to be added to this list of references, unfortunately in some cases the source of origin only places the initial of the name. For this reason, in some cases only the initial of the name is added.

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International Law Enforcement Cooperation against Money Laundering

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Abstract

The purpose of the article is to focus on the need to strengthen the interaction of the law enforcement agencies of various states, highlighting the role of financial institutions in this process, to find optimal ways to improve international cooperation. The study is based on the methods of systemic and critical analysis, as well as a formal logical method. The article confirms that the need to strengthen international cooperation is explained by the existence of certain factors that determine the possibility of money laundering. It has been established that without adequate cooperation between law enforcement agencies and financial institutions at the national level, it is quite difficult to detect crime and prevent money laundering at the initial stage. As a conclusion of the investigation, it is proposed to develop a methodology for the interaction of the law enforcement agencies of several states to counteract money laundering. The results obtained can also become the basis for developing legislative proposals to improve international cooperation in law enforcement and, at the same time, they can be used to increase the efficiency of their anti-money laundering activities.

Keywords: financial institutions; economic security; shared information; state budget; capital outflow.

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Cooperación internacional policial contra el lavado de dinero

Resumen

El propósito del artículo es enfocarse en la necesidad de fortalecer la interacción de las agencias de aplicación de la ley de varios estados, resaltando el papel de las instituciones financieras en este proceso, para encontrar formas óptimas para mejorar la cooperación internacional. El estudio se basa en los métodos de análisis sistémico y crítico, así como en un método lógico formal. El artículo confirma que la necesidad de fortalecer la cooperación internacional se explica por la existencia de ciertos factores que determinan la posibilidad de lavado de dinero. Se ha establecido que, sin la cooperación adecuada entre los organismos encargados de hacer cumplir la ley y las instituciones financieras a nivel nacional, es bastante difícil detectar delitos y prevenir el lavado de dinero en la etapa inicial. Como conclusión de la investigación, se propone desarrollar una metodología para la interacción de las agencias de aplicación de la ley de varios estados para contrarrestar el lavado de dinero. Los resultados obtenidos pueden convertirse además en la base para desarrollar propuestas legislativas para mejorar la cooperación internacional en la aplicación de la ley y, al mismo tiempo, pueden usarse para aumentar la eficiencia de sus actividades contra el lavado de dinero.

Palabras clave: instituciones financieras; seguridad económica; información compartida; presupuesto del Estado; salida de capital.

Introduction

The issue of money laundering is of great importance for the economy of both an individual state and the world because it is a global threat to economic security. There is no exact information on the amount of money laundered in the world, which indicates a high level of latency of this phenomenon. However, according to rough estimates of experts, the laundered income annually makes up from two to five percent of world GDP or from 1.6 to four trillion US dollars (Weeks-Brown, 2018). The situation is aggravated by the fact that in the context of the existence of organized crime and the growth of the shadow economy, existing money laundering schemes are transnational in nature, and unregulated virtual markets around the world provide an opportunity to launder money in the amount of 2.17 to 3.61 trillion US dollars annually (Karpuntsov, 2019).

Thus, money laundering has acquired such dimensions that it can serve as a source of financial and economic upheaval for any state and even individual regions of the world (Levchenko *et al.*, 2019). At the same time, the international anti-money laundering movement is larger in scale than all other areas of interstate cooperation (Karataev, 2012) because the criminally derived funds are usually placed on bank accounts of foreign states, the property of suspects subject to confiscation is located abroad, and suspects try to hide outside the state (Danyliak, 2018). Moreover, money laundering can be carried out using the services of the so-called conversion centers – international criminal groups, which focus on the development of money laundering schemes, as well as the implementation of such activities (Varnalii, 2001). In addition, criminals use various methods of money laundering related to offshore banks and international banking.

At the same time, each state should ensure the ability of law enforcement agencies, which counteract money laundering and investigate the facts of money laundering, to cooperate and exchange information both at the national and international levels. Instead, financial institutions are the primary contributors to counteraction and investigation. However, despite the existing instruments of mutual legal assistance that can be used in the process of international cooperation in the investigation of this crime, law enforcement agencies still experience significant difficulties regarding access and exchange of data, and the level of money laundering remains quite high. Against this background, counteracting money laundering remains one of the most important tasks of each individual state and the entire international community. Therefore, there is an objective need to strengthen international law enforcement cooperation in the field of combating money laundering, which, in turn, will help to reduce the number of crimes in this area, increase the competitiveness of the economy of each country and strengthen its position in the international arena.

Many scientific publications are devoted to the issue of international law enforcement cooperation in the field of combating money laundering, but researchers began talking about the need for international cooperation to combat organized crime only in the last century. Moreover, as S.V. Timofeev rightly observes, even those states that do not have close political and economic contacts usually do not neglect contacts in the field of combating crime (Timofeev, 2002). At the same time, I. Rohach notes that money laundering is closely linked to organized crime, so the fight against this phenomenon is most effective when it is comprehensive and coordinated in all countries (Rohach, 2014).

Because in the opinion of O.A. Vakulyk, N.S. Andriichenko, O.M. Reznik and others, organized groups use the lack of well-established interaction between law enforcement agencies within one state and with law enforcement agencies of other states (Vakulyk *et al.*, 2019). V.P. Holovina

(2004) also recognizes that international law enforcement cooperation is important for optimizing the investigation process, justifying the fact that the well-established mechanism of interaction between law enforcement agencies of the countries contributes to the effective, urgent receipt of information about the movement of money and the use of the status of business entities.

In addition, some studies have highlighted the need for law enforcement agencies to interact with financial institutions, which will certainly contribute to the effectiveness of international cooperation. Thus, R.S. Soroka and H.I. Sunak, exploring the causes and conditions of money laundering in Ukraine, recognize that one of them is the absence of an effective mechanism for law enforcement agencies to interact with banks and other financial institutions (Soroka and Sunak, 2014). Despite the fact that many works have been devoted to the issue of international interaction between law enforcement agencies with each other and with financial institutions in the field of money laundering, in practice, there is an acute shortage of research that would provide a comprehensive picture of the problems identified.

1. Materials and methods

In the process of research, both general scientific and special scientific methods were used: methods of systematic and critical analysis, formal logical method. The methods of systematic and critical analysis were used to justify the need to strengthen the international law enforcement agencies in the field of combating money laundering and to define the role of financial institutions in this field. One of the main methods that made it possible to formulate proposals for improving international cooperation is the formal logical method.

The system-structural approach was used to review publications on the issue of international law enforcement cooperation in the area under consideration and present the results of the research in a systematic way. The method of statistical analysis was used when working with officially statistical materials. The logical analysis method made it possible to prove that countering money laundering remains one of the most important tasks of each state. The analytical method was used to elaborate proposals to improve the mechanism of interaction in the investigation of money laundering cases.

Money laundering is a global crime. The persons involved in it are pursuing their activities internationally, with various goals, including:

– avoiding countries/territories with a clear regulatory framework and a strong law enforcement system;
– using loopholes that exist because of a lack of communication and cooperation between law enforcement agencies in different countries;
– using the shortcomings of the regulatory framework and the work of law enforcement agencies specific to a number of jurisdictions;
– creating additional layers of transactions to complicate the tracking of the financial trail (Komisarov *et al.*, 2015).

2. Results and discussion

Thus, the need to enhance international cooperation is explained by the existence of certain factors, which facilitate money laundering. The main factors include the following.

1. Lack of proper legal framework and loopholes in legislation. Despite the fact that the issues related to the anti-money laundering system are regulated by numerous international legal acts, the level of money laundering remains quite high. The reason for this, according to V. Shulekovskiy, is the serious problems between law enforcement agencies of different countries and the lack of legal framework; therefore, national borders are an element that contributes rather than prevents impunity for money laundering. Using loopholes in international law, certain criminals and criminal groups carry out illegal activities in global markets and are involved in international money laundering, in particular, choosing a country where banking secrecy is most stringent and oversight over law enforcement authorities is least effective or absent (Shulekovskiy, 2006).

2. Specific nature of money laundering in each country. Thus, the economy of Asian countries is characterized by intensive cash transactions, but there are no mechanisms that allow tracking transactions with a great sum of money. In Eastern Europe and the Commonwealth of Independent States, this process has its peculiarities mainly at the first stage of money laundering, which is associated with significant illegal cash flow. Much of the proceeds of criminal activity are laundered by exchanging currency and transferring it abroad. In Africa, money laundering is carried out using African emigrant groups in developed countries (Nikitina, 2006).

3. Continuous improvement of money laundering methods. Money laundering is carried out in several stages (placement, layering and integration), each of which uses various methods that are constantly being improved and changed as countermeasures develop, including on

an international scale. The emergence of new money laundering methods has recently been associated with the popularization of virtual money, especially cryptocurrency, one of which is Bitcoin. Such currency, according to A. Soni and S. Maheshwari, is not controlled by public authorities, and its economic growth has spanned billions of dollars over the last few years (Soni and Maheshwari, 2018).

Thus, according to the Chainalysis research firm, which analyzed ways to launder criminal proceeds, only 2.8 billion US dollars in bitcoins were received illegally in 2019 (Chainalysis Team, 2019). Along with this, money laundering operations by organized groups are greatly simplified due to the functioning of online banks, which, in turn, makes it possible to hide the movement of criminal proceeds, while ignoring traditional state borders. In other words, the advent of Internet technologies has led to the emergence of new and improvement of existing money laundering methods.

4. Vulnerability of credit-banking systems. The use of shadow schemes during various operations by business entities, the introduction of the latest technologies in the financial sector, and the rapid development of the cryptocurrency market have led to the rapid development of money laundering with the participation of financial institutions (Leonov *et al.*, 2018). At the same time, those states that are experiencing an urgent need for financial injections may not reckon with the source of income, because it is becoming increasingly difficult for financial institutions to detect money laundering operations. In addition, most anti-money laundering schemes are implemented using banking or non-banking financial institutions. Moreover, none of the financial institutions is immune to the possibility of becoming an accomplice to money laundering.

Moreover, it is the specifics of credit activity that makes it easy to mask criminal proceeds, masking them as legal, because almost all types of banking operations are used for money laundering (Kondratyeva, 2017). The situation is complicated by the fact that sometimes banks or other financial institutions deliberately hide information about customer accounts, being afraid of losing their business reputation or referring to the existence of bank secrecy, which, in turn, makes it difficult to identify and investigate facts of money laundering.

5. Existence of offshore zones. Increased international cooperation is driven by the outflow of financial resources into offshore zones. Thus, 7 trillion US dollars is the amount equivalent to 8% of the gross domestic product of the world and represents the amount of private capital hidden, according to estimates, in offshore financial centers. A significant part of these funds was obtained from illegal activities (Lipton, 2019). At the same time, according to G. Zucman (2017), individuals have hidden 8.7 trillion US dollars in tax havens. Such discrepancies in estimates are related to the secrecy of offshore financial transactions, which guarantees a high level of

bank secrecy, anonymity, no significant currency restrictions and customs duties for foreigners, which allows for the free export of income. This explains the attractiveness of offshore zones for money laundering.

The impact of the above factors on the economic component of each country cannot be underestimated, given the possible risks of crime in the area of money laundering and the recognition by the world community of money laundering as a global threat to economic security. As S.G. Buyanskyi and G.V. Poryvaiev rightly point out, money laundering activity is closely related to such phenomena as capital outflows, corruption, the use of offshore zones by business entities in order to conceal the source of income, as well as illegal cashing, which are factors of the shadow economy (Buyanskiy and Poryivaev, 2018).

It is a threat to the economic security of the state and affects all areas of economic activity. However, an increase in the level of the shadow economy leads to a decrease in the value of economic security. S. Leonov, A. Boyko and others point out that a large part of the shadow sector in Ukraine is formed as a result of money laundering (Boiko *et al.*, 2019). According to data and forecasts, the level of the global shadow economy in 2017 amounted to 22.5% of GDP, and in 2020 and 2025 it will reach 22.11% and 21.39%, respectively (ACCA, 2017). Despite more or less consoling forecasts for 2025, the rate of decline is not the same for all countries.

The existence of the shadow economy is associated with tax evasion because the shadowing of economic activity is explained by the desire to hide the origin of income and the unwillingness to pay taxes. According to the Tax Justice Network, countries lose more than 3 trillion US dollars a year because they do not receive a significant part of taxes to the budget. As a consequence, lower tax revenues reduce the resources available for productive purposes, which impedes the sustainable and inclusive growth of states (Purcell and Rossi, 2019). In addition to all the above, obstacles arise in implementing the competitive opportunities of economic entities, and conditions are created for unfair behavior of individual market participants, which entails a decrease in the investment attractiveness of the state. According to the BDO (Binder Dijker Otte) International Business Compass (IBC) for 2018, Ukraine ranks 131st in the Investment Attractiveness Rating and 82nd in the Resource Utilization Index, where the top is occupied by North America, Oceania, Northern, and Western Europe (Friederiszick *et al.*, 2018).

Given the above, there is no doubt that the effective counteraction to money laundering necessitates increased international cooperation of law enforcement agencies, given the global nature of this crime and its negative impact on the economic security of each country. Their well-coordinated work will prevent the commission of crimes with “dirty” money and will increase the probability of revealing the facts of laundering at the initial stage, which ultimately will positively affect the economy.

Each country should understand that it is not protected from such a negative phenomenon as money laundering. If criminals or international criminal organizations notice that in a particular country counteraction to the crime is being improved and more decisive action is being taken, some offenders may move their illegal activity to other countries where the conditions for money laundering are more favorable and both the anti-money laundering system and justice system are weaker. In this regard, it is extremely important to cooperate with the law enforcement agencies of all countries, regardless of the level of economic development of each country, since the individual country is unable to ensure its own economic security.

However, even given the well-established international law enforcement cooperation, high-quality and effective anti-money laundering is not possible without law enforcement agencies interacting with financial institutions within the country, since effective international cooperation requires the rapid exchange of information on dubious transactions from banking and other financial institutions. Prompt exchange of information contributes to the fact that the crime is detected at the stage of preparation, and not after its commission since money laundering is a complex of interrelated criminal acts, where laundering itself is the last link of such actions.

Considering the role of financial institutions, we note that they are the most important part of the financial system because they involve domestic and international payments, as well as other financial transactions. In addition, financial institutions are vested with great responsibility as they are subject to initial financial monitoring and internal controls, and therefore have ample opportunities to identify suspicious revenue transactions. In particular, during 2018, the State Financial Monitoring Service in Ukraine specifically accounted for 99.02% of the total number of reports on financial transactions from banking institutions (State Financial Monitoring Service of Ukraine, 2018).

Accordingly, the primary function of financial institutions in combating money laundering is to identify suspicious transactions and forward information about them to an authorized body that transmits such information to law enforcement agencies, or directly to law enforcement agencies that detect, investigate and prevent crimes related to money laundering. It is important enough that the exchange of information does not violate the bank secrecy, because, as S.B. Gladkova rightly points out, the institute of bank secrecy is subject to a certain devaluation, and there is liberalization of access of law enforcement agencies to bank secrecy and the establishment of rather rigid liability (Gladkova, 2015). Consequently, the role of financial institutions is difficult to overestimate since it is quite difficult to detect crimes and counteract money laundering at an early stage without proper interaction between law enforcement agencies and financial institutions.

Issues related to the interaction of law enforcement agencies are reflected in numerous international legal rules. However, some scattering of such rules complicates their search for practitioners, and the latter spend a great deal of time examining national and international law. In addition, the lack of an effective and clear mechanism of interaction between law enforcement agencies of different states between themselves and financial institutions at the national level in the field of counteraction to money laundering causes low efficiency of their activity in detecting, termination and investigation of money laundering facts. At the same time, the process of obtaining information is delayed due to the absence of a clearly defined procedure for its exchange. As a result, the perpetrators have the opportunity to conceal the crime and avoid liability.

Since money laundering differs from other crimes by its unpredictability, latency, multiple episodes of financial transactions and property transactions, and crimes are committed in many cases by organized groups, most of which operate in cross-border space, it is advisable to consider the complexity of the investigation of this crime, and the lack of proper methodological developments further complicates it (Sukhonos, 2012). A similar opinion is expressed by A.N. Klochko, N.I. Logvinenko, T.A. Kobzeva, E.I. Kiseleva, who, based on the analysis of money laundering, came to the conclusion that it is necessary to develop methodological recommendations for the investigation of specified criminal cases, because practice shows that the method of crime prevention in the field of banking requires new scientific approaches and modern knowledge about methods used to commit these actions (Klochko *et al.*, 2016; Guarascio, 2019).

Conclusions

In view of the above, in order to enhance the international law enforcement cooperation, it is necessary to establish close cooperation by developing a method of interaction to counteract money laundering, which will reflect specific aspects of interaction, in particular ways and methods, which will be based on proven foreign experience and scientific development of scientists. The methodology also needs to provide specific guidance on the mechanism of information sharing between law enforcement agencies and financial institutions within a particular country, in particular by improving information sharing and access systems, thereby reducing the timeframe for obtaining certain data. It is important to provide a mechanism for overseeing the processing of such data and the validity of access to it.

We believe that such a proposal must first be tested at the regional level of the European Union, and responsibility should be borne by a special agency. Such an agency could be a new independent body that will tackle the

issue of money laundering, which is already being discussed in the EU. The development and implementation of the methodology will make it possible to achieve a higher level of enforcement by law enforcement officers and will influence effective and efficient cooperation to combat money laundering. This, in turn, will increase the level of protection of the economic security of each country because it will reduce the level of money laundering, will lead to an increase in the level of the state budget revenues and a decrease in the outflow of national capital outside the country, reduce the level of the shadow economy and affect the level of investment attractiveness of the country, and also reduce the level of economic crime.

Money laundering as a threat to economic security and a global crime has raised the issue for all countries about the need to strengthen international cooperation between law enforcement agencies in the field of countering money laundering. In this case, international cooperation will be successful if carried out at both national and international levels. The need for law enforcement cooperation is due to the fact that without international cooperation it is impossible to ensure the collection of evidence outside the country, the criminal prosecution of perpetrators outside the country, as well as compensation for losses or the return of lost income. Accordingly, the proposal to develop a methodology for the interaction of law enforcement agencies of different countries to counteract money laundering will allow taking such interaction to a new level.

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Administrative and Legal Mechanism for Ensuring the Rights of Civil Servants in Ukraine and the Developed Countries of the World

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Abstract

The relevance of this article is due to the ambiguity of the situation of trade unions in Ukraine and the lack of an effective mechanism for the protection of the rights of public officials, which directly influences the development of the state as democratic and legal. The objective of the article is to analyze the state of activity and functioning of the trade union movement in the public administration, to: describe deficiencies in these activities and identify ways to extrapolate positive international experiences in the matter to Ukraine. The main methods used were the general methods of scientific and specific research, including the methods of logic, analysis and comparison of the sources collected. By way of conclusion, the results of this study highlight the problems of union functioning together with the peculiarities in the civil service, therefore, it is proposed to amend the current legislation of Ukraine in order to protect the social and labor rights of public officials. The importance of the results obtained is further reflected in the fact that this study can serve as a basis for outlining future changes to Ukraine's current legislation on the functioning of trade unions in the civil service.

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Mecanismo administrativo y jurídico para garantizar los derechos de los funcionarios públicos en Ucrania y los países desarrollados del mundo

Resumen

La actualidad de este artículo se debe a la ambigüedad de la situación de los sindicatos en Ucrania y la falta de un mecanismo efectivo para la protección de los derechos de los funcionarios públicos, que influye directamente en el desarrollo del estado como democrático y legal. El objetivo del artículo es analizar el estado de la actividad y el funcionamiento del movimiento sindical en la administración pública, para: describir deficiencias en estas actividades e identificar formas de extrapolar a Ucrania experiencias internacionales positivas en la materia. Los principales métodos empleados fueron los métodos generales de investigación científica y específica, incluidos los métodos de lógica, análisis y comparación de las fuentes recabadas. A modo de conclusión los resultados de este estudio destacan los problemas del funcionamiento sindical junto a las peculiaridades en el servicio civil, por lo tanto, se propone enmendar la legislación actual de Ucrania con el fin de proteger los derechos sociales y laborales de los funcionarios públicos. La importancia de los resultados obtenidos se refleja además en el hecho de que este estudio puede servir como base para delinear cambios futuros a la legislación actual de Ucrania sobre el funcionamiento de los sindicatos en el servicio civil.

Palabras clave: Función pública en Ucrania; sindicatos; protección de derechos; funcionarios públicos; servicio civil.

Introduction

Complex reform of the civil service institution, especially in a democratic and rule of law state, is based on the implementation of the rule of law, civil society development, etc., is closely linked to the improvement of the constitutional right to civil service and the newest reform of the legal status of the civil service. Based on the experience of the developed countries of the world, it should be noted that a civil servant plays a key role in the general paradigm of public authority, given the fact that it directs its official and labor activity towards the fulfillment of the tasks, functions and powers

of the state (Harust *et al.,* 2019). At the same time, the legal status of a civil servant is quite vulnerable to the state of transformation declared in our country. To some extent, it is a reflection of the imperfection of the civil service reforms that have taken place in Ukraine throughout the entire period of Ukraine's independence. V.L. Kostiuk and I.B. Vorobiova, while researching the issues of legal status of civil servants, among the main features that characterize their legal status are defined such as: inconsistency with the trends in security and human rights and freedoms; inconsistency with social and state development trends; lack of proper motivation for work and social protection, including pensions; lack of effective legislative support; the absence of a balanced system of rights, obligations, guarantees, restrictions and prohibitions of a civil servant; lack of a proper vocational education system, advanced training; the absence of clear and transparent mechanisms for protecting the rights and interests of civil servants (Kostiuk and Vorobiova, 2018).

A civil servant is a person who is closely associated with the apparatus (or body) of the public relations management service. V. Cherepanov (2016) emphasizes that in fact a civil servant is a person who provides his/her personal professional or technical services for the purpose of performing the administrative functions of the state entrusted to him by the functional duties for recompense (pay).

At the same time, V. Y. Matsiuk defines two groups of emerging legal relations in the sphere of civil service and points out that the public service is a professional, paid service activity of citizens, which is characterized by two groups of legal relationships – service and labor, which are to ensure the exercise of a civil servant's right to work, payment to the latter of the recompense for the performance of official duties, as well as providing guarantees and state-government relations, which are intended to ensure the realization of the needs and interests of the state through the fulfillment of the tasks and functions of the latter (Matsiuk, 2017).

The position of V.L. Kostiuk and M.I. Inshyn is enough plausible. They emphasize that the legal status of a civil servant as a subject of employment relationship is characterized by the following features: the activity of a civil servant is subordinate to the performance of tasks assigned to the relevant state body; the exercise by the official of his/her rights and duties is envisaged and guaranteed by the current legislation and established within the competence of the relevant state bodies; rights and obligations are characterized by a unity, the originality of which is that their rights are duties at the same time, because they should be used for the benefit of the service and duties are rights, otherwise the duties would not be possible; there are restrictions on civil rights of civil servants in order to increase the efficiency of their official activity (Kostiuk, 2016). M.M. Klemparskyi emphasizes that the legal status of civil servants as subjects of labor law

reflects their position not as representatives of the state and carriers of power authority in connection with this, but as employees who carry out specific work functions (Klemparskyi, 2014).

Collective protection and protection of labor rights of employees is determined by the very nature of labor relations: participation in the employment relationship of two opposing entities – the employee and the employer – causes constant conflicts of interest, the first way to settle which should be the collective action of either party or the joint action of both parties. Among the bodies which are called upon to exercise collective protection of labor rights, the first should be mentioned the trade unions, which according to the Law of Ukraine "On Trade Unions, their rights and guarantees of activity" are voluntary non-profit governmental organizations that unite citizens bound by common interests according to the type of their professional (labor) training activities and which are created for the purpose of representation and protection of labor, socio-economic rights and interests of trade union members (Panchenko, 2019).

1. Materials and methods

The following methods were used during the research: general theoretical (analysis, synthesis, concretization, generalization, analogy method, modeling); empirical methods (research of experience of functioning of trade unions on the civil service in Ukraine and abroad, research of normative-legal and scientific-methodical literature on the subject, scientific researches and conclusions).

In accordance with Article 36 of the Constitution of Ukraine (1996), citizens have the right to participate in trade unions in order to protect their labor and socio-economic rights and interests. Trade unions are non-governmental organizations that bring together citizens related to common interests by type of professional activity. Trade unions are formed without prior permission based on the free choice of their members. The Law of Ukraine "On Civil Service" (2015) provides for the existence of trade union organizations in state bodies, and even confers upon them certain competences. Civil servants have the right to join trade unions (associations) to protect their rights, socio-economic and professional interests. The law recognizes the trade union as an officially organized form of association of civil servants. The latter may grant the right of representation to their trade unions and associations according to the profession.

The purpose of the trade union organizations creation in any labor collective of a state body is to exercise the representation of employees,

to protect their labor, socio-economic rights and interests before the administration. The activities of a trade union of a public authority should be based on the principles of legality and transparency, with universal access to information on their statutes and program documents. The main criterion for the effectiveness of the implementation of human rights activities by trade unions is the restoration of violated rights of civil servants. Therefore, trade unions are actively involved in securing their legal rights, and human rights activities are to ensure that civil servants enjoy their rights without interruption, to terminate violations of these rights, to restore them, and to compensate for damages resulting from their violations.

Carrying out activities aimed at identifying the prerequisites for violations of the rights of employees of a state body, eliminating possible causes of such violations, protecting their rights, restoring them in the event of violations, prosecuting officials who violate legislation in the social and labor sphere, determines the role and place of trade unions in the development of social and legal state. By adhering to the democratic principles of our country's development in accordance with Ukrainian law, the state guarantees the realization of the citizens' right for association in trade unions and recognizes them as representatives of labor collectives and defenders of workers' rights, including decent pay and appropriate conditions (Pchelina et al., 2019).

The Law of Ukraine "On Civil Service" (2015) provides for mandatory participation of trade unions in only three cases, namely:

1. When approving the internal rules, when they are submitted for approval by the general meeting of civil servants upon the submission of the head of the civil service and the elected body of the primary trade union organization, if it exists in this state body;

2. When directed by the head of the civil service for approval by the central body of executive power providing for the formation and implementation of state policy in the sphere of labor relations, the Model provision on bonuses, which agrees with the elected body of the primary trade union organization (if any);

3. When issuing an order (instruction) of the head of the civil service regarding the attendance of civil servants to perform urgent or unforeseen tasks and the need to work more than a fixed working day, as well as on weekends, holidays and non-working days, at night, the elective authority of the primary trade union organization (if any) must be reported.

In view of the above, it can be noted that the number of rights enjoyed by other workers on the basis of general labor standards is limited for civil servants. Thus, among government employees, the right to join trade unions belongs only to those who do not hold higher positions, that is means they are not related to participation in issues of a political nature or implementation

administrative functions. A similar restriction is also imposed on employees whose activities are highly confidential (secret) (Solominchuk, 2018). This is unacceptable when the strategic task of systematic transformation of Ukrainian society is to acquire the characteristics of a modern democratic, social and legal European state that would adequately and effectively respond to the challenges of globalization by synthesizing the best national traditions.

By adopting the Law of Ukraine "On trade unions, their rights and guarantees of activity" (1999), the state gave the citizens the opportunity to create trade unions, join them and leave them on the terms and in the manner determined by them statutes, to participate in the work of trade unions on the basis of free will without any permission. The Federation of Trade Unions of Ukraine (FPU) is formed and operates in Ukraine, which includes 44 industry affiliates and 27 territorial associations. The primary trade union membership of the FPU as at January 1, 2019 was 52,975 organizations, with a total membership of 4,828 thousand (Solominchuk, 2018).

In fact, the FPU united virtually all union organizations of central executive bodies and became the main union of the civil service of Ukraine. In accordance with Article 259 of the Labor Code of Ukraine (1971), Article 21 of the Law of Ukraine "On trade unions, their rights and guarantees of activity" (1999) and its own Statute, the Federation of Trade Unions of Ukraine exercises civil control over the observance of labor legislation by the employers including state bodies. For this purpose, the FPU constantly monitors employees' rights violations and conducts appropriate work to organize their protection and maintains a unified register of trade union rights violations. FPU Operational Response Expert Group was established, which is involved in requesting member organizations to respond in a timely manner to trade union rights violations, and which is acting on the basis of the Decree of the FPU Presidium dated June 22, 2016 No. P-2-18 "On Approval of Documents Supporting Operations of the FPU Operational Response Expert Group" (2016).

The FPU Presidium also approved the "Procedure for accounting and analysis of petitions of affiliate organizations on the facts of trade union rights violations that require the response of the FPU" and "Procedure for the organization and assistance of FPU affiliates in the work of the FPU Operational Response Expert Group" (Panchenko, 2019). The FPU informs the Ministry of Social Policy, State Labor and the Commissioner for Human Rights of Ukraine about violations of trade union rights every year. FPU affiliates, their structural units may also inform local authorities about these violations and require them to take appropriate response.

Relations between the administration of the state body and trade unions are regulated on the basis of collective contracts and agreements. Trade

unions have no right to interfere in the official activities of state bodies to fulfill their tasks. The proposals of the trade unions on the passing of the civil service, as well as on the official activity of the state bodies, are advisory. Civil servants are also not allowed to take part in strikes, and they can apply to the relevant public authorities or to court to resolve disputes related to public service. The inability of civil servants to take part in strikes to assert their rights makes trade unions the only body capable of upholding civil servants' rights.

Among the preconditions for the emergence of trade unions in public institutions in different countries of the world are political and economic reasons. But in each country, this process was individual. In examining this question, it should be noted that historically the trade union movement originated first in England, then in France, the USA and Germany. Among the various organizations created by employees, trade unions have their own peculiarities: the largest employee associations; available to all employees; no restrictions on prior membership of a public association (age, gender, income level, nationality, political views); this non-governmental organization is closest to the economy, production and other spheres of life of society, where the interests of all employees are combined (Melnyk, 2014).

The Universal Declaration of Human Rights, adopted at the UN General Assembly in Paris in 1948, states that everyone has the right to join trade unions to defend their interests (The Universal Declaration of Human Rights, 1948). We agree with the results of A. Melnyk's research that prove that among the various organizations created by workers, trade unions have their own peculiarities: the largest unions of workers; accessible to all employees; there are no restrictions on prior membership of a public association (age, gender, income level, nationality, political views); this non-governmental organization is closest to the economy, production and other spheres of life of society, where the interests of all employees are combined (Melnyk, 2014). The development of trade unions in the world's leading countries has made them a truly genuine and powerful mechanism for protecting the rights of workers, including government agencies.

Thus, the UK's trade unions now have over 7 million members, and the Trade Union Congress remains one of the most powerful in the country. Most employers recognize the decisions of trade unions voluntarily. If the administration of a public authority refuses to do it, trade unions may seek recognition of their right through legal process. Under the Labor Relations Act of 1999, the trade union may apply to the Central Arbitration Committee, which will resolve these disputes (Labor Relations Act, 1999). Most decisions are made in favor of the trade union, since the majority of interested employees are members of the trade union. The rights enjoyed by British workers today have been acquired for many years, and in some

cases reflect more than two centuries of collective action by workers and their unions (Melnyk, 2014).

France is an outpost not only of world fashion, but also of the world trade union movement. When French unions organize strikes, it becomes a global event. Their echoes extend to the Ukrainian media. The authorities are accustomed to treating trade union members with respect and even with caution. French President Emmanuel Macron pursues a rather rigid policy on trade unions, but they continue to justify the reputation of real opposition to power. Usually, trade unions, including government agencies, in developed countries resort to strikes and demonstrations in the last place, because the governments of these countries are well aware of their power and prefer to negotiate social issues peacefully. But if the strike becomes the latest argument in disputes with the authorities, then organizing it in France is elementary. The strike must be reported in just 5 days – that is a high level of labor law culture in this country (Yatsun, 2020).

There are many associations that are committed to protecting workers' rights in Germany. There are now around 7.4 million trade union members in Germany. The Main Trade Union Confederation – DGB includes the vast majority of all union members. Within it are separate trade unions such as IG Metall and Verdi, which in turn have considerable autonomy and influence. Trade union membership is strongest among workers in the workforce and in the civil service, but much weaker among private service workers. Among DGB unions, 33.1% of union members are women and 66.9% are men (Fulton, 2015).

2. Results and discussion

In Ukraine, unlike in Europe, the tradition of the trade union movement was annihilated in Soviet times, when the state sought to curb workers' protests and avoid the spread of radical unions by distributing selective social payments through the trade union network – holiday allowance, medical care and health resorts, distribution of cheap housing, etc. After the declaration of Ukraine's independence, the infrastructure that made these social payments possible was transferred to the ownership of the FPU by the state, which made membership in it much more attractive than in the so-called independent trade unions. As a result, they have not been able to become a worthy alternative to the official one. The state at certain times gave the trade unions great powers to protect the rights and interests of workers, and then deprived the trade unions of these powers. In connection with this, there were various problems in regulating the activities of trade unions in the protection of individual and collective rights and interests in the protection of public servants. All this affected the legal status of trade

unions. However, it should be noted that trade unions are in constant motion and this leads to the improvement of regulations governing their activities (Stoian, 2002).

Trade union organizations have sufficient legislative means to protect the violated rights of public servants in their activities. However, no matter how perfect the legal framework for regulating trade union issues regarding the protection of civil servants' rights may be, the inability to enforce it puts all the efforts of the legislator to naught. Today, there are many problems in Ukraine that still need to be addressed. Unfortunately, in today's Ukraine trade union organizations and associations are more often used in political processes than in the development of really effective legislation to protect the rights of civil servants. Thus, so-called "yellow" trade unions under the control of the employer, the authorities or political forces are being created in modern Ukraine.

This contradicts the principles of unity, solidarity and significantly weakens both the trade union movement as a whole and the ability of each organization to implement the main function of trade unions to protect labor and socio-economic rights and interests of trade union members. As a result, the level of trust in trade unions is low. The problem of motivation of trade union membership, which in turn directly affects the number of trade unions, and indirectly – their organizational status, financial strength and, of course, the ability to fulfill their main function – to protect the rights of civil servants, is extremely important.

Today, trade unions face a number of strategic challenges. First, it is information policy. The published materials that distort and diminish the role of trade unions in the life of the state and society are biased, and at the same time there is a desire to create anti-union sentiments in the country. The positive developments that have been achieved with regard to the social protection of workers in the media are reported as a result of the activity of state authorities, not of the trade unions themselves. As a consequence, the authority of trade unions in society is falling, the motivation of trade union membership decreases. The second strategic issue is the relationship with public authorities, which should be built on three principles: social partnership, constructive opposition and labor dispute. But these trade union relationships with government agencies are very difficult to build. In state institutions, there is a restriction on the powers of trade unions in the management of public affairs, the distribution of income, the regulation of social and labor relations. The leadership of state bodies in every way restrains the activities of trade unions, sometimes – forbids them or makes them controlled, which is contrary to moral principles. The problem of updating of working personnel remains acute. Life requires of strong, active, effective union leaders coming to the unions. Today the average age of a member of a domestic union is almost ten years greater than the average

age of a worker. Staff aging is observed, and the rejuvenation of the union asset is slow. The trade union movement should become an important component of modern democracy, the key to building a democratic and social state.

In a time of economic crisis, the role of trade unions in regulating public relations between public servants and the governing body of a union of a state body is increasing and depends directly on their effective protection of labor and socio-economic rights and interests. Therefore, trade unions need to seriously review not only the forms and methods of their activities, but also to develop a new ideology that takes into account all the changes taking place in society, the world, the trade union movement, and defines strategy and tactics in modern conditions (Osovyi, 2018).

Therefore, summing up, we can say that the free activity of effective trade unions, independent of the administration of the state body, is one of the main prerequisites for the proper realization and effective protection of the civil servant's labor and social rights. It is known that the representation and protection of labor and socio-economic rights and interests of its members is the main purpose of trade unions. At the same time, unions must be provided with the appropriate tools enshrined in the legislation of each developed country to achieve this goal. In today's Ukrainian realities, trade unions in the civil service are more formal and "puppet" in nature, because union members are civil servants and therefore under the control of the head. They are also subject to the Law of Ukraine "On Civil Service" (2015), according to which they must comply with all orders of the head. If in Ukraine workers are joining trade unions mostly just to check the box, hoping for various social benefits, such as free health resort vouchers, then in developed countries such as Germany, every self-respecting worker is ready to become a member of Gewerkschaft (German "trade union"). After all, German trade unions offer their members not only help and protection in the workplace, but also many other benefits, such as free legal advice or refresher courses (Osovyi, 2018).

Trade unions in modern Ukraine, especially trade unions of state bodies, are disparate and even competing organizations, the official part of which, on the one part of FPU, tends to establish subordination relations with the state in matters of protection of workers' rights, the other part – the so-called free trade unions – try to declare the principle of independence from the authorities and the priority of the interests of employees. The lack of concerted human rights protection tactics, the low level of mutual support for the protection of workers' rights, and the fact that there are no legal mechanisms for trade union representatives to participate in court sessions to protect violated rights, especially civil servants' rights, reduce the confidence of Ukrainian citizens in trade unions. However, despite the existing problems, trade unions still remain quite structured

public organizations and, given the mass of their membership, constitute a significant electoral resource. Given Ukraine's increasing integration into the world economic and political processes, which likens the problems and tasks of trade unions to those existing in other countries, it is necessary to count on adequate contemporary political and socio-economic realities of self-determination (Melnyk, 2014).

Analyzing this issue, we have come to the conclusion that the basic problem of the legal status of trade unions of civil servants in Ukraine is that the members of the trade union organization are civil servants, that is, subordinate to the head. Accordingly, they are subject to the Law of Ukraine "On Civil Service", according to which civil servants are obliged to obey the orders of the head. The lack of legal regulation of the issue of the persons who are representatives of the trade union committee subordination in a dispute over violated rights of a civil servant before the administration of a state body negates any activity of trade unions in the state body.

Another problem is the creation of so-called "hand-raised" trade unions in the state body, whose management includes persons close to the head and who are under his/her control. This happens quite simply, through administrative pressure on civil servants – members of a trade union organization in the election of an executive body of a trade union committee. As a result, the level of trust in such unions is low. The problem of motivation of trade union membership among civil servants, which in turn directly affects the number of trade unions, and indirectly – on their organizational status, financial power and, of course, on the possibility of fulfilling their main function – protection of civil servants, is extremely important.

One of the problems is the representation of legal rights and interests of employees, in our case civil servants, in court. It should be noted that, unfortunately, there is no such practice in Ukraine, since only lawyers are given this right. Although, for example, in France, unions may represent employee in court and even replace him/her in court on their own initiative or at the request of an employee. In addition, the French trade unions were granted the right to defend the collective interests of the professional category in court.

Today, the situation of trade unions in Ukraine is at the stage of finding its place in the system of new socio-economic and political relations. However, it should be noted that the legal status of an employee in the enterprise is quite different from the legal status of a civil servant, in particular, the latter must comply with all orders and orders of the management. As we noted above, the issue of the legal status of trade unions in the civil service is not sufficiently regulated in Ukraine, which leads to the fact that unions do not fulfill the tasks and powers envisaged by the legislation of Ukraine on the protection of civil servants' rights.

It is possible to determine the legal status of a trade union organization of a state body by amending the Law "On Trade Unions, Their Rights and Guarantees" (1999). Such a legislative consolidation of the place of trade union in the state body will allow to solve the problem of creating "hand-raised" trade unions in the state body, whose management includes persons close to the head and who are under his/her control. The introduction of legal responsibility for such actions will force the leadership of the state body to transparent actions towards members of the executive body of the trade union.

Summarizing the study of the problems associated with improving the effectiveness of trade unions in the public service in Ukraine, it should be noted that the trade unions have proven their necessity and ability to ensure representation and protection of the rights and interests of its members in the social and labor sphere by their history (Law of Ukraine On trade, 1999). Only with the participation of trade unions can the state ensure a stable economic development without social upheaval. Considering the importance of trade unions in the protection of labor rights and the socio-economic interests of workers, in the development of democratic forms of citizen participation in the management of economic and political processes, a democratic, legal and social state, which is Ukraine, should support trade unions and ensure that their powers are legislated (Tsvykh, 2020). Trade unions at all levels must once again return to the consideration of their core functions and pay attention to those that are now more conducive to the achievement of the main purpose of the creation and activity of trade unions – the protection of social-labor rights and interests of trade union members.

Almost all trade union functions can be implemented within the framework of social-partnership relations (Law of Ukraine No. 137/98-BP..., 1998). In collective agreements it is possible and necessary to resolve the issues of wage regulation, employment protection, labor protection, creation of own insurance companies, non-state pension funds, health and medical institutions, etc. The experience of such activities is in different trade unions and should be disseminated and generalized. Trade unions of all levels should be more frequent in the press, on television, participate in conferences and round tables, promote their activities, pay more attention to the training of trade union staff and assets, and involve young people in their ranks (Shevchuk, 2011). International practice has shown that trade unions are necessary for a democratic state and its working citizens. They are an important element of civil society. But without significant changes in the trade union movement, without strengthening the unity of trade unions, increasing the activity and responsibility of the leaders of trade union organizations, the tasks will not be solved.

Today, the situation of trade unions in Ukraine is at the stage of finding its place in the system of new socio-economic and political relations. However,

it should be noted that the legal status of an employee in the enterprise is quite different from the legal status of a civil servant, in particular, the latter must comply with all orders and orders of the management. Considering that the issue of the legal status of trade unions in the civil service is not sufficiently regulated in Ukraine, we believe that our state needs to adopt a law that provides for the legal status of trade unions in the public service. We also propose to amend the Law of Ukraine "On Civil Service", in particular to extend the rights of trade union organizations in the civil service. For example, we propose to include an article in this law that the transfer of a civil servant to a lower position is possible only with the prior consent of the trade union organization.

Ukraine also needs to take into account the French law, according to which trade union organizations can represent the interests of employees in court, in our case civil servants. In Ukraine, unfortunately, there are restrictions provided by the lawyer's monopoly, according to which only lawyers have the right to represent the legal rights and interests of employees. In our opinion, Ukrainian trade unions should also be empowered with this right, so it would be appropriate to add to the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" in section 2 the article on the powers of trade union organizations and their associations to represent legal rights and interests in court. The control and coordination of the activities of trade union organizations should be exercised by the executive authorities, in particular, by the National Agency of Ukraine for Civil Service, which ultimately regulates the issues of the civil service. Therefore, we believe that a trade union department should be added to the structure of this body, which will be responsible for protecting the legal rights and interests of civil servants. This will be a strong foundation for building strong unions in the civil service.

The European Trade Union Federation is an equal partner of business and government. Its representatives are in the legislative and executive structures of the EU. Within the European Commission, which can practically be considered as a Common-European government, there are directorates dealing with the interests of trade unions. The Economic and Social Committee, the Committee of the Regions, in which trade unions and business are represented, work actively. Without discussion in these committees, no law is passed in parliament for approval. Trade union representatives work in EU parliaments. Any laws are passed without their agreement. Any laws are passed without their agreement. Trade union representatives are part of the economic and social councils of each EU country. Therefore, it would be quite advisable that in the Verkhovna Rada of Ukraine there should also be representatives of trade unions, in order to defend the rights of workers at the legislative level, as well as to initiate the raising of the issue of trade union reform.

Additionally, it is necessary to solve the problem of the lack of the right of regional and less numerous trade unions by amending Art. 4 of the Law "On the procedure for the settlement of collective labor disputes". It is necessary to give them the right to make demands and carry out strikes not only at the decision of the whole labor collective or its authorized body, but also at the decision of a separate trade union organization. Without this, fewer trade unions are effectively deprived of the opportunity to pursue independent policies. The perception of trade unions as a social phenomenon, prospects and directions of development of trade union movement in Ukraine requires a radical change in their structure.

Obviously, the need for change in the public administration is long in the making. However, it is also obvious that the current model suits too many people to talk about the possibility of rapid change. Therefore, it is necessary to look for ways to gradually resolve the problems in the legal support of trade unions in the protection of civil servants' rights and getting out of this situation, which has become a dead end. The state, as the main and universal institute of the political system, exists even when the actions of the authorities are contrary to the interests of civil society. However, trade unions, as groups based solely on social communities, do not have the same strong structure: unions must reflect the interests of employees, otherwise they cease to perform their functions.

Ukraine needs special trade union legislation. At present, the only full-fledged regulatory act governing the activities of trade unions is the Law of Ukraine "On Trade Unions, Their Rights and Guarantees". The provisions contained therein are already clearly insufficient to clearly define the relationship between union members and employers. Further development of Ukraine's political system is impossible without the role of trade unions as its most important element. Ultimately, trade unions are a factor capable of alleviating social tensions in society, of developing a mutually beneficial dialogue between civil servants, government, and trade unions. It is much more appropriate to build civic awareness on a real organizational basis rather than a spontaneous one.

Today's Ukraine needs strong trade unions. A strong union is a union that effectively protects the interests of its members, enjoys their trust and support, is able to organize, if necessary, collective action to protect the socio-economic rights and interests of workers, has sufficient organizational, financial and human resources to fulfill its statutory tasks.

Conclusions

In our study, we have shown that Ukraine needs to take into account the French law, according to which trade union organizations can represent the interests of employees in court. In Ukraine, unfortunately, there are restrictions provided by the lawyer's monopoly, according to which only lawyers have the right to represent the legal rights and interests of employees. In our opinion, in the presence of a lawsuit in court against the violated rights of an employee (a civil servant), the Ukrainian trade unions should also be empowered to represent the interests of the applicant-union member. To do this, we propose to amend the domestic procedural law and section 2 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees", to supplement the article on the powers of trade union organizations and their associations to represent the legal rights and interests of trade union members in court.

We believe that in order to coordinate the activities of trade union organizations of state bodies, timely response to violations of the rights of civil servants within the National Agency of Ukraine for Civil Service, to create an appropriate unit for ensuring the activity of trade unions. This unit will become the foundation for building strong and effective unions in the civil service.

In examining the issue of trade union activity, we have found that the European Trade Union Federation is an equal partner of business and government. Its representatives are in the EU legislative and executive structures. Within the European Commission, which can practically be considered as a Common-European government, there are directorates dealing with the interests of trade unions. The Economic and Social Committee, the Committee of the Regions, in which trade unions and business are represented, actively work. Any law is passed in parliament for approval without discussion in these committees. Trade union representatives work in EU parliaments. Any laws are passed without their agreement. Trade union representatives are part of the economic and social councils of each EU country. Therefore, we believe that it is necessary to create an appropriate committee on trade unions in the Verkhovna Rada of Ukraine, which will defend the rights of workers, as well as initiate the raising of the issue of trade union reform at the legislative level.

Additionally, it is necessary to solve the problem of restricting the rights of regional and less numerous trade unions by amending Art. 4 of the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes". It is necessary to give them the right to make demands and carry out strikes not only at the decision of the whole labor collective or its authorized body, but also at the decision of a separate trade union organization.

Without this, fewer trade unions are actually deprived of the opportunity to pursue independent policies. The perception of trade unions as a social phenomenon, prospects and directions of development of trade union movement in Ukraine requires a radical change in their structure.

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Administrative-Territorial Reform: The Experience of the Countries of Western Europe

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Abstract

The relevance of this article is conditioned by the decentralization of the reform of political power in Ukraine, which presents the State with the permanent challenge of finding new ways to solve the problems of governance and governability at the district and regional level. The objective of the article was to carry out a scientific investigation on the mechanism of introduction of institutes of prefects in Ukraine, based on the experience of the main western European countries. The main research methods are general and specific, including the methods of logic, analysis and comparison of the sources consulted. The results of this study are to identify ways to introduce an institute of prefects in Ukraine. By way of conclusion, it highlights the importance of the results obtained, which is reflected in the fact that this study can serve as a basis to delineate future changes to the current legislation of Ukraine on issues of state administration, at the district and regional level, by introducing the institute of prefects.

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Reforma administrativo-territorial: la experiencia de los países de Europa occidental

Resumen

La relevancia de este artículo está condicionada por la descentralización de la reforma del poder políticos en Ucrania, que plantea al Estado el desafío permanente de encontrar nuevas formas de resolver los problemas de gobernanza y gobernabilidad a nivel distrital y regional. El objetivo del artículo fue realizar una investigación científica sobre el mecanismo de introducción de institutos de prefectos en Ucrania, basado en la experiencia de los principales países de Europa occidental. Los principales métodos de investigación son generales y específicos, incluidos los métodos de lógica, análisis y comparación de las fuentes consultadas. Los resultados de este estudio son identificar formas de introducir un instituto de prefectos en Ucrania. A modo de conclusión destaca la importancia de los resultados obtenidos que se refleja en el hecho de que este estudio puede servir como base para delinear cambios futuros a la legislación actual de Ucrania en temas de administración estatal, a nivel distrital y regional, al introducir el instituto de prefectos.

Palabras clave: instituto de prefectos en Ucrania; servicio público; administración pública; descentralización del poder; reforma administrativa-territorial.

Introduction

The new Ukrainian authorities continue to actively seek working mechanisms for effective decentralization of power and reform of the administrative and territorial structure of our country. Over the last ten years, various Presidents and Governments of Ukraine have discussed the beginning of these reforms by amending the Constitution of Ukraine regarding the separation of powers of local state administrations and local self-government bodies.

One of the most recent government initiatives is the introduction of a prefect institute in Ukraine, which provides for the actual replacement of heads of local state administrations by prefects with their functional

reorientation. As Roman Semenukha – the member of the Verkhovna Rada of Ukraine of the last convocation – noted, this new category of civil servants will receive appropriate control and supervisory powers in relation to the local self-government bodies and territorial bodies of the central executive authorities in the respective territory, and with respect to territorial executive bodies, they will also carry out coordination functions (Semenukha, 2014). Taking into account such initiatives, the foreign experience of establishing this institute of state power and its functioning is extremely important, because analysis of the practice of foreign countries, the problems they face and the ways to solve them, will help the state apparatus of Ukraine to build a stronger and more effective institute of prefect (Slobodian, 2016).

In the modern world, the prefect institute is represented in many developed countries, namely France, Italy, Belgium, Greece, the Netherlands, Portugal, Spain and others. Historically, these territories were influenced by the Roman Empire and it was during these times that the development of the prefect's institute began. The introduction of a prefect institute in Ukraine will make it possible to distinguish self-sufficient local self-government from centralized state pressure (including at the level of regions and districts). At the legislative level, it delineates powers and functions between local governments and the executive. Introducing the main function of prefects to exercise control over the legality of decisions of local self-government bodies will help to get rid of the corruption component in the activity of these bodies. But most importantly, ending decentralization by delegating powers from the actual management of territorial communities to regional and district councils, makes them accountable to the population of these localities for effective management and makes them the main authority in the region.

The practice of recent years has shown that local self-government bodies and their officials, heads of local executive bodies often make decisions with excess of their powers, with gross violation of the current legislation and go unpunished. That means, that the principle of the inevitability of punishment for an offense is not valid, since today there is no public authority, which should promptly respond properly to an illegal decision, stop it and demand to comply with the current legislation, or to apply to the court for its cancellation. In fact, state executive bodies and local self-government bodies of the respective territories of Ukraine remained out of state control today. Although certain aspects of their activities are undoubtedly under the control of law enforcement agencies (Rusnak, 2017).

Given the current demands of society, the central government is not able to adequately process large volumes of information and respond quickly enough to any change in the situation in its environment. Most of the tasks related to ensuring the standard of living of the population are carried out

not in the state but in the regions and places of direct residence of citizens. Being closest to the voter, local self-government bodies are more accessible to communication and therefore easier for citizens to evaluate their activity (Bairak, 2013).

The following methods were used during the research: general theoretical (analysis, synthesis, concretization, generalization, analogy method, modeling); empirical methods (research of functioning and implementation of public administration experience, determination of problems and ways of prefect institute introduction in Ukraine, research of normative-legal and scientific-methodical literature on the given issue, scientific researches and conclusions).

1. The processes of formation of the state and legislative structure of Ukraine

At the time of the declaration of independence, Ukraine did not have its own model of state governance, except for some elements that it inherited from the Soviet Union. The Declaration of State Sovereignty of Ukraine (1990) formally laid the groundwork for a new concept of government and the division of powers into three branches: legislative, executive and judicial. The young independent state has faced a need to create a body that would ensure the perfection of the hierarchical construction of the executive power and at the same time closely cooperate with the local self-government bodies. In order to solve this problem in Ukraine, the Law of March 5, 1992 introduced the post of Representative of the President of Ukraine, who was the head of the local state administration in the oblast, Kyiv, Sevastopol, district, district of Kyiv and Sevastopol.

Representatives of the President of Ukraine in the oblasts, cities of Kyiv and Sevastopol were appointed and dismissed by the President of Ukraine and obeyed him. A mandatory condition was the approval of their nominations with the respective Councils of people's deputies. The creation of such a model was dictated by the need to form a unified system of executive bodies headed by the President of Ukraine, who was also the head of the executive branch (Yaniuk, 2015). Following the adoption in 1999 of the Law of Ukraine "On Local State Administrations" (1999), the post of Representative of the President of Ukraine in the oblasts, cities of Kyiv and Sevastopol were eliminated and the positions of the head of the regional state administration in the oblasts, the heads of the city state administration in Kyiv and Sevastopol, and heads of district state administration at the district level were introduced.

In modern Ukraine, the system of state administration is implemented with the help of regional and district state administrations acting on a territorial principle. It is thanks to such administrative-territorial division that the President of Ukraine, the Government, ministries and other central executive bodies can carry out their functions in the field of public administration at the local level. Today, there are 24 regional state administrations in Ukraine, the state administration in Kyiv, 490 district administrations in the oblasts, and 10 district state administrations in Kyiv.

The regional and district state administrations in their activity are guided by the Constitution of Ukraine, the Law of Ukraine "On Local State Administrations" (1999) and other laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, higher level executive bodies, and district state administrations in the Autonomous Republic of Crimea. Also by the decisions and resolutions of the Verkhovna Rada of the Autonomous Republic of Crimea, decisions of the Council of Ministers of the Autonomous Republic of Crimea, adopted within the limits of their powers (The order of the Cabinet of Ministers of Ukraine, 2014). Thus, the main mission, within the limits of its powers, of the oblast state administration (OSA), is to exercise the executive power in the territory of the respective administrative-territorial unit – oblast, as well as to exercise the powers delegated to it by the respective regional council. The regional state administration in the territory of the oblast ensures the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive bodies.

The OSA is responsible for the respect for the rights and freedoms of citizens, law and order in the region. The administration of the regional administration develops and supervises the implementation of state and regional programs of socio-economic and cultural development, environmental programs, and in the cities of compact residence of indigenous peoples and national minorities also the programs of their national and cultural development. OSA experts prepare and submit to the deputies of the respective oblast councils the budgets of the oblasts, as well as monitor its implementation, constituting the corresponding report. The regional state administration also exercises state control over:

– preservation and rational use of state property;
– use and protection of lands of forests, subsoil, water, atmospheric air, flora and fauna and other natural resources;
– protection of historical and cultural monuments, preservation of housing stock;
– compliance with manufacturers of products standards, specifications and other requirements related to its quality and certification;

– observance of sanitary and veterinary rules, collection, utilization and disposal of industrial, household and other wastes, observance of rules of improvement;
– adherence to architectural-building norms, rules and standards;
– observance of rules of trade, household, transport, public services, legislation on protection of consumer rights;
– adherence to legislation on science, language, advertising, education, culture, health care, motherhood and childhood, family, youth and minors, social protection of the population, physical culture and sports;
– labor protection and timely and not lower than the state minimum wage;
– observance of public order, rules of technical operation of transport and traffic;
– compliance with the law on state secrets and information.

The heads of regional state administrations, who administer regional state administrations for the fulfillment of the above mentioned powers and functions in accordance with the current legislation, make orders obligatory for executing by the heads of enterprises, institutions, organizations, their branches regardless of ownership and citizens on controlled issues, and raise the issue of their responsibility to central executive authorities in the manner prescribed by law. Regional state administrations, within their powers, direct the activities of district state administrations and exercise control over their activities. Heads of regional state administrations regularly inform about their activities the heads of regional state administrations, and annually and on request report to them. Regional state administrations have the same powers and rights as the OSA but within the administrative territory of the region.

One of the most pressing problems after the adoption of the laws "On Local Self-Government in Ukraine" and "On Local State Administrations" is the relationship between local state administrations and local self-government bodies. If we analyze the legislation of Ukraine on the relationship between local authorities (oblasts and region state administrations) and local governments, we can conclude that it is imperfect. It is easy to see that the powers often coincide. This causes some misunderstanding as to the limits of their implementation and leads to conflicts between local authorities and local self-government bodies. The proof of this is the results of the norms of the laws of Ukraine "On Local Self-Government in Ukraine" and "On Local State Administrations" analysis conducted by A.Y. Dudkina, who notes that most of the powers of local governments and local state administrations are the same, which leads to conflicts between them (Dudkina, 2013).

At the same time, one of the main pivotal problems of public administration, which is determined to be the most urgent and which continues to adversely affect the quality of the formation and implementation of public policy, is the problem of coordination of the authorities' activities. The fact that this condition is extremely important not only for Ukraine is evidenced by the statement of the famous American researcher and politician G. Seidman. He defined coordination as a philosophical stone of public administration: "If the right formula for co-ordination were found, it would be possible to reconcile the incompatible ones, to harmonize competing and diverse interests, to overcome irrationality in our state structures, and to make difficult choices that no one would dispute" (Kettl, 2015).

All of this has led to the imbalance of regional governance, heads of state administration most of the time are measured by community leaders of local governments, who have more authority and who are the most important in the region, instead of fulfilling the tasks set by central executive bodies. On the contrary, local councils suspend the powers of village, settlement, city mayors, often unlawfully. The mayors, in their turn, do not enforce the lawful decisions of the respective local councils, wrongfully suspend certain points of council decisions at a time when the law provides for the possibility of suspension of all decisions, not part of it. And this list can be continued. In these situations, there is no arbitrator who would intervene in time and "deal" with the wrongful situation.

2. The prefect's powers in the management of Western Europe

We believe that public authorities in Ukraine and its institutions are ineffective, which is due to the following reasons:

- the lack of the possibility for local and regional councils to independently implement local policies through their executive bodies;
- politicization of local councils and violation of the principle of representation of common interests of territorial communities in the formation of regional and district councils;
- imperfection of intergovernmental budgetary relations and lack of stable sources of local budgeting;
- insufficient staffing and organizational capacity of local governments to address local issues (Bairak, 2013).

Given the above, we can conclude that the development of civil society in Ukraine is growing rapidly, but existing local state administrations are

blocking it to some extent, taking over the powers that should be vested in local self-government bodies. That is why, in our opinion, communication between the state government and people living in a certain territory of a district, city or region results in inefficient, irresponsible and non-transparent management of a region that does not develop a territorial community, but only slows down this development. Therefore, Ukrainian society needs a deep, systematic and logical reform of decentralization of power in order to create a European-style country (Pchelina *et al.*, 2019; Syroid *et al.*, 2019).

The reform of decentralization of power in Ukraine that began with the adoption of the Verkhovna Rada of Ukraine by the Law of Ukraine dated February 5, 2015 No. 157-VIII "On Voluntary Unification of Territorial Communities" (2015) has in fact started the process of a new administrative-territorial division of our country. This Law establishes new mechanisms for regulating the relations that arise in the process of voluntary integration of territorial communities of villages, settlements, cities, as well as voluntary association with integrated territorial communities (Andriichuk, 2019). As Yu. Andriichuk noted in his scientific work, local development reform and decentralization have been called one of the most successful reforms in Ukraine in the last 10 years. The situation today in this area is the following. The Government has received a sound draft strategic and policy document for reform – the Concept of local government reform and territorial power organization, which has been prepared in the expert environment for many years, which also had positive conclusions by the Council of Europe (Andriichuk, 2019).

One of the latest government initiatives is the introduction of a prefect institute in Ukraine. The main goal pursued by the authorities is to replace the total control over territorial communities by local state administrations with effective state oversight of the legality and constitutionality of the decisions of local self-government bodies. And it should happen by eliminating the latter and creating a more efficient and optimized body – the institute of prefect. This reform provides for the actual replacement of heads of local state administrations for prefects with their simultaneous functional reorientation. For the average Ukrainian, the very concept of prefecture is not well understood, although for many citizens of many countries in the world this category of civil servant is quite common.

In fact, this reform is very similar to what was carried out in France in the early XIX century when the prefect institute in France was enacted by the Law dated 17 February 1800 by Napoleon Bonaparte, after the French National Assembly conducted a division of France into districts within the limits of decentralization of power. As part of this administrative and legal reform, the prefect becomes the sole central government in the district. Napoleon called the prefects "emperors in miniature" (Las Cases,

2010). Indeed, the prefect was really given very broad powers of command and security. And during the July monarchy, the political function of the prefects was also defined, which consisted in "rushing" candidates, needed by the government, during the organization and holding of elections.

Further prefects receive economic and social powers. Increasingly they are beginning to speak to community-based communities with economic initiatives, aimed at supporting the industry, as well as expanding primary education for all residents of the region and introducing an effective healthcare system on the district territory. But in the days of the Third Republic (early 1880), the prefect became the supervisory authority over the local self-government bodies, they have lost the powers of the heads of executive power of departments and regions, while the heads of general and regional councils obtained this function. In return, they received a supervisory function for these heads. Meanwhile, prior to the 1982 reform, the prefect was not only a local authority, but also an executive body of the department's elected council: that is, the prefect was both an agent of the local government and a representative of the central government (Hanushchak and Chypenko, 2015).

The prefect in modern France, in contrast to the head of the district state administration in Ukraine, for the most part perform not administrative but controlling functions. In fact, prefect is a representative of the state in the relevant territory and acts in parallel with the executive body of the department. The control mechanism that the prefect should exercise is quite specific, but the results of such control are very effective. The prefect mainly follows the procedure for allocating and spending financial resources, and the programmatic and targeted planning and administration methods at his/her disposal are focused not on the final state of implementation of the territorial development program, but on the current indicators of prospects for achieving intermediate results. This makes it possible to adjust in advance the amount of resources allocated and used, as well as to direct the executive bodies of the department level to perform certain specific procedures which are most needed (Siryk, 2015).

According to Y. Hanushchak, there is no hierarchy between the prefect of the region and the prefect of the department. However, there is a rule: senior in rank – senior in age. As the prefect of a region is usually assigned a person who has already been the prefect of the department. There are 256 prefects in modern France, 126 of which are in the position of prefect, and the rest are in other government positions (Hanushchak and Chypenko, 2015). The prefect is both a representative of the state in the department and a local government body in that department.

Considering the legal status of the French prefect, Y. Kovbasiuk (2010) characterize him as the first hierarchy official of the department. Scientists determine that, acting on behalf of the state, the prefect controls

the observance of national interests, ensures the exercise of authority of central government bodies, keeps the government aware of the political situation in the department, is responsible for managing property owned by the state. The prefect implements government policy, oversees the enforcement of regulations of the central government, to ensure order he has the power to make decisions on the use of police forces. If a substantial offense that undermines national security is committed on the territory of the department, the prefect assists law enforcement agencies in finding the perpetrators, and in this role has the right to sign an arrest or search order (Harust *et al.*, 2019a; Harust *et al.*, 2019b).

Within the limits of administrative control over the activity of the department, the prefect may refer the decisions of local self-government bodies and their officials to the administrative court (Kovbasiuk, 2010). Therefore, the prefect tends more to the central government, he/she is empowered with sufficiently broad powers to make a number of decisions regarding the implementation of state policy in the respective region, but on the other hand, carries out the implementation of certain functions of local self-government (Hrobova, 2015). While researching the prefect institute in France, we consider it appropriate to divide the main functions of the prefect into 3 types:

1) general control function;

2) the function of overseeing the activities of local governments;

3) function of ensuring the safety and protection of the population.

It should be noted that the pre-emptive activity of prefects is very important for them to fulfill the role of mediators, that is, as a rule, being "untrained eye", they are perceived by local political elites as an effective mediator in disputes between various local authorities, political forces (Martseliak, 2015). The provisions of the Administrative Code of France for local self-government, which determine the role of the prefect in solving the financial, economic and social problems of the region (department), are also important. It is the rules of this law that oblige the prefect to provide advice and help resolve the issue of employment for residents of the region, tax exemption, investment and debt restructuring of enterprises registered in the department (Batyr, 2003; Vorona, 2017). This governance model gained popularity in countries such as Belgium, Greece, Italy, the Netherlands, Portugal and Spain during the XIX century.

Researching the establishment of the institute of prefect in Italy, it can be argued that a striking example of state formation for it was France. Thus, in the Italian Republic in 1802 a nearly identical system of prefecture as in France was created. The prefect was perceived as the executive of the elected regional government. The prefect in Italy became the sole representative of the Ministry of the Interior in the region, while most other ministries were

represented at the territorial level, at the provincial level. The Royal Decree of 1861 replaced the governorate with the position of prefect, who, until the fall of the fascist regime, would be an omnipotent figure, personally dispose of the fate of a particular region and virtually unresponsive to the local population (Vorona, 2017).

Following the unification of Italy, a law was adopted on March 20, 1865 N. 2248 "On the reorganization and centralization of a new state" also known as the "Lenz's law" (Vorona, 2017), according to which:

-the prefect represents the executive throughout the province;

-exercise the powers delegated to it by law;

-ensures the execution of decisions of higher authorities;

-ensures publication and enforcement of laws;

-takes extraordinary measures that, in his view, are important in various fields of activity;

-provides public safety;

-has the right to take coercive measures and to require it from the armed forces.

The prefect is subordinate to the Minister of the Interior and obeys his instructions (Batyr, 2003). Centralized management and unified decision-making throughout Italy served as a boon for the Italian North and allowed the central government to use the South's resources to develop the industrial North. The Constitution of Italy after its unification in 1861 became the Piedmont Statute, adopted at March 4, 1848 by Carl Albert, and will remain in force until 1947. It was striking a symbolic, rigid constitution, fixing Parliament's limited powers. The statute provided citizens with equality before the law and gave them limited freedom of assembly and the free press, but less than 3% of the population had the right to vote. The statute enshrined the existence of three classic branches of power: the executive (represented by the king), the legislative (divided between the Senate appointed by the king and the elected House of Deputies) and the judiciary (judges also appointed by the king). Initially, the king had the broadest powers: he controlled foreign policy and had the prerogative of nominating and dismissing ministers of state (Shemshuchenko, 2002; Batyr, 2003).

According to the Law of 1865, the Italian prefect had the authority of general administration and provided security and public order in the region, as did his French counterpart. He was the executive officer of the regional council and its chairman at the same time. Although after the change of national legislation in 1889, these positions (prefect and chairman of the

regional council) were separated. In modern Italy, the Council of Ministers appoints commissioners to the regions and prefects in the province. Prefects exercise only control and oversight functions in relation to local self-government bodies, that is, by implementing "administrative custody" they do not deprive them of the sense of the owner of the respective territory (Padalko, 2012).

As mentioned above, the municipal system of Italy belongs to the so-called French type: as in France, in all territorial units of Italy there are representatives of the central government. In the region these functions are performed by a government commissioner who reports directly to the Prime Minister. In the provinces representatives of the central government are prefects who are part of the Ministry of the Interior. Prefects are primarily responsible for public order and security. In the communes the function of the representative of the central government is vested in the mayor, who, although elected by the population of the commune, necessarily takes the oath of the prefect as a representative of the state. The mayor is not only obliged to inform the prefect of the province about the state of public order in his territory, but also keeps a register of civil acts, registers voters, the military etc. (Melvyl, 2007).

In Italy, there is a so-called government vertical, where the prefects do not assume all the functions of the state leadership in the exercise of functions in relation to local governments (Shelepnytska, 2009). According to the results of V.A. Panov's research, "provinces also have territorial bodies of state power, for which the province is the lowest level in the system of administrative and territorial structure. These include the prefect and the prefecture headed by him" (Panov, 2015). That means, that the prefect represents the central government of Italy, as well as oversees compliance with laws by local governments and coordinates the activities of territorial bodies of state power (Slobodian, 2016).

Based on our research, taking into account the historical and legal aspect of the development of the prefect institute in the countries of the European Union, we can conclude that during the whole period of existence of the prefect institute, their functions and powers have changed dramatically, along with that their influx on state formation has also changed. Taking the Roman Empire as an example, France was able to build an optimal model of territorial organization of power, which today serves as an example for many countries in the world. Speaking of Italy, unfortunately it could not achieve such a perfect model as in France, and therefore became a quasi-unitary state. In our opinion, it will be appropriate to use the French experience in Ukraine, it will be quite useful in expanding the powers of local self-government bodies and in the introduction of a prefect institute in Ukraine.

The legislative basis for this reform to radically change the system of government and its territorial base at all levels began to emerge in 2014 (Panov, 2015). Thus, at the Cabinet of Ministers meeting in April 2014, the Concept of reforming local self-government and territorial organization of government was approved and the Action Plan for its implementation (2014) was approved. It envisaged the urgent amendment of the Constitution of Ukraine, as well as the adoption of a number of new laws. Analyzing the domestic legislation, we can say that such a mechanism is the most appropriate for the introduction of a new instrument of public administration as an institute of prefect, which, in our opinion, is urgently needed by Ukraine for the effective development of the state as a whole. Thus, V. Yevtushok (2016) argues that the position of prefect in Ukraine must maintain a balance between the branches of power, and decentralization in this case will not lead to uncontrolled country.

According to Y. Slobodian, completely "transplanting" the successful French model of this institute into the Ukrainian soil will not succeed due to the lack of traditions of institutional discipline. The method for assigning and dismissing prefects and transferring to another position must be carefully worked out. For the introduction of the institute of prefecture in our country it is necessary to do it at the legislative level, by issuing a special law, which clearly differentiates this position from other state officials. In order to be effective, the prefect needs to be independent of the local political elites, not changed because of the replacement of the President or the Government, selected by open competition, as well as guided by such principles as the rule of law, openness, legality, unity of law, continuity, control, efficiency and political impartiality (Slobodian, 2016).

The first attempt to introduce a prefect institute in Ukraine was made in 2015 by drafting a bill "On Amendments to the Constitution of Ukraine (on decentralization of power)" (2015) and a draft law "On Prefects" (2015). These bills are based on European experience, in particular on the experience of France. Indeed, this country in its own example is important to Ukraine because, in pursuing decentralization, France retains its unitarity. It also struck a balance between the delegation of powers to local governments and prefect control (Yevtushok, 2016). According to these bills, the prefect's power, unlike the heads of local state administrations, is to supervise the observance of the Constitution and laws of Ukraine by local self-government bodies and to ensure the implementation of state programs. They will not have the authority to prepare and implement relevant regional and district budgets and to report on the implementation of relevant budgets and programs. It is also positive that the prefect is rotated every 3 years, so there will be no interaction of state representatives with local elites, as well as "family ties" locally, as it was in state administrations.

However, for political reasons these laws were not adopted. The new Ukrainian government represented by the President of Ukraine V.O. Zelenskyi has already submitted to the Verkhovna Rada of Ukraine the Bill No. 2598 (2019), which amends the sections of the Constitution concerning the administrative-territorial structure, activities of local state administrations and bodies of local self-government. Speaking about prefects, President of Ukraine Volodymyr Zelenskyi, like his predecessor, proposes to liquidate local state administrations, but unlike P.O. Poroshenko, he proposes to transfer the executive power in the regions to the territorial bodies of central executive bodies and executive committees of local councils, while the prefects will only coordinate their work and be able to issue binding acts. On the basis of these powers, the prefect may remove the mayor or the chairman of a local council from office, if he / she recognizes the decision of the local authority as not in conformity with the Constitution. At the time of reviewing the decision of the local government body in the Constitutional Court, the President appoints a state official instead of a dismissed official. At the same time, the norm according to which regional councils could dismiss a head of a regional state administration, expressing the distrust to him/her, is proposed to be removed from the Constitution (Neimyrok, 2019).

The experience of reforming the public administration system of France and Italy as a consequence of the country's evolution in the process of decentralization is important for Ukraine, as it shows the need to reorganize the public administration system at the local level (Vorona, 2015). Nevertheless, while supporting the introduction of prefects as a European practicum, it should be noted that, unfortunately, the main focus of today's reformers is on the organization of territorial communities, their numbers, the corresponding administrative-territorial division, that is, visible external attributes. Qualitative moments, inherent in the prefect as a carrier of reforms, to the statesman – his/her worldview, moral and ethical characteristics, state-building, socio-patriotic values and integration orientations – remain out of the focus of science. It seems that this is a minor problem (Vovkanych, 2016).

In carrying out our research, we have come to the conclusion that the mechanism of centralized state administration in which the institute of local state administrations operates in Ukraine does not cope with its responsibilities and has completely lost the trust of the community. Local state administrations limit the ability of communities to manage their own resources, land, finances, etc., and take responsibility for their own territory. The solution to this systemic problem is the reform of decentralization of power and its main component is the introduction of a prefect institute.

Examining the development of such a mechanism of public administration and taking into account the experience of France and Italy,

we can assert that the most effective institute of prefects is functioning in these countries. After analyzing the mistakes of these countries, during the reform and decentralization of power, Ukraine will be able to create its own Ukrainian model of government, taking into account our mentality and historical features.

According to French professor Jean Fabre: "Prefects can be compared to camcorders on the road, which detect traffic violations – one in thousands. But if you take away these camcorders, the number of violations will increase tenfold. So if we had no prefect, France would have come to an end", we can understand what an integral role the prefect plays in the state. Therefore, the Ukrainian prefect should not become a controller, but an observer from the state for the life and development of the territorial community.

Since the beginning of the reform on decentralization of power in Ukraine, both supporters and opposition have appeared in the idea of introducing a prefect institute. Many are afraid to introduce these changes, justifying the fact that the prefect may have such powers that allow us to usurp power in the field. The question is how? The Ukrainian prefect, unlike the French prefect, will have no authority to administer state executive bodies on the ground and to dispose of local budgets. Its main purpose will be to control the legality of local government activities and to coordinate the activities of public authorities in the regions.

If you compare the heads of regional and district state administrations with prefects, it can be argued that the more transparent and effective will be the institute of prefects. First, the prefect is a civil servant and does not belong to political office. This will ensure the neutrality and sustainability of the state in resolving local disputes of citizens, thereby contributing to confidence building. Second, the prefect, unlike the chairman of the regional and district state administrations, rotates every 3 years and does not change with the expiration of the term of office of the president. Thirdly, it oversees the constitutionality of decisions of local governments by going to court. Only the court can revoke or enforce these decisions.

Conclusions

In carrying out the research, we outlined the main tasks on the way to the introduction of the prefect institute in Ukraine and developed our administrative and legal mechanism for carrying out this reform. The first step to decentralization of power is the adoption of amendments to the Constitution of Ukraine. They will become the constitutional basis for all subsequent actions. It is with the introduction of amendments to the Constitution that the process of development of relevant normative-legal

acts on the formation of executive bodies of regional and district councils and introduction of the institute of prefect will begin.

The second step should be the adoption of a special law "On Prefects" by the Verkhovna Rada of Ukraine, which will allow to control operatively the lawfulness of decision-making by local self-government bodies, to strengthen coordination of the implementation of state programs, to ensure prompt elimination of emergency situations. In order to perform these functions as effectively as possible, the prefect should be vested with the following powers:

control of legality (the prefect promptly checks all acts of local authorities, for compliance with Ukrainian law, if a violation is found, he / she suspends the acts and sends a lawsuit to the court or to the central executive authorities);

coordination of state programs at the level of the relevant territorial community (the prefect coordinates the actions of the executive authorities, monitors the implementation and appoints the head of inter-branch programs);

emergency powers (in the event of an emergency, the prefect has additional obligations, namely he / she becomes responsible for overcoming the effects of the disaster, and in the event of a military situation for the safety of civilians).

In fact, the prefect's institute will serve as an observer, and it is better to call it the supervisor about the activities of the territorial community and become a state guard in case of violation of the law. The third, most important step is the elimination of regional and district state administrations that reduce community involvement in government, and the creation of an effective executive body that will be controlled by the territorial community through elected councils of the appropriate level. At this stage, all functions of managing the territorial community and its development are transferred to the executive bodies of the district (oblast) councils individually. Accordingly, it is necessary to develop and amend the Law of Ukraine "On Local Self-Government Bodies" regarding the definition of the legal status of these executive bodies. To develop their structure, it is needed to clearly define: functions, powers, rights and procedures of interaction with the relevant Councils, the Prefect's Office and the central executive authorities. Particular attention should be paid to controlling the territorial community over the work of these executive bodies.

Summarizing the above, we can conclude that the citizens of modern Ukraine need to replace the inefficient Soviet mechanisms of centralized state governance with new ones – in which the citizen of Ukraine and its needs will play a major role. In our opinion, it is the French model of state governance that is the most effective, and the prefect institute as a

mechanism for governing the state needs Ukraine. Its introduction will have a positive impact on the development of the country, as evidenced by the European experience. The prefects will become representatives of the state, which will interfere with the activities of the territorial community only in case of a clear violation of the norms of the Ukrainian legislation.

They will become the "eye" of the central state power in the region and will be able to ensure the interaction of local self-government bodies and the center, thus contributing to the effective fulfillment of the tasks and functions of the state. Thanks only to the oversight function, and not entrusted with the formation and implementation of the state budget, they will monitor the possible theft of state and local budgets in the region and will become a barrier to minimize the risks of misuse. The rotation provided by law will ensure the transparency of the prefect institute, reduce the number of "corruption schemes" in the state. The state in the form of prefects will have an effective mechanism for preserving the unitarity, ensuring the territorial integrity and independence of Ukraine, its sovereignty, protection of the rights and freedom of citizens.

Therefore, many things need to be changed in order to implement the reforms, and this depends not only on the authorities, but also directly on us citizens of Ukraine. As the experience of developed countries shows, to carry out such reforms is possible, but it takes time for dreams to become a reality.

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Application of The Rules on The Exemption from Criminal Liability with The Imposition of a Court Fine: Problems, Features and Experience

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Abstract

This article examines the legal framework and practical aspects of using the criminal liability exemption with the imposition of a judicial fine. The development of Russian criminal and penal legislation, considering the humanization of the State's criminal policy, leads to the emergence of new mechanisms for the humanization of criminal punishment and criminal responsibility itself. Many of them are of great scientific interest, such as the exemption from criminal liability with the imposition of a judicial fine. The authors examine the legal framework, the procedural order to apply this mechanism, the problems that arise in the courts that apply it in practice, the opinions of legal experts on its essence and the problems that arise in relation to its application. Methodologically, it is a documentary investigation close to legal hermeneutics. By way of conclusion, the results contain various provisions that clarify the place of this legal and procedural mechanism for exemption from criminal liability, among other mechanisms used for the same purpose. The authors make several notable proposals to improve the regulatory framework of the mechanism under study, which eliminates several identified problems associated with its use.

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Aplicación de las Reglas sobre la exención de responsabilidad penal con la imposición de una multa judicial: problemas, características y experiencia

Resumen

Este artículo examina el marco legal y los aspectos prácticos del uso de la exención de responsabilidad penal con la imposición de una multa judicial. El desarrollo de la legislación penal y penal rusa, considerando la humanización de la política criminal del Estado, lleva a la aparición de nuevos mecanismos para la humanización del castigo penal y la responsabilidad penal propiamente dicha. Muchos de ellos son de gran interés científico, como la exención de responsabilidad penal con la imposición de una multa judicial. Los autores examinan el marco legal, el orden procesal para aplicar este mecanismo, los problemas que surgen en los tribunales que lo aplican en la práctica, las opiniones de los expertos legales sobre su esencia y los problemas que surgen en relación con su aplicación. En lo metodológico se trata de una investigación documental cercana a la hermenéutica jurídica. A modo de conclusión los resultados contienen varias disposiciones que aclaran el lugar de este mecanismo legal y procesal de exención de responsabilidad penal, entre otros mecanismos utilizados para el mismo propósito. Los autores hacen varias propuestas notables para mejorar el marco regulatorio del mecanismo en estudio, que eliminan varios problemas identificados asociados con su uso.

Palabras clave: aplicación de la ley penal; decisión judicial; exención de responsabilidad penal; discreción judicial; multa judicial.

Introduction

Federal Law of July 3, 2016, No. 323-FL supplemented the Criminal Code of the Russian Federation (2016) with another portion of stories testifying to the state's steady adherence to the policy of humanization and liberalization of the criminal legislation of the Russian Federation. The updating of criminal and criminally-remedial legislation arose scientific and practical interest among legal scientists and practitioners. Scientific works appeared that made a certain contribution to the development of the science of criminal law and law enforcement practice.

Consolidation in Art. 76.2 of the Criminal Code of the new type of exemption from criminal liability with the imposition of a court fine and a new measure of criminal law, which found its place among other measures of criminal law in Chapter 15.2 "Court fine" of Section 6 of the Criminal Code of the Russian Federation, expanded the list of types of exemption from criminal liability.

The Legislative Code of Criminal Procedure did not remain without the attention of the legislator. Innovations touched upon the regulation of the issues of terminating a criminal case and criminal prosecution, as well as proceedings on the appointment of a criminal law measure for exemption from criminal liability. The Russian legislator is taking measures, including by introducing new measures of a criminal-legal nature and expanding the list of grounds for exemption from criminal liability, to achieve "positive dynamics in the social structure of society by reducing the number of persons with a criminal record" (Legislative draft No. 953369-6, 2015). The new type of exemption from criminal liability, like other types, is aimed at a stimulating effect due to the positive post-criminal behavior of the person who committed the crime and involving the facilitation of solving the tasks of the criminal law.

Thus, the introduction of rules on a court fine and exemption from criminal liability with its purpose is aimed at liberalizing the criminal law, as well as encouraging positive post-criminal behavior of the person guilty of committing a crime. The latter may indicate the loss or reduction of the degree of social danger of the guilty person and the inexpediency of applying criminal responsibility to this person if the achievement of the goals of criminal punishment becomes possible without its appointment.

According to the data provided by the Judicial Department under the Supreme Court of the Russian Federation, only in 2017, court fines were imposed on 20,639 people, in 2018 – 33,329, and in the first half of 2019 – 22,316 (The data of judicial statistics, n.d.). Thus, the courts began to actively apply the rules on the imposition of a court fine and exemption from criminal liability. An increasing number of cases of application of this mechanism of exemption from criminal liability and some problems arising in connection with its application and requiring immediate resolution by improving existing legislation actualize the topic of this study.

1. Results

Exemption from criminal liability with the imposition of a court fine refers to the types of exemption on non-rehabilitating grounds provided for in Chapter 11 of the Criminal Code. The norm is characterized by

dispositivity. A court fine in the science of criminal law is ambiguously assessed as a different measure of criminal law, as well as a new type of exemption from criminal liability that has received legislative approval. Similarly, in the law enforcement sphere, many problems create a wide field for discussion regarding legislative innovations under consideration.

A court fine is neither a criminal penalty nor a measure of criminal responsibility. In the first case, the main distinguishing features are the legal limit and the absence of a criminal record. In the second case, it is assigned after the person is released from the application of criminal liability measures.

Thus, I.E. Zvecharovsky, examining the legal nature of the court fine and its relationship with the institution of exemption from criminal liability, expresses with bewilderment: "it is not clear why it is applied" (Zvecharovsky, 2016). A.G. Antonov, developing the idea that a court fine is not a punishment and differs from punishment by the absence of a criminal record, argues that there is a new legal phenomenon as punishment without a criminal record. The scholar proposes to introduce such a concept as "punishment without a criminal record" into the criminal law and extend it to cases of sentencing that are not associated with isolation from society without a criminal record (Antonov, 2018). It is hardly possible to call this idea expedient. Moreover, it seems to us unpromising and unreasonable.

Considering the legal nature of the court fine as another measure of a criminal law nature, one should agree with N.S. Lutsenko that a court fine differs from other measures of a criminal-legal nature in a non-coercive manner. Indeed, the appointment of a fine requires the consent of the person who committed the crime. As the indicated author correctly states, they "consciously choose to undergo a criminal-law measure in the form of a fine, agreeing to voluntarily pay a certain amount of money to the state budget" (Lutsenko, 2019). However, only criminal punishment, according to part 1 of Art. 43 of the Criminal Code, is a measure of state coercion. Thus, as we believe, the place of a court fine in the system of other measures of a criminal nature should not be questioned due to its non-coercive nature.

In part 1 of Art. 104.4 of the Criminal Code of the Russian Federation, the legislator enshrines the concept of a court fine as a pecuniary punishment imposed by the court upon the exemption from criminal liability in the cases provided for by Art. 76.2 of the Criminal Code and, offering a differentiated approach to determining the maximum size of a fine, makes it dependent on the presence or absence of a fine in the corresponding article of the Special Part of the Criminal Code of the Russian Federation. The presence of a fine in the sanction of the article limits the upper limit of the size of the court fine to half the maximum size of the fine. In the absence, one should be guided by the maximum size established by the legislator – no more than 250,000 rubles.

When determining the amount of a court fine, the court must take into account:

- the severity of the crime committed;

- the property status of the person being released from criminal liability;

- the property status of their family;

- the possibility of receiving by the specified person of salary or other income.

There is no legal lower limit on the amount of a court fine. In most cases, courts do not go beyond 5,000 rubles, focusing on the minimum limit provided for punishment in the form of a fine (Art. 46 of the Criminal Code) (Legislative draft No. 953369-6, 2015).

Our study of the practice of court fine application, as well as data provided by individual researchers (Legislative draft No. 953369-6, 2015; Anashenkova, 2017), show that the average size of a court fine varies from 5,000 to 120,000 rubles, including a little more than 50% – in the range of 10,000 to 50,000 rubles. There are some examples of cancellation of court decisions on the imposition of a court fine in the amount not exceeding 5,000 rubles (Resolution of the Avtozavodsky District Court of Tolyatti in case no 10-103/2016, 2016).

Meanwhile, the criminal law does not provide for any requirements that limit the minimum amount of a court fine. However, the appointment of a court fine in the amount not exceeding 5,000 rubles is not a frequent occurrence, which is supported by the theory of criminal law. Researchers suggest that "with a different approach when the court chooses the size of the court fine less than the specified lower limit, the very idea of criminal liability for acts dangerous to the individual, society, or the state will be devalued, assuming the establishment of measures of a criminal legal nature commensurate with this danger" (Legislative draft No. 953369-6, 2015; Soktoev, 2017).

Agreeing with this position, which fully meets to the principle of justice, stipulated in Art. 6 of the Criminal Code of the Russian Federation, it is believed that the minimum amount of a court fine should be legislatively fixed and its calculation of 5,000 rubles is optimal and appropriate. Such a legislative solution would lead to uniform practice and remove the debate over whether it is appropriate to extend the minimum fine to a court fine. The second is not in doubt because of the fundamental contradiction to the requirements of the inadmissibility of applying criminal law by analogy.

In the theory of criminal law, the problem of the lack of uniform practice in determining the amount of a court fine for the commission of several crimes of small or medium gravity by a person for the first time is discussed.

The legislator does not establish the procedure for imposing a court fine against such persons. There are no instructions on determining the final amount in such a situation. However, according to the position of the highest court, set out in paragraph 16.1 of the Resolution of the Plenum of the Russian Federation Armed Forces of June 27, 2013 No. 19, the commission by a person for the first time of several crimes of small or medium gravity is not an obstacle to their release from criminal liability with the imposition of a court fine (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19, 2013).

Analysis of judicial practice shows that courts use three options for determining the amount of a court fine. Some determine it based on the sanction of the article with the strictest liability (Review of judicial practice of exemption from criminal liability with the appointment of a court fine, 2019), others – assign the total amount of the fine for all crimes or assign a court fine for each crime without further addition or absorption of the number of fines, which in principle is not provided for by law.

The legislator also regulates cases of non-payment of a court fine within the term established by the court, in particular, the court fine is canceled and the person is brought to criminal responsibility under the relevant article of the Special Part of the Criminal Code (part 2 of Art. 104.4 of the Criminal Code).

Rules of Art. 46 of the Criminal Code of the Russian Federation do not apply (The Resolution of Plenum of the Supreme Court No. 58, 2015) to the appointment of a court fine, nor do the norms of the criminal-executive legislation regulating the procedure and conditions for the execution of the fine in the form of a penalty, provided for in the article. Art. 31 and 32 of the Criminal Executive Code of the Russian Federation (Criminal Executive Code of the Russian Federation № 1-FL, 1997), since the court fine imposed is based on Art. 76.2 of the Criminal Code, are a different measure of a criminal legal nature and not a criminal punishment.

Turning to the content of the norms of Art. 76.2 of the Criminal Code, note that the legislature sends to judicial discretion the imposition of a fine and release the person from criminal liability provided that the person first committed the crime of minor or medium gravity to repair the damage or otherwise make amends for crime harm.

Paragraph 2 of the Resolution of the Plenum of the Armed Forces of the Russian Federation dated June 27, 2013 No. 19 clarified that the category of first-time offender includes a person who had previously been exempted from criminal liability (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19, 2013). Several scholars have objected to this approach. Thus, according to E.A. Belousova and R.G. Stepanov, if for a previously committed crime the statute of limitations for criminal

liability has not expired, then "a procedural decision taken in the past must be checked from the point of view of legality and validity. In case of its cancellation (in the absence of rehabilitating grounds, entailing a repeated termination of the criminal case or criminal prosecution), the person can no longer be considered a first-time offender" (Belousova, Stepanov, 2017; Belousova, 2004). The opinion of these authors, of course, deserves attention, but it is unlikely that it is correct to question the decision taken earlier by the competent persons to release one from criminal responsibility.

Exemption from criminal liability with the appointment of a court fine may be applied in cases when, as a result of a crime, the loss (damage) caused (The definition of the Constitutional Court of the Russian Federation No. 2257-O, 2017), respectively, by the current judicial practice was expected: the rule applies when failure of any one of the alternative conditions set out in Art. 76.2 of the Criminal Code. Thus, the criminal proceeding in respect of Ch., who committed a crime, under part 4 of Art. 337 of the Criminal Code of the Russian Federation, substantiates its decision by the fact that this norm is to be applied "also in cases where the disposition of the corresponding article of the Special Part of the Criminal Code of the Russian Federation does not provide for damage or other harm as a mandatory sign of corpus delicti or when damage (harm) is not actually caused" (The Resolution of the Makhachkala Garrison Military Court in case No. 1-53, 2017).

In the criminal case against R., who committed a crime, under part 2 of Art. 307 of the Criminal Code, application of Art. 76.2 of the Criminal Code was justified as follows: "the defendant, without a criminal record, is for the first time accused of committing a crime belonging to the category of moderate gravity, the absence of any harm from the unlawful actions of the defendant, subject to elimination or compensation" (The appellate ruling of the Kemerovo Regional Court in case No. 22-550/2017, 2017).

No less controversial are court decisions on the exemption from criminal liability with the imposition of a fine in the absence of the victim. T., accused of committing a crime under part 1 of Art. 228 of the Criminal Code, admitted guilt, repented of what he had done, wrote a confession, actively contributed to the disclosure of the crime, and apologized to the society. According to the court, T. "thereby made amends for the harm caused" (Resolution of the Oktyabrsky District Court of Tambov on the case no. 1-320/2017, 2017). However, if in this criminal case, there are signs that can be assessed as compensation for harm, in another case – the opposite is true. Thus, the court in a criminal case against V., accused of committing crimes under part 1 of Article 228 of the Criminal Code, substantiated reparation as follows: V. fully admitted guilt, realized the severity of the offense, sincerely repents, and, in the opinion of the court, thus has made amends for the harm caused by the crime" (Resolution of the Oktyabrsky District Court of the city of Ufa № 1-523/2016, 2016).

It is believed that admission of guilt, recognition of the gravity of the crime, sincere repentance, and other similar actions are not enough to free a person from criminal liability with a fine for the reason that these actions are not aimed at restoring broken public relations.

In fairness, court decisions that do not recognize that cooperation with the investigation, repentance, confession, and apology can testify to compensating for harm exist, but are extremely rare (The appellate ruling of the Northern Fleet Military Court in the case No. 22-47/2017, 2017). The absolute majority are decisions to terminate the criminal case and release the person who committed the crime from criminal liability, which ignores the conditions established by Art. 76.2 of the Criminal Code of the Russian Federation (Resolution of the Oktyabrsky District Court of the city of Ufa № 1-523/2016, 2016; The appellate ruling of the Shebekinsky district Court of the Belgorod region in case no 10-5/2017, 2017; Resolution of the Chernyshkovsky District Court of the Volgograd region in case no 1-50/2016, 2016).

The reason for the prevailing negative practice lies, inter alia, in the provisions of paragraph 2.1 of the Resolution of the Plenum of the Armed Forces of June 27, 2013 No. 19, which explains what should be understood as compensating for harm in the article under consideration. In particular, reparation involves not only the property, including cash, compensation for moral damages, or provision of any assistance to the victim, but "bringing them an apology and the adoption of other measures aimed at restoring disturbed as a result of crime the victim's rights, legal interests of individuals, society, and the state", that does not imply the material and (or) physical costs to the perpetrators of the crime. For example, the court found the conditions of Art. 76.2 of the Criminal Code fulfilled and released T. from criminal liability for committing a crime under part 1 of Art. 166 of the Criminal Code. As indicated in the decision to terminate the criminal case, T. offered the victim an apology, which he accepted (Resolution of the Uchalinsky District Court of the Republic of Bashkortostan on case No 1-235/2016, 2016).

The list of ways to compensate for harm is left open and, as a result, there is a problem regarding the criteria for evaluating particular methods as acceptable. The lack of such criteria makes it possible to expand the limits of judicial discretion in deciding whether to release from criminal liability with the imposition of a court fine.

Summing up, when applying Art. 76.2 of the Criminal Code of the Russian Federation, there is a trend that manifests itself in the release from criminal liability in the absence of a personal contribution of the guilty to their release, which should be expressed in material and physical costs aimed at reducing or eliminating the socially dangerous consequences of the crime. This tendency makes the preventive impact on the perpetrator

ineffective and does not contribute to the task of preventing crimes.

According to paragraph 3 of the Decree of the Plenum of the Armed Forces of June 27, 2013 No. 19, damages and (or) reparation (Articles 75-76.2 of the Criminal Code of the Russian Federation) can be made not only by the person who committed the crime but also at their request (with their consent) by others persons. This clarification is an occasion for the law enforcer not to consider mandatory such an imperative condition as positive post-criminal behavior of the person who committed the crime. In this regard, it seems appropriate to make adjustments to paragraph 3 of the Decree indicating exceptional circumstances, in the presence of which it will be possible to compensate for the damage and (or) make amends to other persons. Exceptional circumstances may be the lack of a source of income, a low level of material well-being of a family, a low level of family income in the presence of young children, etc.

The legislator in part 2 of Art. 104.4 of the Criminal Code of the Russian Federation did not determine a specific deadline for the payment of a court fine, having provided a decision on this matter to the court. An analysis of Russian judicial practice shows that there are more often periods from 1 to 6 months, although there is a practice of setting deadlines of 12 (Resolution of the Sibay City Court of the Republic of Bashkortostan No. 1-153/2017 in case No. 1-153, 2017) or even 18 months (Appellate ruling of the Moscow Regional Court (case no. 22-7391, 2016; Resolution of the Oktyabrsky District Court of Tambov in case no 1-444/16, 2016). The court must take into account such circumstances as "the possibility of a person receiving a salary or other income, the presence of dependent minors or elderly persons, and other circumstances" (Shalumov, 2017).

To form a uniform judicial practice, it is necessary to establish a legislative framework for the period under consideration. We consider it possible to set the term for payment of the court fine in 60 days with the provision of installments of up to 1 year. An installment period of one year should be established, on the one hand, to avoid competition between norms on the expiration of the statute of limitations and the imposition of a fine and, on the other hand, long terms for installment payment of a fine can lead to the minimization of social expediency and effectiveness of preventive impact.

It seems appropriate to supplement Art. 104.4 of the Criminal Code with part 1.1 of the following content: "A person who is assigned a court fine in accordance with Art. 76.2 of the Criminal Code must pay the fine within 60 days from the date of the court fine. The court has the right, considering the possibility of receiving a person's salary or other income, the presence of dependent minors or elderly persons, and other circumstances, to impose a court fine with installment payments in certain parts for a period of up to one year".

Conclusion

Discussions on many other issues of exemption from criminal liability with the imposition of a court fine continue to take place. The interests of legal scientists focused on questions about the essence and legal nature of the court fine, grounds for application, determining the minimum allowable extent of indemnification, exemption from criminal responsibility in accordance with Art. 76.2 of the Criminal Code in situations where the court in accordance with part 6 of Art. 15 of the Criminal Code changes the category of crimes, proceedings concerning the appointment of a judicial penalty upon the release of persons from criminal liability, etc. This leads to the conclusion that the legislation on court fine and exemption from criminal responsibility gave rise to several serious issues concerning the practical implementation of the legislative amendments, requiring scientific comprehension to develop ways of improving the legislation and practice of its application.

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The Adversarial Approach in the Pre-trial Phase of Prosecution

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Abstract

The confrontational or adversarial approach is one of the main factors that forms the basis of the criminal justice system. However, its application in the pre-trial phase is limited. Therefore, this document aims to demonstrate the importance of analyzing theoretical and practical problems. The choice of documentary and casuistic methodology allowed the following conclusions to be reached: Currently, the Russian police are undergoing changes that aim to humanize the criminal process, to solve fundamental challenges in the protection of the rights, liberty and interests of a person in the pre-trial investigation that will guarantee the confrontation system in criminal proceedings. We conducted a comparative legal investigation and analyzed criminal case files, as well as the results of questionnaire surveys conducted among investigators and attorneys. Overall, the results represent the actual state of cases in the pre-trial phase and help determine areas of development. We propose feasible changes to the criminal procedure legislation of the Russian Federation that will eliminate the disparity between some of its regulations and the requirements of the confrontation system in general.

Keywords: confrontational approach; pre-criminal proceedings; confrontational principle; criminal investigation, criminal lawyer in Russia.

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El enfoque adversarial en la fase previa al juicio

Resumen

El enfoque de confrontación o adversarial es uno de los principales factores que forman la base del sistema de justicia penal. Sin embargo, su aplicación en la fase previa al juicio es limitada. Por lo tanto, este documento tiene como objetivo demostrar la importancia de analizar los problemas teóricos y prácticos. La elección de la metodología documental y casuística permitió arribar a las siguientes conclusiones: actualmente, la policía rusa está experimentando cambios que tienen como objetivo humanizar el proceso penal, para resolver desafíos fundamentales en la protección de los derechos, la libertad y los intereses de una persona en la investigación previa al juicio que garantizará el sistema de confrontación en los procesos penales. Realizamos una investigación legal comparativa y analizamos los archivos de casos penales, así como los resultados de encuestas de cuestionarios realizadas entre investigadores y abogados. En general, los resultados representan el estado real de los casos en la fase previa al juicio y ayudan a determinar las áreas de desarrollo. Proponemos cambios factibles a la legislación de procedimiento penal de la Federación de Rusia que eliminará la disparidad entre algunas de sus regulaciones y los requisitos del sistema de confrontación en general.

Palabras clave: enfoque de confrontación; procedimientos previos al juicio penal; principio de confrontación; investigación penal, abogado penalista en Rusia.

Introduction

If the law stipulates the adversarial principle in its regulations, it demonstrates the level of democracy in the State, humanization and justice of criminal law, protection of rights, freedom, and legal interests of persons, and equal and effective defense by law and courts (Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990).

The adversarial system as a general independent principle is specified in art. 123, para. 3 of the Constitution of the Russian Federation. Also, this principle is enshrined in art. 6 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950) since the adversarial principle ensures legal justice. Notably, the analysis of the European Court of Human Rights practices revealed that the adversarial approach lies in providing the defense and prosecution with equal opportunities to study the evidence of the other

party and state their opinion on it. Consequently, it ensures the equality of the parties in criminal proceedings.

1. Materials and Methods

The empirical basis consists of the results of 211 criminal cases tried in different regions of the Russian Federation; applications and complaints to the Constitutional Court of the Russian Federation and the European Court of Human Rights; questionnaire results among 45 investigators of The Russian Federation Investigative Committee and the Central Investigation Department in Moscow as well as 40 attorneys and 68 members of the teaching group of the Ministry of Internal Affairs of the Russian Federation, Kikotya Moscow University of the Ministry of Internal Affairs, Saint-Petersburg University of the Ministry of Internal Affairs and the People's Police Academy in Vietnam.

To study the data, we employed the analytical method which helped summarize the results of specific legal methods. The legal comparative method helped analyze and detect regulations of the Criminal Procedure Code of the Russian Federation and several international legal acts that stipulate the adversarial system as a basic principle in criminal proceedings. The sociological method in case analysis and surveys among employees helped obtain realistic results of the empirical research as well as analyze, systemize, and summarize it. The formal legal method helped describe the current conditions of implementing the adversarial principle in the pre-trial phase of prosecution in the Russian Federation as well as analyze them and classify the detected problems and propose possible solutions.

2. Results Analysis

It is deemed crucial to implement the adversarial approach to all stages of criminal proceedings. Although its implementation in the pre-trial phase is limited, it is still valuable (Pushkarev et al., 2019a; 2019b). The main reason for that is the limited nature of the defense party's power compared to the powers of prosecution. This represents a declarative nature of the adversarial system established by art. 26 of the Criminal Procedure Code of Vietnam which states that parties have equal rights to present and evaluate evidence. In the Russian Federation, para. 2 of the Decision of the Constitutional Court of the Russian Federation on 29th June 2004 shall be applied. According to this Decision, art. 15, para. 2 of the Criminal Procedure Code of the Russian Federation shall be considered as not contradicting the

Constitution since its regulations require the prosecution to protect the rights and freedom of persons including unreasonable accusation, conviction, and other forms of rights violation (Decision of the Constitutional Court of the Russian Federation No. 13-P, 2004). The aforementioned arguments suppose the confusion in the roles of prosecution and defense. In other words, the prosecution party is under a constitutional obligation to protect the rights and freedom of persons which violates the prohibition stipulated in art. 15, para. 2 of the Criminal Procedure Code of the Russian Federation.

In order to improve the implementation process of the adversarial principle at the pre-trial phase, art. 144, para. 1 of the Criminal Procedure Code was elaborated. In the verification of a crime report in criminal proceedings, it ensures the rights of persons to counsel, to make complaints against the action (or inaction) and decisions of the investigator, inquest body, etc., to not testify against oneself, one's spouse, and other close relatives (determined by art. 5, para. 4 of the Criminal Procedure Code). Also, art. 144, para. 1 of the Criminal Procedure Code stipulates the obligation of public officials to clarify for persons their rights and obligations, to ensure their rights within the criminal proceeding frame (Ivanov, 2011). Thus, there seems to be a trend in expanding of the adversarial system in the pre-trial phase.

However, there is no definition of the legal status of the attorney of prosecution who acts as a representative of the injured party, civil party, or private prosecutor (Rezvana, Subbotinoy, 2002). Thus, art. 45 of the Criminal Procedure Code shall be complemented by para. 1.1 which is as follows: "The Attorney – a representative of the injured party, civil party, or private prosecutor – is a person who ensures the protection of the rights and interests of the aforementioned parties and provides them with legal assistance in criminal proceedings under the Code". At the same time, the legal status of the attorney shall be specified as well as the role in the process. In the absence of such norms, it seems impossible to ensure the equal rights of prosecution and defense parties as required by art. 15 of the Criminal Procedure Code. Also, it is necessary to provide the injured party with free legal assistance.

The analysis of the investigative practice has revealed the violations of the adversarial principle in the pre-trial phase: 1) the investigator did not provide the accused G. (an attempted theft) with a defense counsel when it was necessary since the said G. had been registered with the psycho-neurological hospital; 2) the investigator did not explain the defense rights to the accused P. (robbery), then the investigator appointed an attorney without the consent of the accused which violates art. 50, para. 1 of the Criminal Procedure Code; 3) the investigator did not comply with art. 122 of the Criminal Procedure Code and did not review the application by the accused O.

Due to such violations, human rights activists can claim that there is an absence of actually implemented adversarial system. They try to raise the awareness of the limits in the implementation of the right to defense in criminal proceedings since, as they claim, the arguments of the defense and attorneys' applications are often ignored, attorneys are often not allowed to participate in the criminal process, and the prosecution and defense are not equal (The Report of the Human Rights Ombudsman in the Russian Federation, 2015).

In the pre-trial phase, the rights of prosecution are also violated: 1) the investigator indicted L., K., M, and G. for art. 30, para. 3, art. 159, para. 4 of the Criminal Procedure Code but did not recognize as victims and did not interrogate those people who were mentioned in the narrative part of the charge forms; 2) the investigator interrogated the underage victim Z., witnesses P. and J. without their legal representatives and teachers; 3) breaking art. 42, para. 2, part 11, the investigator did not inform victim D. about the decision to arrange the examination; 4) the investigator did not comply with art. 215, para. 2 and did not notify the victim about the end of investigation; 5) after the victim reviewed the case files and submitted a relevant application, the investigator issued an order granting the request on adding accounting documents that represent the value of stolen goods to the case files. However, those files were not reviewed and were not recognized as physical evidence, thus, they were not added to the case files. Consequently, the parties did not review the additional materials.

Such actions violate art. 24, para. 2 of the Constitution of the Russian Federation which ensures the right of persons to review the documents and materials that affect their rights and freedom. Also, such actions violate art. 15 of the Criminal Procedure Code that stipulates the adversarial principle and prescribes conditions important for parties to perform their responsibilities and exercise their rights. Thus, the failure to present the case files for parties to review them equals violation of the principles of criminal procedure.

Thus, it seems necessary to amend art. 222, para. 2 of the Criminal Procedure Code as follows: "2. The prosecutor gives a copy of the indictment and additional materials to the accused and the victim. Also, the copy is given to the defender if applied".

The analysis of the law requirements to the structure of the indictment allows stating that, according to art. 220, para. 1, part 6, the investigator shall include the list and content of the evidence. However, the investigator is free to choose the order, the style, and interpretation of the evidence on the defense party including the possibility to provide value judgments (Grinenko, 2002; 2020). We suggest limiting the indictment to the evidence on the prosecution party and giving a right to filing an application to the defender "The application for the inclusion of the evidence invoked by the

defense in the indictment". The majority of investigators give a positive assessment of the opportunity to include in the indictment the evidence invoked by the accused, and in the version of the document that the defender provides after reviewing the case files. Not only do the aforementioned arguments highlight the importance of this issue but they also suggest areas for further development of the adversarial principle in the pre-trial phase of prosecution.

Conclusion

This study reveals that in Russian law enforcement the implementation of the adversarial system is broader than using it for ensuring the equal rights of both parties in criminal procedure. It can be seen that there are attempts to apply the adversarial principle in the pre-trial phase of prosecution. The positive experience in Russia should be taken into consideration in Vietnam. The results of the research help deduce the regulations of the criminal procedure law that can be included in the current Criminal Procedure Code of the Russian Federation and the Socialist Republic of Vietnam to ensure the further development of the adversarial principle in the pre-trial phase of criminal procedure.

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Investigating the Realism or Idealism of Iran's Legislative Criminal Policy

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Abstract

This document addresses problems and questions that arise about realism or idealism in the context of the criminal policy of the double legislature in Iran, with the aim of revealing the available skills and capacities of the laws that govern the matter. Has the Iranian lawmaker followed an idealistic criminal policy? Is realism what is necessary for a dimensional criminal policy in Iran's criminal laws? What is the solution to the transition from religious idealism to a realist perspective preserving the status quo? What is certain is that, when examining existing criminal law, criminal policy based on religious idealism and dimensional realism can be seen in terms of criminological data; from the oldest data in criminal law to the latest criminal paradigms. Methodologically, documentary research technique and legal hermeneutics were used. It is concluded that traditional theologically based laws and sharia-based oversight bodies need a new dynamism and a new ijtihad. In this study, the dimensions of the subject and the form of transcendence from idealism to realism are given while preserving religious values.

Keywords: Idealism and realism; restricted criminal policy; controversial criminal policy; Dynamic fiqh; Shiite theology.

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Investigando el realismo o idealismo de la política penal legislativa de Irán

Resumen

En el presente documento se abordan problemas y preguntas que surgen sobre el realismo o el idealismo en el contexto de la política penal de la doble legislatura en Irán, con el objetivo de revelar las habilidades y capacidades disponibles de las leyes que rigen la materia. ¿Ha seguido el legislador iraní una política criminal idealista? ¿Es el realismo lo que es necesario para una política criminal dimensional en las leyes penales de Irán? ¿Cuál es la solución a la transición del idealismo religioso a una perspectiva de realismo preservando el statu quo? Lo que es seguro es que, al examinar el derecho penal existente, la política criminal basada en el idealismo religioso y el realismo dimensional se puede ver en términos de datos criminológicos; desde los datos más antiguos del derecho penal hasta los últimos paradigmas criminales. En lo metodológico se empleó la técnica de investigación documental y la hermenéutica jurídica. Se concluye que, las leyes de base teológica tradicional y los órganos de supervisión basados en la *sharía* necesitan un nuevo dinamismo y una nueva *ijtihad*. En este estudio, las dimensiones del sujeto y la forma de trascendencia del idealismo al realismo se dan preservando los valores religiosos.

Palabras clave: Idealismo y realismo; política criminal restringida; política criminal controvertida; Fiqh dinámico; teología chiíta.

Introduction

If we take into account the reality of the criminal phenomenon, the phenomenon is essentially attributable to human behavior (human reality) and against society (social reality) is. It is a social reality, so it disrupts the social order and is a danger to that order. At every level, it disrupts the security and tranquility of the community and imposes costs on taxpayers to maintain order. But while crime is a social reality, it is also a human reality. In a realistic view, the perpetrator's consideration of the crime is not due to the degree of criminal responsibility, but especially to the determination of the factors that led the perpetrator to commit the crime, and possibly «In the future, it will provoke him to repeat the criminal behavior, it is worth considering.

From a realistic point of view, this issue is not only considered in terms of external appearance and the disturbances it has created in public order,

but also in terms of the causes that are the source of this phenomenon. Therefore, recognizing the causes of crime requires that this time the criminal phenomenon be looked at from a scientific perspective, and since the source of this behavior is man, it is in his existence that the root causes of these real factors must be sought and discovered (Ardabili, 2013). In a realistic view, the causes of the criminal phenomenon in personality dimensions and the factors affecting it are examined in biogenic, psychogenic and sociogenic branches.

The opposite of realism is idealism, which the legislature of the Islamic Republic of Iran, in terms of the obligation to abide by the above laws and the regulatory bodies, has considerably formulated and approved idealistic materials with a religious ideological sub-branch. Idealism, which is rooted in a criminal policy in the narrow sense, is in fact a single legal view of the criminal phenomenon that forms part of the ideal society in the criminal law of our country. The ideal society is a society in which human perfection or the attainment of happiness is achieved in the most perfect way. In religious idealism, the universe, including human society, is made by God, and the fixed principles established by the Holy Shari'a guarantee the happiness and well-being of humanity. Such principles give rise to a moral order that must govern all human societies and create a law of supremacy that all social arrangements, including human rights issues, seek to approach. (Chinhangaru, 2015)

In this study, we intend to examine the existing criminal policy in terms of idealism or realism by examining the existing law. The realism or idealism of the legislature's criminal policy in sub-branches such as Hudood, Qisas, Diyat, Shari'a prescribed punishments and other punishments are issues that can be explored in the plant of idealism or realism in criminal policy to be understood with precision. From the strengths and weaknesses of ways to move from a narrow definition of criminal policy to an up-to-date and comprehensive definition in terms of criminological, sociological and psychological dimensions, let's start with the help of dynamic thinking.

In terms of research background, there are no books or articles that deal directly with the research topic. Articles such as Mohsen Borhani and Bashari Mohammadi's Criminal Perfectionism published in the Journal of Criminal Law Studies; Saeed Ghomayshi's New Criminal Law Foundations in the Islamic Law Magazine; Legislation in the Islamic Government by Mohammad Mansour Nejad in the Islamic Government Quarterly; Written by Khadijeh Kurdistani and Kamran Oveisi, published at the 3rd International Congress of Religious Culture and Thought, as well as philosophical books such as Philosophy of Law, Fundamentals and Functions by Thomas Morautz, translated by Behrouz Jandaghi; Self-contained and similar as well as books on earth Criminal policy has consistently and keyly included keywords from the present study that bring

our meaningful and purposeful communication following the research method closer to the hypotheses of the research.

1. Definitions and Concepts:

1.1. Idealism: Idealism is a sub-branch of naturalism

Idealism is one of the topics of naturalists. Naturalists argue that rights can best be interpreted in terms of natural moral principles, that is, the inseparable principles of an idealistic society and the moral abilities of individuals. According to naturalism, the ideal legal system is part of the idealist society. The ideal society, in its place, is the society in which human perfection or the ways to achieve happiness have been achieved in the most perfect way. Idealist theories suggest that human nature can be objectively redefined; in this sense, the true picture of happy living conditions for all citizens can be grasped given the facts about cruelty and happiness. Brought, Although the roots of such a theory can be traced back to the works of Plato and Aquinas, the theory in question is in fact a kind of approach to the Enlightenment. Naturalism, therefore, is based on the premise that human nature, which can be discovered through research, is the source of rights, because rights are supposed to be tools for actualizing the hidden powers in human nature. Naturalist theory is the theory that «there is a kind of natural order in which people have a place; a natural order characterized by natural harmony (Morawats, 2012:53).

1.2 Religious idealism

Religious naturalists consider the universe, including human society, to be the product of God's holy nature, which is now under his control. The Holy Shari'a has foreseen the principles of stability, and the happiness, expediency, and survival of human society in the universe depend on the application and adherence to those principles and rules. The principles are presented to mankind through revelation in the scriptures, and these principles are common to all human societies, and are in fact universal. These principles provide a moral framework that should govern all human societies and create a law of superiority that all social arrangements, including human rights issues, seek to approach. Theorists of this world, and in particular of human society, consider it to have a final purpose. Law, as a means of promoting good progress and goodness, is an undeniable social necessity.

Without it, people in society, although naturally well-intentioned, are prone to decay in terms of living conditions in a harsh and unfriendly environment and will not be able to achieve the desired goal and destination or even purposeful activity to achieve it. It was. According to these theorists, religious idealism tends to evaluate people's moral attitudes in society. Hence, they interpret what is perfection and moral principles as what should be. Based on this, they decide how the desired result can be achieved through the rules. Theorists in this view are trying to extract a "must" from a "being" and discover that the "is" is the existing attitudes of real morality, and the "must" is what should be desirable and therefore as a result. Properly regulates social arrangements (Chinhangaru, 2015).

Religious idealism in a criminal policy in the narrow sense with a single legal view can be seen in a large part of our criminal laws, laws that sometimes offer fixed and irreversible solutions based on expediency and sometimes to ensure the continuation of human life. They give.

1.3. Realism

Legal realism, revolutionary thought among practitioners of « Hyatn « the history of law schools early in 1890 America had. It was closer to the spirit of affirmation than natural law, but the New Realism movement, which peaked in the 1920s and 1930s, took a view that was not worthy of any of these two traditions. It should be noted that not all realists have a single point of view, nor is there a conscious effort to articulate the concept of law with precise interpretations (Tebit, 2007).

It goes without saying that this is what we are looking for here. We are not merely a philosophical explanation of the realism of criminal law, but of examining a realistic view of the criminal phenomenon, the foundations of which are sought in criminological, psychological, and sociological data; in fact, a realistic view of the factors influencing it. In the formation of a criminal phenomenon and the adoption of a criminal policy based on the fact that it has been used effectively, it is possible to control, prevent and deal with this fact. Xiagenic in cultural and economic environments and human reality in biogenic and psychogenic dimensions.

It also looks at how penalties evolve in order to determine whether developments have been in the direction of development and improvement; and finally, the effects and consequences of each type of punishment in society are examined and critiqued (Abdolrahmani and Habibzadeh, 2018). In a realistic criminal policy, the function of criminalization and punishment is considered according to the surrounding social realities and not with unattainable and dysfunctional idealisms.

In the biogenic dimension, the realistic view of genetic aspects, the effects of biochemicals, hormones, as well as gender and heredity on the occurrence of crime in dimensional criminal policy is the place of study and reflection. In this dimension, the biological aspects of crime are examined (Suri, 2016). But the psychology of crime and other law is then a realistic criminal policy that the application of the ideas of its scholars in the interdisciplinary study leads the legislation towards the realities governing the criminal phenomenon; psychology Crime refers to the application of psychology to the study of criminal behavior. Its main areas are explaining and understanding criminal behavior, direct research on the prison population of criminals, suspended sentences, juvenile delinquency, and related sessions.

This research can be done in the form of longitudinal studies on the evolution of delinquency and related social problems, or in the form of a study of other antisocial actions, such as bullying at school. This area, as expected, is not limited to one branch, it focuses on a variety of criminal behaviors and places particular emphasis on violent, sexual, and drug abuse. Also, some of this work involves the study of the relationship between crime and mental disorders, which is linked to psychiatry and is sometimes called clinical criminology. The psychology of law deals with psychological factors that are widely used in law. In fact, in terms of psychological data in today's field of legislation, we are confronted with realistic criminal policies to have laws influenced by the principle of individualization of punishments (McGrayer, 2011).

1.4 Criminal policy: Legislative criminal policy

As we have seen in the philosophical - research dimension, realism, with a realistic view of the criminal phenomenon, contains a holistic and search-oriented view of the roots of this unbelievable phenomenon, and the idealistic view has a single legal view of the issue. Important and solely based on concepts such as justice and moral tone is based.

Criminal policy itself has internal divisions such as legislative criminal policy, executive criminal policy, judicial criminal policy, police criminal policy, and participatory criminal policy. But what is at stake here is legislative criminal policy (Marty, 2014), which is generally applicable to both narrow and broad concepts of realism and idealism so that we can finally Find the correct analysis of the criminal laws in question based on the findings. Legislative criminal policy should not only be considered the» first layer of criminal policy□, but should in fact be considered the «main center of criminal policy « and determine the type of response to criminal phenomena.

This is because the principles governing criminal law, as well as the principle of legality of crimes and punishments and their inevitable obedience, are indicative of the style of criminal policy designed by law. On this basis, legislative criminal policy is defined as: the legislator's plan and solution to the crime and the response to it, which, of course, attracts attention to the dependence of criminal policy on the ruling political regime in each country, attracts different situations. Legislative criminal policy is the expediency of various legislators and their selection in all kinds of crimes and punishments and in general how to deal with the criminal phenomenon and criminal proceedings (Rahmani, 2015).

2. The result of realism and idealism in criminal policy in a comprehensive and narrow understanding

The enumeration of rational and empirical requirements governing the criminal policy process may be considered one of the most difficult current issues in the realm. Developments in the concept of science and rationality have severely limited the scope of prescriptive and universal prescriptions that can be proposed in this regard. Previously, in the light of the knowledge of scientific knowledge and relying on deep empiricism, problem solving, criminality and its aftermath, criminal response strategies were sought within the framework of mechanical cognition of factors and backgrounds that claimed to be human.

They somehow lead to crime. In the context of the most influential approach branching out from this intellectual current, prescribing the transformation of the foundations of the criminal policy system from a technical context to the boundaries of social work (with extensive preparation to prevent the formation or continuation of criminal personality and reactive measures for rehabilitation and reform of the criminal entities) to bring « as we extend the scope of delinquency through the diversion or segregation and marginalization, have grown . «Employment and the concerns of criminal policy must be generalized to the prevention of criminal dysfunctions, that is, the social factors that lead to the commission of a crime, and even to the limits of social policy" (Laserj, 2003).

At this level, the preparation of response policies based on the knowledge of the set of biological, psychological and social factors underlying the occurrence of criminal behaviors is introduced as the only scientific method of dealing with the criminal phenomenon, so that the strategy Responding to this situation, in line with modern patterns of crime detection, has become one of the manifestations of the emergence of scientific policy": One of the actors involved in the regulation and formation of criminal policy, in fact, experts in science Crime is in its broadest sense.

. Therefore, a reasonable criminal policy must be « of the latest scientific developments and the results of scientific research in the field of crime by experts of the criminology, sociology, criminal, forensic psychology, scientists mass-seeking and .... uses» (Najafi, 1984: 24), in the human performance level of influence within the framework of structural and social infrastructure, psychological and analyzed and the moral responsibility of the offender in relation to the crime is also significantly limited is (Irvanian, 2013). As we will see, some of the current criminal laws of the Islamic Republic of Iran, influenced by the latest paradigms of criminology and criminal law, have found the necessary coordination with criminal policy in its broadest sense, including judicial instruments such as mitigation and punishment. , The Semi-Freedom System, Suspension of Sentencing, Suspension of Execution of Punishment in the Islamic Penal Code and Suspension of Prosecution as a Root Institution in the Theory of Labeling Criminology Showed .

In contrast to the broad definition of criminal policy, there is a narrow view that in our criminal law it can be sought in a jurisprudential approach to criminal law. In this view, relying on the human factor in committing criminal behaviors and analyzing delinquency as a selective situation, the main focus of any criminal response has been drawn in the context of incapacity and criminal punishment. The effects of this policy can be clearly seen from the 16th century onwards and even until the beginning of the present century.

For example, in the age of the emergence of the classical school of criminal law, in view of the consideration of idealistic philosophical and moral justifications for the necessity of punishment and punishment of criminals, the criminal acts committed by those involved in the legal system at that time were answered in the strongest possible way. This can be illustrated in the form of the logic of «the lowest level of tolerance» which is reminiscent of the common justifications of the management model of « zero tolerance « in the field of criminal law (Javanmard, 2014).

That tolerance has a detrimental effect on criminals, and so establishing proper social order and security is the intensity of dealing with most criminal acts. D. However, the mere criminal response to criminal acts and the interference or restriction of civil society intervention in connection with it at all levels, including struggle, containment and prevention, has a historical background and roots that in different historical periods, different aspects and divisions. It has been experienced (Foucault, 1990).

What is certain is that both criminal policy approaches are well visible in Iranian criminal law. At present, the emergence of data on criminology, criminal sociology and criminal psychology in criminal law, and better yet, the generalities of criminal law, more than ever, has injected a scientific criminal policy into our criminal law, while dealing with the rate. Significant

crimes such as hudud, qisas, and shari'ah punishments can be well understood by the legislature's approach to the narrow-minded criminal policy inspired by ideological naturalism.

2.1 Jurisprudential approach in criminal policy

With the beginning of jurisprudence in criminal policy, the tendency to introduce jurisprudential concepts and indicators in criminal law became apparent from the first years after the Islamic Revolution, and jurisprudential issues related to criminal affairs entered criminal law texts with increasing speed. And occupied important parts of criminal law. In this context, several laws were passed that included jurisprudential issues and criminal rulings. Among these laws, the law of retribution, the Twentieth approved in October 1361 and the Islamic Penal August eighteenth year of 1362 can be mentioned.

From the very beginning, the three main chapters of the penal code, namely the issues of Hudud, Qisas and Diyat, were completely dominated by the rules of criminal jurisprudence, as well as the concepts and definitions of jurisprudence with the same details and quality as in the books of jurists. Translated and included in the texts of criminal law. Among these cases, we can mention the legal articles related to the limits and including the limit of Qazf in the Islamic Penal Code approved on August 28, 1991, which with minor changes, are translations of the issues of the book written by Imam Khomeini.

This procedure, which was established in the criminal policy of the Islamic Republic of Iran, was repeated in criminal law, including the Islamic Penal Code adopted on May 1, 2013, and in this law, as in previous laws, the issues of limits, retribution and diyat are absolutely « Religious idealism was based on the rules of jurisprudence□ (Rahmani, 2015). However, some believe that the school of Islamic religious law is not like the school of natural law, which considers the index of laws and legal rules to be only objective facts. And it is not just like the school of rational law that presupposes only the instructions of practical reason as the criterion of rights and regulations.

On the other hand, like the schools of positivist law, it does not consider law and order to have a purely « contractual and credit « theme, but the rules of Islamic law to have a two-way and mixed theme, that is, it has a « credit - real « nature . Yes, it is credible because it belongs to the will and creation of God, and it is realistic because the divine legislative will is in line with his creational desires, and as a result, Islamic regulations are based on the facts, interests, and corruptions of the soul. Has and has. Thus, it

can be said that the rules of our religious law are not merely « discovered reality « and not merely « contractual credit," but are credits based on realism, credits of which the legislator is the Lord of the universe and the wise (Active, 2014).

As mentioned earlier, what is understood from the above statement is criminal idealism, which is attributed to natural rights as an ideological - religious sub-branch. Reality is the need to update jurisprudential data, which in many cases has emerged in the form of ancient intact heritage in our criminal law. The unique feature of Shiite jurisprudence is the possibility of dynamism based on expediency and time and place, which in some cases has positive effects in the form of equality of Muslim and non-Muslim blood money, the need to achieve adult criminal development under eighteen years in the maximum punishment and Retaliation and whispers for the equality of the blood money of men and women, although in terms of quantity, can be seen in a few cases. What is certain realism and impact of scientific data on leading to the discretion of innovative and pursuant to the legislation up to date in some cases been and in this way simply « can not rely on the data in criminal law ancient responsive to shortcomings in society It was today.

3. Observers of the idealism of criminal policy in criminal law

The dignity of legislation in Islamic Iran based on the theory of legislation has been established as a plan for the implementation of strong religious laws. This perception of the dignity of legislation in the Iranian legal system is rooted in the principles of Islam, which is evident in the views of the founder of the Islamic Republic and some jurists of the Constituent Assembly. In the constitution also explicitly « does canonization of God « and « a fundamental role in setting forth the laws revelation « is mentioned (Dabirnia and Naghavi, 2018).

Accordingly, legislation in an Islamic government consists of three stages:

The first stage: the stage of legislating the rules, which, based on the Shiite beliefs about the uniqueness of the legislation to God, is the only competent authority in this period of the divine essence .

Step 2: Identifying the rules by jurists :Although the divine laws are quoted in the book, tradition and hadiths of the infallible Imams, not all people have the ability to use it, because it depends on the ability to specialize in a field, so During the absence of Imam al-Asr, jurists derive laws from sources and make them available to the people . The point to be

studied at this stage is that the jurist has no right to legislate. Rather, his task is to discover the rules on which it was previously written, and this is based on the comprehensiveness of the Shari'a. Therefore, the Shiites believe that Islam has a law on all matters, and that everything includes a specific text or a general text by the holy shari'ah.

The third stage, the planning stage: the laws of the holy shari'a, which are extracted from the sources through the mujtahids, cannot be directly applied in the Islamic society. At this stage, the government needs to develop rules and mechanisms for compliance and coherence. In this idealistic theory, Islamic society does not need customary laws, because Islamic law contains a variety of laws and regulations that make up a complete social system, and in this legal system everything that humanity needs is provided.

Remove the appeals court relied on a single stage of the charge of Islamic as well as the abolition of prosecutors in 73 of the country's legal system to the west of the mechanism emanating from the thought that (Khaleghi, 2015), but deadlock ago It has led some scholars to point out the distinction between fixed and variable laws, according to which the practice of the changing world requires dynamic and changeable laws and must be prepared by experts and specialists. Obviously, this legislation does not mean legislation; rather, it should be done within the limits of the general laws and general principles of Islam, and the diagnosis of non-compliance with the rules of Islam is in any case with the mujtahids (Dabirnia and Naghavi, 2018).

4. The fourth principle of the constitution

One of the principles on which the above theory is crystallized is the fourth principle of the constitution. This principle states that: "All civil, criminal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic norms." This principle governs all the principles of the constitution and other existing laws and regulations of the government, and it is the responsibility of the jurists of the Council of Ministers to determine this .» The result of the reflection on the present principle in the present issue is to point out that each of the regulations, laws, articles and notes approved by the Parliament of Islamic Iran must be in line with Islamic standards. Therefore, in this regard, Articles 72 , 91 , 94 and 96 of the Constitution explain the details of this issue . These principles state that the laws passed by the Islamic Consultative Assembly must comply with Islamic norms, and that none of these laws should be contrary to Islamic law (Javan Arasteh, 2003).

5. Guardian Council and Supervision of Planners

Therefore, the role of the jurists of the Guardian Council in the fourth principle of the constitution is nothing more than a comparative role in the theory of legislation as a plan for the implementation of divine laws. According to Article 2 of the Constitution, revelation plays an essential role in the expression of laws, and its way is ijtihad. This continuous ijtihad in the legislature is enforced through the Guardian Council; in comparative ijtihad, the faqih seeks only to answer the question of whether the subject or decree is contrary to the teachings of Islamic law and regulations. In this type of ijtihad, inference has played a minimal role, and its only function is to examine the inconsistency of approvals with religious data (Kaabi *et al.*, 2008).

Some people consider this attitude to be in accordance with the comprehensiveness of religion and therefore, they suggest the adequacy of non-contradiction of the relevant laws with Islamic rules (Khorasani, 2013), and 68) In contrast, those who looked realistically at the legislative process in the Islamic Republic of Iran, acknowledge the passive role of jurisprudence and jurisprudence in this system. In passive dealing with issues, jurisprudence is only in the role of an observer or plays the role of an obstacle and declares its position against the issued rulings which have negative and sanctioning aspects, so that in this sub-role, jurisprudence and Ijtihad is marginalized (Jahangiri, 2008).

It is necessary to believe in the comprehensiveness of the religion of Islam, to believe in the ability of Islamic jurisprudence to meet all the needs of society and human beings in the face of the law. Therefore, dynamic jurisprudence, which considers the role of time and place in the range of rules of inference of religious law, has the ability to update the religious laws of society. On this basis, the reduction of the field of jurisprudence to comparative ijtihad in the legislative process causes the law to distance itself from Islamic jurisprudence, and gradually the laws in question move away from the goals of Shari'a and it is not far from the law to perfect society. Don't be in a situation (Shariati, 2001). However, limiting ijtihad in jurisprudence in the scope of implementation, depriving society of realistic and up-to-date Islamic rules as single rules is around a single system (Dabirnia and Naghavi, 2018).

6. Dynamic sectarianism, the way of transition from idealism to realism

Dynamic jurisprudence is the opposite of traditional jurisprudence. Each of these two words carries its own meaning: Proponents of traditional jurisprudence give originality to the book and tradition, and look at consensus and reason as the discovery and attainment of the book and tradition, but proponents of dynamic jurisprudence strive. To adapt the two to the intellect and the requirements of the time. The first group, fearing the disintegration of people's beliefs, has taken a defensive stance, considered it their duty to protect former traditions, and the second group is concerned about the inability of religion to meet the needs of the day and is evolving. And change in minds, and in some cases by reconsidering some of the teachings, to create the necessary harmony between religion and time (Feyz and Hosseini Sanani, 2008).

The recent split was the result of a deviation in the institution of ijtihad . The school of jurisprudence, which was presented as a way to empower the school in solving new emerging problems, after the defeat of journalism , stagnated and stagnated itself until Imam Khomeini, the requirements of time and place as He introduced two determinants of expediency in ijtihad and established a new sect (Mousavi Khomeini, 1985).

Accordingly, today, due to a new movement in Shiite jurisprudence based on comprehensive needs and requirements in the system of the Islamic Republic, extraction of laws from jurisprudence, based on judicial needs and international interests and economic, cultural and ... it has become an inevitable necessity.

Among the conditions that affect the dynamism of jurisprudence and ijtihad is the presence in time and confrontation with new events in the realm of social, cultural, economic, political, governmental and international relations, so that the mujtahid can be as clever as possible, to understand the issues of his time and by presenting it on religious principles and rules, he will present his appropriate and up-to-date answer and determine the ground for the flourishing and growth of jurisprudence and following it the application of ijtihad to the surrounding social facts.

Where Imam al-Sadiq (AS) says: It is upon us to convey the principles to you, and it is your duty to return the new subdivisions to the basic principles (Ameli, 1412AH)

Among the conditions of dynamic jurisprudence is the aristocracy over the knowledge that is considered the secret presuppositions of the science of jurisprudence and the great jurists have considered arc in them as a condition for the perfection of ijtihad (Qomi, 1999).

Today, scientific influences such as criminology, criminology, forensic medicine, criminal sociology, criminal psychology, criminal psychoanalysis, criminal economics, and the like on criminal law are undeniable, and ignoring these sciences in a dynamic discipline that leads to legislation. Up-to-date, realistic and efficient, the society is confronted with laws that not only have minimal citations to the procedure, but also confuse the needs of today's human society.

7. Effects Dynamic Recognition leads to the Legislative rooted in realistic criminal policy

Paying attention to the criminal development of the subject of Article 91 of the Islamic Penal Code, paying attention to the equality of Muslim and non-Muslim blood money subject to Article 554 of the Islamic Penal Code, the possibility of replacing the death penalty with stoning if expediency is one of the examples. Dynamic sectarianism enumerated the path of realism and the interests of time and place and the requirements of the day.

7.1 The emergence of realism and criminal growth

One of the cases of legislation that is rooted in dynamic sectarianism and has become a tool for pursuing a realistic criminal policy is Article 91 of the Islamic Penal Code. The ruling of Article 91 is based on the fatwas of the late jurists; Ayatollah Makarem Shirazi has issued the following fatwa in this regard. Whenever different aspects of the issue, including the theory of a trusted expert, are considered, and in general doubt about the lack of sufficient growth in relation to "If there are these crimes, there is no obstacle to turning the age group's punishments into punishments .» Ayatollah Nouri Hamedani replied : « If the people of the above-mentioned age group are at a lower level than ordinary people in terms of understanding and rational growth, the judge can but need to impose severe punishments and retribution on them. "Reject them and impose other punishments on them, but based on that, the criterion is the same as being below the standard level and not for a specific age" (Agriculture, 2014: 332).

As can be seen, in a main sentence, adults under the age of 18, although criminally liable for certain acts and crimes punishable by retribution, but the expertise of jurists in criminal development that is rooted in the psychology of growth led the legislature to one Relative realism has led . However, if we want to achieve an absolute realism, we must leave the principle of non-criminal development of adult children under 18 years of age. What is more,

according to the psychological data of growth, no child is considered to be developed, and this is a proven scientific and experimental matter with a view to considering the age requirements of children (Lotfabadi, 2014).

7.2. The emergence of realism and equality of Muslim and non-Muslim blood money

As mentioned above, one of the ways to achieve realism in terms of material and time and space requirements is to issue a government decree, one of the tangible cases of which has emerged in Article 554 of the Islamic Penal Code: "According to the ruling opinion of the Supreme Leader, the penalty for crimes against religious minorities recognized in the Constitution of the Islamic Republic of Iran is set at the same level as the Muslim penalty".

The blood money of the infidel Dhimmi) ie, the People of the Book who live in the Islamic land and act according to the conditions of the government) is 800 dirhams if he is free and male, whether Jewish, Christian or Magian, and if he is free and a woman, half of it is 400 dirhams. It seems that the diyat of the members of this man and woman and the diyat of their injuries for the blood of their price have the same ratio as the diyat of the limbs and the injury of a Muslim with the blood of his price (Karkhiran, 2013).

As we see in Imam Khomeini's view in the above-mentioned writings, the diyat of a Muslim with a non-Muslim has been inequality, and this is due to the need for the Muslim to dominate the non-Muslim according to Islamic rules, but it is necessary to mention that now, The relationship between Islamic rule and religious minorities can no longer be based on religion, but can be explored in terms of citizenship. Therefore, the Muslim government is obliged to: First of all, to clearly and explicitly mention the level of non-Muslim blood money) religious minorities) in the laws, and in the next stage, to put this amount in front of other subject .

What is more, according to Articles 19 and 20 of the Constitution, the citizens of Iran, regardless of their ethnicity or tribe, enjoy equal rights, and color, race, language, and the like cannot be the cause of superiority, and all people are equal. In the shadow of support are the rules. Therefore, the inequality of the Muslim and non-Muslim blood money was considered an inequality of citizenship based on the above principles, and on the other hand, the jurisprudential obstacles prevented the legislation in this regard. On the other hand, the observance of international principles and interests documented in Articles 1 and 7 of the Universal Declaration of Human Rights and also «in accordance with Article 26 of the International Covenant on Civil and Political Rights, which was approved by the National

Assembly of Iran in 1975, that equality for laws without any limitations because of sex, race, religion and so on, including obligations under international official who follows the harmonization of domestic legislation inevitable due to requirements of time and place (Ebadi, 1994).

Leaving the deadlocks depended on the pursuit of dynamic divisions, and the best appropriate tool was the provincial decree, which in the form of Article 554 of the Islamic Penal Code now, according to the contexts, temporal and spatial requirements, and domestic and international interests. It comes to the fore. As can be seen, the ruling mujtahid, taking into account the realities of the time and place and the current needs of the international community, has pursued a comprehensive criminal policy and a realistic legalization of the society from the existing deadlocks and corrupt talismans caused by It saves.

8. Dynamic division and the possibility of turning stoning into execution

The basis for the possibility of converting stoning to other punishments in the current situation is according to the opinion of some great jurists, according to which the implementation of some severe punishments may cause the deception of the Islamic society. Therefore, if it is not possible to carry out stoning by proposing the court issuing the final verdict and with the consent of the head of the judiciary, if the crime is proven by (sharia) evidence, it will result in the execution of the product and the product of the product. But if religious reasons do not exist, and commit adultery with the other evidence is, exceptionally", converting a penalty in adultery accepted by the legislator placed and adultery caused a hundred lashes for each party to the crime of adultery will be (Goldozian, 2015: 264).

In fact, the sentence of the second part of Article 225 of the Islamic Penal Code has no precedent in Sharia, but the conversion of punishment is based on rational reason (Agriculture, 2014).

The ruling on stoning a woman or a child with a wife is one of the issues that has been proven by many narrations from the Holy Prophet and the Infallible Imams (AS) and is agreed upon by the jurists, but also as necessary and improvised. Muslims reached a place of reflection and doubt in the sentence does not exist in the early days of Islam at the behest of the Prophet (PBUH) has been implemented (Najafi, 1984).

With the above characteristics, the first principle regarding the implementation of divine limits is non-conversion, but as we see, time, space, domestic and international interests cause jurists in dynamic dynamics to open new chapters for legislating and updating laws. As Ayatollah

Makarem Shirazi asks": In the present age, when the implementation of stoning is in some cases faced with domestic and international obstacles and problems, can it be secondary to another type of Executed? « And the answer is that « in case of questions Tbdylsngsar different kind of death has not hindered» (Makarem Shirazi, 2002: 490).

Conclusions and Suggestions

In the present age, criminal policy in most countries of the world, in a broad definition, outlines the rails required for dimensional and realistic legislation. The criminal policy governing the law of criminal law in the country has not followed a single procedure. What is certain is that in the criminal law contained in the latest penal code, we can not only see the latest paradigms of criminal law that are influenced by criminological data and related sciences, but also the oldest religious idealistic laws. We can see that the laws, the abstract legal point of view of which is the main subject, the laws that are at a minimum in terms of citation, and in the judicial procedure of which criminal courts are rarely issued a ruling.

Unfortunately, the abandonment of these laws on the one hand, and the lack of alternatives with acceptable balance on the other hand, in many cases has left us with a legal vacuum while the law exists. What is certain is that the legislature is willing to move from idealism to realism and criminal policy in its broad definition, but it should not be forgotten that the legislature, according to the above laws, such as Article 4 of the Constitution and supreme regulatory bodies such as The Guardian Council gains the ability to engage in modern ijtihad with dynamic jurisprudence and modern jurisprudence in accordance with domestic and international interests and the temporal and spatial requirements in the field of criminal law, with the attention of experts, and to upgrade the valuable ancient heritage. Take action. In this direction, the Guardian Council will play a key role not only in the implementation of the laws on jurisprudence, but also as the most important institution in dynamic criminal jurisprudence.

The ruling mujtahid in the same way in unresolved issues with the issuance of realistic government decrees opens unopened knots in some cases and the continuation of this process not only removes criminal rights from isolation but also the society in terms of security and the costs of providing it in It convinces domestic and international dimensions. In the examples analyzed in the text, we found that the expediencies in idealistic punishments in the plant of requirements and time and space can be examined and changed by the great jurists. What accelerates this process of sectarianism is the need to anticipate the opinion of experts and the possibility of face-to-face consultations with jurists of the Guardian Council

in the form of legislation, which will hopefully revolutionize the dynamic criminal sectarianism.

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Pilares de la estabilidad de los regímenes autocráticos: análisis del caso de Venezuela

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Resumen

Desde finales de la década del 90 el mundo ha presenciado el surgimiento de autocracias con atributos cada vez más sofisticados. Estas se caracterizan por ser democracias establecidas que experimentan retrocesos graduales en sus sistemas de libertades. En este contexto, estudios académicos recientes han indagado sobre los determinantes de la estabilidad de las autocracias contemporáneas. Este trabajo se inscribe en esta línea de investigación, proponiéndose responder las preguntas: ¿Cuál es la configuración de los determinantes de la estabilidad del régimen autocrático de Venezuela?, y ¿Dicha configuración tiende hacia la estabilidad o inestabilidad de su autocracia? El objetivo es analizar los determinantes de la estabilidad autocrática del régimen venezolano. Para tal propósito se elaboró una revisión documental de estudios que examinan el caso venezolano. La data recolectada se clasificó y analizó en base al *modelo de los tres pilares de la estabilidad autocrática* de Gerschewski (2013). La evidencia empírica arroja que actualmente el régimen venezolano se sostiene en base a la aplicación de severas prácticas de represión y cooptación. Sin embargo, el desempeño precario de sus políticas públicas y la merma en su base de apoyo ideológico han disminuido severamente sus niveles de legitimación, catalogando al sistema como una *autocracia inestable*.

Palabras clave: autocracia; estabilidad autocrática; represión; cooptación; legitimación.

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Pillars of the stability of autocratic regimes: analysis of Venezuela case

Abstract

Since the late 1990s, the world has witnessed the emergence of autocracies with increasingly sophisticated attributes. These are mainly characterized by being established democracies that experience gradual setbacks in their freedom systems. In this context, recent academic studies have investigated the typologies and determinants of stability of contemporary autocracies. This work is part of this line of research to study the Venezuelan case; specifically, it intends to answer the questions: What is the configuration of the determinants of stability of the autocratic regime in Venezuela? and Does this configuration tend towards the stability or instability of its autocracy? For this purpose, a documentary review of studies examining the Venezuelan case was prepared. The collected data was classified and analyzed based on the Gerschewski (2013) model of the three pillars of autocratic stability. The empirical evidence shows that currently the Venezuelan regime is sustained based on the application of very intense practices of repression and cooptation. However, the precarious performance of its public policies and the decline in its base of ideological support have severely decreased its levels of legitimation, labeling the system as an *unstable autocracy*.

Keywords: autocracy; autocratic stability; repression; cooptation; legitimation.

Introducción

La autocratización, entendida como el proceso de declive de los atributos del régimen democrático hacia los atributos de un régimen autocrático, ha surgido como un fenómeno global. Un reciente artículo de Lührmann y Lindberg (2019) encontró evidencia empírica sólida de que nos enfrentamos a una *tercera ola de autocratización*. Examinando los datos de todos los episodios de autocratización desde 1900 hasta la actualidad, recabados por el *Variety of Democracy Project (V-Dem),* los autores encontraron un repunte de las autocracias en el mundo desde finales de los 90. En esta línea, el reporte 2020 del *V-Dem Institute* (Lührmann et al, 2020) confirmó que, por primera vez desde el 2001, los regímenes autocráticos son mayoría en el mundo (92 países). Casi el 35% de la población mundial vive bajo regímenes autocráticos (2.6 billones de personas) y, por primera vez, un país miembro de la Unión Europea puede ser calificado como una autocracia (Hungría).

Así pues, menos de 30 años después de que Fukuyama decretara el *fin de la historia* y que Huntington (1991) hablara de una *tercera ola democratizadora*, el mundo experimenta un nuevo retroceso democrático, con reveses tan diversos como Brasil, Burundi, Hungría, Rusia, Serbia, Turquía y Venezuela. En este contexto, el reto de los investigadores y analistas es de gran envergadura, ya que las autocracias se han "sofisticado" enormemente y los regímenes autocráticos contemporáneos se concentran en democracias que experimentaron retrocesos graduales bajo una fachada legal (Lührmann y Lindberg, 2019).

En este marco, la atención académica se ha vuelto a enfocar en las autocracias, proponiendo nuevas respuestas a problemas de larga data. En particular, el debate se ha centrado en determinar qué es lo que hace que los regímenes autocráticos perduren (Gandhi y Przeworski, 2007; Gerschewski, 2013; Wright y Bak, 2016; Kailitz y Stockemer, 2017). Precisamente, el presente trabajo se circunscribe a esta línea de investigación, elaborando un análisis para arrojar luces sobre dos temas: Primero, identificar y clasificar, con el uso de datos empíricos, los determinantes de la estabilidad autocrática del régimen venezolano. Segundo, evaluar si los patrones, tendencias o lógicas de interrelación actual entre cada uno de los determinantes tienden a la estabilización o desestabilización del sistema autocrático.

El presente trabajo contribuye de dos maneras a la literatura sobre el régimen autocrático venezolano. En primer término, fundamenta su análisis en el *estudio de los determinantes de la estabilidad autocrática*; describiendo, clasificando y *examinando empíricamente como los patrones de interacción de dichas variables producen determinados efectos*. Si bien el caso venezolano ha sido ampliamente estudiado en años recientes, la literatura existente se ha enfocado principalmente en *debatir el tipo de régimen autocrático vigente y sus implicaciones* (Noriega y Puerta, 2015; Magdaleno, 2016; Jácome, 2016; Sánchez, 2016); *analizar el rol de los militares en la instauración y sostenimiento del régimen* (Jácome, 2017; Ramos, 2018) y; *reflexionar sobre la posibilidad de una transición democrática* (Alarcón, 2014; Alarcón y Ramírez, 2018; Rivas, 2019). En segundo término, esta investigación *se apoya en un modelo teórico–metodológico establecido y recaba evidencia empírica para generar sus conclusiones*. Así pues, pretende trascender los estudios estrictamente teóricos y los ensayos reflexivos, los cuales han sido ampliamente dominantes en el estudio del caso venezolano.

1. Caracterización de los regímenes autocráticos contemporáneos

Un régimen político puede ser definido como el: "Conjunto de reglas que identifica: quién tiene acceso al poder, a quién se le permite seleccionar al gobierno, y bajo qué condiciones y limitaciones se ejerce la autoridad" (Kailitz, 2013: 1). La literatura sobre regímenes políticos se ha cimentado sobre la distinción de dos grandes tipos de regímenes: regímenes democráticos y regímenes autocráticos.

Según Lührmann, Tannenberg y Lindberg (2018), un **régimen autocrático** es aquel que no cumple con los requisitos institucionales democráticos previstos por la teoría de la poliarquía de Dahl: elecciones multipartidistas, libres y justas, libertad de expresión, fuentes alternativas de información, autonomía asociativa y ciudadanía inclusiva. Los autores conciben la autocracia como un *continuo*. En el extremo inferior, se encuentran las autocracias cerradas, que no cumplen con ninguno de los requisitos institucionales de Dahl. En el extremo superior, se encuentran las autocracias electorales, en las que se celebran elecciones multipartidistas para la elección de las autoridades del poder ejecutivo y legislativo. A lo largo del continuo se encuentran diversas combinaciones autocráticas. En este marco, Lührmann y Lindberg (2019) conciben la *autocratización,* como un proceso de "disminución sustancial *de facto* de las necesidades institucionales básicas para la democracia electoral" (2019: 1096). Como concepto general, la *autocratización* cubre tanto las rupturas repentinas de la democracia, como los procesos graduales de pérdida democrática, los cuales pueden darse tanto en una democracia como en una autocracia. Por ejemplo, una democracia puede perder rasgos democráticos en diversos grados sin desmoronarse por completo, así como un régimen autocrático puede volverse aún más autocrático (p.e. evolucionando a un subtipo autocrático más radical).

En línea con lo anterior, en esta investigación se utiliza el término autocracia como opuesto a la democracia (Geddes, 1999; Geddes et al, 2014; Kollner y Kailitz, 2013; Kailitz, 2013; Gerschewski, 2010, 2013; Lührmann, Tannenberg y Lindberg, 2018). Así pues, la autocracia se utiliza como un término general que abarca la distinción clásica de Linz (1975) en regímenes autoritarios, totalitarios y post totalitarios, así como esfuerzos de clasificación más recientes, como el de Geddes et al (2014), que clasifica las autocracias en regímenes personalistas, unipartidistas, militares y monárquicos.

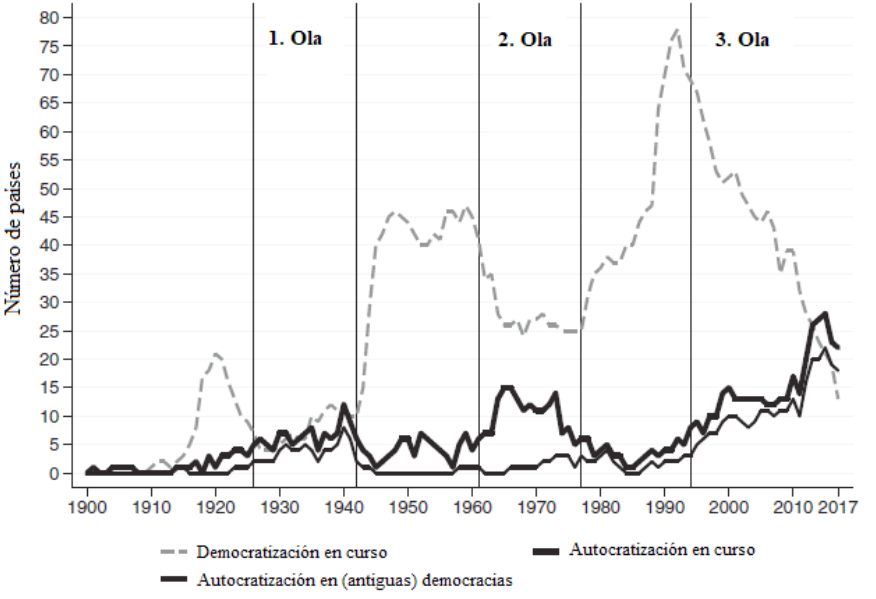
Más allá de las múltiples tipologías de regímenes autocráticos que pueden encontrarse en la literatura, clasificar a los regímenes autocráticos contemporáneos es una tarea cada vez más difícil. Hoy en

día, la mayoría de los regímenes políticos del mundo no son ni claramente democráticos ni completamente autocráticos, si no que ocupan una extensa y nebulosa zona que separa la democracia de la autocracia (Carothers, 2002; Schedler, 2002). Al respecto, Lührmann, Tannenberg y Lindberg (2018) encuentran que, actualmente, la mayoría de los regímenes celebran, *de jure,* elecciones multipartidistas con sufragio universal. En algunos países, las elecciones aseguran que los gobernantes políticos son, al menos en parte, responsables ante el electorado, mientras que en otros son un simple ejercicio de escaparate para la política autoritaria. En estos casos, la frontera entre una autocracia electoral y una democracia electoral puede ser difícil de esclarecer.

Este fenómeno de "camuflaje" de las autocracias contemporáneas ha sido destacado por Geddes (1999), Gerschewski (2013) y Lührmann y Lindberg (2019). Para estos autores, la diferencia entre los regímenes autocráticos contemporáneos y las autocracias clásicas radica en una cuestión de grados: las autocracias clásicas eran "más autocráticas" y claramente distinguibles de la democracia (no cumplían casi ninguno de los requisitos institucionales previstos por Dahl), mientras que, actualmente, muchas de las autocracias cuentan con una fachada democrática que hace difícil su detección.

Profundizando esta idea, Lührmann y Lindberg (2019) destacan que el mundo ha experimentado tres olas de autocratización a lo largo de su historia: la primera ola transcurrió entre 1926 y 1942, teniendo a los regímenes totalitarios de tipo fascista y comunista como protagonistas; la segunda ola se experimentó entre 1966 y 1977, y su característica esencial fue el aumento de los regímenes autoritarios en sus diversas variantes (autocracia personalista, unipartidista, electoral y dictadura militar). Hasta este punto, existe consenso en la literatura. No obstante, estos autores son los primeros en probar empíricamente que nos enfrentamos a una *tercera ola de autocratización*, la cual trae nuevas características (ver Gráfico N.º 1).

Gráfico N.º 1. Las tres olas de autocratización



Fuente: Lührmann y Lindberg (2019: 1103). Traducción propia.

Así pues, evaluando evidencia empírica de todos los episodios de autocratización desde 1900 hasta la actualidad, Lührmann y Lindberg (2019) llegan a tres conclusiones claves sobre las características de la tercera ola de autocratización: 1) *tiene una fachada legal:* alrededor del 68% de las autocracias contemporáneas están dirigidas por gobernantes que llegaron al poder legalmente y con elecciones democráticas, a diferencia de sus pares de oleadas pasadas que se instalaban a través de invasiones, golpes militares, autogolpes y abruptos cambios institucionales; 2) *es gradual:* la *tasa de autocratización* de las democracias es de 8%, respecto a la mediana de 31% de las oleadas anteriores.

Esto implica que los regímenes políticos pierden sus cualidades democráticas a un ritmo más lento; 3) aunque los regímenes actuales se autocratizan a un ritmo más lento que sus pares históricos, la tendencia parece indicar que es más probable que continúen en pendiente negativa hacia una mayor autocratización, tal como ha ocurrido en Turquía, Rusia, Nicaragua y Venezuela, a que se revierta la tendencia y se dé un giro hacia la democratización, como ejemplifica el caso de Corea del Sur.

Los hallazgos de Lührmann y Lindberg (2019) son muy relevantes y justifican la atención reciente hacia los regímenes autocráticos. A su vez, exigen a los investigadores hacerse de modelos teóricos capaces de capturar la complejidad de las autocracias contemporáneas y explicar a que deben su estabilidad y permanencia.

2. Los tres pilares de las autocracias contemporáneas

En un destacado artículo del año 2013, Gerschewski propuso un modelo teórico para explicar la estabilidad de los regímenes autocráticos. En él, buscaba responder la interrogante: *¿qué hace que los regímenes autocráticos se mantengan estables?* Con base en una extensa revisión de la literatura clásica y contemporánea sobre las autocracias, Gerschewski (2013) encontró tres variables frecuentemente utilizadas para explicar la estabilidad de los regímenes autocráticos: legitimación, represión y cooptación. Aunque diversos autores enfatizan en alguna de estas variables, Gerschewski (2013) argumenta que la legitimación, represión y cooptación son los tres pilares de la estabilidad, siendo importante tanto la presencia de cada pilar como la interacción entre ellos.

2.2. Descripción de los pilares de la estabilidad autoritaria

En primer lugar, las autocracias se apoyan en la ***legitimación***, entendida como el proceso de obtención de apoyo por parte de los actores. Gerschewski (2013) parte de una noción weberiana y establece que: "La legitimación busca garantizar el consentimiento activo, el cumplimiento de las reglas, la obediencia pasiva o la mera tolerancia dentro de la población" (2013: 18). El autor distingue entre dos fuentes de legitimación para un régimen autocrático: una vinculada a lo normativo-ideológico (apoyo difuso) y otra relacionada con los resultados (apoyo específico).

La primera fuente de legitimación era propia de los regímenes totalitarios fascistas y comunistas, que buscaban la obediencia de los ciudadanos con base en el adoctrinamiento ideológico y la promesa de un futuro utópico. Sin embargo, a los regímenes autocráticos contemporáneos les resulta muy difícil conservar el apoyo sólo en base al adoctrinamiento, ya que no pueden mantener una ideología utópica y proteger al pueblo de las influencias externas durante un largo período. Por ello, la legitimación por resultados resulta clave en las autocracias modernas.

Aquí, la legitimación proviene del cumplimiento de las demandas de la población, dado que los regímenes se vuelven relativamente sensibles al desempeño gubernamental. En esta misma línea, en un estudio empírico posterior que analizó datos de 179 países desde 1900 a 2017, Tannenberg et al (2019) encontraron evidencia de que las estrategias de legitimación utilizadas en los regímenes políticos son cuatro: 1) ideología (nacionalista, comunista/socialista, conservador/restaurador, religiosos y separatistas), 2) liderazgo personalista, 3) desempeño y 4) procedimientos legales-racionales.

La inclusión de la legitimación como un pilar de los regímenes autocráticos podría resultar controvertido. Ello se debe a que la literatura clásica sobre las autocracias, producida entre los años 40 y 80, se centró en la idea de que los regímenes autocráticos no necesitaban la aprobación de los ciudadanos para gobernar (Geddes, 1999). No obstante, autores como Gerschewski (2013), Dukalskis y Gerschewski (2017), Kailitz (2013), Kailitz y Stockemer (2017) y Tannenberg et al (2019) han retomado la legitimación como una variable explicativa de la estabilidad de las autocracias contemporánea, ante la evidencia cada vez más sólida de que ningún régimen político puede sobrevivir a largo plazo sólo en base a la fuerza. Estos autores han encontrado que las autocracias contemporáneas tratan de fomentar una legitimación en base a resultados para obtener el apoyo o, al menos, la tolerancia de la población y las élites.

En segundo lugar, las autocracias se apoyan en la ***represión***, entendida como el "uso real o amenazado de sanciones físicas contra un individuo u organización, dentro de la jurisdicción territorial del Estado, con el propósito de buscar un costo en el objetivo, así como disuadir actividades específicas" (Gerschewski, 2013: 21). El autor advierte que la represión puede adoptar diferentes formas e intensidades. Por un lado, encontramos la represión de "alta intensidad", definida como actos visibles dirigidos a actores claves de la oposición y/o a un amplio grupo de simpatizantes opositores. Generalmente incluye medidas como la represión violenta de las manifestaciones masivas, las campañas violentas contra los partidos y el intento de asesinato o encarcelamiento de los líderes de la oposición. Por el otro, encontramos la represión de "baja intensidad", que se dirige a grupos de menor importancia, es menos visible y suele adoptar formas más sutiles. Puede incluir medidas como el uso de aparatos de vigilancia (formales e informales), el acoso físico de baja intensidad y la intimidación, y también formas no físicas como la negación de ciertas oportunidades de empleo y educación, así como la reducción de derechos políticos como la libertad de reunión (Merkel, 2017).

Con frecuencia, la represión ha sido considerada la columna vertebral de los regímenes autocráticos y, de hecho, su característica definitoria. Si bien Gerschewski (2013) reconoce la importancia de la represión para las

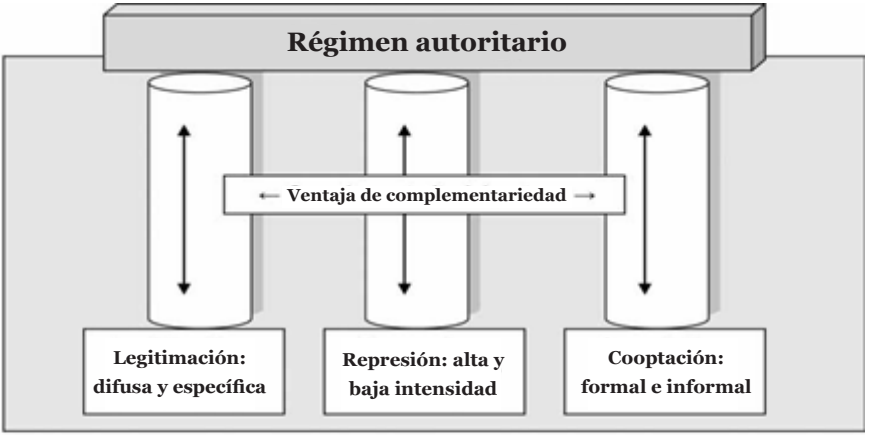
autocracias, destaca que es una forma demasiado costosa y riesgosa de mantener el poder, por lo que ningún régimen autocrático se aferra sólo a ese pilar.

Por último, el tercer pilar de un régimen autocrático es la ***cooptación***, a la que Gerschewski (2013) define como: "La capacidad de vincular actores estratégicamente relevantes (o un grupo de actores) a la élite del régimen" (2013: 22). La cooptación se ejerce para que los actores opositores estén persuadidos de no ejercer su poder de obstrucción y, en cambio, utilicen sus recursos en línea con las demandas del régimen. Por lo general, esos actores estratégicos provienen de sectores económicos, la oposición política, el aparato de seguridad y de la esfera militar (Merkel, 2017). Gerschewski (2013) destaca además que la cooptación puede manifestarse de manera "formal" o "informal".

En el primer tipo, la cooptación de actores estratégicos se realiza a través de la fachada de las instituciones democráticas como los parlamentos, partidos o elecciones y se expresa en acciones como el otorgamiento de cargos, privilegios políticos, recursos y concesiones económicas. En la cooptación informal, la élite autocrática construye una estrecha red de lazos indirectos y ocultos con actores estratégicos que se le subordinan. Esta modalidad de cooptación se manifiesta a través de instrumentos como el patrocinio, el clientelismo y la corrupción. La función de la cooptación es inclusiva y sirve para garantizar tanto la cohesión dentro de la élite como la capacidad de dirección de la élite política.

Este tercer pilar ha sido ampliamente destacado desde la literatura institucionalista. Así pues, autores como Geddes (1999) y Gandhi y Przeworski (2007) encuentran que la cooptación formal a través del parlamento, partido y elecciones ha sido un mecanismo utilizado para mantener controlada a la élite del régimen y a potenciales competidores. El modelo de Gerschewski (2013) parte del supuesto de que la estabilidad y duración de un régimen autocrático no se explica por un solo factor, sino que es el resultado de encadenamiento de factores y variables. Ningún factor o variable puede, aisladamente, «producir» la perpetuación de una autocracia (no bastaría sólo con el adoctrinamiento, la "mano dura" o la cooptación de actores clave). En el Gráfico N.º 2 se resume el modelo.

Gráfico N-º 2. Los tres pilares de la estabilidad autoritaria



Actores	Élite del régimen vs. Población	Élite del régimen vs. Oposición potencial	Élite del régimen vs. Elite estratégica
Montivo	Sentido de justicia	Miedo	Cálculo utilitario de costo – beneficio
Función	Ganar apoyo	Canalizar demandas	Mantener la cohesión de la élite y capacidad de dirección

Fuente: Gerschewski (2013: 23). Traducción propia.

2.2. El proceso de estabilización de las autocracias

Una vez definidos los pilares de la estabilidad autocrática (legitimación, represión y cooptación), se requiere ir más allá. Las autocracias descansan sobre los tres pilares, pero la pregunta es: *¿cómo surgen estos pilares?* Éstos no existen desde el comienzo del régimen, sino que deben construirse con el tiempo e institucionalizarse. Es por ello que Gerschewski (2013) distingue entre los conceptos de *estabilidad* y *estabilización*. El primero, es un concepto estático que refiere al *status quo*, mientras que el segundo es un proceso dinámico que explica cómo se estabilizan esos pilares.

Con base en la teoría neo institucionalista, el autor sostiene que los tres pilares deben ir más allá de una mera base situacional y *ad hoc* y convertirse en instituciones estables. La legitimación institucionalizada significa que los ciudadanos han internalizado la norma de legitimación; la represión institucionalizada significaría que a los actores opositores se les impide

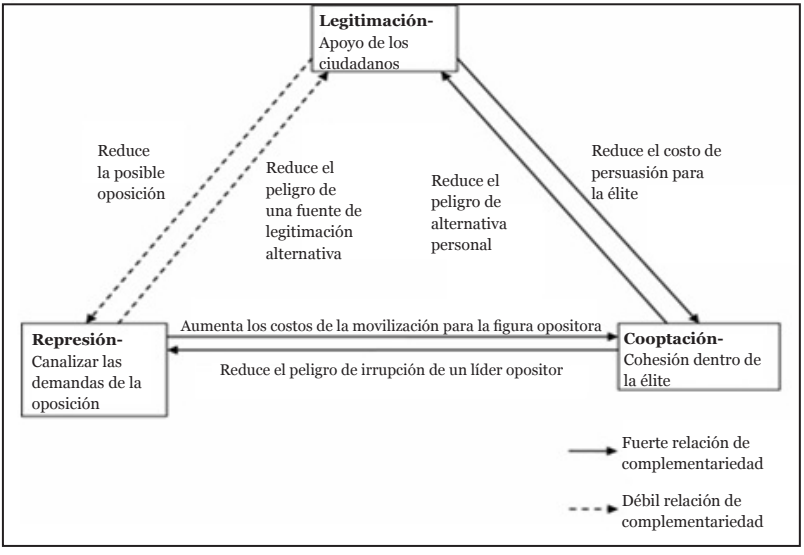
estructuralmente sublevarse; y la cooptación institucionalizada representa una interacción entre la élite política, por un lado, y las élites empresariales y militares, por otro, en la que los beneficios de la cooperación superan los costos. Pero ¿cómo se lleva a cabo el proceso de institucionalización de los pilares? Gerschewski (2013) describe dos procesos diferentes *dentro* de los pilares y uno *entre* los pilares.

1. El proceso de ***refuerzo exógeno*** es impulsado por la disponibilidad de poder externo y recursos materiales del régimen. Para ello, el régimen emplea recursos para ganarse la legitimación de las élites y la población, mantener el aparato represivo en funcionamiento y para distribuir suficientes recursos que permitan cooptar a los actores estratégicos necesarios.

2. El proceso de ***auto reforzamiento*** es impulsado por un cierto comportamiento inercial. El supuesto es que, una vez que una institución se encamina, es difícil de alterar y se refuerza a sí misma. La legitimación puede reforzarse debido al fomento de las actitudes de apoyo de las personas frente al régimen. La represión funciona reproduciendo asimetrías de poder entre el gobernante y la oposición. La cooptación puede verse como una acción más estratégica, en la que tanto la élite gobernante como la élite a ser sopesada calculan sus costos y beneficios individuales.

3. El proceso de ***refuerzo recíproco*** se refiere a la complementariedad entre los tres pilares. Esto implica que la existencia de un pilar provoca la existencia de otro, que a su vez refuerza el primero. El supuesto es que existe una interdependencia funcional entre los pilares que contribuye a su mutuo fortalecimiento. El Grafico N.º 3 expresa las relaciones de complementarias entre los pilares.

Gráfico N.º 3. Reforzamiento recíproco y complementariedad de los pilares



Fuente: Gerschewski (2013: 29). Traducción propia.

Para probar la afirmación teórica del refuerzo recíproco y complementariedad entre los pilares, se supone que el número de combinaciones exitosas de estas variables es limitado. Es decir, ciertas combinaciones de las variables conducen a la estabilidad de los regímenes autocráticos mientras que otras conducen a su inestabilidad y riesgo de desintegración. Desde esta perspectiva, Gerschewski (2013) formula la hipótesis de que dos tipos de configuración de los pilares pueden conducir a la estabilidad autoritaria. El primer tipo es la ***configuración de sobre-politización***, que descansa en un alto apoyo difuso (ideológico), alta represión suave y dura y alta cooptación formal. Esta configuración era la base de la estabilidad de los regímenes totalitarios clásicos. El segundo tipo es la ***configuración de despolitización***, que descansa en un alto apoyo específico (por desempeño), formas de represión más sutiles y presencia de cooptación informal (mecenazgo y redes clientelares). Esta configuración era más típica de los autoritarismos latinoamericanos de los 60 y 70.

En esta dirección, Merkel (2017) encontró evidencias de que el equilibrio ideal para la supervivencia de los regímenes autocráticos se consigue al combinar una alta legitimación basada en la ideología o resultados, con una minimización de la represión dura, un desarrollo de la represión blanda y un nivel medio de cooptación formal e informal. Esto se debe a que este

tipo de configuración explota las ventajas de complementariedad entre los pilares y conduce a la estabilidad autoritaria.

En adelante, el marco teórico descrito servirá de base para analizar el régimen autocrático venezolano. Se procederá en dos pasos: primero, se caracterizará el tipo de configuración presente en los pilares de estabilidad autoritaria del régimen venezolano; posteriormente, se analizará si el tipo de configuración vigente conduce a la estabilidad o inestabilidad autoritaria.

3. Diseño de Investigación

3.1. Selección de caso

La selección de Venezuela como caso de estudio de la estabilidad autocrática se fundamenta en tres razones. En primer término, existe consenso entre analistas y consultores en caracterizar el actual régimen venezolano como un régimen autocrático, independientemente de las divergencias existentes entre los autores en torno al subtipo de autocracia vigente (Magdaleno, 2016; Jácome, 2016; 2017; Romero y Benayas, 2018; Noriega y Puerta, 2015; Sánchez, 2016; Rivas, 2019). En segundo lugar, el régimen venezolano refleja nítidamente la dinámica de las autocracias contemporáneas descrita por Lührmann y Lindberg (2019), en las que los gobernantes llegan al poder a través de canales democráticos y, posteriormente, desarrollan un proceso de *autocratización* gradual que desemboca en la instalación de un régimen autocrático. En tercer lugar, la permanencia del régimen autocrático venezolano es un fenómeno que despierta interés académico, dada la capacidad de la élite gobernante para mantenerse en el poder en un contexto de severa crisis económica, política y social.

Las tres razones descritas sugieren la necesidad de desarrollar estudios académicos que aporten explicaciones y evidencias sobre los determinantes de la estabilidad del régimen autocrático venezolano.

3.2. Preguntas de investigación

El objetivo empírico de este documento es analizar los determinantes de la estabilidad autocrática del régimen venezolano. En consecuencia, dos preguntas guían esta investigación: *¿Cuál es el tipo de configuración de los determinantes de estabilidad autocrática del régimen venezolano? ¿El*

tipo de configuración vigente conduce al equilibrio o a la inestabilidad autocrática? Para responder estas interrogantes, nos basaremos en el modelo teórico de los tres pilares de la estabilidad autocrática propuesto por Gerschewski (2013).

3.3. Recopilación y análisis de los datos

Para observar empíricamente los determinantes de la estabilidad autocrática y el tipo de configuración resultante de su combinación, se procedió en varios pasos.

En primer lugar, se caracterizaron cada una de las variables determinantes de la estabilidad autocrática del régimen venezolano (ver Tabla N.º 1). El proceso se desarrolló en la siguiente secuencia: 1) a través de una revisión documental de informes de ONG's nacionales e internacionales, encuestas de opinión pública de consultoras especializadas y artículos de investigación, se caracterizaron los indicadores que operacionalizan las seis dimensiones de la estabilidad autocrática: apoyo difuso, apoyo específico, represión dura, represión blanda, cooptación formal y cooptación informal; 2) se analizaron cualitativamente los resultados de los indicadores y, posteriormente, se asignó a cada dimensión la calificación de alta, media o baja; 3) se analizaron cualitativamente las dimensiones y, posteriormente, se asignó a cada variable el valor de alto, medio o bajo.

Tabla No. 1. Variables e indicadores para evaluar los pilares de estabilidad autocrática

Variables	Dimensiones	Indicadores	Fuente
Legitimación	Apoyo específico	Aprobación de gestión del Presidente Nicolás Maduro* Disposición a protestar	Datanálisis (2020)
		N.º de protestas	OVCS (2019 y 2020)
	Apoyo difuso	Aprobación de sanciones norteamericanas*	Datanálisis (2020)
		Aprobación de gestión de Hugo Chávez*	

Represión	Represión dura	Detenciones arbitrarias Torturas Asesinatos políticos Presos políticos Procesamiento militar de civiles	ONG Foro Penal (2019, 2020)
	Represión blanda	Internet Freedom Score* Global Freedom Score	Freedom House (2020a, 2020b)
		Medidas sustitutivas de privación de libertad	ONG Foro Penal (2019)
		Agresiones a periodistas Procedimientos administrativos a los medios de comunicación* Censura (directa e indirecta)	IPYS (2019)
Cooptación	Cooptación formal	Participación militar en gabinete ministerial* Empresas estatales presididas por militares* Empresas adscritas a la FFAA* Gastos militares	Amnistía Internacional (2019) ONG Control Ciudadano
	Cooptación informal	Índice de percepción de corrupción	IPC Amnistía Internacional (2019)
		Redes de corrupción	ONG Armando Info (2019a, 2019b, 2020)
		Participación de militares en contratos públicos	Organized Crime and Corruption Reporting Project (2020)

Fuente: Elaboración propia con base en Gerschewski (2010; 2013).

* **Inclusión propia.** Allí donde no se sugirieron indicadores explícitamente o éstos no estaban disponibles para el caso de Venezuela, se propusieron indicadores alternativos que operacionalizan los conceptos propuestos por el autor.

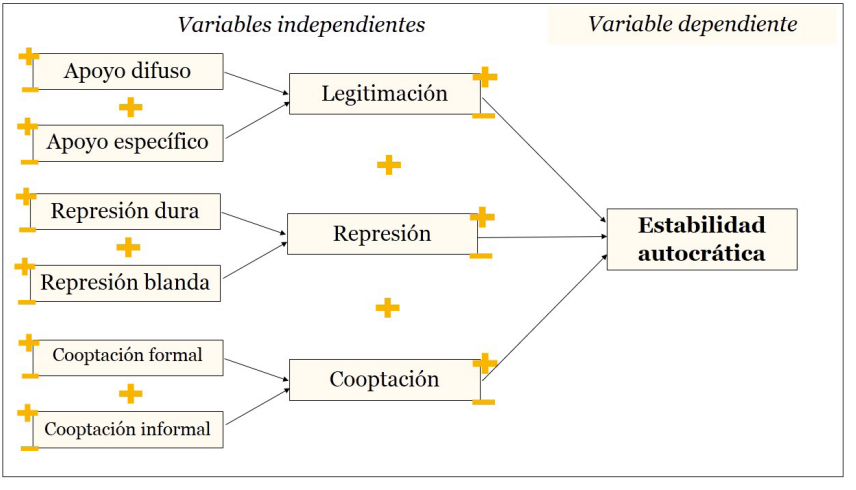
La decisión de asignar cualitativamente la calificación de "alto", "medio" y "bajo" a las dimensiones y variables (pasos 2 y 3) tiene una justificación teórica y práctica. El modelo de Gerschewski (2013) especifica las combinaciones que dan lugar a cada tipo de configuración autocrática, pero no establece los umbrales para cada variable y sus dimensiones. Por ejemplo, la combinación de alto apoyo difuso (ideológico), alta represión suave y dura y alta cooptación formal produce a una configuración de sobre-politización, que era la base de la estabilidad de los regímenes totalitarios fascistas y comunistas. Ante esto, surgió una pregunta metodológica importante: ¿cuáles son los valores que permitirían caracterizar cada variable como

alta, media o baja? Sobre este particular, el modelo de Gerschewski (2013) no ofrece suficientes directrices. Probablemente esto se deba a que esta valoración tiene un carácter situacional y es difícilmente generalizable. Es decir, lo que para un régimen puede ser "alta" legitimación, para otro puede ser "media" o incluso "baja". Por ello, la estrategia desplegada en esta fase de asignar estos rangos a través de un análisis cualitativo de los indicadores parece una estrategia adecuada y, a la vez, sólida.

El resultado de esta primera parte fue un mapeo de la situación de las variables determinantes de la estabilidad autocrática del régimen venezolano (Gráfico N.º 4).

En segundo lugar, tomando como base la caracterización de las variables realizada en la fase previa, se procedió a determinar el tipo de configuración de estabilidad autocrática vigente en el régimen venezolano, la cual se derivó de la combinación e interacción de las distintas variables y sus dimensiones. El tipo de configuración resultante se clasificó en alguna de las siguientes categorías: 1) configuración de sobre-politización; 2) configuración de despolitización y; 3) configuración de inestabilidad autocrática.

Gráfico N.º 4. Variables determinantes de la estabilidad autocrática



Fuente: Elaboración propia con base en Gerschewski (2010; 2013).

4. Presentación y Análisis de los Resultados

4.1. Caracterización de los pilares de estabilidad autocrática

4.1.1. Variable: Legitimación

La Tabla N.º 2 presenta los indicadores que sirvieron de base para la caracterización de la variable de legitimación. El análisis de los indicadores seleccionados permitió concluir que el régimen autocrático venezolano reúne una combinación de **"bajo apoyo específico"** y **"apoyo difuso medio"**, lo que condujo a caracterizar el pilar de legitimación como "bajo" en su conjunto.

El **"bajo apoyo específico"** del régimen se explica por la ausencia de una legitimidad por desempeño. Los datos evidencian que el desempeño de gestión del Presidente Nicolás Maduro es valorado negativamente por un 83,4% de la población (Datanálisis, 2020), con una desaprobación de gestión acumulada en torno al 80% durante los últimos 6 años. Así pues, aunque la literatura contemporánea sobre regímenes autocráticos (Gerschewski, 2010; 2013; Kailitz, 2013) destaca que los nuevos autoritarismos buscan obtener la aprobación de la población y las élites sobre la base de un buen desempeño económico y social, en el caso del régimen venezolano esta tendencia no fue confirmada. Contrariamente, el régimen del Presidente Maduro carece de una orientación al desempeño y se ha visto marcado por una severa crisis económica, una oleada migratoria sin precedentes y el colapso de los servicios públicos esenciales.

Tabla N.º 2. Dimensiones e indicadores de la variable legitimación

Variable	Dimensión	Indicadores	Fuente
Legitimación (Baja)	Apoyo específico (Bajo)	**Aprobación de gestión presidencial:** 83,4% de valoración negativa de la gestión del Pdte. Maduro (Feb-2020) y aprox. 80% de desaprobación acumulada en los últimos 6 años.	Datanálisis (2020)
		Protestas: 16.739 protestas anuales (2019), desagregadas en 58% por DESCA y 42% por DCP; 1.397 protestas en los primeros dos meses de 2020. **Disposición a protestar:** 58% de la población expresa no estar dispuesta a protestar.	OVCS (2020a, 2020b y 2020c)

	Apoyo difuso (Medio)	**Aprobación de sanciones norteamericanas:** 97% de la población rechaza las sanciones generales al país y, en cambio, un 53% prefiere las sanciones personales a los altos funcionarios del régimen.	Datanálisis (2020)
		Aprobación de gestión de Hugo Chávez: 57,5% de valoración positiva de la gestión y figura de Chávez.	

Fuente: Elaboración propia

El mal desempeño gubernamental no ha pasado desapercibido por la población y ha encontrado su canalización en las protestas sociales. Cifras del Observatorio Venezolano de Conflictividad Social (2020a) registraron 16.739 protestas durante el año 2019, desplegadas en diferentes modalidades (concentraciones, marchas, paros, pancartazos, cierre de vías públicas, etc.). De éstas, 58% fueron por reclamos de derechos económicos, sociales, culturales y ambientales (DESCA), mientras que un 42% fueron por reclamos de derechos civiles y políticos (DCP).

Esta cifra supone un récord en los últimos nueve años (superando incluso las tres grandes olas de protestas de 2014, 2017 y 2018). No obstante, para inicios de 2020 esta tendencia parece estar mermando: en los dos primeros meses del 2020, el Observatorio Venezolano de Conflictividad Social (2020b, 2020c) registró una disminución de las protestas en un 76% y 51%, respectivamente, en comparación con los mismos meses del año 2019. A su vez, un reciente estudio de opinión de la encuestadora Datanálisis (2020) reveló que el 58% de la población expresa que no está dispuesta a salir a protestar. Estos datos pueden interpretarse como la expresión de la apatía ciudadana ante la prolongación de la crisis del país y, a su vez, como el resultado de la represión estatal que ha conducido a la desmovilización ciudadana.

Los altos niveles de desaprobación popular del Presidente Maduro y el gran número de protestas por motivos socioeconómicos y políticos son indicativos de que el régimen venezolano carece de una legitimidad por desempeño, lo que se traduce, en términos de Gerschewski (2013), en un bajo soporte específico.

Por otra parte, se evidenció que el régimen venezolano cuenta con un **"apoyo difuso medio"**, derivado de una cierta legitimación ideológica (nacionalista) y una cierta legitimación personalista a través de la figura de Hugo Chávez.

Para evaluar la legitimación ideológica nacionalista se tomó como indicador *proxy* la "aprobación/desaprobación de la población hacia las sanciones norteamericanas". Esta selección se fundamentó en evidencia

empírica previa que demuestra la relación entre las sanciones y la legitimación autocrática. Así pues, un estudio de Grauvogel y Von Soest (2014) encontró que, aunque las sanciones generalmente se consideran una señal de apoyo a la oposición, bajo ciertas condiciones, en realidad desencadenan un efecto de manifestación alrededor de la bandera (*rally-round-the-flag*) y se constituyen en apoyo al régimen autocrático. De esta forma, "las sanciones fortalecen el gobierno autocrático si el régimen logra incorporar su existencia en su estrategia de legitimación" (2014: 1).

El caso venezolano no parece ser la excepción y, efectivamente, el régimen ha intentado utilizar las sanciones como una fuente de legitimación. Así pues, desde que iniciaron las sanciones generales en 2017, el discurso gubernamental ha adoptado una retórica nacionalista cuyo eje central ha sido las sanciones, promoviendo la dicotomía entre "patriotas nacionalistas" y "apátridas" en función del posicionamiento hacia este tema.

Sobre este particular, la evidencia sugiere que el régimen venezolano ha logrado explotar efectivamente el sentimiento nacionalista de la población. Un estudio de opinión de Datanálisis (2020) refleja que el 97% de la población declara estar en desacuerdo con las sanciones generales y, en cambio, considerarían más efectivas las sanciones de carácter personal a los altos representantes gubernamentales (53%). Si bien este dato no debe ser interpretado en términos de un apoyo directo al régimen, sí refleja que la estrategia comunicacional de tipo nacionalista en contra de las sanciones estadounidense ha encontrado eco en la población (sea por razones ideológicas o pragmáticas) y le ha otorgado temporalmente legitimidad a la narrativa "antiimperialista" del régimen.

Por su parte, una segunda fuente de legitimación que contribuye al apoyo difuso del régimen es la legitimación personalista. En este caso, se tomó como indicador *proxy* la "evaluación de gestión de Hugo Chávez". Esta selección se fundamentó en que Chávez es considerado todavía el líder carismático, referente político y simbólico del chavismo en Venezuela. Sobre este particular, un estudio de opinión de Datanálisis (2020) encontró que, a pesar de haber transcurrido 6 años desde su fallecimiento, un 57,5% de la población mantiene una valoración positiva del ex Presidente Hugo Chávez. Esta valoración positiva permite al régimen venezolano explotar la figura de Chávez como recurso político y ganar indirectamente rédito político.

En conclusión, la combinación de "bajo apoyo específico" y "apoyo difuso medio" condujo a caracterizar el pilar de legitimación del régimen venezolano como "bajo" (ver Tabla N.º 2). Así pues, aunque el régimen ha buscado fundamentar su legitimidad en criterios ideológicos y personalistas (lográndolo parcialmente), su bajísima legitimación por desempeño deja casi sin efecto las otras fuentes de legitimidad. Esto va en línea con lo dispuesto por el modelo de Gerschewski (2013), según el cual los regímenes

autocráticos contemporáneos que no logran mostrar un buen desempeño gubernamental y responder, así sea parcialmente, a las demandas de la población, tienen muy difícil contar con una fuente de legitimidad estable que les garantice apoyo, dado que las narrativas ideológicas y personalistas han perdido cada vez más peso como fuente de legitimación de las autocracias.

4.1.2. Variable: Represión

La Tabla N.º 3 presenta los indicadores que sirvieron de base para la caracterización del pilar de represión. El análisis de los indicadores seleccionados permitió determinar que el régimen venezolano despliega una **"alta represión dura"** en combinación con una **"alta represión blanda"**, lo que condujo a caracterizar el pilar de represión como "alto" en su conjunto.

La **"alta represión dura"** se expresa en las elevadas cifras de detenciones arbitrarias, torturas y asesinatos por razones políticas. Al respecto, la ONG Foro Penal documentó 2.219 detenciones arbitrarias sólo en el año 2019, con un acumulado de 15.250 personas detenidas entre el 2014 – 2019. De estos detenidos, al menos el 50% reporta haber sido víctima de malos tratos al momento de su detención o durante el tiempo de reclusión y se ha verificado que 500 de ellos fueron víctimas de tortura por parte de los funcionarios que tenían a cargo su custodia. Asimismo, Foro Penal (2020) documentó 50 personas asesinadas en 2019 por razones políticas.

Tabla N.º 3. Dimensiones e indicadores de la variable represión

Variable	Dimensión	Indicadores	Fuente
Represión (Alta)	Represión dura (Alta)	**Detenciones arbitrarias:** 2.219 personas (2019); 15.250 personas (2014–2019). **Asesinatos políticos:** 50 personas (2019). **Torturados**: 500 personas (2019) **Presos políticos:** 326 personas se mantienen recluidas. **Procesamiento militar de civiles:** 852 personas.	Foro Penal (2019)

	Represión blanda (Alta)	**Violaciones de libertad de expresión:** 534 casos (2019). **Agresiones contra periodistas:** 326 casos (2019); 2.865 casos (2011–2019). **Limitaciones de acceso a información pública:** 81 casos (2019). **Censura previa:** 70 casos (2019) **Procedimientos administrativos a medios de comunicación:** 21 casos (2019) **Censura interna:** 15 casos (2019) **Censura indirecta:** 3 casos (2019).	IPYS (2020)
		Internet Freedom Score: 30/100 puntos. Global Freedom Score: 16/100 puntos.	Freedom House (2020a, 2020b)

Fuente: Elaboración propia

Al día de hoy, permanecen recluidos 326 presos políticos, entre los que se incluyen diputados opositores, militares, líderes estudiantiles y activistas de DDHH. Finalmente, 852 ciudadanos civiles han sido procesados ante la jurisdicción militar, en una clara violación del debido proceso.

La mayoría de los delitos de represión dura han sido dirigidos hacia líderes y activistas de la oposición política y se han materializado en el contexto de las protestas sociales. Esto ha tenido por finalidad sembrar terror entre los manifestantes y desestimular la movilización ciudadana.

No sólo los líderes y activistas opositores han sido víctima de represión por parte del régimen venezolano. Simultáneamente, el gobierno del Presidente Maduro ha desplegado una **"alta represión suave"** dirigida a grupos menos visibles y ha desplegado represión a través de formas más encubiertas. Particularmente afectado se ha visto el gremio periodístico. El Instituto Prensa y Sociedad de Venezuela (IPYS) documentó para el año 2019 un total de 534 casos de violaciones a la libertad de expresión, para un acumulado de 2.865 casos ocurridos durante los últimos 8 años. Asimismo, el IPYS registró 326 agresiones y ataques contra periodistas y medios de comunicación social, 81 limitaciones de acceso a la información pública, 70 casos de censura previa, 21 procedimientos administrativos contra medios de comunicación, 15 casos de censura interna forzosa y 3 casos de censura indirecta.

Por otra parte, las violaciones a la libertad de expresión e información también han sido registradas por la ONG internacional *Freedom House* (2020b). Así pues, en el *Internet Freedom Score,* Venezuela fue evaluado como un país "no libre", con una puntuación de 30/100. Al desagregar los datos, encontramos que el país recibe una puntuación de 4/25 en obstáculos

para acceder al internet, 14/35 en limitaciones al contenido y 12/40 en violaciones a los derechos de los usuarios.

Las agresiones contra los medios de comunicación independientes y las restricciones a la libertad de información forman parte de la estrategia gubernamental de imponer una hegemonía comunicacional a través de la politización de los medios informativos estatales y la censura de los medios de comunicación independientes.

Otras formas de represión blanda han sido registradas por la ONG Foro Penal. Al respecto, esta organización documentó que, entre 2014 y 2019, un total de 9.000 personas han sido investigadas penalmente y permanecen con medidas cautelares sustitutivas de la privación de libertad.

Finalmente, la alta represión blanda desplegada por el régimen venezolano puede verse expresada en la puntuación otorgada por *Freedom House* (2020a) en el *Global Freedom Score* 2019. En dicho ranking, Venezuela es caracterizado como un país "no libre", con una puntuación de 16/100. Al desagregarlo, encontramos que en materia de derechos políticos el país es evaluado con 2/40, mientras que en libertades civiles se adjudicó un 14/60.

En conclusión, la combinación de "alta represión dura" y "alta represión suave" condujo a caracterizar el pilar de represión del régimen venezolano como "alto" (ver Tabla N.º 3). Estos hallazgos confirman lo dispuesto por la literatura clásica y contemporánea de los regímenes autocráticos: la represión constituye la columna vertebral de las autocracias y, de hecho, su rasgo distintivo. A pesar de ello, autores como Geddes (1999), Kailitz (2013), Gerschewski (2013) y Lührmann y Lindberg (2019) sostienen que los regímenes autocráticos contemporáneos utilizan formas más sutiles y encubiertas de represión de la oposición, dado el intenso escrutinio público al que se ven expuestos los gobiernos. No obstante, en el régimen autocrático venezolano este postulado no parece cumplirse por completo. Contrariamente, el régimen ha demostrado ser poco sensible a este escrutinio y despliega una represión alta en todos los frentes, independientemente de los reclamos y denuncias recibidas desde ONG's, gobiernos extranjeros y líderes de opinión.

4.1.3. Variable: Cooptación

La Tabla N.º 4 presenta los indicadores que sirvieron de base para la caracterización del pilar de cooptación. El análisis de los indicadores seleccionados permitió determinar que el régimen venezolano despliega una **"alta cooptación formal"** en combinación con una **"alta cooptación informal"**, lo que condujo a caracterizar la variable cooptación como

"alta" en su conjunto.

La **"alta cooptación formal"** ha tenido como destinatario principal a las Fuerzas Armadas (FFAA). Desde el inicio de la llamada Revolución Bolivariana en el año 1999, el régimen venezolano se ha cimentado en una estrecha unión cívico–militar, en la que los militares han pasado a ocupar importantes espacios del mundo político y los sectores claves de la economía. Esta tendencia inició en el gobierno de Hugo Chávez y ha tenido continuidad en el gobierno de Nicolás Maduro. Diversos indicadores dan cuenta de la alta cooptación formal de los militares en la actualidad.

En la esfera política, la ONG Control Ciudadano (2019) ha documentado una alta participación militar en el Gabinete Ministerial, con 10/34 ministros que provienen de las FFAA (militares activos y retirados). Lo relevante no es sólo la proporción, cercana al 30% en la actualidad y con un promedio de 33% en los últimos 5 años, sino la composición de esa proporción: los militares han sido asignados en los ministerios claves, como energía y petróleo, salud, alimentación, etc. En la misma línea, Control Ciudadano (2018) identificó que un 30% (7/23) de los gobernadores provienen del mundo militar, cifra que asciende a 35% (7/20) si sólo se consideran los gobernadores del Partido Socialista Unido de Venezuela (PSUV).

Tabla N.º 4. Dimensiones e indicadores de la variable cooptación

Variable	Dimensión	Indicadores	Fuente
Cooptación (Alta)	Cooptación formal (Alta)	**Participación militar en gabinete ministerial:** 29,4% (10/34) de ministerios presididos por militares (2019); con un promedio de ocupación de 33% en los últimos 5 años. **Participación militar en gobernaciones:** 35% (7/20) de los gobernadores del PSUV provienen de las FFAA.	ONG Control Ciudadano
		Empresas estatales dirigidas por militares: 60 empresas (2019)	Transparencia Venezuela (2018a)
		Empresas adscritas a las FFAA: 14 empresas militares creadas en 20 sectores económicos (2013–2017).	International Crisis Group
		Gastos militares: Reducción del 71% del gasto militar durante los últimos 5 años.	SIPRI
	Cooptación informal (Alta)	**Índice de percepción de corrupción:** 18/100 puntos, ocupando la posición 169.	Transparencia Venezuela (2018b)

		Redes de corrupción políticos-empresarios: Casos más sonados: Operación CLAP, Alex Saab y Carlos Pulido; Operación Alacrán, etc.	ONG Armando Info
		Participación de militares en contratos públicos: Un tercio de los 312 generales activos del Ejército de la FFAA, está vinculado a empresas habilitadas para hacer contratar con el Estado. De estos, 35 son socios o están en juntas directivas de compañías privadas que aparecen en el Registro Nacional de Contratistas (RNC). Estos 35 generales están vinculados con 41 empresas y han recibido más de 220 contratos entre 2004-2017.	OCCRP

Fuente: Elaboración propia

En la esfera económica, la cooptación formal ha sido aún más elevada. Así pues, la ONG Transparencia Venezuela (2018a) documentó que 60/576 de las empresas estatales tienen como máxima autoridad a un militar. Aunque esta proporción de participación puede parecer baja (10,4%), lo relevante es la composición: las empresas estratégicas del Estado como PDVSA, CVG, CORPOELEC, CANTV y diversas empresas del sector alimentos, están siendo presididas por militares. A pesar de esta abrumadora presencia, los militares no parecen haberse conformado con su cuota de participación en la esfera económica civil. Así pues, entre 2013–2017 se han creado 14 empresas militares en áreas económicas claves como hidrocarburos, construcción, agricultura, etc.

Especialmente importante ha sido la creación de la Compañía Anónima Militar para las Industrias Mineras, Petrolíferas y de Gas (CAMIMPEG), la cual ejerce sus labores en el Arco Minero del Orinoco, área que ha sido declarada "zona económica militar" (International Crisis Group, 2019). Sin embargo, no todo son buenas noticias para los militares. Si bien la FFAA ha sido el sector más favorecido por el régimen, no han sido ajenos a la crisis económica del país. Al respecto, el *Stockholm International Peace Research Institute* (2019) (Sipri) registró que, en los últimos 5 años, se ha evidenciado una caída del 71% del gasto militar de Venezuela, lo que contrasta con el período de bonanza de 1999-2016, en el que se gastaron 5.657 millones de dólares en armamento y equipos militares.

No sólo las Fuerzas Armadas han sido cooptadas formalmente por el régimen venezolano. Simultáneamente, el gobierno ha desplegado una **"alta cooptación informal"** de militares, empresarios y líderes opositores, principalmente a través de la creación de redes corrupción. Sobre este particular, la ONG Armando Info, organización especializada

en periodismo de investigación, ha revelado una gran cantidad de entramados corruptos. Entre los más destacados se encuentra la alianza entre el régimen de Maduro y los empresarios colombianos Álex Saab y Álvaro Pulido en el marco de las importaciones de alimentos del programa CLAP, utilizando una red de empresas de maletín corruptas (Armando Info, 2019b). Éstos mismos empresarios fueron señalados de la compra de diputados opositores de la Asamblea Nacional para que desplegaran una gira europea para lavar su reputación, luego de haber sido sancionados por el gobierno de Estados Unidos por sus vínculos con el régimen de Maduro (Armando Info, 2019a; 2020). Este mismo grupo de diputados sería parte de la "Operación Alacrán", un operativo desplegado por el régimen en enero de 2020 para comprar diputados opositores y persuadirlos de conformar una Junta Directiva alternativa que impidiera la reelección de Juan Guaidó como Presidente del Parlamento.

Por su parte, la *Organized Crime and Corruption Reporting Project* (2020) (OCCP) también ha develado los nexos económicos corruptos de los militares con el régimen. En un reciente informe de investigación, la OCCP (2020) encontró que casi un tercio de los 312 generales activos del Ejército tienen vínculos con empresas habilitadas para contratar con el Estado. De este grupo, 35 generales son socios o están en juntas directivas de compañías privadas que aparecen en el RNC. A su vez, están vinculados con 41 empresas que han recibido más de 220 contratos entre el 2004-2017.

En conclusión, la combinación de "alta cooptación formal" y "alta cooptación informal" condujo a caracterizar el pilar de cooptación del régimen venezolano como "alto" (ver Tabla N.º 4). Estos hallazgos confirman lo dispuesto por la literatura contemporánea de los regímenes autocráticos: la cooptación constituye una importante fuente de estabilización de las autocracias modernas. Al respecto, autores como Geddes (1999) y Gandhi y Przeworski (2007) han destacado que la cooptación es la vía preferida por los autócratas para vincular a actores estratégicos a su agenda política y así éstos se abstengan de utilizar su poder (fuerza, político o económico) en su contra. En el caso del régimen autocrático venezolano, estos postulados teóricos son confirmados empíricamente y parece claro que la cooptación es uno de los pilares autocráticos del régimen.

4.2. Tipo de configuración de los pilares de estabilidad autocrática del régimen venezolano

La sección anterior permitió comprobar empíricamente que existen suficientes razones para argumentar que la permanencia del régimen autocrático venezolano no ha recaído en tres pilares, sino en dos: represión y cooptación.

La evidencia sugiere que el régimen fundamenta su permanencia en el poder en una alta represión (dura y blanda) y una alta cooptación (formal e informal), pero no ha logrado cultivar una suficiente legitimación, ni en términos de desempeño (bajo apoyo específico), ni en términos ideológicos o personalistas (apoyo difuso medio).

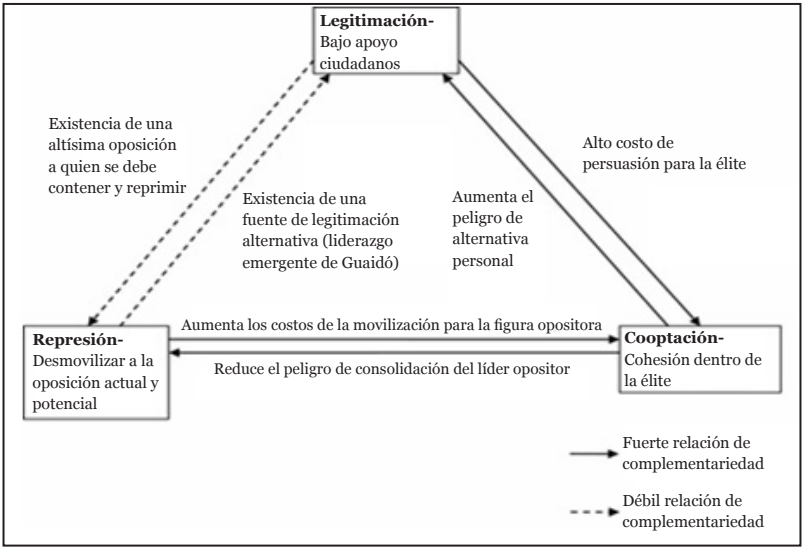
El tipo de configuración resultante de la combinación de estas variables y dimensiones puede caracterizarse como una **configuración de inestabilidad autocrática.** Esta caracterización se fundamenta en que, según los hallazgos de Gerschewski (2013) y Merkel (2017), las configuraciones que históricamente han conducido a la estabilidad autocrática son la configuración de sobre-politización (alto apoyo difuso 'ideológico' + alta represión dura y blanda + alta cooptación formal) y la configuración de despolitización (alto apoyo específico 'por desempeño' + alta represión blanda + alta cooptación informal). El caso del régimen autocrático venezolano no se ajusta a ninguno de estos subtipos. Respecto al primero, la debilidad del régimen estaría en que no cuenta con una alta legitimación difusa (ni ideológica ni personalista). Respecto al segundo, la debilidad del régimen es que carece totalmente de una legitimidad por desempeño y, a su vez, recurre intensivamente a la represión dura.

Con base en la evidencia recabada, sostenemos que el régimen venezolano tiene un tipo de configuración de inestabilidad autocrática (Gráfico N.º 5). Se argumenta que esta configuración conduce a la inestabilidad por tres razones claves: 1) impide explotar las relaciones de complementariedad y refuerzo recíproco entre los pilares, lo cual es fundamental para mantener el equilibrio del sistema y evitar sobrecargas; 2) los pilares de represión y cooptación requieren ampliamente de un refuerzo externo para poder sostenerse (recursos económicos, materiales y de poder), justamente el tipo de refuerzo más escaso por parte del régimen en la actualidad; 3) la carencia de un refuerzo recíproco entre los pilares y la debilidad del refuerzo exógeno obliga a cada pilar a sostenerse fundamentalmente sobre el refuerzo endógeno, lo cual puede ser insuficiente a mediano plazo. A continuación, se desarrollan más detalladamente estos argumentos:

1. Al no existir una suficiente base de legitimación proveniente de ninguna fuente (ni ideológica, ni desempeño, ni personalista, ni procedimental), no es posible explotar las relaciones de complementariedad y refuerzo recíproco entre los pilares. Así pues, cada vez es más difícil cooptar (persuadir) a nuevos actores estratégicos (líderes opositores, empresarios locales y extranjeros); cada vez es más difícil para los actores cooptados mantenerse junto a la agenda del régimen (especialmente para los militares institucionalistas y líderes opositores blandos); cada vez es más alta la proporción de grupos opositores a quien debe reprimirse (tanto de la población como de los grupos de poder) y; cada vez se legitima más el liderazgo de la contraparte

(coyunturalmente, la figura del Presidente de la Asamblea Nacional, Juan Guaidó, aunque podría emerger otro). De esta forma, la debilidad de la relación de complementariedad entre los binomios legitimación-represión y legitimación-cooptación, obliga al régimen a sobrecargar la relación represión-cooptación. Si bien esta relación puede considerarse la clave de casi todos los regímenes autocráticos, se sostiene, en línea con Gerschewski (2013) y Kailitz (2013), que un mínimo de legitimación (de cualquier tipo) es fundamental para poder mantener a un régimen autocrático a largo plazo.

Gráfico N.º 5. Relaciones de complementariedad y refuerzo recíproco entre los pilares autocráticos del régimen venezolano



Fuente: Elaboración propia con base en Gerschewski (2013)

2. Al existir una sobrecarga de la relación represión-cooptación, estos pilares deben ser fuertemente "reforzados" para poder sostenerse, recurriendo especialmente al refuerzo exógeno (económico y material). En particular, sostener el pilar de represión requiere de ingentes recursos económicos para mantener en funcionamiento los aparatos de "seguridad del Estado" que ejecutan la represión dura (FAES, SEBIN, DGCIM, PNB[3], etc.) y mantener a los poderes públicos que ejecutan la

3 FAES: Fuerzas de Acciones Especiales; SEBIN: Servicio Bolivariano de Inteligencia Nacional; DGCIM: Dirección General de Contrainteligencia Militar; PNB: Policía Nacional Bolivariana.

represión blanda (TSJ, CONATEL, FGR[4], etc.). Por su parte, sostener el pilar de cooptación también requiere de ingentes recursos económicos para asignar presupuestos cuantiosos a las FFAA, mantener a flote las empresas estatales que arrojan resultados financieros negativos, garantizar contratos lucrativos a empresarios nacionales y extranjeros que sostienen al régimen, comprar las voluntades de los líderes opositores y, en general, ofrecer oportunidades de negocios a militares y políticos corruptos. Esta cuantiosa necesidad de recursos contrasta con la realidad económica actual del régimen.

Por un lado, la recesión del país por 5 años consecutivos ha reducido fuertemente las arcas públicas. A esta crisis económica preexistente hay que añadir importantes agravantes que restringen severamente el "margen de maniobra" económico del régimen, entre ellos: 1) la importante caída de los precios de petróleo; 2) las sanciones financieras impuestas por el gobierno estadounidense al gobierno venezolano (tanto de carácter general, como de carácter particular hacia los funcionarios) que limitan las transacciones económicas de las empresas públicas y privadas; 3) la pandemia del coronavirus que recrudece la crisis económica y social preexistente; 4) las acusaciones del Departamento de Justicia hacia la cúpula del régimen por presuntos actos de narcotráfico, incluyendo recompensa económica por la captura de los funcionarios. La combinación de estos elementos genera un panorama económico crítico para el régimen, el cual se ve forzado a generar nuevas fuentes de ingresos a través de actividades lícitas e ilícitas para poder mantener en funcionamiento su aparato de represión y cooptación. Se argumenta que, si bien el régimen ha sido exitoso en la tarea de obtener fondos que le permitan financiar su permanencia en el poder, la situación cada vez más crítica genera incertidumbre sobre la posibilidad de mantener este aparato más allá del corto plazo.

3. Ante la ausencia de un refuerzo recíproco entre los pilares y la dificultad cada vez mayor de ejecutar el refuerzo exógeno (económico y material), los pilares de represión y cooptación dependen fundamentalmente del auto reforzamiento (refuerzo endógeno), es decir, un cierto comportamiento inercial. Así pues, la represión sigue funcionando debido a la gran asimetría de poder existente entre la élite gobernante y la oposición (principalmente en términos de fuerza bruta) y la cooptación sigue funcionando porque los actores cooptados por el régimen todavía no cuentan con una oferta alternativa que les haga sopesar que sus beneficios individuales serían mayores con otro régimen. Sin embargo, se argumenta que este auto reforzamiento no puede mantenerse por un largo tiempo si no es alimentado por el refuerzo exógeno.

4 TSJ: Tribunal Supremo de Justicia; CONATEL: Comisión Nacional de Telecomunicaciones; FGR: Fiscalía General de la República.

Por todas las razones expuestas, se sostiene que el tipo de configuración vigente de los pilares de legitimación, represión y cooptación conduce al régimen venezolano a una situación de inestabilidad autocrática. Sin embargo, el desenlace que puede derivar de esta inestabilidad puede ser variado. Por un lado, si no logra mantenerse el refuerzo exógeno del binomio represión-cooptación, el desenlace apunta hacia una transición democrática que lleve a la descomposición del régimen autocrático. Por otro lado, si el régimen logra seguir estimulando el auto reforzamiento de la represión y cooptación y, a su vez, logra inyectar algunos recursos económicos adicionales al sistema, es muy probable que logre continuar con su proceso de liberalización económica y social, manteniendo el control político sobre el curso en el que avanza el proceso de adaptación necesario. El producto de este proceso podría ser un régimen híbrido hacia una autocracia más "suave" (Gerschewski, 2010). Un análisis más detallado sobre las consecuencias de la inestabilidad autocrática (liberalización o transición) no corresponde a los objetivos de esta investigación y, por tanto, podría ser abordado en futuras investigaciones.

Conclusiones

El objetivo del presente documento fue analizar empíricamente los determinantes de la estabilidad autocrática del régimen venezolano. Tomando como base el modelo teórico de estabilidad autocrática propuesto por Gerschewski (2013), se sostiene que los regímenes autocráticos descansan en tres pilares: la legitimación, la represión y la cooptación. Para tener en cuenta el proceso de estabilización autocrática dependiente del tiempo, el modelo sugería examinar tres procesos: refuerzo exógeno, auto reforzamiento y refuerzo recíproco entre los pilares. En este sentido, el marco teórico seleccionado tenía por objeto integrar una visión estática para explicar la estabilidad mediante tres factores causales, con una perspectiva dinámica para descubrir los mecanismos de refuerzo subyacentes.

El modelo de Gerschewski (2013) presta especial atención a la reincorporación de la legitimación en los estudios de los regímenes autocráticos, una dimensión que en los estudios de las autocracias contemporáneas se venía considerando menos relevante. De esta forma, este documento sigue la línea de autores como Gerschewski (2010; 2013), Dukalskis y Gerschewski (2017), Kailitz (2013), Kailitz y Stockemer (2017) y Tannenberg et al (2019), quienes han retomado la legitimación como una variable explicativa de la estabilidad de las autocracias contemporáneas, ante la evidencia cada vez más sólida de que ningún régimen político puede sobrevivir establemente y a largo plazo sólo en base a la fuerza. Estos autores han encontrado que las autocracias modernas tratan de fomentar

una legitimación en base a resultados para obtener el apoyo o, al menos, la tolerancia de la población y las élites.

La evidencia empírica recabada a través de una extensa revisión documental de fuentes secundarias permitió concluir que, en el caso del régimen autocrático venezolano, la permanencia en el poder no ha recaído en tres pilares, sino en dos: represión y cooptación. Así pues, el análisis de los datos sugiere que el régimen busca fundamentar su persistencia a través de una alta represión (dura y blanda) y una alta cooptación (formal e informal), pero no ha logrado cultivar una suficiente legitimación, ni en términos de desempeño (bajo apoyo específico), ni en términos ideológicos o personalistas (apoyo difuso medio).

La combinación e interacción entre estos tres pilares permitió caracterizar el tipo de configuración autocrática vigente en Venezuela como una "configuración de inestabilidad". Se sostiene que esta configuración conduce a la inestabilidad del régimen por tres razones claves: 1) impide explotar las relaciones de complementariedad y refuerzo recíproco entre los pilares (legitimación, represión y cooptación), lo cual es fundamental para mantener el equilibrio del sistema a largo plazo y evitar sobrecargas. Así pues, ante la ausencia de legitimación, se encuentran rotos los binomios legitimación-represión y legitimación-cooptación, lo que ha obligado al régimen a sobrecargar el binomio represión-cooptación; 2) el binomio represión-cooptación requiere ineludiblemente de un refuerzo exógeno para poder sostenerse (recursos económicos, materiales y de poder), justamente el tipo de refuerzo más escaso por parte del régimen en la actualidad. Así pues, la severa crisis económica del país, los agravantes que añaden las medidas de sus grupos rivales (principalmente las sanciones estadounidenses) y la fuerza de factores contextuales como la guerra de los precios petroleros y la pandemia del coronavirus, generan incertidumbre sobre la posibilidad del régimen para mantener el binomio represión-cooptación más allá del corto plazo; 3) la carencia de un refuerzo recíproco entre los tres pilares y la debilidad del refuerzo exógeno de tipo económico y material, obliga a los pilares de represión y cooptación a sostenerse fundamentalmente sobre el refuerzo endógeno, es decir, un comportamiento inercial con los recursos existentes, lo cual puede ser insuficiente a mediano plazo.

En consecuencia, se argumenta que el tipo de configuración vigente de los pilares de legitimación, represión y cooptación conduce al régimen venezolano a una situación de inestabilidad autocrática. Ello implica que, si el régimen pretende continuar bajo un esquema autocrático, requiere incorporar importantes reformas en el sistema que le permitan transitar de una situación de inestabilidad a una situación de estabilidad autocrática. La revisión de la literatura permite afirmar que esto sería factible si el régimen evoluciona hacia una *configuración de despolitización*, caracterizada por un nivel medio-alto de legitimación por desempeño, un nivel medio de

represión blanda y un nivel medio de cooptación formal e informal. Esta combinación de factores es considerada como el equilibrio ideal para la sostenibilidad de los regímenes autocráticos contemporáneos, ya que explota las ventajas de complementariedad de los pilares (Merkel, 2017). Los casos de los regímenes autocráticos asiáticos (China, Indonesia, Singapur, Malasia, etc.) constituyen un buen ejemplo de esta afirmación.

De lo anterior se deduce que, el régimen venezolano requeriría trabajar sobre los tres pilares simultáneamente para llegar a una *configuración de despolitización*. Esto implicaría:

- *Incrementar la legitimación por desempeño*. Esto pasa ineludiblemente por la mejora del indicador de evaluación de gestión del gobierno de Nicolás Maduro.
- *Reducir la represión dura* hacia los actores opositores clave y *desplegar un nivel medio de una represión blanda* hacia los actores estratégicos, tanto opositores como del propio régimen.
- *Reducir la cooptación formal e informal* del sector militar. Esto le otorgaría a la esfera civil mayores posibilidades de liberalización (económica y política) sin estar sujetos a los intereses corporativos de la esfera militar y, a su vez, liberaría algunos recursos económicos y materiales necesarios para fortalecer los otros pilares.

A la fecha, nada parece indicar que el régimen venezolano se esté moviendo en una dirección de flexibilización de la represión y cooptación y un incremento de la legitimación por desempeño. Al contrario, los datos recabados respaldan la afirmación de que el régimen se sustenta en una sobreexplotación del binomio represión – cooptación, lo que luce como una estrategia insostenible a mediano plazo en ausencia de una importante inyección de recursos económicos y materiales.

Un análisis más detallado sobre las consecuencias de la inestabilidad autocrática del régimen venezolano no corresponde a los objetivos de esta investigación y, por tanto, podría ser abordado en futuras investigaciones.

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Political structure and the administration of political system in Iraq (post-ISIS)

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Abstract

The objective of the investigation was to analyze the structure and administration of the political system in Iraq (post-ISIS). After 2003, the Iraqi political system suffered the fundamental problem of its failure to achieve the political and social inclusion that characterizes democratic systems, to guarantee the establishment of a "state for all", while respecting differences. Political representation has moved from the system of sectarian ethnic components, under the title of consensual democracy, to the representation of leaders and the realization of their interests and the interests of their parties at the expense of the groups that claim to represent them, which complicates the problem. In this sense, the new political system could not represent social pluralism, on the one hand, and could not satisfy the demands of the same components on the other. Methodologically, it is a political investigation in the framework of the analysis of the political system. It was concluded that the search for new balances is a pending issue. While these emerging balances and arrangements are still fragile and immature to the extent required, they represent a clear entry point to reshape the regime's political structure in one form or another.

Keywords: Iraq's political structure; post ISIS scenario; admiration of the political system; consensus democracy; ethnic and political differences.

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Estructura política y administración del sistema político en Iraq (post-ISIS)

Resumen

El objetivo de la investigación fue analizar la estructura y administración del sistema político en Iraq (post-ISIS). Después de 2003, el sistema político iraquí sufrió el problema fundamental de su fracaso para lograr la inclusión política y social que caracteriza a los sistemas democráticos, para garantizar el establecimiento de un "estado para todos", respetando las diferencias. La representación política ha pasado del sistema de componentes étnicos sectarios, bajo el título de democracia consensuada, a la representación de los líderes y la realización de sus intereses y los intereses de sus partidos a expensas de los grupos que afirman representarlos, lo que complica el problema. En este sentido el nuevo sistema político, no se pudo representar el pluralismo social, por un lado, y no pudo satisfacer las demandas de los mismos componentes por el otro. En lo metodológico, se trata de una investigación politológica en el marco del análisis del sistema político. Se concluyó que la búsqueda de nuevos equilibrios es una asignatura pendiente. Mientras que estos equilibrios y arreglos emergentes, aún son frágiles e inmaduros en la medida requerida, por lo que representan un claro punto de entrada para remodelar la estructura política del régimen de una forma u otra.

Palabras clave: estructura política de Irak; escenario post ISIS; admiración del sistema político; democracia consensuada; diferencias étnicas y políticas.

Introduction

The democratic system in Iraq was established after 2003 based on political and institutional arrangements for the system of sectarian-ethnic components, in an effort to address social pluralism, and representation of components in power structures and institutions of governance, and to achieve democratic inclusiveness, after the Iraqi state has suffered since its founding from imbalances in the sectarian and ethnic composition, which led to the deviation of the Iraqi regime in previous stages towards the dictatorship.

However, these institutional arrangements and forms that emerged after 2003 were dysfunctional, its lacking for political and economic integration, which led to the failure in achieving tangible improvements in the lives of citizens, and provide basic security for them, and thus did not bring peace and prosperity to the majority of the population.

One of the main imbalances, and most notably in the new governance arrangements, was the political structure that governed the joints of the political system and state institutions, as the social components became hostage to the orientations and interests of the leaders and political parties that they claim to represent. The political structure later turned into a system of component - sectoral leaderships, so political institutions became hollow structures that do not reflect in any way the interests of the groups or citizens, which led to an inability in providing basic services, increase unemployment rate, and widespread corruption, as well as insecurity.

These repercussions led the political system to almost complete political blockage, and the search for an alternative to the administration of the state and the regime became a predominant demand for wide sectors of the masses, and a way out for the political forces from a suffocating crisis, which has matured new changes and alternatives discussed in this research.

1. Factors and Indicators of Change

The post-2003 Iraqi political system witnessed two types of political structure, the first type during the transitional period, which was an expression of the political framework that outlined by the State Transitional Administration Law of 2004. The second type during the stage after the adoption of the permanent constitution in 2005, which is an expression of the political framework that outlined by the permanent constitution. The Transitional Administrative Law has adopted the principle of Consensus democracy as a framework for managing the pluralistic nature of Iraqi society through institutional arrangements for the sharing and exercise of powers among sectoral groups to find a balance in making substantive decisions.

The permanent constitution bypassed that formula through the adoption of a new political formula or another compromise that ensure the weakness of Consensual arrangements and strengthen the logic of the constituent majority in governance, in exchange for a trade off with a pattern of expanded administrative and political decentralization, and the latter approaching to the Confederacy. Consequently, the regime's management has moved from political-institutional Consensus to partisan partnership, which is dominated by the logic of party transactions governed by receptive and changing political interests and balances, and which are directly influenced by external factors to frame this pattern of political tradition. Overall, the political practice in both types failed to achieve political stability and improve institutional performance, which came at the expense of the state-building process, which became weak cohesion and performance. So political and security instability, widespread corruption, and state fragility

were the prelude to the military and security collapse that paved the way for the invasion of ISIS and its control over large areas of Iraq. This made the Iraqi political system in the face of existential challenges reflected its effects on the political process, and led to the emergence of several indicators are maturing in the post-ISIS phase, which were changes in the political structure through the repositioning and change the orientations and political discourse of the political forces. The most important changes can be indicated by:

a) Change of major political alliances: the decline of the political components.

b) Choose an independent prime minister (the crisis of the largest bloc).

c) Change the location of the Kurdish blocs (the referendum and its political implications).

d) The emergence of parliamentary opposition.

e) Declining sectarian polarization.

The above-mentioned indicators were imposed by new political facts whose features began to appear during the legislative elections of 2018, are the result of internal factors mentioned above, and external factors resulting from the repercussions of international positions on the crises of the region, and their repercussions on the course of the regional and international conflict in Iraq as one of the most important pillars of the international approach to the region. Therefore, the political formula expected during the last elections called for a way out, a deal or a compromise as described by the theories of democratic transition. Where the political arena is witnessing the fragmentation of the major political forces, as a result of the successive political and security setbacks since 2003, and the high costs in terms of material and human losses resulting from these setbacks, especially the enormous amount of destruction resulting from the war against ISIS. Moreover, the coincidence with the financial crisis as a result of the decline in oil prices for previous years, which made political change a demand that garnered wide support from the civil and popular sectors, and political parties, as well as the Shiite Supreme authority and large segments of a devastated Sunni community that reject many of the Sunni political forces which were part of the factors of collapse, whose disastrous consequences were most tolerated by these societies. In addition, international attitudes in support of reform demands for different purposes - with varying attitudes -, especially in light of the pressures referred to above, which pushed the regime to seek international support in the security, economic and political aspects.

2. New variables:

a) Change of major political alliances: the decline of political components

The legislative elections of 2018 witnessed many divisions in the political map, characterized by being vertical divisions, unlike the horizontal divisions which represented by the political map since 2003. These divisions reflected in three main political components (Shiite, Sunni, Kurdish), Shiite forces were divided into five major coalitions Are (Al Fatah, Al Naser, State of Law, Sa'aroon coalition, Al Hikma), these coalitions, some of which resulted from internal party splits preceded its formation (Al Da'awa party, Al Hikma), or splits after the subsequent electoral alliances (Al Fatah, Al Naser and Al Hikma), others resulted from alliances on different bases, such as the Sa'aroon coalition, which represents an alliance between the forces of the right, left and center, which represented by the Sadrists (a major Shiite populist religious trend), with the Communist Party, and other civilian forces representing the protest movement. The Kurdish arena has witnessed sharp divisions after the failure of the Kurdistan referendum in September 2017, which reflected negatively on the ability of Kurdish political parties to form a unified coalition in the parliamentary elections, and this led to the participation of most Kurdish parties independently in the elections, and enhanced the presence of political forces with different weights such as: the Movement for Change (Koran), the list of the new generation headed by Shaswar Abdul Wahid, and the coalition of justice and democracy headed by Mr. Barham Saleh, and this in turn reflected on the formula of alliances or understandings with other parties. Several letters were exchanged between the Kurdistan Democratic Party (KDP) with Vice President Nuri al-Maliki in mid-December 2017, which included references to the possibility of rapprochement with Maliki, who was accused of cutting salaries and imposing sanctions on the Kurdistan territory during his rule, to face the intransigence of Haider al-Abadi as Kurdish described. On the other hand, leaders of the Patriotic Union of Kurdistan (PUK), the Alliance for Democracy and Justice, and the new generation, made many visits to meet Prime Minister Haider al - Abadi, and some directly supported Abadi's stay as prime minister in the coming period (AL-Qarra Dagi, Shaho, 2018).

As for the Sunnis, the scene does not seem to be better than anyone else. The Sunni representation in the political process is essentially suffering from a deep crisis, due to the sharp polarization governed by the discourse of narrow factional and regional interests, and the submission to the strongest and influential, so the Sunni parties and entities could not form a unified and a wide political front to participate in general elections, because of

their different orientations, and the intersection of their interests, and the relational gaps between the leaders and elites, and that force's insistence on division may have been the result of prior alliances with the political and security forces preparing for the arrangements of the political majority, with which reserved seats for the next cabinet (Alzubaid, Bagher, 2018).

Thus, it was expected that these conditions will lead to the low level of electoral participation and below the expected, because of a large package of social and political challenges, and the state of frustration reached by many Iraqis. It was also expected that the elections will not produce a large bloc as passed in the experience of previous years, and we will see political blocs that do not exceed each of them (30-40) seats in the parliament, which makes it difficult to choose the Prime Minister and the formation of the next government. Many observers also predicted that rival blocs are likely to resort to transient alliances, and this is achieved through a compromise that may be the selection of independent personalities for the three presidencies and less polarized sectarian and ethnic figures. It is a development that arose to a lesser extent in the three presidencies at that time (Ma'asom, Al Abadi, Al Jubouri) compared to the previous three presidencies (Talabani, Al Maliki, Al Nujaifi) (Rudaw, 2018).

These expectations have been achieved almost completely. The legislative elections of 2018 led to the exit of more than 200 deputies from the last sessions, while more than 100 deputies from all blocs and parties retained their seats, and this is the total number of seats in the Iraqi parliament for the current session, which amounts to 329 seats. Therefore, the divisions in the constituent alliances, and the absence of a large bloc according to the election results, capable of forming the government as in the past, led to the formation of two large blocs in order to form a government which they are (Building Alliance) and (Al Fatah Al-Mubeen – law alliance), which is politically led by the leader of the Al Fatah Al-Mubeen and the Secretary General of Badr Hadi Al-Amri, which represents a broad coalition of the Popular Mobilization Forces(PMF), which is the closest to Iran, and (the Alliance for Reform and Reconstruction), and Sa'aroon coalition led by Muqtada al-Sadr (Al-Khanjar and Al-Nujaifi, 2018).

The two blocs formed from different components (Sunni Shiite and others), with reference to the clear Sunni representation within them. In other words, Sunni representation was not only formality, for example, the Building Alliance - the Hawks Shiite leader's alliance - included Sunni leaders such as Mr. Khamis al-Khanjar, leader of the Arab Project Bloc, who was described by the parties of the Building Alliance as a leader in the alliance, having been excluded from participation in the elections as a result of his previous opposition positions in favor of forces rejecting the political process, some of them terrorist. This led to angry reactions and criticism from some political forces (Sunni and Shiite) emerged later differences,

which are due to political reasons in the first place, the most important conflict over the representation of the Sunni component, which led to the separation of his bloc from the Iraqi decision coalition led by Osama Nujaifi, and the formation of an independent parliamentary bloc, after running parliamentary elections together in the Iraqi Decision Alliance (Baghdad Today, 2018), which left its impact on the portfolio of the Ministry of Education, which is the share of Sunnis, where the dispute over the ministry between the blocs (Khamis al-Khanjar / Building – Al Nujaifi / Reform), in the context of the conflict Between the Sunni of Building alliance and the Sunni of reform around ministerial seats and other positions (Nass Agency, 2019).

On the other hand, Khamis al-Khanjar welcomed the election of a member of the A'ataa bloc Mansour al-Muraed, led by Faleh al-Fayyad, as governor of Nineveh. Al-Muraed received support from political blocs in the province, in the forefront of which is the Kurdistan Democratic Party (KDP) led by Massoud Barzani (Sumeriya News, 2019). This led to criticism and the exchange of accusations among the Sunni leaders, and led to divisions in the National Axis bloc - the Sunni of Building - and the reshaping of the alliance (Iraqi forces) closest to the Sunni of reform (Hamza Mustafa, 2019), which reflects the larger conflicts of this issue, as stated by Ethel Al Nujaifi, when he said: "conflicts within Nineveh seemingly local, but each side of the conflict is supported by one of the parties to the international-Iranian conflict", pointing out that one of the parties in his interest to be Nineveh is Arena of conflict between the parties (Al-Hurra TV, 2018). Therefore, some considered that the formation of the alliance of forces is a sign of a change in the regional equation on the one hand, and the emergence of more national will from other (Zaid Salem, 2019).

What is presented gives a different perspective on the nature of the political structure at this stage, and thus the management of institutions at the other joints of the political system will be completed in the following paragraphs.

b) Choose an independent prime minister (the crisis of the largest bloc)

The problem of the largest parliamentary bloc nominating the prime minister in Iraq, is one of the recurrent crises in the Iraqi political system, which began since the crisis of forming the government in 2010, and continued in subsequent sessions in various forms, there was no clear mechanism and specific, and this was because it did not represent the results of the elections (the first winning bloc in the elections). In the 2018 elections, the Da'awa Party lost its ability to dominate the ruling

Shiite arena, having been in control of the post of prime minister since the first session in 2006, due to the failures already discussed, as well as the emergence of new rival political forces, most notably the PMF, which got clear parliamentary representation, and the overall changes in the Sunni and Kurdish axes, as well as the effects of the international equation, as a result of the coincidence of US economic sanctions on Iran with the election period. This marks a shift in the equation of US-Iranian consensus on the political process in Iraq.

The political blocs suffered another crisis of a constitutional nature, namely the crisis of identifying the "largest bloc", according to the discrepancy between the two figures, the bloc (Reform and Building) had collected about 177 deputies by the signatures of their bloc heads, based on the interpretation of the Federal Court of Article 76 in 2010, but the Building block was based on the signatures of the deputies themselves, declaring that it has about 145 deputies (Hassan Al-Saeedi, 2018), which makes the Federal Court's interpretation of Article 76 subject to other controversies.

In the light of the claims of the two largest blocs to own the parliamentary majority, Iraq entered a political crisis, and political forces were unable for more than four months after the parliamentary elections, to reach a solution to the dilemma of the major bloc, which is supposed to form the new Iraqi government, and the Parliament also failed to elect a president and two vice presidents, and postponed its first session on 3/9/2018. Parliament subsequently ended political chaos by electing Mohammed al-Halbousi, a member of the Building Alliance, as its president on September 15, with a secret parliamentary vote, marred by suspicions and accusations of buying office and votes from deputies (Muhammad Abdul-Jabbar al-Shabout, 2018).

The largest parliamentary bloc is one of the most important pillars of the political process because it is constitutionally responsible directly for the formation of the government, as well as being the main driver for the selection of other presidential positions (Presidents of the Republic and Parliament), in other words, the largest bloc is responsible for the rule of Iraq. Therefore, it is a political problem rather than a legal one, and that changing the course of its formation and thus its political choice may lead to the transformation of Iraq into a political system of various features and borders in one way or another, as it seems that the internal and external complexities of the sectarian components system have brought the political process to a crossroads. The previously established options are no longer feasible in preserving the necessary political balances to sustain the political system.

The most suitable and available option to get out of this stalemate, in light of the failure to identify the largest bloc, is the candidate of compromise between the two largest blocs and with different specifications represented

in choosing a prime minister. Moreover, Prime Minister Adel Abdel Mahdi, who was appointed on October 2, 2018, stipulated on the political parties before agreeing to assume the presidency of the Council of Ministers, giving him full freedom to choose ministers, in addition to the freedom to formulate his government program, and arrange its relationship with political forces As far as he sees fit, and to exclude partisan and political interventions from government action (Harith Hassan, 2017), regardless of the extent to which these conditions were met later, so the current government was described by many political forces as the government of the last chance (Retired Brigadier Nizar Abdel-Qader, 2018), or a government of salvation, and another opinion went further to say that the Presidential Troika of the Political regime (Mohammed al-Halbousi, Barham Salih and Adel Abdul-Mahdi), represents the last chance for the Iraqi political process, and this is an acknowledgment of the failure of the formula of governance that has existed since 2003, and an indication of new political propositions that began to emerge strongly by many political forces in conjunction with the escalation of the protest movement, represented in the need for fundamental amendments, including the amendment of the Constitution and the parliamentary system of government.

c) Change the positions of the Kurdish blocs (the referendum and its political implications)

The Kurdistan referendum came in September 2017, after the extensive extension of the Kurdistan Regional Government in the disputed regions as a result of battles fought by the Peshmerga against ISIS, a unilateral referendum lacking Iraqi and international support, as the Kurdish leadership has declared it non-binding. Moreover, the referendum would not in any way change the geopolitics. The region would remain besieged with no access to the sea, and it would remain subject to Turkish intentions in the bulk of its oil exports. Therefore, the referendum was not practically related to the issue of self-determination, but it used to achieve goals within two axes:

1. The first relates to strengthening the KRG's influence in the disputed regions, especially Kirkuk and the Nineveh Plain, in the sense of using Kurdish military control as a pressure card on the federal government.
2. The second is related to the Kurdish situation, which is divided into two aspects. First, the use of the referendum as a mechanism for exporting the internal political, financial and service crisis. On the financial and service levels, the provincial government has been unable to pay the salaries of the majority of civil servants, representing 12% of the population of the territory, and the unemployment rate has increased

to high levels (from 6.5% in 2013 to 14% in 2016), and the region has also accumulated debt, which was caused by excessive non-investment expenditures in previous years and oil production partnership contracts (DENIZ Natalie, 2017), estimated at $ 20 billion (Erm News, 2019). In addition to the inability to secure electricity to the population in the three provinces in the Kurdistan region despite the export of oil independently for three years. Second, securing the position of political leadership inside the territory within the framework of competition for power, revenues and resources among the Kurdish political forces. Competition among Kurdish forces has escalated since the start of the campaign against ISIS, and in light of the challenge posed by the PKK and its affiliated organizations, as well as other Iraqi Kurdish groups. Therefore, a number of Kurdish forces launched a "no" voting campaign in the Kurdish referendum, considering that the aim of the referendum is to expand the authority of Barzani and not achieve Kurdish independence (Abdel-Qader Al-Janabi, 2018).

The failure of the referendum led to the decline of Kurdish influence in general, and undermined the legitimacy of the leaders of the territory, and in the midst of crises in Iraqi Kurdistan as well as the above mentioned, such as the crisis of freezing parliament, and the end of the mandate of the President of the territory, with political unrest of opposition movements and protests coincided with the event, all this contributed to the escalation of political and constitutional blockage in KRG, in return, this event gave impetus to the federal government towards the Kurdish territory, coincided with the victory of Iraq over ISIS, the liberation of Mosul, and resolve the issue of Kirkuk largely after the entry of federal forces, followed by the restoration of Khanaqin and Jalawla'a districts and the Sinjar and other areas in the Nineveh Plain by the Iraqi army and the Popular Mobilization Forces (PMF), which led the Kurds to comply with many of Baghdad's demands, in terms of closing airports, and the deployment of Iraqi forces in the disputed regions, and has already been marked retreat of the position of the Kurdish issue as a whole (Abdul–Nasser Al-Mahdawi, 2018).

Therefore, these indications reflected on the Kurdish position on the formation of the federal government. The Kurdish forces between the PUK and the KDP have been divided on positions reserved for the Kurds, such as the post of President of the Republic, the post of Deputy Speaker of the Parliament, and the Ministry of Justice, as well as the conflict between the two main Kurdish parties over the post of governor of Kirkuk. However, this does not mean that the Kurdish influence in the Iraqi political system has diminished, or that it is no longer a key party, but it has lost much of its qualitative weight and numerical weight due to the previous repercussions. In other words, it is no longer in a negotiating position to gain new gains, or even retain all his previous gains, and this was considered a significant change in the fundamental balances and the mechanisms governing the Iraqi political system post 2003.

d) The emergence of parliamentary opposition

The political process in Iraq has remained since 2003 lacking one of the most important pillars of democratic systems (the parliamentary or political opposition), as no political opposition bloc was formed in the Iraqi parliament. All blocs participated in the government, or opposed some positions without being in the position of opposition. The reason is mostly because most of these parties want to gain benefits from government positions, which they do not get if they resort to the opposition option. However, the current reality has become clearly different. After seven months of the formation of the new Iraqi government, headed by Adel Abdul Mahdi, the signs of failure to deal with many files, including the completion of ministerial portfolios, along with the files of services, corruption and unemployment, in addition to foreign presence In the country, the Iraqi parliament began to witness a movement aimed at establishing an opposition bloc. This movement led by one of the components of the "Reform and Reconstruction" coalition, which was a victory coalition led by former Prime Minister Haider al-Abadi, who declared his "opposition" to the government on 13 June 2019, to be officially the first bloc declared its opposition to the government (Al-Arabiya Net, 2019). However, these dialogues were conducted within the framework of preliminary understandings and did not reach the stage of final agreement. In the meantime, specifically on June 16, 2019 (The Wisdom Stream) led by Ammar al-Hakim, turning to the political opposition, which he called it (constructive opposition).

Therefore, the bi-pro-opposition began to emerge (Parliament, 2019), although the opposition is still a minority in parliament, and the government still holds a parliamentary majority at that time, with reference to the waving of Muqtada al-Sadr, leader of the Sa'aroon alliance on 9/8/2018 to resort to the opposition if the government does not respond to reforms (Middle East Online, 2019), which was happened later after the start of the protests in early October 2019, and the demanding of Muqtada al-Sadr, to resign the government as a result of the popular opposition, and the loss of a large number of victims in those demonstrations (22).

In this context, the Federal Supreme Court ruled that the parliamentary opposition is constitutionally guaranteed, stressing that its members enjoy full constitutional guarantees.

Regardless of the various estimates of the reasons for declaring or adopting these blocs opposition position, or credibility, and the extent of its ability to pressure on the government to reform, or even topple it, but what is important is the emergence of this missing link in the Iraqi political system after 2003, a s one of the fundamental guarantees of the democratic system, and one of the main mechanisms of parliamentary work.

e) Declining sectarian - ethnic polarization

During this phase, a number of factors emerged that indicated the decline of sectarian polarization in the first place, and the ethnic in the second place. The war against IS led to the unification of Sunnis and Shiites, bridging the big gap between them, and thus repairing the rifts of national unity, which were subsequently reinforced through subsequent events. The crisis of the Kurdistan referendum represented another opportunity for a Shiite-Sunni rapprochement materialized by passing a resolution rejecting the referendum from the Iraqi parliament, dismissing the governor of Kirkuk (in two sessions from which the Kurdish blocs withdrew), and the Shiite coalition and the main Sunni forces issuing statements rejecting the referendum.

Moreover, a decision was issued by the Federal Court disrupted the referendum procedures, and the crises experienced by the territory produced positions opposed to the dominance and uniqueness of the Kurdistan Democratic Party led by Massoud Barzani, which led many Kurdish opposition forces and personalities to rapprochement with the Iraqi political forces nearby or in line with their orientations, as mentioned above. In addition, different political priorities and agendas have divided minorities in the Kurdistan territory, such as the Yazidis, Assyrians, Sunni Arabs, and Turkmen, between loyal factions to the KDP and others opposed to it. Those who oppose the KRG or the KDP generally support Baghdad or an Iraqi state where they can enjoy wider local autonomy.

In the same context, the parliamentary elections and the subsequent political movement led to the re-formation of major alliances outside the constituent divisions of the political process since 2003, and then the formation of the government in the manner mentioned above, and the emergence of parliamentary opposition to the government in general and its president in particular, from the Shiite forces against the most prominent position of the Shiite component, the Prime Minister, and this adds another sign to this change. All this was framed in the October 2019 protests, which came out mostly from Shiite areas, and reflected purely nationalist tendencies, where most of the protesters sought to avoid sectarian slogans, and raising Iraqi flags, as slogans showed that the anger was directed at a political class not a particular sect because of corruption, unemployment and the deterioration of the of services reality, in contrast to the protests that took place in 2012 and 2013, which used by the ISIS to gain support.

Consequently, the political discourse and alliances reveal different starting points in the management of the political system, and indicate a state of political maturity in one way or another. Where the criteria on which political performance is based become more linked to societal tasks

(the needs of citizens, not only the requirements of political parties and politicians), in terms of services, security, tackling unemployment and fighting corruption, etc., in conjunction with the public rights and freedoms that frame these needs and associated with them, without ignoring the struggle of political parties and forces to maintain their positions and privileges, but in the context of growing awareness of the strength of popular demands and the need to identify its with them, even at a minimum level, to maintain the positions of those forces and parties, which inevitably pushes forward the process of state-building and national unity.

Conclusion

The repercussions of the post-IS period are a reflection of structural imbalances in the new governance arrangements after 2003, which brought the country into comprehensive political, economic and security crises, and allowed the ISIS to invade Iraqi territories with its devastating effects, as well as the exorbitant costs of the battles to liberate the cities and territories. However, these repercussions on the other hand, strongly imposed on the political system to search for a way out of its worsening crises, having exhausted most of its options to continue the status quo, which pushed the political forces under the pressure of these developments accompanied by discontent and widespread popular protests, towards new directions and options, in order to Achieving a degree of political and economic inclusiveness, through the creation of new political balances, ensuring fair representation and institutional effectiveness. Although these new balances and arrangements are still fragile and immature to the extent required, but they represent a clear entry point to reshape the political structure of the regime in one way or another.

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The Impact of Social Justice and Alienation on Political Participation in Jahrom City

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Abstract

The purpose of this research is to study the impact of social justice and alienation on the political participation of people in Jahrom, Iran. Methodologically, field surveys were applied in terms of amplitude, and a cross-sectional study in terms of scope. The statistical population of this research were the holders of voting rights (over 18 years old) residing in the city of Jahrom. Sample size was calculated using the Cochran formula and selected by simple multi-stage cluster random sampling. The research questionnaire was developed by an investigator and was used by experts to determine its validity. For the data analysis, the regression coefficient tests, Mann-Whitney and Kruskal-Wallis were used. The results showed that there is a significant relationship between the sense of social justice and the sense of social alienation with political participation among the citizens of Jahrom. Furthermore, according to the study findings, the relationship of political participation based on contextual factors of citizens, gender, marital status, income, occupation and social class did not have a significant correlation with political participation (P value> 0.5).

Keywords: political participation; sense of social justice; sense of social alienation; contextual factors; citizenship in Jahrom.

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El impacto de la justicia social y la alienación en la participación política en la ciudad de Jahrom

Resumen

El propósito de esta investigación es estudiar el impacto de la justicia social y la alienación en la participación política de las personas en Jahrom, Irán. En lo metodológico se aplicaron encuestas de campo en términos de amplitud, y un estudio transversal en términos de alcance. La población estadística de esta investigación fueron los titulares de derechos de voto (mayores de 18 años) que residen en la ciudad de Jahrom. El tamaño de la muestra se calculó mediante la fórmula de Cochran y se seleccionó mediante un muestreo aleatorio simple por conglomerados en varias etapas. El cuestionario de investigación fue desarrollado por un investigador y fue utilizado por expertos para determinar su validez. Para el análisis de datos, se utilizaron las pruebas de coeficiente de regresión, Mann-Whitney y Kruskal-Wallis. Los resultados mostraron que existe una relación significativa entre el sentido de justicia social y el sentido de alienación social con la participación política entre los ciudadanos de Jahrom. Además, según los hallazgos del estudio, la relación de participación política basada en factores contextuales de los ciudadanos, género, estado civil, ingresos, ocupación y clase social no tuvo una correlación significativa con la participación política (Valor P> 0.5).

Palabras clave: participación política; sentido de justicia social; sentido de alienación social; factores contextuales; ciudadanía en Jahrom.

Introduction

Political participation in the indirect democracy system plays a major role. Election is the main mechanism for the realization of popular sovereignty. The ultimate power belongs to the people, and the people delegate this power to the representatives through the political participation process. Meanwhile, participation allows citizens to replace responsible officials and change government. Thus, participation makes the people responsible and responsive to the nation. Political participation is a descriptive combination that signifies the interference of the people in the political affairs of governing.

Political participation came into the political literature of political theorists following the process of socializing human beings and interfering with the political management affairs of countries. Since the 16th century

and following the collapse of the political system of the church and the introduction of social contract theory into political debates and the emphasis of the Enlightenment thinkers on people's involvement in determining their fate , the discussion of political participation and civil society entered western political literature and based on the Enlightenment and the social contract theory of political participation means that one's involvement in different levels of activity in the political system closely linked to the socialization of politics (Rush, 2012).

The extension of political indifference that gives power to irresponsible and power-seeking individuals, dramatically reducing rulers and government attention to the interests of the people, preventing the growth of opposition groups and various organizations, degrading the political education of the people, including the consequences of reducing political participation at the level of society that causes irreparable damage to the political and social system (Rezaei, 2015).

Participation in various fields has always been the subject of debate among many thinkers and experts, as if they think that the main focus of development is based on political participation. In this regard, Lucine Pie considers the development subject to the successful transition of the systems from the six crises, one of which is the crisis of participation (Pie *et al*., 2001). Therefore, to remove these consequences and to promote the country's overall development, the factors affecting political participation should be considered as an important issue in order to provide scientific solutions to increase political participation.

The issue of political participation and how it is realized, has rooted in the long history of nations, and today it is one of the fundamental requirements of democracy, citizenship and one of the indispensable necessities of the 21th century political system. The main indicator of political development is the response to the growing need for political participation and its institutionalization in the form of civic institutions. Studying the political participation of each society enables the understanding of the political behavior of its people and identifies how and in what social contexts the level of political participation of citizens changes. It seems that different factors affect citizens' political participation. These include social justice and alienation.

Habermas regrets that the historical currents in favor of positivist cognitions have isolated the conceptual and communicative cognitions of liberation, making human life meaningless. In the theory of communicative actions, the two concepts of the " world of life" and the "system" are facing each other. The" world of life" is the domain of symbolic relationships, normative structure, the world of meaning, the communication practice, understanding, consensus, agreement, and mental relation. In contrast, they are essential elements of the power and money system. In the modern

era, the vast areas of the "world of life" have become impossible within the "system" and have been renovated based on the economic system and power system.

The domination of the system over the world of life endangers the cultural and symbolic reproduction of society and makes society sick. The result of this situation is the loss of meaning, the shattering of collective identity, anomaly, alienation and objectification in society, unpaid work, absurd and meaningless jobs (Ritzer, 2004). Habermas argues that economic and bureaucratic crises will not be the cause of the collapse of society, but the legitimacy and motivation crises that are related to the identity and solidarity of the system, are the main cause of the collapse of the social order. Because the world of life, which is responsible for cultural transformation and understanding through communication, social cohesion, socialization and personality formation, has lost its functions due to the influence of the system.

To get rid of this situation, Habermas pays attention to communicative rationality**.** In the year 1970, he wrote two papers as a return to the idea of the public sphere. In a regularly destroyed communication paper, he illustrates the nature of healthy communication and in the second paper " "towards the theory of communicative competence" he argues that for the actor to be able to communicate he must know more than the linguistic rules of how sentences and speech are constructe. They should also be aware of the "universal dialogues" that are part of the social linguistic structure of society. He describes another situation as the "Ideal verbal situation" in which disputes are rationally resolved through the communication and understanding which is free from the element of coercion (Turner: 1986)

According to these principles, Habermas pathologizes the distorted forms of the world of life that lack meaning, identity and freedom, and he sees the rebellion of world life through the revival of universal scope. According to him, it is possible to revive the masses through the activation of new social movements. It is here that politics takes its place in Habermas's theory. This policy is manifested by the revival of universal scope to include all members of society as individuals who have the right to speak in a common world. Habermas's reliance on dialogue moves him away from dealing with institutional arrangements, so what matters to him politically is the freedom to criticize political authority through dialogue and argument rather than relying on equal voting right, representation, balance of the three powers, and issues that guarantee political freedom (Turner, 1986). The distinguishing feature of man as a social being is "action and speaking in public."

Without the participation in the social life of groups and social organizations, the formation of a distinct human identity at the individual level and the formation of a collective identity is impossible. Thus, the main

function of groups and social organizations is to create a collective identity, to shape collective interests, having the power and ability to modify social and equitable relations, and to foster these relationships. On the other hand, citizens in society need social justice to feel it.

Social justice is one of the implications of justice, which means the "fair" allocation of resources in a society. In this regard, the law must achieve an acceptable level of real and formal justice and must ensure a fair distribution of resources and equal opportunities (Paya,202). Social and political justice are central issues in the participation of individuals in micro and macro politics. According to political philosophers, the two main factors involved in societal judgments against political justice are distributive and procedural justice.

These two main approaches to social justice have always played an important role in the decision-making process of individuals on the usefulness or unusefulness of the governments' policies to attract public participation in the implementation of programs. In political philosophy, equality has always been taken into account both for political consequences and for the pursuit of justice (Arizi & Golparvar 2005).

The concept of social political justice consists of the empirical and conceptual foundations of the moral evaluation of social policy (Austin, 1986). Scholars such as Graham (2002) believes that over the past three centuries, political philosophy has been one of the main providers of conceptual frameworks for movements of social political liberation. In fact, advances in achieving the right to vote for women, equality of opportunity for education and employment appear to be legitimate demands that achieve simultaneous attention to political and social justice.

Conducting the present study in Jahrom is a major issue. Jahrom is one of the very old cities of Iran whose people have played a main role in Iran's political environment and have been active participants, especially after the Islamic Revolution, during the various elections, but the basic issue is that in this city, the main participation contributes to participate in various elections and participation in parties, political groups and associations are somewhat less. While political participation can mean at the two levels of the masses (such as participation in elections, membership in parties and associations and social experiences) and elites in parliament, the executive power and excellent positions (Kazemipour, 2004), but in Jahrom city, party and community participations are more among the elites, while every society must benefit all of its human resources to achieve development goals. Therefore, the issue of political participation in the city of Jahrom is a fundamental issue and the present study seeks to answer the main question of which are the sociological factors related to political participation with priority on social justice and alienation among the citizens above 18 years old in the city of Jahrom?

1. Research Background

The results of the research are presented in tabular form in order to avoild the prolonging the article and make it more visible.

Table 1. Overview of Previous Studies

Researcher	Title	Results
Hahram nia et al (2017)	Assessing the impact of social networks on political participation (case Study of Mazandaran university students	There is a positive relationship between social networking (network hierarchies and types of participation) and political participation, and the social dimension of social networks has the most impact on students' electoral behavior.
Rahim Zadeh (2016)	The role of social capital in political participation	According to Putnam's theory, three major indicators, which are a reflection of the social capital are proposed to illustrate the relationship between social capital and political participation: social trust, social norms, and social networks. Research findings show that social capital improves cohesion, cohesion and confidence in society while modifying relationships, enhancing the political participation of human resources and maintaining their interactions with the government.
Nik Pour Ghanavati et al, 1968	Investigation of socio-economic factors related to political participation	Place of birth, education, occupation, social class, religious orientation, income, use of mass media, political family, political affiliation, and interest in political programs have a significant relationship with women's political participation. There was no significant relationship between age, marital status, and ethnicity with political participation. Multivariate regression analysis showed that the five variables of religious orientation, political friends, interest in political programs, use of mass media, and education explained 47% of the changes in the dependent variable.
Jafari nia (2011)	Investigation of socio-economic factors affecting the level of political participation among the citizens of Khormoj	The desire for political participation was higher for men than for women, and as education increased, the desire for political participation increased as well. There was no relationship between age, place of residence, and marital status with the degree of desire for political participation. Among the research variables, the variables of education and organizational relations had the most significant impact on the desire for political participation, respectively, wiht a beta of 0.47 and 0.28, respectively. Using the linear variance of the independent variables, the rate of desire to participate in political participation was explained at 52.5%

Jemna & Curelaru	Values and political participation of students on a group of students in Romania	Voting rate among students with a preference for religious activities is significantly higher than those who have never had religious participation.
Suh (2014)	The correlation between Social capital and political participation: considering national development, economic, political and economic inequality	Human capital, which is a general indicator of trust, confidence in government and public participation, is associated with political participation in institutions (such as voting) or non-institutions (participating in peaceful demonstrations, etc.). Large variables indicate the impact between social capital and political participation and the rapid change in public values leads to the participation and activity of individuals. The correlation of social capital with political participation is also dependent on social contexts.
Theorel (2013)	The link between social capital and political participation: voluntary associations and employment networks in Sweden	Participation in organizations has a positive impact on political activity, and this finding has been extensively studied. That is why people like Toddle believe that civic skills and social capital creation are created through these associations and institutions, but Theorel in his article seeks to show whether social capital can have a similar impact or not. According to the logic of poor communication, organizational participation increases human capital by increasing the communication of individuals. As a result, it increases participation and ultimately leads to more activity, but the question is what aspects of community participation are more effective and directive. He believes that participation in organizations, both voluntary and forced, can ultimately lead to political participation.
Putnam and Halleville (2006)	Education and social capital	Education has a relatively positive impact on political participation. With regard to trust, it has also been found that by increasing both self-education and average education, people's trust is significantly increased. Of course, they point out that education does not always have a positive impact on participation, so the impact of education on social participation and trust should be regarded as relative rather than permanent.
Fami (2006)	Social capital and civil action: a study of youth in the United Kingdom	The rate of social capital among young people (19 to 26 years old) in the UK is lower than the rate of social capital among older people (30 years old and older). In most cases this difference is significant. Youth political participation is also lower (compared to the political participation of older people).

(Own elaboration based on the objective of the investigation).

2. Research Theoretical Basics

There are various definitions of political participation, some of which include: Herbert McCloskey: "Voluntary activities by which members of a community contribute to the selection of governors, directly or indirectly, in the formation of public policy" (Siles 1968:252). Milbert & Goel: Private citizens try to influence or support politics and government" (Van Deth, 2001: 4). Nelson: "Any voluntary act, successful or unsuccessful, organized or disorganized, cross-sectoral or continuous exercise to influence the choice of public policies, public administration or the selection of political leaders at different levels of government, whether local or national". He believes that three dimensions of this definition require interpretation.

The first aspect of participation is as an action that include not only reactions or abstract emotions but also personal emotions. In all political systems, people have a potion relative to government and politics. But these positions are considered participation when accompanied by some form of action. The second dimension refers to the concept of citizens' participation in voluntary actions; therefore, non-voluntary actions, such as military service in the armed forces or paying taxes, fall outside the scope of the participation. The third aspect is that a citizen has the right to be elected by government officials, so voting in single-member elections that deprive citizens of their right to vote is not as a part of participation (Pie *et al.*, 2001).

Van Deth also believes that the various definitions of political participation refer to: 1. the people who play the role of citizen; 2. political participation is recognized as an activity. 3. Thi action is voluntary. 4. Politic participation is related to the government, not limited to a specific stage, such as parliamentary elections (Van Deth, 2001). The discussion about the nature of participation is complex and proponents of every thought have their own reasons. However, different schools of thought expect quite different results. The school of liberalism believes that conventional participation enhances the dignity of citizens and promotes their agreement with government and the political system.

Accordingly, participation can be as a form of civic education that leads to more informed and realistic citizen demands and increases the power of the poor to find equality. Participation is often seen as a guide to problem solving and public affairs management, as it facilitates greater input of ideas and information and provides incentives for the executive and legislature to work hard and be honest (Huntington & Weiner, 2000:149).

From this point of view, although there are always problems with the participation of the ignorant and corrupt citizens, there is no better way than the participation of the citizens themselves (Sheikh Mohammadi, 2000). In

contrast, conservatives disagree with the above ideas and criticize them. Their criticisms emphasize the less optimistic basics of the capacity of most citizens to understand the complexities of public affairs and recognize their long-term interests, and to harmonize desirable interests.

Extensive participation can also threaten the freedom or at least the freedom of minorities and smaller groups (Huntington & Weiner, 2000: 150). In addition, it may reduce stability by increasing group conflict and demands as well as frustration when demands are not realized (Sheikh Mohammadi, 2000: 88). In the mid-1990s, a third school of thought emerged that combined some assumptions with both conservative and liberal theories to gain influence. This new school believes in an optimal level of participation. Extensive participation at the optimum level can provide many of the benefits anticipated by liberal theory, but the consequences of intense, prolonged and widespread participation are less desirable (Sheikh Mohammadi, 2000:87). For this reason, Almond and Verbah point to the need to combine passive and passive citizenship orientations with active citizenship. Melbourne believes that a moderate level of participation is desirable and helps the government to balance the need arising from the need for reaction and the need to act cohesively and firmly (Huntington & Weiner, 2000).

3. Research Framework

Different theories have been used in the present study, but only the theories that are the basis of the research hypothesis extraction namely the relationship between social justice and alienation, constitute the theoretical framework.

According to Frohlich and Oppenheimer's theory, one of the qualities of political discourse among modern societies (which is prerequisite for creating a sense of political equality) is whether political discourses are based on just and impartial reasoning?

In general, sense of inequality and injustice can have worrying consequences for society. According to the principle of difference (which plays a central role in Rawls's theory of social justice), citizens of any society may believe that the government as a reference and political power should try to resolve differences and create social and political equality between different groups of society.

At more advanced levels of analysis, individuals in the community may consider the usefulness and ineffectiveness of political and social differences to weak or reinforce the legitimacy of political power mentally. Ultimately, these perceptions moderate the overall level of political, social, and ...

participation (Arizo & Golparvar, cited by Thorne Bellam and Vermont, 1998). Therefore, from the theory of Frohlich and Oppenheimer, Rawls and Thorne Bellam and Vermont, the following hypothesis is obtained:

3.1. There is a relationship between social justice and political participation

According to Almond and Verba's theory, alienation has a great impact on the attitude, beliefs and judgments of its consumers about the social world and consequently the political community. Political alienation refers to a set of attitudes and beliefs that reflect a negative view of the political system. A less positive view of the political world that reflects one's dissatisfaction with political agents and institutions. Sociologists believe that political alienation may lead to the formation of illegal acts such as protest movements and mass violence, as well as reduced participation through legal political channels, such as voting and the activities of stakeholder groups. Therefore, alienation and participation in various social and political spheres are highly correlated (Masoudnia et al.2014:104). Therefore, from the theory of Almond and Verba we obtain the following hypothesis*:*

3.2. There is a relationship between sense of social alienation and political participation among citizens.

Results from surveys in countries show that men more than women, people more educated than less educated, urban more than rurals, rich people more than poor people and middle-aged people more than young people show their interest (Lipset and Dose 1994: 379-418). So, from Lipset theory we obtain the following hypotheses:

3.3. There is a relationship between demographic variables and political participation among citizens.

Research Model of Research
Table 2.

Sense of social justice	
Sense of social alienation	
Contextual factors	

Age	
Gender	
Marital status	
Income	
Social class	Political participation

(Own elaboration based on the objective of the investigation).

4. Research Hypotheses

According to the purpose of the research, the following hypotheses are presented:

- There is a significant relationship between the sense of social justice and political participation among citizens with the right to vote in Jahrom.
- There is a significant relationship between the sense of social alienation and political participation among the citizens of Jahrom.
- There is a significant relationship between the contextual factors and political participation among the citizens of Jahrom who have the right to vote.

5. Research Method

The present study is a field method with survey technique, in terms of the purpose is an applied study, in terms of scope is micro, and in terms of time is a cross-sectional study. The statistical population of the present study was all persons above 18 years old in Jahrom (have right to vote) that according to the census of year 2016, their number was about 70000 persons. Using Cochran's formula, the sample of the study was calculated for 383 persons and selected by simple random sampling.

The level of analysis in this research is micro level, because in this research the attitude of the citizens is evaluated regarding the variables and factors. The unit of analysis in this study is also the citizens of Jahrom above 18 years old and also the observation unit in the present study is individual, because the researcher-made questionnaire with 73 questions in 5 options Likert questionnaire was completed by individuals. The following steps were performed to prepare a validated questionnaire:

1.Theoretical study around the discussion of factors affecting political participation. 2. Conceptual definition of independent and dependent variables of research and determination of its objective indicators. 3. Prepare questions to measure the major research variable that is the same

dependent variable 4. Prepare questions for each of the independent variables considered in this research. 5. Set up the final questionnaire and its implementation among 5 members of the statistical population based on their contribution in the statistical population. 6. Determine the validity and reliability of different variables in the questionnaire. 7. Remove some questions to increase the validity of the questionnaire and final approval by the supervisor. 9. The next step is to complete the questionnaire by the respondents which is done by the supervisor after confirming the questionnaire. In Table 3, the variables, the relevant questions, and their validity are indicated:

Table 3. Examine the status of the research variables

Variable	Item	Scoring	Validity
Political participation	1-12	5=very high, high, average, low, and very low=1	0.815
Social justice	49-55	5=strongly agree, agree, somewhat, disagree, strongly disagree=1	0.749
Sense of alienation	60-66	5=very high, high, average, low, never=1	0.676
Contextual factors	67-73	-	-

(Own elaboration based on the objective of the investigation). Items 35 and 55 are scored reversely.

In the present study, some methods were used to determine the validity of the questionnaire, such as conducting preliminary research to determine probable problems in the research questions. Table 1 presents the conceptual and operational definitions of the research variables:

Table 4. Conceptual and operational definitions of variables

Variable	Status	Conceptual definition	Operational definition	
			Indicator	**Item**
Political participation	Dependent	Huntington defines political participation as a set of activities done by citizens to influence over the regime and support the political system. According to this definition, people can participate in political affairs by imposing pressure, competing and influencing over the regime on one hand and support the system on the other hand (Huntington, 2002, 15)	Electoral actions	1-3
			Participation in political associations and institutes	4-7
			Political opinions and comments	8-12
Sense of ocial justice	Independent	Social justice is one of the implications of the concept of justice, which means the "fair" allocation of resources in a society. In this sense, the law must achieve an acceptable level of genuine and formal justice and must ensure a fair distribution of resources and equal opportunities (Paya, 2002, 76).	--	49-55
Sense of self-alienation	Independent	The term alienation, which Raymond Williams regards as one of the most difficult vocabulary terms, has emerged as one of the major concepts of sociology, psychology, and social psychology (Mohseni Tabrizi, 1991:25), widely used in the humanities to explain various forms of actions and reactions to flows, peripheral realities, psychological pressures, and social constraints (Sotoudeh, 2000.244)	Feeling absurd	60-63
			Self-esteem reduction	64-66
			Social class	73
Demographic and contextual factors	Independent	----------	Age	67
			Gender	68
			Marial status	69
			Income	70
			Job	71
			Education	72
			Social class	73

(Own elaboration based on the objective of the investigation).

6. Research Findings

To analyze the research hypotheses Spearman's correlation coefficient, F, Mann-Whitney and Kruskal-Wallis tests were used**.**

Table 5. Examine the status of research hypotheses

Hypo-thesis	Spearman correlation coefficient	Signifi-cance level	(R^2)	F	Signifi-cance level	Mann-Whiteny	Signifi-cance level	Status
1	0.53	0.309	0.1	0.414	0.520	10843	0.0	Confirmed
2	0.61	0.232	0.2	0.751	0.387	50228	0.0	Confirmed

(Own elaboration based on the objective of the investigation).

The result of the first hypothesis and the result of the second hypothesis: Considering the significance level of Mann-Whitney test, the first and second hypotheses were confirmed**.**

Table 6. Examine the status of the third hypothesis

	P-Value	Abundance	Average	Contextual factors
P = 0.33 Chi-Square = 8.710	159	197.6	18-30	**Age**
	154	193.19	31-43	
	53	149.83	44-56	
	12	217.29	57-67	
	5	-----	Invalid response	
P = 0.794 Mann-Withney = 17934	198	19.08	Man	**Gender**
	184	193.3	Woman	
	’	-----	Invalid response	
P = 0.850 Mann-Withney = 16295.500	133	192.45	Single	**Marial status**
	284	190.22	Married	
	2	-----	Invalid response	
P = 0.543 F =0.612	32	33.468	Less than 1 million	**Income**
	199	33.130	4 to 101 million	
	28	30.875	401 million and more	
	124	-----	Invalid response	

P = 0.612 F = 0.672	32	34.187	Govermental	**Job**
	21	33.761	Private	
	179	32.666	Freelance	
	90	31.136	unemployed	
	58	-----	Invalid response	
P = 0.26 F = 2.586	6	35.166	Illiterate	**Education**
	69	34.637	Under diploma	
	133	30.330	Diploma	
	38	32.763	Associate degree	
	74	34.837	Bachelor	
	22	32.954	MA and higher	
	41	-----	Invalid response	
P = 0.475 F = 0.746	36	33.222	High	**Social class**
	239	33.87	Moderate	
	97	31.587	Low	
	11	-----	Invalid reponse	

(Own elaboration based on the objective of the investigation).

According to the findings of the relationship between political participation based on citizens' contextual factors, gender, marital status, income, occupation and social class had no significant relationship with political participation (P_Value> 0.5). Also, the highest frequency of political participation was observed in people between the ages of 18-30 years old (n = 159) and those with a high school diploma (n =133) (P_Value <0.5).

Discussion and Conclusion

The results showed that the highest frequency of the reearch unit was in the age group of 18-30 years old for 159 persons (42.1%) and the lowest frequency was in the age group of 57-67 years old for 12 persons (3.1%). The highest frequency of the reearch unit was observed in 198 men (57.1%) and 248 married (64.8%). The highest frequency in people with incomes of 1 to 4 million was 199 persons (52%) and the lowest frequency in people with incomes of 5 million to 1 billion wa 28 persons (7.3%).

The highest frequency of occupations was in the freelance occupants (3 persons, 46.7%) and the lowest frequency in the private occupations (2 persons, 5.5%). Also, the highest frequency of education level was in high school (133 persons, 34.7%) and the lowest frequency was in illiterate people (6 persons, 1.6%) and the highest frequency of responsiveness in middle

social status people was (239 persons, 62.4%) and the lowest frequency was found in people with high social status (36 persons, 9.4%). The highest mean was related to the religiosity variable with a value of 40.362_+ 7.74 and the lowest mean was related to the national media use rate with a value of 3.956_+1.19.

According to the results of the **first hypothesis**, it can be concluded that social justice is one of the implications of justice, which implies fair allocation of resources in a society, so the law must achieve an acceptable level of real formal justice and guarantee equitable distribution of resources and equal opportunities.

In the social and political environment of modern societies, the combination of political and social justice is such that most democratic mechanisms seek to create the trust that prioritizes popular demands during micro and macro policymaking. Citizens of the community may believe that the government, as a source of political power, should devote all of its efforts to remove differences and create social and political equality between different parts of society.

At more advanced levels of analysis, individuals may consider the usefulness or unusefulness of social and political differences, thereby weakening or reinforcing the legitimacy of political power on the basis of the same usefulness and unusefulness of the differences mentally.

To examine the **results of the second hypothesis**, the word alienation must be defined. The word" alienation", which Raymond Williams describes as the most difficult word of vocabulary is one of the main concepts of sociology, psychology, and social psychology, has been widely used in the humanities to explain the forms and types of actions and reactions to currents**,** peripheral facts, psychological pressures and social impositions. Results from Lipset surveys in countries show that men more than women, people more educated than less educated, urban more than rurals, rich people more than poor people and middle-aged people more than young people show their interest.

The results of the third hypothesis are in line with the studies of Nickpour Ghanavati et al (2012), Panahi and Bani Fatima (2015), Nazari et al (2014), Jafarinia (2011), Beck (2009), Famy (2006) and Glazer (2000). The findings of Nickpour Ghanavati et al. (2012) showed that place of birth, education, occupation, social class, religious orientation, income, use of mass media, political family, political friends, and interest in political programs were significantly associated with women's political participation. There was no significant relationship between age, marital status, and ethnicity with political participation.

Multivariate regression analysis showed that the five variables of religious orientation, political friends, interest in political programs,

use of mass media, and education explained 47% of the changes in the dependent variable. Panahi and Bani Fatemeh (2015) concluded that the political culture of women affects their political participation. Also, all political cultural components, including attitude towards political system, ruling political elites, political knowledge, women's attitude towards their political empowerment, and the norm of women's political participation had a significant positive relationship with women's political participation.

Nazari et al (2014) showed that women's political participation in the structure of power in the Islamic Republic of Iran was low. Due to the different socialization and gender stereotypes that are induced in the process of socialization through institutions such as family, media, schools, educational institutions, women view politics as a masculine domain and don't tend to engage in politics, especially in the area of power.

As such, women's unwillingness to be in power, rather than stemming from the prevailing structures of society, is deriven by the different socialization of girls and women**.** However, he first condition is to increase women's participation and presence in power, to remove and prevent the reproduction of stereotypes and gender identities arising from the culture of society in the process of socialization. Jafarnia (1) showed that men were more likely to engage in political participation than women, the higher social classes were more likely to engage in political participation than the lower social classes.

There was no relationship between age, residence, and marital status with a desire for political participation. Among the research variables, the variables of education and organizational relations had the most significant impact on the tendency for political participation, respectively, with a beta of 0.47 and 0.28, respectively. Using the linear variance of the independent variables, tendency to participate in political participation was explained at 52.5%. Beck (2009) found that factors such as parental socioeconomic status and their political participation, youth activism in high school, and parental civic orientation had a significant impact on adolescent political participation.

Famy (2006) showed that the rate of social capital among young people (19-26 years old) in the UK was lower than the rate of social capital among older people (30 years old and older). In most cases, this difference is significant. Youth political participation is lower (compared to the political participation of older people). Glazer (2000) has indicated that age variables play an important role in social capital. He considers the curve of age with social capital as inverse **U**, which means that by the increase in age, investment in social capital increases, but this investment has a threshold that is further reduced by the increase in age.

Also, people invest more in their social relationships in occupations that are more socially connected. Lipset believes that there is a strong relationship between political participation and socio-economic factors, and in most of his studies has shown a positive relationship between socio-economic bases and political participation. Of course, there are many evidences that show political participation at all levels differs according to socio-economic status, gender, age, personality, and the political environment or the context in which the partnership takes place.

According to Sydney Verba and Nay, Individuals with higher socioeconomic status show the higher rate of participation. Voting, previously considered the simplest participatory act, has been influenced by the socioeconomic base of organizational bonding patterns. Leicester Milbrat believes that political participation varies depending on various factors such as political environment, political status, political motives and personality traits. The more individuals are exposed to political incentives such as discussing politics, belonging to political organizations, and accessing political information, their chances of political participation increases.

Practical Suggestions and Results-Based Hypotheses

According to the seventh hypothesis of the relationhip between a sense of social justice and political participation, it is suggested that the relevant authorities proceed to create laws appropriate to the conditions of the people and to prevent them from rapidly changing and misleading the people. The state and provincial budgets mut be distributed according to the rules, without relationhip and lobbying to reign theocracy and avoid decisions based on ethnicity or locality and prevent money and relationship law enforcement.

The rights of ethnicities must be respected. **Hypothesis eight,** which examines the relationship between social alienation and political participation, proposes that people must engage in social policy. The attraction and acceptance of people in social and political affairs should be facilitated. The social dignity of individuals must be respected. People should be able to express their opinions freely. Given the **ninth hypothesis,** which examines the relationship between contextual factors and political participation, it is suggested that

It is suggested that appropriate social media programs in the mass media, in schools and in the workplace should be held for different ages based on the age understanding of the audience**.** There should be no prejudice to the inactivity of a particular gender, and the conditions of

recruitment should be facilitated in political activities regardless of their gender, as well as their marital status or single-sex status. The level of literacy and political education of individuals should be strengthened. To create jobs and increase the income of people in the community so that politically-minded individuals with an economic wing can inject new ideas into the political community. Appropriate actions and planning must be performed by the state authorities to increase the social class of the people.

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Identification of Advertising Trends in The Mass Media and On the Internet Used by Modern Terrorism

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Abstract

The authors have set themselves the goal of analyzing the mass media and coverage of terrorist attacks on the Internet, to assess their impact on the growing number of terrorists in the world based on this analysis. The methodological basis of this research is represented by the comprehensive approach, which allowed identifying and corroborating the need to restructure the media and the Internet to combat modern terrorism. The epistemological potential of the statistical and sociological methods used within quantitative and qualitative research makes it possible to properly interpret the results of scientific research devoted to the subject of analysis. The results suggest that current activity by the media and Internet users encourages the growth in the number of terrorist acts in the world and improves the efficiency of recruiting newcomers to terrorist organizations. Furthermore, optimal ways of restructuring social media and expanding the scope of control of the operation of the Internet without violating freedom of expression and the right of citizens to free access to information are discussed.

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Identificación de tendencias publicitarias en los medios de comunicación e Internet utilizadas por el terrorismo moderno

Resumen

Los autores se han fijado el objetivo de analizar los medios de comunicación de masas y la cobertura de ataques terroristas en Internet, para evaluar su impacto en el creciente número de terroristas en el mundo basándose en este análisis. La base metodológica de esta investigación está representada por el enfoque integral, que permitio identificar y corroborar la necesidad de reestructurar los medios de comunicación e Internet para combatir el terrorismo moderno. El potencial gnoseológico de los métodos estadísticos y sociológicos utilizados dentro de la investigación cuantitativa y cualitativa posibilita interpretar adecuadamente los resultados de la investigación científica dedicada al tema de análisis. Los resultados sugieren que la actividad actual de los medios de comunicación y los usuarios de Internet alienta el crecimiento del número de actos terroristas en el mundo y mejora la eficiencia de reclutar a los recién llegados a las organizaciones terroristas. Por lo demás, se discuten formas óptimas de reestructurar los medios de comunicación social y ampliar el alcance del control del funcionamiento de Internet sin violar la libertad de expresión y el derecho de los ciudadanos al libre acceso a la información.

Palabras clave: sociedad democrática; Internet; medios de comunicación social; espacio de medios; organizaciones terroristas.

Introduction

It is common knowledge that nowadays, the main indicators of success in the media business are ratings and advertising revenues. In this connection, the mass media report terrorist attacks instantly and publish the bloodiest photographs. In the 21st century, no one denies that the advanced technologies, communications networks, and the all-pervading spread of television have had a significant impact on the increase of the advertising potential of terrorism. Terrorism is inconceivable without the mass media playing a major role in informing the society of what is happening in the world, especially in the areas of activity where members of society do not

have free access to information. Just as government authorities, modern terrorists use all benefits provided by the mass media to present their goals to the public and gain support for their world, which is very often Islamic.

History shows that the mass media increase the impact of terrorist attacks and global communications systems provide their coverage in real-time mode. For example, according to expert evaluations, the hostage-taking and mass massacre of Israeli athletes by the terrorist group Black September during the Olympic Games in Munich in 1972 were seen by a global audience of over 500 million people — and it was in the middle of the 20th century. At the beginning of the 21st century, on 11 September 2001, the mass media were already broadcasting live the terrorist attack in the USA all over the globe. Any terrorist attack is a scoop, which leads to a sharp rise in the size of its audience. R. Nixon, the 37th President of the USA, said, "It is much more profitable to invest a dollar in the mass media, in propaganda, than ten dollars in designing new weapons. The probability of using weapons in the modern world is small, whereas propaganda operates every day, every hour" (Sistema moralno-psikhologicheskogo obespecheniya v Vooruzhennykh Silakh Rossiiskoi Federatsii, 2005). Therefore, what matters for terrorists is not the very fact of doing damage or the presence of a victim but their socio-psychological influence on the consciousness of mankind.

Experience suggests that terrorist organizations and terrorists choose their targets very thoroughly and the victims and destroyed infrastructure resulting from their activity get the leading ratings in media reports. We agree with T. Watkins from San José State University, who believes that there is an unspoken agreement between the terrorists and the mass media: Media: "If you commit some atrocity, we will publicize it and make it seem militarily significant". Terrorists: "Well, if you will publicize it, we will commit it" (Nature and Significance of Terrorism, n.d.).

L. NBC News President said the following in this regard:

> The job of the press is not to worry about the consequences of its coverage, but to tell the truth <...> As much as those of us as in the press would like to be popular and loved, it is more important that we are accurate and fair <...> and let the chips fall where they may (Cohen-Almagor, 2005: 26).

Meanwhile, at the Arab Information Ministers Council the following was pointed out in respect of the "chips", "The time has come for the world to bear its responsibility in holding these means accountable" (Adopting the Launch of the Arab Media Observatory of Terrorism, 2006: 112). Psychologists have said many times that terrorists can cancel a terrorist attack if they know that the media will not cover its consequences.

In view of the foregoing, the following dilemma arises. On the one hand, society has the right to receive reliable information in all spheres of its

activity. On the other hand, the information circulating in free access should not have a destructive impact on public consciousness. The hypothesis of this research is the statement that freedom of speech and freedom of the media in terms of the content of their reports must be ensured in any society, but the activity of the media must be restricted as far as destructive impact on the worldview and psychological state of a democratic society is concerned.

1. Methods

Methodological foundation of this research is represented by the comprehensive approach, which allowed us to identify and substantiate the necessity for the restructuring of the mass media and the Internet to counter modern terrorism. The gnoseological potential of the statistical and sociological methods used within quantitative and qualitative research made it possible to interpret the results of scientific research devoted to the subject matter of analysis adequately.

2. Results: The mass media as an accessory to terrorism

The mass media have an innate inclination to create sensations. Live TV broadcasts create an illusion of involvement with the events on the screen in the audience watching such programs. The surveys conducted by the Public Opinion Foundation (FOM) suggest that about 90% of TV viewers believe what is broadcast. However, they frequently receive information about real events interpreted in a particular way, which can be called second-hand data (Zelenkov, 2016). The effect of perception of such information to a large degree depends on the content and tone of comments, propaganda skills of the program host, and explanation of facts. As a rule, they are highly correlated with the goals pursued by certain forces. By rerunning TV programs and chiefly appealing to emotions, one can impose virtually any viewpoint on the target object. Using military terminology, it can be argued that control of the mass media is equivalent to “air superiority in modern war”.

In their work devoted to studying the Israeli–Palestinian conflict, C. Happer and G. Philoa found that in a content study of 89 news bulletins, there were only 17 lines of text (from transcribed bulletins) relating to the history of the conflict. When journalists used the word “occupied”, there was no explanation that the Israelis are involved in a military occupation. This led some viewers to believe that the Palestinians were the “occupiers”

since they understood the word only to mean that people were on the land. Further, while there was extensive coverage of the violence, there was very little analysis of its nature and causes. The practical effect was to remove the rationale for Palestinian action. Much of the news implicitly assumed the status quo – as if trouble and violence started with the Palestinians launching an attack to which the Israelis responded. As a result, the Palestinian perspectives were effectively marginalized in the debate and the Israeli perspectives were promoted (Happer, Philo, 2013).

Public news networks are less driven by advertisement revenues but are equally dependent on ratings. Today the emergence of an array of new digital platforms has turned media competition into a fierce contest to capture people's attention. This has led to hyper-sensationalization in the way terrorist activity is reported, a tendency perhaps most apparent in television, still the general public's main source of information. TV has always had a love affair with drama and violence. "Being on television confers a kind of reality on people, much more so than being written about," said Daniel Schorr, a three-time Emmy-winning journalist who covered world news for more than 60 years. Drama is at its peak of effect on TV. Shana Gadarian, associate professor of political science at Syracuse University (USA), draws similar conclusions in a piece published two years earlier in The Washington Post, "Terrorism is newsworthy because it is inherently dramatic and threatening. Media competition means that journalists and editors have incentives to use emotionally powerful visuals and storylines to gain and maintain ever-shrinking news audiences" (Ogilvy, 2017: 225).

H. Rivera notes that the relationship between the media and terrorist organizations is "symbiotic" in nature. This is manifested in the following. On the one hand, mass communications and media (USA, Europe) have negative attitude to terrorist activities, support the fight against them, but on the other hand, terrorist acts, or rather coverage of their consequences, are very beneficial for the media in terms of attracting an audience. This information is one of the most rated in the news, causes a lot of discussion, which increases the cost of advertising in such media, television programs, websites, etc. In turn, terrorist organizations, committing various acts of terrorism (or even not committing them but imitating commitment), try to contact various media to broadcast video materials about these events, thereby increasing their fame and counting on the promotion of their own ideological convictions worldwide.

According to B. Nacos, terrorists that have entered into a mutually beneficial alliance with the media sphere, as a rule, pursue four main goals:

> To convey the propaganda of the deed and to create extreme fear among their target group; To mobilize wider support for their cause among the general population, and international opinion by emphasizing such themes as righteousness of their cause and the inevitability of their victory; to frustrate

> and disrupt the response of the government and security forces, for example by suggesting that all their practical anti-terrorist measures are inherently tyrannical and counterproductive; and to mobilize, incite and boost their constituency of actual and potential supporters and in so doing to increase recruitment, raise more funds and inspire further attacks" (Nacos, 2007: 59).

In the context of this research, it is noteworthy to take into consideration the results of the research conducted under the guidance of A. Grau devoted to the following topic: "Why do some terrorist attacks get more media attention than the others?". Scientists have found that the mass media focused more deeply on terrorist attacks if they involved fatalities. If law enforcement agencies classified terrorist attacks as crimes (similar to murders) rather than terrorist attacks, the mass media were not interested in the corresponding facts.

Analysis of news reports showed that in all kinds of the mass media, attacks by Muslim perpetrators received, on average, 357% more coverage than other attacks; for major media this indicator amounted to 758%. For instance, in the database the research relied on Muslims carried out 12.5% of the attacks in the USA but got 50% of the total news coverage. Media coverage was higher when: the terrorist was arrested (the arrest itself is an event to be reported); law enforcement agencies or the government were the target of the attack; when the terrorist attack led to fatalities among the population. One additional death provided an average increase of reach by 46% (Grau, 2015).

Therefore, as long as the mass media exist, terrorists will hunger for what the former British Prime Minister Margaret Thatcher called the "oxygen of publicity" (Wilkinson, 2006). For as long as terrorists commit acts of violence leading to innocent victims, the mass media will continue to scramble to cover them to satisfy the desire of their audiences for dramatic stories in which there is inevitably huge public curiosity about both the victimizers and their victims. The journalist R. Dwivedi points out that even those terrorist incidents where the perpetrators fail to claim responsibility and their identity is unknown or in serious doubt, as in the case of the bombing of the American base at Dhahran in June 1996, the international media coverage given will still be enormous (Dwivedi, 2019). This prompted David Broder, a Washington Post reporter, to demand that the terrorist be denied access to the media outlets because media coverage of terrorist operations is a reward for their criminal actions (Muhammad, 2016).

3. The Internet as a modern media platform in the hands of terrorists

Apart from television, social networking sites have become widely popular all over the world in the 21st century. The fact that they are deeply ingrained in everyday life has provided easy access to information and high speed of its usage virtually in all spheres of human activity. However, it is important to remember that these advantages are also available to terrorists. The same technology that allows the globalized world to interact regardless of distances or physical location is used and adapted by terrorists to carry out terrorist attacks, recruit newcomers, and ensure organizational longevity.

For instance, the terrorist organization Islamic State of Iraq and Syria (ISIS) uses social networking sites extremely effectively to recruit new members from all over the world. Terrorists borrow elements from famous comics, games, or movies for their propaganda. One of the examples is the logo of the American action film "Avengers: Infinity War", which was converted for advertising of the Caliphate. Content is adapted for different target groups. Depending on the target audience of videos or photos, users are shown more young men or women and as far as children and teenagers are concerned, the content is compiled taking into account their living environment and watching habits.

Making use of online tools, terrorists appeal to young people's sense of justice or utilize the experience of racism and discrimination to arouse hatred towards society. For instance, debates over racism in connection with the statement made by M. Özil (a German footballer of Turkish origin) and his retirement from the national team in 2018 triggered a series of related media stories. Their purpose was to reach young users that had had no contacts with terrorist groups before by multiple suggestions on social networking sites and gradually convert them to their ideology (REPORT Islamist content on Telegram. Children and young people lack protection, 2019).

In November 2017, one of the founders of Facebook admitted that this social networking site (and there is a high degree of probability that it is also true for other similar social platforms) "literally changes your relationship with society, with each other. It's a social-validation feedback loop <...> exploiting a vulnerability in human psychology" (Why is youth extremism on the rise? (Fahmy, 2017: 39). Knowing this, recruiters of terrorist organizations usually make first contact with young people via social networking sites. According to experts, ISIS has registered from 30,000 to 40,000 Twitter accounts and guides to jihad and joining ISIS are available on the Internet.

It should be noted that Twitter is an especially useful tool for terrorist organizations. This is due to the fact that Twitter uses the method of "pushing" information to the user. It means that on the screens of their gadgets users often see the information they are not necessarily looking for. For example, a week before the resignation of the Egyptian President H. Mubarak, the total number of tweets about political changes in Egypt increased by a factor of ten. The top video with protests and political comments generated about 5.5 million hits. Over 75% of the people who clicked on the Twitter embedded links about the Arab spring were from the countries that do not belong to the Arab world. As a result, social media resources became a mouthpiece that spread information about the unrest and riots in Egypt. Meanwhile, usage of Twitter was observed already in 2008 during the conflict between Russia, South Ossetia, and Georgia.

Some experts share the opinion that social networking sites represent a new form of the mass media, where terrorists have posted their messages from the very moment when they appeared. However, it is impossible to hack into social networking sites and the databases where the data about each user are stored. On the other hand, dissemination of propaganda materials is only half the battle. It is most worrying that users of social networking sites might become radicalized indirectly through targeted advertising algorithms developed by Facebook and Twitter and owners of these media giants do not deny this fact. This targeted advertising can be even more focused than previously thought. Reports show that Facebook uses 29,000 different criteria for each user, which can be used to trace such things as their income, the number of credit cards, etc.

In the course of its investigation, ProPublica (An American nonprofit organization that produces investigative journalism in the public interest) was able to target its advertising at radical groups via the Facebook advertising service by paying $30 to promote corresponding posts. Facebook suggested groups to be targeted, including 2,300 people interested in the topics "Jew hater", "How to burn Jews", and "History of why Jews ruin the world". ProPublica selected the groups and within 15 minutes the ads were approved ("How to burn Jews" Facebook group suggested to advertisers by algorithm, 2017). As M. Pascoe notes, this targeting would show Facebook users content they had never seen before, sometimes based on continuous searches but sometimes only based on one click (Pascoe, 2019).

"Facebook is dangerous," said Senator Sherrod Brown (Ohio, USA) at the hearing of the Senate Banking Committee in July 2018. "Facebook has said, 'just trust us'. And every time Americans trust you, they seem to get burned". Social media has plenty of detractors, but by and large, Americans agree with Brown's sentiment. In 2018, 42% of those surveyed in a Pew Research Center survey said they had taken a break from checking the platform for several weeks or more, while 26% said they had deleted the

Facebook app from their cellphone. A year later, the iteration of the same Pew survey found social media use unchanged from 2018. According to the marketing professor Pinar Yildirim, Facebook has its critics and they are mainly concerned about two things: mishandling consumer data and poorly managing access to it by third-party providers; the level of disinformation spreading on Facebook (The Impact of Social Media: Is it Irreplaceable? 2019).

Worse, there is an addictive quality to social media since due to their adaptivity, they adjust based on the user's preferences and behaviors, which makes them both engaging and addictive (The Impact of Social Media: Is it Irreplaceable?, 2019). As it was noted by Jeffrey Feltman, the UN Under-Secretary-General for Political Affairs at the UN Counter-Terrorism Committee, in 2015, ISIS raised the exploitation of the Internet and social media to a new level, luring over 30,000 foreign terrorist fighters from over 100 countries to join the conflicts in Syria and Iraq or inciting individuals to commit terrorist acts in their home countries (In special meeting, UN weighs measures to prevent terrorists from exploiting the Internet, social media, 2015).

The attempt to analyze the phenomenon of terrorism in an integral way is tarnished by the fact that terrorists recruit reasonable people. They form groups of people or "networks", i.e. subjects connected with each other via complex communications of direct or indirect exchange. The deadly business of terrorism is a living social undertaking organized by people who do not associate themselves with the societies of their social origin. The growing loss of contact with society has turned jihadism into a global movement based on virtual connections with abstract concepts. To increase the effective sense of belonging among the members of terrorist organizations, it is necessary to instill a few common basic beliefs into them. This is where ideology is combined with the abilities of social media. Together they serve as factors playing the role of catalysts for maintaining the power and stability of terrorist groups. For instance, during the Arab spring in 2010–2011 with the help of social networking sites young people were able to organize an unprecedented antigovernmental revolution, which started in Tunisia and then spread to Egypt, Libya, Yemen, Syria, Bahrain, and other Middle Eastern countries.

Research has shown that wide usage of the Internet to spread propaganda and engage people in terrorist groups, including data transfer encryption, has changed the pattern of jihad. Nowadays, many terrorists either maintain publicly available profiles in social media reflecting the rhetoric and images of jihadists or communicate with each other via the Internet using encrypted messaging applications. The percentage of such online activity is constantly rising. For example, the development of social media and the Internet as a means of spreading jihadism in the USA was encouraged by

several key figures who prepared and disseminated messages promoting the activity of Islamic terrorists. Among them, there was Samir Khan from North Carolina, who came to promote al-Qaeda in a propagandist magazine Inspire, and Zachary Chesser, who was connected with Revolution Muslim — a terrorist organization, which spread its propaganda via websites and YouTube and created a special video threatening the creators of the South Park TV show (Terrorism in America After 9/11, n.d.).

Thus, modern terrorists become radicalized online since the Internet and social media do not impose any visa requirements and restrictions on their users. In 1990, the US National Academy of Sciences published a report saying that in the future, due to advanced information and communications technologies, terrorists will be able to do more damage "by using a keyboard than by installing an explosive device" (Veimann, 2011). The same conclusion is shared in the report published in February 2018 by the George Washington University saying, "Only one of the 12 returnees identified in this study returned with the intent to commit an attack on behalf of a jihadist group in Syria" (Meleagrou-Hitchens, Hughes, Clifford, 2018). Terrorists acknowledge that social media are a powerful tool not only for recruiting newcomers but also for intimidating their opponents (for this purpose they publish horrifying videos of killing), promoting their worldviews, and justifying their actions. For example, the average radicalization duration (i.e., the time from first exposure to extremist beliefs to participation in extremist acts) of US foreign fighters in 2005, when social media were first emerging as a factor in the radicalization of US extremists, was approximately 18 months. In 2016, when over 90% of US foreign fighters were active on social media, the duration of radicalization was down to 13 months on average (Jensen, James, LaFree, 2018).

"Law enforcement officers, psychiatrists, and criminologists have known for decades that certain perpetrators like to publicize their acts," says criminologist Scott Bonn of SPIEGEL, who explores the motivation of terrorists and criminals and public opinion. In general, they do this to nurture their vicious narcissism and magnificence. The terrorist, who attacked mosques in New Zealand in March 2019, had previously announced his attack online and was streaming the attack live. The assassin from the Berlin Christmas Market in 2016 had recorded his confessional video weeks earlier (Wie Nutzer mit digitalem Terror umgehen sollten, n.d.). As we see, terrorism has no motherland and neither does the Internet. Those who browse the virtual space without passports do not have a motherland either even if physically they are in their native countries.

4. The mass media and the Internet as a means of restraining terrorists

Free speech and media are the basic instruments (many would say values) of every democracy. However, they provide terrorists with the publicity they need to inform the public about their atrocities, operations, victims, and goals. Indeed, democracy is the best arena for those who wish to reach their ends by violent means. Raphael Cohen-Almagor from the University of Haifa notes that violent movements and individuals exploit democratic instruments to find "golden paths" (from their point of view) to further their ends without holding themselves to the rules of law and order. Those subjects of terrorism would be crushed immediately were they to employ similar tactics in autocratic systems (Cohen-Almagor, 2005).

However, it does not mean that reputable democratic mass media share the values of terrorists. At the same time, it shows that in an open society free media are especially vulnerable to exploitation and manipulation by terrorist organizations. In view of this, a question arises as to what has to be done to transform the Internet out of an instrument of spreading terrorism into a means of its suppression. The conducted analysis allowed us to identify a few directions.

First, it is necessary to reconsider the approach to the presentation of information in the mass media, which is now based on emotions, convulsiveness, and superficiality rather than results of scientific research. We do not call for introducing censorship but advocate for putting the content of newsfeed on scientific grounds. Journalists should create reports about dramatic and emotionally charged violence avoiding propaganda of hateful statements proclaimed by terrorists or encouraging stereotypes leading to separation of society. In this context, Dan Berkowitz's work is of interest, which applies a semiotic lens to examine the role images of terrorism play in mediating healing and solidarity in both the local and the global media arena. Using a qualitative examination of news reports and blogs related to the 2016 Brussels terrorist attacks, he found that a combination of photographs, editorial cartoons, and anchoring texts has the potential to build global solidarity against terrorism. One of the insights of his work emphasizes the importance of the anchoring function. Berkowitz explains that this function is essential for audience decoding (Fahmy, 2017).

Second, it is necessary to reduce the unintentional promotion of terrorist organizations by the mass media using mechanisms for controlling the terminology they use referring to terrorists and legislative elaboration of the regulations applying to the coverage of events connected with terrorism. Practice shows that in some cases the mass media should refrain from covering terrorist attacks. It is particularly true when attempts are

being made to free hostages. A live broadcast showing that specialized security forces are going to enter the building where hostages are kept can endanger the whole operation and hostages' lives (for example, as it happened in the course of the release of hostages in Nord-Ost (Moscow) and Beslan). Terrorists can follow the coverage of their actions and the activities carried out by law enforcement forces, listen to, and even watch anti-terrorist operations as they are being performed and their reaction can be fatal. Besides, hostages can hear some information about the plans of the authorities, understand the situation in the wrong way, and start acting, thereby compromising the release operation.

The American mass media can object by referring to the First Amendment to the Constitution of the United States, which guarantees freedom of expression to journalists. We can respond to this argument in the following way. In 1991, during the Gulf War, journalist teams were organized in the warfare area and were accompanied by public affairs officers from the corresponding department of the US Central Command. Any material prepared in the region during the military operation could not be sent to the press without an endorsement given by these officers. Reporters and journalists were not allowed to work in the military bases and subdivisions deployed at the front line. Anything that hindered moral consolidation of the troops — criticism of George Bush administration; portraying difficulties faced by the army in the desert, preparation of burying teams, and cases of unsuccessful bomb-dropping; multiple discussions of the facts of imprisonment and deaths of representatives of multinational forces — was strictly forbidden. Strong censorship measures were also taken by the allies of the USA within the anti-Iraq coalition (Zelenkov, 2016). No one mentioned the First Amendment — everyone complied with the requirements of the Command of the multinational forces.

Third, the mass media should fight for reliability and objectivity of information, while law enforcement agencies should introduce wide control of materials promoting terrorism being published in the mass media and on the Internet. The mass media and civil society should realize their responsibility for fighting terrorism and understand that this responsibility is common and collective and should follow a comprehensive approach, encouraging moderation, dialog, and tolerance at the same time. In their essence, terrorists are serial mass murderers. All efforts of the government and society should be devoted to stopping them but they should not be considered politically any more significant than the other serial killers that exist in the world (Nature and Significance of Terrorism, n.d.). If all mass media adhere to this conclusion, the number of terrorist attacks covered globally will be substantially reduced. Hassan Ali Mohammed, professor in Mass Media at the University of Minya (Egypt), notes that an important criterion for evaluation of the success of a certain terrorist attack is a free publication about it in the mass media. Certain work is conducted in this direction in many countries, both democratic and autocratic.

For example, in 2018, the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications (ROSKOMNADZOR), the Ministry of Internal Affairs, and the Federal Security Service of the Russian Federation in cooperation with the Prosecutor General's office of the Russian Federation stopped the activities aimed at dissemination of illegal information by over 64,000 Internet resources (in 2017 — 61,700, in 2016 — 36,700), 47,000 out of which contained materials connected with activities of international terrorist organizations (Vestnik Natsionalnogo antiterroristicheskogo komiteta, 2019). In the countries of the European Union, global Internet companies Microsoft, Facebook, Twitter, and Google/YouTube, whose headquarters and servers are located in the USA, together with the European Commission developed a "Code of conduct on countering illegal hate speech online", where they commit to responding to the publication of prohibited materials on the Internet promptly and effectively.

Within the framework of cooperation with global providers, at the beginning of 2015, a department in Europol was established focusing on marking terrorist content on the Internet. Upon its requests, prohibited materials are highly likely to be blocked or deleted (in over 90% of cases in 2017). In the UK it is forbidden by the law to disseminate and publish materials promoting terrorism on local media platforms, including foreign ones. The Act to Improve Enforcement of the Law in Social Networks, which came into force on 1 January 2018, places an obligation on operators of social networking sites to provide a judicial assessment in response to each submitted complaint about unlawful content within 24 hours and restrict (remove) access to it. Otherwise, they are subject to severe fines. The control of information published on the Internet is very strict in the Kingdom of Saudi Arabia since all traffic goes through proxy servers belonging to the state. In many countries failure to meet the requirements prescribing removal or blocking of terrorist content can result in criminal or administrative penalties (in France — up to €375,000, in Germany — up to €5 million, and in the UK — criminal prosecution) (Zhikhar, Krivorotov, 2019).

Thus, after many years of praising the benefits of the mass media and the Internet, especially their role in the integration of cultures and activation of dialog between civilizations, we see that these means of communications can also be used to harm the above-mentioned aspects of life. Nowadays, the intellectual legacy of the mass media and the Internet has turned into a fragile legacy that should be subject to large-scale restructuring. The following intellectual question should be asked once more, "What is the difference between the need of society for freedom of access to information and various prevailing types of using it by the mass media and the Internet?" Posing this question allows us to argue that the hypothesis of this research has been proved. The mass media and the Internet should not serve as a factor in marginalization of society or a breeding ground for terrorists.

Conclusion

Fighting terrorism is more than just military confrontation since it represents a fight between ideas and values. Nowadays, coverage of terrorism in the mass media and on the Internet should be viewed in the way that encourages the efforts of these networks in collaboration with civil society and authorities. Modern mass media and the Internet represent means that can both nourish and restrict terrorism. The strategy of their development in the context of fighting terrorism should focus on increasing the awareness of society of its various reasons and consequences, while the mass media and the Internet should play a leading role in this process due to using special forms and methods in the programs they provide and reasonable content that they introduce to public consciousness. It is necessary to create a database about the manifestations of terrorism and carry out analysis of this information in a way that would lay media siege to terrorism. Formalization of the terminology used by the mass media is necessary to provide a common point of view on the events and problems connected with terrorism. Counter-terrorism activity in the mass media and on the Internet cannot be carried out without a comprehensive interdisciplinary approach combining political, legal, technological, media, and sociological methods.

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The Influence of Artificial Intelligence on the Human Potential Development: The Views of Orthodox Clergy and Parishioners

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Abstract

The article discusses the nature of the influence of artificial intelligence on the development of human potential from the point of view of the Orthodox clergy and their parishioners. Methodologically, surveys and statistics were used to find out the opinion of the study subjects. A common phenomenon in the study was a unique consolidated position of all categories of Orthodox respondents on the danger that artificial intelligence represents. Most Orthodox are concerned about the unpredictability of creating and using artificial intelligence, especially in a pandemic. The authors considered the position of clergy, parishioners with and without a church on the nature of artificial intelligence's influence on human potential, the threats and risks to humans that come from artificial intelligence. The main advantage of the work is the results obtained on the basis of the comparative analysis of the positions of different categories of orthodox respondents on the nature of the influence of artificial intelligence on the development of human potential. In conclusion, the results can be used to develop a categorical-conceptual

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apparatus, to systematize knowledge about the use of artificial intelligence in the social and spiritual spheres.

Keywords: artificial intelligence; human potential; orthodoxy in Russia; clergy and parishioners; risks and threats of artificial intelligence.

La influencia de la inteligencia artificial en el desarrollo del potencial humano: las opiniones de los clérigos y feligreses ortodoxos

Resumen

El artículo discute la naturaleza de la influencia de la inteligencia artificial en el desarrollo del potencial humano desde el punto de vista del clero ortodoxo y sus feligreses. Metodológicamente se emplearon encuestas y estadísticas para conocer la opinión de los sujetos de estudio. Un fenómeno común en el estudio fue una posición consolidada única de todas las categorías de encuestados ortodoxos sobre el peligro que representa la inteligencia artificial. La mayoría de los ortodoxos están preocupados por la imprevisibilidad de crear y usar inteligencia artificial, especialmente en una pandemia. Los autores consideraron la posición del clero, los feligreses con y sin iglesia sobre la naturaleza de la influencia de la inteligencia artificial en el potencial humano, las amenazas y los riesgos para los humanos que provienen de la inteligencia artificial. La principal ventaja del trabajo son los resultados obtenidos sobre la base del análisis comparativo de las posiciones de diferentes categorías de encuestados ortodoxos sobre la naturaleza de la influencia de la inteligencia artificial en el desarrollo del potencial humano. Como conclusión los resultados pueden usarse para desarrollar un aparato categórico-conceptual, sistematizar el conocimiento sobre el uso de la inteligencia artificial en las esferas sociales y espirituales.

Palabras clave: inteligencia artificial; potencial humano; ortodoxia en Rusia; clero y feligreses; riesgos y amenazas de la inteligencia artificial.

Introduction

Recently, society is increasingly faced with the challenges of the times. Economic crises, armed conflicts, production declines, natural disasters,

pandemic. The structure of society, the forms and methods of production and consumption of goods are constantly changing. Staying competitive is not easy. It is necessary to maximize the potential in the digital economy (Ushakov et al., 2018; Ridho et al., 2018; Sukhorukov et al., 2018). The basic source of survival of all companies is their personnel. Its potential, hidden and revealed, is the source of survival in such difficult conditions. Research on the discovery and use of human potential contributes to its more effective use in the work process. Applied modern technologies make it possible to develop human potential. This is also facilitated by improving staff motivation (Karácsony et al., 2018; Vinichenko et al., 2018), skillful work with young employees (Nikiporets-Takigawa, 2018; Chulanova et al., 2018; Demchenko et al., 2018), and methods for attracting people with various health restrictions (Porayska-Pomsta et al., 2018). The experience of social security (Sochneva et al., 2017, Moskaleva et al., 2018), social protection (Padavic, et al., 2020), and social partnership (Vinichenko et al., 2019) helps to achieve the desired results.

AI has a significant impact on human development. This is manifested both on the positive and negative sides. AI helps in medicine (Das et al., 2019; Lee et al., 2019; O'Sullivan, et al., 2019; Kurita et al., 2019), which is relevant today. Great developments are available in other areas (Alzoubi et al., 2019; Kamal & Adouane, 2019; Kumar & Kumar, 2019).

In the context of the transformation of the economy, research is being conducted on the nature of communication, interaction and exchange in a digital society (Wang et al., 2019; Abubakar et al., 2019), on changing the social status of employees (Ilina et al., 2018), and on increasing efficiency in various management areas (Duan et al., 2019; Zimenkova et al., 2018; Kirillov et al., 2017). Some scientists see an important issue in the development of human potential in improving the education system by the introduction of AI (Koch & Brockmann, 2019; Ossmy et al., 2019; Garnelo and Shanahan, 2019).

When people interact with AI, threats to society are identified in a variety of ways (Cellan-Jones, 2014; Saoud & Jung, 2018; International Conference on CSIA, 2019, Neri et al., 2019). There is a risk of replacing the AI with a person in the management system (Belciug & Gorunescu, 2019), pushing the person out of the labor market, and losing their jobs (Shi, 2019; Demchenko et al., 2017).

The most important aspect, the problem area, is the psychological impact of AI on people. People are not yet fully prepared to compete with AI in professional and spiritual spheres. The result of counteraction is not always in favor of psychological stability and calmness of the person (Burrell, 2019; Kalmady et al., 2019; Zhang et al., 2019).

There is a danger to the sustainability of the human inner world through the aggressive influence of the outside world, the Internet and the media. The pressure of modern information technologies on the human psyche breaks the emerging balance between faith and knowledge (Zanotti, 2018) the spiritual sphere and AI (Toit, 2019). Theological debates, doctrinal and universe discussions complicate the problem (Milbank, 2008; May, 2020; Brown, 2020).

The active involvement of AI in human life, its impact on the development of its potential, the spiritual sphere, and the lack of systematic developments on this issue have necessitated the study of one element of this system from the perspective of Orthodox people.

1. Methods

In order to identify the nature of the influence of artificial intelligence on the development of human potential in terms of Orthodox clergy and parishioners, a sociological study was organized and conducted. The goal of the research was to determine the attitude of the Orthodox residents of Moscow (Russia) to the nature of the influence of artificial intelligence on the development of human potential.

Scientific tasks:

1. 1. To determine the nature of the impact of artificial intelligence on human potential.
2. 2. Identify threats and risks to humans arising from artificial intelligence.

The hypothesis was put forward in the study: The impact of artificial intelligence on the development of human potential is complex and controversial, distinguishing the position of clergy, churched members and unchurched members.

The study uses the concepts of churched members and unchurched members, based on the approach of V. Chesnokova (2005). Churched parishioners are people who actively participate in church life, regularly attend divine services. Unchurched parishioners are baptized Orthodox people who rarely participate in church events.

A study to identify the nature of the influence of artificial intelligence on the development of human potential from the position of Orthodox clergy and parishioners was conducted at Orthodox churches in Moscow in February - early March 2020. Moscow was chosen for the study because of the combination of two world centers in it: Orthodoxy and the introduction of innovative technologies and AI.

The study involved 53 clergymen and 354 parishioners (181 churched members, 173 unchurched members) aged 18 to 80 years. Of these, 71% are older than 55 years. The collection, synthesis and processing of data was carried out separately for clergy, churched members and unchurched members.

The main research methods were questionnaire survey, in-depth semi-structured interviews; content analysis; methods of statistical analysis. In assessing the degree of influence of artificial intelligence on the development of human potential, the Likert method was used. The survey and in-depth semi-structured interviews were conducted in accordance with the requirements of research ethics.

2. Results and Discussion: The Nature of the Influence of Artificial Intelligence on Human Potential

A study of the nature of the influence of artificial intelligence on the development of human potential from the point of view of Orthodox clerics and parishioners made it possible to establish that there is no consensus among different categories of respondents on this issue (Figure 1).

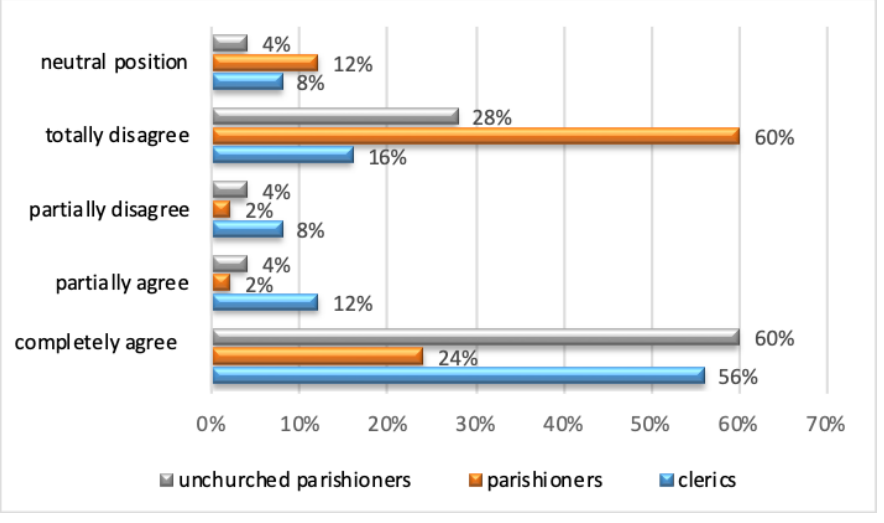

Figure 1. AI will make the use of human potential more effective. (Own elaboration).

Unchurched parishioners (60%) and clerics (56%) trust AI the most in unlocking of human potential. Apparently, one's own experience or information from the social environment, the media, correlates with the position of some scholars (Randell et al, 2019). Their opinion is influenced by the very idea of creating AI to facilitate human life and help in various areas of life. The exact opposite answer was received from churched members. More than half of the parishioners in the church disagreed that AI would allow to use human potential more effectively. They are wary of AI's possibilities, considering human potential disclosure a matter either of man himself or of the divine.

Almost a third of unchurched parishioners also do not trust AI. To a certain extent, this is natural, since this category of respondents do not have a clear position with respect to their faith, being Orthodox only by baptism or partially participating in certain church events, holidays, weddings.

A neutral part was taken by a small part of all categories of respondents (4-12%). Apparently, they still do not have a clear position in the capabilities of AI and the technologies for its use in various areas of public, personal and religious life.

In the development of human potential through the introduction of AI and improving the effectiveness of training, clerics took a confident position (Figure 2).

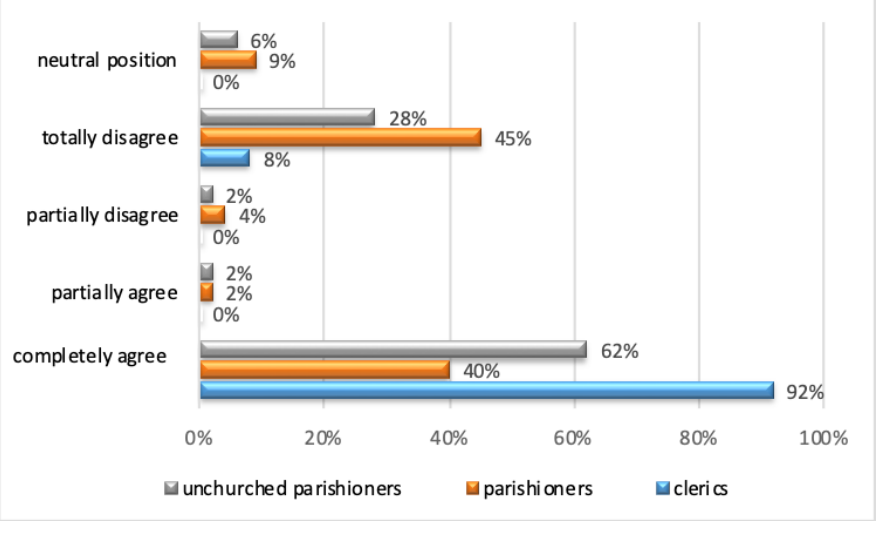

Figure 2. AI contributes to human development through improved learning efficiency (Own elaboration).

The vast majority of clergy (92%) have hopes for the development of human potential by increasing the effectiveness of teaching people through the introduction of AI into the educational process. To a certain extent, this correlates with the results of research on the previous question. Unchurched parishioners also believe more in favor of using AI in teaching. The practice of using AI in the international education system indicates a great demand for the use of AI both by employers, representatives and organizers of secondary, higher, additional education, and consumers of educational services (Al-Kurdi et al., 2019; Shakhovska, et al., 2019).

The position of opponents and supporters of the appropriateness of using AI in teaching was distributed approximately equally among the churched members. Nevertheless, there were several more opponents among the churched members. This is affected by a certain backwardness of age-related respondents in the use of modern training systems.

Young people are confidently in the position of introducing AI into the education system and in practice have felt the benefits of the competent use of AI opportunities in training (Vergara et al., 2019), increasing competitiveness in the labor market (Nikiporets-Takigawa, 2018; Buley et al., 2018; Demchenko et al., 2017). Most young people are not very afraid of the introduction of AI, which is correlated with the results of scientists who in the 50-70s of the last century said that we should not be afraid of technological myths (Simone & Ballatore, 2020).

All respondents expressed significant concerns about the increase of social inequality coursed by a widespread use of AI (Figure 3).

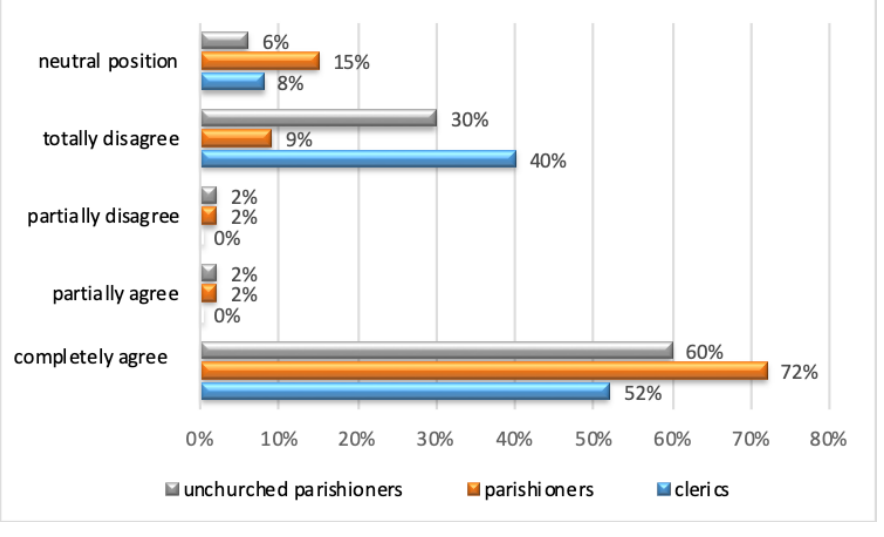

Figure 3. AI will deepen social inequality (Own elaboration).

Most of all it excites the churched members (72%). These fears are based on the great commitment of this category of respondents to the canons of religion, which may make them less competitive in the digital economy. In practice, they are often poor and do not have the ability to purchase expensive hardware and software that AI uses. In addition, true believers do not set the goal of their life as enrichment, so a sharp increase in the well-being of others through the use of AI can increase social inequality.

The variants of the clergy's answers have taken an interesting form. They were divided approximately equally between those who agreed and those who disagreed that the AI would deepen social inequality. The age and position of clergy in the church hierarchy seems to be affected here. Younger clerics do not see serious danger in the rapid enrichment of a small group of people due to their relatively modern views, their knowledge of information technology, and their lack of life experience. They see this process as manageable. This correlates with the research of scientists and its practical implementation in business - the creation of conditions for people to discover their talent based on AI, regardless of material wealth in the family (Abassi and Boukhris, 2018; Pomato, 2020).

Mainly due to youth, 30% of unchurched parishioners turned out to consider it impossible to create a significant social and material gap between groups of people using and not using AI in their professional activities and personal life. Lacking sufficient life experience, young parishioners have not yet felt the huge gap that has developed between the majority of the country's population and a small group of very rich people.

3. Life Safety. Threats and Risks to Humans Posed by Artificial Intelligence

One of the most important issues for human existence is security. Analysis of the data in Figure 4 shows that Orthodox respondents are very concerned about the threats posed by AI.

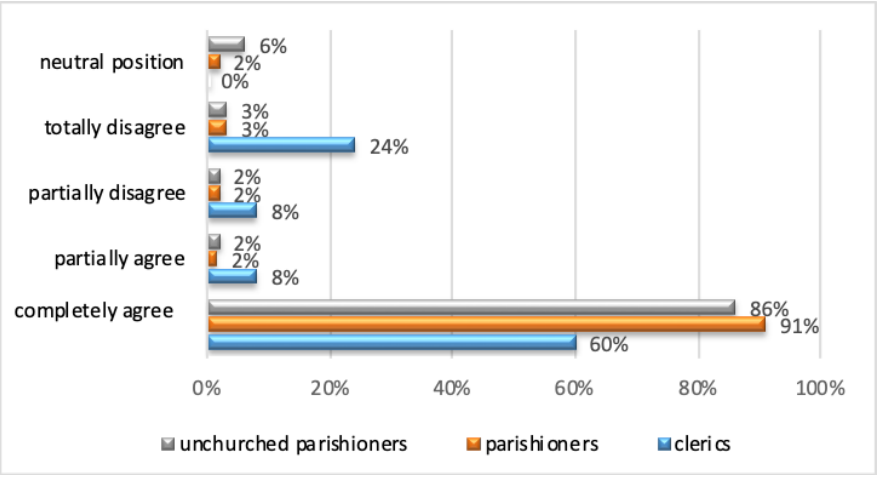

Figure 4. Artificial intelligence is dangerous for humans (Own elaboration).

It should be noted that the overwhelming majority (86-91%) of unchurched and churched parishioners see a serious danger, risks emanating from the AI. These risks and dangers are both abstract and specific. Unexpectedly many (24%) of Orthodox clergy consider AI not dangerous, rather, even useful for a person. This can be explained by confidence in their abilities to influence parishioners, exceeding the ability of AI in the matter of faith. At the same time, the experience of using social networks, information technologies in their activities and at home, and the ability to benefit from the digitalization of society are also affected (Titarenko et al., 2017).

In addition to this question, an attempt to find out some aspects of people's fear of using AI was made. The results of the answers to the question about the dangers of AI for society due to the possibility of its use for evil purposes are somewhat different from the previous question (Figure 5). Almost all Orthodox respondents fear a situation where enemies of faith and humanity will be able to use AI to the detriment of people, which coincides with the problems raised at the international conference on security (International Conference on CSIA, 2019).

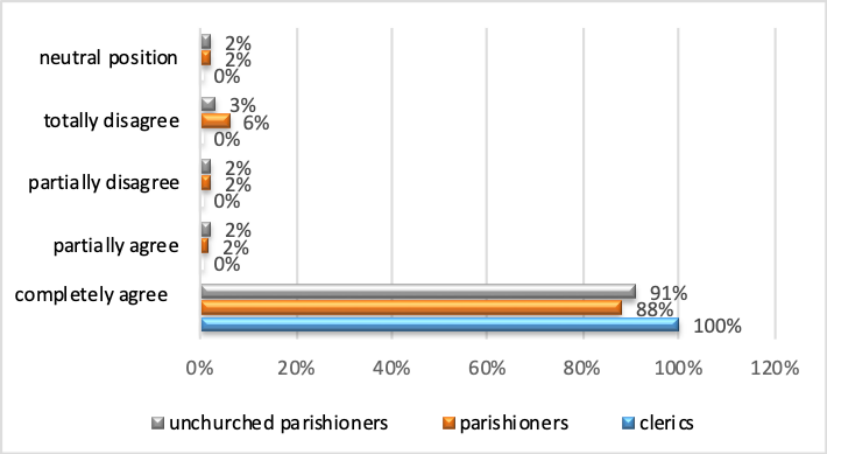

Figure 5. Artificial intelligence is a danger to society, since it can be used for evil purposes (Own elaboration).

At the same time, all clergymen see a dangerous enemy in the person of AI, if it or with its help the enemies of faith, humanity will strive to achieve bad goals. This is especially true in a pandemic.

The AI is also dangerous to a person's private life. It will interfere with a person's private life, causing him inconvenience. Most respondents agree with this (Figure 6).

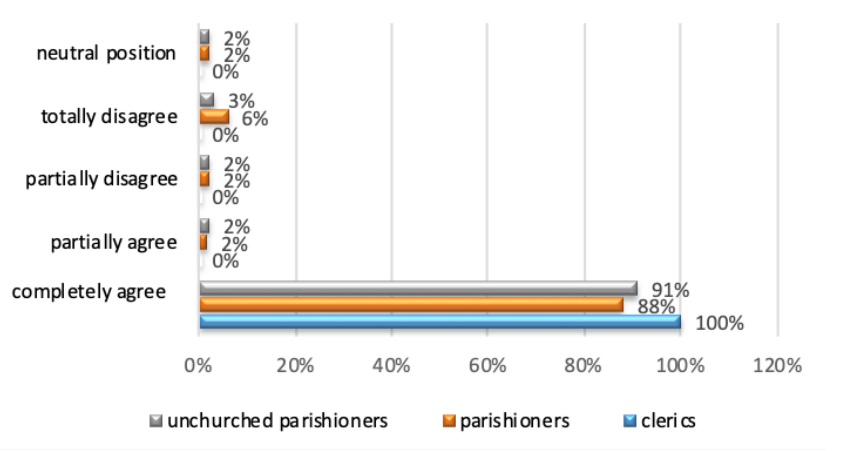

Figure 6. Artificial intelligence will interfere with a person's private life, causing him inconvenience (Own elaboration).

All categories of Orthodox respondents: clergy, unchurched and churched members, agreed that the AI would interfere with a person's private life, causing him inconvenience. This unanimity among clergy and parishioners is explained by the fact that the experience gained in using electronic devices, social networks, and innovative technologies using AI is controversial. On the one hand, on the technical side, AI makes life easier for humans (Sukhorukov et al., 2019). On the other hand, with social, emotional, moral, religious AI harms a person to a greater extent, and interferes with his personal life. The vast majority of Orthodox respondents says so. Explicit and covert surveillance using electronic devices to determine the location, nature of activities and the nature of human actions inflicts more moral damage than contributes to the achievement of humane goals. In addition, the invasion of privacy, the disclosure of personal secrets via the Internet and the dissemination of confidential information to a wide audience do not cause optimism among both clergy and parishioners. This is somewhat alarming in view of the fact that almost all religions use the Internet to disseminate their ideas, provide information to their supporters, and provide online help to parishioners who are at a great distance.

Both religious leaders and parishioners almost equally negatively perceive issues related to social life, security, and AI.

Conclusion

In assessing the nature of the influence of artificial intelligence on human potential, there is no consensus. A feature in a different combination of positions distinguishes each involved group of respondents.

In revealing human potential with the help of artificial intelligence, AI supporters turned out to be clergymen, as well as part of unchurched parishioners. More than half of the respondents in these groups seek to rely on the achievements of the digital economy, AI assistance. Among them, almost all young people. The parishioners, who considered the development of human potential to be a matter of either the person himself or the divine, expressed the opposite opinion. About a third of unchurched parishioners joined them. They expressed roughly the same position on the issue of developing human potential by increasing the effectiveness of training based on AI. The clergy to a greater degree have hopes for increasing the effectiveness of teaching people through the introduction of AI into the educational process. Apparently, in the church environment, the learning process using advanced technologies is well established. Orthodox youth turned out to be an ardent supporter of the use of AI in training, in fact, they felt the main advantages of such training.

Churched members are strongly concerned about the deepening social inequality due to the introduction of AI into the life. Their moral position, life goals are aimed at spiritual development, and not the acquisition of material wealth. To a certain extent, this impedes the high dynamics of their development in the digital information environment, commercial competitiveness, and can increase social inequality. Many clergymen were on their side. However, there were people with alternative views among the clergy and unchurched parishioners. They do not see a serious danger in the quick enrichment of a small group of people, considering this process to be manageable. Others in their youth have not yet felt the huge gap that has developed between the majority of the country's population and a small group of very rich people.

A characteristic phenomenon in the study was a single consolidated position of all categories of Orthodox respondents on the danger posed by AI. In general, Orthodox respondents consider AI in the system of human life safety as a negative factor. In particular, they see a serious danger emanating from AI in personal and general matters. Fear among clergy and parishioners is caused by the increasing penetration of AI into human life. The fear itself proceeds from the fact that it is not completely clear who and how creates and controls AI, for what purposes it is used. Control systems created a priori in the interests of human security, society, can fall and sometimes fall into the hands of bad people, organizations. This worries Orthodox respondents. Information security also has not acquired a perfect look. Periodic leakage of confidential data, both personal and commercial, alarms the society, reduces the level of trust in the creators and exploiters of AI. The unpredictability in the creation and use of AI most worries Orthodox clergy and parishioners. Special fears come from the possibility of using AI by enemies of humanity, faith.

The hypothesis was confirmed for a number of indicators - the influence of artificial intelligence on the development of human potential is complex and contradictory. At the same time, a number of issues revealed differences in the positions of clergy, churched members and unchurched members. On other issues, especially security, all categories of respondents expressed a unanimous opinion.

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Implementing Cultural Policies With A View of Capacity-Building at University

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Abstract

The increase in the level of awareness and knowledge of public officials and senior managers of the community about the need to formulate an appropriate public cultural policy indicates its role and importance in improving social life. This research was established with the main objective of identifying the components of the implementation of cultural policies. The descriptive survey was used methodologically and the data collection instrument was a questionnaire with the statistical population, including experts, which was carried out using the two-step Delphi method. The statistical population of experts included cultural managers and university professors in the field of management and policy formulation. The sampling was non-random and deliberate, with 7 interviews carried out. Based on Delphi's two-stage results, panel member consensus, and achievement of theoretical saturation, experts identified 44 components. In conclusion, the results also showed that the dimensions of "management factors" and "software" had the highest average and the dimensions of "structural factors" and "activation of cultural centers in the university" had the lowest range.

Keywords: public policies in Iran; cultural policy; Capacity building; College; policy evaluation.

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Implementación de políticas culturales con miras al desarrollo de capacidades en la universidad

Resumen

El aumento en el nivel de conciencia y conocimiento de los funcionarios públicos y gerentes superiores de la comunidad, sobre la necesidad de formular una política cultural pública apropiada indica su papel e importancia en la mejora de la vida social. Esta investigación se estableció con el objetivo principal de identificar los componentes de la implementación de políticas culturales. En lo metodológico se empleó la encuesta descriptiva y, el instrumento de recopilación de datos fue un cuestionario con la población estadística, incluidos los expertos, que se realizó mediante el método Delphi de dos pasos. La población estadística de los expertos incluía gestores culturales y profesores universitarios en el campo de la gestión y la formulación de políticas. El muestreo fue no aleatorio y deliberado, con 7 entrevistas realizadas. Según los resultados en dos etapas de Delphi, el consenso de los miembros del panel y el logro de la saturación teórica, los expertos identificaron 44 componentes. Como conclusión los resultados mostraron además que las dimensiones de "factores gerenciales" y "software" tenían el promedio más alto y las dimensiones de "factores estructurales" y "activación de centros culturales en la universidad" tenían el rango más bajo.

Palabras clave: políticas públicas en Irán; política cultural; desarrollo de Capacidades; Universidad; evaluación de políticas.

Introduction

Optimal and accountable management, and desirable and efficient organizational performance are greatly dependent on the design and formulation of objectives, missions, and schemes. Capacity-building allows for the desired results in the light of proper planning and implementation; in other words, what results in the implementation and emergence of statutory objectives of governmental and non-governmental organizations, institutions and centers, especially scientific and research centers, is capacity-building or setting an organizational setting. To clarify the role and importance of this category, definitions provided by researchers and international centers are provided.

Organizational capacity-building occurs when individuals, associations, organizations, and institutions believe in it by themselves and the key elements and factors of success in building-capacity, especially the culture

strengthen the orientation toward it. When the strategic thinking culture, continuous education, creativity and value-oriented and knowledge-based management and all software infrastructure in the organization are generalized and broadened, one can easily see the objective manifestation of its manifestations at the domestic and foreign levels. The capacity-built organization and country enjoy a strong relationship between program and action, with the strategic thinking penetrating at all levels. From the perspective of management science, the policy-making process has multi-stage cycles, including preparing the agenda, establishing the policy, implementing the policy, evaluating the policy, changing the policy, and finally ending the policy.

One of the issues encountering countries today is policy implementation; this is because the government's ability to implement its objectives hinges on the successful organization and implementation of the policies it has formulated. Policy implementation as one of the main phases of public policy-making has received special attention from thinkers and researchers in the field of policy-making and implementation since1970 onward. Various models, theories, and approaches have emerged in the field of policy implementation, including top-down, bottom-up, and combined approaches. There is usually a perception that if a law is not enforced, it is the fault of the executors, and the policymakers will be spared of any blame/fault; But this is not the reality; this is while, many issues related to policy implementation arise during development. Therefore, the policy-maker should also consider the arrangements for its implementation when making policies (Khanifar *et al*., 2015).

Viewing the culture as one of the main domains of development and the possibility of cultural management to think in cultural elements and to achieve predetermined goals as well as pay attention to the role of governments in cultural planning, have created a good groundwork for the formation of the cultural policy formation. Cultural policy is a kind of formal agreement and consensus by officials and administrators to identify, determine and formulate the most important principles and priorities critical in cultural activities and will be a guide and instruction for cultural managers. A study of many countries across the world show that many countries have explicit or semi-explicit cultural policies, while there are few ones having a completely implicit or unwritten cultural policy. Of course, it is worth noting that the level, structure and objectives of these policies (in different countries) involve many commonalities and differences.

Some are very modern whereas others are more traditional and dependent. Given the rapid trend of changes across the world, these policies require continuous reviewing and updating. Few countries (such as the United Kingdom and Scotland have obliged their countries and even counties (even rural areas) to provide their own local cultural strategy

(tailored to local facilities and conditions but in accordance with the national cultural strategy). The interesting point to mention is that many countries have combined their cultural policies and cultural strategies and compiled them all in the form of a "comprehensive cultural policy" or "cultural development plan" (Ahmadpour and Ebrahimian, 2013).

In fact, in new governments, there are many barriers to successful policy implementation, e.g., shortage of qualified human resources, lack of political guarantees for executives, insufficient guidelines and lack of clarity on all aspects, lack of adequate supervision and monitoring of executives, deficiency of sufficient capital and support to advance programs and implement policies, resistance to the policies themselves, corruption and social disorder. Some structural barriers to policy implementation include bargaining, shortage of investment, changing priorities, multiple goals, and weak parliamentary supervision.

Cultural policy-making in higher education is a concern for scientists and politicians. Policy making is defined as "the field of action of the government and the public sector, both do's and don'ts" and the institutions of science and academia cannot be ignored by those in power and thought because of their significant and plurality of functions they have today. Strengthening and expanding leadership thinking in the cultural management and planning field requires a proper understanding of the relationship between culture and the institution of science.

According to the above, this research was established with the main objective of determining the components for the implementation of cultural policies by looking at capacity-building the university and prioritizing their dimensions.

1. **Theoretical Research Basics**

Cultural policy has two theoretical and practical areas. Its theoretical domain is related to studies in the cultural policy field, which is followed by scholars in various fields. In contrast, the area of action relates to the actions by statesmen. Theoretically, the history of the study on cultural policy goes back to the third generation of cultural studies, led by Tony Bennett. This school of thought claims that cultural studies should entangle itself of studying the past and instead study everyday life. Cultural studies must engage itself in policies and procedures that influence effective daily life and evaluate policies with different approaches, whether critical or corrective, introducing alternatives as far as possible (McGuigan, 2009).

In practice, as we learn, the establishment of nation-states in Europe in the fifteenth century is the beginning of a general policy in its modern

sense. Although the nation-states inevitably interfered in cultural affairs (such as identification measures such as the official language), it may be more appropriate to claim the establishment of the Ministry of Culture in France in the mid-twentieth century to be considered the beginning of cultural policy in the modern sense (Ayoubi, 2010). The objective of cultural organizations is to apply proper and effective management in cultural changes and variations. The presumption for the cultural organizations' performance is that cultural affairs have evolved over time to lay the grounds for innovation and modernity in terms of internal elements of culture, which we call the dynamic elements of culture; therefore, according to the important presumption, any inefficiency in the cultural organizations' affairs is considered to arise from the lack of management or inefficiency of cultural organizations.

In other words, whenever culture is invaded or does not respond to creative cultures in the face of foreign cultures or economic and social developments, it is necessary to search for the barrier to the formation of a dynamic culture in the cultural organizations' lack of efficiency. In general, an investigation of the cultural policy typology is a methodological strategy for identifying what and how of policies. Also, many researchers state that capacity-building is actually a timely activity and performance that strengthens the key competencies within organizations. Capacity-building is an abstract term that has a wide range of meanings and includes various areas of knowledge and resources such that governmental and non-governmental organizations must work to establish efficiency and improve productivity (Connolly and Strengthening, 2003).

Capacity-building refers to the process of individual and organizational learning in which skills-building, networking and performance in order to increase knowledge, leads to the productivity of the organization and the progress of the people working there (Blumenthal, 2002). Capacity-building denotes improving and developing the ability to measure and evaluate, as well as responding to the needs of the country through a proper understanding of development policies and models (United Nations Conference on Environmental Development, 1992).

According to the definition provided by the United Nations Development Program, capacity-building is a continuous and prolonged process in which government, non-governmental agencies, scientific-specialized associations and other academic centers participate in the framework of the law to develop human resources and management systems and to establish a capable environment with a transparent policy (United Nations Conference on Environmental Development, 1992).

Capacity building also refers to improving and correcting organization's ability to present desirable performance and to achieve pre-designed results over a period of time (Georgiadau, 2001). Williamson and colleagues posit

that capacity building has different meanings and interpretations, and that depending on who is dealing with it and in what social context, it could entail multiple meanings. This issue has become more widespread in recent years, both institutionally and organizationally and is relatively close to higher education, professional training and human resource development (Williamson *et al*., 2003).

In a study entitled Future Research in Public Policy Making with a Systematic Approach, (Mohammadian *et al*., 2018), first provided the definitions and objectives of public policy making in the form of a theoretical background, especially in the field of culture and future research, then referred to various models of both in the experimental background forms. In the end, the role of future research in cultural policy-making with a systemic approach as well as the models provided in this regard were investigated.

Salimi and Ghaffari (2016) investigated the need for cultural policy-making in the mass media. The research method in this study was descriptive and data collection was done using content analysis method. The findings suggested that cultural policy-making and implementation and evaluation of programs related to cultural affairs can play an essential role in creating and institutionalizing constructive cultural values across the country where the significance attached to cultural values can play a role in behavioral patterns and ultimately in improving behavior and public interest. In society, it can prohibit from many social anomalies, and sustainable development cannot be expected unless cultural policy is addressed in the mass media as a strategic program.

In a study entitled "Cultural Policy and Cooperation in the Artistic Molo Area in Seoul", Hartley (2018) stated that experimental findings through a framework that focus on three dialectics are: economics, policy and culture. Governments, while trying to collaborate, provide one single limited way for artists to influence politics. (Arocen *et al*., 2015) addressed knowledge and university policies in developing countries. In this study, they investigated the systems of innovation and social participation concerns of universities. In this research, using exploratory factor research method, they showed that universities can play a significant role in resolving problems and creating development. University systems cannot operate in isolation. Rather, there must be a direct relationship between social goals and academic activities.

Numerous cases were investigated in the area of policy research. According to some of the results in the past research, we attempt to implement cultural policies with a view to building capacity in the university, in the present study by combining the relevant factors, which is as follows:

Table 1- Dimensions and components of the cultural policies implementation with a view to building capacity at the university

	Dimensions	**Components**	**Sources**
Factors implementing cultural policies	Human factors	Developing and selecting managers	Ghorbanizadeh *et al.* (2017); Haji Mollamirzaei (2016); Pourazat *et al.* (2013).
		Effective training	
		Job enrichment	
		Human resources management	
		Effective and comprehensive manpower	
	Managerial factors	Participatory Management	
		Jihadi look	
		Thinking rooms	
		Leadership method	
		Obligation	
		Organizational Culture	
		Inadequate power distribution	
		Manpower shortage	
	Structural factors	A structure for access and management	
		Cultural and administrative departments	
		Outcomes of organizational chart	
		Socio-cultural-corporate structure	
		Financial and economic structure	
		A structure based on the objectives of the center's position in the government	
	Strategic factors	The effectiveness of executive programs	
		Goal-setting for cultural factors	
		Executive Programs (Executive Processes)	
		Documentation of cultural programs	
Capacity building	Hardware	Technology exchange and transfer in the hardware sector	Mousavi Movahedi *et al.* (2005); Blumenthal (2002); UNCED (1992); Georgiadau (2001).
		Providing infrastructure such as facilities in the hardware facilities	
		Effective and active participation in advancing science and technology in the hardware sector	
		Continuous interaction with scientists in the hardware sector	

	Software	Technology exchange and transfer in the software sector	
		Providing infrastructure such as facilities and software	
		Effective and active participation in the advancement of science	
		Technology in the software sector	
	Skills	Continuous interaction with scientists in the software sector	
		Improving and developing competencies for assessment and evaluation	
		Developing human resources and management systems	
		Establishing a capable environment with a clear policy within the framework of the law	
		Developing sustainable skills and organizational structure	
Policy making implementation	Holding a cultural ceremony	Empowering individuals and organizations to actively participate and optimize program efficiency	Ghorbanizadeh *et al.* (2017); Haji Mollamirzaei (2016); Pourazat *et al.* (2013).
		Symposiums with cultural figures	
		Holding jihadi cultural camps	
	Activating cultural centers at the university	Broadcasting documentaries recognizing multiple cultures	
		Cultural Associations at the University	
		Cultural magazines at the university	
	Holding and sending students to Olympiads and conferences	Weekly Culture-identification Circles	
		Holding annual conferences at Payame Noor Universities	

(Own elaboration based on the research objectives).

2. Materials and methods

The present research is applied in terms of purpose, exploratory in terms of data and cross-sectional in terms of nature of survey involving a two-stage Delphi analysis method. In the present study, first the main factors and characteristics of the components influencing the implementation of cultural policies with the view of capacity building at the university were extracted from the depth of research literature and theoretical foundations and exploratory interviews on the subject and then the dimensions and components of the consensus of experts were identified and then ranked and scored by the help of two-step Delphi technique, by using the cultural managers' views and academic professors in the field of management, policy-making. The statistical population included cultural managers and university professors in the management and policy-making field, which was finally done with seven interviews. Excel statistical analysis software, SPSS24, was used for analysis and research information.

3. Delphi method

When speaking about collective consensus among experts on a subject, the Delphi method can be used. Therefore, Delphi method is thought to be one of the main techniques in designing and developing the model of this research. Some prominent features in Delphi technique are:

1. Lack of familiarity of people with each other
2. People not being influenced by each other
3. Repetition of questionnaires (from two to ten rounds)
4. Adaptability
5. Feedback

Here are the benefits of predicting using the Delphi method:

- Delphi method creates a vision for the future (Dalkey, 2002)
- Delphi is the most widely used method for short-term and long-term forecasts (Okoli, 2004)
- Delphi technique as prediction instrument (Rowe, 1999)

Selection of Delphi panel members: Since in the present study, prediction about the phenomenon and consensus of experts is intended

and it is important to understand the current situation, the Delphi method is thus applied, and in the meantime, the Delphi panel method with experts via considering the possibilities facing it, is the most appropriate way to extract the different perspectives of experts and specialists, as well as to establish "convergence" and "integration" of ideas, solutions and other factors.

Research validity: Because the questionnaire was the best tool for collecting information and measuring variables in the present study, so measuring the validity of the questionnaire was also significant because the validity of the research indicated the compatibility of the questionnaire with the research objectives. There are several methods for determining the validity of measurement tools, the most important of which are construct validity, convergent and divergent validity, content validity, internal validity, formal validity, criterion validity, and empirical validity. Although the validity of construct is the most important criterion for measuring the validity of instruments, three methods of content validity, structural validity and formal validity were used in the present study to increase the validity of simultaneous research tools.

1) At first, a wide-ranging study was carried out in the field of literature. Then, the main and important sources in the field of auditing were identified and studied more carefully so that we cold measure the main concepts and variables in the organization, while extracting them, and we could design appropriate questions. (Construct validity)

2) After the desired dimensions of the research were clarified, questions appropriate to the subject, objectives and variables of the research were prepared and designed according to the studies. (Construct validity)

3) The initial questionnaire was provided to respected professors, supervisors and consultants to be corrected and approved. (Face validity)

4) Concerning the content of the questionnaire, the first step was to delimit the research. (Formal and content narrative).

5) The design of the questions was brief and an attempt was made to use clear and unambiguous expressions as much as possible. In designing the questions, an attempt was made to design the questions more objectively by observing the principle of openness (formal validity).

6) The questionnaire was designed with a combination of closed-end and open-end questions to investigate the opinions and views of the respected members of the panel, so that they would be free to express their thoughts. In a way, at the end of the first stage of Delphi, we were faced with new ideas.

A measure called the reliability coefficient was used to measure reliability. The range of reliability coefficient was from zero to +1. Zero reliability coefficient represents the unreliability and one reliability coefficient represents the full reliability, though the full reliability is really rare.

In this research, SPSS software (version 24) was used. Also, after calculating the alpha, the mean, variance and standard deviation of the responses, as well as the reliability of the indicators were calculated by estimating the Kendall coefficient and ranking among the responses.

Consensus scale: In this study, Kendall's consensus coefficient was utilized to determine the level of consensus among panel members. Kendall's Coordination Ratio indicates that people who have grouped several categories based on their importance have basically used the same criteria to judge the importance of each category and agree with each other in this connection.

Table 2- Interpretation of different values of Kendall coordination coefficient

Interpretation	W value	Confidence over the order of the factors
Very weak consensus	0.1	Does not exist
Weak consensus	0.3	Low
Medium consensus	0.5	Medium
Strong consensus	0.7	Much
Very strong consensus	0.9	Very much

(Own elaboration based on the research objectives).

4. Findings

An examination of the collected data showed that the highest frequency distribution of respondents was in terms of gender, i.e., male (91.7%); in terms of the age range between 40-50 and 50-60 years (41.7%); of education, PhD and above (66.7%); of the status of the relevant field of study (100%); of the work experience of people with a history of 20-25 years (41.7%); of the work situation of the university faculty (66.7%); of the academic status of associate professor (33.3%); of executive responsibility of middle manager (50%).

In the present study, to determine the level of consensus among panel members, the Kendall coordination coefficient was used. Based on this, in

order to analyze the data of the qualitative part, a two-step Delphi method was applied. The findings of the first and second rounds of Delphi included 44 components as listed in the third table.

Table 3- Summary of two-step Delphi results

Components	First Delphi stage		Second Delphi stage	
	Mean	Mean rank	Mean	Mean rank
Technology exchange and transfer in the hardware sector	4.29	20.64	4.43	19.79
Providing infrastructure such as facilities and hardware facilities	4.57	25.29	4.71	25.71
Effective and active participation in advancing science and technology in the hardware sector	4.43	22.29	4.57	22.86
Continuous interaction with scientists in the hardware sector	4.14	20	4.43	19.86
Technology exchange and transfer in the software sector	4.14	18.86	4.29	19.29
Providing infrastructure such as facilities and software	4.43	22.64	4.57	22.79
Effective and active participation in the advancement of science and technology in the software sector	3.86	14.79	4	10.57
Continuous interaction with scientists in the software sector	4.14	18.36	4.29	16.79
Improving and developing competencies for assessment and evaluation	4.43	24.57	4.71	26.07
Development of human resources and management systems	4.29	20.93	4.57	22.79
Creating a capable environment with a clear policy within the framework of the law	4.43	23.14	4.57	22.71
Developing sustainable skills and organizational structure	4.57	25.29	4.86	28.93
Empowering individuals and organizations to actively participate and optimize program efficiency	4.57	25.5	4.71	25.79
Developing and selecting managers	4.57	26.14	4.57	22.93

Effective training	4.14	20.21	4.29	21.21
Job enrichment	4.43	24.57	4.71	25.79
Human resources management	4.71	28.29	4.86	28.93
Effective Manpower	4.57	26.14	4.71	26
Participatory Management	4.14	18.64	4.43	21.36
Jihadi look	4.43	23.79	4.71	26
Thinking rooms	4.29	20.86	4.29	16.64
method of leadership	4.14	18.07	4.29	16.79
Obligation	4.43	23.36	4.57	23
Organizational Culture	4.29	21	4.57	22.71
Inadequate power distribution	4.43	23	4.43	19.57
Manpower shortage	3.86	14.57	4.14	13.71
A structure for access and management	4.29	20.86	4.57	22.93
Cultural and administrative departments	4.29	20.36	4.57	23
Outcomes of organizational chart	4.71	28.07	4.86	28.86
Socio-cultural-corporate structure	4.43	23.36	4.57	22.79
Financial and economic structure	4.57	25.79	4.57	22.57
The structure based on the goals of the center's position in the government	4.14	19	4.43	21.57
The effectiveness of executive programs	4.57	26.14	4.71	26
Goal-setting cultural factors	4.29	22	4.43	19.79
Executive Programs (Executive Processes)	4.57	26.14	4.57	22.64
Documentation of cultural programs	4.57	24.93	4.71	26.36
Symposiums with cultural figures	4.57	25.93	4.71	26
Holding jihadi cultural camps	4.43	23.14	4.57	22.64
Broadcasting documentaries recognizing multiple cultures	4.57	26.14	4.71	26
Cultural Associations at the University	4.14	19.64	4.43	21.07
Cultural magazines at the university	4.14	19.64	4.43	21.07

Weekly Cultivation Circles	4.43	23.79	4.57	24.14
Holding annual conferences at Payame Noor Universities	4.29	21	4.43	12.07
Active participation in international scientific conferences	4.43	23.14	4.57	22.93
Cronbach's alpha	0.914		0.876	
Kendall coefficient	0.101		0.736	

(Own elaboration based on the research objectives).

The third table summarizes the statistics related to the reliability analysis of the first step. According to the results of this table, the reliability value of the questionnaire indicators is 0.914. The alpha value indicates that the model indicators enjoy a high degree of reliability via the opinion of experts, in other words, they have a high internal consistency to measure these indicators. The average value obtained for each question indicates that most respondents have chosen high and very high options, so the questions have a low standard deviation. This statistic shows that the questions are in fact acceptable from a reliability point of view.

The Kendall's Ranking Test measures the ranking of respondents. In this test, each respondent is considered as a judge or rank assessor, and any question serves as a variable, and then the average rank is calculated for each of these variables. In addition to significantly differentiation or lack of distinguishing among the average rank of evaluations; Kendall's test also prioritizes them. In other words, this test shows in which index the respondents' evaluation is more positive and in which areas it is more negative. To achieve this, the average of the components of "Human Resource Management" and "Consequences of Organizational Chart" is the highest value according to the third table (4.71) and the component "Effective and active participation in the advancement of science and technology in the software sector" and the "manpower shortage" has the lowest value (3.86). There is also a "very weak consensus" among the panel's respected members on the components in question, given the result of the Kendall's test (0.101).

As can be observed in the third table, the two components of "human resource management" and "outcomes of the organizational chart" have the greatest impact in terms of participants in the first round. According to the results in the third table, the standardized reliability value is also stated in the second stage of Delphi. The level of standardized alpha indicates that experts believe that they have a high degree of reliability, in other words, internal consistency. The mean value obtained for each question suggests that most respondents have chosen high and very high options. In fact, the

questions have an acceptable reliability and there is an agreement between the respondents' evaluation of the desired variable.

The Kendall W test is also ranked second, indicating that the Kendall W test is 0.076, which denotes that respondents can rank. There is "strong consensus" among the respected members of the panel in the second stage. Therefore, according to the results of the two Delphi rounds and the consensus of the panel members and the achievement of theoretical saturation, the number of 44 components were identified by experts. Regardless of the changes observed in the ranking of concepts, in fact, it can be summed up that even if the distribution of questionnaires is repeated N times, the same results will be obtained.

In the following, we have listed the dimensions of Table 1 in the theoretical foundations section. To achieve more accurate results, we have ranked the dimensions for implementing cultural policies by viewing the capacity-building process at the university using the Friedman test, which is described below. The results are as follows:

Table 4- Friedman test Dimensions of cultural policies implementation with a view to capacity building at the university

Variable	Dimensions	Mean rank	Rank
Factors implementing cultural policies	Human Factors	5.1	7
	Management factors	6.62	1
	Structural factors	4.59	10
	Strategic factors	5.4	5
Capacity-Building	Hardware	5.93	4
	Software	6.16	2
	Skill	6.13	3
Implementing cultural policy	Holding a cultural ceremony	4.92	8
	Activating cultural centers at the university	4.8	9
	Holding and sending students to Olympiads and conferences	5.37	6

(Own elaboration based on the research objectives).

According to the results of the above table, the "managerial factors" and "software" dimensions have the highest mean and those of "structural factors" and "activation of cultural centers at the university" have the lowest rank.

Conclusions and Suggestions

The implementation of cultural policies and the strengthening and expansion of positive cultural influences in the Islamic society is one of the important objectives of the Islamic Republic of Iran. This issue is quite evident in the statements by the Supreme Leader and senior officials of the government, so that the year 2014 was called "the year of culture and economy with national determination and jihadi management" in the statements of the Supreme Leader of the Islamic Republic of Iran. The subject of culture is so vital that even today, various economic approaches in the world have cultural roots. Implementing the country's macroeconomic goals and strategies requires careful and appropriate cultural policy-making and the formulation of cultural appendices for projects.

In the few researches done about the cultural activities of the country, one of the main reasons for the non-actualization of programs and objectives in the field of culture is related to the poor performance and management of cultural organizations. On the other hand, the policy-making process includes policy-making development, implementation and evaluation, and an effective policy-making is the one that enjoys the ability to implement and evaluate. Many experts believe that policy-making is a prerequisite for the success of government directors in the successful implementation of policies; to this end, in the literature of the science world, policy implementation has received serious attention and several articles were compiled about it. On the other hand, organizational capacity-building occurs when individuals, associations, organizations and institutions believe in it and strengthen the key elements and success factors.

When the strategic thinking culture, continuous education, creativity and value-oriented and knowledge-based management and all software infrastructure in the organization are generalized and expanded, it is easy to see the objective manifestation of their manifestations at the domestic and foreign levels. The capacity-building organization and country enjoy a strong relationship between program and action, and strategic thinking penetrates at all levels. This research was performed with the main objective of identifying the components of the implementation of cultural policies by looking at capacity building at the university and prioritizing their dimensions. Based on the research from which the components and indicators were prepared and in the view of the experts surveyed, the indicators were approved, so it can be said that the indicators used in the present study are consistent with the research mentioned in the above tables.

Other results also showed that the dimensions of "managerial factors" and "software" have the highest average, and the dimensions of "structural

factors" and "activation of cultural centers in the university" have the lowest rank. In line with the results obtained, it is recommended that due to the fact that the duties of human service providers are very difficult; this is because the raw material, or the client, both act as the customer and play the role of an active partner in the relevant processes. The client plays an important role in determining what the desired outcome should be and how the goals can be achieved, and this integration of the client's role and the target community is clearly manifested by organizations that utilize service delivery technologies.

A relatively new approach to analyzing results is proposed to adapt to best practices, which, by investigating successful and unsuccessful policies, is selected to determine influential factors and analyze their results to improve the policies. The lack of trained staff and the limited time of political and administrative institutions and other institutions cause the evaluation work to be left to organizations outside the organization. The assumption that the passage of laws and the allocation of resources to implement them will inevitably lead to the full or partial realization of the objectives of the policy is not correct. In reality, while evaluating the policy, a distinction must be made between the output of the policy and its effect or outcome. Therefore, any scientific research, in addition to fulfilling its mission, necessarily requires to lay the ground and suggestions on the subject of the study rather than a guide for other interested people who may have followed that path in the future or used the results.

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Current Issues and Prospects of Modern Higher Legal Education in Conditions of the Fight against COVID-19

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Abstract

The purpose of the document is to determine the current problems and the possible directions for the development and improvement of higher legal education in the modern challenges and conditions of the pandemic and post-pandemic of COVID-2019, under the hypothesis that the upcoming emergency is affirmed again. world order. General-scientific and special-legal methods of cognition have been used. Through the use of the dialectical method, the current problems of modern legal education have also been identified, their foundations have been investigated and instructions have been sought to improve legal education and the quality of young lawyers in the educational environment of the pandemic. In conclusion, it is highlighted that the findings found in the research can be useful for higher education teachers who are constantly adapting to the new conditions of professional activity in the field of legal education, in the scene of pandemic and the ordering after the pandemic, with particular emphasis on specialists focused on developing suggestions and improving the quality of legal education in the context of the global challenges imposed by COVID-2019.

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Keywords: pandemic and post pandemic; educational environment; global changes; future lawyers; new world order.

Temas actuales y perspectivas de la educación jurídica superior en condiciones de lucha contra el COVID-19

Resumen

El propósito del documento es determinar los problemas actuales y las posibles direcciones del desarrollo y la mejora de la educación jurídica superior en los modernos desafíos y condiciones de la pandemia y post pandemia de COVID-2019, bajo la hipótesis que afirma la emergencia próxima de nuevo orden mundial. Se han utilizado métodos de cognición general-científica y especiales-legales. Mediante el uso del método dialéctico, se han identificado también los problemas actuales de la educación jurídica moderna, se han investigado sus fundamentos y se han buscado las instrucciones para mejorar la educación jurídica y la calidad de los abogados jóvenes en el entorno educativo de la pandemia. Como conclusión se destaca que los hallazgos encontrados en la investigación pueden ser útiles para los docentes de nivel educativo superior que se adaptan constantemente a las nuevas condiciones de actividad profesional en el campo de la educación jurídica, en la escena de pandemia y el ordenamiento posterior a la pandemia, con énfasis particular en especialistas enfocados en el desarrollo de sugerencias y la mejora de la calidad de la educación jurídica en el contexto de los desafíos globales que impone el COVID-2019.

Palabras clave: pandemia y post pandemia; ambiente educativo; cambios globales; futuros abogados; nuevo orden mundial.

Introduction

Wide-scale global changes, transformational processes in societies under total informatization, and the influence of massive culture have their not just positive but negative consequences in political, economic and social-cultural spheres of the world. The mentioned above has its reflection on law of every country. Nowadays, the global community has got one more reason for its internal differently directed changes to give a rather quick reaction for its further existence and development in conditions of the fight against COVID-2019. The unforeseen coronavirus pandemic has interrupted our personal, professional, financial and commercial lives, to a point of

preventing best performance at all levels; even rendering performance impossible (Modani and Desai, 2020). The global spread of SARS-CoV-2 has put international law on pandemic response and related legal fields into the limelight. As the coronavirus pandemic rages in, nations throughout the world scramble to enhance their responses. Various measures have brought a broad spectrum of restrictions: from general alerts to mandatory quarantines and isolations of individuals, to blanket travel bans and cordoning-off of cities and, in some cases, countries. Many governments have declared states of emergency, thereby assuming exceptional powers (Von Bogdandy and Villarreal, 2020).

On the 7th of April 2020, the Council of Europe not to destroy human core values and free societies during the pandemic provided governments with a toolkit for dealing with the present unprecedented and massive scale sanitary crisis in a way that respects the fundamental values of democracy, rule of law and human rights. The document covers four key areas: 1) derogation from the European Convention on Human Rights in times of emergency; 2) respect for the rule of law and democratic principles in times of emergency, including limits on the scope and duration of emergency measures; 3) fundamental human rights standards including freedom of expression, privacy and data protection, protection of vulnerable groups from discrimination and the right to education; 4) protection from crime and the protection of victims of crime, in particular regarding gender-based violence (Information Document, 2020).

Thus, soon or later by this or a similar way the need to modify the national legislation under the international and regional regulations and requirements of living in pandemic and post-pandemic reality originates not just legal mechanisms of their proper implementation but also the change of legal and juridical practice. Step by step all this leads to the modification of national legal systems, acceptance of new sources of law by such countries, and the formation of a new juridical paradigm that has to be more competitive and effective for the sake of the further development and improvement of national systems of law.

Under the mentioned above the legal education plays its very important role as for the formation of a professional in the field of law and the whole juridical community on the level of a separate state but according to the needs and conditions of reality for the whole world. In such a situation the preparation of future lawyers is still the relevant theme for its scientific investigation, the topicality of which will be always very high the same way as the role and significance of a professional jurist for every country. At the intersection of disruption and unpredictability will emerge a new model for the world's economy and for higher education. COVID-19 has created a new world order requiring a shift in perspective and necessitating thinking in different ways (Dennis, 2020).

At the same time, even taking into account the mentioned above negative consciences, if we look far and hard enough into our postsecondary post-pandemic landscape, we can glimpse some reasons for optimism. Nowhere is the higher ed post-COVID-19 future as positive or as interesting as in the realm of teaching and learning (Kim, 2020). Therefore, current issues, needs and imperative reforms to form a modern effective lawyer within the walls of a law school in modern times under the conditions of the fight against COVID-2019 are the quite important and relevant aim of our paper.

With this purpose it is needed to solve the following tasks: 1) to determine the current problematical moments that are the source of critical obstacles for the effective present and future legal education, including the conditions of the fight against the corona virus; 2) to analyze the present needs of different nature for the formation of a modern professional in the field of jurisprudence by law schools; 3) to investigate and on this base suggest the essential directions of the legal education improvement that may be reflected in national educational reforms under the modern requirements of the legal practice and the needs of reality in conditions of the fight against COVID-2019. The mentioned tasks are to investigate a subject of the paper that is current issues and prospects of modern higher legal education in conditions of the fight against the coronavirus.

1. Materials and methods

To achieve the aim of the paper, general-scientific and special-legal methods of cognition have been used taking into account the specifics of the research subject. Their application is based on the integrated approach that allowed exploring the issues through the prism of their social content and their legal form. The historical-legal method has been used in the analysis of the development of the legal thought to determine the current state and directions of the further improvement of juridical education. This method allowed determining the historical basis of the modern issues of quality educational legal services in pandemic and post-pandemic conditions in the presence of technical inability of law schools to use innovative teaching methods, the informational and technical illiteracy of teachers to teach and students to learn in the new electronic educational space under the requirements of reality.

By using the dialectical method, the current issues of modern legal education have been formulated, their reasons have been investigated and the directions of their removing to improve the juridical education and the quality of young lawyers in the world under conditions of the fight against the corona virus have been outlined. Also, modern challenges to higher juridical education in pandemic and post-pandemic conditions have been

determined and analyzed to highlight their internally connected nature with the financial potential of the existed educational juridical schools, their traditional policy of the educational service, the prevailing status of the face-to-face teaching, non-redness of their stuff to accept the urgent need to improve the informational literacy and use innovative methods of educational service in the sphere of jurisprudence.

The formal-dogmatic method contributed to the development of the authors' explanation of "Current issues of law schools in the proper education of future lawyers" and "Current issues of law schools' students in their proper education". This method has been used to reveal the authors' vision of the law students' current issues of a different nature. This method provided an opportunity to substantiate the vision of legal education in the informational age in the context of global changes, the transformation of social consciousness and anti-pandemic measures.

Using of this method, it has been analyzed and represented the suggestions to ensure the effective implementation of a new educational paradigm in the legal field based on the positive experience of the world, improving the traditional approach in providing the educational services with a focus on blended informational teaching and learning, the increase and development of technical literacy and skills of teachers and students, and the growing role of self-learning for both of them.

Using the formal-legal method, the content of the legal act of the European Union concerning the actions of its member states respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis has been analyzed. Using the system-structural and the comparative methods, the practical aspects of the implementation of the new world educational policy for the introduction of effective electronic and blended juridical education in order to train quality legal professionals in pandemic and post-pandemic conditions have been considered. Also, the systematic method has been used in the classification of suggestions for law schools of modern times and the new world order for the provision of educational services of a legal nature under its transformation from the traditional form into the innovative one.

The comparative method gave the opportunity to suggest the directions of the modern law school's development and the improvement with the aim to train effective and competitive lawyers in conditions of global changes, social transformation under the innovative development of the world and the fight against COVID-2019. The application of the mentioned above methods allowed to provide the comprehensive analysis of the current state, issues, and prospects of modern higher legal education in conditions of the fight against COVID-19 and post-pandemic world.

2. Results and discussion

The paper investigated modern higher legal education in conditions of global changes, transformational processes in societies under total informatization, and the influence of massive culture, including the fight against COVID-19. Special attention has been paid to the state and issues of juridical education in pandemic and post-pandemic periods. In this concern, the present problematical circumstances of law schools in the proper education of future lawyers have been analyzed according to the investigation of the outside and inside conditions of the educational environment in the sphere of juridical education. Also, the present issues of law schools' students in their proper education have been revealed. Modern challenges to higher juridical education in pandemic and post-pandemic conditions have been outlined. The need to transform the modern legal education from its traditional form into innovative under the requirements of the new world's order and reality dictated by the influence of COVID-19 has been proved. To ensure the further effective functioning of higher legal education, prospects of its future development and improvement in conditions of the fight against COVID-19 and the post-pandemic world have been suggested.

2.1. Modern higher legal education in conditions of the fight against COVID-19: current state and issues

Nowadays, the world's legal educational system is rather classically formed and consists of state and private institutions. Among them, there are specialized leading law schools that have their own history and recognition in the legal community. It guarantees them high demand among applicants, special or additional financing form their countries, and the willingness of those who wish to study there or their parents to pay high amounts for the education. As usual, educational institutions of such a level are rather competitive in the educational market and care about the giving of the proper educational service. At the same time, in our days there are many faculties of law in non-specialized institutions. As usual, in recognized technical, humanitarian, pedagogical, or even agriculture universities such faculties have been created to get additional financing and develop a new direction in the training of classical lawyers with the stress in their specialization on the specific of the traditional universities.

A question about the quality of their educational service, a level of their graduates' education and knowledge of law is still debatable in the legal community. One part of the jurists is totally opposite in such a situation

because they support just classical law school preparation where the most qualified professors and scientists are concentrated. In their opinion, the material, technical, educational, and research base may be properly organized just by recognized law schools that exist for a long time. More else, they think that just under those conditions the proper preparation of a qualified lawyer is possible, and just after graduation of recognized law schools it is possible to be needed and competitive as a legal specialist at the labor market. At the same time, the second part of lawyers does not see the weakness of today's young legal professionals just in a fact of their preparation by non-specialized law schools. More else, many of them admit that newly trained lawyers in most cases even if they studied in rather recognized law schools are not capable to apply their knowledge in practice.

It seems to be the main problem of graduates because their employers cannot be sure of the performing of working duties effectively by such a lawyer. Nowadays, there is a gap between knowledge got in a law school and the real ability to apply and implement them in the practical activity by graduates. In our opinion, the reason for such a situation cannot be explained just by the legal training of them by the mentioned above non-specialized educational institutions. More else, in conditions of the fight against COVID-2019 the mentioned issue became and with time will be more visible than ever before. The reality of distance learning as the only possible form of education in pandemic conditions revealed the main problem of law schools and their students. And it is not determined just by the technical side of the question.

Nowadays, the real dialogue of educational nature is possible just between conscious students that desire to get new deep knowledge and professional teachers that are capable to give the knowledge. Of course, innovative technologies and programs that are instruments of communication between students and teachers are an essential element of modern legal education. That is why, on the one hand, the teachers, and, on the other hand, students have to develop and improve their so-called technical skills on a permanent base. But it seems to be the imperative requirement of pandemic and even post-pandemic reality to get not just higher juridical but even secondary education.

On the base of the mentioned above, it is quite important to investigate reasons and outline the directions of removing to improve juridical education and the quality of young lawyers everywhere in the world. We think it is possible to divide them into two parts: "Current issues of law schools in the proper education of future lawyers" and "Current issues of law schools' students in their proper education". Both of them are relevant to be investigated and analyzed scientifically with further suggestions to remove the obstacles, improve, and develop juridical education as a whole.

2.2. Current issues of law schools in the proper education of future lawyers

The educational process obligatory involves two sides. The first one is a student that is to get the proper knowledge, special techniques and abilities to provide the practical activity effectively in different forms of legal activity such as legal cases and connected with this searching of evidence, advocacy in representation and protection of human rights, freedoms, and interests, judgment, consultative advice and promotion of different kinds of commercial activity, etc. The second one is a law school where lawyers with deep theoretical knowledge, practical skills, experience, and scientific achievements are to train the students.

We think that current issues of law schools in the proper education of future lawyers depend on two interrelated and interdependent components that are the law school's potential and the potential of this law school's teaching staff. That is why, on the one hand, the graduates' level of legal education, the depth of their legal knowledge and practical mastering depend on the material-technical base of an institution where they study. It is possible to understand this component as an outside condition of the educational environment of legal education. On the other hand, the depth of theoretical knowledge, practical experience, and scientific-methodological techniques of teachers at law schools determine the inside condition of the educational environment of legal education. Idest. higher educational institutions in the field of law on the base of the proper and modern level of the outside and inside components' development are to be the right environment of the legal education according to the law and practical needs.

That is why to prepare modern competitive lawyers a modern law school has to follow modern needs of technical, methodological and educational abilities. It means that financing of the law school has to be used on the improvement of technical equipment, cyber technologies and any other type of modern innovations of technical character to make the process of learning of jurisprudence easier by traditional and modern methods. We have to realize that today's preparation of future lawyers is made in the so-called digital era. It requires the law school's technical ability to use the effective technical achievements of mankind and the moral readiness of the teaching staff to apply them in their pedagogical activity. Today's distance teaching and learning via the use of informational technologies under the pandemic of the corona virus is the undoubted proof of the mentioned above.

At the same time, every law school nowadays should understand the need to improve its own technical and innovative base to create and develop the modern environment of law-students training. On the one hand, it requires

the money investments to the material-technical base of the school. On the other hand, it needs systematical money to improve and develop the staff's level. Nowadays, there are many professionals among the law teachers that have a scientific degree in the field of law, right abilities and skills, and teaching experience. At the same time, because of their age not all of them used to use new technologies and innovative methods of teaching. In the use of traditional methods of the future lawyers' training such professors may be rather effective by giving brilliant lectures, providing practical classes and giving advice.

But nowadays even traditional higher legal schools' methodology of teaching and learning has to be transformed due to the needs of the innovative development of the world. A picture of a law student has been changed and is still under the process of transformation because a picture of a young person has been changed in conditions of global changes and social transformations. Everyday use of technologies and innovative achievements of the world changed even a blueprint of a future lawyer. That is why no law teacher today may be closed for technologies and innovations. Nowadays, for example, even classical delivering of a lecture on a theoretical juridical theme by a specialist of a high level with a tremendous experience may be rather boring for a modern student just because of his or her internal need to percept the information with the use of visual or video interactive material.

The face of modern youth has been changed even in their daily communication because they use social networks and phones by typing messages rather more than verbal communication. If such a person has formed his/her ability for communication this way, it is rather difficult for him/her to percept theoretical academic information of the rather difficult juridical content just by listening of the lecturers without any visual materials. That is why the leading law schools of the world have already accepted the mentioned fact and reacted to this the right way.

Administrators must reward faculty who engage in innovative teaching practices, not just those who publish most frequently. Teachers must be willing to spend the time needed to modify their current teaching practices to incorporate the more frequent assessments of their students. Individual teachers and law schools can and should begin altering their approaches now, giving themselves time to adapt to the new teaching paradigm for legal education (Ramy, 2013). Stephen Colbran, Anthony Gilding and Samuel Colbran determined animation and multiple-choice questions as a formative feedback tool for legal education (Colbran *et al,* 2017). Two-dimensional animation when combined with multiple-choice questions affords an interesting and innovative formative feedback tool for engaging law students in problem-based learning. Students viewed the animations as a very positive learning experience, in the sense of making the lesson more

interesting to learn, assisting them to learn and help visualise the ethical problems. Student comments highlighted design features which, when refined, may improve the quality of both the animations and the student experience in studying law using animation (Colbran *et al,* 2017). At the same time, determining the creative podcasting as a tool for legal knowledge and skills development, Rachel Killean and Richard Summerville made the suggestion of "introducing a student-led legal podcast in their law school in September 2017 to explore creative podcasting's potential as a tool of legal knowledge and skills development" (Killean and Summerville, 2020).

As Alison Bone (2009) admitted: "Students appreciate innovations by law teachers involving technology such as podcasts, wikis or blogs even though this not widespread". The expansion of the use of virtual learning environments and law databases does mean that it is possible to access an enormous range of materials without setting foot in a law library and there are undoubtedly more interesting ways of engaging students interactively with material for their study in the first decade of the twenty-first century than hitherto (Bone, 2009). Rather interesting ideas of optimizing the Law School Classroom Through the "Flipped" Classroom Model have been given by Angela Upchurch (2013).

A flipped classroom turns the traditional teaching paradigm on its head – altering the roles of both the professor and the students during shared classroom time and during time outside of the classroom. In a flipped model, the professor presents some new content in taped online videos that the students view outside of the classroom. As a result, more in-class time can be freed up for activities or concepts that would benefit from modeling or demonstration by the professor or from group work.

Analyzing new skills and new learning in the USA, Gene Koo (2007) connects legal education and new technologies. Tomorrow's lawyers will be plucking increasingly valuable data from exponentially-growing fields of information; working with colleagues and clients spanning the globe, and establishing automated systems to leverage scarce legal resources more efficiently. In schools around the United States, students are already at work laying the foundations of a future legal system that assumes the use of new technologies.

As P. Caron (2007) notes, G. Koo (2007) pointed that law firms, continuing legal education providers, technology providers, and law schools all have a role to play in ensuring that attorneys are prepared for a technologically-mediated world. To meet this challenge, these organizations must understand what to teach and how to teach it. In many ways the opportunity demands an entrepreneurial approach: relentless experimentation to sharpen both practice and the pedagogy of practice (Koo, 2007). It also requires institutional awareness: understanding not just the divide between academy and practice and the divergent challenges

facing global mega-firms versus local community lawyers, but also how to bridge those differences when necessary (Koo, 2007). In our opinion, to meet the needs of pandemic and post-pandemic reality in the adequate and qualified service in the field of juridical education, law schools have to accept the mentioned above and transform their traditional educational methods into innovative with the proper use of traditional.

2.2.1 Current issues of law schools' students in their proper education

On the base of the mentioned above, it is possible to admit that the proper education of the future lawyers depends on the abilities and skills of law students as well as their natural potential and internal interest to get juridical knowledge and mastering. Unfortunately, not all of such students have natural skills to the legal profession that they understand with time and change the profession in the future. It means that even in highly technically developed law schools under the guidance of the skillful and experienced pedagogical collective, such a student will never become a professional lawyer. Such a person with the amount of legal knowledge will know techniques and methods but will never feel how to use them in practice.

This fact is the current issue of every profession because a human during the getting of education may reveal his/her own hided deep qualities, abilities, and skills with the further determination and change of the profession. At the same time, in this paper, we try to analyze law students that are trained to be lawyers and most of them began to practice jurisprudence. Such a student wants to know law, he/she is ready to analyze, investigate it, improve own knowledge, skills, and get new techniques in its mastering and practicing. For such a student a modern law school should be the way to acquire knowledge, somebody's juridical experience, and the formation of a minimum competency model of a future lawyer.

The modern law student is appreciative – it would appear – of the efforts of law teachers in providing lectures and facilitating seminars which are still seen as of fundamental importance to their learning. Textbooks are usually bought, especially by first year students, but seen as less important to learning by second- and third-year students. Online resources are widely used and valued, whether provided by the university or by others such as publishers. Students feel they are given guidance on the transition to higher education but would seem to want more specific help with studying law. The face-to-face contact with other students is generally regarded as essential to their learning (Bone, 2009).

At the same time, we think that legal education is changing under the influence of the requirements and challenges of our time especially in conditions of the fight against COVID-2019. Their character is determined by the development of a society, its legal consciousness, legal culture, values, and expectations. A significant impact on the changing nature of the training of lawyers in higher education was made by modern technological progress, the development of innovative and cyber technologies. Under the pandemic, the world's higher education landscape is enriched by a wider role of online learning and taking into account that more learners will study closer to home. The list is too long and changes daily of the number of colleges and universities worldwide that have suspended, or ended, in-person instruction, and replaced it with online teaching. The wisdom and necessity of increased online. Specific cohorts of students will opt to study closer to home. According to a report published by QS, prospective Asian students may increasingly look to intra-regional universities for tertiary study (Dennis, 2020).

Today, experts in the field of law are faced not only with the solution of classical problems of protecting human rights, interests, and freedoms but also with a willingness to quickly transform their own skills and abilities to the needs and requirements of the environment of existence and the activity of a modern lawyer. Accordingly, the training of such a lawyer in modern conditions poses new questions for the higher law school and actualizes the urgency of their solution. According to the mentioned above, we agree with Herbert Ramy (2013) that "students must become willing participants in their own education so that they can become independent lifetime learners".

In our opinion, the modern law schools have to form not just the proper skills and knowledge but develop in the student community an understanding of the need and an active focus on self-development and the formation of research skills in the field of jurisprudence as the main source of knowledge in the field of law and its further applying in practice. More else, we think that just interdisciplinary training of law students may ensure their competitiveness and professional prospects, as well as the future development of jurisprudence in the world.

Analyzing interdisciplinary strategies for legal education Deborah L. Borman and Catherine Haras admitted that law education possesses the tools necessary to create outstanding classroom experiences. It remains for law to incorporate these borrowed education strategies mindfully into legal education. To do so will enhance and improve the teaching and learning process and build law education into a training ground for the finest critical-thinking practitioners (Borman and Haras, 2019). Interdisciplinary training is not an impediment to students' success on the job market and instead may help them to achieve a competitive edge (Kleynhans and Bornstein, 2015).

2.3. Modern higher legal education in conditions of the fight against COVID-19: future development and improvement

The further existence and progressive functioning of higher legal education in conditions of the fight against the corona virus is only possible if the whole system of higher juridical education will be modernized and the consciousness of teachers and students will be updated. Pandemic and post-pandemic circumstances and effects played their essential role in the creation of a new world order with entirely different and fundamentally new problems. A modern higher juridical education has to be ready to react appropriately with the aim to form the needed environment for the educational service and training of lawyers.

The issue of impossibility to coordinate the conduct of teachers and students in the era of new technologies has to be resolved with the quick involvement of different kinds of electronic education. To teach a subject is to learn that subject anew, to see it in a new light, in a deeper and richer significance (Sanders, 1908). This will require the pedagogical methods change and communication changes between teacher and students from one hand, and among students from the other hand. Regardless of existing till now disadvantages the m-Learning will become more and more popular with the progress of information and communication technologies. Its common use with traditional education will correspond to the needs of educational quality improvement.

The educational process will become more flexible and will fulfill the needs of lifelong learning (Georgiev *et al,* 2004). At the same time, we think that the further development of juridical education needs its interdisciplinary teaching and learning. Interdisciplinarity is a learning process, but, for that learning, time and resources are needed. For a university interdisciplinarity is an important means. New interdisciplinary courses offer the best of several disciplines in a balanced way and are, therefore, attractive and relevant to (more) students (Wilthagen *et al,* 2018).

The most change that a modern law school and its students realized during the educational process under the fight against COVID-2019 is their quick reorientation on so-called e-learning. On the one hand, not all of the students and teachers were ready to it morally, on the other hand, even using the Internet and new technologies in their daily life, many of the students and even teachers did not have enough technical skills to use the technical side of this issue with a professional and educational purpose.

The question about e-learning is still debatable because of its advantages and disadvantages. As V. Arkorful and N. Abaidoo (2015) state, e-learning involves the use of digital tools for teaching and learning. It makes use of technological tools to enable learners' study anytime and anywhere. It

involves training, delivery of knowledge and feedback. It motivates students to interact with each other, exchange and respect different point of views. It eases communication and improves the relationships that sustain learning. Its adoption in some institutions has increased faculty and learner access to information. A rich environment for collaboration among students can improve academic standards (Arkorful and Abaidoo, 2015).

The overall literature which explains the advantages and disadvantages of e-learning suggests the need for its implementation in higher education for faculty, administrators and students to enjoy the full benefits that come with its adoption and implementation (Arkorful and Abaidoo, 2015).

Analyzing teaching and learning after the corona virus, scientists in the sphere of law predict that blended learning will dramatically increase, and online education will be a strategic priority at every institution (Kim, 2020). We support the mentioned above but, in our opinion, even is pandemic legal education requires just its electronic and distance form it does not mean that it should be its only format in the post-pandemic period. Depending on the condition of reality, the modern post-pandemic legal education has to be blended but still concentrated on the classical form of teaching and learning. The transfer of knowledge and experience from teachers to students may be provided exclusively in the e-format only if the post-pandemic conditions will not allow using the classical form of education.

We have not to forget that e-learning except advantages has disadvantages. Many studies have attempted to find out whether distance education differs from traditional modes of instruction when referring to facilitating student success. The majority of these studies reported no significant differences between the distance and traditional modalities. Most important, the design of such type of research (whether comparative or evaluative) clearly places emphasis on the importance of the method of delivering instruction and is consistent with the instructivist (instructor-centered) learning theory but inconsistent with the constructivist (learner-centered) theory, which is more concerned with the role of the student in learning than with the role of the instructor in teaching (Diaz, 2000).

The future opportunities for distance education are unlimited. Clearly, distance education programs and courses are here to stay and will increase in the future but there are still many uncertain issues to be clarified and investigated. While distance learning can be at least as effective as conventional classroom learning under certain situations, it hasn't been claimed that e-learning can replace traditional classroom learning. Like any kind of educational program, distance learning comes with a host of pros and cons. Before learners enroll in any kind of distance learning program, they had better make sure to carefully consider these points in order to be sure they'll be getting an education that meets their personal needs, strengths, and career goals (Sadeghi, 2019).

The necessity of teaching and learning with asynchronous (Canvas and Blackboard, D2L) and synchronous (Zoom) platforms will yield significant benefits when these methods are layered into face-to-face instruction. We will come back from COVID-19 with a much more widely shared understanding that digital tools are complements, not substitutes, for the intimacy and immediacy of face-to-face learning (Kim, 2020).

Finally, distance learning is seen as a viable alternative for lifelong learning opportunities, including informal courses, professional development tutorials, and full degree programs. The growth of online courses, enhanced by the ease of access, media attention, and interest from the private sector, has increased demand, and efforts are underway to respond with various online learning activities (Lau, 2000). Educators, course designers, and institutional planners must consider pedagogical policy and support issues before plunging into offering online courses. The community of scholars and educators must also create more avenues for sharing of experiences and research among all the international players by being willing to describe difficulties and take feedback from learners (O'Lawrence, 2005).

At the same time, we think that the new educational reality needs interdisciplinary teaching. The pupil's knowledge of a subject may end with the gathering and the understanding of facts, but the teacher's knowledge must include this and add to it the knowledge of its deeper relations to other subjects and to mind growth (Sanders, 1908). Academic institutions appear to be responding to science's increasingly multidiscipline approach. This is particularly beneficial as interdisciplinary teaching and scholarship continues to infiltrate the traditional disciplinary framework. Interdisciplinary training will thus enable future faculty to teach general education courses, as well as in a growing number of interdisciplinary programs (Kleynhans and Bornstein, 2015).

2.3.1 Prospects of modern higher legal education in conditions of the fight against COVID-19 and post-pandemic world

Analyzing the current issues and the future of legal education, including pandemic and post-pandemic circumstances, we have to admit the obligatory need for its transformation from its traditional form into innovative. A law school of new times and world's order has to be able to:

– identify, analyze the state, issues, and challenges for higher education for the quality provision of educational services in the legal field;

- be prepared to generate proposals, adequately and actively respond to problems and challenges in modern higher legal education;
- understand the internal and external causes of the problem of low efficiency in law education and put into practice models for their exclusion;
- through its own activities to transform the traditional legal education into the legal education of a new innovative type that will require the needs of pandemic and post-pandemic reality and new world's order.

We think that the further development of science in our time suggests its interdisciplinarity. This character, in particular, of legal science and legal education, is true and only possible, ensuring the effectiveness and practical validity of the further development and functioning of jurisprudence. In this regard, both the portrait of a modern lawyer and those who are called upon to ensure his/her training at the higher law school have changed. We are talking about the need to transform both the material-technical, and the methodological base of higher education, and the teacher for adaptive purposes to the challenges of modernity and the expectations of students. In the era of innovative technologies and cyber development, a law student should be formed solely taking into account the mentioned above, acquiring not only knowledge but also relevant competencies in the conditions of his/her interdisciplinary training by innovative methods.

That is why the efficient modern legal education in pandemic and post-pandemic circumstances of COVID-2019 may be got just in a law school that has to able to:

- determine the characteristics, needs of a law student of the 21st century, his/her expectations from a teacher in a higher law school in conditions of modern innovative technologies;
- determine and choose, as well as effectively use modern teaching methods for future jurists in the context of global changes and social transformations;
- develop in the student community an understanding of the need and an active focus on self-development and the formation of research skills in the field of jurisprudence as the main source of knowledge in the field of law and its further application in practice;
- determine, choose, effectively use modern technical means and methods for training lawyers in their practical pedagogical activities;
- put into practice knowledge and moral-psychological readiness to build a training space for future specialists in the field of law in higher education;

– carry out interdisciplinary training of law students to ensure their competitiveness and professional prospects, as well as in the name of the future development of jurisprudence.

Conclusion

It has been proved that the modern legal education under global changes, transformational processes in societies in pandemic and post-pandemic circumstances and effects of COVID-2019 requires its essential transformation from the traditional to the innovative form of its existence. This process is two-sided and includes, on the one hand, law schools and, on the other hand, law schools' students. The first ones have to improve their technical-innovative potential and ability to use the effective technological achievements of mankind and the moral readiness of the teaching staff to apply them in their pedagogical activity on the base of interdisciplinary teaching for adaptive purposes to the challenges of modernity and the expectations of students. The second ones have to become active participants of the educational process, deep their digital abilities and permanently grow their self-educational skills to ensure their competitiveness and professional prospects, as well as the future development of jurisprudence in the world.

The materials in this paper may be useful for teachers of higher educational level adapting to the new pandemic and post-pandemic conditions of professional activity in the field of legal education, for specialists focused on the developing the suggestions and improving the quality of juridical education in the context of global COVID-2019 challenges. In the research process, new questions and issues arose that are needed to be solved. It is necessary to continue the investigation of methods and details of the effective practical implementation of modern higher legal education development and improvement under the fight against COVID-19 and in conditions of post-pandemic circumstances and the new world's order.

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Young People Leisure Activities Transformation During Quarantine Self-Isolation: Characteristics and Regulation Problem

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Abstract

The objective of the research is to study the characteristics of leisure activities of young people in self-isolated conditions during the coronavirus pandemic. As a research method, the authors use an online survey that allowed them to more effectively visualize the features of leisure activities and the peculiarities of their regulation among self-isolated students. The article also considers the leisure strategies of young people in conditions of self-isolation and social fortune. The novelty of the research

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lies in the fact that the hierarchy of leisure preferences of young people was studied for the first time during the period of self-isolation. It is concluded that the leisure practices of young people are identified by the regular use of the Internet, instead of the use of sports or any other practice. The priority areas of the Internet application are: study and communication, reading books and consulting news. In addition, there is the ability to communicate on social networks, search for video and audio recordings and games on the network. Preferred game genres are shown to be multiplatform simulators and strategies.

Keywords: student youth: leisure practices; self-isolation; COVID 2019; regulation problems.

La transformación de las actividades de ocio de los jóvenes durante el autoaislamiento en cuarentena: características y problema de regulación

Resumen

El objetivo de la investigación es estudiar las características de las actividades de ocio de los jóvenes en condiciones de autoaislamiento durante la pandemia de coronavirus. Como método de investigación, los autores utilizan una encuesta en línea que les permitió visualizar de manera más efectiva los rasgos de las actividades de ocio y las peculiaridades de su regulación entre los estudiantes en condiciones de autoaislamiento. El artículo considera también las estrategias de ocio de los jóvenes en condiciones de autoaislamiento y cuarentana social. La novedad de la investigación radica en el hecho de que se estudió, por primera vez, la jerarquía de las preferencias de ocio de los jóvenes durante el período de autoaislamiento. Se concluye que las prácticas de ocio de los jóvenes se identifican por el uso regular de Internet, en lugar del uso de deportes o cualquier otra práctica. Las áreas prioritarias de la aplicación de Internet son: el estudio y la comunicación, lectura de libros y consulta de noticias. Además, existe la capacidad de comunicarse en las redes sociales, buscar grabaciones de video y audio y juegos en la red. Se muestra que los géneros de juego preferidos son los de estrategias y simuladores multiplataforma.

Palabras clave: juventud estudiantil: prácticas de ocio; autoaislamiento; COVID 2019; problemas de regulación.

Introduction

Changes in youth leisure are due to the emergence of a new form of reality of self-isolation and a new information and communication space. The Internet is a special social space, a sphere of communication (Putilina *et al.*, 2019; Olkhovaya *et al.*, 2019a, 2019b). Leisure activities are undoubtedly important in the daily life of any person, as they meet many needs of the individual. The basic functions of leisure activities can be identified as therapeutic and Wellness (Cherdymova, 2017; Khanmurzina *et al.*, 2020). Satisfying his/her needs for leisure activities, especially in the context of quarantine, the person avoids disturbing thoughts, obsessive-compulsive disorder.

If you avoid this type of activity, it is possible through constant tension, stress and neuroticism to come to psychological depression, especially in difficult conditions of self-isolation, which are dictated by the coronavirus pandemic (Usak *et al.*, 2020). Along with communication in the Internet space, one of the most common Hobbies of young people is games. With the development of a new information and communication space, new forms of leisure activities appear which are formed into whole leisure strategies. Today, changes in youth leisure are becoming obvious, and there are significant differences from traditional leisure activities. (Kendo, 2000; Zborovsky and Orlov, 1970; Zharkova and Chizhikova, 1998).

There is a dynamic development of information and communication space and its integration into the leisure sphere in the process of self-isolation. Modern works on leisure activities are mainly devoted to the problems of widespread use of the Internet as a new information and communication space (Yaroshenko, 2017; Reprintseva, 2003; Mandrika and Tyutyunnikov, 2000; Turkhanova, 2006; Ponukalina, 2009). Communication via the Internet in on-line mode has already gained its unshakeable popularity among Russian citizens.

The concept of leisure is the starting point for understanding leisure strategies in the space of youth life-activity, so there is a need to clarify it in connection with the different understanding of leisure and the concept of free time, which is close in meaning in the scientific literature on this issue. Even ancient philosophers said that one of the main human aspirations is the desire for pleasure. As a rule, a person gets pleasure by doing his/her favorite activity, hobby, satisfying their interest, and this is all, in turn, related to leisure activities (Tregubov, 1991; Mints, 1997). In a situation of self-isolation due to the coronavirus pandemic, in an ordinary home environment, it is quite difficult to fully realize personal needs for self-development, just as it is quite difficult to get it in full in the business sphere, in the household, since everyday work, routine actions and limited

activities, absorb the individual's consciousness and do not allow him/her to distract from their worries.

The essence of free time is that which remains for the individual after work and is spent on rest, leisure, recuperation, physical and spiritual development of the individual (Drobinskaya & Sokolov, 1983; Grushin, 1967; Tregubov, 1991; Mints, 1997). Leisure, in our opinion, is a part of free time, the content of which is filled with activities for their own pleasure, entertainment, self-improvement, development or other goals of their own choice. This is not working time, which a person spends with pleasure and interest, in the process of which he/she restores his/her mental balance. The structure of leisure consists of several levels, which are distinguished from each other by their psychological and cultural significance, emotional weight, and degree of spiritual activity (Andreeva and Novikova, 1988; Omelchenko, 2006). One of the most common leisure strategies is rest, relaxation, which is necessary for a person to restore potential, both physical and psychological, which in turn will lead to the restoration of psychological balance and psychological health (Gordon and Klopov, 1972; Grushin, 1967; Levikova, 2002).

Special attention should be paid to the developing and educational functions of leisure. Indeed, during the period of socialization and individual development of the individual, leisure becomes of great educational importance. However, these functions remain important at any age. There is still a need to expand one's horizons, especially in the modern world with a high speed of updating information, maintain social ties, and meet the requirements of the time (Surtaev, 1992; Streltsov, 2002; Derzhavin, 2002). Free activity was regarded as the highest manifestation of the human spirit, and leisure as the highest good. In other words, the concept of free time is broader in scope than leisure, and leisure is only part of it. In analyzing the problems of free time and leisure, it is most interesting and important to pay attention to the socio-demographic group of young people, since this group is the most vividly and quickly responds to new social trends (Fatov, 2006; Goncharova, 2009; Zakharchenko, 2008). Therefore, when talking about leisure strategies in the context of self-isolation, we will also consider young people as a group involved in this space and reacting as quickly as possible to the appearance of innovations as an object of close study (Bidwell, 1972; Bovkun, 1988; Vishnevsky and Rubina, 1997; Gavrilyuk and Trikoz, 2002). The vast majority of young people prefer to spend their free time away from home, in the company of their peers, but in conditions of self-isolation, leisure activities undergo significant changes.

1. Materials and Methods

The problem field of the study is determined by the fact that today young people are forced to sit at home in self-isolation during the coronavirus pandemic. Quota selection based on socio-demographic characteristics (gender and age) was used as a sampling method.

Types of leisure strategies for young people in conditions of self-isolation in the new information and communication space. The research questions were:

What leisure practices do you most often use when you are in self-isolation about the coronavirus pandemic?

How often do you spend your time at home?

How often, on average, do you use the Internet in conditions of self-isolation?

1. Every day

2. Almost once a week

3. Every other day

4. Once a week or less

Why do you use the Internet most often in self-isolation?

1. To work

2. for study

3. for leisure, communication, entertainment

4. To search for information not related to work or studies

5. Other (specify what it is)

If you use the Internet for recreation, communication, entertainment, what ways do you use exactly?

1. Communication in Social networks

2. Search for videos (videos and movies) and audio (music, stories, etc.)

3. Reading books and news in electronic form

4. Computer games playing

5. Network games playing

6. Other (specify what it is)

How many hours a day do you play these games on average?

1. 0-5 hours

2. 6-10 hours

3. 11-18 hours

4. 19 or more hours

Do your friends play similar games with you?

1. Almost everybody play

2. Only some of them play

3. Approximately half of them plays

4. Almost no one plays

5. No one plays among my friends

Have you developed any new leisure activities during your period of self-isolation?

If so, which ones?

2. Results

Moving to the results of the survey, we can state that all 100% of the students surveyed are Internet users. More than three-quarters (78%) of students never play on the Internet on a computer. The remaining quarter of students (23%) play computer Internet games with varying regularity. Of these, about one in eight (13%) of the students surveyed rarely play on the computer and almost one in ten (8%) often play computer games on the Internet. The absolute majority of respondents (80 %) have a positive attitude to the computer and the Internet. Of these, more than half of the respondents (54%) like them very much. 13% of respondents are neutral about these technologies. According to more than half of the respondents, the Internet will not be able to replace the classic media (Newspapers, radio, television).

A third of respondents (31%) think that the Internet in conditions of self-isolation can replace the classic media, and 13 find it difficult to answer. The distribution of the frequency of Internet use gave the following results. Among Internet users, almost every one of the respondents (95%) uses the Internet in conditions of self-isolation every day; only 3% use the Internet 4-6 times a week. Two or three times a week, 2% of the youth surveyed use the Internet, and none of the respondents who use the Internet once or less

often. The percentage of young people who use the Internet in conditions of self-isolation less than four times a week is represented by a statistically insignificant value. Distribution of respondents by areas of life in which they use the Internet. The absolute majority of young people surveyed (100%) use the Internet to study. About one-third of the respondents use the Internet for work. The majority use the Internet for recreation, communication, and entertainment (99%) and search for information, which is not related to work, or study (51%).

In terms of self-isolation, the opportunity to read books and news in electronic form is in the first place in the hierarchy of preferences of young people among the entertainment opportunities of the Internet (88%). The second place in the hierarchy of preferences of young people among the entertainment opportunities of the Internet network is occupied by the ability to communicate in social networks (86%). In the third place in the hierarchy of preferences, the ability to search for videos and audio recordings on the Internet is preferred by more than half of the respondents (57%). In addition, in the last place in the hierarchy of preferred opportunities are gaming practices. About a quarter (27%) of those who use the Internet for entertainment play online games, and only 9% play computer games. It is worth noting that among those who play games on a computer, the absolute majority (99 %) prefer network games. Exactly half (50%) of the respondents who are interested in computer games spend about 6-10 hours a day on this activity. It is worth noting that the absolute majority (97%) of respondents who are fond of computer games, some friends are fond of such games. Just 1% says that almost everyone plays, and the same amount (1%) that almost no one plays. It is worth noting that from the above-mentioned data, we can conclude that if a person is fond of games, then at least one of his friends is also fond of them. The first type: active participants, they are characterized by a high degree of involvement in gaming and related practices.

They often use a computer and Internet resources, and their priority activity on the Internet is mainly various gaming practices that require a lot of time. Among their friends, there are always representatives who share their passion. You can join virtual or real groups, chat rooms, and forums dedicated to computer or network games. The presence of interest in information related to the appearance of new products in the computer game industry. The share of representatives of this type is only 4% of those who play computer and network games. Another type of player is characterized by an average degree of involvement in game practices and, possibly, partial involvement in accompanying practices. The share of representatives of this type is more than half (90%) of respondents who play computer and network games. The third type is characterized by a low degree of involvement in gaming practices, and in the accompanying practices are mostly not included.

Also, a variety of passive participants are those who are formally included in the accompanying practices, but the game practice for them is not a priority occupation on the computer or on the Network, the time spent on this type of activity is very limited. The share of representatives of this type is only 6% of those who play computer and network games. Thus, in conditions of self-isolation, the proportion of young people using Internet resources for leisure activities has increased significantly.

3. Discussions

Leisure occupies an important place in the life of modern people, it is a part of free time, the content of which is filled with activities for their own pleasure, entertainment, self-improvement, development or achieving other goals of their own choice. In the conditions of self-isolation about the coronavirus pandemic, the amount of free time has significantly increased and the features of its conduct have undergone significant changes. Free time is not working time, which a person spends with pleasure and interest, in the process of which he/she restores his/her psychological health. Youth leisure develops in a young person such habits and skills that will then completely determine his/her attitude to free time. It is at this stage of a person's life that an individual strategy of leisure and recreation is developed, the first experience of organizing free time is accumulated, and attachment to certain activities occurs.

It is important to note that in conditions of self-isolation, the fascination with computer and network games is not limited only to the practice of playing. There are a number of related aspects, one of which is that the absolute majority of young people playing games, according to the results of the survey, are registered in Internet chat rooms, forums dedicated to computer games. As well as the majority of computer-players are interested in information related to the appearance of new products in the computer game industry. So according to the results of the survey, two-thirds of them are interested in such information to varying degrees, a little more than half of them are more interested in this information than not, and accordingly for less than half of the respondents who are fond of computer games such current information is very interesting and useful for self-development.

Having described the empirical distribution in the conditions of self-isolation of the surveyed youth by the degree of involvement in gaming practices, we can note the following: only a third of the respondents are interested in computer or network games. It is important that among this third, representatives of the moderate and passive type of players predominate, that is, young people with an average and low degree of involvement in gaming practices, despite the development of the computer entertainment industry.

The assumption about the involvement of young people in the conditions of self-isolation in gaming practices was somewhat exaggerated. Instead of the expected half, only a third of young people are included in gaming practices. In modern conditions, new scientific discoveries and technological innovations lead to the development of information and computer technologies, which young people are passionate about. Information and communication space is increasingly absorbing the attention of students.

In conditions of self-isolation, the phenomenon of information and communication space covers almost all spheres of public activity, including politics, ideology, culture, lifestyle, as well as the very conditions of human existence. In particular, this phenomenon has firmly taken its place in the field of leisure.

Through the computer, a person in self-isolation has created a fundamentally new environment-virtual reality, which exists alongside the real world, and over time, this border between virtual reality and the real world becomes more blurred. One of the embodiments of virtual world is computer games, which served as the basis for the formation of a subculture of gamers. The gaming movement today captures more new social groups and categories of individuals. At the same time, the information and communication space, despite its external attractiveness and rather deep penetration, especially in the youth environment, has an ambiguous socio-cultural impact on society.

Conclusion

Leisure is an important and necessary structural element in any person's life. Modern times offers a huge variety and range of leisure activities, especially for young people. As a result, leisure can always be considered as the realization of personal interests related to recreation, self-development, self-realization, communication, health improvement, etc. Leisure is important for any person in order to restore physical and mental potential, to meet the needs of a person in self-development. In conditions of self-isolation at home, due to the coronavirus pandemic, the conditions for meeting this need are significantly narrowed and transformed.

Young people who previously satisfy the need for personal development in the external environment feel quite limited in movement and constrained by reality. Consequently, previously meaningful and active leisure of young people was transformed into a more passive and non-characteristic for them form, which does not meet the needs of young people. Undoubtedly, the leisure activities should be varied, interesting, entertaining, and unobtrusive in nature. Such leisure can be provided by providing an

opportunity for everyone to actively show their initiative in various types of recreation and entertainment.

In conditions of self-isolation in a limited space, young people move less, their active lifestyle significantly decreases, and, as a result, they become more and more exposed to Internet technologies, they become more and more involved in the Internet web, which undoubtedly has the most effective effect on their moral image and Outlook. In conditions of self-isolation, leisure activities of young people are quite strongly reduced to passive leisure, active movements are becoming less and less, which, in turn, requires maximum concentration and compliance with the daily routine in order to somehow stimulate themselves to activity in order to restore physical potential and form and, as a result, to help their mental health.

Thus, leisure in conditions of self-isolation integrates many disparate aspects of human life into a single whole, which allows a person to feel the fullness of life. Without leisure in conditions of self-isolation due to quarantine, life activities of young people would be monotonous and difficult to bear.

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