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

CUESTIONES POLÍTICAS

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

Vol.40 *Nº 73*
Julio
Diciembre
2022

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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.

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Revista Cuestiones Políticas. Av. Guajira. Universidad del Zulia. Núcleo Humanístico. Facultad de Ciencias Jurídicas y Políticas. Instituto de Estudios Políticos y Derecho Público
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Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022

DOI: https://doi.org/10.46398/cuestpol.4073.00

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Abstract

The Russian Federation's invasion of Ukraine in February 2022 is an unusual geopolitical event that puts the security of Western Europe at risk and, at the same time, erodes the norms of international law that regulate, at least in theory, relations between civilized countries. Indeed, it is a tragic event that has cost the lives of thousands of civilians who have been victims of war crimes and serious violations of their fundamental rights. In this sense, the objective of this editorial is twofold, on the one hand, to present volume 40, number 73 of Political Questions and, on the other, to briefly explain the causes and geopolitical consequences of the Russian invasion of Ukraine. It is concluded that the invasion of Putin's Russia in Ukraine can trigger a prolonged and extensive conflict that can even confront NATO directly with Russia. Ideologically, it is a conflict that means a clash between different political models such as the liberal democracies of the West (ensuring human rights, adherence to the principles of international law - the sovereignty of the country, freedom of speech, free movement around the world, etc.) with the militarist and neoconservative authoritarianism of tsarist roots.

Keywords: Russian Federation invasion of Ukraine in 2022; war crimes; human rights violations; interdisciplinary study of war; war in Ukraine.

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Reflexiones para el estudio interdisciplinario de la invasión de Ucrania por parte de la Federación Rusa en 2022

Resumen

La invasión de Ucrania por parte de Rusia en febrero de 2022 es un evento geopolítico que pone en riesgo la seguridad de Europa Occidental y, al mismo tiempo, erosiona las normas del derecho internacional que regulan las relaciones entre países civilizados. De hecho, se trata de un acontecimiento trágico que ha costado la vida a miles de civiles que han sido víctimas de crímenes de guerra y de graves violaciones de sus derechos fundamentales. En este sentido, el objetivo de este editorial es doble, por un lado, presentar el volumen 40, número 73 de Cuestiones políticas y, por otro, explicar brevemente las causas y consecuencias geopolíticas de la invasión rusa de Ucrania. Se concluye que la invasión de la Rusia de Putin en Ucrania puede desencadenar un conflicto prolongado y extenso que incluso puede enfrentar a la OTAN directamente con Rusia. Ideológicamente, es un conflicto que significa un choque entre diferentes modelos políticos como las democracias liberales de Occidente (garantizar los derechos humanos, la adhesión a los principios del derecho internacional - la soberanía del país, la libertad de expresión, la libre circulación en todo el mundo, etc.) con el autoritarismo militarista y neoconservador de raíces zaristas.

Palabras clave: Invasión de Ucrania por parte de la Federación Rusa en 2022; crímenes de guerra; violaciones de los derechos humanos; estudio interdisciplinario de la guerra; guerra en Ucrania.

Exordium

An adequate understanding of the invasion of the Russian Federation to Ukraine that occurred on February 24, 2022, demands the identification of the main actors and factors, texts, and contexts that have converged dialectically in the realization of the dramatic events that represent a war of defense with characteristics of hybrid war on the part of Russia, for the Ukrainian society as a whole in the general framework of the commission of war crimes and crimes against humanity by the invading troops, as evidenced by the ruthless killings (massacres) of thousands of civilians in the cities of Bucha, Borodyanka, Gostomel, Irpin, Buzova, and others.

The analysis presented below is based on the consideration of 7 important factors to take into account in political and legal analysis as a necessary condition to understand, without bias or partial vision, the main

events that determine the dynamics of political conflict in its course and war between Russia and Ukraine, the latter, a sovereign and independent country that has the irrefutable right to self-determine its national destiny, without the interference of Russia, beyond its historical and cultural ties.

The reasons and factors for the beginning of the war between the Russian Federation and Ukraine are:

1. Signing without guarantees of compliance of the Budapest Memorandum on December 5, 1994. Denial of nuclear weapons. (Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons. 1994)
2. The arrival of the pro-Russian president of Ukraine Viktor Fyodorovich Yanukovych who governed between 2010-2014, ruining the national economy and the military establishment.
3. Annexation of the Crimean Peninsula in 2014 by the Russian Federation and the weak position of Europe in the form of sanctions.
4. Uncontrolled dynamics of Corruption in Ukraine for 30 years (from 1990-2021). In fact, there were no arms purchases, especially military plans.
5. The impunity of President of the Russian Federation Vladimir Putin in the military conflicts in Chechnya 1999-2009, Syria, and Ukraine. A situation that has underpinned Putin's "reign" from 1999 to the present.
6. Russian information war in the media inciting the Russians against the Ukrainians. Systematic lies about Nazis and fascists, NATO bases locations, etc., live on the territory of Ukraine.
7. Ukraine's withdrawal from Russian oil and gas, reduction in commercial turnover, i.e., a decrease in Russia's profits. It is profitable for Ukraine to sell products to Europe, and Asian countries. Russia is not happy about this.

The purpose of this editorial is to briefly explain the causes and geopolitical consequences of the Russian invasion of Ukraine. On the ideological level, the authors of the text openly and unambiguously support unrestricted respect for international humanitarian law and public international law as a guarantee of the order in international relations!

At the same time, people in Ukraine are suffering every day as a result of the war, which is manifested in the killing of civilians, constant air alarms, and the senseless destruction of civilian infrastructure, which is projected to reach about 600 billion US dollars.

In fact, it should be noted that one of the authors of this editorial, Professor Yevhen Leheza of the University of Customs and Finance in Dnipro, Ukraine, has witnessed the ravages of war with his family, so his testimony should be valued for its eyewitness status of the events.

This work is presented simultaneously in three languages: English, Spanish, and Ukrainian, with the humble intention of shedding light on the international debate on the scope and meaning of the war in Ukraine.

1. Texts and contexts that reveal the war in Ukraine

As in all social and political phenomena, the Russian invasion of Ukraine unfolded not only on the battlefields, but also in the collective imaginary of international politics through the staging of two completely exclusive narratives, each one of which responds to particular hegemonic interests in the case of Russia or, contract hegemonic, in the case of Ukraine.

For Putin's Russia, as absurd as it may seem, Ukraine is a "tool" of NATO and the US, which is used as a spearhead to erode its national security. In addition to the fact that the country is being controlled by NAZI forces that have systematically committed a kind of genocide against the Russians who live in Crimea and in the Donbas region. So, the "special operation" of the Russian military forces in Ukraine aims to liberate this country from the Nazis and genocides who are in power protected by President of Ukraine Volodymyr Zelensky, who otherwise contradictorily is from Jewish origin.

As is customary in propaganda stories, the Putin administration does not present concrete evidence to support or at least justify these controversial claims, much less plural and independent flow of information is allowed in Russia to question the official narrative of the war in Russia. public opinion or, at least, generate a serious debate about it. For its part, the Ukrainian narrative of the conflict argues that the country has been the victim of an unprecedented invasion that has meant the destruction of entire regions with a difficult to quantify balance of loss of human life, displaced persons, and refugees.

In this sense, the organized civil society and the armed forces of Ukraine thus have the historical responsibility to resist the Russian invasion as an indispensable condition to protect their lives, families, and national sovereignty against the onslaught of war from a power, which also threatens to unleash a nuclear war that would put the survival of Euro-Western civilization as a whole at imminent risk.

According to the Wilson Center's Nuclear Proliferation International History Project, a global network of researchers and institutions studying international nuclear history, the Budapest Memorandum was struck

in 1994 and was a key agreement in assuring Ukraine's sovereignty and territorial integrity from Russia (What is the Budapest memorandum and how does it impact the current crisis in Ukraine?, 2022).

With the memorandum, the United States, the United Kingdom and Russia committed "to respect the independence and sovereignty and the existing borders of Ukraine" and "to refrain from the threat or use of force" against the country (Budapest memorandum on security assurances, 1994).

Ukrainian President Volodymyr Zelenskyy has publicly commented on the Budapest Memorandum by arguing that it provides no true guarantee of safety due to Russia's coercive power (Zelensky's full speech at Munich Security Conference, 2022).

On 19 February 2022, Zelenskyy made a speech at the Munich Security Conference (Zelensky's full speech at Munich Security Conference, 2022) in which he said "Since 2014, Ukraine has tried three times to convene consultations with the guarantor states of the Budapest Memorandum [i.e., United States and the United Kingdom]. Three times without success. Today Ukraine will do it for the fourth time. ... If they do not happen again or their results do not guarantee security for our country, Ukraine will have every right to believe that the Budapest Memorandum is not working and all the package decisions of 1994 are in doubt."(Zelensky's full speech at Munich Security Conference, 2022).

This treaty has since been violated by Russia at the outbreak of the 2022 Russian invasion of Ukraine.

During the reign of pro-Russian President Viktor Yanukovych (2010-2014), Ukraine's gold and foreign exchange reserves fell from $ 34 billion to $ 7 billion, the population became poorer, unemployment increased, and the formal attitude to defending the country's sovereignty and national security led to the annexation of Crimea. February 2014.

In February and March 2014, Russia invaded and subsequently annexed the Crimean Peninsula from Ukraine (Annexation of Crimea by the Russian Federation, 2014).

This event took place in the aftermath of the Revolution of Dignity and is part of the wider Russo-Ukrainian War (Annexation of Crimea by the Russian Federation, 2014).

On 22–23 February 2014, Russian President Vladimir Putin convened an all-night meeting with security service chiefs to discuss assisting the deposed Ukrainian president Viktor Yanukovych with leaving the country (Annexation of Crimea by the Russian Federation, 2014). At the end of the meeting, Putin remarked that "we must start working on returning Crimea to Russia"(Annexation of Crimea by the Russian Federation, 2014). On 23 February 2014, pro-Russian demonstrations were held in the Crimean city

of Sevastopol (Annexation of Crimea by the Russian Federation, 2014). On 27 February 2014, masked Russian troops without insignia took over the Supreme Council (parliament) of Crimea and captured strategic sites across Crimea.

This led to the installation of the pro-Russian Sergey Aksyonov government in Crimea, the Crimean status referendum, and the declaration of Crimea's independence on 16 March 2014(Annexation of Crimea by the Russian Federation, 2014). Russia formally incorporated Crimea as two Russian federal subjects—the Republic of Crimea and the federal city of Sevastopol on 18 March 2014 (Annexation of Crimea by the Russian Federation, 2014). Following the annexation, Russia escalated its military presence on the peninsula and made nuclear threats to solidify the new status quo on the ground (Annexation of Crimea by the Russian Federation, 2014).

The Minsk agreements were a series of international agreements which sought to end the war in the Donbas region of Ukraine (Minsk agreements, 2015). The first, known as the Minsk Protocol, was drafted in 2014 by the Trilateral Contact Group on Ukraine, consisting of Ukraine, Russia, and the Organization for Security and Co-operation in Europe (OSCE), with mediation by the leaders of France and Germany in the so-called Normandy Format (Minsk agreements, 2015). After extensive talks in Minsk, Belarus, the agreement was signed on 5 September 2014 by representatives of the Trilateral Contact Group and, without recognition of their status, by the then-leaders of the self-proclaimed Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR) (Minsk agreements, 2015). This agreement followed multiple previous attempts to stop the fighting in the region and aimed to implement an immediate ceasefire (Minsk agreements, 2015).

The agreement failed to stop fighting and was thus followed with a revised and updated agreement, Minsk II, which was signed on 12 February 2015 (Minsk agreements, 2015). This agreement consisted of a package of measures, including a ceasefire, withdrawal of heavy weapons from the front line, release of prisoners of war, constitutional reform in Ukraine granting self-government to certain areas of Donbas and restoring control of the state border to the Ukrainian government (Minsk agreements, 2015). While fighting subsided following the agreement's signing, it never ended completely, and the agreement's provisions were never fully implemented (Minsk agreements, 2015). The Normandy Format parties agreed that the Minsk II remains the basis for any future resolution to the conflict (Minsk agreements, 2015).

Amid rising tensions between Russia and Ukraine in early 2022, Russia officially recognised the Luhansk and Donetsk people's republics on 21 February 2022 (Minsk agreements, 2015). Following that decision, on 22

February 2022, Russian President Vladimir Putin declared that the Minsk agreements «no longer existed», and that Ukraine, not Russia, was to blame for their collapse (Minsk agreements, 2015). Russia then invaded Ukraine on 24 February 2022.

So, by launching a full-scale war, the Russian Federation unilaterally violated the Minsk agreements of 2014 and 2015, Budapest Memorandum of 1994.

Conclusions

From no point of view is Russia's military invasion of Ukraine acceptable, since it is a military onslaught to affect the sovereignty and territorial integrity of a free and independent country such as Ukraine. Consequently, Ukraine has every right to build an autonomous national project based on its interests, aspirations, and needs and everything indicates that this project will be developed within the framework of the European Union, liberal democracy, and free trade, tools that characterize the development strategies of the free world.

Russia's military invasion of Ukraine, which began gradually in 2014 with the de facto annexation of the Crimean peninsula, admits different geopolitical and geostrategic readings. In the first scenario, it is an attempt by Moscow to regain the territorial hegemony of the USSR or even of the Tsarist empire which also implies the political and economic control of neighboring countries such as Latvia, Lithuania, and Estonia. This seems to be the reality of their intentions since the invasion of Georgia and the latent threat to invade now Moldova. It is a plan of territorial division and the creation of artificial republics in the occupied territories subordinated to the authoritarian power of the Kremlin, regardless of the parameters of international law.

However, since the disintegration of the USSR and after having lived through the experience of real socialism, it is clear that the societies of the aforementioned countries want to be integrated into the political expectations of the West, as a condition of possibly increasing their economic potential and productive capacities in a climate of respect for individual liberties and the rule of law that identifies democracy, since it is understood in the social representations of the younger generations that democracy, without denying its contractions, is the best form of government when seeking the general enjoyment of human rights.

In conclusion, the invasion of Putin's Russia in Ukraine may trigger a prolonged and extensive conflict where a direct confrontation between NATO and Russia is not ruled out. Ideologically, it is a conflict that

means a clash between different political models, such as Western liberal democracies (guaranteeing human rights, adherence to the principles of international law - the sovereignty of the country, freedom of speech, free movement around the world, etc.) with militaristic and neoconservative authoritarianism with tsarist roots. Recall that in the absence of the Marxist-Leninist ideology of yesteryear, Russia has sought to recall its Tsarist past and its Orthodox religious tradition as a new source of national unity and historical consciousness.

Thus, the Russian Federation, violating the norms of international law, bears full legal and political responsibility for thousands of civilians in Ukraine, destroyed infrastructure (houses, bridges, airports, factories, hospitals, schools, etc.), world hunger due to blocking the ports of Ukraine and the exit of civilian ships to the Black Sea to export more than 20 million tons of wheat.

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Derecho Público

Cuestiones Políticas Vol. 40, Nº 73 (2022), 27-51
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Regional leadership as an element of Ukraine's geopolitical strategy

DOI: https://doi.org/10.46398/cuestpol.4073.01

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Abstract

The aim of the article was to identify the current status and problems of Ukraine's regional associations, and discuss them in the context of supranational challenges and the COVID-19 pandemic. Observation, the comparative method and the neo-institutional approach were the main methodological tools involved. The investigation found that Ukraine intends to establish various coalitions, blocs and alliances to develop the foreign policy vector. Countries that thrive to be regional actors, as well as NATO and EU Member States, engage in this type of cooperation. A gradual intensification of the growth of the country's regional leadership was revealed through a comparative study of Ukraine's cooperation with different countries and their partnerships. The authors of the research supported the point of view of adherents to the concept that Ukraine is interested in the political discourse of regional leadership. It is concluded that expanding the country's political and economic opportunities is an appropriate context for

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Recibido el 04/03/22 Aceptado el 10/06/2022

reforming the Western vectors of Ukraine's foreign policy. It demonstrated the great potential of regional partnerships, of which Ukraine is a member, to improve democracy.

Keywords: political risks; geopolitical transformations; regional leadership; consolidation of states; political platforms.

El liderazgo regional como elemento de la estrategia geopolítica de Ucrania

Resumen

El objetivo del artículo fue identificar el estado actual y los problemas de las asociaciones regionales de Ucrania, y discutirlos en el contexto de los desafíos supranacionales y la pandemia de COVID-19. La observación, el método comparativo y el enfoque neoinstitucional fueron las principales herramientas metodológicas involucradas. La investigación encontró que Ucrania tiene la intención de establecer varias coaliciones, bloques y alianzas para desarrollar el vector de política exterior. Los países que prosperan para ser actores regionales, así como la OTAN y los Estados miembros de la UE, participan en este tipo de cooperación. Se reveló una intensificación gradual del crecimiento del liderazgo regional del país a través de un estudio comparativo de la cooperación de Ucrania con diferentes países y sus asociaciones. Los autores de la investigación apoyaron el punto de vista de los adherentes al concepto de que Ucrania está interesada en el discurso político del liderazgo regional. Se concluye que expandir las oportunidades políticas y económicas del país es un contexto apropiado para reformar los vectores occidentales de la política exterior de Ucrania. Se demostró un gran potencial de las asociaciones regionales, de las que Ucrania es miembro, para mejorar la democracia.

Palabras clave: riesgos políticos; transformaciones geopolíticas; liderazgo regional; consolidación de los estados; plataformas políticas.

Introduction

In the current context, any event that is related to international relations and the interaction of political power between different states and territories is referred to as geopolitics. The evolving scope of geopolitics is undergoing major changes in the new environment. The world has also faced the most

difficult recent challenge of offering a consistent, collective and adequate response to the COVID-19 pandemic. Among other things, this also entailed profound changes in the global order, and countries began to struggle with the influence of new regional and global players. All regional and global states are counting on the emerging geographical regions, such as the Indo-Pacific, Eurasia and the Arctic, which requires new norms, institutions and partnerships.

The political, economic, technological and regulatory multipolarity is the world's target, where each "pole" implements the necessary policies by involving the traditional tools of power in different ways (Cont, 2020). A new era requires countries which have different conflicts on their territories to succeed in resolving them in the short term, while states that invest in stability may well determine the future of globalization and the new world order (Saran and Tirkey, 2021).

The regions of the world play a crucial role in the context of global policy trends. The regions that have multiple conflicts, which are mainly overlapped between regional competitors capable of influencing the global security architecture, undergo particularly noticeable transformations (Heibach, 2021). Not only by the membership in the integrational institutional association, but also its commitment to the transformational path play an important role in modern international relations (Dnistryansky, 2021). In fact, a legal regime emerges between the member countries of the association, and between the latter and third countries.

The global struggle between liberal democracy and authoritarianism set in at the beginning of the third decade of the 21st century is very likely to be one of the decisive conflicts in the short and medium run (Freudenstein, 2021). The global geopolitical discourse suggests that the Euro-Atlantic space covered by NATO and the Eurasian space covered by the SCO are the two main areas of stability in the world which move towards conflicts and growing uncertainty. These "sustainability islands" can be threatened by unstable political relations between these two groups, fragmented conflicts and threats to security ((Kukartseva) and Thomann, 2021). It is extremely important to contain geopolitical threats that come from crisis zones with due regard to political processes and phenomena of the past.

The geopolitical picture of the world has been significantly changed by the collapse of the USSR and the communist system. The states with a similar political and legal system, which was inherited from the previous government, emerged in the post-Soviet space. The newly established countries attempted to promote public solidarity, while opposing Moscow's rule and seeking support from Europe and Asia. But Russia, which has still been a huge nation and tried to remain the strongest player in the post-Soviet space, had none of these options available (Weir, 2021). Nevertheless, Russia's influence on the former Soviet republics has steadily

been declining at different speed in different subregions and sectors. This process became part of the multidimensional disintegration of the post-Soviet space (Moshes and Racz, 2019). The newly established states did not have a wide range of government institutions and inherited a distorted command economy system. In addition to numerous unresolved internal challenges, those countries also faced challenges posed by the globalization, because of their lack of independence experience.

They established regional associations of states with similar interests to achieve common goals through collective efforts. Numerous unsuccessful attempts were made in the post-Soviet period to arrange the space around Russia through regional integration projects. Russia initiated many regional organizations having one distinctive feature: they provided a very limited delegation of powers to intergovernmental agencies (Libman, 2020). The geographical location of post-Soviet countries, such as Ukraine, Georgia, Azerbaijan and Moldova, where Ukraine was a fundamentally important geopolitical centre, contributed to strengthening of the associations. Associations also served the purposes of improving economic and political relations, special partnerships and broad cooperation at the regional level in solving international problems. Those countries could be a kind of bridge between Europe and Asia, the foundation for external opportunities to improve transport and communication ties (Rud, 2018).

Ukraine has played a significant but often ignored role in the global security system for a long time. This region is currently involved in the rivalry between major powers. According to many analysts, the rivalry trend will dominate international relations in the decades to come (Masters, 2021). Ukrainians have clearly determined their position about their future in Europe, but serious corruption and deep regional splits could impede them from following this way (Feore, 2021). The 2021 European Court of Auditors Report stated that the EU is ineffective in the fight against corruption among the high-ranking government officials in Ukraine (Deutsche Welle, 2021). Besides, Russia's policy line in relation to Ukraine has caused the biggest security crisis in Europe since the Cold War. Ukraine's European path and the support of the majority of Ukraine's population for NATO membership was reaffirmed by Russia's military aggression in Crimea and eastern Ukraine of the early 2014, which followed the Euromaidan revolution.

The strategies that state use to gain regional leadership entail serious real consequences both in the respective regions and beyond. So, the case of Ukraine testifies to the need for in-depth research on the state of regional leadership as an element of the country's geopolitical strategy.

In view of the foregoing, the aim of the article was to identify the current state and current issues of regional formats and alliances of Ukraine and elaborate them in greater detail. The aim involved the following objectives:

1) identify current trends in Ukraine's geopolitical strategy that affect the establishment of formats and alliances intended to promote Ukraine's regional leadership;
2) reveal the current state of Ukraine's advances in relation to the state's aspirations on its path to regional leadership, the main problems peculiar to the relevant regional interstate cooperation, and possible ways to solve them.

1. Literature Review

Globalization and qualitative systemic transformations of the recent decades have prompted scholars to search for more reasoned arguments for intensifying the process of internationalization and convergence of political and economic interests of most countries. Some of their studies provided the definitions of "political risks", "regional partnership" and "economic security", while leaving aside the prospects of the post-Soviet states for regional leadership. Scientific schools of political science, economics, sociology, philosophy, international law and others partially studied the above issues. The study found a lack of fundamental research in the field of regional leadership in Ukraine. Dnistryansky (2021) made one of the newest attempts to study this problem in his work entitled Exacerbation of Geopolitical Relations in the Postmodern Period and the Situation in Ukraine, which was taken into account in shaping the author's position based on the results of the study of the selected subject matter.

Cont (2020) reveals the relationship between political risks in international relations and political and strategic transformations in the EU. The author focused on modern geopolitical relations in the pandemic context.

The findings of Feore (2021) on forecasting the political risks of strategic planning of public policy in Ukraine in the context of globalization were taken into account in this article. Cadier (2019) made a special contribution to the study of this issue by detailing the prospects of Ukraine in the field of cooperation with the European Union. The works on the realities of Ukraine's participation in various associations were of particular importance for the results obtained in this study. Kapoor (2020) accurately revealed the prospects of Ukraine in the Lublin Triangle.

In turn, Kovalchuk (2021) in his article GUAM: Promising or Insolvent? criticized the realities of cooperation of GUAM member states providing appropriate grounds, and emphasized the reasonability of reforming the union. The scholar's position was also reflected in this work. The Master's (2021) position on the atypical geopolitical situation of Ukraine in the

context of the aggression of the Russian Federation and the prospects of this negative impact on the status of Ukraine as the regional leader were also taken into account.

The review of the scientific literature, which fully or partially covers the subject matter under research, gives grounds to state that the political science has not comprehensively studied the phenomenon of regional leadership of Ukraine, thus madding to the topicality of this research. Moreover, the historiographical analysis of Ukraine's political leadership also demonstrates that its regional aspect is inadequately studied.

2. Methods

The author has previously made a qualitative selection of the original units for observation, study and analysis. The empirical background of the study consists of official documents, including reports of national information agencies, articles in print and electronic media, analytical articles on selected topics, collections of scientific papers. A total of 48 sources were studied. The latest studies on political science conducted by researchers and practitioners, as well as the latest trends in regional international transformations in the context of globalization challenges were the core of the research. Figure 1 shows the structure and stages of the author's scientific research on the selected topic.

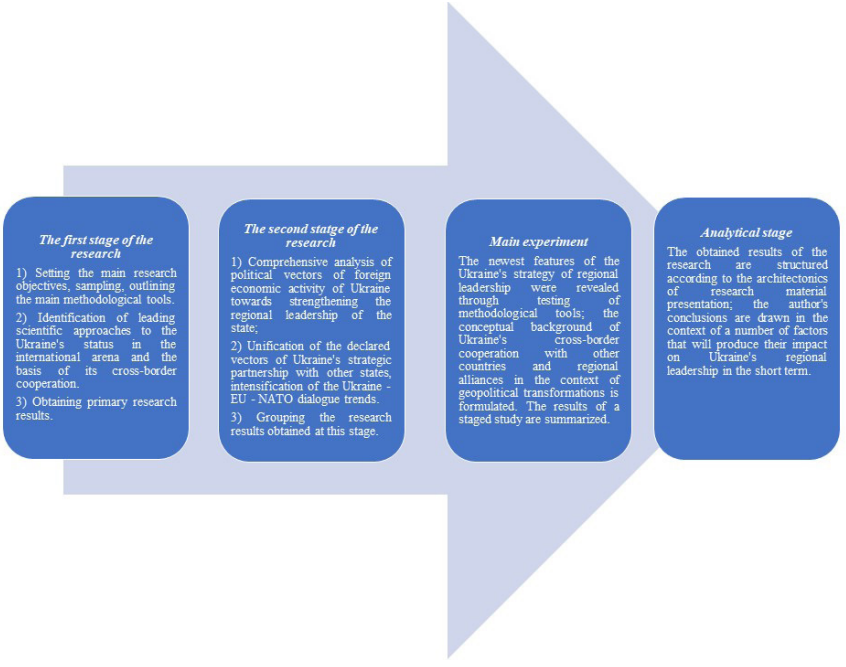

Figure 1. Staged research design (Own creation).

The main methodological tools were selected in view of the need to consider the problem through the prism of basic research approaches, concepts of political leadership and political processes in Ukraine and on the world stage.

The method of observation in combination with the comparative method constituted the methodological background of the article. They were used to reveal the general features of Ukraine's political strategy and the specifics of its transformation in connection with geopolitical changes and the state's aspirations to become a regional leader. The study of Ukraine's regional political leadership is based on the principles of universals and particulars in the Ukraine's political process. The general tendencies of Ukraine's regional leadership were identified through the comparative method. The said methods allowed combining macro and micro analysis, showing the multidimensionality of this phenomenon.

The research also involved a neo-institutional approach to the problem of political regional leadership. The neo-institutional analysis was conducted at the organizational and individual levels in order to answer

the following interrelated questions: on the patterns of development, selection and change of different strategies of Ukraine in the context of political discourse; on the choice of certain organizational measures and mechanisms for implementing strategies depending on the existing geopolitical environment; on the peculiarities of the practices of states in different regional associations.

The historical method was another method applied for drawing prognostic conclusions about the prospects for further implementation of the declared strategies of Ukraine. This method was used to consider the genesis of Ukraine after the collapse of the Soviet Union and entry into the international political space. The gradual entry of Ukraine into regional formats and alliances was considered, as well as an idea of the transformation of state policy in view of these processes was formulated through this method.

The principles of dialectics, empirical and comparative political science, ethnopolitics, sociology of politics, theory and sociology of management also underlie the research methodology of the article. In general, the research objectives were fulfilled in full due to the methods, techniques and approaches used.

3. Results

Ukraine has been doing its best to follow its own path as a sovereign state for almost three decades of independence. The country is focusing its efforts on closer cooperation with Western institutions, including the European Union and the North Atlantic Treaty Organization (NATO). The collapse of the USSR entailed an urgent need for Ukraine to achieve a high level of regional leadership. As the rest of the post-Soviet states, it needed the tools to counter Russia's efforts to concentrate the countries of the former Soviet Union around Moscow.

Besides, Ukraine needed alternative ways of energy supply, the establishment of the state as a territory that has influence not only in the geographical, but also in the geopolitical context. Ukraine placed a strong emphasis on strengthening international cooperation, as it had its own areas of interest related to energy transportation and the transport corridor development. It had to maintain security, expand markets for its products and diversify the ways to deliver critical imports. So, Ukraine gradually aspired to the regional leader's position.

At the same time, the United States has never hidden its interest in uniting post-Soviet states in order to make them come out of Russia's influence. The interests of this state ranged from strengthening its own influence

in the post-Soviet space, implementing energy and transport projects, to promoting democracy and human rights as the officially proclaimed goals of US foreign policy.

Russia has developed several effective tools for its strategy of soft domination in the post-Soviet space. First and foremost, Russia has used a combination of economic concessions and sanctions to limit Western influence in post-Soviet countries. The second tool that Russia used was the so-called "frozen conflicts" — internal territorial conflicts between sovereign states and unrecognized separatist regions (for example, in Moldova, Georgia, Armenia, Azerbaijan and Ukraine). Third, Russia tried to launch several integration projects with fewer participants (for example, the Eurasian Economic Community and the Customs Union) when they understood that the CIS as an integration platform was too weak. For example, Azerbaijan was searching for allies in its confrontation with Armenia supported by Russia; Uzbekistan has fought against an extremist movement attempting to overthrow the government. Georgia and Moldova have requested international support to restore their own territorial integrity as the countries that were dramatically affected by pro-Russian separatist groups.

These states also tried to find allies to defend their positions on resolving internal controversies. Those problems went beyond national borders. With the exception of Azerbaijan, Georgia, Moldova and Ukraine remained dependent on oil and gas supplied from or through Russia. Azerbaijan had significant oil and gas reserves, having all its exports going either through the Russian territory or through countries that Russia could destabilize. A strategic and an economic issue was Moscow's key role in meeting the region's energy needs. Russia successfully manipulated the foreign and domestic policies of the former Soviet republics through threats to cut off supplies or redirect export routes.

The geopolitical location of Ukraine is an integral part of the European and Euro-Atlantic security frameworks, being an important energy and logistics hub in this area (Decree of the President of Ukraine No. 448/2021, 2021). Russia — Black Sea — Turkey is the main geopolitical division line of Eurasia. A border between Europe and Asia is considered to pass through these territories. For Ukraine, the border is in the Azov and Black Sea, as well as the Kerch Strait. Poland — Ukraine — Turkey is the next substantial geopolitical consolidation, which crosses the majority of transport corridors connecting North and Central Asia, Western Europe. Figure 2 presents the main directions of geospatial and transboundary ties of Ukraine summarized through the analysis of modern trends.

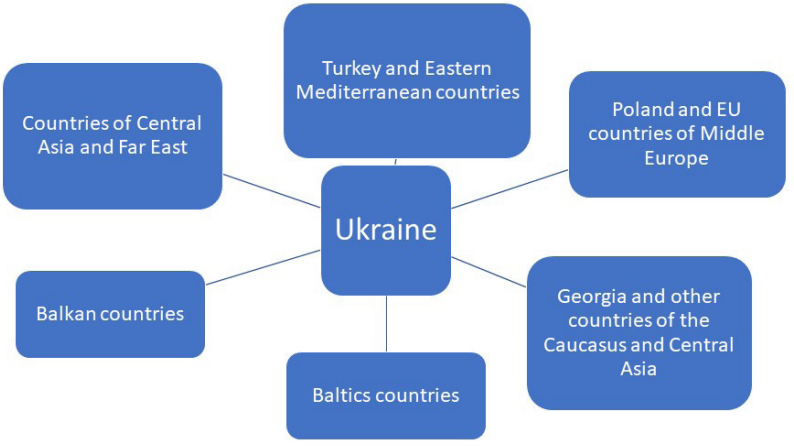

Figure 2. Ukraine's modern geospatial and cross-border ties (generalized by the author based on the observation testing results).

Ukraine is actively creating regional formats and join alliances in the current realities. On October 10, 1997, at the Summit in Strasbourg (France) Presidents of Ukraine, Georgia, Azerbaijan and Moldova signed an agreement on the establishment of the Organization for Democracy and Economic Development — GUAM, which was based on the idea of cooperation in the political, military and economic spheres. The need for the development of four-sided cooperation was emphasized in joint communiqué in order to improve stability and safety in Europe based on the principles of respect for sovereignty, territorial integrity, inviolability of borders, democracy, supremacy of law and respect for human rights (GUAM, 1997).

The interests of the members did not always coincide in full. At the onset of Organization, its members simply wanted to use each other and the Organization to protect their national interests. The key to explaining many GUAM problems, including political ones, is unresolved economic problems of the poorest countries in Europe multiplied by the global financial crisis. For example, limited resources of Georgia hampered its economic growth. Ukraine's economy was more developed compared to Georgian one, but this situation also resulted in increasing uncontrolled "oligarchizing" of the state's economic and political system.

The organization was recreated in May 2006 at the GUAM Kyiv Summit (GUAM, 2006). In 2010, when V. Yanukovych came to power, Ukraine

intensified its cooperation with the Russian Federation significantly, thus reducing Ukraine's interest in GUAM. The association experienced a surge of its activity after the Revolution of Dignity, the annexation of the Crimea and the Donbas conflict, because Ukraine decided to depart from the Russian Federation policy and restore the GUAM platform.

The problem was lack of coordination of actions between members of the organization. One priorities of cooperation were often changed by others, and regrouping of forces and vectors caused serious contradictions, thus hindering the implementation of very profitable programmes. It is also necessary to take into account mostly declarative assistance of the countries that were not members of this organization, and their material support was insufficient. GUAM developed several programmes during this period, that could be implemented in a particular situation provided the interest of the EU Member States. As a consequence, external partners didn't support those energy transit programmes, or they proved to be uncompetitive.

The adoption of the Development Concept for the GUAM Transport Corridor in 2013 at the 8th GUAM Working Group on Transport meeting attended by GUAM member states in Tbilisi was a major result of the joint work (Liga Law, 2013). The development of partnerships with other countries, including the United States, Japan, but more importantly — with neighbouring European countries — members of the Visegrad Group (Poland and the Czech Republic) was also of great importance in the organization's activities. The GUAM Organization for Democracy and Economic Development still depends heavily on the support of non-regional players and the domestic political situation in the member states.

In 2017, Prime Minister V. Hroisman promised to reanimate the GUAM (Government Portal of Ukraine, 2017a). The first GUAM Summit in nine years was held at the Ukraine's initiative, where goals for a free trade zone were set and the solution of transport corridor issues were suggested (Government Portal of Ukraine, 2017b). The issues of cooperation between GUAM member states in the context of new issues — counteraction to the COVID-19 pandemic; conflicts in the GUAM region — were raised at the 13th session of the GUAM Parliamentary Assembly in February 2021 (Milli Majlis of the Republic of Azerbaijan, 2021).

The current areas of partnership, including the growth of inter-parliamentary cooperation, the partnership of the GUAM Parliamentary Assembly with the Baltic Assembly were given special consideration. The member states consider the prospects of GUAM in the context of the platform for the fulfilment of trade goals and its transit potential. The establishment of the GUAM International Center for Innovation and Technology Transfer can be noted as a very positive step in this regard (Ministry for Strategic Industries of Ukraine, 2021). The Center will be part of the future GUAM and Partners International Innovation Development Corporation.

This context determines the main direction of the Foreign Policy Strategy of Ukraine (Decree of the President of Ukraine No. 448/2021, 2021), including the creation of regional alliances in Ukraine to improve security and gain a foothold as a strong and influential state of the Central Europe (Figure 3).

Figure 3. Reformation vectors of achieving regional leadership by Ukraine (based on the results of document analysis and observation).

Ukraine has made steady progress in the European Neighborhood Policy and the Eastern Partnership within the framework of its stable European course. Traditionally, European integration has been one of the most intensive segments of Ukraine's foreign policy. The Ukrainian government, as other Eastern Partnership countries, is focused on the implementation of the Association Agreement and on the fulfilment of other commitments.

In May 2021, Moldova, Ukraine and Georgia signed a memorandum that formalizes their cooperation on a joint path towards EU membership, which documented a number of goals, including joint diplomatic activities and trilateral consultations (Association Trio, 2021). The Foreign Ministers of Georgia, Moldova and Ukraine met for the first time as the Association Trio in Brussels on June 24, 2021. They identified the priorities under the Eastern Partnership, including integration into the EU internal market, closer cooperation with the EU in the transport, energy sectors, digital market, green economy, healthcare, and improving security cooperation.

In July 2021, the Heads of Georgia, the Republic of Moldova and Ukraine, as the Association Trio, took part in the Summit held in Batumi in order to improve trilateral cooperation on European integration between the countries (Batumi Summit Declaration, 2021). On December 15, 2021, the Joint Declaration was adopted at the Eastern Partnership Summit held in Brussels, which documented that the EU recognizes the aspirations

and choice of three associated partners — Georgia, Moldova and Ukraine — to enhance cooperation with the EU adhering to the differentiation and inclusion principles (Agenda.ge, 2021; Crimea Platform, 2020).

The Lublin Triangle consisting of Ukraine, Poland and Lithuania was established on July 28, 2020, which initiated a new format of regional cooperation. The Ministers of Foreign Affairs, heads of national security agencies, and representatives of the high-ranking legislative bodies of Ukraine, Poland, and Lithuania held a number of meetings within a relatively short period of time. The initiated Youth Lublin Triangle Forum also showed to good advantage. The Declaration on Joint European Heritage, the Lublin Triangle Roadmap for Cooperation and the Action Plan against Disinformation were signed in Vilnius on July 6, 2021 (Ministry of Foreign Affairs of Ukraine, 2021a).

The Lublin Triangle was primarily aimed at countering Russia's aggressive policy in the region; military and defence cooperation through the involvement of NATO and EU; cybersecurity and tackling disinformation. Eliminating the consequences of the COVID-19 pandemic is a very serious objective for this organization. Another focus is economic and energy cooperation, including halting the Nord Stream-2 project. The Lublin Triangle is also intended to expand the scope of cooperation in the field of culture, science and education, cooperation between security agencies, etc.

The EU- and US-led Three Seas Initiative is directly mentioned in the joint declaration. It covers 12 EU Member States between the Adriatic Sea, the Baltic Sea and the Black Sea intending to develop the cooperation in the energy, transport and digital sectors. The Initiative focuses on creating the North-South Corridor in order to reduce the dependence of post-Soviet states in the region on Russian energy pipelines.

Another initiative, which will also help strengthen Ukraine's regional leadership, is also worth mentioning. The working visit of the President of Ukraine V. Zelenskyi to the Republic of Turkey on October 16, 2020 resulted in an agreement establishing a new — Quadriga (2 + 2) — format of political and security consultations with the involvement of Foreign Affairs and Defence Ministers of Ukraine and Turkey. Kyiv hosted the inaugural meeting in a new format on December 18, 2020.

The quadriga format to be held annually is intended for the discussion of the most pressing policy and regional security issues, coordinating joint actions, and developing new politics, security, economic and defence projects. It is worth mentioning that Turkey is recognized one of Ukraine's most important trading partners. For 9 months of 2021, the trade volume between Ukraine and Turkey amounted to $5.00 milliard (↑49.9%), exports — $2.75 milliard (↑65.8%), imports — $2.25 milliard (↑34.2%).

The main commodity items distributed as follows: exports — ferrous metals (53.4%), cereals (15.9%), ores, slag and ash (7.1%); imports — nuclear reactors, boilers, machinery (10.4%), mineral fuels; oil and refined products (8.9%), ferrous metals (6.9%). The Ukraine's positive balance for this period amounted to $495.84 million (Embassy of Ukraine in the Republic of Turkey, 2021).

Ukraine's integration into the Black Sea Economic Cooperation (BSEC), which was established in 1992 at the initiative of Russia and Turkey, is a very important indicator of its aspiration for regional leadership. This organization consists of twelve member states: Azerbaijan, Albania, Armenia, Bulgaria, Greece, Georgia, Moldova, Romania, Russia, Serbia, Turkey, Ukraine. The aim of the Parliamentary Assembly of the Black Sea Economic Cooperation (PABSEC) is to provide support for the parliamentary dimension in attaining the goals the BSEC organization, as well as to consolidate the legal framework for multilateral economic, trade, social, cultural and political cooperation in the Black Sea region.

The importance of access to the Black Sea and its resources in order to create an economic and logistical hub between Europe, Asia and Africa determines Ukraine's interest in the BSEC. The Crimean Platform initiated by the President of Ukraine V. Zelenskyi to restore sovereignty over Crimea was officially launched in September 2021 (Crimean Platform, 2021). The Crimean Platform is a consultation format aimed at improving the effectiveness of the international response to the occupation of the peninsula by the Russian Federation, having deoccupation as its ultimate goal. The platform will operate at three main levels: intergovernmental, parliamentary and expert.

In 2020, the election of the Ukrainian Ambassador to Hungary, Lyubov Nepop, as President of the Danube Commission, an international intergovernmental organization established for the development of free navigation on the Danube, strengthened Ukraine's regional leadership. The members of the Danube Commission are Austria, Bulgaria, Hungary, Germany, Moldova, Russia, Romania, Serbia, Slovakia, Ukraine and Croatia. It was the first time in 70 years when the representative of Ukraine was appointed responsible for policy development in this influential Central European organization (Embassy of Ukraine in Hungary, 2021).

Centuries-old foreign relations of Ukraine with Latvia are the example of the development of bilateral relations. In 2019, the volume of bilateral trade amounted to $564 million, trade growth was over 2% with a surplus of $136 million (Government Portal of Ukraine, 2020; The presidential office of Ukraine, 2021). The 2020 pandemic caused a 17.3% decrease in trade in goods and services between Ukraine and Latvia, which amounted to $470.3 (Embassy of Ukraine in the Republic of Latvia, 2021).

The expansion of economic and trade cooperation between the two countries despite the negative impact of the COVID-19 pandemic is especially noteworthy. The development of an interactive electronic platform — Trade House Ukraina — launched in 2020 proves the productive work of the Intergovernmental Ukrainian-Latvian Commission on Economic, Industrial, Scientific and Technical Cooperation. Latvia has consistently supported Ukraine's sovereignty and territorial integrity.

The Presidents of Ukraine and Latvia signed a joint Declaration on the European Perspective of Ukraine in May 2021 (Office of the President of Ukraine, 2021). Latvia also aspires for regional leadership. It has been a member of the Organization for Security and Co-operation in Europe (OSCE) since 1991, the Council of the Baltic Sea States since 1992, the Council of Europe since 1995, NATO and the EU since 2004. It is a member of the Baltic Assembly established in 1991 — an advisory body on cooperation between the parliaments of Estonia, Latvia and Lithuania.

The analysis identified the main regional formats and alliances that promote Ukraine's movement towards regional leadership (Figure 4).

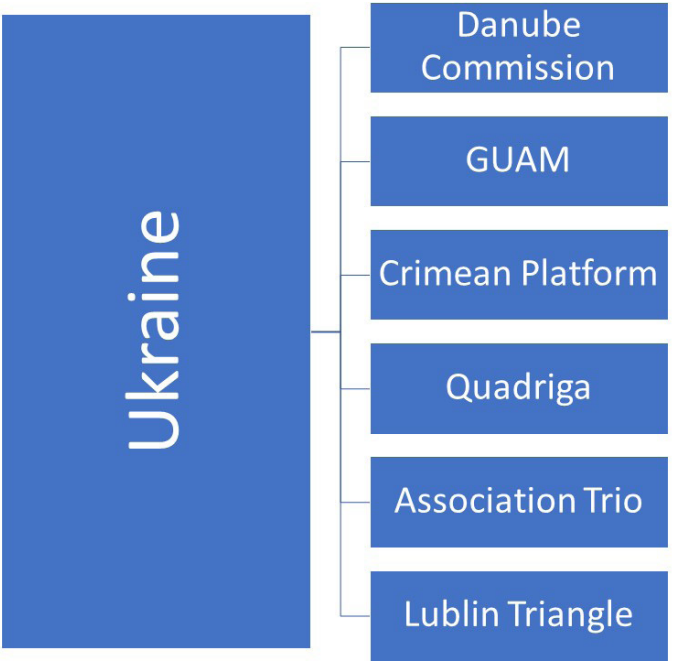

Figure 4. Ukraine's membership in the regional formats and alliances (based on the results of the author's analysis).

It is reasonable to emphasize the results of the outlined cooperation of Ukraine with other states. As regards the Danube Commission, a remarkable point was the election of the Ambassador of Ukraine to Hungary, L. Nepop, as the President of the Danube Commission. The 13th session of the GUAM Parliamentary Assembly decided on cooperation between the states in responding the Covid-19 pandemic and extending the transit capacity. The Crimean Platform is a consultative format initiated to increase thew effectiveness of the international response to Russian occupation of the peninsula.

Quadriga established the foundation for a new format of consultations with the Republic of Turkey on political and security issues. The Association Trio has established a trilateral enhanced cooperation between Ukraine, Georgia and Moldova on European integration. In turn, the Lublin Triangle became an effective format for regional cooperation with Poland and Lithuania. The intensified Ukraine's interstate cooperation shows the positive trend of implementing reformational changes in the country on the its path to a sustainable status as a regional leader.

4. Discussion

The results of the analysis point to the potential for a "cross-border closed globalization" that will be less free and open than before. Strategic considerations, political trust, climate threats, technological threats and health damage justify state political and economic transformations. Saran and Turkey Supported the author's position. The researchers provided that countries tend to create smaller groups in order to establish flexible partnerships on particular issues that promote cooperation between like-minded countries (Saran and Tirkey, 2021; Milli Majlis of the Azerbaijan Republic, 2021).

The inefficient multilateralism and globalization within the ongoing restructuring require new correctional mechanisms which would not compromise the benefits that these processes offer. The intensifying competition between major powers makes medium-sized states more persistent in pursuing their interests (Thompson *et al.*, 2021; Official website of the president of Ukraine, 2021).

It was found that the regional leadership can be an ancillary goal for the regional state within its comprehensive foreign policy strategy. But there may be specific situations where regional leadership will not be perceived as a desirable goal, as Nolte and Schenoni (2021) state. Proper regard shall be paid to the fact that a restrictive international environment can obstruct regional leadership, make larger states apprehend regional states, thus preventing the delegation of functions.

The government's ability to obtain and mobilize resources for regional leadership can be adversely affected by unfavourable domestic events, such as economic crises and corruption scandals (Nolte and Schenoni, 2021). Regions are still important for understanding the complex evolution and the change of the nation-state worldwide system. When territories become "geopolitical units", they mostly belong to the part of economic or political systems. Sometimes they show synergy and integration, and sometimes conflict and fragmentation. States that often belong to economic, political or cultural systems at the global and regional levels are the most advanced "geopolitical units" (Puntigliano, 2021).

The difficult international situation implies synergies between different players with the purpose of achieving geopolitical stability on the Eurasian continent. In the long run, a new Eurasian geopolitical architecture based on the new doctrine of international organizations' overlapping circles would be a significant factor in the development and enhancement of Eurasian security. In a multicentre world, will be difficult to coordinate competing geopolitical projects and stabilizing the friction between the poles of power that oscillate between hidden rivalry and cooperation in the way other than through the balance of power (Thomann, 2020).

In this context, involving the international partnership in solving security problems, eliminating obstacles to Ukraine's path to regional leadership are the most important things for Ukraine's leaders (Trenin, 2021; Ministry of strategic industries of Ukraine, 2021). In particular, concerns about a relationship between the presence of Russian forces and the risk of military escalation were caused by a build-up of Russian troops along the border with Ukraine in late 2021 (Mînzărari, 2021).

In 2021, rapidly changing global challenges have made Ukraine to formulate its geopolitical strategy clearer than ever. The position of the President of Ukraine V. Zelenskyi is a striking example of the above — he considers that Ukrainian diplomacy should fight off the "poor relative complex" and feel like a regional leader (European, 2021). In 2020, the Secretary General of GUAM addressed the participating countries and called on them to focus their efforts on finding serious prospects for cooperation with the OSCE and NATO.

In the same year, the Secretary General of GUAM addressed the member states urging them to focus their efforts on finding serious prospects for cooperation with the OSCE and NATO. Efendiev (2020) emphasized that such cooperation will affect the security process at a later time, and will become an important component of territorial parliamentarism.

We can conclude that Ukraine can have a serious support on its way to regional leadership on the part of such an organization as GUAM. For this purpose, it is necessary to give consideration to the extensive experience

of GUAM, as well as relevant mistakes and ways to solve them. In 2020, V. Zelenskyi stated that GUAM can be made a serious union by breathing new life into it (Office of the President of Ukraine, 2020). At the same time, the evaluation of GUAM's effectiveness gives grounds to state that there have been no significant or even small achievements so far (Kovalchuk, 2021). Despite GUAM's failure to achieve its goal, its member states can easily join other entities and adapt by finding new ways of economic integration and further development (Pincu *et al*., 2020).

In turn, the main goal of the Eastern Partnership as a component of the European Neighbourhood Policy is designed to reinforce political association and expand economic integration between the EU and its eastern neighbours (Cadier, 2019). The Eastern Partnership initiative did not provide for the expected stimulus from the EU — the membership prospect (Mirel, 2021). The imitative focuses on reforming not only the Eastern Partnership but also the EU's policy towards Eastern Europe as a whole (Blewett-Mundy, 2020; European Truth, 2021). So, we can conclude that the Association Trio was the first regional initiative of the Eastern Partnership to clearly set its own priorities. The Association Trio cleared the way for a more active phase of the Eastern Partnership (Sheiko, 2021).

According to N. Kapoor, the success of the ambitions of the Lublin Triangle will depend on several factors, some of which are out of control of its members (Kapoor, 2020). The possible level of cooperation between Ukraine and the EU/NATO will have an impact on the destination of this organization. Ukraine's accession to the Lublin Triangle clearly demonstrated its intention to adhere to the Western direction in its foreign policy with the support of other like-minded states. The strategic importance of partnerships, such as the UAE with Central and Eastern Europe, should also be taken into account in this context. A close alliance with the United Arab Emirates will enhance the influence of the Lublin Triangle member states on transatlantic partners (Krzymowski, 2020).

Therefore, we can argue that the author's position on the prospects of Ukraine's future regional leadership and its impact on the geopolitical situation in the world is properly justified. Moreover, it found support of the representatives of both theory and practice. Further scientific research in this area is also substantiated by the active actions of the Government of Ukraine.

Conclusion

International cooperation will retain its core place in the international system for the next decade. States are currently considering new multilateral cooperation scenarios, although they are arbitrary and variable in nature.

Regional entities which thrive for the solution of common security issues, apart from economic, trade and humanitarian cooperation, are a distinguishing feature of the current international relations.

This situation promotes the development of qualitatively new forms of regional leadership as a component of geopolitical strategy. The establishment of various intergovernmental associations indicates that the countries consider all types of cooperation through the prism of security. The current realities dictate that only a comprehensive view of threats and the ways to eliminate them makes it possible to create a single organization and institutionalize ways to respond to security challenges. This once again testifies to the fact that current geopolitical trends are dominated by increasing regionalism and creation of blocks.

Ukraine's aspirations for regional leadership as part of its geopolitical strategy is expressed through the transformation of formats of interaction with government entities and associations of different levels. In turn, Ukraine-EU-NATO relations are being intensified. The current state of regional formats and alliances indicates Ukraine's adherence to the European vector of reforms and its significant progress in this area. Reformatting and structuring of mutually beneficial cross-border partnerships with other leaders of the global political arena is still the main objective of Ukraine's geopolitical strategy.

The main risk of declarative Ness of gradual implementation of the outlined strategy is Russia's aggression on the territory of Ukraine remains. Ukraine needs regional and global support in this matter. In its turn, the European Union commits to strengthen dialogue and partnership with Ukraine in the context of its possible membership. The author's further research will deal with foregrounding the results of the implementation of Ukraine's declared regional leadership strategy in the short term.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 52-70
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Criminal Law Transformation in the Context of COVID-19: The Experience of the European Union and Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.02

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Abstract

The aim of the study was to identify and analysed the novelties of the criminal law of Ukraine and the EU Member States caused by the COVID-19 pandemic, as regulations and social impact tools. The content analysis, doctrinal approach, comparative method, as well as general methods were applied to analysed research papers, regulations, case law and statistics on COVID-19-related crimes. Criminal law is considered as part of anti-pandemic policy. National governments focus on responding to individual COVID-19-related crimes rather than on crime trends in general. Due to the transient situation, European and Ukrainian practice has shown the priority of adapting existing criminal law to prevent COVID-19. In general, the transformation of criminal law involves establishing rules that can be applied in any pandemic. An important area is the response to long-term criminal challenges (domestic violence, organized crime) through criminal law. The experience of European countries and Ukraine in responding to global threats reveals uncertainty in the criminal law transformation approaches. This determines the reasonability of working out a common European framework of criminal

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Recibido el 15/03/2022 Aceptado el 12/05/2022

law policy and prospects for the development of criminal law, which can be defined in international recommendatory instruments.

Keywords: criminal law policy; criminal legislation; human rights; prevention of COVID-19; political transformation.

Transformación del Derecho Penal en el Contexto del Covid-19: La Experiencia de la Unión Europea y Ucrania

Resumen

El objetivo del estudio fue identificar las novedades del derecho penal de Ucrania y los Estados miembros de la UE provocadas por la pandemia de COVID-19, como normativa y herramientas de impacto social. Se aplicó el análisis de contenido, enfoque doctrinario, método comparativo, así como métodos generales para analizar trabajos de investigación, normativa, jurisprudencia y estadísticas sobre delitos relacionados con el COVID-19. El derecho penal se considera parte de la política anti-pandémica. Los gobiernos nacionales se enfocan en responder a los delitos individuales relacionados con el COVID-19 en lugar de las tendencias delictivas en general. Debido a la situación transitoria, la práctica europea y ucraniana ha mostrado la prioridad de adaptar el derecho penal existente para prevenir el COVID-19. Se concluye que en general, la transformación del derecho penal pasa por establecer reglas que puedan aplicarse en cualquier pandemia. Un área importante es la respuesta a desafíos criminales de largo plazo (violencia doméstica, crimen organizado) a través del derecho penal. La experiencia de los países europeos y Ucrania en la respuesta a las amenazas globales revela incertidumbre en los enfoques de transformación del derecho penal.

Palabras clave: política de derecho penal; legislación penal; derechos humanos; prevención de COVID-19; transformación política.

Introduction

The modern world is facing global crime and other destructive social challenges that threaten the security of all countries. The reasonability of cooperation of criminal law systems of different states and their groups became an agenda item. Such interpenetration and mutual enrichment is a complex process, as the levels of political, economic and legal development

are different (Popko, 2021). However, it contributes to the improvement of criminal law and its practical application for the comprehensive protection of human rights, as well as law and order.

The COVID-19 pandemic has unprecedentedly affected all social processes in the world, making controversies more acute and provoking conflicts. Governments have faced a dynamic criminal situation, created not only by the pandemic itself but also by quarantine restrictions imposed. A significant number of states have reported a reduced crime rate promoted by the isolation, while the level of domestic violence has increased dramatically (Peršak, 2020). Isolation and the active use of the Internet have led to increased sexual violence rates, such as online harassment and digital extortion. Crimes against children became especially frequent (Europol, 2020d).

Public attention was also drawn to crimes in the field of production and distribution of counterfeit COVID-19-related pharmaceuticals, and forgery (European Parliament, 2020, Europol, 2020b). The problem of corruption in the field of public procurement of protective and medical equipment, filling of state funds has become more acute. The number of public fund frauds (Meško, 2021), with the supply of medical items and equipment for their production has increased (Europol, 2020a). In October 2020, it was stated at the meeting of the parties to the Palermo Convention that the most serious criminal threat at this stage is the COVID-19 vaccine falsification and their placement on the market (Csonka and Salazar, 2021)

In this context, a number of changes have been made to criminal law in the EU and Ukraine. But this has raised a number of tactical issues, which in turn have made the systemic problems of the limits of criminal influence in democratic societies more acute. States have faced with the need to choose the scope of restrictions on human rights and freedoms for the public good. Public health is of paramount importance. Most countries have applied securitized measures to protect it, including significant restriction of fundamental democratic freedoms and expansion of police powers (Stott, West and Harrison, 2020). Although this is in line with the public demands set out in the EU Constitution, each measure must be carefully assessed in terms of proportionality. This assessment is carried out in each state (Dorneanu, Malka and Coeckelberghs, 2021)

Although restraints usually have little effect on the behaviour of most people, it is criminal law that legitimizes states' anti-pandemic policies. Therefore, it is believed that excessive or illegal use of criminal law to address healthcare problems can set a threatening case law (Matić Bošković and Nenadić, 2021). Attention is paid mainly to the manifestations of crime as a basis for the transformation of criminal law because of the relatively short time and instable situation associated with the pandemic. The assessment of the dynamics of the criminal situation varies from its uniqueness to

its typicality, because the pandemic can be considered as another crisis. Quarantine restrictions, together with persistent factors, affect crime rate in the short term.

The long-term trend may be mainly the growth of mercenary crime determined by the socio-economic consequences of COVID-19 (United Nations Office on Drugs and Crime, 2020). Organized crime Trends are much worse (Council of the European Union, 2020; Eurojust, 2021; Europol, 2020a). Experts, however, believe that they are not completely unexpected, but only reflect its flexibility and ability to adapt to any conditions. This feature is typical for any period of crisis (Europol, 2020c). At the same time, it is noted that it is difficult to assess the impact of the pandemic on drug markets. Post-crisis dynamics of supply and demand can significantly affect supply channels and lead to increased violence (Europol, 2020a)

Problems of uncertainty regarding criminal law transformation in the context of the pandemic have also entailed difficulties in modernizing criminal justice. The unified judicial procedure for combating COVID-19-related crimes has not been adapted to the change rates of quarantine restrictions (House of Commons Justice Committee, 2021). At the same time, the courts and law enforcement agencies were under extreme public pressure, while judicial independence was perceived as a source of social and political tension (Sarmiento, 2021) The provisions of the European Convention and the case law developed on their basis cannot, however, be levelled by the need to reduce costs and social distance (McCann, 2020).

Therefore, the EU and Ukraine, like other countries, need to determine the importance of the pandemic for transforming criminal law as the basis of criminal justice with regard to the rule of law.

During the pandemic, some new manifestations and certain trends have emerged in the traditional types of crime, the duration of which is not obvious. The issue of the introduction of criminal law responses for non-compliance with quarantine restrictions by the population is criticized in light of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights, 2021a).

Given the above, studying the specifics of the development of criminal law in the European and other countries in the region in the pandemic context is topical and appropriate for further improvement of the legislation and practice.

The foregoing gives grounds to determine the aim of this study as an analysis of European and Ukrainian experience of the criminal law transformation in the context of COVID-19.

This aim provided for the following objectives: determine the novelties introduced in the criminal law of Ukraine and the EU during the pandemic, including their compliance with the legal provisions of the ECHR, and establish the social significance of general trends in criminal law.

1. Literature Review

The review of studies on the prospects for the transformation of criminal law in the context of COVID-19 shows a wide range of diverse problems considered by European and Ukrainian scholars.

Researchers raised the issue of the social significance of criminal law in crisis situations, as quarantine restrictions established in other regulations were the grounds for banning COVID-19-related actions. European and Ukrainian researchers have concluded that governments have applied similar approaches. The dynamic situation and incomplete understanding of the nature and implications of the disease have led to excessive restrictions and their partial regulation (Krajewska, 2021). Guarantees of fundamental human rights established in the course of strict quarantine were mostly rare and patternless (Zhuravel, Hetman and Hylyaka, 2021). This has also affected the controversial understanding of the use of criminal law in a pandemic.

The main tool of criminal law used to regulate the behaviour is the criminalization of acts. The pandemic context poses serious threats to the excess criminalization (there are examples of proposals to criminalize cough in public places (Skolnik, 2020). Many studies emphasize the lack of a clear understanding of the social significance of criminal law in general and its main institutions in particular (Harding and Oberg, 2021), which leads to inconsistent changes in legal regulation (Matić Bošković and Nenadić, 2021), imposing excessive sanctions for violations and ever-changing measures (Peršak, 2020).

The authors note that it is difficult to assess the effectiveness of the transformation of criminal law in an unstable situation with fairly long criminal proceedings (Turanjanin and Radulović, 2020). The negative result is a violation of the fundamental principles enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights, 2021a). According to the experts, the implications of such a policy are projected to the future, because there will be an inevitable problem of further integration of convicts into society (Skolnik, 2020; Terpstra, de Maillard, Salet, and Roche, 2021).

At the same time, the issues of developing new criminal law provisions and applying existing ones in the pandemic context remain poorly studied.

Analysing the legal provisions of the European Court of Human Rights (2021a, b, c), practitioners outline the potential problems related to the compulsory vaccination (Varlamov, 2022).

The literature presents views on the importance of the type of guilt in criminalizing actions, where subjects intentionally or negligently violate quarantine rules, and determining the sanctions for such violations (Baker, 2020; Turanjanin and Radulović, 2020). Ukrainian researchers discuss the criminal law provisions of Ukraine, which are aimed at preventing the spread of COVID-19 (Novikova, 2020), as well as controversial aspects of the distinction between the administrative and criminal liability in this area (Hupalo, 2020).

So, the literature review allowed talking about lack of unified approaches. In general, studies of the interaction between the pandemic and the development of criminal law are ongoing. The scale of the pandemic implications is the basis for a new direction, where the criminal law transformation will be studied as part of the development of criminal justice (Baker, 2020).

2. Methods

In order to achieve its aim, this study was carried out with a view to the practical tasks in stages based on the logic of studying and presenting the material. These stages were the following:

- search and selection of scientific literature and regulatory acts, the ECHR case law;
- analysis of the content of the selected materials and evaluation of the research findings;
- identifying trends in the transformation of criminal law in the EU and Ukraine and clarifying their compliance with the legal provisions of the ECHR;
- determining the aim of the article;
- drawing conclusions and providing practical recommendations to improve the quality of criminal law and its compliance with human rights;
- outlining prospects for further research in this area.

The empirical background of the study was the provisions of the criminal law of the EU Member States (Bulgaria, Denmark, Spain, Latvia, Romania, Hungary, Finland, France, the Czech Republic, Sweden) and Ukraine concerning COVID-19-related crimes. The relevant provisions of the

Convention for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights, 2021a) and the legal provisions of the ECHR were also analysed. Besides, the experience of Poland, where authorities have imposed administrative sanctions for COVID-19-related offenses was considered. Nevertheless, these sanctions are informative for this study in terms of the amounts of the fines (according to Engel criteria). The study also involved statistics that reflect the COVID-19-related criminal situation in Ukraine.

In aggregate, these data allow assessing the European and Ukrainian experience of criminal law response to COVID-19-related crimes, its social significance and prospects for the development of criminal law.

In achieving the aim set in the article, the following methods were used in this study:

- content analysis to study significant volumes of regulatory and scientific texts and determine their relevance to the problems of criminal law transformation during the pandemic;
- doctrinal approach to study criminal law regulations as regulatory structures that establish criminal liability for certain socially dangerous acts;
- comparative method to establish similarities and differences between the relevant criminal law provisions that were included in criminal legislation or transformed during the pandemic period;
- general methods, including Aristotelean method, analysis and synthesis, generalization.

3. Results

The COVID-19 pandemic has affected the criminal law transformation by amending existing criminal laws and/or creating new ones. Accordingly, we can talk about the formation of a set of criminal provisions (Organization for Security and Co-operation in Europe (OSCE), 2020), where the anti-pandemic policy of national governments directly determines their social significance and structural features.

This set of provisions and their content are dynamic in view of the temporal features of the pandemic. An act of violation of quarantine rules may be identified as the main crime. These rules are established by other regulations to prevent infectious (especially dangerous infectious) diseases. This criminal provision is not new, as the problem of creating a risk of getting infected with dangerous diseases existed long before the COVID-19 pandemic. Therefore, this provision is either applied unchanged

to violations of the COVID-19 prevention rules, or has been adapted to the current situation.

An example is Article 325 of the Criminal Code of Ukraine "Violation of sanitary rules and regulations to prevent infectious diseases and mass poisoning", which was introduced in 2009. For the purposes of countering the COVID-19 pandemic, it was adapted to increase the severity of the sanction, rather than the description of the act itself.

So, regardless of the specific legislative wording of the title of the article and the terminology used to describe the signs of the act, it is possible to identify similar characteristics of this crime in the criminal law of European countries and Ukraine:

- the act is the violation of quarantine rules aimed at preventing the spread of dangerous infectious diseases, which include COVID-19;
- these rules are established by other regulations, so criminal law serves as an additional protection of public health and public safety;
- violation of the rules leads or may lead to the spread of the disease, that is a person may be punished if his/her actions only posed a threat of negative consequences;
- there is a separate indication of such a violation in the event of grave consequences (damage to health, death of one person or several persons).

In some European countries (for example, the Czech Republic) intentional and negligent violations of these rules are two separate crimes. In Ukraine, this act is qualified under Article 325 of the Criminal Code regardless of the type of guilt. However, there should be a fact of negligent attitude to consequences.

With regard to the potential and actual damage that this crime can cause, it is considered quite grave (serious). This is evidenced by the sanctions imposed for its commission. At the same time, the criminal legislation of some states provides that if the violation of the relevant rules does not cause serious harm the penalty is a fine, but the amount is fairly large (see Table 1).

Table 1. Comparison of the amount of punishment in the form of a fine for violating quarantine rules without serious consequences

Country	Limits of fines for violating the most common quarantine restrictions (EUR)
Bulgaria	5,100 – 25,500
Spain	100 – 30,000
Ukraine	535 – 1,606
France	Up to 3,750
Czech Republic	107,000

Own elaboration.

Unreasoned changes in the number of fines for crimes related to violations of quarantine restrictions in Ukraine have led to a negative balance of administrative and criminal law sanctions. This is why an administrative fine is greater than a fine provided as a punishment for a crime.

However, imprisonment is the typical punishment for this crime in the criminal law of European countries and in Ukraine. This punishment is established in case of both intentional and negligent violation of quarantine rules. It is significant to compare the European and Ukrainian experience of establishing penalties for violating quarantine rules in the event of serious consequences (serious damage to health, causing the death of at least one person) (see Figure 1).

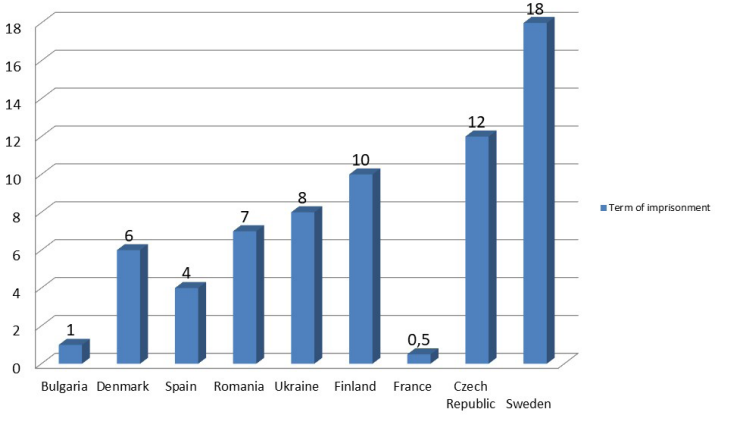

Figure 1: Comparison of custodial sanction (in years) for violation of quarantine rules in case of serious consequences. (Own elaboration).

It was noted that the criminal law provisions on crimes related to violations of quarantine rules aimed at preventing infectious diseases have largely been adapted in European and Ukrainian legislation to prevent the COVID-19 pandemic. Accordingly, persons who committed this crime without connection with COVID-19 are also convicted under the relevant article of criminal law. However, during the pandemic period, the number of people accused of violating quarantine rules is objectively increasing compared to previous periods. This increase is observed in the second half of the pandemic period, which is due to the need to adapt investigative and judicial bodies to changes in legislation. The experience of Ukraine confirms this statement (see Figure 2).

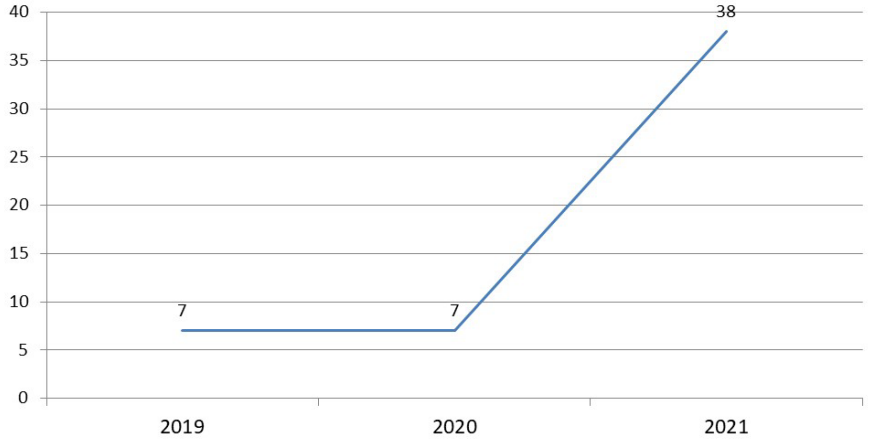

Figure 2: Dynamics of charges for violating quarantine restrictions in 2019-2021 (Ukraine's experience)

Source: Office of the General Prosecutor of Ukraine (2022).

According to the Unified State Register of Court Decisions, 15 sentences, including 7 COVID-19-related crimes, were passed under Article 325 of the Criminal Code of Ukraine in 2019-2021. All the convictions were instituted against entrepreneurs. In 6 cases, persons were fined from UAH 17 thousand (EUR 535) to UAH 34 thousand (EUR 1,070). In one case, the convict was sentenced to 2 years in prison, but the person was released from serving a probation sentence. It is noteworthy that the convicts are persons who violated the quarantine rules at their enterprises (shops, restaurants, etc.) only. In no case did such a violation entail serious consequences. In addition to this crime, the criminal law of European countries and Ukraine provides for other acts that may be classified as those related to COVID-19.

For example, in Ukraine it is the falsification of medicines and document forgery, including the use of forged documents (see Table 2).

Table 2. Statistics on COVID-19-related crimes (Ukrainian experience)

Years	Total number of registered crimes	Falsification of medicines	Violation of quarantine rules	Document forgery
2019	444,130	29	70	15,359
2020	360,622	22	111	13,345
2021	321,443	21	101	14,037

Source: Office of the General Prosecutor of Ukraine (2022).

At the same time, no changes were made to the criminal law provisions on falsification of medicines and forgery of documents during the pandemic. Some European countries have criminalized forging or using forged COVID documents. For example, at the end of 2021, a new article was introduced into Latvian criminal law, which provides for liability not only for document forgery, but also for the acquisition of a forged COVID-19 vaccination certificate, test results or recovery certificate. The use of a real certificate, but issued to another person will also entail punishment. Such acts may be punishable by up to 1 year in prison.

It is worth noting that the social danger of such changes to the criminal law of Latvia were caused by the involvement of healthcare workers in the forgery of relevant documents and their acquisition by ordinary citizens. There have also been attempts in Ukraine to criminalize forgery of vaccination-related documents, however, it did not find support in parliament. Today, all these actions are covered by the existing article of criminal law on document forgery.

In some European countries (for example, Spain, Romania, Hungary) new or existing rules have been introduced to prosecute for disseminating inaccurate information about the pandemic. This experience was not widespread and was negatively assessed by international organizations (OSCE, 2020)

As the application of criminal law entails lengthy and complex criminal proceedings, some countries have used administrative sanctions to address the pandemic. For example, in Poland, administrative fines (up to € 6,600) were imposed for violating quarantine restrictions (participating in protests). However, lower courts upheld the rule of law, closing administrative cases brought by law enforcement agencies against protesters. In view of the Engel

criteria, these provisions can be assessed as bordering on criminal coercion due to the severity of financial constraints. Therefore, they are informative in terms of understanding the trends in the criminal law transformation.

Governments' resort to coercive action during the pandemic have received unambiguous feedback among the population of European countries and in Ukraine. Such a perception is reinforced by the unclear link between criminal law and the success of anti-pandemic policies.

Besides, the problematic issue related to criminal law transformation during the COVID-19 pandemic is the compliance of government decisions with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights (2021a).

The reasonability of using criminal law to restrict the realization of a number of human rights and freedoms during the pandemic must comply with Article 15 of the Convention. In general, the uniqueness of the situation, which requires restrictions on rights and freedoms, provides for an assessment by national authorities. As the ECHR has stated in Ireland v. The United Kingdom (§ 207): "It falls in the first place to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency". However, Article 15(2) of the Convention protects certain rights from derogation from obligations to secure them. They include those provided for in Article 7 of the Convention (European Court of Human Rights, 2021b).

Legal certainty is a fundamental principle of building criminal law provisions. The lack of "quality of the law" to determine the crime causes a violation of Article 7 of the Convention (Kafkaris v. Cyprus, §§ 150 and 152). At the same time, the application of too vague concepts and criteria in the interpretation of a legislative provision may make this provision incompatible with the clarity and predictability requirements regarding its consequences (Liivik v. Estonia, §§ 96-104) (European Court of Human Rights, 2021c).

A serious rethinking of the role of criminal law in addressing social issues is required in view of the necessity for states to respond to society's needs for protection against adverse events, including significant threats to health. Emphasis should be placed on the need to transform criminal law depending on how complex and long-lasting the threats to law, order and security are.

It is obvious that criminalization of COVID-19-related acts as such is not appropriate. It seems more appropriate to formulate generalized criminal law provisions that could be used to protect public health in any pandemic, without violating the analogy prohibition principle. However, the criminal

law transformation in the context of the long-term consequences of the COVID-19 pandemic should also be on the agenda. In particular, this applies to criminal law provisions on domestic violence, online harassment and digital extortion. A separate problem is the criminal law response to the trends of organized crime that emerged during the pandemic.

The quality of criminal law should be a priority, because the application of criminal law can cause serious social tensions, raise issues of segregation and inequality, encourage mass discontent due to violations/restrictions of human rights and freedoms. In the context of globalization of threats to the rule of law, it is advisable to raise the issue of developing European principles of criminal law policy and prospects for criminal law without denying the sovereign right of states to criminal law rule-making. On the basis of a comprehensive discussion, such principles could be enshrined in an international instrument of recommendatory nature, to which all states in the region could accede.

Such principles should include strategic, as well as legal and technical aspects: the importance of criminal law as the last tool for resolving social conflicts; systemic connection of criminal legislation with administrative and tort law, as well as criminal procedure; defining the limits of criminal law enforcement; compliance of criminal legislation with crime trends; inadmissibility of excessive casualness in building criminal law provisions to protect against analogy; clarity of criminal law structures to prevent certainty principle violations, etc.

4. Discussion

The research findings demonstrated that the criminal law transformation during the COVID-19 pandemic is on the agenda in all EU member states and in Ukraine. There is no comprehensive research on this topic either in European countries or in Ukraine because the situation is unstable.

Our study confirmed the importance of research on the significance and prospects of criminal law as a social regulator. We should agree with the researchers that the pandemic has led to tactical criminal law transformation: over-criminalization and high change rates. This has resulted in uncertainty and confusion in the development of anti-pandemic strategies and has led to accelerated procedures for discussing and adopting new or changed provisions (Bošković and Nenadić, 2021). Our research has shown that this calls into question the understanding of crime as a category that embodies ethical compromise in any legal system (Harding and Oberg, 2021). The research findings demonstrated the validity of expert opinions on the inadmissibility of the use of fuzzy standards and vague concepts in the criminalization of actions (Krajewska, 2021). This is influenced by the

negative prospects of further stigmatization of convicts (Skolnik, 2020; Terpstra et al., 2021). We also confirmed the controversial nature of the imposition of severe sanctions for violations of ever-changing rules and measures (Peršak, 2020).

Currently, experts do not have a vision of the reasonability of transforming criminal law with a focus on eliminating/limiting the long-term implications of the COVID-19 pandemic. Although Europol (2020c) reports and some EU strategies (Council of the European Union, 2020) emphasize crime trends (domestic violence, sexual offenses against children, organized drug crime, etc.), scientific assessment of relevant criminal law provisions is still being formed. We consider this threatening from the perspective of further development of criminal activity.

Scientific research that dealt with the criminalization and penalization of violations of certain anti-pandemic measures are generally declaratory. They address the features of crime related to violation of quarantine rules in the criminal law of European countries (Turanjanin and Radulović, 2020), the establishment and application of significant fixed fines (Baker, 2020). In the Ukrainian literature, such an analysis is accompanied by negative assessments of the quality of legislation in view of law enforcement practice (Hupalo, 2020; Novikova, 2020). In this context, we advanced and proved the thesis of the priority of adapting existing criminal law over developing new ones. We also established a certain discrepancy between the traditional and modern provisions of the criminal law of European states and Ukraine.

The thesis on the reasonability of developing and discussing European principles of criminal law policy and prospects for the development of criminal law is another result of our study, which could be enshrined in an international recommendatory document.

Conclusions

In a pandemic context, national governments are actively using the criminal law tools to maintain law and order and ensure the safety of the population. Therefore, the analysis of approaches to criminal law transformation in European countries is relevant.

The study found that criminalizing and penalizing COVID-19-related actions is considered part of anti-pandemic policy. The focus is on the response to individual crimes related to COVID-19, rather than on crime trends in general. The predominant approach in European countries and in Ukraine is the adaptation of existing criminal law provisions in order to prevent COVID-19. The pandemic promoted the increase in penalties for crimes related to violations of quarantine rules.

Some European countries have introduced criminal liability for forging COVID documents (vaccination certificates, tests), while Ukraine refused to criminalize those acts. The introduction of a criminal law ban on the dissemination of certain information during the pandemic was negatively assessed by international organizations. In general, incomplete compliance with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights (2021a) are the problems of criminal law in European countries and in Ukraine in the context of the COVID-19 pandemic.

It is reasonable to raise the issue of developing European principles of criminal law policy and prospects for the development of criminal law in the context of globalization of threats to public security. Such principles could be embodied in an international recommendatory instrument based on a comprehensive discussion. Such principles should include both strategic, legal and technical aspects: the importance of criminal law as the last tool for resolving social conflicts; systemic connection of criminal legislation with administrative and tort law, as well as with criminal procedure; defining the limits of criminal law enforcement; compliance of criminal legislation with crime trends; inadmissibility of excessive casualness in developing criminal law provisions to protect against analogy; clarity of criminal law structures to prevent violation of the certainty principle.

This study underlines the pandemic situation affects the criminal law transformation despite its dynamics. The prospects for further comparative analysis of the development of criminal law of the EU and Ukraine is the unification of national criminal law policies, improving rule-making and law enforcement. This opens up additional opportunities for the development of uniform standards of criminal law in the European region in order to protect human rights and security of society.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 71-89
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Problems of Concluding Surrogacy Agreements: Practice of Ukraine and the EU

DOI: https://doi.org/10.46398/cuestpol.4073.03

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Abstract

The aim of the article was to identify and analyses typical problems of concluding surrogacy agreements in the context of supranational challenges and pandemics. This aim was achieved with a view to the peculiarities of the legal status of surrogacy in leading European countries. Methods of observation, comparative legal analysis and legal simulation became the basic methodological tools. The study resulted in grouping of the European countries according to the state of surrogacy legalization, as well as outlining the leading problems of concluding and executing surrogacy agreements. It was stated that women in current realities are becoming commercial gestational carriers, and are not acting in the best interests of the child. The study proves a high degree of levelling of the terms of surrogacy agreements in Ukraine, which requires immediate legislator's response. It is argued that the approach to altruistic surrogacy has the potential to eradicate commercial agreements in a cross-border context. Further author's research will focus on establishing a unified and optimally effective international approach to solving problems of concluding surrogacy agreements.

Keywords: altruistic motherhood; bodily autonomy; gestational carrier; innovative technologies; reproductive medicine.

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Recibido el 15/03/2022 Aceptado el 02/06/2022

Problemas de la celebración de acuerdos de subrogación: práctica de Ucrania y la Unión europea

Resumen

El objetivo del artículo fue identificar los problemas típicos de celebrar acuerdos de gestación subrogada en el contexto de desafíos supranacionales y pandemias. Este objetivo se logró teniendo en cuenta las peculiaridades del estatus legal de la gestación subrogada en los principales países europeos. Métodos de observación, análisis jurídico comparado y simulación jurídica se convirtieron en las herramientas metodológicas básicas para la investigación. El estudio resultó en la agrupación de los países europeos según el estado de legalización de la gestación subrogada, así como en la descripción de los principales problemas para concluir y ejecutar acuerdos de gestación subrogada. Se afirmó que las mujeres en las realidades actuales se están convirtiendo en portadoras gestacionales comerciales y no están actuando en el mejor interés del niño. El estudio demuestra además un alto grado de nivelación de los términos de los acuerdos de subrogación en Ucrania, lo que requiere una respuesta inmediata del legislador. Se argumenta que el enfoque de la subrogación altruista tiene el potencial de erradicar los acuerdos comerciales en un contexto transfronterizo. La investigación adicional de los autores se centrará en establecer un enfoque internacional unificado y óptimamente eficaz para resolver los problemas de celebración de acuerdos de subrogación.

Palabras clave: maternidad altruista; autonomía corporal; portadora gestacional; tecnologías innovadoras; medicina reproductiva.

Introduction

Reproductive function with the use of medical technologies is a trend characterized by striking roots and continuous development in society. Increasingly limited opportunities for international adoption have contributed to the spread of international surrogacy. In this regard, a wide range of methods are available today for infertile couples, which are important in supporting natural fertilization (Wennberg, 2020). If surrogacy is legal in any country, citizens have the right to travel abroad for a variety of reasons: to gain access to surrogacy with more innovative infertility treatment, lower costs, the ability to use genetic engineering using specific genetic materials (Caldwell, 2019).

Cross-border gestational surrogacy may raise some legal issues regarding the return of these citizens to their country with children conceived illegally

or fraudulently. Surrogacy also raises important ethical issues that make it difficult to solve legal problems in case of international surrogacy. This is a major obstacle to achieving a common approach and a minimum international legal framework (González, 2020).

Unfortunately, international surrogacy is increasingly positioning itself as a negative form of cross-border reproductive assistance, so-called "reproductive tourism". The international community recognize that it is currently impossible to monitor medical procedures, professional practices, ethical standards, the free consent of a surrogate mother or the independent counselling used in the framework of an international surrogacy agreement. Profits or intermediaries of any kind automatically make international surrogacy agreements ethically questionable.

Surrogacy is not always viewed from a negative perspective. Surrogacy can be traditional or gestational: in the first case, the surrogate mother uses her own egg and undergoes artificial insemination with the sperm of the intended father or donor. Gestational surrogacy instead relies on an embryo created by in vitro fertilization (IVF) and implanted in the surrogate uterus. A child born as a result of gestational surrogacy has no genetic link to the surrogate mother. The intended parents may be heterosexual or homosexual couples, or even single. In gestational surrogacy programmes, the incidence of clinical pregnancies with embryo transfer ranges from 19 to 33%, with 30 to 70% of couples who have reached clinical pregnancy becoming parents (Piersanti et al., 2021).

However, critics believe that variable methods, including surrogacy, can lead to the transformation of human life into the commodity and exploitation of women, making surrogacy highly commercial and bioethically controversial (Bertelli *et al*., 2019). These methods, taken separately, provide fertilization, but when used together can lead to the emergence of real "children's factories", which already exist in poor countries and mostly operate illegally.

Litigation over the conclusion, interpretation and legal consequences of surrogacy agreements is currently on the rise in many countries. When deciding on surrogacy, courts tend to prefer several factors that often conflict with each other: the best interests of the child, the rights of the gestational mother, the genetic link between the child and the genetic father, or the couple who signed the surrogacy agreement. There is no consensus in the legal or ethical community as to which of these factors should be a priority (González, 2020).

In today's world, there are different national approaches, from permissive to prohibitive, from regulatory to non-regulatory. The most liberal approaches are based on the right to start a family and women's autonomy. Most prohibitive approaches reflect ethical or religious

arguments against potential and documented methods of exploitation, especially when reproduced by third parties. Although case law is evolving in terms of children's rights, any international instruments do not directly address this issue, leaving different interpretations open.

The Surrogacy Agreement is a long and complex legal document that includes a wide range of legal remedies, contingencies and guarantees for both surrogate mothers and prospective parents, as well as protecting the child's well-being before and after birth. It is important to emphasize that the special medical component of such a legal relationship must also be taken into account in detail. Therefore, there is a need for in-depth bioethical and legal research to reform legislation on the combined use of assisted reproductive technologies.

Given the above, the aim of the article was to identify and reveal current issues of concluding surrogacy agreements in Ukraine and EU countries. This aim involved the following objectives: 1) identify current trends that affect the procedure for concluding surrogacy agreements; 2) reveal the state of legal regulation of surrogacy in Ukraine and EU countries; 3) outline the prospects of legal innovations in the legal field of Ukraine in the studied area.

1. Materials and Methods

The research procedure is presented in Figure 1. In turn, the sequence of scientific research was determined by the leading areas of scientific and legal research on the selected topic. Particular attention was paid to the debatable rules of law in the field under study. Variable approaches to the legalization of surrogacy have revealed common mistakes in the conclusion and execution surrogacy agreements in this area in different countries.

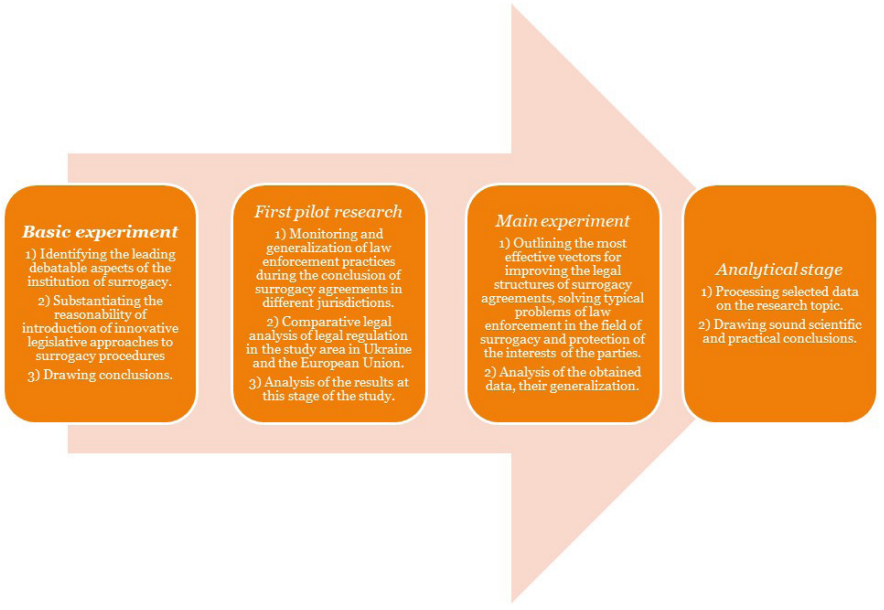

Figure 1: Schematic representation of the research on the subject of the article.

The study was based on a set of general and special methods, scientific approaches and theories, which found their detailed consideration at each stage of scientific research. The main research methods were observation and comparative legal analysis. The specified methodological tools helped to reveal the main problems of realization of the rights and lawful interests of the parties to the contractual legal relations in the field of surrogacy; substantiate the reasonability of introduction of new medical procedures in a complex with the corresponding legislative innovations; it is proposed to find a unified international legal approach to the problems of contractual relations in the research area and to ensure the best interests of the child.

The comparative legal method was also used in the comparative analysis of current national legal norms of Ukraine in the field of surrogacy with legal systems and the latest scientific developments of other countries in order to identify positive legislative practice, which is appropriate and possible for testing in our country in view of the peculiarities of the domestic legal system.

In turn, the dialectical method of cognition of phenomena and processes allowed determining the state, directions and prospects of development

of research and legislative developments in the field of legal regulation of the institution of surrogacy in Ukraine and the European Union. The historical and legal method was applied during the study of the genesis of the development of legislation governing the use of assisted reproductive technologies in Ukraine and foreign countries; methods of analysis and synthesis were used to establish the nature and content of the institution of surrogacy.

Besides, these methods allowed outlining the variability of legal structures of agreements. Conclusions were drawn in accordance with the aim of the study through the dogmatic method. Taking into account the experience of foreign countries, the method of analogy allowed concluding that it is necessary to adopt new regulations in Ukraine. Forecasting and proposals for legislative innovations were realized through logical methods of knowledge and the method of legal simulation.

The theoretical and methodological background of the author's scientific research was the works of leading scholars and practitioners in the field of surrogacy and contract law. Considerable attention was paid to the results of comparative studies of the legal status of surrogacy in various jurisdictions, previously conducted by representatives of the doctrine. Drawing author's conclusions was facilitated by the analysis of primary sources of legislative, regulatory acts and international documents on the subject of the article. A total of thirty-three sources have been tested in the article. Regulatory-semantic methods, as well as other scientific tools were used in formulating legislative proposals. The set of methods, techniques and tools determined by the aim of the article and the research objectives helped to reveal the issues outlined in the article as much as possible.

2. Results

According to the 2019 Council of Europe Report: Anonymous Sperm and Oocyte Donation: Balancing the Rights of Parents, Donors and Children, about 8 million children were born using assisted reproductive technologies (Council of Europe, 2019). The global COVID-19 pandemic has slowed the growth of surrogacy and reduced the number of international surrogacy agreements concluded in 2020 due to restrictions on foreign border crossings imposed and implemented by most European legislators. It is believed that this trend will continue until the end of the global pandemic and is expected to end with the lifting of travel restrictions. Prior to the introduction of coronavirus restrictions, surrogacy was considered a global emerging market. According to the forecasts of GlobeNewswire (2019), by 2025 the cash flow in the field of surrogacy "will exceed $ 27.5 milliard".

At the same time, not all surrogacy contracts are paid. Altruistic surrogacy refers to those agreements where the surrogate mother does not receive monetary compensation. In most altruistic agreements, the surrogate mother is a close relative of the probable parents. In turn, the commercial surrogacy agreement provides a surrogate mother's compensation package tailored to the unique situation of each surrogate mother. The surrogate compensation agreement details the pre-determined plan under which the intended parents agree to cover medical expenses, travel expenses, court costs and other potential expenses that may arise during the trip. The surrogacy agreement must include the provisions of regulatory law, as it is necessary to take into account the legality of surrogacy in a particular country.

It is advisable to refer to the general terms and conditions of the agreements in the research area. In particular, such an agreement should detail all aspects of conception, including whose gametes are used, how many embryos will be transferred in one attempt, how many attempts will be made to implant embryos, whether embryos used will be fresh or frozen, any genetic research, and similar details. It is especially important that any contract with a surrogate mother stipulates the legal maternity and paternity. It should be ensured that the intended parents are recognized as legal parents, releasing the surrogate mother (and her spouse, if any) of all rights and responsibilities with respect to the child. The agreement also guarantees that parents will receive immediate custody of the child after birth.

In order to properly protect the interests of the unborn child, the surrogacy agreement must provide for an emergency plan. For example, if the parents die or become disabled before the full fulfilment of the terms of the agreement. Intended parents must provide evidence that they are in any case capable of fulfilling their financial obligations under the contract and securing the child's future legal status. This includes the appointment of guardians for the child and custodians to ensure that the surrogacy agreement is concluded, executed and all costs and obligations of surrogacy are met.

The contract must specify the procedure if any of the parties involved divorces or marries before the end of the agreement. To avoid potential problems, surrogacy agreements generally prohibit both prospective parents and surrogate mothers from performing any of these actions before the child is born. Parents are responsible for obtaining health insurance for their child, and usually pay any insurance premiums, surcharges or uncovered medical expenses related to pregnancy and childbirth. The surrogate mother should review her own health insurance policy before signing the agreement to make sure that the policy does not preclude her from participating in surrogacy. The agreement must include information

on the amounts that can be paid to the surrogate mother and the procedure for such payments.

The agreement between the parties must also provide for legal consequences in the event of a miscarriage or abortion. According to the current practice, the decision to try again in this case is made either with the consent of the parties, or, more often, remains at the discretion of the surrogate mother. In the tragic case of a child dying at birth or shortly thereafter, custody of the remains is usually passed on to the prospective parents who arrange the funeral. The child's name should be included in the agreement, along with instructions for the hospital on how the names of the prospective parents will be listed on the birth certificate. Given the above, it is advisable to summarize the leading standard terms of the surrogacy agreement (Figure 2).

Figure 2: Leading typical essential terms of the contract in the field of surrogacy in a cross-border context summarized by the author based on the analysis of empirical data.

Let's turn to the practice and problems of concluding relevant agreements in different jurisdictions. The implementation of surrogacy procedure in Ukraine is characterized by a number of features: there must

be a commercial surrogacy agreement, which provides for the payment of a specific amount of fee, which does not contain restrictions on the amount of remuneration; there is no legislative provision for obtaining a permit from the guardianship and wardship authority (as in the case of adoption). Upon the birth of a child, the surrogate mother signs a permit to transfer the child to the biological parents.

In this case, there is no need to consider the case in court, all legal relations are governed primarily by Article 123 of the Family Code of Ukraine (Verkhovna Rada of Ukraine, 2002) and the relevant agreement. The names of the biological parents are entered in the birth certificate. The parental rights to the child fully belong to the genetic mother and father. A surrogate mother in Ukraine should not be genetically related to the unborn child and is considered only as a "gestational carrier".

Besides, the basis of legal regulation in Ukraine is the Law of Ukraine "On Fundamentals of Health Care Legislation" (Verkhovna Rada of Ukraine, 1992) and the Procedure for the Use of Assisted Reproductive Technologies in Ukraine, approved by the Order of the Ministry of Health of Ukraine No. 787 of 09.09.2013 (Ministry of Health of Ukraine, 2013). Therefore, the current legislation of Ukraine regulates the possibility of implementing assisted reproductive technologies, in this case — surrogacy. Ukraine has no obligation to test the ability of expectant parents to legalize child status in countries where surrogacy is prohibited. Unfortunately, minimizing legal risks is a matter for biological parents alone, not for medical clinics and agencies that provide this procedure.

Legal relations arise between the surrogate mother, potential parents and medical organizations, and are governed by the relevant agreements between them. Two types of agreements are concluded for the purpose of legal support in this case: between the genetic parents and the agency (medical institution), and between the genetic parents and the surrogate mother.

The main terms of the agreement between the agency (medical institution) and the genetic parents are not clearly established by law. As a result, those agreements are concluded in a simple written form provided by the agency, without notarization. There is a current problem of contractual regulation of surrogacy in Ukraine. Paragraph 6.11 of Order No. 787 (Ministry of Health of Ukraine, 2013) stipulates that such an agreement is not subject to mandatory notarization, but a notarized copy of the written general agreement between the surrogate mother and the woman (wife) or spouses.

In contrast, in most EU countries, the principle of family law *"mater semper certa est"* acts as a legal barrier to surrogacy agreements. According to this principle, a surrogate mother is also considered a legitimate mother

because she gives birth to a child. Therefore, the future parents must go to court if they want to be appointed legal parents of this child. The main purpose of these prohibitive and restrictive laws is to protect the rights, dignity and well-being of both surrogate mothers and future children.

In parallel with the increasing use of surrogacy, EU countries have decided to allow surrogacy only in certain cases: for example, Greece (Masry, 2003), Portugal (VLex, 2016) accept an altruistic model only. However, in 2019, the Portuguese Constitutional Court repealed a number of provisions of a law passed by parliament on suspicion of violating constitutional principles and rights in the field of family law. Some countries have decided to explicitly prohibit surrogacy, such as Germany (Ministry of Justice of Germany, 1990) and Spain (Instituto Bernabeu, 2007) or even consider it a crime, such as Article 227-13 of the Penal Code of France (Legislationline, 1992).

Surrogacy is prohibited by law in Spain, so the only option available to prospective parents is to consider going to another country to complete the procedure. However, individuals and couples can start the treatment process in Spain in a private clinic and arrange for their gametes to be transferred to the country where the surrogacy process will begin. The cost of surrogacy will depend on the country of destination and whether treatment is started in Spain (Statista, 2019).

In countries where surrogacy is permitted, there may be specific legislation governing it (Legislation.gov.uk, 1985), or surrogacy is permitted without any specific law, applying the principle that "everything that is not forbidden is allowed" (for example, Belgium and the Netherlands). In practice, cases of surrogacy still exist (this is possible in some hospitals, under certain conditions and under strict control), for example in Belgium. The surrogacy agreement is considered invalid, so the surrogate mother (whether or not she is the genetic mother of the child) cannot be forced to give up the child after birth.

Therefore, the parental relationship between the child and the prospective parents must be established through adoption, as the surrogate mother's name is recorded on the birth certificate and the surrogate mother is considered the legal mother. Belgian courts generally agree to grant adoption in such cases if it is in the best interests of the child and provided that surrogacy has not been rewarded. If the surrogate mother is not married, the prospective father may recognize the child if the surrogate mother agrees. In this case, only the prospective mother should adopt the child. When surrogacy is legal (altruistic or commercial), it can be restricted for citizens or legal residents (for example, in Portugal). Therefore, a conditional list of countries for the implementation of surrogacy procedures can be provided (Table 1).

Table 1. Surrogacy in the world — the distribution by the state of implementation (summarized by the author based on the results of observation over the transformation of legal regulation).

Distribution of countries by trends in the implementation of surrogacy procedures		
Altruistic and commercial surrogacy is prohibited	**Altruistic surrogacy is allowed**	**Altruistic and commercial surrogacy is allowed**
• France; • Germany; • Italy; • Spain; • Portugal; • Lithuania	• Netherlands (commercial surrogacy is prohibited) • Belgium (commercial surrogacy is illegal) • Denmark; • Greece; • Czech Republic; • United Kingdom (commercial surrogacy is prohibited)	• Ukraine; • Russian Federation.

It should be emphasized that most surrogacy agreements are international agreements. An international agreement in the field of study is an agreement that includes more than one country of permanent residence, citizenship or place of permanent residence of prospective parents, donors and pregnant mothers. Such arrangements have emerged over the past few decades, primarily due to the evolution of the "family concept", which has shifted from traditional heterosexual couples to single parents, foster families, the legalization of extramarital relationships or same-sex couples. Second, this trend is determined by the increase of international mobility of people as a result of globalization. Even in situations that do not allow such parents/couples to have children on their own, they are still willing to become parents and therefore resort to surrogacy, which has become an alternative to adoption.

Legal problems usually begin when a person or couple returns to their country with a surrogate child and tries to be recognized as the child's parents. Problems may arise before returning to their country. For example, a baby needs to obtain a passport, and their own embassy may not issue the necessary documents because they may have evidence that the child was born as a result of fraud. For the most part, children's citizenship depends on the nationality of their parents (*ius sanguinis*; for example, in Spain, the

first paragraph of Article 17 of the Civil Code states that a child is Spanish if at least one parent is a Spanish citizen) (Ministry of Justice of Spain, 2013).

At the same time, in the case of surrogacy, the issuance of a passport may be denied because paternity and maternity are not recognized, so the child cannot obtain the citizenship of his/her parents. Depending on national law, legal recognition of a child as a person indicating his/her origin may be required; in some cases, this may be required when a child needs to be enrolled in school, vaccinated or when a fee must be paid to the national health system. Besides, the authorities of the parents' country of origin can intervene in a wide range of legal issues to recognize the legal status of a child belonging to a married couple at any time.

Problems can also arise when the probable parents are a same-sex couple or a single father. Surrogacy may be considered the only way to have a child, but national parental law may not allow same-sex couples or single parents to have children. When they return home, they may face certain legal difficulties in recognizing them as parents. Complications can arise when probable parents travel to another country to seek surrogacy, even though surrogacy is legal in the country of origin. This may apply to couples or single people who do not comply with the legal requirements of their national law. Upon returning home, these parents will face the same legal challenges in trying to be recognized as the child's legal parents.

Eventually, problems may arise if international surrogacy has taken place in a country where there is no special legislation on such procedures. Therefore, if there are any problems, such as complications during pregnancy, lack of agreement between the prospective parents and the surrogate mother, the surrogate mother's refusal to transfer the child after birth, divorce of the prospective parents during the process, or alleged change of parental views after pregnancy, there may be no legal provisions governing such cases.

However, a judge can always provide a legal solution to these potentially problematic situations by applying existing national rules of origin and contracts. The outlined problems significantly increase uncertainty and contribute to the negative attitude towards surrogacy. The leading problems during and after the conclusion of the surrogacy agreement were identified as a result of the scientific research (Figure 3).

There is little consensus among European states on the legal regime of surrogacy in general and transnational commercial surrogacy in particular. In this context, the case law of the European Court of Human Rights (ECHR) is particularly important in this regard, as it provides a common background for the legal regime of transnational commercial surrogacy in Europe. In 2010, the Hague Conference on Private International Law launched a project on parenthood and surrogacy.

In March 2019, a group of experts decided to develop a convention "on the recognition of foreign judgments on legal parentage" and "a separate protocol on the recognition of foreign judgments on legal parentage, recognition of the implications of an international surrogacy agreement." The group will meet in 2022 again to finalize the report it will present to the General Affairs and Policy Council in 2023 (Experts' Group on the Parentage, Surrogacy Project Chair of the Experts' Group on the Parentage & Surrogacy Project, 2021).

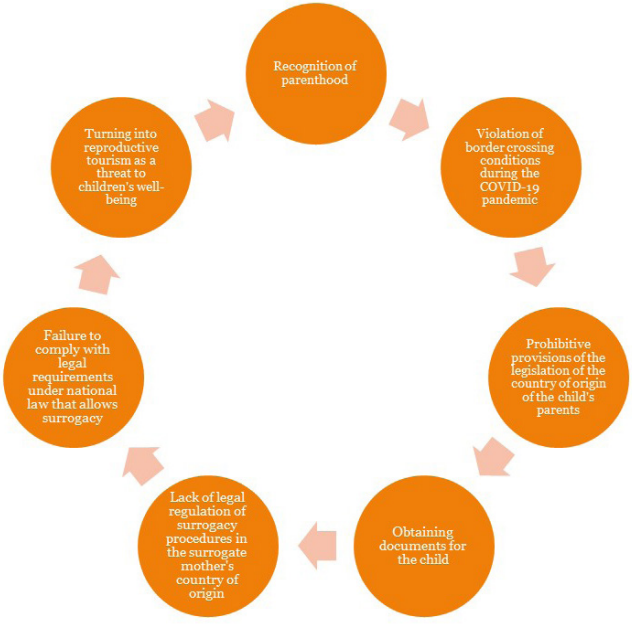

Figure 3: List of conditional problems in the field of implementation of the terms of the surrogacy agreement grouped by the author.

In early 2021, a group of experts in international law and human rights adopted the Verona Principles for the Protection of the Rights of the Child Born through Surrogacy (International Social Service, 2021). These Principles are intended to inspire and guide legislative, political and practical reforms to protect the rights of children born through surrogacy. The principles were created in anticipation of further evolving efforts, in the broader human rights framework. The Verona Principles have received the support of the UN Committee on the Rights of the Child, they are

recognized as an important contribution to the development of guidelines on the protection of the rights of children born through surrogacy.

3. Discussion

Research has shown that surrogacy is a procedure that raises deep ethical and religious issues and considerations. Usually, a person who wants to have a child assumes the medical risks of pregnancy, while the surrogate mother assumes the risk in surrogacy agreements. As a result, the state is obliged to ensure the practical implementation of the necessary rules and conduct long-term monitoring of all participants in the procedure to ensure that neither party suffers long-term harm (Ellenbogen, Feldberg & Lokshin, 2021). The dynamics associated with surrogacy agreements emphasize that the altruistic element, that is helping couples with fertility problems to achieve parental rights, is the driving force for most surrogate mothers (Piersanti *et al.*, 2021).

It should also be emphasized that a simple ban on commercial surrogacy does not solve the main problems: the ban could lead to the development of underground businesses, which is likely to jeopardize and harm the interests and rights of women who need to improve their financial conditions through illegal and disguised surrogacy (Rudrappa, 2018).

Besides, the use of altruistic surrogacy as the only legal alternative may contribute to the absolute deregulation of surrogacy, which in turn may lead to increased exploitation of women. In this case, the adoption of labour legislation aimed at protecting women who have decided to become surrogate mothers and considering them valuable and indispensable elements of the labour force could be an effective way to combat the exploitation of surrogacy (Stuvøy, 2018).

As a result of scientific research, it was stated that there is a problem of "physical autonomy" of the surrogate mother in all surrogacy agreements, which is mostly not taken into account in the discussion of surrogacy. So, the preferences of prospective parents are potentially formed. In this case, the best way to protect women's independence in surrogacy is to consider each case individually and give women the right to become surrogate mothers only in case of no social pressure and coercion of all kinds (Gustafsson, 2019).

It can be concluded that reproductive medicine in Ukraine is not properly reflected in legislation, as there is no systemic approach to this regulation. Adoption of a high-quality legal act that will regulate and control the field of assisted reproductive technologies, including surrogacy, will be able to protect the rights of all participants in the process, to eliminate the relevant

abuses. A number of scholars conclude that it is necessary to use a notarized form of surrogacy agreement, which will significantly reduce the risk of adverse consequences for the parties and the criminal component in this segment of the service (Andrushchenko *et a*l., 2021).

Existing international legal instruments regulate some problems of international surrogacy, which cannot properly ensure the implementation of these issues. The ECHR has developed several decisions on international surrogacy, for example, reproductive tourism or recommendations on how to recognize a child-parent relationship in surrogacy with a prospective father who is not the child's biological father, but it is necessary to develop a good international legal instrument now. Prompt response in relevant cases is particularly relevant in this case.

The Hague Conference on Private International Law is currently developing such a protocol. However, there are a number of issues that also need to be addressed by this protocol. Scholars insist that the protocol should also provide a body that will have the right to monitor the implementation of this legal initiative and have the authority to resolve disputes between the parties to international surrogacy (Maydanyk & Moskalenko, 2020).

Conclusion

Given the increasing number of couples who cannot conceive on their own, along with the latest technological innovations, and the largely altruistic nature of surrogacy, the practice of contracting in the field under study is growing. However, the expediency of strict precautionary measures to protect both the rights and interests of the gestational carrier and the alleged parent(s) is urgent. Therefore, the state, which implements surrogacy procedures, is obliged to legalize clear rules that will ensure the legal relations with the legal balance of interests of the parties when concluding agreements in this area.

A detailed study of different national approaches to solving the problem of surrogacy shows the ambiguity of the positions of legislators. In some countries surrogacy is completely prohibited, while in some countries only commercial agreements are prohibited, in others — the use of assisted reproductive technologies is limited in general. However, surrogacy is largely legalized by states, including the EU and Ukraine. Therefore, the comparative analysis of the basics of legal regulation of surrogacy agreements is of particular importance within the framework of legal science.

The research found that Ukraine is currently considered the most convenient and liberal country for commercial surrogacy, which differs

significantly from EU policy in the field of altruistic surrogacy. Therefore, it is reasonable to adopt a detailed regulatory act on the territory of Ukraine which will be able to regulate both legal relations in the field of surrogacy and the legal consequences of concluding agreements in this area in a cross-border context.

Given the need for legislative transformations both at the national level of Ukraine and EU member states, and in the international legal field, further research will be conducted in order to make a comparative legal analysis of relevant innovations.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 90-107
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Role of the Number of Detected Criminal Offenses in the Police Performance Indicators System

DOI: https://doi.org/10.46398/cuestpol.4073.04

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Abstract

The aim of the study was to analyses the system of police performance and determine the role of the indicator that shows the number of detected criminal offenses in this system. A comprehensive study of the chosen topic was realized through empirical and theoretical methods, as well as the comparative analysis. It is determined that the components of the system of police performance indicators include the level of public trust in the police as a fundamental indicator that reflects the real state of crime and security in the country; the level of detection of criminal offenses; crime rate and public safety; citizens-police interaction rate; response time to offenses. It was found that the ratio of detected and solved crimes for the reporting period allows reflecting the police performance in the fight against crime, identifying the main problems of organizational, personnel, material, technical and legal nature of their activities. The evaluation of the effectiveness of policing through the prism of detected criminal offenses provides for further research and justification in order to determine effective legal tools for its regulation.

Keywords: activity; crime; criminal offenses; detection; police.

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Recibido el 15/04/2022 Aceptado el 10/06/2022

El papel del número de delitos penales detectados en el sistema de indicadores de desempeño policial

Resumen

El objetivo del estudio fue analizar el sistema de actuación policial y determinar el papel del indicador que muestra el número de delitos detectados en este sistema. Se realizó un estudio integral del tema elegido a través de métodos empíricos y teóricos, así como el análisis comparativo. Se determina que los componentes del sistema de indicadores de desempeño policial incluyen el nivel de confianza pública en la policía como indicador fundamental que refleja el estado real de delincuencia y seguridad en el país; el nivel de detección de infracciones penales; tasa de criminalidad y seguridad ciudadana; tasa de interacción entre ciudadanos y policía; tiempo de respuesta a las ofensas. Se constató que la relación de delitos detectados y resueltos para el período informado permite reflejar el desempeño policial en la lucha contra el delito, identificando los principales problemas de carácter organizativo, personal, material, técnico y jurídico de sus actividades. La evaluación de la eficacia de la actuación policial a través del prisma de los delitos detectados prevé una mayor investigación y justificación a fin de determinar herramientas jurídicas eficaces para su regulación.

Palabras clave: actividad; crimen; delitos; detección; policía.

Introduction

Police reform is necessitated by the statehood development stage, political, socio-economic and legal transformations, and building up efforts to combat crime. In this context, changes in the system of real orientations and the attitude of the police officers to the performance of their official duties become a priority. Legal, economic, political and social factors of objective reality always influence policing, which is constantly in the public eye in different parts of the world. As the public is the main user of police services, it should control their completeness and quality. Policing is not only the result of the implementation of the provisions of current legislation, but is the result of the implementation of a range of organizational and legal tools. In aggregate, such tools contribute to the establishment of an appropriate mechanism for establishing the right conditions and factors to ensure the professional activities, rights and interests of the police as a key player in the jurisdiction process.

The approach to evaluating police performance in developed countries has changed significantly over time. This was promoted by the spread of

the practice of researching the level of public confidence in the police and determining the index of crime and public safety. Therefore, the police performance evaluation system has gradually become more complex and many-sided. There is currently no single approach to the policing evaluating model, all existing options have a number of advantages and disadvantages. Even in countries with developed economies, there are ongoing discussions about the appropriateness of taking into account certain indicators when evaluating police performance. Although the EU police have gained considerable experience in evaluating police performance by setting uniform policing standards, these countries are also trying to adjust the performance system of police as the main body to combat crime.

Most European countries evaluate policing by quality, not quantity. This is the philosophy of the Venice Commission (2011), which was chosen by the EU and the Council of Europe as the basic standards for evaluating the quality of work of institutions that ensure the rule of law. The police have special powers to restrict human rights and freedoms on legal grounds. Police officers face a wide variety of situations in their work every day.

The law does not always provide a clear answer to the algorithm of actions of police officers, but law enforcement officers must always make an operational decision on their further actions in a given situation. The rule of law should be a safeguard against human rights violations by the police. That is why policing must be based on the rule of law in its broadest sense.

The aim of this study is to determine the police performance through the prism of the number of detected crimes. The aim provided for the following objectives:

- define and describe European standards of quality of work of law enforcement agencies in the context of ensuring the rule of law;
- consider criteria for evaluating the effectiveness of policing;
- find out the role and place of the level of crime detection in the system of police performance indicators;
- identify the main problems of evaluating the effectiveness of policing and suggest ways to solve them.

1. Literature Review

Many scholars studied the system of police performance indicators and its constituent elements. Examining the police performance from the perspective of detected criminal offenses, Drugă (2020) noted that reduced crime rate is the best police performance indicator, as it can be achieved through highly professional management, the results being constantly presented in the media, as well as professionalism and the rule of law.

Considering the activities of police officers through the prism of their level of education, practical training and experience, Cordner (2022) stated that the efficiency of police activities can be improved by combining the administrative system of influence and acquired level of knowledge, skills and abilities. Lum and Nagin (2017) studied the effectiveness of policing in a democratic society and found that such activities can be improved through indicators of crime prevention and high public confidence in the police. Wechsler, Kümmerli and Dobay (2019) considered policing through the prism of public goods.

The system of police performance indicators and their components were studied by: Richardson, Schultz and Crawford (2019) from the standpoint of human rights violations; Wuschke et al. (2017) - the ratio of police participation in criminal investigation and public safety; Asif, Shahzad, Awan and Akdogan (2018) structured framework for measuring various aspects of police performance for resource allocation, reorientation of activities and identifying ways to improve efficiency, Nepomuceno, Santiago, Daraio and Costa (2020) — the ratio of criminal offenses and exogenous crime, Lum and Nagin (2017) — the ratio of the level of public safety and public confidence in the police.

European police performance indicators have been the subject of research by many scholars. Bilouseac and Armanu (2021) studied the mechanism of the Romanian and French police and found that the Romanian police is more efficient at the local level due to accelerated modernization compared to the French municipal police. Vince (2019) analyses the activities of the Hungarian police and notes its effectiveness through the introduction of the police officer's individual evaluation model a with a bonus system, rather than the influence of subjective factors. Analysing the police influence on the crime rate in Denmark, Laufs, Bowers, Birks and Johnson (2021) noted that the crime rate significantly affects the consciousness of citizens and their trust in the police; Mendel, Fyfe and Heyer (2017) studied policing in the UK from the perspective of its reform and the formation of the optimal structure.

The role of forensic information in policing was studied by Ribaux, Roux and Crispino (2017) who found that the amount of such information increases due to increased costs and inflated control mechanism, which negatively affects the development of police management and public trust in police.

Despite the rather wide range of scientific research on this issue, the issues of the importance of detected criminal offenses in the system of police performance indicators and the formation of public confidence in law enforcement remain incomplete, thus determining the topicality of the chosen subject matter.

2. Methods and Materials

This study was conducted in three stages. The first stage involved the search and study of scientific literature on criminal law, research papers on assessing the effectiveness of policing, the provisions of international treaties on law enforcement, the practice of law enforcement and analysis of statistics of international organizations and national police on crime rates, public trust in the police and public safety. The review of these sources was the basis for the selection of subject matter, aim and objectives of the study.

The second stage provided for a theoretical and experimental study of the chosen topic, which was conducted by comparing their results and analysing the differences. The theoretical study allowed determining the content of the system of police performance indicators from the perspective of the level of public confidence, the ratio of the number of committed and solved crimes, and other additional criteria for evaluating effectiveness. Experimental research based on international standards, the legal framework of European law enforcement and generalization of their practical application, as well as doctrinal analysis of research papers on problematic issues of policing effectiveness, allowed fulfilling the objectives and determining the role of detected crime in the system of police performance indicators.

The third stage involved the final analysis for achievement of the set aim and presentation of the research results.

The study of the research topic was carried out through the use of empirical and theoretical methods of scientific knowledge. Empirical knowledge reflects the content of the object of study — a system of police performance indicators — from the perspective of international legal support in the field of law enforcement and the importance of crime rate for the countries of the world. Scientific, legal, statistical and practical information on the components of the system of police performance indicators was analysed through the method of comparative analysis.

Theoretical knowledge of law enforcement reveals the subject of research from the universal internal, essential connections and patterns, followed by the rational processing of empirical data. An empirical interpretation of the theory and theoretical interpretation of empirical data is carried out, as well as the significance of the level of detected crimes on the police performance of the is revealed through the combination of empirical and theoretical methods.

The sample of scientific research included such objects of research as: general characteristics of law enforcement and its powers in the fight against crime, analysis of criteria for police performance evaluation, the significance of the crime rate for police performance. Statistics on the crime rate of Europol, Numbeo and the national police authorities of European countries allowed identifying the main components of the system of police performance

indicators. The combination of the study of these objects helped to reveal the content of the problems of forming a police performance evaluation system. The research was carried out on the basis of information retrieval and scientometric databases.

International legal acts were the main materials for the study: European Statistics Code of Practice, EU Regulation No. 223/2009 on European Statistics, EU Strategy for the Beginning of the New Millennium (2000/C 124/01) on the Prevention and Control of Organized Crime, the report of the Venice Commission on the rule of law, as well as statistics on the crime rate of Europol, Numbeo, the World Values Survey and the national police authorities of European countries.

3. Results

Police performance indicators should take into account not only the legality of their activities, but also really reflect the state, which allows responding quickly to its changes. Police performance evaluation criteria should also include the parameters of the professional activity of the police officer, which are revealed through the prism of objective and subjective factors. The components of the police performance evaluation system are shown in Figure 1.

Public trust in the police is measured by surveying citizens to determine their views on the effectiveness of the police and violations committed by law enforcement officers in the performance of official duties. The level of public trust in the police is the main criterion for evaluating the effectiveness of policing, as this indicator allows to measure the police performance in general. Other indicators, such as crime rate, the detection rate and the level of interaction, allow reflecting assessments of the effectiveness of individual components of the law enforcement system to improve it and make appropriate management decisions.

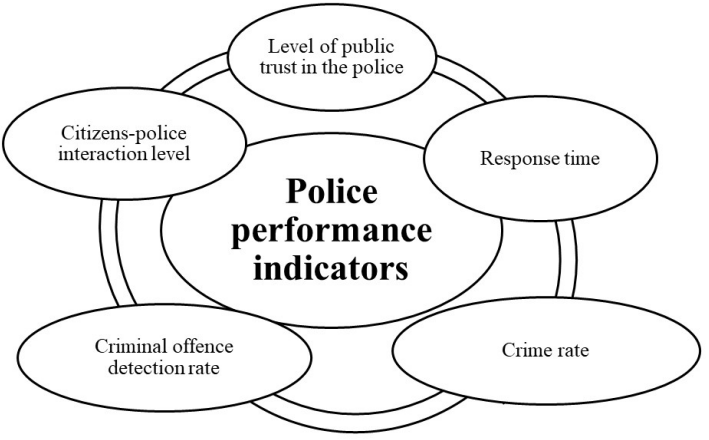

Figure 1: The system of police performance evaluation indicators (on the basis of the literature reviewed)

Source: Authors.

Trust in the police in European countries is high, which is shown in Figure 2. The police are most trusted in Finland (97.9%), Denmark (95.9%), Italy (94.7%), Sweden (94.2%) and Greece (94%). There is a high level of distrust in the police in Bulgaria (18.9 5), where one in five people does not trust the police. The Czech Republic (17.9%), Spain (17.4%), Estonia (17.2%), Hungary (14.3%) and Germany (14.1%) also have high levels of distrust in the police. In other countries, this distrust rate ranges from 12.9 to 2.1% (Potapenko, 2020).

The state of distrust in many European countries is the result of active police interference in people's private affairs and personal lives. Police interference in private life was much more common in Ukraine (9.1%), Romania (8.3%), Cyprus (3.6%), Greece (3.1%) and Germany (2.7%). The level of public trust in the police and law enforcement system in general is significantly influenced by people's consciousness in terms of the priority of their safe life in comparison with material goods and personal development conditions.

According to the Ukrainian Centre for European Policy's Values Survey as part of the World Values Survey, the vast majority of Europeans continue to prioritize a stable economy over the security of their lives (Figure 3). In choosing the priority between economic stability, the transition to a more humane society, where the individual and his ideas are valued, only 14.9% of Romanian citizens prioritize the issue of security of life, crime and effective police measures to combat it as a tool to improve crime rates in their place of residence. The crime situation is also a priority for residents of Germany (13.7%), Cyprus (10.5%), Greece (10.1 5) and Ukraine (9.8%).

Statistics for the formation of a system of police performance indicators in the EU are regulated by the European Statistics Code of Practice (Eurostat, 2017) and EU Regulation No. 223/2009 on European Statistics (European Parliament & Council of Europe, 2009). These European regulatory documents establish uniform requirements within the EU in the field of statistics, standards and rules for statistical processes, as well as results in order to make the European Statistical System more transparent.

In order to intensify the EU's action in the field of organized crime in view of new current challenges and to ensure the rights and freedoms of the European community, which are significantly threatened by new forms of crime, EU Strategy for the Beginning of the New Millennium (2000/C 124/01) on the Prevention and Control of Organized Crime was adopted (Council of Europe, 2000). The provisions of the Strategy are aimed at ensuring a high level of security in the area of freedom, protection and justice, including the introduction of effective legal measures to combat crime in all its forms.

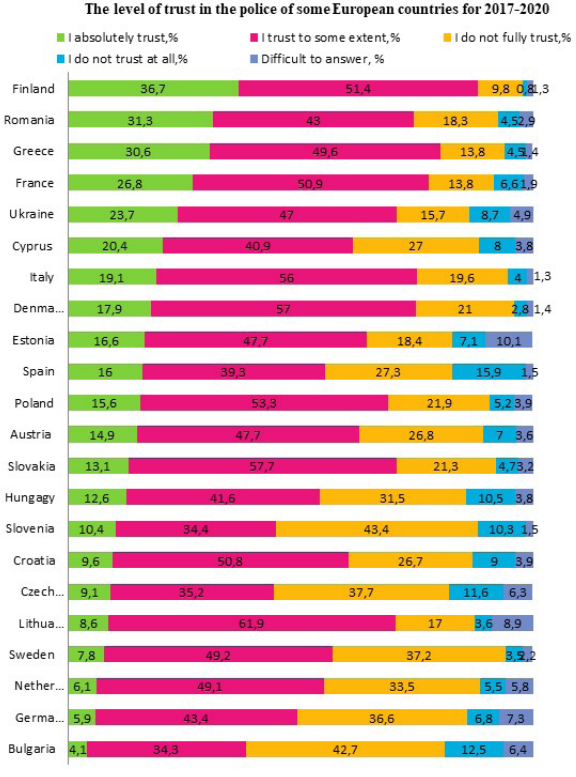

Figure 2: The level of trust in the police in some European countries.

Source: Potapenko (2020, 66-67).

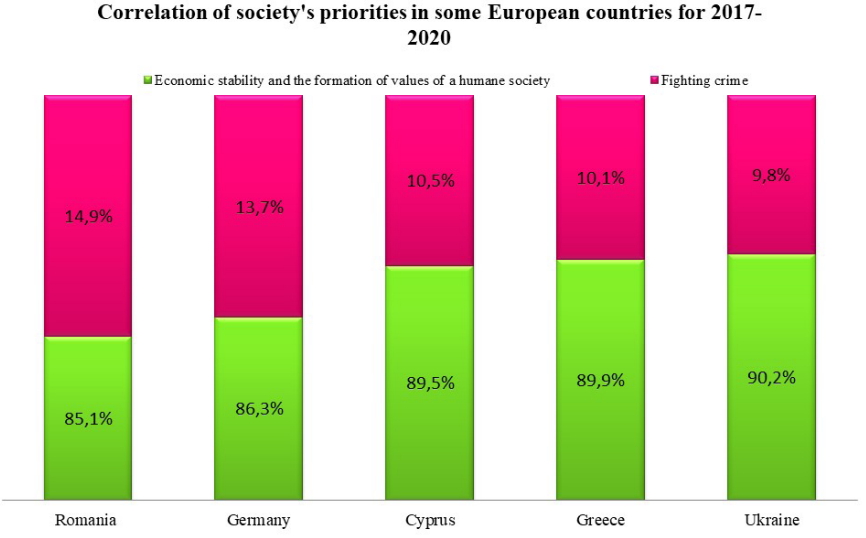

Figure 3: Priority goals of European societies.

Source: Potapenko (2020: 123).

On the territory of the EU, the European Union Agency for Law Enforcement Cooperation (hereinafter — Europol) collects information on criminal offenses, their detection and analyses crime (Europol, 2021). Europol's main activities are to assist States Parties in exchanging information, analysing and processing information on crime, and to assist States in investigating crimes and providing them with background and analytical information. Europol provides information to States Parties on the links between criminal offenses that concern them and prepares strategic reports for crime analysis.

The competence of the said European law enforcement body does not include the coverage of data on the number of registered and detected criminal offenses. Such indicators are disclosed by each state at the national level. Europol conducts research on crimes against the person, financial and cybercrime on the basis of information received from European countries on crime, identifies the risks of such crimes and develops ways to overcome them.

The crime rate and level of public safety in the world is formed by an independent online database Numbeo (n. d.) by surveying its users from around the world. In 2022, the top five safest countries in Europe (according to the Security Index) included Spain, Portugal, Switzerland, Germany

and Norway. The five most dangerous countries in Europe according to the Numbeo Crime Index were led by England, France, Italy, Belarus and Sweden. This year's ranking of the Numbeo crime index was formed with the participation of more than 110 thousand respondents in 6,589 cities around the world.

The 2021 Crime and Security Index of European countries according to Numbeo is shown in Table. 1. Given the data provided in Table 1 we can note that the listed countries with a high crime rate are dangerous countries and have, respectively, completely opposite values of the Security Index. Given that the Numbeo crime rate below 20 is very low, between 20 and 40 is low, between 40 and 60 is medium, between 60 and 80 is high and above 80 is very high, European countries are determined by countries with a medium crime rate (Numbeo, n. d.).

Table 1. European Crime and Security Index, according to Numbeo (as of December 2021)

Place	Country	Crime Index	Place	Country	Security Index
1	Belarus	60.27	1	Greece	55.86
2	France	49.20	2	Belgium	55.83
3	Ukraine	48.28	3	Italy	55.63
4	Sweden	47.20	4	Ireland	54.98
5	Moldova	46.56	5	Britain	54.74
6	Britain	45.26	6	Moldova	53.44
7	Ireland	45.02	7	Sweden	52.80
8	Italy	44.37	8	Ukraine	51.72
9	Belgium	44.17	9	France	50.80
10	Greece	44.14	10	Belarus	39.73

Source: Numbeo (n. d.).

According to the Numbeo server, in 2021 Ukraine ranked 54th in the world out of 135 in terms of crime rate. In Europe, Ukraine ranked third after Belarus and France in the list of the most dangerous and criminal countries in Europe. One of the developed EU countries, France, is on the list as a result of a sharp rise in homicides over the past two years as a result of the Covid-19 health crisis. According to the Ministry of Internal Affairs of France (2022), 681,561 crimes were detected in 2020, which is dozens of times higher than in the 1950's. As of the end of 2021, the situation in the country with crime

and delinquency is gradually stabilizing, but there is still an increase in sexual violence (+11%), theft without violence against people (+5%), theft of property from vehicles (+5 %) etc.

Growing crime rates, to some extent linked to the Covid-19 pandemic, has significantly reduced Europeans' confidence in law enforcement and the EU project as a whole. According to a report by the European Council on Foreign Relations (ECFR) published in 2021, the level of trust fell in half of respondents: the vast majority of the population of France — 62%, Germany — 55%, Italy — 57%, Spain — 52%, Austria — 51%, Poland — 33% (TVN24, 2021).

Despite the fact that Ukraine has a high crime rate, the National Police of Ukraine is recording the opposite dynamics of reducing the number of crimes committed in the country itself. Figure 4 shows the dynamics of criminal offenses, their detection and suspension of cases over the past 5 years.

Figure 4: Dynamics of crime in Ukraine for the last 5 years.

Source: (Office of the Prosecutor General of Ukraine, 2021)

The National Police of Ukraine reports an increased share of grave and especially grave crimes in 2020: 95% of homicides; 97% infliction of grievous bodily harm, including fatalities; 98% of rapes (Cabinet of Ministers of Ukraine, 2021). As a result of changes in the organization of operational

work of Ukrainian law enforcement agencies and the improvement of the quality of documenting criminal offenses, the police managed to increase the detection of grave and especially grave crimes to 45%. According to the EU Advisory Mission to Ukraine, the level of public confidence in the National Police of Ukraine in 2020 was insignificant — 33%, despite the decline in crime rate, including a roughly stable annual crime rate (Ministry of Internal Affairs of Ukraine, 2021).

For comparison, in the EU this figure ranges from 39% in Hungary to 94% in Finland. Only the balance of trust/distrust indicator in the National Police of Ukraine has a positive trend (+5.8%). In order to improve the level of public trust in the national police, Ukraine has joined the Open Police project of the United Nations Recovery and Peacebuilding Programme. This Programme is implemented with the participation of four UN agencies: the United Nations Development Programme, the United Nations Plan for Gender Equality and Empowerment of Women, the United Nations Population Fund and the Food and Agriculture Organization of the United Nations.

Given the criminogenic situation in Ukraine, its crime rate in the international arena and the indicator of national trust of Ukrainians in the police, we can note that the system of police performance indicators should be based on the indicator of trust in the police, being then summarized in the number of crimes and the number of detected criminal offenses. The state of the crime detection rate reflects the realities of the organization of police activities, the mechanism of their legal activities, the use of policing tools, as well as the real state of their personnel, resource, social and legal support.

4. Discussion

The effectiveness of policing significantly depends on the police performance — the ratio of the number of detected and solved crimes during the reporting period. The state of crime detection by the police and the transfer of criminal cases to court with the participation of the police reflects the realities of police activities in combating crime and the problems in the use of effective legal means by the police in the performance of their duties.

Cordner (2022, p. 202-210) believes that the long-term police performance can be improved by establishing an administrative system of influence, including management supervision, control, discipline, fines, etc. Lum and Nagin (2017) follow this approach to improving policing. According to them, the main indicators of police activity should not be the number of arrests, but the measures taken to prevent crime and statistics of

detected crimes. Richardson, Schultz and Crawford (2019) note that such statistics on crime prevention, crime detection and criminal prosecution cannot, however, objectively assess policing, as such results of policing are accompanied by significant risks to their activities and the decreasing public confidence in this law enforcement agency. This position is supported by Wuschke et al. (2017), as only 20% of the daily workload of the police is related to the detection of criminal offenses, and 80% — to public security issues.

According to Demou, Hale and Hunt (2019, p. 702-706), the workload of the police officer, his/her psychological state should be taken into account for an objective calculation of the effectiveness of the police, while according to Lum and Nagin (2017) and Dau et al. (2021) — the ratio of the level of public security and public trust in the police.

Ashby and Tompson (2017, p. 109-111) and Laufs et al. (2021) believe that the crime rate formed by the police significantly affects the consciousness of citizens regarding the security of public life, their views on policing and trust in law enforcement; Wechsler, Kümmerli and Dobay (2019, p. 412-418) found that public trust in the police is formed as a public good even at the level of human biological processes because it is an extremely important factor in the prevention of crime. According to Pehkonen (2021, p. 615-617), public trust in police officers is established not only in the process of their direct communication with citizens, but also under the influence of different media. As Ribaux, Roux and Crispino (2017, p. 489-493) stated, the amount of forensic information is constantly increasing due to increased costs and inflated control mechanism, which leads to the deterioration of the model of police management and the formation public of trust in police.

When calculating the crime rate, Bove and Gavrilova (2017, p. 2-4) propose to take into account the data of the military police involved in the fight against street crime and public safety. According to Mummolo (2018), the importance of the military police in combating crime is twofold: it improves public confidence in the police on the one hand, while their activities do not improve the rate of crime committed by violence, robbery, etc. on the other. When calculating police performance indicators, Nepomuceno et al. (2020) propose not to take into account indicators of exogenous crimes (murder, violence, crimes against property), because the indicators of such crimes can only rank structural units according to their qualifications, rather than reflect the real state of law enforcement.

As Asif et al. (2018) noted, improving the efficiency of policing will help determine the optimal allocation of resources, reorientation of activities, and identify ways to improve police performance. According to Drugă (2020), reduced crime rate is the best police performance indicator, as it can be achieved only through highly professional management, the results of which are constantly presented in the media, as well as taking into

account professionalism and the rule of law. In Wilson's (2019) opinion, statistical indicators of policing are important for the formation of public safety platforms.

The efficiency of the European police has a number of country-specific features. According to Bilouseac and Armanu (2021: 39-41), the Romanian police is more efficient than the French municipal police at the local level due to accelerated modernization. Vince (2019) emphasizes that the introduced model of individual evaluation of the work of a police officer with a bonus system in Hungary is more effective in improving the policing than the assessment of subjective factors. Analysing the activities of the police in England and Western Europe, Mendel, Fyfe and Heyer (2017, p. 3-6) argue that the effectiveness of policing depends on its optimal structure and effective management model, as in Scotland and the Netherlands.

We can note on the basis of the doctrinal analysis of the problems of selection of criteria for evaluating police performance and components of the system of police performance indicators that researchers consider it reasonable to further study the formation of a system of indicators of the level of effectiveness of law enforcement from the perspective of detected crimes, effective recommendations for their practical implementation, which adjusts the content and directions of law enforcement development.

Conclusion

Policing should be based on the rule of law. The system of police performance indicators should take into account not only the legality of their activities, but also reflect the real state, which allows responding quickly to its changes. When calculating the police performance, the level of trust in the police should be taken into account first, then followed by the indicators of the number of crimes committed and the number of detected criminal offenses.

The system of police performance indicators is formed by such basic criteria as: the level of public trust in the police as a fundamental indicator that reflects the real state of crime and security in the country; response time to the offense; crime rate and public security; crime detection rate; citizens-police interaction level.

The crime detection rate is evaluated by the indicators of reporting on the closure of a crime based on the completion of police investigations into a criminal case with its subsequent transfer to court to determine the punishment or release from punishment. The crime is also considered solved if the case is closed on the basis of the death of the accused due to the lack of corpus delicti.

Developing criteria for police performance evaluation is the prospect of further research. Therefore, we see further prospect in the empirical research, as well as theoretical and methodological justification of effective mechanisms for implementing a system of police performance indicators, including not only the level of public confidence in the police, the crime rate and the number of detected crimes during the reporting period, but also other significant indicators that are necessary to ensure the proper policing.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 108-127
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

International institutions in the mechanism for the protection of human rights and freedoms in the national security context

DOI: https://doi.org/10.46398/cuestpol.4073.05

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Abstract

The objective of the article was to determine how effective international institutions are in the mechanism for the protection of human rights and freedoms in the context of national security. The methods of statistical analysis, correlation analysis, generalization and analogy, hypothetical-deductive model were used to achieve the proposed objective. In addition, international institutions were identified that are directly concerned with the protection of rights and freedoms in the event of their violations at the regional level. The correlation was established between the level of human rights protection and the level of national security, the number of international human rights treaties ratified, the number of cases brought before international regional human rights courts. It concludes that international institutions are effective in the mechanism for the protection of human rights and freedoms in regions with a weak national system for the protection of human rights and freedoms. Identifying factors affecting the level of protection of human rights and

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Recibido el 14/03/2022 Aceptado el 28/05/2022

freedoms in the context of national security in countries with a weak national protection system may be the prospect of further investigation.

Keywords: international court; international organizations; national security; international community; global protection.

Instituciones internacionales en el mecanismo de protección de los derechos humanos y las libertades en el contexto de la seguridad nacional

Resumen

El objetivo del artículo fue determinar qué tan efectivas son las instituciones internacionales en el mecanismo de protección de los derechos humanos y las libertades en el contexto de la seguridad nacional. Se utilizaron los métodos de análisis estadístico, análisis de correlación, generalización y analogía, modelo hipotético-deductivo para lograr el objetivo planteado. Además, se identificaron instituciones internacionales que se ocupan directamente de la protección de los derechos y libertades en caso de sus violaciones a nivel regional. Se estableció la correlación entre el nivel de protección de los derechos humanos y el nivel de seguridad nacional, el número de tratados internacionales de derechos humanos ratificados, el número de casos presentados ante los tribunales regionales internacionales de derechos humanos. Se concluye que las instituciones internacionales son efectivas en el mecanismo de protección de los derechos humanos y las libertades en regiones con un débil sistema nacional de protección de los derechos humanos y las libertades. La identificación de los factores que afectan el nivel de protección de los derechos humanos y las libertades en el contexto de la seguridad nacional en países con un sistema de protección nacional débil puede ser la perspectiva de una mayor investigación.

Palabras clave: corte internacional; organizaciones internacionales; seguridad nacional; comunidad internacional; protección global.

Introduction

Shumilo (2018) states that World War II clearly demonstrated that human rights need to be protected, where international protection is not an exception. Enshrinement of human rights in national and international regulations provides the background for their enforcement. Ramcharan

and UN Acting High Commissioner for Human Rights (2004) notes that personal, international and national development is based on respect for human rights, while their observance and enforcement prevent national conflicts.

The mechanism for the protection of human rights and freedoms consists of many national and international links that form an interdependent system. Many public areas, including national security, are affected by the effectiveness of the interaction of institutions for the protection of human rights and freedoms. This is why in case that national remedies for the protection of human rights are exhausted, the international community performs its functions in resolving the conflict. International institutions shall determine whether the violations of human rights took place, and if so — which human rights were violated, how disputes between the state and the citizen should be resolved with due regard of the interests of the national security. In other words, as Bozeman (1982) explains, the international community assumes the role of judge in the internal conflict.

1. Research Objectives

The aim of the research was to establish how effective the international institutions are in the mechanism of protection of human rights and freedoms in the national security context.

The aim involved the following research objectives:

1. Identify international institutions that directly deal with the protection of rights and freedoms in case of their violations, as well as countries against which the largest and smallest number of applications filed with the identified international institutions.
2. Analyse statistical indicators of the level of the protection of human rights, the level of national security, as well as the work of international regional courts of human rights.
3. Find out the extent of the relationship between the level of the protection of human rights and the national security level, the number of ratified international human rights treaties, the number of cases filed with the international regional courts of human rights.
4. Prove or disprove assumptions about the effectiveness of international institutions in the protection of human rights and freedoms in the national security context.

2. Literature Review

For all civilized nations of the world, the proclamation of the principle of the priority of human rights and freedoms in relation to the state is one of the greatest values. In the national security context, as Shmotkin (2017) noted, this priority affects the entire system of links between the elements of the national security framework in some way, especially the activities its actors, where the state represented by its bodies is the main actor. Chyzhov (2021) emphasises that everyone's rights should be considered protected and their interests secured only in case of no threats to the country's security.

There are two main security theories. The first is the traditionally state-centred security concept, the second is the human security theory. State-centred security is based on the idea that all members of society and individual interests are subordinated to the interests of the state. The aim of the concept is to protect the state from the threat of military aggression and preserve the territorial integrity of the state. State institutions shape state national security policy. Government bodies are entrusted with the development and approval of strategies to ensure national security. This theory has a disadvantage: a secure state does not necessarily mean the personal security of citizens. National security is important for the protection of citizens from foreign military aggression, but it does not guarantee the security of citizens (Pranevičienė and Vasiliauskienė, 2018).

Human rights and freedoms are one of the key aspects of international relations, so they are not reduced to the internal guarantees provided for individual countries. The effective realization of human rights and freedoms strengthens democracy, peace, security and prosperity, thus preventing aggression, corruption, crime and global humanitarian crises. This is why it is necessary to promote and strengthen multilateral, both international and regional, human rights mechanisms and promote their effective activities (Ministry of Foreign Affairs of the Republic of Lithuania, 2021).

The institutions engaged in the protection of human rights and tools used for that purpose operate at the international, regional and subregional. Mizanie and Alemayehu (2009) indicate that more than 500 international organizations of various sizes in the world have been established because of the need to address transnational challenges. Neuman (2019) defines an international organization as an organization established by a treaty or other international instrument and having its international legal personality.

International organizations are distinguished in the literature according to the relevant criteria. The laws governing the organization are one of these distinctions. Mantu (2019) writes that the organization is called international or at least intergovernmental when its activities are regulated by international law. Neuman (2019) states that there are hundreds of international organizations that have different degrees of influence and

range of functions, from huge ones, such as the UN and the World Bank, to bilateral border waters commissions. Mantu (2019) notes that some actors may not meet the criteria that distinguish international organizations, but they may be international in nature and may be assigned specific tasks under international law. Neuman (2019) indicates that it is a mistake to conclude that human rights should be universal and directly link all public authorities and international organizations.

The universal system of the protection of human rights has become extensive and complex over the past decades. It currently includes the following organizations and mechanisms: the UN General Assembly, the UN Human Rights Council and its subsidiary bodies and mechanisms; the UN Security Council and a number of its specialized mechanisms; the United Nations Economic and Social Council and its Commission on the Status of Women and the United Nations Permanent Forum on Indigenous Issues; UN International Court of Justice; the UN Secretariat and its separate subdivisions; treaty (convention) human rights bodies; some specialized agencies of the United Nations (International Labour Organization); United Nations Educational, Scientific and Cultural Organization; temporary and special mechanisms for the protection of human rights established by UN agencies.

It should be noted that regional mechanisms are being actively developed in addition to universal mechanisms for the protection of human rights: the Council of Europe and the European Court of Human Rights, the Inter-American Commission on Human Rights, etc. Shumilo (2018) point out an active work of the regional international courts that monitor the protection of human rights by the states.

The International Criminal Court operates as a centre for the protection of human rights. International crimes, which are the cruellest human rights violations, often require the coordinated actions of the international community in order to solve the problem. Many human rights violations that are not serious international crimes should be addressed by the internal system of the state concerned. But the countries have sought to protect the human rights of their citizens through joint conventions in support of such efforts. This resulted in the establishment of appropriate courts of human rights in European, American and African countries. The Asia-Pacific region is the only region that has not established the courts of human rights. Chang-ho Chung (2016) emphasises that there is an even greater need to establish it than ever before with regard to the population, economic power and dynamic political situation of this region.

The mechanisms of international protection of human rights and freedoms, which are to implement the norms of multilateral conventions, as well as other relevant legal standards that are not enshrined in treaties, are covered in hundreds of books and articles. Nevertheless, there are

still many controversial issues to be reviewed. In particular, human rights are a dynamic area and some provisions of international regulations are outdated. Tomuschat (2020) notes that many studies are reduced to one particular aspect, one institution, one procedure, while the current focus is to compare different mechanisms with similar goals.

3. Research Materials and Methods

The main approach in studying how effective the international institutions are in the mechanism of protection of human rights and freedoms in the national security context was the identification of international institutions that directly deal with the protection of rights and freedoms in case of their violations, as well as countries with the largest and smallest number of applications filed with such international institutions.

We believe that the analysis of the indicators under research in these countries best reflects the effectiveness of the protection of human rights and freedoms.

The relationship between the level of protection of human rights and the national security level was studied using the method of statistical analysis of the Human Rights Index and the Security Threats Index in different regions. Besides, we analysed the statistical indicators of the number of applications filed with the European Court of Human Rights, African Court of Human and People's Rights, Inter-American Court of Human Rights for 2015-2019 using the statistical method.

The correlation analysis was involved to establish the relationship: between the Human Rights Index and the Security Threats Index for period 2015 - 2019 by year and by country; between applications pending before the European Court of Human Rights and the Human Rights Index 2015-2019 by year and by country; between the number of cases tried by the African Court on Human and Peoples' Rights and the Human Rights Index in 2016-2019 by year and in 2015-2019 by country; between the number of cases tried by the Inter-American Court of Human Rights and the Human Rights Index for 2015-2019 by year and country; between the 2019 Human Rights Index in Luxembourg, Chile, Benin, Turkey, Colombia, Poland, Sudan, Syria, Oman and the number of ratified international treaties in these countries.

The following formula of correlation analysis was used in the study:

$$r=\frac{\sum(x_{1i}-\bar{x}_1)\cdot(x_{2j}-\bar{x}_2)}{\sqrt{\sum(x_{1i}-\bar{x}_1)^2}\cdot\sqrt{\sum(x_{2j}-\bar{x}_2)^2}}$$

where x_1 — Human Rights Index and x_2 – Security Threats Index, r – linear correlation coefficient.

The assumptions about the effectiveness of international institutions in the mechanism of protection of human rights and freedoms in the national security context were proved with the use of the hypothetico-deductive model, the method of generalization and analogy.

The study involved the most significant scientific works that reflect the development of scientific thought in the field of protection of human rights and freedoms, in the national security context including, as well as international institutions in the protection of these rights from 1982 to 2022.

The following indicators are analysed in the research:

- Human Rights Index for 2015 – 2019 reported in Our World in Data.
- Security Threats Index for 2015 – 2019 reported in The Global Economy.com.
- Applications filed with the European Court of Human Rights for 2015 – 2019 reported by European Court of Human Rights.
- Applications filed with the African Court on Human and Peoples' Rights for 2015 – 2019 reported by the African Court on Human and Peoples' Rights.
- Cases tried by the Inter-American Court of Human Rights by country for 2015 – 2019 reported by the Inter-American Court of Human Rights.
- The number of ratified international human rights treaties by country reported in Our World in Data.

4. Results

National security creates a background for a stable life of citizens and the development of all spheres of state, in particular the conditions for the observance and realization of human rights and freedoms. Objects of

national security include the constitutional rights and freedoms of man and citizen. So, ensuring their protection is a priority in the national security of countries.

The mechanism for the protection of human rights and freedoms includes national and international institutions. The globalization of all spheres of life demonstrates their deep relationship between all countries of the world. Therefore, human rights and freedoms in this area goes beyond national borders in today's world.

National institutions for the protection of human rights and freedoms have their advantages and disadvantages. The advantages include taking into account all the causes and features of internal conflicts and the use of effective tools to protect them in a particular region. The disadvantage is the high-level corruption in the public sphere in countries with high levels of human rights violations. This is why the Member States have adopted international acts establishing international organizations with appropriate functions to ensure the creation of the background for the observance and protection of human rights and freedoms and national security. This is evidenced by the historical background for the creation of the United Nations after the Second World War, which aims to support international peace and security.

The UN notes that violence and conflict undermine sustainable development. Human rights violations are the root causes of conflicts and vulnerabilities, which in turn invariably lead to further human rights violations. This is why actions to protect and promote human rights are inherently preventive, while rights-based approaches to peace and security add to the efforts for sustainable peace. The human rights framework also provides a solid background for addressing serious concerns within or between countries that could lead to conflict if left unaddressed. Human rights information and analysis is a tool for early prevention and early targeted action that has not yet been fully used. According to the United Nations (n.d.b), non-compliance with international human rights standards and the protection of human rights undermines peacekeeping and peacebuilding efforts.

The results of the calculated correlation between the Human Rights Index (shows the extent to which the physical integrity of citizens is protected from murder, torture, political imprisonment, mass murder and abduction, where higher values mean fewer violations) and the National Security Threat Index (the index takes into account security threats to the state, such as explosions, attacks and deaths in battles, insurgency, riots, coups or terrorism, organized crime and murder, and apparent public confidence in internal security, where higher values mean more threats in the country) from 2015 to 2019 show the following values of the correlation coefficient: Luxembourg — 0.69, Iceland — -0.27, Peru — -0.63, Ukraine

— -0.80, Ethiopia — -0.02, Sudan — -0.25, Oman — 0.006, Syria — 0.70 (Table 1 and Table 2).

Table 1. Human Rights Index

Country	2015	2016	2017	2018	2019
Europe					
Luxembourg	5.33	5.32	5.31	5.31	5.31
Iceland	5.16	5.16	5.15	5.15	5.16
Ukraine	- 1.02	- 0.99	- 1.00	- 0.98	- 0.77
Turkey	- 1.13	- 1.33	- 1.42	- 1.53	- 1.72
Romania	1.22	1.25	1.26	1.32	1.41
Russia	- 0.98	- 1.08	- 1.08	- 1.16	- 1.19
Poland	2.12	2.02	1.92	1.80	1.83
Africa					
Ethiopia	- 1.95	- 2.00	- 1.92	- 1.90	- 1.74
Sudan	- 2.07	- 2.08	- 1.78	- 1.79	- 1.94
Cote d'Ivoire	- 0.22	- 0.15	- 0.08	0.04	0.01
Mali	- 1.12	- 1.14	- 1.24	- 1.71	- 1.77
Benin	1.06	1.08	1.06	1.02	0.94
Tanzania	0.11	0.01	- 0.05	- 0.07	- 0.08
South America					
Peru	0.82	0.96	1.02	1.06	1.07
Argentina	0.97	1.06	1.10	1.17	1.26
Bolivia	1.13	1.07	1.06	0.88	0.47
Chile	1.33	1.28	1.31	1.21	0.53
Colombia	- 0.80	- 0.66	- 0.57	- 0.48	- 0.47
Ecuador	0.79	0.81	0.91	0.94	0.90
Asia					
Oman	1.16	1.06	1.09	1.12	1.13
Syria	- 1.72	- 1.68	- 1.76	- 1.79	- 2.04

Source: Our World in Data (2020).

Table 2. Security Threats Index

Country	2015	2016	2017	2018	2019
Luxembourg	2.00	1.40	1.70	1.40	1.30
Iceland	1.00	0.80	1.00	0.80	0.70
Peru	7.10	6.80	7.10	6.80	6.50
Ukraine	7.90	7.40	7.60	7.40	7.10
Ethiopia	8.40	8.10	8.40	8.70	8.20
Sudan	9.50	8.70	9.00	8.70	8.40
Oman	4.7	4.4	4.2	3.9	3.6
Syria	10	10	9.8	9.9	9.8

Source: The Global Economy.com (2022).

Therefore, the values are ambiguous thus not allowing to state a direct dynamic link between national security and human rights protection in the selected countries. European countries with a high level of protection of citizens' rights have different correlation indices. Luxembourg has a medium level of positive correlation between the indicators studied, while Iceland has a low level of negative. This means that during 2015-2019 the security threat and the human rights index are interdependent areas and are changing dynamically, while in Iceland, which has a high level of human protection, the security threat is low and the correlation is negative, thus indicating the inverse interaction of dynamics of the areas under research.

The results of the calculated correlation between the Human Rights Index and the Security Threats Index by year for 2015 - 2019 in the studied countries are the following: the correlation coefficient in 2015 is -0.97, 2016 is 2019 is -0.96. These values indicate a high-level negative relationship between the protection of human rights and the national security threats, which means that the low level of protection of human rights corresponds to a high level of threat to national security.

The international community is developing human rights standards and special tools to protect them. In particular, international courts are established on the basis of international regulations: the International Criminal Court was established on the basis of the Rome Statute, the International Court of Justice, and the courts of the region: the European Court of Human Rights, the Inter-American Court of Human Rights. Human Rights. Their main function is to protect human rights and freedoms. Their statistics are the basis for calculating the correlation between the Human Rights Index and the number of cases tried in the courts of each region.

This is how we will determine the effectiveness of the relevant court and its impact on the Human Rights Index.

The correlation coefficient between the applications filed with the European Court of Human Rights and the Human Rights Index for 2015-2019 is: Turkey — -0.15; Luxembourg — -0.40; Russia — -0.87; Ukraine — -0.35; Romania — -0.69; Poland — 0.75; Iceland — -0.04 (Table 3).

Table 3. Applications filed with the European Court of Human Rights

Country	2015	2016	2017	2018	2019
Turkey	2,212	8,303	25,978	6,717	7,274
Russia	6,003	5,587	7,957	12,148	12,782
Ukraine	6,007	8,644	4,387	3,207	3,991
Romania	4,604	8,192	6,509	3,369	2,656
Poland	2,178	2,422	2,066	1,941	1,834
Luxembourg	22	38	38	35	23
Iceland	10	24	27	24	40

Source: European Court of Human Rights (2020), European Court of Human Rights (2019).

Thus, there is a negative correlation between the number of applications filed with the European Court of Human Rights and the Human Rights Index during that period. The exception is Poland, which had a medium level of human rights protection.

The correlation coefficient between the Human Rights Index and the number of applications files with the European Court of Human Rights for 2015 - 2019 in the selected European countries is: in 2015 — -0.83, 2016 — -0.88, 2017 year — -0.67, 2018 — -0.77, 2019 — -0.80. Thus, in the period 2015-2019, there is a high level of negative correlation between the human rights index and the number of applications filed with the European Court of Human Rights.

Therefore, the results of the correlation of the indicators under research by country and year indicate a direct negative correlation between the protection of human rights and the number of applications filed with the European Court of Human Rights. This result indicates the imperfection of the national system of the protection of human rights, as well as high-level confidence and effectiveness of the European Court of Human Rights.

The correlation between the number of cases tried by the African Court on Human and Peoples' Rights and the Human Rights Index is as follows: Mali for 2016 - 2019 — -0.93, Tanzania for 2015 - 2019 — 0.38, Benin for 2017 - 2019 — -0.99, Cote d'Ivoire for 2016, 2017, 2019 — 0.88 (Table 4).

Table 4. Applications filed with the African Court on Human and Peoples' Rights

Country	2015	2016	2017	2018	2019
Cote d'Ivoire	-	2	1	-	25
Mali	-	4	4	7	6
Benin	-	-	1	4	13
Tanzania	25	51	19	20	16

Source: African Court on Human and Peoples' Rights (2022).

Thus, in the analysed countries the correlation coefficient has ambiguous values, for example, in Tanzania — a country where the African Court on Human and Peoples' Rights tried 131 cases during the study period, the correlation coefficient indicates a low level of correlation with the Human Rights Index. At the same time, 18 cases were tried in Benin in 2017-2019 and the correlation coefficient has the most negative correlation ratio. The same correlation ratio is observed in Mali with a high level of negative and Cote d'Ivoire with a high level of positive relationship.

The correlation coefficient of these indicators for 2016 — 2019 is as follows: 2016 — 0.57, 2017 — -0.12, 2018 — -0.06, 2019 — 0.52. The results are dynamic, because the medium level of positive relationship was recorded in 2016 and 2019, while in 2017 and 2018 the minimum level of negative relationship was found.

The correlation coefficient between the number of cases tried by the Inter-American Court of Human Rights and the Human Rights Index for 2015-2019 is the following: Argentina — 0.83, Bolivia — 0.52, Chile — 0.45, Colombia — 0.41, Peru — 0.26, Ecuador — -0.96 (Table 5).

Table 5. Cases tried by the Inter-American Court of Human Rights by country

Country	2015	2016	2017	2018	2019
Argentina	6	2	6	10	18
Bolivia	3	6	5	2	-
Chile	4	2	3	5	2
Colombia	8	10	23	10	15
Peru	17	20	10	25	21
Ecuador	15	15	4	5	6

Source: Inter-American Court of Human Rights (2022).

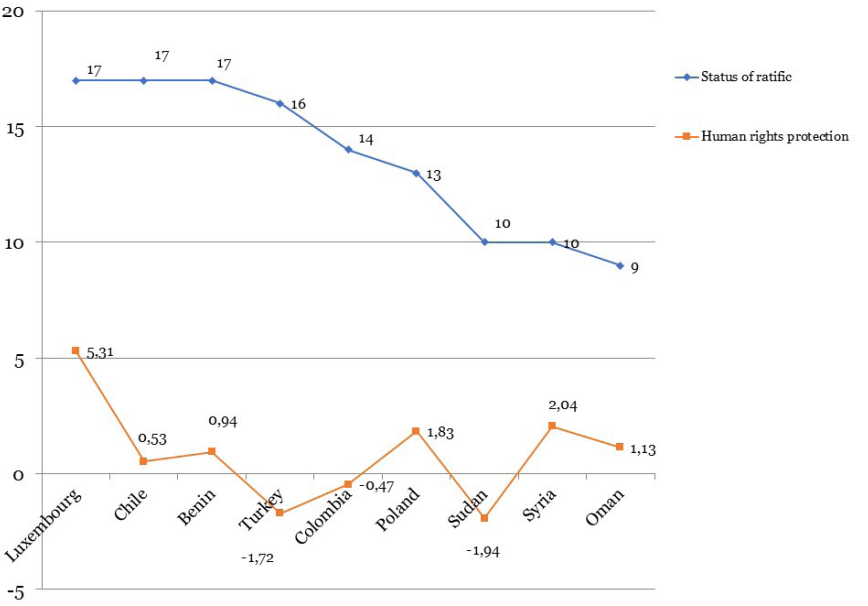
Thus, the correlation coefficient in the selected countries has positive correlation values, except for Ecuador, where the correlation value has a high negative level.

The correlation between the Human Rights Index and the number of cases tried by the Inter-American Court of Human Rights was also dynamic: in 2015 — -0.15, in 2016 — -0.21, in 2017 — -0.95, in 2018 — 0.01, in 2019 — 0.16.

So, the interdependence of the level of the protection of human rights and the number of applications filed with the regional international courts gives grounds to conclude that countries and regions with negative interdependence have weak national protection systems that require additional international protection of human rights. In countries with positive interdependence, the national system of protection of human rights and freedoms and the international system coherently perform their functions as a single mechanism for the protection of human rights and freedoms.

The tools that international human rights institutions use are international regulations adopted by international organizations, which enshrine such rights. Their effectiveness can be determined by comparing the Human Rights Index with the number of ratified international human rights treaties (Figure 1).

Figure 1. Protection of human rights and the number of ratified international human rights treaties



Source: Built on the basis of: United Nations Human Rights (2022), Our World in Data (2020).

The correlation coefficient between the Human Rights Index in 2019 in Luxembourg, Chile, Benin, Turkey, Colombia, Poland, Sudan, Syria, Oman and the number of ratified international treaties in these countries is 0.19. That is, the positive interdependence between the indicators under research is low.

5. Discussion

De Schutter (2010) notes that international organizations are established as a tool of institutionalizing forms of interstate cooperation on the enforcement and protection of rights. The international cooperation has been necessitated by the global interrelation and interdependence between the nations that the world has experienced and continues to experience since the end of the Cold War. According to the United Nations (n.d.a), security, which is the deep interrelation of the security of each state, taking into account the security of other states, is one of the main issues to be addressed by the global security sector.

As the Australian Human Rights Commission (2007) states, the international human rights regulations enshrine tools that enable governments to balance national security and human rights. At the same time, Morris (2020) emphasize that they do not provide protection for internal situations regarding their violation. The results of the study prove that the protection of human rights does not directly depend on the number of ratified international treaties. Therefore, Morris (2020) notes that the international tools for the protection of human rights are weak where national security intersects with human rights violations at the domestic level.

Kumar (2005) states that the protection of human rights and the national security level are interdependent. The high level of negative relationship between the Human Rights Index and the Security Threats Index indicates a direct interdependence between the protection of human rights and national security.

In turn, Zeleza (2007) and Sarkin (2017) underline that human rights are inalienable, universal, indivisible — they underlie all national and international regulations, but in practice this is not the case and all countries have problems with human rights. States fulfil their obligations related to human rights through legislation, courts, administrative bodies and the public. Neuman (2019) indicates that international organizations contribute to this protection in different ways — by providing guidance, assistance, monitoring and support. At the same time, Goodman (2020) emphases that the interaction between national authorities and international institutions in the mechanism for the protection of human rights and freedoms is an important factor in achieving results.

Bozeman (1982) proved that public authorities have their own peculiarities in the mechanism for the protection of human rights and national security in all countries, and therefore they differ from each other rather than coincide in a specific model of their assigned functions. The protection of human rights by regional intergovernmental organizations has both the advantages regarding global international organizations: the involvement of fewer states facilitates political consensus on the development of tools and establishment of institution for the fulfilment of the assigned tasks; regional systems may also be more accessible, as geographical distances are shorter (Mantu, 2019), and disadvantages: the extension of international organizations to all areas of intergovernmental cooperation causes numerous conflicts with international human rights law (Zagel, 2018).

Therefore, it is appropriate to establish international institutions for the protection of human rights and freedoms in certain regions of the world, which differ in mentality, structure, religious views, culture, geographical location in view of their number and range of influence.

International regional institutions, which directly deal with the protection of human rights and freedoms, include international regional courts. The results of the study indicate the appropriateness of establishing international regional institutions for the protection of human rights and freedoms. They are effective in case of shortcomings in the national mechanism for the protection of human rights, which fails to provide an adequate level of protection of human rights and, consequently, national security. The region of Southeast Asia has no international regional court of human rights. It is appropriate to establish an international regional court that will protect human rights in view of the cultural, religious, economic, mental peculiarities of this region (Gunawan and Elven, 2017).

Conclusions

The background which is built for the observance and realization of human rights and freedoms is a guarantee of development and security in every state. Human rights and freedoms are the primary object of protection in case of encroachment. The direct relationship between the protection of human rights and the national security level was proved.

At the same time, it is established that international legal acts as the tools used for the protection of human rights and freedoms, do not directly affect the level of protection of human rights.

Therefore, an adequate level of protection of human rights and freedoms ensures adequate national security and vice versa. But historical facts evidence that the national level of protection is not sufficient, which urged the adoption of a number of international regulations as the background for the establishment of international communities with different scales of their activities.

The study found that in countries and regions with a negative correlation between the level of the protection of human rights and the number of applications filed with the regional international courts (European Court of Human Rights, African Court of Human and Human Rights, Inter-American Court of Human Rights) is a weak national system of human rights protection that requires additional international protection of human rights. In countries with positive interdependence, the national system of protection of human rights and freedoms and the international one performs their functions in a unified mechanism in the protection of human rights and freedoms.

Therefore, international institutions in the mechanism for the protection of human rights and freedoms in the national security context are effective in performing their functions.

Southeast Asia is the only region which does not have the international regional court of human rights, so it is appropriate to develop a mechanism to establish it in order to ensure international protection of human rights and freedoms in this region with the use of the results of the study.

The results of the study can also be used to develop strategies to increase the national security level and make the national system of protection of human rights and freedoms more effective.

The prospects of further research include the identification of factors that affect the level of protection of human rights and freedoms in the national security context in countries with a weak system of national protection.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 128-150
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Fiscal decentralization practices in developing countries

DOI: https://doi.org/10.46398/cuestpol.4073.06

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Abstract

The objective of the article was to identify and describe the current state of fiscal decentralization in Ukraine, Armenia and Georgia and the problems and achievements of territorial communities. Observation and comparative analysis were the main tools used. The study showed that effective fiscal decentralization of territorial communities requires the implementation of the relevant experience of developing countries that have achieved significant results. Fiscal decentralization, the transfer of taxes and spending powers to lower levels of government has become an important strategy for modern governance in developing countries. Fiscal decentralization is facilitated by a combination of citizens' struggle to actively participate in the management process and dissatisfaction with the outcomes of the centrally planned economy. It is concluded that adequate decentralization strengthens the organs of local self-government and forces states to be more accountable to their citizens. In this regard, the adequacy and prospects of Sweden's fiscal decentralization approach were also noted as a model worthy of study.

Keywords: decentralization; fiscal administration; distribution of competencies; fiscal potential; decentralization Index.

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Recibido el 14/03/2022 Aceptado el 21/05/2022

Prácticas de descentralización fiscal en los países en desarrollo

Resumen

El objetivo del artículo fue identificar y describir el estado actual de la descentralización fiscal en Ucrania, Armenia y Georgia y los problemas y logros de las comunidades territoriales. La observación y el análisis comparativo fueron las principales herramientas utilizadas. El estudio mostró que la descentralización fiscal efectiva de las comunidades territoriales requiere la implementación de la experiencia relevante de los países en desarrollo que han logrado resultados significativos. La descentralización fiscal, la transferencia de impuestos y facultades de gasto a los niveles inferiores de gobierno se ha convertido en una estrategia importante para la gobernanza moderna en los países en desarrollo. La descentralización fiscal se ve facilitada por una combinación de la lucha de los ciudadanos por participar activamente en el proceso de gestión y la insatisfacción con los resultados de la economía centralmente planificada. Se concluye que una descentralización adecuada fortalece los órganos de autogobierno local y obliga a los estados a ser más responsables ante sus ciudadanos. En este sentido, como modelo digno de estudio se señaló además la idoneidad y las perspectivas del enfoque de descentralización fiscal de Suecia.

Palabras clave: descentralización; administración fiscal; distribución de competencias; potencial fiscal; índice de Descentralización

Introduction

The long-term economic impact of the COVID-19 pandemic has disrupted traditional financial flows in many countries. Ali *et al.* (2022) state that this trend indicated an urgent need to intensify the mobilization of domestic resources and improve the national tax administration. Strengthening and using the full potential of domestic taxation is one of the most important sources of development financing and should therefore be a policy priority for modern governments. The above transformations are especially relevant in developing countries.

Many developing countries around the world are transferring responsibility to lower levels of government, as decentralization is considered vitally important for achieving sustainable economic growth and development. Teremetskyi *et al.* (2021) indicate that the priority goal in this context is to promote bottom-up regional development by giving

subnational governments more freedom in identifying programmes that match the public interest, as well as local and regional development goals. Digdowiseiso (2022) maintains that different institutional conditions for fiscal decentralization can significantly contribute to growth in developing countries. Different types of fiscal authorities have a significant impact on income distribution and ethnic inequality. As Digdowiseiso (2022) writes, it depends on the level of institutions and defence spending by certain developing countries.

In recent decades, the introduction of decentralization systems in many developing countries, especially in Ukraine, Armenia and Georgia, has been largely motivated by policy features and cooperation or integration into the EU. Kohut and Kovacs-Rump (2021) emphasize that more efficient mobilization of domestic resources and effective fiscal administration systems through fiscal decentralization reforms can offer a way to strengthening public budgets and increasing the role of taxation as a source of financing for effective development.

Fiscal decentralization involves the distribution of taxation and spending powers between the central government and local governments. In other words, fiscal decentralization gives local self-government bodies considerable autonomy in terms of revenues and expenditures, including the power to collect taxes and fees. This can increase the fiscal space of local self-government bodies and improve service delivery as well as the well-being of the population. A broader definition includes the financial perspective, where not just the right to collect taxes, but economic resources allocated to the regional level are decentralized. Countries need to meet several key institutional preconditions for fiscal decentralization to be effective. Obeng (2021) attributes the following preconditions there:

1) a stable political environment;

2) effective autonomous subnational governments;

3) institutional capacity at regional/state and local levels of government;

4) government accountability;

5) effective democratic electoral infrastructure at all levels of government;

6) the ability to increase income at the local level to the appropriate level.

The geographical proximity of local self-government bodies to their electors, direct beneficiaries of public services, makes local self-government bodies to allocate fiscal resources efficiently.

It is important to conduct a qualitative legal analysis of real fiscal decentralization reforms in a situation where economic theory proposes competing hypotheses. At the same time, any empirical analysis faces

significant challenges. First, the transfer of fiscal authority to local governments is often gradual. It impossible to separate the effect of fiscal decentralization from the influence of other trends without a sharp increase in fiscal autonomy. Second, fiscal reforms are usually a large-scale policy that affects all local self-government bodies at the same time. Therefore, the analysis should be based for the most part on comparisons between countries, with due regard to the proper control over all significant factors of transformation. So, relevant research in developing countries should be the focus.

In view of the foregoing, the aim of the article is a comparative analysis of the realities of implementing the fiscal decentralization concepts in developing countries. The aim involved the following research objectives:

1) generalize the main features of effective implementation of fiscal decentralization in the countries under research;
2) compare statistics on the implementation of fiscal decentralization in different jurisdictions and identify the country with the highest efficiency rate;
3) identify promising directions of further improvement of the fiscal decentralization practices tested in the developed countries.

1. Literature Review

The choice of research topic correlates with modern vectors of academic research conducted by theorists in different countries. The work of Teremetskyi *et al.* (2021) was the background for this study. The grounds for defining the concept of "fiscal decentralization" were summarized in the research, thus forming the author's perception of this definition.

The work of Digdowiseiso (2022) also had an impact on the author's position on the research topic. The work of researcher allowed outlining the vector of research on the transformation of strategies and policies of many countries aimed at strengthening the capacity of local communities in the course of fiscal decentralization. In turn, the article by Ali *et al.* (2022) helped the author to realize the need to further introduce mechanisms for achieving fiscal capacity in developing countries. The study took into account the work of Obeng (2021) in the field of addressing the problems and practical difficulties that arise in the course of fiscal decentralization, democracy and the size of government.

The work of Abuselidze (2021) on the analysis of the main components of intergovernmental relations and their regulation in the context of decentralization of fiscal policy and Rotulo *et al.* (2020) on the peculiarities

of the budget deserve special attention. federalism and fiscal decentralization in health care. The research of Ter-Minassian (2020), the results of which was used in the article, emphasizes the importance of intergovernmental fiscal cooperation and subnational revenue autonomy. This work helped to trace the transformation of the main features of the innovative approach to decentralization processes, which consist of fiscal, administrative and political components.

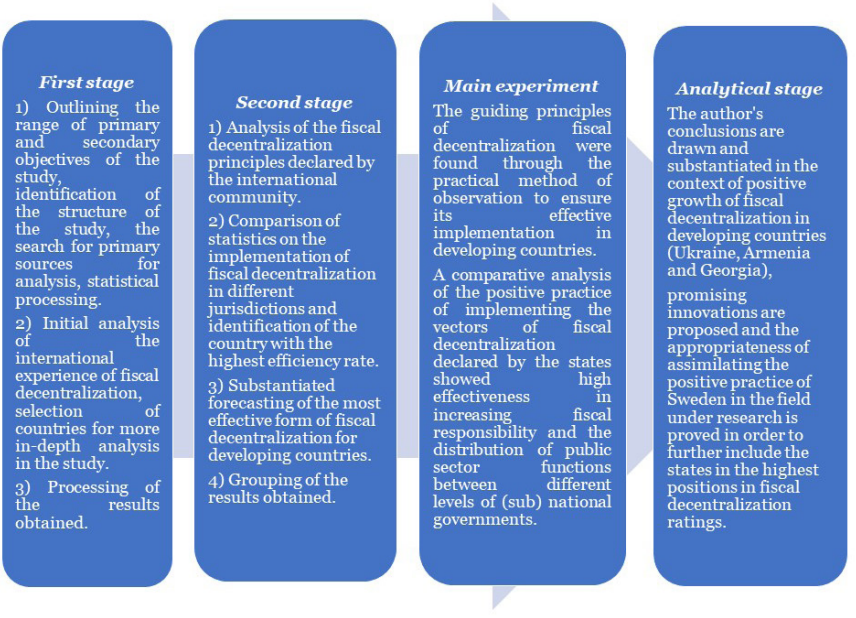
This study also allowed for the relevant vectors, such as innovation (novelty), objectivity, subjectivity, purposefulness, demand, implementation in practice, the effectiveness of local communities, which were outlined by Yang *et al.* (2020) and Zhu *et al.* (2022). The achievements of Erlingsson (2021) on the analysis of the results of decentralization and the development of multilevel trust of territorial communities were also taken into account.

Active research on this issue confirms that the fiscal decentralization contributes to the strengthening of local communities in order to ensure prosperity. Therefore, it is urgent to conduct research on new research criteria.

2. Methods

Given the chosen research topic has many aspects and given the large volume of empirical material, the authors clearly structured and phased the research (Figure 1). The structure of the research was based on comparative studies of the positive practice of the selected developing countries and on the grouping of the data obtained.

Figure 1. The research designs



Source: Authors development

The study involved a combination of parametric and non-parametric approaches underlying the author's view of fiscal decentralization and the effectiveness of the competencies of local self-government bodies. Various methodological tools were used in the article. The practical method of observation was the main method of research. This method was conductive for achieving the aim and fulfilling the objectives of the study, establishing the guiding principles of fiscal decentralization in the cross-border context, and focusing on the appropriateness of transformation in developing countries through the principles and programmes used in Sweden.

The comparative method was also important in writing the article, which allowed not only to compare the main statistical indicators of fiscal decentralization in the studied countries, but also to propose the latest conceptual changes based on best practices. This method also further substantiated the appropriateness of assimilating fiscal decentralization practices of Sweden into the legal field of the studied countries as soon as possible.

General decentralization programmes were considered in the article as a system that involves the competencies of different levels of government and local business related to the relationship of exchange on the allocation of fiscal, financial, material, administrative and other resources in their various combinations. This approach allowed considering the activities of states in the field of decentralization through the prism of declared international principles and systemic internal environment of states.

The empirical content of the processes of transformation of intrasystemic fiscal relations of power interactions in the selected states was based on the historical genetic method. It allowed describing the essential characteristics of fiscal decentralization policy, reveal the causal links in the development of decentralization and subsequent budgetary transformations, as well as in the formation of the discourse of state bodies on economic cooperation between the central government and the regions. Besides, this method also allowed creating an empirical background for further evaluation of the performance of government and fiscal decentralization as such on the example of the dynamics of development of states and their economic indicators.

The comparative historical research was used to determine the essential characteristics of government participation in the implementation of fiscal decentralization policies and programmes at different stages. This method was used to identify the positive features and critical differences in the practice of implementing the principles of fiscal decentralization in the studied countries.

The statistical method was indispensable at various stages of the study. It was used to analyse the dynamics of various aspects of fiscal decentralization programmes at the national and subnational levels, as well as to study a significant body of data characterizing the results of the actions of the selected states.

A significant array of data was thoroughly studied in the research, including forty-eight references in the text of the article.

3. Results

Fiscal decentralization as part of the transfer of powers has been implemented by many developed countries in order to find the appropriate balance between central government control and decentralized governance. The financial potential of local self-government bodies is based on the ability to attract available and potential financial resources from the relevant area to finance economic, social and environmental needs. The rational and effective directions of their distribution and use are established. This

generates a balance between public services and the needs and preferences of local communities and citizens, increasing the responsibility of local authorities for the relevant functions and the efficiency of the public sector as a whole through the introduction of elements of competition.

The positive vector of regional decentralization is increasing the self-sufficiency of communities, creating a background for the development of civil society. Disadvantages of decentralization include complicated process of implementing strategic government programmes and giving priority to regional political elites. The effectiveness of financial decentralization is influenced by a number of economic, socio-political and institutional factors, including constitutional provisions that reflect the history of decentralization in each country; balance of power between different levels of government; structure and practice of intergovernmental relations; and the degree of regional economic, ethnic and social inequalities that can and often cause conflicts of opinion and hinder constructive dialogue. Local authorities must perform decentralized functions effectively, have a sufficient level of revenue, and have the power to decide on expenditures. And any decentralization programme must cover the most important elements of public spending, namely fiscal sustainability, efficient allocation of resources, operational efficiency and transparency.

The state fiscal decentralization programme should include the gradual activation of functions for local and regional authorities in line with capacity building and legal reform. It is also necessary to optimize the full budget cycle and include decentralization in sector ministries, agencies and state-owned enterprises.

Effective decentralization requires further adaptation of institutional mechanisms for intergovernmental coordination, planning, budgeting, financial reporting and implementation. Such arrangements may include both specific rules (for example, in the development of fiscal transfers) and provisions for regular intergovernmental meetings and periodic reviews of intergovernmental arrangements (See Figure 2).

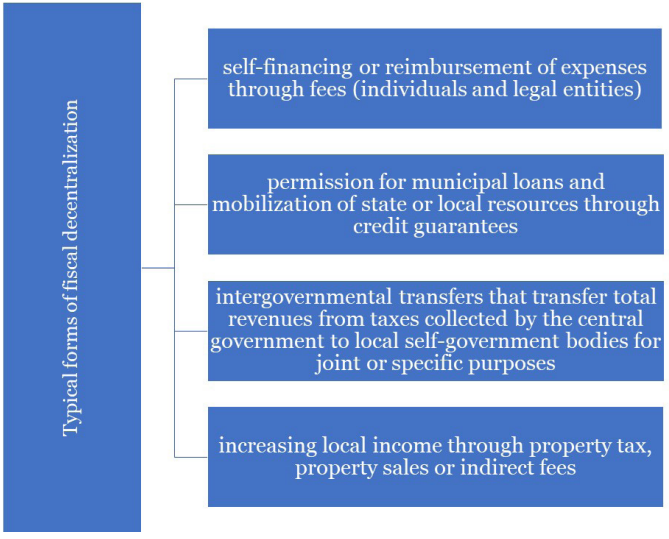


Figure 2. Forms of fiscal decentralization (summarized by the authors based on the results of empirical material studied)

The OECD (2019) has developed ten guidelines on decentralization that apply to all types of countries and which currently remain the leading tools for the effective implementation of decentralization concepts (Figure 3).

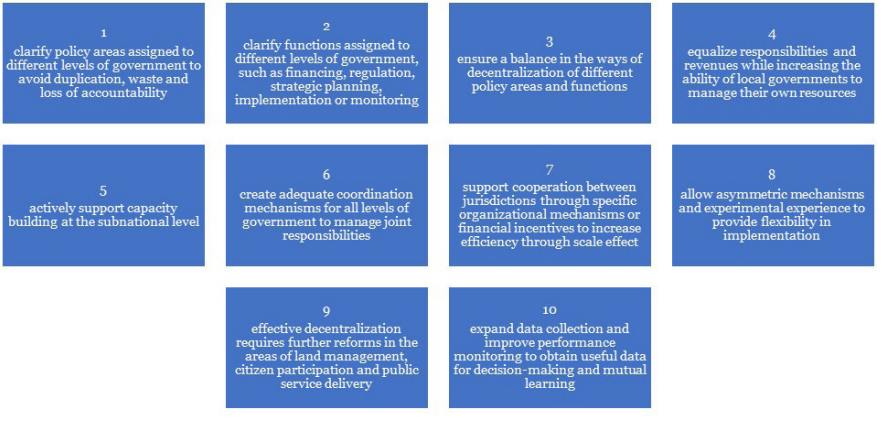


Figure 3. Guiding principles of priority actions of states on the way to the implementation of fiscal decentralization (according to the OECD (2019)

According to the UN Human Development Index (HDI), a country with less than 0.80 points is considered to be developing. Ukraine ranks 74th in the world with a score of 0.779 (Human Development Reports, 2022). The examples of the development of countries in this context are: Armenia — 81st with a score of 0.776, Georgia — 61st with a score of 0.812. For 2022, the World Bank classifies countries and territories with Gross National Income (GNI) per capita of $ 12,696 or higher as high-income countries. The countries with the values below this number will be considered developing countries. For example, Ukraine's GNI is $ 3,570, Armenia's — $ 4,220, and Georgia's — $ 4,270 (World Bank, 2020). The main goal of developing countries is to restore economic growth while maintaining a full system of social guarantees to ensure public goods.

Ukraine, like most developing countries, is pursuing a process of further decentralization that includes political, administrative and fiscal components. Local budgets of Ukraine act as a financial plan for the creation and use of financial resources necessary to ensure the functions and powers of local self-government bodies (Verkhovna Rada of Ukraine, 2022b). Fiscal decentralization in Ukraine is directly dependent on administrative and political decentralization and is a politically necessary reform for Ukraine. The Budget Code of Ukraine (Verkhovna Rada of Ukraine, 2022a) stipulates that the principle of subsidiarity is the background for the budget system of Ukraine. This principle consists in the distribution of types of expenditures between the state budget and local budgets, as well as between local budgets in such a way as to bring the provision of public services as close as possible to their direct consumer.

Order of the Cabinet of Ministers of Ukraine No. 333-r (Verkhovna Rada of Ukraine, 2014) provides that implementation of the basics of financial decentralization has become a key task in the economic and administrative system of Ukraine. Ukraine has the National Decentralization Project, which includes 25 Programmes. The programme supporting decentralization reform in Ukraine — U-LEAD with Europe: Local Empowerment, Accountability and Development Programme — is the leading one (Decentralisation. International Cooperation, 2016). The amount of assistance to Ukraine under this Programme from 01.01.2016 to 31.12.2023 will be EUR 152.3 million. The amalgamated communities have acquired the powers and resources that cities of regional significance have, in particular — the transfer of 60% of the personal income tax to the local budgets of ATCs (amalgamated territorial communities) under their own powers.

Besides, revenues from taxes remain entirely at the local levels: single tax, profit tax on enterprises and communal financial institutions property tax (real estate, land, transport). The implementation of the concept of financial provision of local self-government was to ensure the strengthening

and balance of local budgets through the redistribution of revenue and spending powers between different levels of government and the application of new methodological approaches to budgeting. Such approaches include, in particular: redistribution of expansive determination of local budget revenues; transition to the organization of medium-term financial planning at the local level; use of results-oriented budgeting methods, and increasing efficiency of local budget expenditures.

The financial decentralization process has entailed a number of changes. The main direction was ensuring the fulfilment of revenue and expenditure obligations of local budgets. Balancing local budgets by providing constant sources of income; development of mechanisms to eliminate and prevent the occurrence of unfunded expenditures; financing of state powers transferred to the local level required the implementation. Particular attention was paid to the formalization of the procedure for providing material assistance to communities from local and central budgets.

According to IMF (2020), the 2020 tax revenues to GDP ratio in Ukraine was as follows: the central government — 25.61%, local governments — 6.32%. For 9 months of 2021, the general fund of local budgets of Ukraine received UAH 247 billion 948 million 700 thousand excluding inter-budgetary transfers (Government Portal, 2021). The increase in revenues to the general fund amounted to 20.1% or + UAH 41 billion 442 million 600 thousand compared to the corresponding period of 2020. The personal income tax revenues for January-September 2021 amounted to UAH 150 billion 489 million. The increase in PIT revenues is 19.5% or + UAH 24 billion 550 million 600 thousand compared to the corresponding period of 2020. There were 16 regions that had higher personal income tax growth rates than the average in Ukraine.

Ternopil region had a growth of over 25%. Dnipropetrovsk, Kirovohrad, Poltava and Vinnytsia regions had the lowest growth rates. Revenues from land fees amounted to UAH 26 billion 620 million 200 thousand, the growth of revenues is 14.9%, or UAH 3 billion 455 million 300 thousand compared to January-September 2020. Actual revenues from real estate tax for 9 months of 2021 amounted to UAH 5 billion 838 million 600 thousand, the growth of revenues is 38.3% or UAH 1 billion 616 million 900 thousand UAH compared to the corresponding period of 2020. Revenues from the single tax amounted to UAH 32 billion 400 thousand, the increase in revenues is 21.1% or UAH 5 billion 574 million 800 thousand compared to January-September 2020. In accordance with the budget legislation, the Government also provided intergovernmental transfers to local budgets in the amount of UAH 120 billion 872 million 800 thousand for 9 months of 2021, which is 95.3% of the planned appropriations for January-September 2021, in particular: the basic subsidy amounted to UAH 11 billion 777 million 300 thousand or 100% to the scheduled appropriations; educational

subvention amounted to UAH 72 billion 837 million 700 thousand or 99.5% to the schedule.

The task of radical restructuring of Ukraine's budget system to meet the new requirements is urgent. Non-subsidized communities have problems with the revenues and are unable to cover the expenditures, which creates problems with the financing of the public sector. The lack of sufficient sources of funding at the state and regional levels still entails inefficient management of local finances. Ukraine has also a problem of imperfect relations between the state and local budgets, there are no administrative supervision bodies over the activities of local self-government bodies at the level of public authorities.

In Armenia, as a unitary, partially decentralized country, self-government operates only at the municipal level (Legislation of the CIS Countries, 2002). Property and land taxes are 100% accumulated in the municipal budget. The local budget annually receives income tax and different fees. However, the tax revenues to GDP ratio in 2020 was as follows: the central government — 26.21%, local governments — 0.50% (International Monetary Fund (IMF), 2020). Municipal budget revenues include taxes, non-tax revenues and subsidies. Tax revenues include land tax (95%), property tax (95%), income tax (15%), deductions and fees from various types of taxes to the state budget. Non-tax revenues include rents, fines, local fees, etc.

Transfers consist of subsidies and transfers from other sources. According to the legislation, municipalities receive subsidies, budget loans and loans from the state budget (Legislation of the CIS Countries, 1997). The municipality is allocated a subsidy to verify the revenues and expenditures of its budgets. The procedure for receiving grants and subsidies is regulated by the Law on Accounting (Legislation of the CIS Countries, 2019). According to this law, the allocation of subsidies is based on the population and the budget allocations rate. Armenia's budget system is a set of two-tier budgets. The state and local budgets are based on a single financial and monetary policy and government taxation policy. The fiscal decentralization policy is reflected in the Law on the State Budget. The government needs the fiscal decentralization strategy.

The economic and financial background of self-governing units of another state — Georgia — is governed by basic laws: the Code of Local Self-Government of Georgia (Legislative Bulletin of Georgia, 2022a), the Budget Code of Georgia (Legislative Bulletin of Georgia, 2021), the Tax Code of Georgia (Legislative Bulletin of Georgia, 2022b), Law on Georgia on Grants No. 331 (Legislative Bulletin of Georgia, 2020), and Law of Georgia on Local Assemblies No. 1401 (Legislative Bulletin of Georgia, 1999). On December 31, 2019, the Government of Georgia adopted the Decentralization Strategy for 2020-2025. The principle of the Decentralization Strategy is the state's

commitment to support financially weakened self-governing associations through a fair distribution of funds.

The aim of this strategy is to increase the powers of self-government bodies, fiscal decentralization and improvement of the local government. Based on the action plan in the field of decentralization strategy, it is planned to revise local taxes, distribute taxes on a utility license by local self-government bodies, determine the types of property to be provided to municipalities, as well as rules and conditions for their provision. The subsidy for equalization of fiscal capacity is allocated from the state budget for the purpose of financial support of local self-government bodies for performance of their duties.

In Georgia, the rights and responsibilities of each level of revenue and expenditure mobilization are not clearly defined. This can also be stated regarding the distribution of taxes between the centre and the budgets of the regions, as well as issues of economic subsidies etc. This is reflected in the volume of mobilization of tax revenues only at the level of budgets and its ratio to GDP in 2020: the central government — 22.45%, local governments — 0.89% (IMF, 2020). The lack of local budget funds in Georgia, which is supplemented by regulatory revenues, is the result of minimizing the quality of local tax authorities.

In this regard, it is also necessary to take into account the problems of economic development: the general decline in production; limited economic resources in rural areas; transfer of social facilities to local administrations; uncertainty in the status of branches of enterprises and organizations located in the districts; restriction of the rights to natural resources of local self-government bodies. Sectoral legislation is still not in line with the government decentralization principles, while the progress on revision and harmonization of legislation is very slow. There is also a need to further develop the legal environment to promote and stimulate inter-municipal cooperation.

The indicator of decentralization of revenues, which is the ratio of local budgets and their revenues to the state budget, shows that Ukraine has the best situation with this indicator. From 2014 to 2018, the ratio of local budgets and their revenues to state budget revenues in Ukraine varied from 22.5% to 28.9%. In Georgia, this level ranges between 8% and 12%, in Armenia — between 3% and 5% (CORLEAP, 2020). In Ukraine, which shows the best results on this indicator, the level of centralized spending varies between 49% and 58%, in Georgia — 19-22%, in Armenia this figure was about 7-8%.

Improvements resulting from a successful budget decentralization programme can only be achieved through high quality governance in decentralized agencies of national and subnational governments. In OECD

countries, regional governments have, on average, complete discretion over 70% of their tax revenues (OECD, 2022). Another 15% of their income comes from general taxes, which require the consent of governments to the distribution rate. On the contrary, local governments have, on average, full or almost complete autonomy over 13% of their revenues only. However, local authorities retain discretion with certain limitations on additional 62% of tax revenues. According to the OECD report (OECD, 2018), subnational governments in OECD countries account for 40% of government spending, corresponding to 16% of GDP, and this share has increased in recent decades for most countries. Expenditure obligations of subnational governments have changed over the past 25 years, in particular as a result of decentralization processes that have transferred responsibilities to the subnational level in sectors such as education, health, social protection, economic development, urban and spatial planning.

Sweden — a unitary country with a high share of local government spending — is an example of such changes. The state structure of Sweden is highly decentralized and includes two subnational levels: 21 counties and 290 municipalities. Welfare is generally high in the regions of Sweden, which are among the 20% of the largest OECD regions in terms of civic participation (OECD, 2020). According to the UN Human Development Index, Sweden ranks 7th in the world with a score of 0.945 (Human Development Reports, 2022). Sweden's GNI is $ 54,050 (World Bank, 2020).

It can be stated that the provision of services is crucial for subnational governments, as the bulk of their spending is on education, general public services and social protection. The Constitution of Sweden explicitly recognizes the local self-government principle. The Law of Sweden on Local Self-Government No. Ds 2004:31 (Government Offices of Sweden, 2015) defines the scope of local autonomy, establishes specific powers and lists the sources of income for local entities. Local budget revenues come from tax revenues (about two-thirds of the total), total transfers from the central government (about 15% for municipalities and 9% for districts), targeted government transfers (3-4%), and user fees and rents (about 6% for municipalities and 3% for counties).

Local authorities have the right to collect personal income taxes to meet their financial obligations and are free to decide on the level of their taxes. At the aggregate level, the state tax rate is about 20% and the district tax rate is about 10%. In general, 50% of Sweden's public spending is shared by the central government and 50% — by municipalities and counties. The fiscal equalization system is governed by the central government. The redistribution of resources between different subnational governments relies on different tax bases and expenditure rates.

According to the European Committee of the Regions (2022b), the revenue autonomy at the local level is higher in Sweden than the EU average (67% vs. 53% in 2018), resulting in lower dependence on central government transfers than in the EU (32% vs. 47% in 2018). Local own revenues accounted for 33% of total government revenues in 2017, which is higher than the EU average (13%). The aggregate ratio, which reflects aspects of fiscal decentralization of both revenues and expenditures, suggests that Swedish subnational governments have a degree of fiscal decentralization (66% in 2017) that is well above the EU average (17% in 2017). The indicator, which measures the level of tax autonomy, also indicates the high fiscal autonomy of local governments in Sweden, with 98% of total local tax revenues being under the full control of local authorities (European Committee of the Regions, 2022b).

Local budgets are prepared according to a conservative approach aimed at a surplus of 2-3%. Expenditures in districts and municipalities are most concentrated, and higher than the EU average, in healthcare (27% of total local expenditures), social protection (27%) and education (22%). Other relevant areas of expenditure are general public services (11%) and economic issues (6%). The ratio of tax revenues to GDP in 2020 in Sweden was as follows: the general government — 39.90%, local self-government bodies — 13.03% (IMF, 2020).

Today, the Decentralization Index (European Committee of the Regions, 2022a) is widely used in the 27 EU Member States, which is an interactive tool for various aspects of decentralization (political, administrative and fiscal). According to the Index, high fiscal decentralization is 35-100%. Average decentralization: expenditure ratio — 27-34%. Low decentralization: the expenditure ratio is 20-26%. Very low decentralization: cost ratio — 0-19%. Overall decentralization ranges from 1 to 3 points and is 2.4 points in Sweden. Assessment of decentralization by parameters: administrative — 2.3 at the local level and 1.1 at the regional level; fiscal — 3; political — 1.8. Expenditure ratio, that is the relative share of total subnational expenditures against total government expenditures is 46%. Sweden has created stable local revenues with a local income tax and tax equalization system.

Comparing the achievements of fiscal decentralization in terms of tax revenues in GDP from local authorities in Sweden and such countries as Ukraine, Armenia and Georgia, it can be stated that this reform has not yet achieved final results in these countries, although Ukraine has made more progress in implementing this strategy (Figure 4).

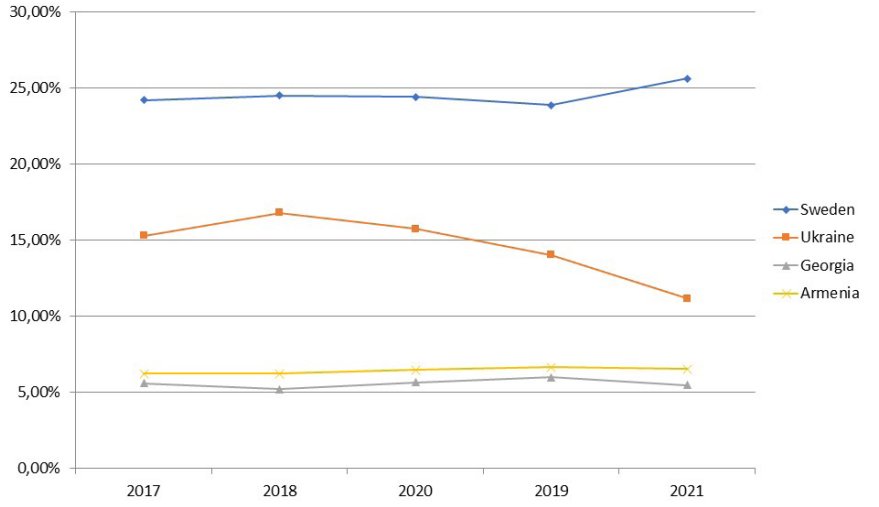


Figure 4. The amount of local government revenues in % of national income in Sweden, Ukraine, Armenia and Georgia for 2017 - 2021 (according to the generalized data of the European Committee of the Regions (2022a).

SKL International (2021) states that in 2021 the government of Sweden has committed itself to supporting the Ukrainian government in its efforts to implement a decentralization reform. The Support to Decentralization in Ukraine Project will help the local self-government sector to take on more powers and responsibilities. Advisory, analytical and coordinating support will be provided to create a general and more reliable empirical background for the development of fiscal policy in the transformed system of decentralized governance, which is being developed.

4. Discussion

According to Vincent (2022), decentralized decision-making makes it possible to positively correlate with economic growth through more efficient provision of public services and their targeting, reduction of production costs and prices, as well as creating more effective incentives for all participants in economic activity. Abuselidze (2021) emphasized that tax autonomy of local self-government is a relative concept, which is determined by whether the governing bodies have a sufficient amount of their own income and

whether they have the right to dispose of it independently in accordance with their functions. According to the researcher, this does not mean that they are completely isolated from each other. On the contrary, the centre and the municipalities have common interests for the benefit of society and relevant coordinated strategic actions in economic and political priorities.

Hanif *et al.* (2020) indicates that the positive impact of fiscal decentralization on economic growth is weakened if the country is corrupt and has weak institutions and/or suffers from political instability. According to researchers, a relatively corruption-free country with sound institutions and a stable political environment could make more use of the benefits of fiscal decentralization to accelerate economic growth.

Rotulo *et al.* (2020) proved that the creation of local pools reduces the effect of cross-subsidization and protection against financial risks guaranteed by the national pool, turning fiscal decentralization into regressive choices. Researchers conclude that this not only aggravates interregional inequality, but can also pave the way for tough policies, such as healthcare: service quality declines with limited access to public resources, prompting patients in poorer regions to seek help from other regions.

Ter-Minassian (2020) state that effective fiscal decentralization models must be adapted to the context of individual countries. Policymakers and experts in each area of vertical and horizontal cooperation should take part in sectoral discussions. There is also a potentially useful role for cooperation between the relevant units of each subnational level of government.

According to Digdowiseiso (2022), the negative impact of fiscal decentralization on economic growth should not be interpreted as supporting centralized systems of public administration. The effectiveness of fiscal decentralization in relation to growth should be assessed from the perspective of institutions (Digdowiseiso, 2022).

Erlingsson (2022) recommended that a research programme needs to be developed in Sweden that will systematically analyse the ways in which the political system distributes responsibilities between levels of government and how this affects trust and satisfaction at the local, regional and central levels.

The central government should pay attention to the heterogeneity of the impact of fiscal decentralization on cities with different strategic backgrounds and levels of innovation (Yang *et al.*, 2020), and the fact that the fiscal decentralization system plays an important role in improving green development (Zhu *et al.*, 2022). It is necessary to conduct a constant (annual) analysis of standard deviation and other indicators that describe the effectiveness in order to better understand how effective the system of horizontal equalization of budget revenues of territories is.

Teremetskyi *et al.* (2021) emphasized that it is necessary to develop an adequate political and institutional environment, improve the quality of governance, close ties between local governments and the population and the formation of effective channels of communication. According to researchers, special attention should be paid to strengthening the responsibility of local self-government bodies to society and the fight against corruption.

The main directions of strengthening the financial independence of local self-government should be realized primarily through a clear definition of the structure and powers of central and local executive bodies. Kohut and Kovacs-Rump (2021) identified that a feature of tax reform in Ukraine should be the transition from the fiscal principle of tax policy to the development of a new model that would provide the necessary amount of budget revenues to support the functioning of the state, adhering to the principle of social justice of distributing tax burden in the state.

Conclusions

Effective fiscal decentralization mechanisms can help governments at different levels to identify and mitigate the adverse external effects of their policies, avoid or reduce tax competition, and make better use of the scale effect in the provision of certain public services. This policy helps to reduce the risk of spreading infectious diseases, improve the safety of citizens during the pandemic, the quality of the environment, as well as promote consensus on political reforms.

Government operational and fiscal decentralization is a way to improved local decision-making, infrastructure development and service delivery, but many countries are struggling to benefit from decentralization, delegation and transfer of powers. Challenges include accountability, capacity, coordination, freedom of action, technology and variability.

The scope of policy in developing countries should be redistributed between the centre and local self-government bodies. The centre should determine the appropriate legislative framework within which local self-government will be free to make decisions, especially when solving socio-economic problems.

Fiscal decentralization requires:

- strengthening the role of local taxes in the formation of the revenues of local budgets;
- finding and implementing reserves for the formation of own revenues of local governments;

- promptly reporting on the implementation of financial policy and choosing forms of fiscal support for local governments to accumulate their own fiscal capacity and increase self-efficacy;
- presenting new approaches to the budget process to the general public in order to prevent public resistance to fiscal decentralization.

Encouraging local authorities to increase their own budgets, reduce regional tensions, and create proper access for investment development should be the focus.

The representatives of the Tax Service and the Treasury should be involved in the analysis of factors promoting cooperation in improving the management of revenues and expenditures, while ministers or secretaries of finance responsible for national and subnational public finances should be involved in the discussion of fiscal policy reforms.

The clearly determined steps to implement fiscal decentralization in Ukraine, Armenia and Georgia will help build local political and institutional capacity. The range of responsibilities of local authorities in Sweden directly affects the lives of most citizens. So, there is a potential for the implementation of relevant experience in the practice of fiscal decentralization in developing countries. This will be a promising vector of further research for the authors.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 151-171
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal regulation of the institute of control in the field of housing construction in the conditions of armed aggression of the Russian Federation

DOI: https://doi.org/10.46398/cuestpol.4073.07

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Abstract

Housing and social infrastructure have suffered significant damage during the Russian armed aggression, and it needs to be restored in a short time. So, the aim of the study was to analyses the legal background for construction control and determine its importance for the development of the construction industry. The chosen topic was comprehensively studied through empirical and theoretical methods of scientific knowledge, as well as the comparative analysis. The legal basis of control in the field of housing construction in the conditions of armed aggression is determined. It is established that cconstruction control is exercised by inspecting construction sites, issuing construction permits, conducting examinations of construction projects for compliance with building codes, rules and standards, and identifying violations of construction legislation in order to eliminate them. The mechanism of legal regulation of construction control consists of construction and legal rules that ensure control in the construction industry; subjects of architectural

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Recibido el 03/04/2022 Aceptado el 16/04/2022

and construction control; construction control tools; the control procedure. The prospect of further research is the organizational support of effective control in the field of housing construction in the context of the armed aggression of the Russian Federation in order to restore the quality of housing in Ukraine.

Keywords: construction control; construction industry; safety; standard; rules.

Regulación legal del instituto de control en el campo de la construcción de viviendas en las condiciones de agresión armada de la Federación Rusa

Resumen

La vivienda y la infraestructura social han sufrido importantes daños durante la agresión armada rusa, y es necesario restaurarla en poco tiempo. Por lo tanto, el objetivo del estudio fue analizar el marco legal para el control de la construcción y determinar su importancia para el desarrollo de la industria de la construcción. El tema elegido fue estudiado integralmente a través de métodos empíricos y teóricos del conocimiento científico, así como del análisis comparativo. En las conclusiones se indica que, el mecanismo de regulación jurídica del control de la construcción consiste en normas constructivas y jurídicas que aseguran el control en la industria de la construcción; materias de control arquitectónico y de la construcción; herramientas de control de la construcción; el procedimiento de control. La perspectiva de una mayor investigación es el apoyo organizacional del control efectivo en el campo de la construcción de viviendas en el contexto de la agresión armada de la Federación Rusa para restaurar la calidad de la vivienda en Ucrania lo antes posible.

Palabras clave: control de la construcción; industria de la construcción; seguridad; estándar; reglas.

Introduction

The issue of the need to create new residential and industrial buildings to accommodate production facilities and housing workers and their families became urgent as a result of the rapid development of the economy, increasing consumption, improving welfare of the population and growing population. The legal, organizational, institutional and financial support

is required to solve such problems. Construction, as an object of legal regulation, regulates various social relations, including private and public legal relations. Government regulation of the construction sector is carried out through the development, adoption and application of current building legislation, building codes, standards and regulations.

The priority task of the government regulation of the construction industry is the control and supervisory function of the state over the entities operating in the construction market. The number of cases of violation of construction legislation, rules and standards during construction is growing along with the development of the construction industry. Consequently, the protection of construction market participants requires an effective system of government supervision of the construction sector. Quality control of construction, which assesses the compliance of construction products with the rules and regulations of the construction industry occupies an important place in the system of legal measures aimed at improving safety and quality of construction.

In a state governed by the rule of law, construction control is exercised within clearly defined legal framework. The construction legislation is the legal background of construction control. The aim of this legislation is to regulate administrative relations during the organization and execution of construction works, thus providing the possibility of government influence construction control bodies on the construction sites under their jurisdiction. Therefore, the main point in the legal regulation of legal relations of construction market participants is to regulate administrative relations and determine the legal status of each participant in such relations, which determines the topicality of this research.

The aim of this study is to determine the legal background for construction control and determine its importance for the development of the construction industry. The aim involved the following research objectives:

- determine and describe European standards of the construction industry in the context of ensuring the quality and safety of construction facilities;
- consider the mechanism of the legal regulation of construction control and describe its components;
- identify the main problems of construction control and suggest ways to solve them.

1. Literature Review

Many researchers studied the construction control and the main problems of exercising it. Akimova *et al.* (2020) studied the legal tools of construction control and their components. Lou and Xu (2017) covered quality control of residential construction in the city and found that such projects should be controlled in three stages: before construction, during construction and after construction. Fatourehchi and Zarghami (2020) considered the problems of construction supervision and noted that the problems of construction supervision usually result from gaps in the relationship between the participants in the construction process.

Binninger *et al.* (2017) examined the control of construction sites in Germany, determined its effectiveness and appropriateness of implementation in different countries. Ding *et al.* (2017) reviewed the functioning of regional construction supervision and control systems in China, and determined its dependence on the work of practical managing engineers. Zhou (2019) and Mu (2020) revealed the content of the substance of control over public construction from the perspective of the China's market economy.

Zhao *et al.* (2017) studied the effectiveness of government control of construction, which is exercised through information and communication technologies. Ciampa *et al.* (2019) and Rouhanizadeh and Kermanshachi (2020) analysed the effectiveness of the use of unmanned aerial vehicles and drones in construction inspections, and found that their use speeds up the construction inspection process. Zhang and Arditi (2020) studied the use of laser scanners during construction inspections and found out their significant effectiveness for construction inspections.

Akimova *et al.* (2020) analysed the substance of construction control from the perspective of safety and quality of the construction site; from the perspective of reducing the number of construction accidents and measures to prevent them — Ravi *et al.* (2017) and Benny and Jaishree (2017); from the perspective of labour protection and safety — Nnedinma (2017; 2017a). Analysing the effectiveness of construction supervision, Khanzadi *et al.* (2020) noted that compliance with quality, stages of construction and reducing financial costs for construction is the basis of supervision in the construction sector.

Despite a rather wide range of research on this issue, the issues of the development of legal mechanisms for the residential construction control are not comprehensively covered, which determines the relevance of the chosen research topic.

2. Methods and Materials

The study was conducted in three stages. The first stage involved the search and study of scientific literature on construction law, scientific works of researchers on government supervision of the construction industry and construction control, provisions of international agreements on construction, practice of the application of legal tools that regulate construction control, as well as the analysis of statistics of the EU statistical service — Eurostat — on the development of the construction industry in the EU and the metrics on construction accidents. The analyses of the indicated resources gave grounds for the formulation of the topic, aim and objectives of the study.

The second stage involved a theoretical and experimental study of the chosen topic by comparing their results and analysing the differences. Theoretical research allowed determining the substance of the mechanism of legal regulation of the residential construction control from the perspective of compliance with building codes and standards. Experimental research based on international standards, legal principles of European construction and labour protection, as well as the summary of their practical application, as well as doctrinal analysis of scientific papers on problematic issues of assessing the effectiveness of construction control of construction sites, helped to fulfil the research objectives and determine the importance of construction control for the development of the construction industry.

The third stage involved the final analysis for achieving the aim of the research, and presentation of the research results.

The research topic was studied through the use of empirical and theoretical methods. From the perspective of international legal support of the construction industry and the importance of construction control for the quality of constructed buildings, empirical knowledge reflects the substance of the object of study — the mechanism of legal regulation of construction control.

Comparative analysis was used to analyse scientific, legal, statistical and practical information on the components of the mechanism of legal regulation of construction control. Theoretical knowledge of construction and the means of its regulation reveals the subject of research from the perspective of universal internal essential connections and regularities, which are covered by rational processing of empirical data. The combination of empirical and theoretical methods provides an empirical interpretation of the theory and theoretical interpretation of empirical data, as well as reveals the importance of construction control as an effective tool to regulate the construction sector.

The research sample included such objects of research as: general characteristics of construction activities and the means of their regulation, analysis of construction control through the prism of improving the quality of buildings and safety of the construction sector. Eurostat statistics on the EU construction industry allowed determining the importance of the effectiveness of construction control in the construction sector. The combination of the study of these objects helped to reveal the problems of supervision of the construction industry. The research was carried out on the basis of information retrieval and scientometric databases.

The following international legal acts formed the background of the study: Safety Provisions (Building) Convention, Safety and Health in Construction Recommendation, International Building Code, Eurocodes, Construction Products Regulation (EU) No. 305/2011, European legislation governing safety and labour protection on the construction site, and Eurostat statistics.

3. Results

Russia's armed aggression in Ukraine has created the conditions for a rapid response of society and the state to its consequences. Mass destruction of infrastructure and housing stock of Ukraine needs immediate restoration, so the Government of Ukraine issued a number of regulations and amended existing ones, in particular: Amendments to the Procedure for inspection of commissioned construction (Verkhovna Rada of Ukraine, 2022a); Amendments to the Procedure for approval of construction projects and their examination (Verkhovna Rada of Ukraine, 2022d); Procedure for carrying out urgent work to eliminate the consequences of the armed aggression of the Russian Federation related to damage to buildings and structures (Verkhovna Rada of Ukraine, 2022b); Procedure for dismantling facilities damaged or destroyed as a result of emergencies, hostilities or terrorist acts (Verkhovna Rada of Ukraine, 2022c); Methods of inspection of buildings and structures damaged as a result of crises, hostilities and terrorist acts (Ministry for Communities and Territories Development of Ukraine, 2022c); Estimates of Ukraine "Guidelines for determining the cost of work to assess the technical condition and operational suitability of facilities" (Ministry for Communities and Territories Development of Ukraine, 2022b); Rules of maintenance of residential buildings and adjacent territories, approved by the order of the State Committee for Construction, Architecture and Housing Policy of Ukraine (Verkhovna Rada of Ukraine, 2005).

Also, the government has developed a Clarification on fixing the destruction to eliminate the consequences of hostilities and restore the

infrastructure of settlements in a state of war (Ministry for Communities and Territories Development of Ukraine, 2022a).

Adopted bylaws allow making informed decisions on the restoration of damaged objects or their dismantling under a simplified procedure, including the procedure of examination of project documentation. Development of projects for the restoration of damaged objects is possible in a short time. Thus, the institute of control in the field of housing construction was partially changed for a specific category of buildings that suffered from the armed aggression of the Russian Federation in Ukraine.

The mechanism of legal regulation of control in the construction industry consists of legal provisions of construction legislation and building codes, standards and rules; entities that carry out architectural and construction control; means of control of construction sites; the construction control procedure.

Construction legislation is wide-ranging, which includes rules relating to the general legal framework, the implementation of construction policy, fundamental rights and responsibilities of all participants in the construction process, requirements for the development, creation and construction of real estate properties, control of construction sites, commissioning procedure, liability for violations of building codes, etc. Many countries (Australia, Germany, Canada, USA) and international organizations (EU, the International Code Council) have codified construction legislation into a single legal document — the Building Code — in order to regulate legal relations in the construction industry.

Eurocodes are an EU-developed set of harmonized standards for the calculation of load-bearing structures of buildings (European Commission, n.d). This document contains ten separate standards (Eurocodes), which set requirements for the calculation of building structures of different materials. The International Building Code developed by the International Code Council regulates the issues of labour protection and safety at the construction site, based on regulatory building requirements and standards (ICC Digital Codes, 2018). The aim of the provisions of the Code is to ensure the quality and safety of construction works and reduce costs for construction stages. This Code complies with quality control of construction projects by mandatory use of standardized and certified construction materials and equipment and compliance with the conditions of construction operations.

In addition to international documents and national legislation, the system of construction legislation includes international levels and standards of international organizations: standards of the International Organization for Standardization (ISO), which determine uniform requirements for quality of construction products, materials, equipment and construction works, the provisions of the World Federation of Technical Assessment

Organisations (WFTAO), which sets the requirements for technical regulation of the construction industry, FIDIC (International Federation of Consulting Engineers) International Building Standards, which determine the rules of construction works, etc.

The construction practice emphasizes the need to control and reduce the risks associated with the creation and operation of the property. Ignoring construction control and the failure to comply with the construction rules and standards entails the creation of dangerous and inappropriate construction sites and accidents during construction works. Approximately 3 million workplace accidents are reported in the EU each year, of which 65.6% are construction, transport and storage, manufacturing, agriculture, forestry and fisheries, and 44.3% are in other areas. According to Eurostat, in 2018 the EU built 74.1% of small buildings, 12.9% of medium-sized buildings, 13% of large buildings, with almost 20.5% of fatal accidents occurred during construction on their construction sites. The construction sector has the highest accident rates, which is almost 3.2-3.4 thousand cases per year, compared to the transport sector (2.5-2.7 thousand cases per year) and manufacturing (2.1-1.8 thousand cases per year). Figure 1 shows accident rates in these areas during 2012-2018 (Eurostat, n.d.).

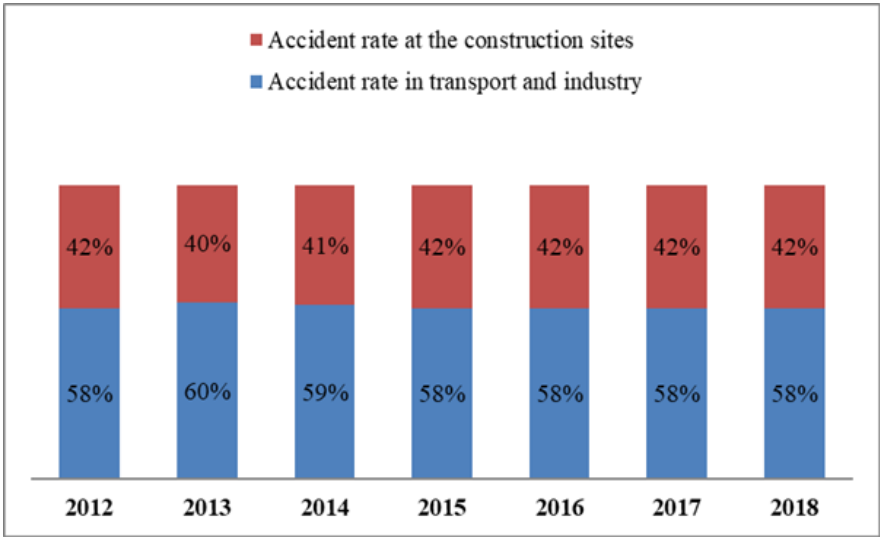

Figure 1. The accident rates in construction, transport and industry in the EU for 2012-2018.

Source: author's own development based on (Eurostat, n.d.)

In 1939, the International Labour Organization adopted the Safety Provisions (Building) Convention in order to reduce the number of injuries and the risk of accidents on construction sites (International Labour Organization, 1937). The provisions of the Convention regulate the activities of all types of operations on the construction site, including the construction, repair, reconstruction, maintenance and demolition of all types of buildings. This international document contains standardized minimum safety measures and a set of standard safety rules, where the control over their compliance is the basis of construction sector policy.

The provisions of the Safety and Health in Construction Recommendation reveals the practical implementation of the set of standard safety rules (International Labour Organization, 1988). According to the Recommendation, all participating countries undertake to harmonize their national construction legislation on labour protection by establishing appropriate occupational health and safety measures that will ensure the safety of workplaces. Compliance with such safety measures is the employer's and employees' responsibility. The planning, preparation and execution of construction stages must take into account:

- the risks that may arise during the construction because of the failure to comply with safety rules;
- avoidance of excessive overload of employees, which can cause injury or accident;
- organization of work on observance of safety and labour protection regulations;
- use of harmless and high-quality materials;
- providing employees with appropriate means of protection.

According to the Recommendation, the provisions of national construction legislation of the member states should provide for the establishment of a competent body that will regulate the construction sector, verify construction project documents and construction permits, monitor compliance with building codes and standards, and prosecute for non-compliance with construction legislation. A total of more than 60 Council of Europe directives have been adopted so far on occupational health and safety, the system of which is presented in Figure 2.

According to the Regulation (EU) No. 305/2011 on construction materials, construction works in general and parts thereof that must be suitable for their intended use and must be safe for the users' health throughout the life cycle (Eur-lex, 2021). The safety of construction projects is achieved through the quality of construction materials that comply with the rules of this Regulation. The provisions of the Regulation establish not only the conditions for entering the EU market of construction materials,

but also agreed rules for assessing the conformity of quality of construction products, its main characteristics and the use of CE marking for such products. The Regulation also establishes methods for assessing the conformity of construction equipment and products.

During the construction control at the construction site, the construction process is monitored and inspected for the functioning of the construction projects under control, and assessed for its compliance with construction requirements and standards, as well as the violations or deviations from the specified parameters are detected. This government regulation of the construction sector is realized by a specially authorized body. In many countries, not only public authorities, but also private institutions and insurance companies perform such oversight and supervisory functions. They not only carry out architectural and construction control and inspections, but also issue building permits. Table 1 shows the list of entities that exercise construction control in different countries.

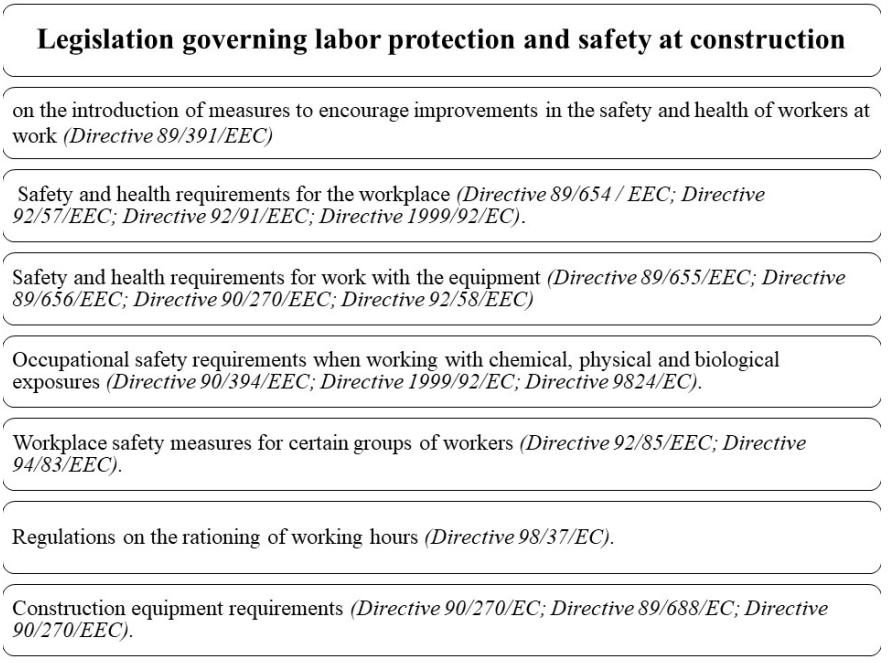

Figure 2. System of labour protection and safety regulations.

Source: author's own development based on (Eur-lex, n.d.).

Table 1. Institutional support for construction control in some countries

Country	Entities that exercise control and supervision over the construction	Authority of the entities
Austria, Estonia, Iceland, Spain, Norway, Slovenia, Croatia, Czech Republic, Sweden	Specialized public bodies and special independent private institutions or independent private experts	Architectural and construction control
Great Britain	Ministry of Housing, Communities and Local Government	Regulation of the construction sector policy, construction control, approval of uniform construction codes and regulations
	Building Regulations Advisory Committee; Building Regulations and Standards Department	Providing advice on the application of building codes
	Local authorities and inspectors	Architectural and construction control
Denmark	Ministry of the Interior and Housing	Regulation of the construction sector policy
	Local authorities, National Agency for Construction and Housing	Architectural and construction control, issuance of building permits, verification of compliance of construction projects with building codes
Ireland	Specialized government agencies	Architectural and construction control
Canada	Canadian Commission on Building and Fire Codes	Technical regulation of construction works, compliance of the construction projects with natural and climatic conditions, Canadian building traditions, building codes and rules
	Canadian Construction Materials Centre	Architectural and construction control
Poland	Ministry of Regional Development Regional Development Agencies	Regulation of the construction sector policy, attraction of investments in the construction industry, verification of compliance with the control of construction projects

Romania	Regional Development Agencies	Development of a regional development strategy for the construction industry
France	Ministry of Construction, Transport and Tourism	Regulates the policy of the construction industry, makes forecasts and develops strategies for the development of the construction sector
	Construction companies that are members of the National Federation of Public Works and the National Federation of Construction Companies	Issuance of building permits, verification of compliance with building legislation; technical regulation of construction works, etc.
	National Centre for Construction Machinery	Architectural and construction control
	Insurance companies — controllers	

Source: authorship.

The construction permits are issued by the entities that exercise architectural and construction control before the start of construction by checking the compliance of the documents required for construction. At this stage, the inspector identifies inconsistencies in the submitted documents and indicates them for elimination purposes. In 2020-2021, the Building Permits Index in the EU averaged 128.8. The index of constructed buildings during this period is much lower and amounted to 106.7.

Figure 3 shows quarterly values of these indices (Eurostat, n.d.). The European Real Estate Index is calculated from the perspective of the number of completed constructions, real estate pricing policy, cost of construction materials and valuation of construction projects. The Building Permits Index reflects the indicators of permits issued by the relevant institutions for the construction of only one-apartment houses and houses with two or more apartments. These indices do not, however, take into account indicators of social construction projects, such as homes for the elderly, schools or kindergartens. These data give grounds for the conclusion that the EU permitting system of the construction industry exceeds the indicators of completed construction, which testifies to the existence of a legal mechanism for government regulation of the construction sector.

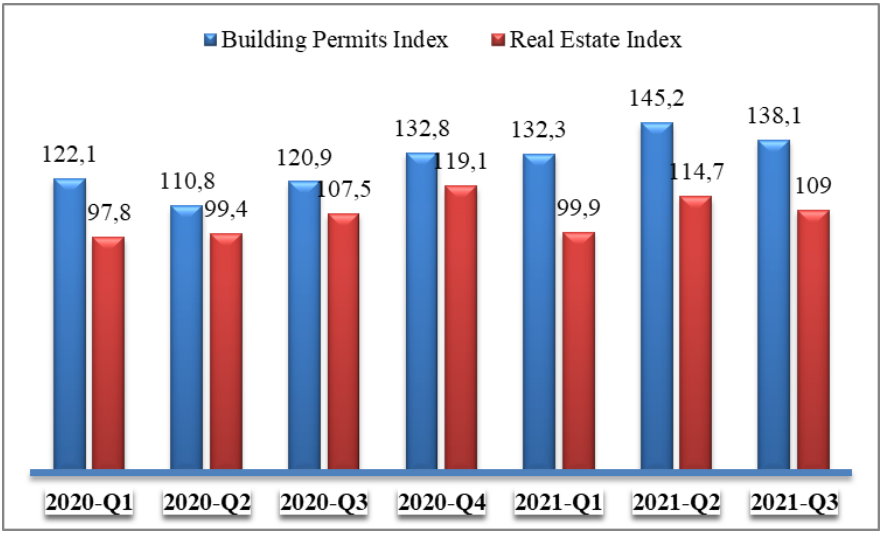

Figure 3. Quarterly Building Permits Indices and the Real Estate Indices in the EU in 2020-2021.

Source: author's own development based on (Eurostat, n.d.)

The object of the construction control is the construction process itself and closely related legal relations, and the subject is compliance with building codes and standards. The latter include, in particular, international and national standards during design and construction; provisions of construction legislation; construction project design documentation; labour protection and safety requirements; environmental and sanitary requirements; licensing conditions and compliance with the certification of construction materials and equipment; the regime of use and development of land plot on which construction will be carried out; compliance of construction works in accordance with the issued permits; terms of construction stages and its completion.

4. Discussion

Control of construction projects establishes the quality of construction structures by assessing the compliance of their characteristics with construction legislation, as well as construction standards and requirements. Ignoring the control and supervision of the construction process can lead to violations of building codes, which can result in accidents, both during construction and in the subsequent use of the building.

According to Lou and Xu (2017), in order to establish an effective state regulatory policy in the field of construction, government supervision of construction should be carried out not only upon completion of construction, but in three stages: before construction, during construction and after constructio. Binninger *et al.* (2017) noted that the effectiveness of government supervision over construction sites should be achieved through the control and inspection of those sites. According to Onaiwu (2020), the clearly regulated legal mechanism for compliance with building codes will create favourable conditions for the development of the construction industry and the economy as a whole.

Zhao *et al.* (2017) and Zeng *et al.* (2022) emphasized that the real-time control over the construction stages can also be effective. Online inspection of the remote construction site helps to improve the management of the construction process and eliminate shortcomings in the construction stages. According to Ciampa *et al.* (2019) and Rouhanizadeh and Kermanshachi (2020) the use of unmanned aerial vehicles and drones during construction inspections helps to speed up the inspection procedure. These researchers state, however, that their use should be clearly regulated. With their low cost, efficiency, ability to inspect the construction site in real time, these technological tools can not only indicate problems and shortcomings during the inspection of the construction site, but also to carry out construction inspections of high-rise buildings, in remote areas or other complex cases.

Kim *et al.* (2020) also considers the use of unmanned aerial vehicles in construction control to be effective. In their opinion, these tools help to technically implement government regulation of construction by constantly monitoring the construction process, its stages, quality and safety of work. In aggregate, this will improve the quality and safety of the construction object. As Zhang and Arditi (2020) noted, the use of laser scanners during construction control significantly speeds up the inspection of the construction stages.

According to Piasny and Pasławski (2015), modern approaches to construction control do not reflect a comprehensive approach to the development of uniform requirements for the scope and level of construction control, which will ensure proper assessment of quality and safety of the construction project. Vesela and Synek (2019) and Mu (2020) state that the mission of construction control is ensuring quality in construction, as quality is the basis for calculating the preparatory, production and evaluation procedures and stages of construction. Khanzadi *et al.* (2020) believe that quality, strict compliance with the progress of construction and reduction of financial costs for construction is the main objective of supervision in the construction industry. Ravi *et al.* (2017) and Benny and Jaishree (2017) maintain that construction control should help to reduce the number of construction accidents and develop clear preventive measures. Nnedinma

(2017; 2017a) contend that monitoring compliance with labour protection and safety regulations should be the main objective of construction control.

Ding *et al.* (2017) studied the effectiveness of regional construction supervision and control systems in China, finding that practical managing engineers who supervise construction design and life cycle cost of the construction project is the current priority in the construction control system. The competitiveness of the construction project is assessed based on the results of their work, thus allowing the developer to enter the market with this project and maintain competitive advantages.

According to Zhou (2019), the quality of engineering works on construction sites can be approved through construction control. Government supervision of construction should be implemented through inspections of compliance with construction standards, construction progress and construction stages. Actual methods of construction control allow analysing the current scheme of construction management at a particular site, identify its gaps, and suggest ways to solve them.

Akimova *et al.* (2020) and Piasny and Pasławski (2015) explored the legal means of exercising construction control and found that self-regulation of licensed organizations is a component of government regulation. Although these organizations are engaged in civil law relations and issue construction permits, certificates, inspect construction technical regulations, etc., their powers are administrative.

Compliance with building standards, quality and safety is the basis of the construction industry (O'Brien *et al.*, 2020). According to Fatourehchi and Zarghami (2020), the main problems of construction supervision are related to the imperfection of the relationship between the participants in the construction process, compliance with quality standards and deadlines for investment construction projects. As Zeng *et al.* (2022) noted, barriers to construction control are the imperfection of the regulatory framework governing compliance with standards and codes of the construction industry and the powers of inspectors of construction control.

The theoretical analysis of the problems of construction control and its effectiveness from the perspective of compliance with safety and quality of construction objects showed that researchers consider it reasonable to further study residential construction control from the perspective of its legal regulation, effective recommendations for the practical implementation of the legal regulation, which would adjust the development of the construction industry.

Conclusion

Russia's armed aggression has destroyed much of its housing stock and social infrastructure. Therefore, the state authorities are obliged to take immediate action to restore the destroyed and damaged buildings in the territories liberated from the occupiers. The government has approved a legal framework for the rehabilitation these facilities, which partially simplifies some stages of construction.

Government construction control of construction projects is the activity of entities that carry out construction control by inspecting and supervising construction in order to ensure its compliance with state building codes, requirements, rules and standards, as well as aimed at preventing, detecting and terminating actions that violated the above regulations, as well as bringing the perpetrators to justice. The construction control is exercised by inspecting construction projects, issuing building permits, conducting examinations of construction projects for compliance with building codes, rules and standards, and identifying violations of construction legislation in order to eliminate them.

The mechanism of legal regulation of control in the construction industry includes such elements as: building codes and legal rules that ensure the exercise of control in the construction industry; subjects of architectural and construction control; tools of construction control; construction control procedure. Building codes and legal rules consist of construction legislation, international construction standards, rules and regulations. The entities that exercise construction control are specially authorized government bodies, private independent institutions, experts, inspectors and insurance companies.

The purpose of construction control is ensuring compliance of construction projects with the quality and safety regulations, as well as reduction of risks associated with the creation and use of the buildings. Ignoring construction control and adhering to building codes and standards entails dangerous and unserviceable construction sites and accidents during construction operations.

The prospects for further research include the analysis of the mechanism of legal regulation of construction control. Therefore, we consider the empirical study, as well as theoretical and methodological justification of effective measures for the state supervision of the construction sector to be further prospects of the research in this area.

The prospect of further research is the organizational support of effective control in the field of housing construction in the context of the armed aggression of the Russian Federation to restore the quality of housing in Ukraine as soon as possible.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 172-191
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Building Legal Mechanisms for Electronic Governance Development

DOI: https://doi.org/10.46398/cuestpol.4073.08

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Abstract

The aim of the study was to identify the legal mechanisms for the establishment of e-government and the development of e-governance from the perspective of international law and national legislation of countries where the level of e-governance is very high. Empirical and theoretical methods of scientific knowledge, as well as the comparative analysis were used for a comprehensive coverage of the research topic. It is found that the community-oriented principles are the basis for the functioning of e-government with a view to the digital transformation values. The establishment of digital government in different countries with a very high level of e-governance has its own peculiarities related to the status of the national legal framework, institutional capacity and economic development, information policy and information security. It was established that the e-governance should be improved by eliminating the digital gap, raising the level of digital literacy, creating a single competent authority to regulate public e-governance policy, introducing a network system of access to e-government services, and establishing a system for training civil servants on the provision of electronic services. Further research on e-governance may be focused on follow-up study and argumentation in order to determine effective legal tools of its regulation.

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Recibido el 26/03/2022 Aceptado el 24/05/2022

Keywords: e-government; digital government; information and communication technologies; information society; public service.

Construcción de Mecanismos Legales para el Desarrollo de la Gobernanza Electrónica

Resumen

El objetivo del estudio fue identificar los mecanismos legales para el establecimiento del gobierno electrónico y el desarrollo del gobierno digital desde la perspectiva del derecho internacional y la legislación nacional de países donde el nivel de gobierno electrónico es muy alto. Se utilizaron métodos empíricos y teóricos del conocimiento científico, así como el análisis comparativo para una cobertura integral del tema de investigación. Se encuentra que los principios orientados a la comunidad son la base para el funcionamiento del gobierno electrónico con miras a los valores de transformación digital. El establecimiento del gobierno digital en diferentes países con un nivel muy alto de gobierno electrónico tiene sus propias peculiaridades relacionadas con el estado del marco legal nacional, la capacidad institucional y el desarrollo económico, la política de información y la seguridad de la información. Se concluye que se debe mejorar el gobierno electrónico eliminando la brecha digital, elevando el nivel de alfabetización digital, creando una autoridad única competente para regular la política pública de gobierno electrónico, introduciendo un sistema de red de acceso a los servicios de gobierno electrónico, para establecer un sistema de capacitación de los servidores públicos en la prestación de servicios.

Palabras clave: gobierno electrónico; gobierno digital; tecnologías de la información y la comunicación; sociedad de información; servicio público.

Introduction

Digital technologies have become a driving force for socio-economic development and economic recovery in many countries. Information and communication technologies are becoming the foundation for sustainable development in almost all spheres of life, including e-economy, e-governance, e-democracy, e-commerce, e-education, e-medicine, e-research and e-innovation. They do not change activities, but the technological capability to use the latest knowledge.

The modern conditions of the Information Age require not only a radical modernization of society itself, but also the power vertical, which reflects this society and the inevitability of its administrative reform. Digital technologies are implemented in the public administration through the establishment of e-governance. In this context, the management and activities of national governments are determined by the usage of information and communication technologies with a focus on the citizens' need to use information networks. This public administration model allows the citizen to receive public information or administrative service online and thus make governance more efficient and transparent by establishing public control over it. The United Nations (2000) Millennium Declaration adopted by the General Assembly on September 8, 2000 enshrines access to the benefits of new technologies, especially information and communication technologies, through which e-government services are provided. Therefore, establishing legal mechanisms for the development of e-governance is currently a topical issue.

The aim of this research is to determine the legal tools for implementing and developing e-governance through the prism of international standards and provisions of national legislation of countries with a very high level of e-governance. The aim involved the following research objectives:

- determine and describe international standards for the establishment and development of e-governance;
- consider the fundamental principles of e-governance in the context of international standards;
- analyse the legal provisions of countries with a very high level of e-governance and determine the legal tools that they use in the implementation of e-government services;
- identify the main problems in the legal regulation of e-governance and suggest ways to solve them.

1. Literature Review

Many scholars dealt with the issues of legal support of e-governance and the introduction of effective legal mechanisms regulation. Elbahnasawy (2021) examined conceptual approaches to the development of future e-governance and identified economic growth and political stability as the basis for its development. Ma and Zheng (2019) studied the development of e-government in European countries in the context of the developing legal awareness, trust and digital capabilities of the people of these countries. Glyptis et al. (2020) considered the status of e-governance in the EU through the prism of the peculiarities of the legal provision of public administration

in different EU member states. Bharosa et al. (2020) studied e-governance in Estonia and the Netherlands and found that combination of institutions, information and communication technologies, legal tools and public administration help to achieve the effectiveness of e-government services. Tangi et al. (2021) examined e-governance at the local level in Italy in the context of e-maturity of Italians.

Roux et al. (2020) studied the effectiveness of e-governance in the exercise of electoral rights in the United States, and noted that the use of information and communication technologies is relevant in view of the current globalization trends in establishing e-democracy and the general form of public will expression — voting. Lee and Porumbescu (2019) and Sangki (2018) examined e-government services in South Korea and established its rapid growth due to the rapid development of information technology in this country and the transition of its society from industrial to highly developed information society. Liu et al. (2020) dealt with e-governance in China and identified three aspects that affect its development: the environment (political institutions); process (introduction of information technologies, public relations and their interaction); productivity.

Kurfalı et al. (2017) explored the sector of e-government services in Turkey in terms of promoting Turkish e-government services by identifying the needs and priorities of citizens for those services. Lallmahomed et al. (2017) studied the preconditions for establishing e-government services in Mauritius in the context of building trust, legal awareness and improving privacy protection in using e-government services. Lumbanraja (2020) dealt with the urgency of public administration reform and the provision of e-government services in Indonesia to promote synergies and harmonization between public authorities by eliminating duplication of functions between them to provide the same services. Almotawkel and Qureshi (2021) reviewed the status of e-governance in the Middle East and distinguished the main factors of its development: communication infrastructure, human resource efficiency, annual costs and legal awareness of society.

Park and Kim (2020) and considered e-government as an anti-corruption tool. Chen et al. (2019) analysed the factors that contribute to the e-government effectiveness, where they included technical, legal, managerial, inter-organizational factors. Wijatmoko (2020) examined the competence of public authorities to provide electronic administrative services to society, in particular: correctional, migration services, intellectual property services, information and communication protection, general legal administration services and others. Reviewing the evolution of e-government, Alcaide–Muñoz et al. (2017) recognize the prospects for its development by building a system of e-government services, the introduction of public e-government policy and the introduction of technological tools.

Nevertheless, the application of legal tools to regulate e-government, the reasons for inefficiency of e-government services and ways to overcome them are only partially covered despite the wide range of studies on this issue, which determines the topicality of this research.

2. Methods and Materials

This research was conducted in three stages. The first stage involved the search and study of scientific literature on information, scientific works on the legal problems of implementation of e-government, the provisions of international treaties on information society development, national legislation of countries with very high levels of e-government, the practice of applying legal tools of digital government. The topic, aim and objectives of the study were determined on the basis of the analysis of this literature.

In the second stage involved a theoretical and experimental study of the chosen topic through comparing their results and analysing the differences. The content of e-governance from the perspective of international standards and legal mechanisms for its implementation was determined through theoretical research. The objectives were fulfilled and the legal background for e-government, principles and ways to improve legal e-government regulation were determined through the experimental research based on international standards, the legal framework of European information policy and the generalization of their practical application, as well as doctrinal analysis of scientific papers on problematic issues of e-government.

The third stage provided for the final analysis to achieve the aim, as well as for the presentation of research results by writing an article on a computer.

The empirical and theoretical methods of scientific knowledge were used in the study of research topic. Empirical knowledge reflects the content of the object of study — the legal regulation of e-government — from the perspective of international legal support and legal relations in the field of information society development. Scientific, legal and practical information on e-governance and its e-services system was analysed through comparative analysis. Theoretical knowledge of the legal background of e-governance reveals the subject of research in terms of the universal internal essential connections and patterns covered by the rational processing of empirical data. The empirical and theoretical methods were combined to provide an empirical interpretation of the theory and theoretical interpretation of empirical data, as well as to reveal the principles of digital government.

The research sample included the following objects: the legal background for the development of the information society and e-governance,

international standards of digital government, the e-government principles and obstacles to its development. The legal background for the introduction of e-governance, e-government resources and a list of public e-services were determined through dispositions of the legislation of Denmark, Estonia, Finland, Sweden, Great Britain, Norway, Canada in the field of information society development, generalization of practical application of international and European legislation on e-government and statistics United Nations E-Government Survey 2020. The combination of these objects helped to reveal the problems of establishing the legal mechanisms of e-governance. The research was based on information retrieval using a computer, the global computer network and scientometric databases.

The research was based on the following international legal acts: UN Millennium Declaration, Okinawa Charter for the Global Information Society, UNCITRAL Model Law on Electronic Signatures, Digital Single Market Strategy for Europe, Digital Europe 2025, Recommendation Rec (2004) 15 of the Committee of Ministers of the Council of Europe on e-Governance, Electronic Signatures Directive 1999/93/EC, Declaration on a European Policy for New Information Technologies, Berlin Declaration on Digital Society and Value-Based Digital Government, and public law in countries with a very high level of e-governance, according to the UNE-Government Survey 2020.

3. Results

The provisions of international agreements are the foundation for the development of the information society and the provision of e-government services through the use of information and communication technologies. The United Nations (2000) Millennium Declaration proclaimed the main goals of developing the information society of the 21st century and the reduction of the digital gap. The Declaration provides that one of the directions of development of the information society shall be implemented through the measures taken by the member States to provide access to information and digital technologies to all population segments, including access to those information and communication technologies which are used to provide e-government services.

The Okinawa Charter on the Global Information Society adopted in 2000 enshrines the principle of accessibility of people to the benefits of digital technologies without restrictions and discrimination (Ministry of Foreign Affairs of Japan, 2020). This is essentially one of the first international legal acts, which reflects the general principles and directions of establishment and development of the information society. Paragraph 1 of the Charter states that the revolutionary development of information and

communication technologies affects the course of this millennium, people's way of life, their education and work, as well as the interaction between government and civil society.

The Charter appeals to the world community to create a favorable legal environment for the digital technologies to become a tool for economic growth, welfare, enhancing social cohesion, developing cultural diversity and the full exercise of human rights and their potential for strengthening the democracy and public administration. In order to achieve these goals, the Charter identifies the active introduction of information and communication technologies in the public sector to provide online services required to increase the availability of authorities to all citizens as one of the areas of implementation of these goals. E-government needs to introduce a number of e-services in almost all spheres of life for the full functioning of the information society, including telecommunications, transport, parcel delivery, social activities, customs and freight forwarding procedures, etc. The Charter appeals to the States parties to support developing countries by providing them with financial, technical and political assistance in order to create a favourable climate for the use of information technology worldwide.

As regards reducing the digital gap, the Charter focuses on cooperation with international organizations, developing countries and other actors in order to promote international cooperation to build political, regulatory and network support, as well as improve technical compatibility, expand access, reduce costs and strengthen human capacity, as well as encouraging participation in global e-commerce networks. Therefore, this international instrument not only declares the introduction of e-government for transparency of government through the provision of e-services, but also reduces the digital gap in society by providing assistance to developing countries.

The adoption of the Model Law On Electronic Signatures by the UN Commission on International Trade Law (UNCITRAL) in 2000 and setting up of electronic document management in the 90's of the 20th century played an important role in creating the legal framework for the establishment of e-government (United Nations, 2001). The provisions of this Law apply not only to the regulation of the use of electronic signatures in trade, but also in the public sector.

The provisions of Electronic Signatures Directive 1999/93/EC determine the use of electronic signatures and certain certification services for the proper functioning of the internal European market (EurLex, 1999). The provisions of Directive 1999/93/EC apply to almost all spheres of life, including the public sector. Paragraph 19 of the Preamble stipulates that public sector executive bodies may use electronic signatures in relation to citizens, economic operators, for example, in public procurement, taxation, the social security system, the health care system and the justice system.

According to Part 7 of Article 3 of Directive 1999/93/EC, member States may impose additional requirements before the use of electronic signatures in the field of public administration. Such requirements must be objective, transparent, proportionate and non-discriminatory, and relate only to specific characteristics. They cannot create obstacles to the provision of cross-border services to citizens.

The following framework and strategic documents provide the legal framework for digital transformation by extending the capability and engaging every citizen, empowering every business, building e-government and addressing global challenges within the EU: Digital Single Market Strategy for Europe (European Commission, 2015), Digital Europe (2019), European Standards for Telecommunications and Digital Technologies Development Programme, Connectivity for a European Gigabit Society, etc. The aim of the Digital Single Market Strategy for Europe (European Commission, 2015) is to create a single digital space within the EU for the proper functioning of the economy, industry and public administration.

Introducing e-government is a necessary prerequisite for building an efficient digital economy and a single EU digital market. Introducing common digital e-governance standards in the EU contributes to reducing the digital gap of Europeans in obtaining e-government services in the public sector and introducing common e-government information systems.

The Declaration on a European Policy for new Information Technologies proclaims the implementation of a single information policy in the EU (Verkhovna Rada of Ukraine, 1999). This information policy implemented in the legal systems of the member States can facilitate the use of the latest information technologies at the national, regional and local governance levels, as well as in administrations and executive bodies.

The leading role in the legal support of e-government is played by Recommendation Rec (2004)15 of the Committee of Ministers to Member States on Electronic Governance (Council of Europe, 2004; OECD, 2020), which establishes the basic legal framework for the implementation of e-government. The Recommendation recognizes that the member States need to review their e-government policies, legislation and to develop common e-government requirements based on respect for human rights, e-democracy and the rule of law. Uniform e-government requirements should be established through:

- strengthening democratic institutions at all levels by making them more accessible, transparent, accountable and efficient;
- creating conditions for everyone to participate in the decision-making process on public administration;
- improving public administration and services by making them more accessible, user-oriented, transparent, efficient and cost-effective.

Upon assessment of the role of governance for national, regional and local authorities, the European community considers it reasonable to build e-governance by implementing comprehensive strategies for its development. Those e-governance strategies should be developed through the principles of respect for human rights, in particular the right of everyone to express, seek, receive and impart information, knowledge and ideas. Typical national e-governance development strategies should include:

- basic principles of e-democracy and its processes;
- expanding the system of access points to information and communication channels to enable the user access to e-government services;
- developing a coordinated model of public administration of executive bodies functioning in different spheres and having different competencies;
- establishing cooperation between public authorities, the private sector and other civil society organizations;
- enshrining effective mechanisms for personal data protection at the legislative level in strict compliance with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and Protection of Information Security;
- introducing quality management systems in government bodies and providing constant monitoring of e-government management risks;
- implementing information and communication technology policy based on technological neutrality, open standards and evaluation of the possibility to choose from a variety of available software models, including open source models;
- setting up an education and training system for citizens and civil servants in order to improve their e-literacy (Council of Europe, 2004).

The Berlin Declaration on Digital Society and Value-based Digital Government was adopted in 2020, as the innovative role of public authorities in promoting e-governance based on the values of digital transformation of European society was recognized (European Commission, 2020). The Berlin Declaration is the continuation of the key principles of digital public services enshrined in the Tallinn E-Government Declaration and E-Government Action Plan for 2016-2020. The Berlin Declaration defines the public sector as an important element of the European single market and a driving force for new and innovative technological solutions to administrative services and social problems. This Declaration provides for e-governance which is based on user-oriented principles, taking into account the values of the

digital transformation of the European community. Figure 1 shows the European principles of e-governance.

European principles of e-governanance

- Validity and respect for fundamental rights and democratic values in the digital sphere;
- Social participation and digital integration to shape the digital world;
- Expanding rights and opportunities, as well as digital literacy that enable all citizens to participate in the digital sphere;
- Trust and security in interaction with e-government, which allows everyone to navigate safely in the digital world, authenticate easily andreceive digital recognition in the EU;
- Digital sovereignty and interoperability as key to ensuring the ability of citizens and public administrations to make decisions and act independently in the digital world;
- Human-centered systems and innovative technologies in the public sector that strengthen its role as a pioneer in safe and credible technology research;
- A sustainable digital society that preserves the natural foundations of life and uses digital technologies to increase the resilience of health systems.

Figure 1. The system of e-governance principles in the EU.

Source: European Commission (2020).

The Organisation for Economic Co-operation and Development (2020) has also contributed to the development of e-government principles for society by enshrining them in the Good Practice Principles for Data Ethics in the Public Sector adopted in 2020. Good Practice reflects the mechanism of ethical use of e-government data, its results and services, which guarantees a higher level of public trust. Unlike European e-governance principles, which are based on the values of the digital transformation of the European community, e-governance principles enshrined in the Good Practice make human rights the focus of e-government policy and data. Such principles include, in particular:

- integrated data management;
- national measures to ensure reliable access to e-government services, their use and information security;
- introduction of ethical norms of information policy in the public sector;
- monitoring and control of e-governance input data and its results, including data on the development and learning of artificial intelligence systems;
- provision of e-government services with a view to the purpose of using the public information received;

- establishment of boundaries for access to e-governance data and their shared use;
- adherence to openness, clarity, inclusiveness and quality in the provision of electronic services to the public sector;
- disclosure of e-governance open data and their source code;
- expansion of control over receiving of personal data;
- monitoring and responsibility for controlling the risk management of e-government.

The United Nations (2020) E-Government Survey evidenced that all regions of the world are progressing in the implementation of e-government. Europe is this year's leader with the greatest share of countries with a very high level of e-governance (58%), followed by Asia (26%), America (12%) and Oceania (4%). In 2020, Denmark, South Korea, Estonia, Finland, Australia, Sweden and the United Kingdom became the countries with a very high level of e-governance. Outsiders include Sudan, Eritrea and the Central African Republic. The EU countries have, on average, the highest rates of countries with a very high level of e-governance — 93% of European countries provide public services using information and communication technologies. The EU countries have high rates because of the fruitful work of the Community in building digital policy and the information society. The legal framework for the development of digital government in different EU countries and other leading countries with a very high level of e-governance has its own peculiarities (Table 1).

Table 1. Legal support of e-government of countries with a very high level of e-governance

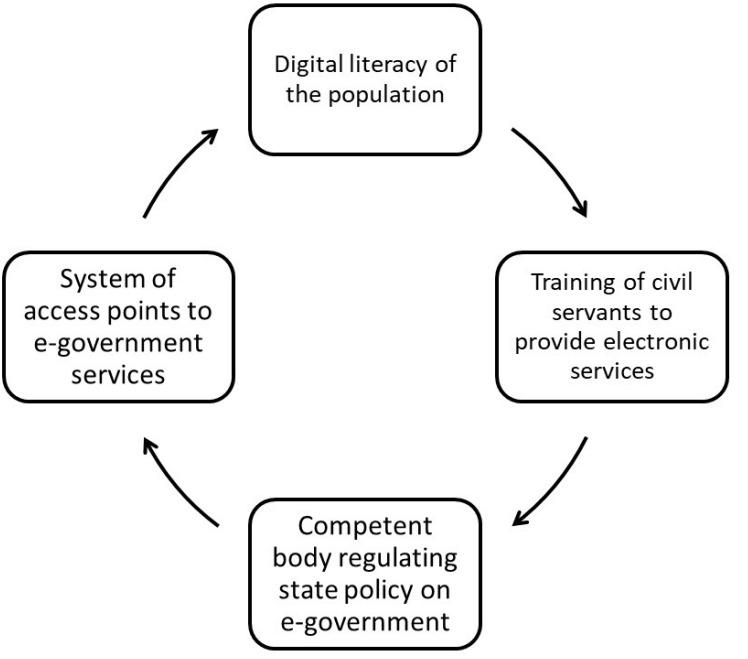
Country	Legislation	E-governance resource	E-government services
Denmark	Digitization Strategy of Denmark; State Strategy of Artificial Intelligence	Different specialized e-government portals for individuals and legal entities, including the national health portal	Services in the field of social protection, health care, taxation, education, etc.
Estonia	Civil society development strategy; Estonian Information Strategy 2013; Digital Signature Act 2004, Public Information Act 2004, Information Services Act, Database Act	The X-road system is a multi-channel communication protocol, and Eesti.ee is single-window government and electronic services	Services relating to digital identification, electronic voting, electronic taxation, electronic commerce, etc., excluding marriage and divorce, purchase and sale of real estate

Finland	Digitization Programme of Finland	Centralized single-window multichannel portal	Services in the field of social protection, health care, commerce, taxation, education, etc.
Sweden	Freedom of the Press Act 1949, Personal Data Act 1998, Electronic Signature Act 2000, Electronic Communications Act 2003	Government.se – state e-government portal, National Public Procurement Office	Services in the field of social protection, health care, commerce, taxation, education, etc.
England	Government Transformation Strategy for 2017-2020, Information Protection Act 2018, EU General Data Protection Regulations, Strategy for technological innovation, Electronic Communication Act 2000, Communications Act 2003, Electronic Signature Act 2002	gov.uk – state e-government portal	Services in the field of social protection, health care, commerce, taxation, education, etc.
Norway	Digitization Programme of Norway	Norge.no and Government.no, Altinn.no, Data.norge.no, Anskaffelser.no – government portals	Services for citizens and legal entities
Canada	Government On-Line (GOL) Programme, Shared Views and Feelings on Internet Use Programme	GOL – government portal	Services for citizens and legal entities

Source: United Nations (2020).

The effective e-governance should be implemented by eliminating the digital gap, creating a competent regulatory body for public policy on e-governance, introducing a system of access points to e-government services and training of civil servants to provide e-services (Figure 2).

Figure 2. Ways to develop e-governance



Source: Council of Europe (2004).

The areas of e-governance development should be enshrined at the legislative level with a clear plan for their implementation. The digital gap reduced by raising e-literacy among all population segments through lifelong education on innovation. The media, social networks, government forums and other information can make an effective contribution to the promotion of e-literacy. Improving the e-literacy of civil servants will help improve the quality of e-government services. Digital awareness of government officials can be raised through the introduction of a system of training and advanced training of civil servants in higher educational institutions on the basics of e-governance and the legal framework for its implementation.

The introduction of a system of access points to e-government services will help to overcome barriers among different population categories related to income, health, age, gender, etc. These measures should be reflected in national concepts together with the development of e-government and the information society as a whole. The newly established competent state body should deal with the implementation of not only the above-

mentioned directions of e-government development, but also the control over the implementation of the state e-governance development policy. The activities of this body will reflect the real indicators of the effectiveness of legal, organizational and technical means.

4. Discussion

The development of e-governance and the proper functioning of the e-government service system depends on the implementation of effective legal tools to eliminate the digital gap of the population, raise public confidence by providing quality electronic public services, introducing a system of e-government access points and train civil servants on basic principles of digital governance and improving knowledge in the field of electronic services.

According to Elbahnasawy (2021) and Malodia et al. (2021) the success of e-government projects depends on the needs of citizens, communication channels and the state of information and communication technologies. According to Ma and Zheng (2019), enhancing the use of e-government services by the public is possible through increased investment in e-government, successful public information policy aimed at building public confidence in the use of e-government services, expanding digital opportunities and raising awareness of society through increasing incomes and obtaining education. The established trust and legal awareness will balance the level of supply and demand of e-government.

According to researchers, the level of public knowledge about the latest technologies and the diversity of e-government services promote the participation of citizens in public education on IT, which has a positive effect on the interest in using e-government services regardless of age, as well as by people with disabilities (Lee & Porumbescu, 2019).

As Kurfalı et al. (2017) state that the increasing demand for electronic public services results from the expected productivity of governance policy, effective legal tools for keeping e-government services confidential, as well as for proper protection of Internet content and social position. According to Lallmahomed et al. (2017) — the level of protection of confidentiality of e-government results and the quality of public information resources promote the increase in the demand for the use of electronic services in the public sector. Tangi et al. (2021) believe that the electronic maturity of society increases the demand for electronic administrative services, thus reducing the costs of executive bodies at the state and local levels. According to Almotawkel and Qureshi (2021) communicative infrastructure, human resources, annual costs and the legal consciousness of society are the main factors in the development of e-governance.

Park and Kim (2020) state that e-governance is an effective anti-corruption tool, as open data portals introduced at the legislative level and discussion forums of public authorities on the Internet reduce corruption in the provision of administrative services. Liu, Yang and Zheng (2020) include the environment (political institutions), process (implementation of information technology, public relations and strategic interaction) and productivity in the factors influencing the implementation of e-governance projects. Chen et al. (2019) believe that special attention should be paid to the implementation of an effective system of legal tools to regulate e-government services along with technical, managerial and inter-organizational indicators of the effectiveness of e-governance.

Studying the evolution of e-governance, Alcaide–Muñoz et al. (2017) determine its further growth through the development of its components: smart city (public services), e-participation (political sphere) and the use of information and communication technologies by citizens (technological tools).

Sangki (2018) considers that the future model of modern e-governance should include the level of social maturity which is based on e-democracy, and healthy civil society which is based on the statistical model. According to Lumbanraja (2016), the reform of public administration in the field of e-government services should be based on harmonization of the structure of public authorities and their functions by eliminating duplication of their powers when providing the same administrative services to citizens. Roux, Fusi and Brown (2020) note that current globalization trends urge the use of information and communication technologies in the establishment of e-democracy through the exercise of the right to vote through online voting on public servers.

Efficiency of the system of electronic administrative services provided to society (correctional, migration services, intellectual property services, information and communication protection, general legal administration services, etc.) is based on the principles of the rule of law, e-democracy, quality, timeliness and reasonability (Wijatmoko, 2020, p. 213-214; Kurfali et al., 2017).

According to Glyptis et al. (2020), the key factors influencing the e-governance level include: the financial situation of society and the level of its readiness for e-government; state of infrastructure and technological innovations for effective knowledge and communication management; political and legal framework. Morozova and Kurochkin (2020) believe that the study of e-governance is topical because of the need to improve the system of government agencies and its sectors in terms of technological development, informatization and digitalization

We can note based on the results of the doctrinal analysis of the problems of establishing legal mechanisms for e-governance that scientists consider it reasonable to further study the legal tools of regulating the system of e-government services, effective recommendations for their practical implementation. This will adjust the content and directions of development of legal support for public administration.

Conclusion

The legal mechanism to regulate the development of e-governance is a system of legal tools, principles, methods and forms, which it to convert the rule of law into orderly public relations in the field of e-governance, as well as to establish and provide an appropriate system of electronic public services to meet the needs of citizens and legal entities.

The e-governance is based on the citizen-oriented principles, while taking into account the values of digital transformation. Such principles include: the validity and respect for fundamental rights and democratic values in the digital sphere; social participation and digital integration to shape the digital world; expanding rights and opportunities, improving digital literacy that enable all citizens to participate in the digital sphere; trust and security in interaction with e-government; digital sovereignty and interoperability as key to enabling citizens and public administrations to make decisions and act independently in the digital world; systems of innovative technologies in the public sector to strengthen their role in providing information security; a sustainable digital society that preserves the natural foundations of life and uses digital technologies to make health systems more resilient

The introduction of e-governance, the creation of e-government and the establishment of e-democracy promote the modernization of the form of public administration and the model of interaction of public authorities with citizens and organizations. The main current principles of e-government development include: improving the regulatory framework for digital government; consistency of the legal regulation of the archival storage of electronic documents; improving the quality and inclusiveness of e-public services provided to the public and businesses by building citizens' trust and improving their e-literacy; introduction of a system of training and advanced training for civil servants, local officials and citizens on the e-governance implementation issues.

The prospect of further research is working out legal mechanisms for the development of e-governance. Therefore, we consider the empirical research, as well as theoretical and methodological justification of the legal background for the development of the information society, including

the introduction of e-government and its services, as further prospects of research.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 192-214
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Reforming Techniques to Combat Organized Crime in the Context in View of Securing Human Rights and Freedoms

DOI: https://doi.org/10.46398/cuestpol.4073.09

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Abstract

The aim of this research was to detect shortcomings and provide suggestions for the development of new strategic directions in order to make combating organized crime more effective for providing security and comprehensive protection of human rights and freedoms. This aim was achieved through the methods of descriptive statistics, comparison and contrasting, descriptive analysis, pragmatic approach, forecasting. The main strategic directions of reforming measures to combat organized crime include: cooperation between government agencies, in particular, cooperation between government agencies and community representatives; destruction of the economic component of organized crime, criminal markets and criminal links between different types of criminal activities; providing proper level of education and digital literacy of law enforcement and other agencies; involving digital technologies and research findings in combating organized crime; creation of an appropriate national and international legal framework; securing the rights and freedoms of suspects or the accused; establishment and development of international cooperation to

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Recibido el 14/03/2022 Aprobado el 26/04/2022

combat organized crime. This study is not comprehensive, thus opening up prospects for further research on improving the legal framework and the practical implementation of its provisions in combating cross-border and national organized crime.

Keywords: countering crime; combating crime; human freedoms; human rights; organized crime.

Técnicas de reforma para combatir el crimen organizado en contexto con miras a garantizar los derechos humanos y las libertades

Resumen

El objetivo de esta investigación fue detectar deficiencias y hacer sugerencias para el desarrollo de nuevas direcciones estratégicas a fin de hacer más efectivo el combate al crimen organizado, para brindar seguridad y protección de los derechos humanos. Este objetivo se logró a través de los métodos de estadística descriptiva, comparación y contraste, análisis descriptivo, enfoque pragmático. Las principales direcciones estratégicas de las medidas de reforma para combatir el crimen organizado incluyen: cooperación entre agencias gubernamentales, cooperación entre agencias gubernamentales y representantes de la comunidad; destrucción del componente económico de la delincuencia organizada, los mercados delictivos y los vínculos delictivos entre distintos tipos de actividades delictivas; proporcionar el nivel adecuado de educación y alfabetización digital de las fuerzas del orden y otras agencias; involucrar las tecnologías digitales y los resultados de la investigación en la lucha contra el crimen organizado; creación de un marco legal apropiado; garantizar los derechos y libertades de los sospechosos o acusados; establecimiento y desarrollo de la cooperación internacional para combatir el crimen organizado. Este estudio no es exhaustivo, por lo que abre perspectivas para futuras investigaciones sobre cómo mejorar el marco legal y la implementación práctica de sus en la lucha contra el crimen organizado.

Palabras clave: lucha contra el crimen; combatir el crimen; libertades humanas; derechos humanos; crimen organizado.

Introduction

Combating organized crime is one of the priorities of national and international criminal law policy. The reason is that this type of crime is one of the most dangerous (Mkrtychan and Khadzhy, 2020), because it violates fundamental human rights and freedoms, infringes national and universally recognized values (Vaccaro and Palazzo, 2015), while socially dangerous activities of the vast majority of criminal organizations go beyond the borders of one state. This, in turn, requires the development of new both national and transnational (or supranational, as noted Fijnaut (2016), strategies and techniques to combat organized crime.

Besides, the rapid technological progress, increasing digitalization of social relations (financial transactions, payments, sales relationships, public administration services, etc.) promote the development and improvement of organized crime (Potapenko, 2020) the management of criminal organizations in many countries is being facilitates; the financing of organized crime is being simplified; ways of carrying out criminal activity of such organizations are being improved; interstate relations between different criminal organizations are being strengthened.

This is an extremely dangerous trend, which requires an immediate response from state national law enforcement agencies and international organizations. Their activities should focus on developing the latest practical tools to combat organized crime. In turn, making law enforcement more effective will help stabilize the dynamics of organized crime, and subsequently reduce its level both nationally and internationally.

Moreover, certain law enforcement actions applied by law enforcement agencies in order to counter the activities of members of organized criminal groups often violate the rights and freedoms of persons detained as suspects. The rights and freedoms of individuals should be protected equally for victims and suspects/the accused. Therefore, the rights and freedoms of both victims and perpetrators must be secured in developing new ways and techniques of combating organized crime at all levels.

1. Literature Review

The importance of the chosen subject matter is confirmed by the attention that scholars, practitioners, law enforcement agencies and other national government agencies pay to it. Fundamental research in this area deals with a comprehensive study of the concept, dynamics, description of changes and opportunities in combating organized crime (Nelen and Siegel, 2017); study of the role and effectiveness of national law enforcement agencies (police) in combating this type of crime (Sabet, 2012).

Most studies cover particular aspects of combating organized crime at different levels. In particular, the researchers pay attention to developing and reforming the main measures to combat organized crime in some countries at the level of national legislation, including the United States (to establish special law enforcement agencies to combat this type of crime) (Ibragimov, 2017), Mexico (to develop criminal justice reform areas) (Shirk, 2016), Ukraine (identification of problems in combating organized crime and the development of international cooperation in this area) (Poplavsky, 2019), the Russian Federation (development of tools to combat transnational organized crime through the cooperation of all government special bodies) (Orlova, 2021), Serbia (assessment of the opportunities that the reformed public administration offer in mitigating the negative effects of organized crime through the cooperation of special government bodies), the Netherlands (the importance of partnership between special government bodies and local communities in combating organized crime) (Groenleer, Cels and De Jong, 2020).

Some studies, which has recently increased in number, focus on exploring the features of cross-border organized crime and developing measures to combat such manifestations (Scherrer, 2009). In particular, the problems of combating organized crime are examined in terms of the need for cross-border cooperation in combating such crimes (Klymenko, 2018) at the level of associations of individual states (G8) (Radosavljević, 2020; Sherrer, 2009), (CIS) (Nizamedinkhodjaev, 2017) among other levels in order to develop a common strategy to make the situation with organized crime more stable.

The studies also cover certain aspects of organized crime, in particular its economic component (Savona and Riccardi, 2015), and the impact of the organized crime on the economic security of the state (Spanò, Di Paola, Caldarelli and Vona, 2016). The types of crimes that prevail in organized crime are highlighted (Gachúz, 2016), which is conductive to the development of special tools to combat certain areas of organized crime.

Nevertheless, a number of issues remain insufficiently studied despite adequate number of works on combating organized crime in some countries and at the transnational level. This makes counter-measures against this type of crime significantly less effective. Securing human rights and freedoms guaranteed by national (Constitutions of States) and international (Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter referred to as the Convention, the Universal Declaration of Human Rights, hereinafter referred to as the Declaration) regulatory acts is one of the basic principles and the ground for the activities of law enforcement and other government agencies in combating crime, in particular organized crime (Lestanin and Nikac, 2019).

But the researchers have not adequately covered the issue of securing the rights and freedoms of both victims and detainees for criminal activity as part of criminal organizations, although it would help to find a balance between law enforcement in this area and protection of rights in the state (Berar, 2015).

The topicality of the research issue, as well as a number of unresolved issues related to human rights and freedoms in combating organized crime determined the aim of this study, which is to identify shortcomings and provide suggestions for new strategic directions to improve combating organized crime from the perspective of security and comprehensive protection of human rights and freedoms. This aim provided for the following objectives to be fulfilled in this study:

- study the level of organized crime in some countries and the world;
- identify the most frequently violated rights and freedoms in combating organized crime;
- determine the main directions of combating organized crime at the current stage.

2. Methodology and Methods

In order to achieve the aim and fulfil the objectives set in the article, this research was conducted in a clear sequence, following the stages of studying the issue based on the logic of presentation of the material. The stages were the following:

- formulation of the subject matter and determining the scope of the study;
- search and selection of literary source base;
- selection and study of statistical data;
- analysis of the material presented in selected sources and assessment of the finding of those studies;
- identification of unresolved issues related to combating organized crime in terms of securing human rights and freedoms;
- determining the aim of research;
- drawing conclusions and providing practical recommendations for resolving the chosen issues;
- outlining prospects for further research in this area.

This study involved statistics on the Organized Crime Index of selected countries and their resilience to organized crime, statistics on the criminal markets in selected countries with a breakdown by type of organized crime (statistics on 42 countries were selected out of 193 countries the highest, average and lowest Organized Crime Indices). Information on violations of the rights and freedoms of persons engaged in organized crime constituted the empirical background of the study. The expert opinions on the imperfections of current methods of combating organized crime at the national and transnational (cross-border) levels were analyzed.

The article provides a detailed study of the provisions of international and national strategies that enshrine recommendations on the activities of law enforcement agencies to combat organized crime in order to develop suggestions for new strategic directions in combating organized crime to make law enforcement in combating this socially dangerous factor more effective. The regulatory framework consists of documents that enshrine data on the establishment, purpose and main activities of international law enforcement organizations to combat transnational organized crime (African Union Mechanism for Police Cooperation (AFRIPOL), n. d.; Association of Southeast Asian Police Commanders (ASEANAPOL), n. d.; Cooperation Council for the Arab States of the Gulf (GCCPOL), 2020; European Union Agency for Law Enforcement Cooperation (EUROPOL), 2021; International Criminal Police Organization (INTERPOL), n. d.; Police Community of America (AMERIPOL), n. d.).

The aim of the article was achieved through the following methods:

- descriptive statistics was used to select data to assess the level of organized crime in particular countries and evaluate the statistics;
- comparison and contrasting were used for comparative analysis of statistics on organized crime in the selected countries, as well as the proposed strategic directions to improve combating organized crime at the national and international levels;
- descriptive analysis was used to arrange, classify and summaries information on the previous research on issues related to combating organized crime in selected countries and the world, and the effectiveness of law enforcement activities in this area;
- the pragmatic approach to data collection and analysis was applied to determine the main grounds for reforming techniques and measures to combat organized crime in accordance with current needs;
- the forecasting method was used to develop suggestions and recommendations for improving measures to combat organized crime at the national and cross-border levels.

3. Results

The development of new tools to combat organized crime at the current stage is necessitated by the rapid development of criminal cross-border relations and the danger that the activities of criminal organizations pose at both national and international levels. Organized crime is not a new phenomenon in the world: organized crime in some countries is quite ingrained. According to some research, almost 80% of countries have a high level of crime in general and organized in particular. The Index of Organized Crime in 193 countries (see Table 1 for the data on the crime index and resilience index of selected countries) was determined through the comparison of the following indicators:

- the scale, scope and impact of certain criminal markets on government agencies and spheres of society;
- structure and influence of criminals on government agencies and areas of social life;
- the degree and effectiveness of measures of countries' resilience to negative influences that provide protection against threats of organized crime (Global Initiative against Transnational Organized Crime, 2021).

Table 1. The Organized Crime Index and the Resilience Index of countries (on a scale from 1 to 10)

Country	Organized Crime Index (ranked among 193 countries)	Criminal Market Index	Criminals Index	Resilience Index (ranked among 193 countries)
Mexico	7.57 (4)	8.00	7.13	4.46 (112)
Afghanistan	7.08 (7)	6.90	7.25	2.67 (172)
Turkey	6.89 (12)	6.40	7.38	3.54 (151)
Vietnam	6.28 (29)	6.05	6.50	4.67 (99)
Russia	6.24 (32)	6.10	6.38	4.04 (129)
Serbia	6.22 (33)	5.55	6.88	4.92 (93)
Ukraine	6.18 (34)	5.60	6.75	4.00 (133)
China	6.02 (41)	5.90	6.13	5.46 (60)
Montenegro	6.00 (45)	5.00	7.00	4.46 (112)
Italy	5.82 (53)	5.35	6.38	6.29 (33)
Spain	5.78 (55)	5.30	6.25	6.63 (27)

United Arab Emirates	5.75 (57)	6.75	4.75	5.33 (68)
France	5.67 (59)	5.70	5.63	6.83 (26)
United States	5.50 (66)	5.50	5.50	6.58 (28)
Bulgaria	5.43 (70)	5.10	5.75	5.29 (71)
Croatia	5.07 (85)	4.75	5.38	5.58 (51)
Greece	4.93 (92)	4.10	5.75	5.25 (72)
Germany	4.90 (95)	4.80	5.00	7.67 (13)
UK	4.89 (99)	4.40	5.38	7.88 (8)
Netherlands	4.69 (107)	5.00	4.38	7.42 (18)
Czech Republic	4.63 (112)	4.75	4.50	6.25 (34)
Romania	4.59 (115)	5.05	4.13	5.58 (51)
Sweden	4.57 (116)	4.25	4.88	7.46 (16)
Portugal	4.55 (117)	4.10	5.00	6.46 (29)
Japan	4.53 (118)	4.05	5.00	7.46 (16)
Hungary	4.50 (122)	4.25	4.75	5.08 (84)
Israel	4.42 (124)	4.20	4.63	6.00 (38)
Belgium	4.34 (127)	5.05	3.63	7.00 (25)
Switzerland	4.34 (127)	4.30	4.38	7.13 (24)
Austria	4.04 (141)	3.95	4.13	7.42 (18)
Poland	4.02 (143)	4.40	3.63	6.13 (35)
Australia	4.00 (145)	3.75	4.25	7.96 (6)
Denmark	3.87 (150)	3.85	3.88	8.21 (4)
Norway	3.82 (153)	4.00	3.63	7.92 (7)
Canada	3.67 (161)	3.45	3.88	7.25 (22)
Estonia	3.60 (163)	3.45	3.75	7.83 (9)
Latvia	3.52 (164)	3.65	3.38	7.42 (18)
Singapore	3.13 (174)	3.25	3.00	7.71 (12)
Georgia	2.97 (177)	3.05	2.88	5.71 (43)
Finland	2.72 (181)	2.80	2.63	8.42 (1)
Luxembourg	2.37 (185)	2.35	2.38	7.50 (15)
Liechtenstein	1.78 (190)	2.00	1.75	8.42 (1)

Own elaboration.

The data in the Table 2 add arguments to the above-mentioned danger to society that the both domestic and transnational organized crime pose. Moreover, this is also determined by the types of crimes that prevail in organized crime. These are mainly crimes that have a well-established system of their commission, which includes ways to overcome obstacles, specialization of individual members of a criminal organization in committing a particular crime, the use of proven effective methods and means of committing, ensuring maximum concealment of a certain type of crime. Such crimes include: human trafficking, people smuggling, arms trafficking, wildlife crimes, non-renewable resources crimes, drug trafficking, trafficking in psychotropic substances (cannabis, heroin, cocaine, synthetic drugs) (see Table 2 for the Organized Crime Index in selected countries).

The types of crimes listed in the Table 2 violate a number of fundamental human rights and freedoms enshrined in the Convention, the Declaration, national constitutions, as well as other national and international regulatory acts.

These include:

- the human right to life, which may be violated by wildlife crimes, drug trafficking, arms trafficking, etc. (Article 2 of the Convention);
- the right to have his honor respected and his dignity recognized, as human trafficking and people smuggling dishonor them (Article 3 of the Convention);
- people smuggling and human trafficking in the vast majority of cases is associated with slavery and forced labor in violation of Article 4 of the Convention;
- the right to liberty and security of person violated by human trafficking and people smuggling (Article 5 of the Convention);
- the right to respect for private life (Article 8 of the Convention), etc.

Table 2. Types of Organized Crime Index in selected countries (on a scale from 1 to 10)

Country (ranked among 193 countries)	Criminal markets in general	Human trafficking	People smuggling	Arms trafficking	Wildlife crimes	Wildlife crimes	Non-renewable resources crimes	Heroin trafficking	Cocaine trafficking	Cannabis trafficking	Synthetic drug trafficking
Mexico (1)	8.00	7.5	8.5	8.0	7.5	7.0	7.5	8.0	9.0	8.0	9.0
Afghanistan (6)	6.90	8.5	8.0	8.5	6.0	4.0	8.0	9.5	1.0	7.0	8.5
United Arab Emirates (8)	6.75	8.5	6.5	6.5	5.5	7.5	6.0	7.0	6.0	6.5	7.5
Turkey (13)	6.40	7.0	9.0	9.0	4.0	3.0	9.5	8.0	4.0	5.0	5.5
Russia (27)	6.10	6.5	6.0	4.5	7.5	7.5	5.0	7.0	4.5	5.0	7.5
Vietnam (29)	6.05	6.5	7.0	4.0	6.5	8.5	6.0	7.0	4.0	4.5	6.5
China (37)	5.90	6.5	6.0	2.5	8.5	9.0	4.5	6.5	3.5	4.0	8.0
France (42)	5.70	6.0	6.5	6.0	4.0	5.5	4.5	6.0	6.5	6.5	5.5
Ukraine (50)	5.60	7.0	6.5	8.0	6.5	4.0	7.0	5.0	3.5	5.0	3.5
Serbia (51)	5.55	5.0	6.5	7.5	4.0	4.0	4.0	7.0	5.5	6.0	6.0
United states (53)	5.50	5.5	4.5	6.5	2.5	5.5	4.5	6.5	7.0	5.0	7.5
Spain (58)	5.30	7.0	7.0	4.0	3.5	5.0	2.0	7.5	6.0	7.0	4.0
Italy (63)	5.25	7.0	6.5	5.5	2.5	3.5	5.5	4.5	7.5	5.0	5.0
Bulgaria (71)	5.10	6.0	5.0	3.5	5.5	5.0	5.0	6.0	4.0	5.0	6.0
Belgium (74)	5.05	5.0	5.5	5.5	2.5	3.5	3.0	4.0	7.5	6.5	7.5
Romania (74)	5.05	6.5	5.5	3.5	6.0	5.0	4.0	5.5	5.5	4.5	4.5
Netherlands (77)	5.00	5.5	4.5	5.0	3.0	4.0	4.0	4.0	7.0	5.5	7.5
Montenegro (77)	5.00	4.5	5.5	6.0	3.0	4.5	3.5	5.5	7.5	5.5	4.5
Germany (92)	4.80	5.5	7.0	6.0	1.5	3.5	2.5	4.5	6.5	5.0	6.0
Czech Republic (95)	4.75	5.0	5.0	4.5	3.0	5.5	3.0	4.5	4.5	6.0	6.5
Croatia (95)	4.75	4.5	6.0	3.5	5.0	2.5	4.5	5.0	5.5	5.5	5.5

Hungary (95)	4.75	6.0	6.0	3.5	3.5	4.5	5.5	4.5	5.0	5.5	5.5
UK (109)	4.40	6.0	5.0	3.5	2.5	4.0	2.0	4.5	6.5	4.5	5.5
Poland (109)	4.40	5.5	4.5	3.5	2.0	2.5	5.5	4.0	4.5	5.5	6.5
Switzerland (117)	4.30	5.0	3.0	6.5	1.5	3.0	7.0	2.5	5.5	5.5	3.5
Sweden (118)	4.25	4.5	5.5	6.0	2.0	3.5	2.0	4.0	4.5	5.0	5.5
Israel (121)	4.20	5.5	2.5	5.5	1.5	2.0	5.5	3.0	4.5	6.5	5.5
Portugal (127)	4.10	4.5	4.0	4.0	3.5	3.5	3.0	4.5	5.0	4.5	4.5
Greece (127)	4.10	5.5	7.5	3.5	2.0	2.5	3.0	6.0	3.5	5.0	2.5
Japan (130)	4.05	5.0	4.5	3.0	4.0	6.0	3.0	2.0	3.0	4.5	5.5
Norway (133)	4.00	5.0	3.5	3.5	2.5	4.0	3.5	5.0	4.5	4.0	4.5
Austria (136)	3.95	4.5	5.0	6.5	2.0	2.5	2.0	4.5	3.5	4.5	4.5
Denmark (143)	3.85	4.0	4.5	4.0	1.5	2.0	2.0	5.0	5.5	5.0	5.0
Australia (148)	3.75	3.5	3.0	3.5	3.0	3.5	2.0	3.5	5.0	3.5	7.0
Latvia (152)	3.65	4.5	3.5	3.5	1.0	2.0	2.0	4.5	5.0	3.5	7.0
Estonia (160)	3.45	4.5	3.0	3.0	1.5	1.5	3.0	3.0	3.5	5.0	6.5
Canada (160)	3.45	35	4.0	2.5	2.0	3.0	3.0	5.0	3.5	3.0	5.0
Singapore (164)	3.25	5.5	2.5	2.0	2.0	5.0	1.5	4.0	3.0	2.0	5.0
Georgia (169)	3.05	3.5	2.0	2.0	3.5	3.5	3.0	3.5	2.0	3.5	4.0
Finland (177)	2.80	3.0	2.5	2.5	1.0	1.5	2.0	3.5	4.0	3.5	4.5
Luxembourg (187)	2.35	3.5	2.0	2.0	1.0	1.5	1.5	3.5	3.0	2.5	3.0
Liechtenstein (188)	2.00	2.0	1.5	2.5	1.5	1.5	1.5	2.0	2.5	3.0	2.0

Own elaboration.

In view of the danger of crimes committed by organized criminal groups and the resulting violation of human rights and freedoms, the government policy of some countries focuses on enshrining all the necessary preventive instruments at the national level. The integration of some countries and the creation of their unions necessitated the development of common techniques of combating organized crime at the international level. A number of international organizations have been established for this purpose to carry out law enforcement activities, in particular combating

organized crime (see Table 3). The states realize law enforcement through law enforcement agencies, which often have separate units to combat organized crime in the state at the national level.

Table 3. Types of Organized Crime Index in selected countries (on a scale from 1 to 10)

Name of the international organization	Activities
INTERPOL (n. d.)	The International Criminal Police Organization, established in 1923 and comprising 194 states; it is engaged in coordination activities supporting the activities of law enforcement agencies to search for a person (object), the administration of justice, providing legislative support of their activities, etc.; coordination of international search; combating organized crime
EUROPOL (2021)	The EU law enforcement agency established in 1994, which includes all EU countries; it is engaged in activities that support information exchange between countries, coordinates operational activities and analysis of operational and law enforcement activities of member countries, ensures the harmonization of activities to combat crime, in particular organized crime
ASEANAPOL (n. d.)	The international law enforcement agency for combating transnational crime in the Far East established in 1981, which includes 10 countries (Brunei, Vietnam, Indonesia, Cambodia, Laos, Malaysia, Myanmar, Singapore, Thailand, Philippines); coordinates and strengthens international cooperation of law enforcement agencies of member states in combating transnational crime
AFRIPOL (n. d.)	The international law enforcement organization for police co-operation in Africa established in 1963, consists of 55 African countries; provides strategic, operational and tactical activities of law enforcement agencies of member states in combating organized transnational crime
AMERIPOL (n. d.)	The American police community established in 2007, has 18 member states (30 member organizations); the main objective is combating drugs, as well as other types of organized crime and providing the national security
GCCPOL (2020)	A law enforcement unit of the Secretariat General of the Gulf Cooperation Council, established in 1981, which provides the UAE's links (mostly) with partners, in particular, combating organized crime

Own elaboration.

The social danger and the scope of organized crime determine a large number of international law enforcement agencies to combat it.

Unfortunately, they are still not able to ensure respect for human rights and freedoms in the course of proceedings. The rights and freedoms of criminals are violated quite often when combating organized crime, as well as in the course of practical implementation of measures to expose criminal activity and detect perpetrators of crimes. This is usually the case during detention, arrest or holding in custody; during the pre-trial investigation; in the processes of extradition, expulsion and return of foreigners or stateless persons (see Figure 1).

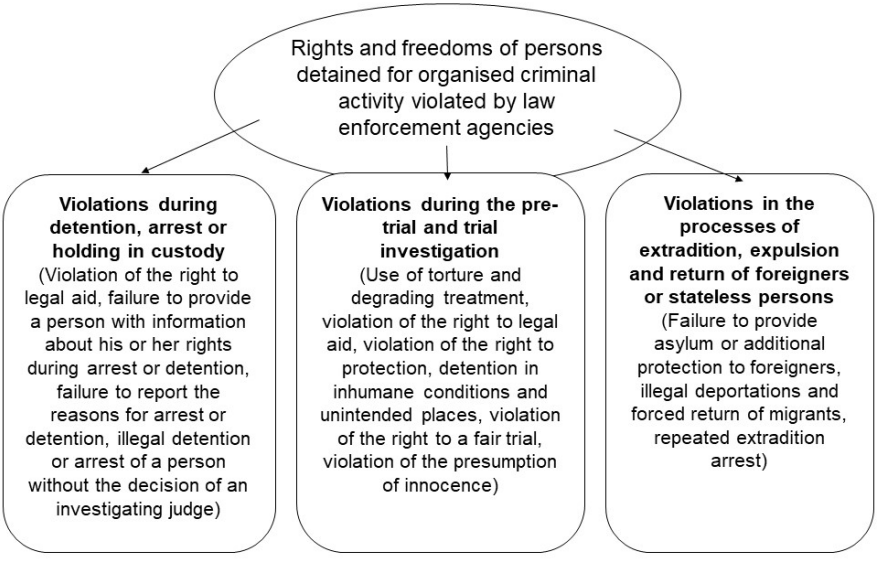

Figure 1: Violation of the rights and freedoms of persons engaged in organized crime by law enforcement agencies (Own elaboration).

These illegal actions by law enforcement agencies violate the Convention and the Declaration, the regulatory acts on extradition, combating cross-border crime, as well as national regulatory acts that enshrine fundamental human rights and freedoms.

The current state policy of each country focus on maximizing the rights and freedoms of each person, which are subject to the legal regulation. The vast majority of states that are members of particular unions, or parties to the international legal acts are guided in their criminal policy by a number of national and international legal acts that establish the main

areas of combating organized crime, in particular cross-border crime. Nevertheless, almost all strategies and recommendations for combating this type of crime need some improvement in view of the current needs and continuous humanization of all spheres of life, including law enforcement. The above statistics on the Organized Crime Index in some countries and their Resilience Index show that high level of country's resilience to the risks of increasing level of organized crime is not always a guarantee of the low crime rate. This, in fact, proves the need to develop a new approach to combating this dangerous phenomenon.

This is why a number of countries are trying to take into account the shortcomings of legislation in this area and its practical implementation when developing a strategy to combat organized crime at the national level (Ohr, 2015). Providing security and interests of the state and society, protection of human rights and freedoms in the face of threats of personal, social, national and international nature posed by organized crime are the main objectives of those strategies. Those strategies aim to develop new tools and areas of this field, improve existing ones and recommend methods of applying these tools. Moreover, national strategies usually include quite similar areas of improvement and modernization in combating organized crime in the context of globalization, humanization of legislation, as well as geopolitical, economic and technological world development trends (see Table 4).

Table 4. Strategic directions for improving measures to combat organized crime

Strategic direction	**Description**
Establishing and strengthening cooperation between government bodies and other agencies	- providing national security through the integration of representatives of government (law enforcement, judicial) agencies and non-governmental organizations, ensuring effective and timely exchange of information between them in order to combat organized crime; - establishing partnerships between specialized government bodies and local communities to ensure teamwork in combating organized crime
Making law enforcement activities aimed at ruining the organized crime groups and focusing on the highest priority crimes more efficient	- development of special measures to combat certain types of organized crime; - ensuring the effectiveness of law enforcement agencies in combating such crimes as human trafficking, people smuggling, wildlife crimes, drug trafficking; - break off criminal connections in the organized criminal activity by exposing certain types of criminal activity and breaking them; - identification and destruction of connections between organized crime and terrorism, corruption, extremism, etc.

Neutralization or destruction of the economic component of organized crime	- investigation of crimes committed by criminal groups and individuals against the economic and financial component of the national economy; - ensuring seizure of illegal profits and criminal proceeds; - termination of legitimate business that finances organized crime; - making fight against money laundering more effective; - counteracting the penetration of the criminal component into the legal economy
Combating criminal market	- combating criminal markets engaged in human trafficking, arms trafficking, public sector fraud and financial transactions in the public sector, cybercrime, money laundering and illicit proceeds, people smuggling (migrants), intellectual property crimes, corruption offences, environmental crimes; - mitigating risks and impact of criminal markets on the criminal structure and performance
Establishment and development of international cooperation in combating organized crime and its coordination	- improving the mechanisms of cooperation between the national law enforcement agencies of different states with international law enforcement agencies to combat organized crime; - ensuring coordination and exchange of information between national and international law enforcement agencies in combating organized crime, and making those processes more efficient; - creation of international databases that will be useful in combating organized crime
Using knowledge and skills, research finding to forecast the dynamics of organized crime and prevent it	- increasing the level of special knowledge in the field of anticipating the development of phenomena that give rise to and contribute to the development of organized crime; - identification of determinants and main trends in the development of organized crime; - forecasting the future state of organized crime in order to effectively combat certain types of crime in the structure of organized crime
Development of a new legal framework in combating organized crime, and adaptation of the current one	- development of new acts that will regulate new techniques and areas of combating organized crime; - revising current regulatory acts and certain provisions that determine measures to combat organized crime in line with current needs of national security
Providing an educational component for law enforcement and other agencies involved in combating organized crime	- training of law enforcement and judicial officers in digital literacy; - development of new educational programs for law enforcement officers and other agencies involved in combating organized crime; - permanent adaptation of the activities of national bodies engaged in combating organized crime to new ways and tools of criminal activity; - developing the necessary knowledge, skills of law enforcement and other government agencies involved in combating organized crime, and gaining the experience necessary for a digital investigation

Application of the latest digital technologies, as well as research and development products in combating organized crime	- expanding the use of new technologies to make combating organized crime more effective; - providing quick access to digital evidence and testimony; - ensuring the effective storage of data and information of law enforcement agencies on combating organized crime; - solving the problem of legal access to hidden and encrypted information on criminal investigations and prosecutions; - ensuring the security and confidentiality of law enforcement and other government agencies involved in combating organized crime

Source: Department of National Security of Spain (2019); European Commission (2021).

The strategic directions in combating organized crime that we identified are universal for stabilizing the dangerous situation with the growing level of organized crime in the selected countries and the world as a whole. As these directions are universal in the context of globalization at the international level, there is a need to develop a strategy for combating organized crime that will be taken into account in developing national strategies in this area. But they should also provide for a specially authorized person (such as an ombudsman) in view of such aspects of the research as violation of the rights and freedoms of persons involved in organized crime and current requirements for respect for the rights of suspects and the accused. This person (or probably a separate structural unit) should control the observance of the rights and freedoms of those criminals who committed organized crime or were involved in it. This will comply with the principles of humanity and human-centeredness of law enforcement. This should not, however, mean unjustified commutation of punishment or release from punishment and serving of those guilty of such criminal activity.

So, the International Draft Strategy for Combating Organized Crime may include structural components and areas of updating those activities, in particular:

- argumentation of the need to develop such a Strategy, which is due to current global geopolitical, technological and economic processes;
- the purpose of the Strategy to achieve the maximum expected effectiveness of measures to provide national and international security by law enforcement agencies involved in combating organized crime, as well as to ensure protection of human rights and freedoms in the implementation of the said measures;
- the main strategic directions to improve combating organized crime, which include: enhancing cooperation between different government agencies, as well as between government agencies and community representatives to ensure teamwork in combating organized crime; breaking the economic component of organized

crime, criminal markets and criminal connections between different types of criminal activity; providing the proper level of education and digital literacy for law enforcement officers and the officers of other agencies involved in combating organized crime; use of the latest digital technologies, knowledge, skills and research findings on combating organized crime; development of an appropriate national and international legal framework; ensuring that the rights and freedoms of suspects or the accused of being involved in organized criminal activity are observed; establishment and development of international cooperation to share information, data and experience in combating organized crime.

4. Discussion

The study indicates that one of the essential and priority measures in combating crime in general both nationally and internationally is the development of the latest techniques and tools to combat organized crime (Hrebeniuk, 2019) The reason is that organized crime has unfortunately become an integral part of crime in some countries and in the world, so it can no longer be considered an unusual phenomenon for any country (Xholi, 2017), although some approaches to determining the main features of organized crime and ways to combat it are debatable and cannot be considered universal and securing human rights and freedoms in this area.

The suggestion to consider organized crime as a political crime (Barnes, 2017) does not correspond to reality, notwithstanding the fact that combating crime in general and its type in particular is part of the criminal policy of states. This approach may lead to conditional recognition of punishment for organized crime as political repression, which is a violation of human rights and freedoms. Therefore, such an approach will not promote either combating organized crime or securing the rights and freedoms of persons engaged in criminal activity as part of organized criminal groups.

The author cannot agree with the suggestion to take certain measures in combating organized crime either. We can't fail to agree that combating organized crime is an important and complex activity, but there is a doubt about the need to establish additional government bodies (law enforcement agencies) that will focus on this type of activity (Ibragimov, 2017). Each state already has specially authorized bodies to combat and counter crime in general, being provided with all the necessary tools and resources for that purpose.

The establishment of additional bodies will duplicate existing bodies, moreover, this will require additional government funding. Therefore, this measure is inappropriate. It is also inappropriate for the same reason

to establish additional special international bodies that will deal with combating organized crime only (Fijnaut, 2016). Establishing cooperation, partnership between government bodies (police, prosecutor's office, tax service, etc.) and local communities, public organizations will be more effective and will allow for team multidisciplinary work (Groenleer, Cels and De Jong, 2020). In turn, this will be another guarantee of observing the rights and freedoms of persons engaged in criminal activities as part of the criminal organization and victims of such activities.

The possibility of applying restorative justice to perpetrators of crimes as part of the criminal organization is doubtful (D'Souza and L'Hoiry, 2021). Restorative justice involves a special approach to justice, where a meeting of the victim with the offender is arranged, usually with the involvement of members of the wider public to eliminate (settle) the consequences of the offense (Restorative Justice Council, n. d.). The possibility of applying this form of justice to persons who have committed crimes as part of a criminal organization is doubtful, as this type of crime is extremely dangerous and the consequences of it cannot be eliminated or corrected in the vast majority of cases.

Conclusions

The conclusion drawn from the study about an urgency of the reforming measures to combat organized crime, which is caused by geopolitical, technological and economic processes that have radically changed the features of the organized crime.

The main strategic directions of reforming the activities of law enforcement agencies to combat organized crime were identified on the basis of the results of the study. They are universal for both national and international law enforcement activities and include:

- enhancing cooperation between different government agencies, as well as between government agencies and community representatives to ensure teamwork in combating organized crime;
- breaking the economic component of organized crime, criminal markets and criminal connections between different types of criminal activity;
- providing the proper level of education and digital literacy for law enforcement officers and the officers of other agencies involved in combating organized crime;
- use of the latest digital technologies, knowledge, skills and research findings on combating organized crime;

- development of an appropriate national and international legal framework; ensuring that the rights and freedoms of suspects or the accused of being involved in organized criminal activity are observed;
- establishment and development of international cooperation to share information, data and experience in combating organized crime.

The Draft Strategy for Combating Organized Crime of advisory nature to member states should be developed at the international level. It should include the following structural components: grounds for the need to develop this strategy; the purpose of creating this strategy; main strategic directions of activity to combat organized crime and their explanation.

This study is not comprehensive and does not solve all the problems of making combating organized crime more effective and ensuring full respect for human rights and freedoms in the course of such activities. But the suggestion on the up-to-date Strategy for Combating Organized Crime and identification of the main strategic directions opens up prospects for further research in this area, which will improve both the legal framework and the practical implementation of its provisions on combating organized crime at the cross-border and national levels.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 215-232
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Formation of Social Ukraine's Policy on the Principles of Social Governance in EU Countries

DOI: https://doi.org/10.46398/cuestpol.4073.10

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Abstract

The purpose of this article was to identify the characteristics of the development of Ukraine's social policy in the context of integration into EU standards. The historical method was used to perform analysis of documentary sources in the temporal context and to investigate the genesis of the introduction of social policy and trends towards its further development with Europe. The legal method was also used to investigate Ukrainian and EU legislation and its application in the social field, in order to investigate its gaps, as well as its influence on integration processes. By way of conclusion, it was determined that the processes of European integration and, more precisely, the adaptation of Ukrainian legislation to EU standards in the social field played an important role in the development of the country's social policy. At the same time, there were differences in terminological approaches to key categories of the legislative systems of Ukraine and the EU, as well as in separate areas of social policy.

Keywords: governance; social policy; European integration; social justice; collective well-being.

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Recibido el 03/03/2022 Aceptado el 28/04/2022

Formación de la Política de Ucrania Social sobre los Principios de Gobernanza Social en los Países de la UE

Resumen

El propósito de este artículo fue identificar las características del desarrollo de la política social de Ucrania en el contexto de la integración a las normas de la UE. El método histórico se utilizó para realizar análisis de fuentes documentales en el contexto temporal y para investigar la génesis de la introducción de la política social y las tendencias hacia su mayor desarrollo con Europa. Se utilizó además el método legal para investigar la legislación de Ucrania y la UE y su aplicación en el ámbito social, con el fin de investigar sus lagunas, así como su influencia en los procesos de integración. A modo de conclusión se determinó que los procesos de integración europea y, más exactamente, la adaptación de la legislación ucraniana a las normas de la UE en el ámbito social desempeñaba un papel importante en el desarrollo de la política social del país. Al mismo tiempo, había diferencias en los enfoques terminológicos de las categorías clave de los sistemas legislativos de Ucrania y la UE, así como en áreas separadas de la política social.

Palabras clave: gobernanza; política social; integración europea; justicia social; bienestar colectivo.

Introduction

The relevance of this work is determined by the need to study the social policy of Ukraine in accordance with European integration processes.

The principles of social policy in Ukraine are one of the priorities of public policy and they are entrenched at the constitutional level. Accordingly, social policy aims to meet the needs of citizens through social security and welfare aid by providing shelters, appropriate medical and educational services and monetary payments to overcome poverty. Each direction represents an important area of human needs, which should be guaranteed and provided by the State at the appropriate level.

However, in the realities of the State's strengthening, the social sphere has been one of the most vulnerable ones since attainment of independence. And with the beginning of Ukraine's European integration, the process of adaptation of Ukrainian legislation to EU standards and the demands of the European community on Ukraine have led to a number of changes in the regulatory framework of the social sphere in accordance with EU principles. Thus, the relevance of our study stems from the need to determine the feasibility and effectiveness of implementation of social policy in Ukraine in the context of European integration processes.

The purpose of this article is to identify the features of legislative development and patterns of practical implementation of social policy in Ukraine in accordance with the European Union standards and norms.

This article defines the following tasks:

- to determine the place of social policy in Ukraine's European integration process;
- to analyse the state of practical implementation of social policy in Ukraine in the context of European integration processes;
- to identify the main gaps and development trends in the social policy of Ukraine and the European Union.

The purpose of this article is to study the development of social policy in Ukraine on the basis of principles and under the influence of integration processes of the European Union.

The object of research is social relations in the field of social policy development in Ukraine in accordance with the process of adaptation of legislation to EU standards and principles of social governance in the European Union.

Development and practical implementation of social policy in Ukraine remains a problematic issue. This problem becomes especially relevant in connection with Ukraine's European integration. It is necessary to analyse the legislative, practical and scientific base of sources in the field of social policy of Ukraine and the European Union. It is important to explore the features and gaps in the legislation, as well as their impact on integration processes in the social sphere. These factors determine the relevance of this article.

1. Literature Review

Okladna and Yakovyuk (2016) analysed the evolution of scientific views on social policy as part of the European integration process of Ukraine based on the scientific papers of the leading specialists in the field of European integration and social policy, statutes, legal and political acts of the European Communities.

Aravacik (2018) undertook a detailed analysis of the process of changes and transformations in different states and their social policy on a global scale, which will be considered conceptually and in terms of historical development. The paper established, that social problems change depending on economic and environmental factors, as well as differ depending on the social structure and public policy.

A study by Graziano and Hartlapp (2018) identified the causes of the financial and economic crisis and the change in the ideological composition of the European Commission as a determinant of the agenda and became a key driver of the European Union's social welfare policy.

A study by Copeland and Daly (2018) identifies the basic guidelines of EU social policy and the place of the "European Semester" in EU social development. It was noted that EU social policy is more focused on the support of market development than on the correction of market failures, due to a combination of factors, including the strong influence of some social agents in the context of restrictions, moderation in expectations and adoption of strategic practices by the key agents as well as due to policy differences among Member States.

The work by Babenko *et al.* (2020) determines that ensuring sustainable economic development in difficult political and economic conditions is one of the priorities for Ukraine, which is forced to reorient the vector of foreign economic cooperation to the integration groupings of the European Union.

Yakovlev (2020) reveals the importance of the principles of social security law and their role in social protection of the population. According to this study, the principles of social security are the key guidelines for rule-making activities aimed at the formation of a new system of social protection of the Ukrainian population. The more fully they are taken into account, the more successfully they will be adapted to modern demands, and the more reliably and efficiently the relevant social security system will function.

It was proposed to establish the following principles of social security law at the legislative level: multipurpose Ness, non-discrimination, equality of rights and opportunities, social justice, targeting, planned use of funds, State guarantees of the established rights, solidarity and subsidizing, transparency, timeliness, provision of a standard of living not lower than the minimum living standard, established by law, defence and protection of the lawful rights and interests of citizens in accordance with the national and international legislation. The more fully they are taken into account, the more successfully they will be adapted to modern demands, and the more reliably and efficiently the relevant social security system will function.

Sokurenko (2020) considered the principles of the welfare state from the perspective of some acts of the Constitutional Court of Ukraine and proved that formalization of the social State principles occurs due to some acts of the Constitutional Court within the national legal system of Ukraine.

Another study, undertaken by Begg (2010) determines the very special role and place of the "European Semester" in social and economic policy coordination. In particular, it was determined that European market integration contributes to the creation of an increasingly "social" Europe and that the "European Semester" is now the main coordination mechanism

for socio-economic policy. In general, it is an annual cycle of coordination aimed at better harmonization of the EU's national social and economic policies with commonly agreed objectives.

Karunarathne (2021) in the study of the relevance of social policy in social maintenance noted the role of the State and public administration in the development of social policy of each state.

The Covid-19 pandemic has become a significant socio-economic problem, causing a significant crisis in the world. In 2019-2021, there was a lot of research on various aspects of the pandemic and its impact on the modern world. Another topical research is Cavallin's (2021) study on preventing pandemics by building bridges in EU Policy and Law of 2021, which states that the approaches and positions of the EU and Member States often lack determination and ambition and are limited in synergy and coherence, representing lost opportunities both in terms of ambitions and in building bridges in various areas in connection with the pandemic.

Vesan and Corti (2021) investigated the return of the Social Entrepreneurship Commission before and after the Covid-19 pandemic in the context of adoption of the European Pillar of Social Rights (EPSR). The paper identifies that the EPSR was both a "policy support" and a "policy trigger" strategy, deepening the EU's social policy integration after a decade of significant political inertia.

Čeginskas *et al.* (2021) revealed that the discussion between the countries of Northern and Southern Europe on Eurobonds or the Economic Reconstruction Fund to respond to the economic and social consequences of the Covid-19 pandemic is the most relevant example of lack of political unanimity, which undermines the legitimacy of the Union. Researchers have found that if heritage sites manage to create polyphonic interactions between different groups and emotionally move people, they can help increase empathy and solidarity.

These are necessary preconditions for building a social Europe based on the recognition of the right to the same level of well-being in all Member States and the responsibility for correcting structural inequalities as a joint effort of Member States and EU citizens. Such an image of Europe can lay the groundwork for more active social policy and raise this policy to the top of the EU agenda. Therefore, European cultural heritage policies and practices can and should help make Europe more "social", especially as they become more citizen-oriented.

At the same time, we cannot agree with the allegations of Jordan *et al.* (2021), that in recent years the regime has not paid more attention to the social goals of the EU. The authors indicated that this was done through an in-depth analysis of pay statistics, employment protection and collective bargaining policies in Germany, Italy, Ireland and Romania between 2009

and 2019. It was concluded that EU intervention in these three areas of industrial relations policy continues through the liberalization program that transforms the labour force into commodities, albeit to varying degrees, in the uneven but still integrated European political economy. In our opinion, the formation and social orientation of the EU has significantly improved in recent years.

2. Methods and Materials

This article uses general scientific and legal research methods, among which the historical method is very important, as it allowed to conduct a detailed study and analysis of materials in the historical context, as well as to investigate the genesis of establishing social policy in Ukraine and trends for its further development and integration. Also, legal and comparative-legal methods were used to study the legal framework of Ukraine and the European Union, and the practice of their application in the social sphere and to explore the features and gaps in legislation, as well as their impact on integration processes in the social sphere.

Having analysed Ukrainian and foreign academic and practical literature , we have selected the scientific papers that allowed to study the history of the social policy development in Ukraine, European integration policy and legislation, as well as the practical consequences of their application. Further, we carried out the analysis of the legislation of Ukraine and the European Union in the field of social policy.

The research procedure included determining the relevance of the chosen research topic, analysis of scientific and practical methods and approaches used to conduct research on EU social policy, as well as their impact on the social sphere of Ukraine.

At the first stage of the study, we reviewed the scientific sources for the period from 2016 to 2021 to analyse the main aspects and theoretical basis of European and Ukrainian social policies, and accordingly to analyse different approaches. Also, it allowed to explore the historical background and development of European social policy and determine the directions of its further development. Next, a study of relevant legislation and current legal and regulatory instruments was conducted.

The next stage involved the selection of practical and theoretical materials in the field of social policy in accordance with the criterion of territoriality on the basis of an integrated approach, which allowed to identify the main problems and prospects of this research, study the experience of the EU and determine the state of development of this problem in different regions.

Next, we analysed the common and distinctive features of European and Ukrainian social policies and identified the obstacles to the formation of the Ukrainian social sphere on the basis of the EU principles. An important aspect at this stage was the study of the compliance of social spheres with the goals of sustainable development in these regions.

To verify the results, we analysed the budgets and financial costs for social security of Ukraine and the EU and undertook the appropriate comparable monitoring of practical materials for the implementation of certain areas of social policy in the EU and Ukraine.

3. Results

The analysis of the data conducted in this study confirms our hypothesis that the definition of the list of principles of social policy in Ukraine is a debatable issue.

One of the most controversial issues of Ukraine's social policy is the problem of principles, which play an important role in the provision of social security. However, there is no scientific consensus regarding the determination of the list of such principles.

Accordingly, there is a contradiction in approaches to understanding the terminology of social policy in Ukraine. If the term "social policy" is used in the EU countries, the Ukrainian legislation operates with such terms as "social welfare policy", "social protection policy" and "social policy" itself. There are two points of view on the meaning of these terms: the first indicates their identity, and the second states that "social welfare policy" and "social protection policy" are included into the notion of "social policy". The differences in the legal systems of the EU and Ukraine, as well as different legal systems (Anglo-Saxon legal system in the EU and the Romano-Germanic legal framework in Ukraine) necessitate different concepts and approaches to understanding of the term "social policy".

In the empirical analysis, we compared the income and expenses of the budget in certain areas for the last five years (2017-2021).

Funding for 2021 was approved according to the Law of Ukraine "On the State Budget of Ukraine for 2021" (Verkhovna Rada of Ukraine, 2020).

According to this document, the government revenues for 2021 amount to 1,147,876,117.3 thousand hryvnias, and the state budget expenditures amount to 1,385,492,043.2 thousand hryvnias.

The state budget for 2021 provides for almost UAH 160 billion for healthcare, and almost UAH 170 billion will be allocated for the development of education and science. Expenditures on national security and defence

are projected at UAH 267 billion, or 5.93% of GDP. In 2021, the minimum subsistence level per person per month in Ukraine is in the amount of 2189 hryvnias from January 1; 2294 hryvnias from July 1, and 2393 hryvnias from December 1. The minimum wage in 2021 in Ukraine from January 1 is 6000 hryvnias, from December 1 - 6500 hryvnias.

State revenues for 2020 amount to UAH 11,022,051,935 and state budget expenditures for 2020 were provided in the amount of UAH 1,270,677,100.3. The maximum limit of Ukraine's government deficit is set at UAH 298,404,307.9. In 2020, the minimum subsistence level per person per month in Ukraine was from January 1, 2020 - 2027 hryvnias, from July 1 - 2118 hryvnias, from December 1 - 2189 hryvnias. The minimum wage in 2020 was from January 1 - 4723 hryvnias, from September 1 - 5000 hryvnias (Verkhovna Rada of Ukraine, 2019).

Ukraine's State budget for 2019 provided for government revenues in the amount of UAH 1,007,303,177.9 and state budget expenditures in the amount of UAH 1,093,021,713.2. In 2019, the minimum subsistence level per person per month in Ukraine was 1853 hryvnias per month from January 1, 2019, 1936 hryvnias from July 1, and 2027 hryvnias from December 1 (Verkhovna Rada of Ukraine, 2020). In 2019, the minimum wage from January 1 was 4173 hryvnias (Verkhovna Rada of Ukraine, 2018).

Ukraine's State budget for 2018 provided for government revenues in the amount of UAH 917,998,866.4, and state budget expenditures in the amount of UAH 991,930,698.4. In 2018, the minimum subsistence level per person per month in Ukraine was 1,700 hryvnias from January 1, 2018, 1,777 hryvnias from July 1, and 1,853 hryvnias from December 1. In 2018, minimum wage from January 1 was 3723 hryvnias.

Ukraine's State budget for 2017 provided for government revenues in the amount of UAH 771,266,617.6 and state budget expenditures in the amount of 841,402,834.3. In 2017, the minimum subsistence level per person per month in Ukraine was 1544 hryvnias from January 1, 2017, 1624 hryvnias from May 1, and 1700 hryvnias from December 1 (Verkhovna Rada of Ukraine, 2016). In 2017, the minimum wage from January 1 was 3200 hryvnias.

Accordingly, Table 1 shows the following trends in budgeting for 2016-2021.

Table 1. Social budget of Ukraine for 2017-2021.

Year	State revenues	State budget expenditures	The minimum subsistence level	The minimum wage

calendar year	*Thousand UAH*	*Thousand UAH*	*from January 1*	*from May 1*	*from July 1*	*from December 1*	*UAH*
2017	771.266.617,6	841.402.834,3	1544	1624	1624	1700	3200
2018	917.998.866,4	991.930.698,4	1700	1700	1777	1853	3723
2019	1.007.303.177,9	1.093.021.713,2	1853	1853	1936	2027	4173
2020	11.022.051.935	1.270.677.100,3	2027	2027	2118	2189	*from January 1* - 4723, *from September 1* - 5000.
	1.147.876.117,3	1.385.492.043,2	2189	2189	2294	2393	*from January 1* - 6000., 3 *from December 1* - 6500.

Source: Authors.

Thus, from 2017 to 2021, Ukraine's government revenues increased by UAH 376609499.7, state budget expenditures increased by UAH 544089208.9, the minimum subsistence level increased by 849 hryvnias, and the minimum wage by 3 300 UAH. Thus, the percentage ratio can be calculated as follows (Table 2).

Table 2. Percentage changes in the social budget of Ukraine for 2017-2021.

Year	**State revenues**	**State budget expenditures**	**The minimum subsistence level**	**The minimum wage**
previous / next year	*%*	*%*	*%*	*%*
2017/2018	19,94	17,94	9,00	16,34
2018/2019	9,72	19,28	9,39	12,09
2019/2020	1094,54	16,26	4,49	19,82
2020/2021	-89,58	9,03	9,14	30,00

Source: Authors.

At the same time, the wage level in the EU in 2021 ranged from 300 euros in Bulgaria to 2202 euros in Luxembourg (Eurostat, n. d.). It is estimated that the average wage in Ukraine is less than 180 euros per month (Figure 1).

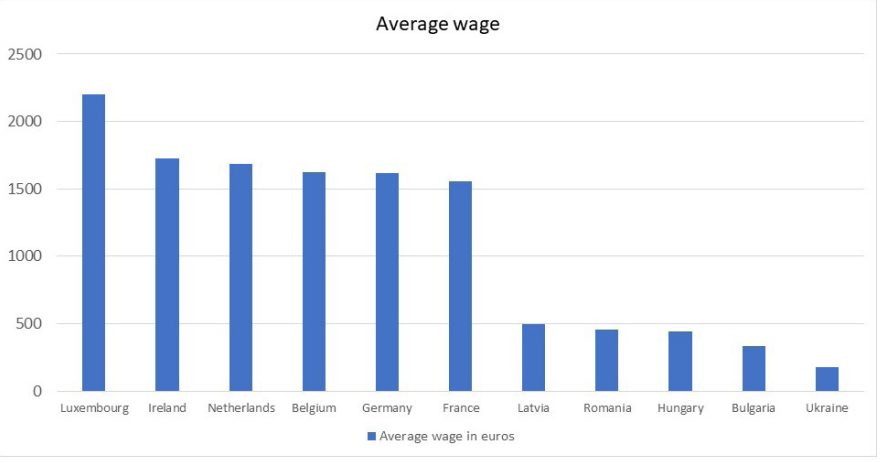

Figure 1: Comparison of average wages.

Moreover, although life expectancy in Ukraine is growing, it still remains one of the lowest in the world (Worldometer, n. d.). We analysed the average age in some EU countries and in Ukraine in 2020 and determined that the average life expectancy in Ukraine is lower than the global by 0.7 years, female life expectancy is higher by 1.67, and life expectancy for men is lower by 3.24 years. In total, Ukraine ranks 119-th in the world (Table 3).

Table 3. Average life expectancy in Ukraine and the EU.

2020	World	Ukraine	Sweden	France	Germany	Italy
Women	75.6	77.27	84.97	85.82	84.14	85.97
Men	70.8	67.56	81.69	80.32	79.62	81.90
In general	73.2	72.50	83.33	83.13	81.88	84.01

Source: Authors.

As a result, we should emphasize that Ukraine should pay more attention to certain aspects of social policy development, but take into account the fact that on general social indicators Ukraine cannot fully meet the EU requirements. Nevertheless, given the data, it can be determined that the direction of social policy in accordance with the European integration processes has led to a significant development of certain social indicators in Ukraine.

As a result of the analysis of scientific and practical materials of 2016-2021, we concluded that the social policies of Ukraine and the European Union have significant differences that were not duly taken into account, which complicates the process of adaptation and harmonization of Ukrainian legislation with EU legislation.

In particular, the legislative frameworks of Ukraine and the European Union are based on different legal systems that have different features of their implementation.

Furthermore, the level of socio-economic development and government priorities also play a significant role in shaping the country's social policy. Accordingly, Ukrainian and European realities differ in these areas.

In our opinion, it is especially important that the coordination of policies of EU Member States is among the main tasks of the EU, and migration from the Middle East is a significant problem, which has led to significant additional burden on the budget and social sphere of Europe and lead to instability and made the crime situation worse.

At the same time, in Ukraine European integration plays a key role among the main tasks, in the process of this integration it is important to adapt and harmonize Ukrainian legislation to EU requirements, as well as to further implement it effectively. An important task is the systematization of social law rules and the formation of a comprehensive system of social policy in accordance with the requirements and principles of the social direction of the European Union. The main obstacles in the Ukrainian realities include overcoming the consequences of the Chornobyl catastrophe and social support for Chernobyl victims, which is an exclusively national issue of Ukraine.

Secondly, the elimination and overcoming of the consequences of Russian aggression, and, accordingly, social security and protection of ATO participants, as well as their families, is an acute problem of Ukraine's social policy in the 2020-s. The issue of social security for internally displaced persons became relevant with the annexation of the Autonomous Republic of Crimea and the Donetsk region. These aspects have a significant impact on the social sphere of the State.

Ukraine's European integration is the common goal, in which, in accordance with modern political conditions, both sides are interested.

Also, both sides are characterized by the so-called "aging of the nation", i.e., citizens of pensionable age constitute the majority of the population, which complicates proper social security.

Also, the whole world faced a difficult common issue related to the Covid-19 pandemic in 2019-2022, which particularly affected the social sphere of each country, including the EU and Ukraine. Accordingly, the

crisis in the social sphere of the countries of the world and their interaction and the consequences of overcoming the epidemic is a topical area for further research.

4. Discussion

As a result of the study, we determined the features of social Ukraine's policymaking under the influence of European integration processes and the difference with the social policy of the EU. It was determined that the Ukrainian and European preconditions of development and geopolitical features significantly influenced its formation. The experience and trends of the EU social direction have influenced Ukrainian realities, but cannot be considered as imperatives for Ukrainian reality.

In general, the EU is an international entity with a global reach which has a number of special characteristics compared to state actors. Particular challenges, which the EU is facing, include the diversity of institutions and members, the effectiveness of its external actions, and the question of legitimacy.

Social policy is concerned with how societies around the world meet human needs for security, education, work, health and well-being (Platt, n. d.). The complexity of the study is due to the peculiarities of socio-political changes in public life, which led to a change in social needs (Aravacik, 2018). As a result of the 1991 Maastricht European Council, the Treaty on Political, Economic and Monetary Union was concluded, which together constitute the Treaty on European Union (2012). According to the Treaty, Member States confirm their commitment to fundamental social rights (Begg, 2010).

Changes in globalization processes have led to the need to reform the social sphere, which is associated with the definition of new parameters of social problems and the social policy transformation (Čeginskas *et al*., 2021).

Despite the crisis, the European Pillar of Social Rights was adopted, which was the impetus for development (Garben, 2019; Vesan and Corti, 2021). It identifies 20 principles and rights necessary for equity of labour markets and social protection systems (European Commission, n. d.).

Also, the European integration process in Europe has become especially important for the development of the social sphere, as it has gradually become a factor influencing the socio-economic development of countries around the world (Haas *et al*., 2020). In 2008, the European Parliament adopted a Resolution stating that it is unacceptable to favour social rights. Thus, the implementation of the common social policy becomes an essential

element necessary for strengthening internal ties within the EU and for the formation of European identity.

In 2015, the Sustainable Development Goals for the period up to 2030 were adopted in order to ensure peace, social development and prosperity for people and the planet now and in the future (United Nations, 2015). It has been acknowledged that over the past fifteen years, there has been a lack of new policy solutions for underrepresented groups in the labour market (Alcidi and Gros, 2017). These changes affect other areas, such as gender equality, protection of social rights, health protection or global competition for skills and innovations.

Thus, the Ukrainian social sphere must respond and develop in accordance with the new directions and trends of European social policy. Article 46 of the Constitution of Ukraine stipulates that *all* citizens have the right to social protection, which includes the right to security (Voronina, 2020). The Association Agreement of June 27, 2014, between Ukraine and the EU serves as a strategic guideline for systematic social reforms (Proskura, 2020). Ukraine, respectively, must provide gradual approximation to EU law, standards and practices in the field of social policy (Sokurenko, 2020).

At the same time, integration plays a key role among the main tasks of Ukraine, within which it is important to adapt and harmonize Ukrainian legislation with EU requirements. The main obstacles are overcoming the consequences of the Chornobyl catastrophe and social support for the victims. An acute problem of Ukraine's social policy is the elimination and overcoming of the consequences of Russian aggression, social security and protection of ATO participants and their families. The issue of social security for internally displaced persons became relevant with the annexation of the Autonomous Republic of Crimea and the Donetsk region. These problems strongly influence the social sphere (Bekker, 2021).

The European integration of Ukraine is the general objective, in which, in accordance with the political conditions, both parties are interested. The high level of public debt in the EU and Ukraine is a factor that today increases economic vulnerability (Casagrande and Dallago, 2021a, b). Although a number of social reforms have not been successful, they have led to significant development and formation of new social policies in the EU and Ukraine (Alcidi and Gros, 2017). The crisis in the social sphere in recent years has been caused by the Covid-19 pandemic, which has particularly affected the social sphere of each country. At the same time, the pandemic crisis is a window of opportunity for fundamental changes in the social sphere (Ladi and Tsarouhas, 2020; Seabrooke *et al*., 2020).

Conclusions

As a result of the study, we can conclude that this policy is necessary for the world community, as the social sphere is key area for the establishment of democracy, human rights and in the formation of the appropriate level of welfare of citizens of each state. Accordingly, current socio-political changes, crises and challenges require a review and rethinking of basic approaches and trends in the development of the social sphere.

The relevance of the work is determined by the need to study the social policy of Ukraine in accordance with the processes of European integration and the crisis caused by the coronavirus pandemic.

The principles of social policy in Ukraine are enshrined at the constitutional level and are one of State policy priorities, aimed at meeting citizens' needs through social protection and security, which must be guaranteed and provided by the state at the appropriate level. However, in the realities of Ukrainian nation building, the social sphere has been one of the most vulnerable ones since independence. The development of social policy in the state took place gradually, and scientific and theoretical approaches to understanding social policy developed and improved progressively as well.

And with the beginning of Ukraine's European integration, it has led to a number of complications and drastic changes in the social sphere that need to be addressed. Therefore, our study of the need to determine the practical feasibility and effectiveness of social policy in Ukraine in the framework of European integration reforms is relevant and topical.

In general, in Ukraine and the EU there are different approaches to understanding the socio-political processes arising from different political systems of the countries, features and state of socio-economic development.

Accordingly, the problem of social security and social protection of Chernobyl victims and ATO participants, the problem of social security for internally displaced persons in Ukraine and migrants in the EU are especially acute.

Instead, both sides have adopted the principles of sustainable development and adhere to them, these principles have defined the main criteria, needs and ways of socio-economic, social and environmental development of countries.

It ought to be noted that for all countries of the world, including Ukraine and the EU, the coronavirus pandemic 2019-2021 is a sensitive issue that caused a significant social and economic crisis.

Thus, we can conclude that the EU and European integration play a significant role in shaping Ukraine's social policy. At the same time, it should be recognized that the category of the social sphere has expanded significantly in recent years, which has led to a new understanding of the role and importance of the EU in this area.

Taking into account the results of this study provide an opportunity to more effectively and systematically approach the effective social policy-making in Ukraine and its adaptation to EU standards.

Determination of the features of the application of social policy principles in Ukraine, as well as exploration of the specificities of social security and protection of Chernobyl victims and former members of the ATO participants may constitute prospects for further research.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 233-250
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Infrastructural Development of Smart Cities as the Background of Digital Transformation of Territorial Units

DOI: https://doi.org/10.46398/cuestpol.4073.11

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Abstract

The Interoperability, continuous data and technology flow are core requirements of a proper smart city. Smart cities take on the characteristics of innovative, competitive and attractive megalopolises, which is strategically important for residents and investors. The aim of the article was to identify the current state and current issues of the Smart City concept implementation in Ukraine in the context of the experience of developed countries. The main methodological tools included the observation, statistical and comparative analysis. The study found that the effective development of digital transformation of territorial units in Ukraine requires focusing on certain factors during the implementation of the Smart City concept. Such factors conditionally include: technology-based infrastructure; environmental comments; constructive level of public transport; progressive city plans; opportunities for citizens to use appropriate resources. It was found reasonable to introduce infrastructural development of smart cities in Ukraine as a foundation of digital transformation of territorial units. Smart

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Recibido el 01/04/2022 Aceptado el 13/06/2022

Cities were substantiated as an important tool for effective prevention and control of the pandemic without the introduction of restriction policies. A comparative analysis of the practice of Ukraine and developed countries in the implementation of infrastructural development of Smart Cities is a promising area of further research.

Keywords: cybersecurity; digitalization; innovative technologies; internet of Things; smart city.

El Desarrollo Infraestructural de las Ciudades Inteligentes como Contexto de la Transformación Digital de las Unidades Territoriales

Resumen

Las ciudades inteligentes asumen las características de megalópolis innovadoras, competitivas y atractivas, lo cual es estratégicamente importante para residentes e inversores. El objetivo del artículo fue identificar el estado actual y los problemas de la implementación del concepto Smart City en Ucrania en el contexto de la experiencia de los países desarrollados. Las principales herramientas metodológicas incluyeron la observación, el análisis estadístico y comparativo. El estudio encontró que el desarrollo efectivo de la transformación digital de las unidades territoriales requiere centrarse en ciertos factores durante la implementación del concepto de Ciudad Inteligente. Dichos factores incluyen condicionalmente: infraestructura basada en tecnología; comentarios ambientales; nivel constructivo del transporte público; planes urbanos progresistas, y; oportunidades para que los ciudadanos utilicen los recursos apropiados. Se consideró razonable introducir el desarrollo de infraestructura de ciudades inteligentes como base de la transformación digital de las unidades territoriales. Se concluye que las Ciudades Inteligentes se fundamentaron como una herramienta importante para la prevención y el control efectivos de la pandemia sin la introducción de políticas de restricción. Un análisis comparativo de la práctica de Ucrania y los países desarrollados en la implementación del desarrollo de infraestructura de *Smart Cities* es un área prometedora de investigación adicional.

Palabras clave: seguridad cibernética; digitalización; tecnologías innovadoras; internet de las cosas; ciudad inteligente.

Introduction

The COVID-19 pandemic has made the global population realize how technology can improve current realities by keeping citizens healthy and transforming the economy. COVID-19 urged digitalization and urban innovation. The development of a regulatory framework, organizational structure, approaches to citizen involvement and general ethical considerations are currently required for taking relevant actions in cities (Amankwah-Amoaha *et al*., 2021).

According to 2018 scientific data, more than 50% of the world population lived in cities, and this figure is expected to exceed 70% by 2050 (Ritchie and Roser, 2018). Covering about 1% of the land area, cities consume 75% of energy, 85% of resources and produce about 80% of the world's greenhouse gas emissions (Huang *et al.,* 2021). The structural changes in the world were driven by the fourth industrial revolution. Technological changes, innovation and human capital were recognized by industrial enterprises and small firms as the driving force of modern economic and social transformations (Chung, 2021). Continuous urbanization of cities can, however, lead to more serious environmental pressure, as well as inconsistencies between supply and demand of resources (Fox and Goodfellow, 2021). Digital transformation is conductive for many cities on their way of becoming "smarter", providing them with the opportunity to improve digital processes, pursue climate-friendly goals, or raise the standards of living of their citizens (Elberzhager *et al*., 2021).

Smart City theory and practice emerged in developed countries, where the urban infrastructure was superior and which launched urbanization earlier. Smart Cities evolved from the smart growth concept being part of the New Urbanism movement in the United States in the 1980's, and were created through information technology (Hollands, 2020). They have begun to use this technology in order to offer innovative solutions to urbanization with the aim of sustainable development, as well as the protection of life and the environment.

Smart City is currently defined as the favourable integration of information technology (IT), social, human systems and business infrastructures to generate a collective mind with the proper use of all available interconnected information (Antwi-Afari *et al*., 2021). Optimization of urban functions is the main goal of the Smart City. Smart Cities can be argued to bring technology closer to people, integrate them into a new spatial system of many-sided, multi-actor and multi-level local government (Echebarria *et al*., 2021). The level of relations between the public and private sectors measures the performance of Smart City. Besides, the role of data analytics being part of the Smart City structures remains very important in finding errors and ways to eliminate them.

There is no doubt that Smart Cities, like every innovation, have certain drawbacks. These technologies can also boost the territorial digital gap, posing risks of disintegration of communities in some small remote settlements. Besides, there is a threat that the economy and the population will become even more vulnerable to cyber-attacks. In Ukraine, the digitalization process is slow, Smart Cities projects are point-like (mostly in megalopolises), smart ideas are still largely defined as populist (Chernova, 2021). The chosen subject matter of the article in Ukraine and the post-Soviet space is still highly controversial. Therefore, the experience of the states that have become leaders in this aspect requires additional comparative analysis to substantiate the appropriateness of transformations (Gryshchenko *et al*., 2021).

In view of the above, the aim of the article was to identify the current state and current issues of the Smart Cities concept implementation in Ukraine in the context of the experience of other countries. The aim provided for the following objectives:

1) identify the current state and main problems of the infrastructural development of Smart Cities in Ukraine;
2) identify the current state of digital transformation of territorial units in a number of countries and find out the possible implementation of relevant achievements in order to develop the Smart Cities concept in Ukraine.

1. Literature Review

The representatives of theory and practice currently pay considerable attention to the study of the concept of Smart City in different jurisdictions. The collective work of Huang *et al*. (2021) deals with the basic problems and risks of the Smart City concept. The scholars successfully substantiated the prospects of digitalization in the global aspect, as well as in the EU and China in terms of the introduction of Smart Cities.

Hollands (2020) studies the structural components of the Smart City, in which the author defines the nature and content of the popularized Smart City concept. Fox and Goodfellow (2021) cover management competencies promoting the creation and development of Smart Cities. Scholars also emphasize the complex implications of "late urbanization" and their impact on the environment. Giuffrida (2021) considered the Smart Cities concept from the sustainable development perspective. The scholar's findings allowed considering the development of Smart Cities in terms of the UN Global Goals.

A comprehensive work by Muraev (2021) entitled Organizational and Informational Support for the Development of the Strategy of Smart Cities of Ukraine in the Digital Economy had a significant impact on the author's opinion in the article.

The value and significance of the findings obtained by these researchers is unconditional, but it should be noted that the theoretical, organizational and methodological issues relating not only to the implementation of Smart Cities but also its information support remain unresolved in the current context of digitalization.

2. Methods

The outlined range of issues were covered in the article through a step-by-step scientific research with effective testing of methodological tools. The results of each stage are reflected in the appropriate parts of research and the author's substantiated conclusions. Moreover, the scientific novelty of the study was previously outlined by the doctrine representatives only in part, which indicates that modern scientific analysis in this area is topical. Figure 1 presents the research procedure.

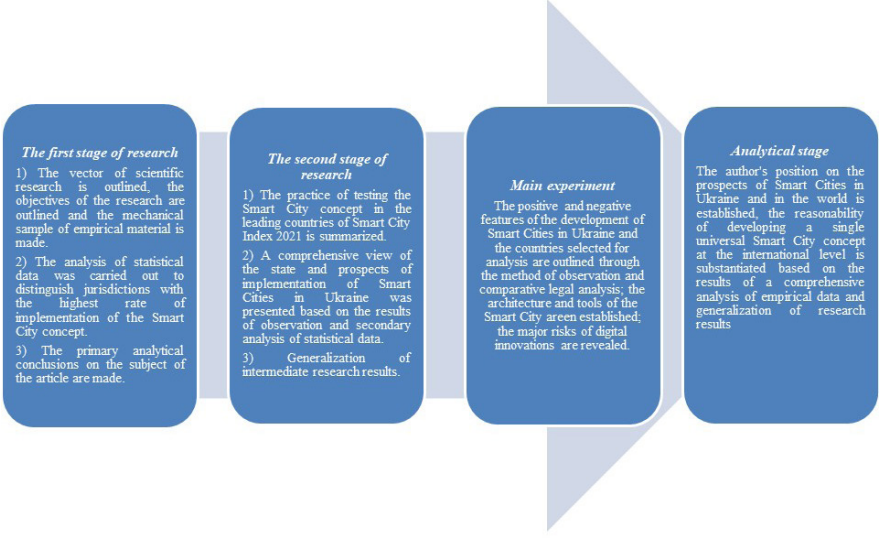

Figure 1: Research procedure.

Source: Authors.

The theoretical background of the study is based on a systemic and operational approach, the information society concept. The systemic approach was used to reveal the features of digitalization of public relations and management system, to identify the aim, as well as the actors implementing these innovations, their functions and relationships with participants. The Smart City concept implementation is also considered from the perspective of a systematic approach — as an integrated direction of responsible and involved actors to achieve a common goal — improving the quality of life of urban residents and achieving sustainable functioning of the cities. The activity approach was applied to identify the peculiarities of the efforts of the subjects of the digitalization process and the implementation of the Smart City project, the regulatory, personnel, organizational and financial support for such activities.

The objectives set in the article were fulfilled on the basis of such research methods as analysis of theoretical and legal documents, methods of observation, statistical and comparative analysis. A study was conducted with the involvement of secondary data analysis and document analysis. The architecture and tools of Smart Cities in different countries were revealed through the observation and comparative analysis. Besides, these methodological tools were useful in outlining the leading risks and prospects of digital innovation in the context of intensifying urbanization and globalization in Ukraine. The method of statistical analysis was of particular importance for the author's scientific research. This method was used both in sampling of leading countries with a positive practice of implementing the Smart City concept and in the analysis of the effectiveness of relevant innovations.

The information background of the study includes statistical data, analytical reports and open data on the results of the implementation of urbanization projects of the Smart City urban environment by public authorities of different levels and jurisdictions, as well as legal documents of different states and comprehensive research of scholars in this area. A total of 41 sources were reviewed and taken into account in the work.

3. Results

In 2015, the United Nations adopted the Sustainable Development Goals, also known as the Global Goals, as a general call for action to eradicate poverty, protect the planet and ensure well-being of people by 2030 (United Nations Development Programme, 2015). In this context, sustainable urban development is provided through creating career and business opportunities, safe and affordable housing, and building up sustainable societies and economies. According to statistical forecasts, the

cost of technological innovation under the Smart Cities Initiative in the world will more than double between 2018 and 2023, increasing from $ 81 milliard in 2018 to $ 189.5 milliard in 2023 (Statista, 2020).

The improvement of Smart Cities is supported by the state political support as an important external driving force. The implementation of the Smart City concepts currently involves a number of stages. First, it is necessary to establish a smart physical infrastructure by grouping the available specific technological solutions: smart home, smart transport, smart energy, smart housing management system, smart waste management, smart education, smart health care system and others. This shall be followed by the establishment of the primary digital infrastructure, which includes common standards and protocols that can provide device compatibility. The next step is the creation of digital platforms by merging smart physical and digital infrastructure. The final stage is the combination of the data from individual vertical digital platforms into a horizontal integrated digital platform — the Digital City Twin (Figure 2).

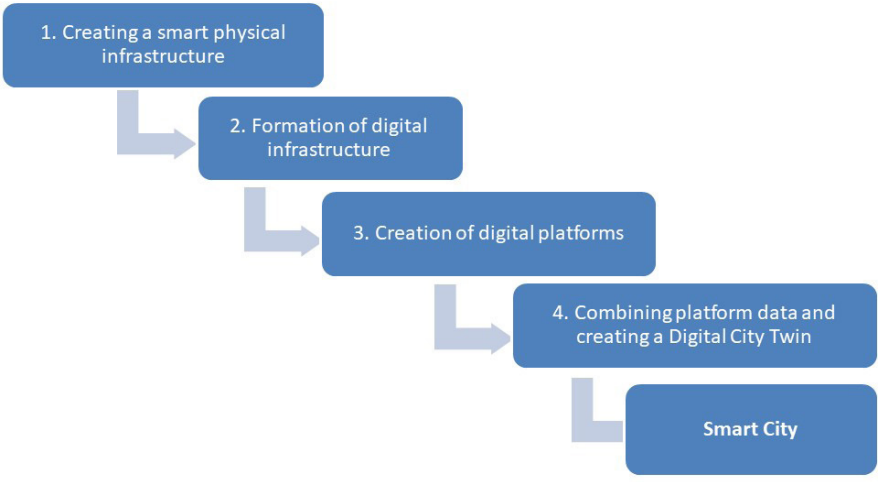

Figure 2: Gradual cycle of processes of implementation of the Smart City concepts

Source: Authors.

Technology is the main driving force of municipal development. Smart Cities provide connected solutions to the public through a variety of software, user interfaces, and communication networks, as well as the Internet of Things (IoT). IoT is the most important of the listed tools, which is a network of connected devices for communication and data sharing. In

addition to the IoT solutions, Smart Cities also involve such technologies as: application programming interfaces (APIs); artificial intelligence (II); cloud computing services; monitoring panels; machine learning; machine-to-machine communication (M2M); 3D printing; mesh networks. Cities obtain valuable information from large data sets collected from various sources through Big Data. Smart Cities perform a series of consistent actions in order to improve the quality of life and promote economic growth through a network of connected IoT devices and other technologies.

In 2021, the European Parliament and the Council of Europe launched the Digital Europe Programme as part of the 2021-2027 Multiannual Financial Framework (MFF) in order to promote digitalization in the EU (European Parliament and Council of Europe, 2021). The programme intends to eliminate the gap between research in the field of digital technologies and their introduction to the market, the introduction of digital solutions for cities. For example, Germany has been implementing the industry 4.0 Initiative (European Commission, 2017) designed for the research and initiatives related to IoT technologies and the Smart Manufacturing concept. The annual Smart City Index is calculated by the Institute for Management Development (IMD, 2021) in Lausanne, Switzerland, and the Singapore University of Technology and Design (SUTD). The report ranks 118 cities around the world based on citizens' perceptions of how technology can improve their lives, as well as economic and social data from the UN Human Development Index (HDI).

The IMD-SUTD Smart City Index (SCI) measures residents' perceptions of the structures and technological software solutions available in their community in the context of its infrastructure. In SCI, Smart City describes the urban environment where technologies are used to increase the benefits and reduce the negative aspects of urbanization. The perception of 120 people in each city is randomly selected when evaluating the cities of the world. SCI is based on more than 12,000 surveys, there are 40 questions in each survey. The main part (36 questions) is equally divided between two factors: structures that include existing urban infrastructure, and technologies that describe the technological conditions and services available to residents. There are also three other questions to evaluate attitudes towards the use of personal data, identity recognition and general confidence in the city authorities.

The overall ranking of the city corresponds to the above breakdown and is related to the overall score of the city. The results of the 2021 Smart City Index (IMD, 2021) showed that citizens' perceptions of how technology helps solve urban problems have been strongly influenced by the pandemic and the accelerating digital transformation. According to the report, affordable housing is a major problem in cities around the world. Environmental problems are more acute in richer cities, while access to

better quality air and health services has also become a priority around the world in the context of the Covid-19 pandemic.

It is also noted in the report that the pandemic revealed the innovative potential of Smart Cities to address issues such as the distribution of protective equipment, the use of health facilities and vaccination campaigns, contact tracking compared to central governments. Singapore tops the list of cities in the world that most actively use the technology, as well as in terms of environmental, medical and social issues. Table 1 demonstrates the top ten cities in the Smart Cities Index. These are all cities that, have effectively coped with the Covid-19 crisis and will be able to become resilient quickly according to their residents.

Table 1. 2021 Smart City Index leaders

Item No.	City name	"Technologies" factor	"Structures" factor
1.	Singapore	***AAA***	***AAA***
2.	Zurich (Switzerland)	***A***	***AAA***
3.	Oslo (Norway)	***A***	***AAA***
4.	Taipei (Taiwan)	***A***	***A***
5.	Lausanne (Switzerland)	***A***	***AAA***
6.	Helsinki (Finland)	***A***	***AA***
7.	Copenhagen (Denmark)	***A***	***AA***
8.	Geneva (Switzerland)	***A***	***AA***
9.	New Zealand	***A***	***A***
10.	Bilbao (Spain)	***BBB***	***A***

Source: IMD (2021).

Since the launch of the Smart Nation initiative in 2014, Singapore has introduced a wide range of smart technologies in both the public and private sectors. Furthermore, Singapore announced its plans to create a new eco-smart city, completely devoid of vehicles (Holland, 2021).

The street lighting project became important for Zurich. The city presented a series of streetlights that adapted to the traffic level with sensors to increase or decrease the brightness. The project saved up to 70% of electricity (Von Hunnius, 2019).

Helsinki has set the goal of achieving zero carbon emissions by 2035. The city managed to reduce emissions by 27% back in 2017 compared to 1990 (Sustain Europe, 2019). Another goal of Helsinki is to reduce road emissions by 69% by 2035 through such measures as converting the entire city bus fleet to electricity and expanding the metro network and charging networks for electric vehicles (Lai, 2021).

Launched in June 2019, the G20 Global Smart Cities Alliance on Technology Governance brings together municipal, regional and national governments, private sector partners and urban residents around a common set of principles for the responsible and ethical use of Smart Cities technologies (World Economic Forum, 2019). In 2020, the World Economic Forum selected thirty-six cities in twenty-two countries and six continents to develop a new global policy roadmap for Smart Cities (World Economic Forum, 2020). This Global Smart Cities Alliance, which was established at the Forum, commits member cities to adopting privacy policies, improving broadband coverage, ensuring accountability for cybersecurity, enhancing the openness of urban data and improving access to digital urban services for people with disabilities and elderly people.

Policy experts and government officials were interviewed in 2021 to evaluate the implementation of a set of five key policies identified by the G20 in 2020 (World Economic Forum, 2020). Almost all of the cities surveyed have serious policy gaps related to Smart City technology management.

Compared to 2020, Kyiv has improved its performance in the Smart City Index 2021 (IMD, 2021) and moved from 98th to 82nd place. Some components of "smart" infrastructure are also being implemented in Vinnytsia, Dnipro, Drohobych, Zhytomyr, Lviv, Mariupol, Kharkiv and other cities. For example, the Kyiv Smart City Forum 2020 recognized Kharkiv as the Best Digital City (Kharkiv City Council, 2020) due to the introduction and active use of digital technologies. In particular, the online platforms Portal of Electronic Services and Portal of Kharkiv, mobile application My Kharkiv are currently operational (see Figure 3).

In turn, Ukraine has introduced regulations that can define and lay the foundation for the development of Smart Cities: The Law of Ukraine "On the National Informatization Programme" (Verkhovna Rada of Ukraine, 1998); "On Personal Data Protection" (Verkhovna Rada of Ukraine, 2010); 2021–2027 State Regional Development Strategy (Cabinet of Ministers of Ukraine, 2020); Kyiv Smart City 2020 concept (Kyiv City Council, 2017) and others. Ukraine, like other UN member states, has joined the global sustainable development process (President of Ukraine, 2019). At the same time, a number of problems that hinder the implementation of smart infrastructure initiatives in Ukraine have been proved.

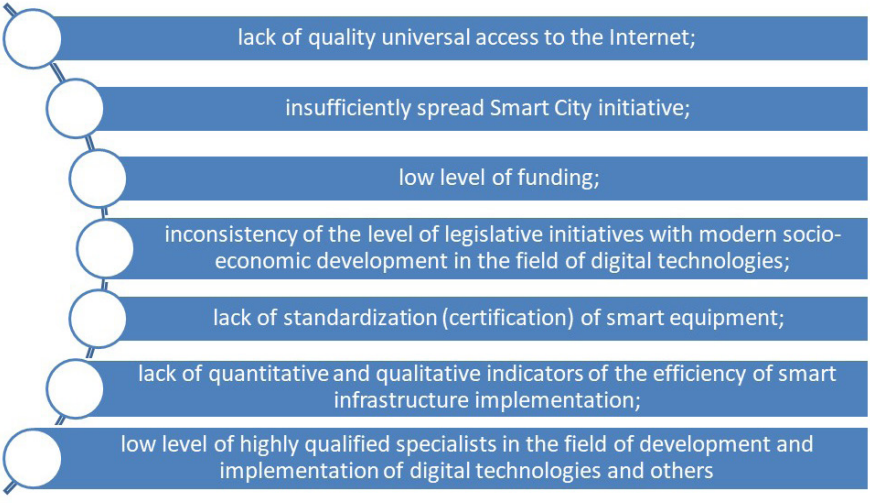

Figure 3: Major problems in the implementation of Smart Cities in Ukraine

Source: Chernova (2021).

The Ministry for Communities and Territories Development of Ukraine is currently working on the creation of innovation infrastructure in the regions to overcome a number of relevant problems. The 2021–2027 State Regional Development Strategy (Cabinet of Ministers of Ukraine, 2020) provides for the introduction of innovative technologies into urban development management systems based on the Smart City concept as one of the objectives of regional policy. The digital transformation of regions must be implemented through the tools of smart urban planning, spatial planning and building innovative ecosystems. the Ministry for Communities and Territories Development of Ukraine and the non-profit British organization World Smart Cities Forum (WSCF) signed the Memorandum of Cooperation on April 27, 2021 (Lviv Polytechnic National University, 2021). The parties will jointly develop a strategic plan for Smart Cities in Ukraine. Moreover, the Sustainable Cities Programme funded by the International Finance Corporation's (2021) in Ukraine provides financial and advisory support to the country's growing cities.

4. Discussion

It is apparent that building Smart Cities ultimately serves the needs of the people, so it is reasonable to develop a comprehensive concept oriented to the residents of settlements. Attention should be paid to the relationship between cities and the environment in view of the need of cities for sustainable development (Obringer and Nateghi, 2021). At the same time, development should combine the available resources and sectoral characteristics with regard to the real situation in the region in view of urbanization, maintaining the same priority for the economy and security, as well as taking into account local features of building Smart City (Huang *et al.,* 2021).

Researchers underline that technology- and enterprise-oriented Smart Cities have many drawbacks because of the lack of social and cultural inclusion (Huang *et al.*, 2021). Public distrust of technologies that may track and provoke the loss of privacy is inextricably linked to transparency, which is the key in democratic systems. Achieving greater resilience requires a serious consideration of the level of relevant risks (Giuffrida, 2021). Therefore, other researchers support the author's conclusion about the high degree of risk of innovation.

The integration of technology and society is especially important for public recognition. They currently fail to pay adequate attention to people-centred services and innovation-based sustainable development. This is directly reflected in the "emphasis on building infrastructure and neglecting the use of services" (Han and Hawken, 2018). Real Smart Cities must start with the city and its social problems, while technology-oriented needs must meet people's desires. So, there shall be a balance between technology, innovation, people, society, culture and the environment (Xu and Geng, 2019).

The services, innovative platforms and systems are provided to citizens through infrastructure and interoperability technologies, many of them are accessible via mobile devices. This situation may entail deprivation of voting rights of key population segments (Hryshchenko and Lavshchenko, 2020). Designers and planners of Smart Cities must take into account that innovations as blockchain-based systems and the wider use of IT are becoming an integral part of the system architecture (Ismagilova *et al.*, 2020).

Technology expanded opportunities to overcome difficulties and recover during the COVID-19 pandemic by expanding participation and social ties, improving physical and mental health, and supporting the educational and economic systems. With regard to the abovementioned, policymakers and researchers need to rethink the role of Smart City projects in future health emergencies such as COVID-19 (Cavada, 2022). Relevant research and

discussions need to be expanded on the role of Smart City projects in health emergencies (Yang and Chong, 2021). The introduction of technology can, however, have adverse consequences, such as social exclusion, digital gap, privacy and confidentiality, political bias and disinformation, and inefficient teleworking and distance study (Hassankhani *et al.*, 2021).

Ukrainian cities have just begun to develop the Smart City concept, and the main problem they face is the lack of funding, because the state should be the main initiator of the Smart Cities development. Scholars support the author's position and emphasize that it is up to the authorities to realize the potential of cities to implement "smart" technologies (Muraev, 2021).

It is necessary to pay more attention to improving not only digital literacy but also digital security in a rapidly changing both technological and social reality, which should be the basis for sustainable development of smart cities (Vershinina and Volkova, 2020). The risk rates and the difficulties in their management changes over time due to the development of technologies and processes. Therefore, it is important to continuously monitor and assess the risks of each aspect of the Smart City and this concept as a system (Sharif and Pokhare, 2022).

Conclusions

The idea of smart cities is attracting attention as a new driver of growth and development strategy in many cities around the world in view of the development of artificial intelligence and the Internet of Things. Smart City implies such a structure of municipal government, which is able to interact with a large proportion of the city's residents and respond quickly to the population's requests. Technology-based infrastructure; environmental proposals; functional level of public transport; advanced plans of settlements; the ability of residents to use these resources are the features of the effective development of the Smart City.

Adherence to basic systemic process underlies building a smart city. This process includes selecting a competent team, in-depth diagnostics of particular urban technologies, human resources and institutional capabilities, financial assets, constraints and challenges, as well as establishing a coherent system of cooperation and interaction between all stakeholders. Besides, the sustainable development of the Smart City faces a variety of challenges, where the relevant risks must be properly realized and mitigated, otherwise they may create privacy and security concerns.

Reviewed examples of the implementation of the Smart Cities concept in some developed countries indicate that these cities make full use of the competencies and infrastructure required to generate, transmit, process

and analyse large data sets to obtain useful knowledge for more effective decision-making and a deeper understanding of the urban environment, operational functioning, sustainability management and planning. Smart City technologies can help identify and mitigate health care crises, as evidenced by the experience of combating the COVID-19 pandemic in developed cities.

When implementing the Smart City concept in Ukraine, it is necessary to clearly define the priorities, develop a consistent implementation programme and take into account an integrated approach in its implementation. Relevant achievements of developed countries can be used as a positive example for testing in Ukraine. Therefore, it is urgent to develop a unified conceptual approach to the implementation of the Smart City components in Ukraine in the short and long run.

A further research will be aimed at updating the results of Ukraine's implementation of the Smart Cities concept as a background for digital transformation. Besides, the synergy of the Internet of Things (IoT) and Big Data technologies can lead to promising horizons for the Smart City development. In this sense, security combined with confidentiality is an important topic for further research in the field of Smart Cities.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 251-259
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Prevention of crimes performed by the Russian federation against humanity in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.12

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Abstract

The purpose of the investigation is to improve criminal legislation in accordance with international standards in the context of the prevention of crimes against humanity in Ukraine. The issue of combating crimes against humanity in the twenty-first century was addressed. The commission of such crimes violates a number of international conventions and treaties, including the Rome Statute of the International Criminal Court of 17 July 1998, the Charter of the United Nations of 26 June 1945, the Universal Declaration of Human Rights of 10 December 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, etc. The methodological basis of the research consists of general and special scientific methods of scientific knowledge. The conclusions have established that the invasion of the territory of Ukraine by the Russian Federation, the use of weapons of mass destruction, missiles and machine guns against the civilian population is a usurpation not only of the territorial integrity of Ukraine, but also of the European values that have been built over centuries in response to the experience of war.

Keywords: war crimes; crimes against humanity; international criminal court; prevention of crimes; financial sanctions.

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Recibido el 14/03/2022 Aceptado el 06/06/2022

Prevención de crímenes realizados por la federación rusa contra la humanidad en Ucrania

Resumen

El propósito de la investigación es mejorar la legislación penal de acuerdo con los estándares internacionales en el contexto de la prevención de crímenes de lesa humanidad en Ucrania. Se abordó el tema del combate a los crímenes de lesa humanidad en el siglo XXI. La comisión de tales crímenes viola una serie de convenciones y tratados internacionales, incluidos el Estatuto de Roma de la Corte Penal Internacional de 17 de julio de 1998, la Carta de las Naciones Unidas de 26 de junio de 1945, la Declaración Universal de Derechos Humanos de 10 de diciembre de 1948, la Convenio para la Protección de los Derechos Humanos y las Libertades Fundamentales de 4 de noviembre de 1950, etc. La base metodológica de la investigación consiste en métodos científicos generales y especiales del conocimiento científico. En las conclusiones se ha establecido que la invasión del territorio de Ucrania por parte de la Federación Rusa, el uso de armas de destrucción masiva, misiles y ametralladoras contra la población civil es una usurpación no solo de la integridad territorial de Ucrania, sino además de los valores europeos que se han construido durante siglos en respuesta a la experiencia de la guerra.

Palabras clave: crímenes de guerra; crímenes de lesa humanidad; corte penal internacional; prevención de crímenes; sanciones financieras.

Introduction

Nobody could expect that the 21st century would give a place for such terrible crimes against humanity known during the World War Two. But Ukraine has faced such terrible crimes.

Despite the Minsk agreements, on February 24, 2022, the Russian Federation has invaded the territory of Ukraine and opened hostilities aimed at its occupation. According to the Office of the United Nations High Commissioner for Human Rights this resulted in great civilian casualties: From 24 February, 2022, when Russia started the war against Ukraine, to 0:00 AM on 12 March, 2022 they amounted to 1,663 civilians, including 596 dead.

During a press conference with foreign journalists, the President of Ukraine Volodymyr Zelensky named the number of dead victims among the Armed Forces of Ukraine for the first time. According to him, during 17 days of the war about 1300 Ukrainian military men were killed, and Russian

military casualties amounted to more than 12 thousand (Khan, 2022). Irreparable damage to the Ukrainian economy, private property of citizens and objects of cultural value has been caused. According to KSE data received from volunteers as of 10 March, 2022, at least 200 educational institutions, 30 health care facilities, 8 churches, 1,600 residential buildings, 19 office buildings, 23 factories and their warehouses, 12 airports, 5 thermal power plants and hydropower plants were damaged or completely destroyed. In addition to that, more than 15,000 km of roads, 5,000 km of railways and 350 bridges were destroyed or disabled (Svyrydenko, 2022).

1. Literature review

Some aspects of this problem have already been studied by many scientists and scholars.

M.I. Khavroniuk researched the issue concerning harmonization of the criminal legislation of Ukraine with legislation of foreign countries and requirements of international agreements (Khavroniuk, 2005). The relevance of this topic has been also confirmed by existing thesis works on this issue. G.V. Epur has studied the issue concerning implementation of international legal acts in the criminal legislation of Ukraine (Epur, 2005). S.P. Kuchevska has studied problems concerning harmonization of Ukrainian legislation on criminal liability with the Statute of the International Criminal Court (Kuchevska, 2008).

At the same time, taking into account the events taking place in Ukraine, it preserves its relevance. But this gives grounds to argue that it is appropriate to conduct research on countering crimes against humanity

2. Materials and methods.

Application of the dogmatic method contributed to clarifying content of international treaties that provide for liability for war crimes, content of international treaties which provide for fundamental human rights. The dialectical method has contributed to analysing the concept of war crimes and crimes against humanity in international and national criminal law. The comparative-legal method was used in international criminal law standards for the purpose to use the world experience of establishing responsibility for war crimes and crimes against humanity. Methods of deduction, analysis and generalization were used within the framework of the studying doctrinal provisions on the investigated issue. The system-functional method gave an opportunity to analyze the available domestic literature, which covers the issue of responsibility for war crimes and concepts and characteristic features of implementation.

3. Results and discussion

Among other things the Preamble to the Rome Statute states that in the 21st century, millions of children, women and men have fallen victims of inconceivable crimes that have deeply shaken the conscience of mankind; these most serious crimes threaten general peace, security and prosperity; the most serious crimes causing concern for the entire international community must not go unpunished and their effective prosecution must be ensured both by measures taken at the national level and by the intensification of international cooperation (Law of Ukraine, 1998).

This problem is a concern not just of a single country, but of all the mankind. In this situation, after the aggression against Ukraine there is a threat to the security of other countries of the world.

The level this problem has united the countries of the world is amazing. Various countries help Ukraine as much as they can by means material support, weapons, and an information attack about the RF. Poland has accepted more than a million Ukrainians, supported families who agreed to host them, Poland has offered to admit Ukraine to the EU. Moldova, Romania and other countries also accept Ukrainians, EU countries agreed to exclude the RF from the SWIFT system, imposed financial sanctions on the RF, arrested funds in banks; many brands refused to work in the RF.

However, as of March 17, 2022 NATO is still refusing to "close the Ukrainian sky," as well as to provide fighter planes, because it does not want to enter into direct confrontation with the Russian Federation. And active combat actions are going on in particular in Kyiv, Kharkiv, Mariupol, Mykolayiv, Melitopol.

The Russian Federation is currently showing disrespect not merely to the integrity of the territory of Ukraine, but to international values in general. This state sets at nought agreements, official documents ratified by it, as well as principles of international law. The parties agree on humanitarian corridors, the time of silence for evacuation of people, the RF violates these agreements as well. Russian soldiers kill civilian population, open fire on humanitarian aid vehicles, steal them, rape captured women, use heavy weapons to destroy people's homes, hospitals, nurseries and hostels. This is terrible and this is a violation of international norms. And political leaders of the Russian Federation distort information in their favor in terms of defense against Ukraine. In particular during negotiations in Turkey the Minister of Foreign Affairs of the Russian Federation Sergey Lavrov told journalists that "Russia did not attack Ukraine." Russia has introduced its troops into Ukraine and kills peaceful population. And according to the RF it is called "defense".

On 28 February, 2022, the Prosecutor of the International Criminal Court (ICC) announced his decision to request permission to open an investigation of the Situation in Ukraine on the basis of the preliminary conclusions of the Office resulting from its preliminary consideration and covering any new alleged crimes under the ICC's jurisdiction. The office of the ICC prosecutor received an appeal concerning the situation in Ukraine from 39 states-participants of the ICC as required according to Article 14 of the Statute. These appeals made it possible to launch an investigation of the Situation in Ukraine since 21 November 2013, thus covering any previous and current allegations of war crimes, crimes against humanity or genocide committed in any part of Ukraine by any person.

During the preliminary review of the situation in Ukraine the Office has already found reasonable grounds to believe that crimes within the jurisdiction of the Court have been committed in Ukraine and the Office has identified potential cases admissible to be viewed by the Court. (Khan, 2022). On 07 March, 2022, public hearings of this case began in the International Court of Justice (the Hague).

Any witness who can report any facts on killing of civilians performed by the Russian occupiers, barbaric rocket bombings and artillery strikes on hospitals, schools, houses and other civilian objects can do so by means of direct sending information to the ICC Prosecutor by e-mail. A special site https://www.ukrainetjdoc.org/ has also been created to document war crimes.

On 16 March, 2022, the order of the International Court of Justice in the dispute over interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide was announced. First, the Russian Federation got a refusal as to closing the case, the case will be considered on the merits; an armed attack cannot be conditioned and justified by accusations of the victim of aggression in genocide; the Court did not find any evidence to support Russia's allegations of genocide in Ukraine; the Court orders the Russian Federation to take the following temporary measures: immediately stop military operations, launched on 24 February, 2022 in the territory of Ukraine; ensure that any military organisations or any other organisations or persons under Russian control do not continue military operations. The court unanimously orders the both parties to refrain from actions that worsen the situation (International court of justice, 2022).

In accordance with Article 1 of the Charter of the United Nations dated 26 June 1945. The UN has the following goals: to maintain international peace and security and, to that end, to take effective collective action to prevent and eliminate threats to peace and suppress acts of aggression or other violations of peace, and to carry out peaceful means in accordance with the principles of justice and international law for settling or resolving international disputes or situations, which may lead to violations of peace.

Chapter 7 of the Statute establishes "actions concerning threats to peace, breaches of peace and acts of aggression".

In addition, for participants of armed hostilities in Ukraine it is also important to strictly adhere to current norms of international humanitarian law. And although it is difficult to talk about the justice and expediency of war and bloodshed, it is the observance of preliminarily known rules and agreements that puts the parties within relatively clear norms. Of course, laws supposed to regulate something as radical as war will fall into the same pitfalls as simpler laws. The Law on Armed Conflicts is designed to protect those who cannot defend themselves and to encourage nations and combatants to fight within the framework of the Law on Armed Conflicts (Leheza *et al.*, 2020).

No person has the right to commit crimes within the jurisdiction of the International Criminal Court, including Ukraine (where these horrific events are taking place) and citizens of that country. Ukrainians often show dissatisfaction with the humane attitude to prisoners, their feeding, maintenance of hygienic norms, provision of necessary clothes and medicines. But if Ukrainians treat them with cruelty, Ukraine will also be violating international norms, in particular the Geneva Convention ratified by Ukraine (Leheza *et al.*, 2018).

According to Article 3 of the Geneva Convention on the Treatment of Prisoners of War dated 12 August 1949 Persons who do not actively participate in military activities, in particular those from the Armed Forces who have ceased hostilities, as well as those who have stopped participating in military activities in connection with illness, injury, detention or for any other reason should be treated humanely in any circumstances, without any discrimination on grounds of race, color of skin, religion or believes, sex, origin or property status or any other similar criteria. To this end, it is forbidden to continue such actions as (a) violence against life and person, in particular all kinds of murder, mutilation, cruel treatment and torturing; (b) seizure of hostages; (c) violation of human dignity, including abusive and humiliating behavior; (d) conviction and application of punishment without a preliminary court decision, which was duly established and which provides judicial guarantees recognized by civilized Nations as necessary (Law of Ukraine, 1990).

Section 20 (XX) of the Criminal Code of Ukraine provides criminal liability for criminal offenses against peace, security of mankind and international law. These offenses in particular include: War propaganda (Article 436), planning, preparation, connection and conduct of aggressive war (article 437), violation of laws and customs of war (Article 438), use of weapons of mass destruction (Article 439), genocide (Article 442), ecocide (Article 441), etc. The new Criminal Code of Ukraine (text as of18 January 2022), developed by a group of scientists since 2019, also provides for

criminal responsibility for crimes against basics of international law and international order (Book eleven). The book is structured into the following sections: Section 11.1 (Genocide), Section 11.2 (Crimes against humanity), Section 11.3 (Crime of aggression), Section 11.4 (Military crimes), and Section 11.5 (Crimes against international law and order) (Law of Ukraine, 2001).

When noting the need to bring the national criminal laws into line with the international criminal laws it is necessary to take into account significant differences in approaches chosen by the international legal system and the national legal system concerning definition of an act as a criminal offense. In national law, the Criminal Code provides for legal components of crime (corpus delicti), determines the type and severity of punishment. The norms of international law establish the crime of certain acts, mostly the composition of crimes, but generally do not contain clear explanations regarding the types and extent of punishment. This is at the discretion of the state (Tylchyk *et al.*, 2022).

Conclusion

Despite the huge number of international instruments and institutions aimed at ensuring peace, there are still wars in the world, encroachments on the territory of other states, mass killing of people and destruction of civilian buildings.

Violation of fundamental human rights and freedoms provided for in international instruments has been defined as inadmissible. It has been found that ratification of international instruments and the existence of institutions aimed at ensuring peace in the modern civilized world should prevent encroachments on the territory of other states, mass killing of people and destruction of civilian buildings.

Every person is a value, human rights are a value. And no political ambition is worth human life. Russian Federation's invasion of the territory of Ukraine, the use of mass destruction weapons, missiles and machine-guns against the civilian population is an encroachment not only upon the territorial integrity of Ukraine. It has been established that any armed invasion of the territory of another state in the 21st centuries is an encroachment not only upon territorial integrity. This is an encroachment on European values. These values have been built for centuries in response to the experience of war. Thus, other states are also at risk if an effective mechanism of counteraction has not been developed.

The conclusion is drawn on the necessity of integration and unity in preventing crimes against humanity and military crimes. Integration of

the international community to ensure peace is particularly conditioned by existence of global problems, environmental and economic crisis, epidemics, epizootics, poverty and other problems; and it must be executed as never before.

It is proposed to provide additional guarantees for implementation of decisions made by international institutions against the aggressor state, to improve the mechanism for imposing sanctions on a state that has violated international agreements.

Determined is the necessity to observe standards of human rights standards in criminal prosecution of persons who have committed crimes against humanity and aver been involved in such crimes. The civilized world must meet civilized standards and ensure security through civilized means.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 260-273
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Formation of priority tasks and strategies for education highly qualified political scientists: European experience, and Ukrainian practice

DOI: https://doi.org/10.46398/cuestpol.4073.13

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Abstract

The aim of our study is to examine the experience of European countries in strategies for the development of the training of highly qualified specialists in political science. The task of the article is to identify the advantages of European university and non-university systems of political science education, in order to develop proposals to improve the level of political science teaching in Ukraine. The work uses theoretical research methods, among which the axiomatic, historical and structural-comparative methods stand out. It was found that the teaching of political science in European universities focuses on the acquisition of practical skills, but despite all the difficulties in the training of political scientists in Ukraine, the curricula of Ukrainian universities correspond in many respects with European standards. The conclusions indicate that the practical part of political science teaching does not play a minor role than the theoretical one. In Ukraine, education is not provided in institutes, while university curricula are mostly theoretical.

Keywords: political science in Ukraine; university education; studio plans; European experience; highly qualified professionals.

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Recibido el 23/09/2021 Aceptado el 22/11/2021

Tareas y estrategias prioritarias para la formación de politólogos altamente cualificados: La experiencia europea y la práctica ucraniana

Resumen

El objetivo de nuestro estudio es examinar la experiencia de los países europeos en las estrategias para el desarrollo de la formación de especialistas altamente cualificados en ciencias políticas. La tarea del artículo es identificar las ventajas de los sistemas universitarios y no universitarios europeos de enseñanza de la ciencia política, para desarrollar propuestas para mejorar el nivel de la enseñanza de la ciencia política en Ucrania. En el trabajo se utilizan métodos de investigación teóricos, entre los que destacan el método axiomático, el histórico y el estructural-comparativo. Se comprobó que la enseñanza de la ciencia política en las universidades europeas se centra en la adquisición de habilidades prácticas, pero a pesar de todas las dificultades en la formación de los politólogos en Ucrania, los planes de estudio de las universidades ucranianas se corresponden en muchos aspectos con los estándares europeos. Las conclusiones indican que la parte práctica de la enseñanza de la ciencia política no desempeña un papel menor que la teórica. En Ucrania, la enseñanza no se imparte en los institutos, mientras que los planes de estudio universitarios son mayoritariamente teóricos.

Palabras clave: ciencia política en Ucrania; educación universitaria; planes de studio; experiencia europea; profesionales de alta calificación.

Introduction

A study of contemporary political science education and training programs is a pressing academic challenge. Employment of political scientists is projected to grow by 9% over 2020-2030, which is about as fast as the average for all professions. A total of 700 new political science jobs are projected to emerge each year over the decade in democracies. Many vacancies are expected to arise as older generations of political scientists change careers or retire. For this reason, there is a need to analyze the European experience of training specialists of the appropriate level in order to identify strengths and weaknesses in the training of Ukrainian political scientists, to adapt applicants to the next professional activity by improving curricula and programs.

The aim of our research is to analyze the experience of European countries on strategies of development of training of highly qualified

specialists in political science. The task of the article is to identify the advantages of European university and non-university systems of political science education, to work out proposals to improve the level of political science education in Ukraine.

1. Materials and Methods

The theoretical part of the article is built on the systematic study of modern professional literature on the indicated issue and generalization of some previous experience of researchers. For example, Vilkov and Rudenko (2017), who researched the peculiarities of creating the system of political science education in Taras Shevchenko National University of Kyiv, - thoroughly defined the global and national ideological and ideological factors that influenced the activities of university teachers, as well as highlighted the features of organizational support and content. training of political scientists. Medvedev (2014) summarized the current problems of teaching political science in the post-Soviet space Babichev (2014) investigated the specifics of political science courses under the Bologna process.

Additional sources of work were our preliminary reconnaissance on this issue, statistical and informative data, including those obtained from educational and methodological materials of educational institutions in Ukraine and Western Europe. For comparison and description of a more complete worldview picture, some data on the corresponding educational programs in the USA are also given.

The paper applies theoretical methods of research, among which the following are highlighted: axiomatic, based on certain initial provisions - axioms, from which the following knowledge and statements are logically derived; historical - involving the description of the real process of transformation of the research object: this method reflects the formation of political science education in Ukraine since it gained independence. The structural-comparative method used in the consideration of the internal structure of the system of training of specialists-political scientists in specific institutions of Western Europe was also applied. Equally important was the method of comparison, with the help of which we were able to compare the practice of European universities with Ukrainian regarding the formation of strategies of training political scientists.

The experience of European countries on preparation of highly qualified specialists in political science was investigated on the basis of the system analysis, according to which the university political science directions were considered through a prism of cumulative steady interrelations, which simultaneously dynamically develop. So general scientific methods of research as: analysis, synthesis, induction, and deduction were used along

with weighty for our research - logical method and method of abstraction, which implied ascending from the abstract to the concrete, when we analyzed general theoretical approaches and provisions and proposed specific ways of their implementation in further.

Special attention in the work is paid to empirical methods of collection, analysis, and interpretation of information. In particular, the work is formed on the basis of analysis of different kinds of documents, first of all, curricula, and syllabuses of political science disciplines of Ukrainian and European universities. As a result, an objective position on the experience of European countries on the formation of priority tasks and strategies of development of training of highly qualified specialists-political scientists is achieved.

2. Results

The training of political scientists is an integral part of university training in many countries of the world. Now political science majors are in high demand, so the problem of the formation and foundations of political science requires constant renewal, which would be based on the best examples of the world.

2.1. French experience and practice

Among European countries, France and its research institutions are a recognized leader in the study of political science. It should be noted that a characteristic feature of French educational institutions is the immediate absence of departments of political science. The political sciences are often studied together with law, and the corresponding academic structures are called Faculties of Law and Political Science. At the same time, eight institutes of political science (Instituts des Etudes Politiques) continue to operate in France after 1945 and to this day - these include the Institute of Political Science Panthéon-Sorbonne at the University of Paris, the Institute of Political Science of Grenoble, the Institute of Political Science of Toulouse at Toulouse, and several others (Sage *et al.,* 2021).

These institutions put forward different curricula based on a wide range of academic disciplines. Such a system is implemented through attempts to provide graduates with broad political-management knowledge and to instill in them the ability to pursue different fields of study without being specifically trained as specialists in a particular field. There is also a lot of emphasis on methodological issues, which makes teaching somewhat rigid and requires discipline. Institutes of political science are open educational institutions, especially, perhaps, learning foreign languages and conducting foreign internships to gain the necessary practical experience for a future professional career (Medvedev, 2014).

The educational process here takes place according to the Bologna system; the period of study for the political science profile is 5 years, which is quite equivalent to the generally accepted European framework for the training of a master (master) in political science. Much attention is paid to the professional orientation of future specialists, in particular, even within specific disciplines (e.g., political science). Applicants are usually able to determine their future career immediately by enrolling in one or another type of institution of higher education. Applicants who are academically oriented and tend to be research-oriented tend to enroll at universities. Other applicants oriented towards practical work often choose higher schools and Institutes for education (Vilkov and Rudenko, 2017).

The peculiarity of training of high-class specialists in political science is the active involvement of applicants in practical work. According to the adopted methodology, for at least 9 months an applicant should undergo an internship outside the Institute: in administrative structures, private companies, enterprises, in a political or public foundation or organization (association), including - international.

International internships are also practiced. In some cases, if previously agreed with the administration of the Institute of Political Science, it is possible to have an internship in several different structures, but its total duration should not be less than 9 months. For example, the International Relations and Internship Department of the Political Science Institute in Aix-en-Provence offers quite a few options for work placements for its students, also citing a considerable list of foreign partner institutions which may accept students from Provence for internships.

There is also a compulsory introductory computer science class. It determines students' computer science background and recommends additional classes for students who need them. Attendance is mandatory, and appropriate academic grades are given at the end of this course. Foreign language classes are also important for political science students. Typically, as a first foreign language, a choice is offered to take, German, English, Spanish, or Italian. A second foreign language is given, as for the French, a more "exotic" one: Arabic, Chinese or Japanese.

The training of political scientists in French universities usually takes place in French only. The only exceptions are the Institute in Toulouse, where both French and English are taught in parallel, and the International Chiller University in Paris, where both French and English master's degrees can be taken simultaneously (Sage *et al.,* 2021).

An additional advantage of French institutions where political science is studied is the wide range of opportunities for subsequent employment. In particular, graduates can become researchers in political science, pursue doctoral studies, work as experts in the private or public (public) field, enter

professional politics, work as a parliamentary attaché, a commissioned officer, or in charge of a political project. As a rule, the best political science graduates are invited to work in the research centers of the institutes themselves.

An additional guarantee of successful employment is extensive contact with stakeholders (employers). For example, the Paris School of Political Science maintains links with about 1,000 potential employers. These include various enterprises, companies, organizations, foundations (both public, private, and non-governmental). Each year they contribute a certain amount to the institution's budget, investing in the training of their future employees. They also gain access to scientific and scholarly journals and have some influence on the formation of curricula and research projects. By controlling their implementation, the beneficiaries must achieve in the educational process the correspondence between the academic training of undergraduate and graduate students and the needs in the professional qualities of future specialists. Often the best students are invited to intern at these partner organizations and companies.

2.2. German experience and practice

Political science courses at German universities do not differ significantly from those at North American and Western European universities in terms of their curricula. In addition to classical political theory, the study of political practice at the local (state) level where an institution is located occupies a significant place. Training takes place according to the Bologna system - usually the Bachelor's training is 3-4 years and the Master's is 5-6 years (Babichev, 2014).

After completing the full course of study in the Master's program in Political Science, applicants to German universities are required to obtain a second specialization. As a rule, students choose related academic disciplines, in particular economics, sociology, jurisprudence, etc. Some institutions may offer other options, and the practice exists of obtaining several auxiliary qualifications. Note that a similar system greatly increases the labor market opportunities for graduates. Its organizational elements are worth a closer look from the point of view of reforming the Ukrainian educational system.

Unlike the French experience, the German educational institutions do not cooperate so closely with non-state structures. For this reason, excellent. a feature of employment of graduates of a political science profile in Germany is the identification of their own initiative in search of work. Internships also take place independently: Applicants choose where they wish to work: political organizations and associations, public organizations and foundations, publishing houses, newspaper, and magazine editorial

offices, etc. Undoubtedly, the number of the most desirable places in terms of future career is limited, so potential employers have the right to choose interns on a competitive basis. Preference is given to the most talented and capable students and graduates.

2.3. UK experience and practice

In Great Britain, political science education exists in more than 50 universities, however - in all the so-called "classical" universities (which are at least 100 years old). The first educational degree in political science is the bachelor's degree - it can be obtained in 3 years of study (in the universities of Scotland - in 4 years). Actually, students who have completed such a program, study political science as part of other humanities and social sciences, get an opportunity to get political science specializations at the second level of higher education - master's level. UK political science education is also characterized by two different types of curricula - advanced theoretical and research courses.

As a result of studying advanced theoretical courses the applicant will receive a master's degree and, as practice shows, significantly greater opportunities for subsequent employment (especially if compared with those who have received a bachelor's degree). In selecting research courses, the main emphasis is on writing a master's thesis, which in some universities (e.g., Oxford) reaches the size of a dissertation research - up to 25-30 thousand words (Sage *et al.,* 2021). There is also an emphasis on practical work and internships.

Note that the British experience is a peculiar combination of the German and French systems of teaching political science. British universities also actively engage potential employers, but the latter have little influence in shaping courses and disciplines. Perhaps this system should be considered optimal. Although stakeholders have the right to influence the training of their future specialists, they should not determine the main directions of training or interfere in the development of authoring curricula and methods.

2.4. USA experience and practice

The British university system is close to the American system, so the training of specialists in political science there is at a high level. Let us briefly analyze the U.S. experience in the formation of priorities and strategies for training political scientists. Nearly 400 U.S. institutions of higher education in various fields train political scientists. According to the American educational classification, the "Political Science" curricula are combined in one section with the closely related "International Relations" thematic program. At the same time, there is also a general direction: "political science and international relations". It is common for departments,

faculties, and graduate schools in American educational institutions to be called by the same name (Sage *et al.,* 2021).

Thus, the association of political science studios with international studios is a reasonable alternative for the introduction of joint specializations (not just separate disciplines) in Ukrainian higher education institutions. This will allow a broader understanding of the importance of political science in the context of international transformations.

2.5. Ukraine experience and practice

On the basis of the European and partly American experience the situation of political science education in Ukraine should be analyzed. It should be noted that political science education in Ukraine is somewhat different. Within the Taras Shevchenko National University of Kyiv, the teaching of political science is also concentrated at the Faculty of Philosophy and consists of the Department of Political Science and the Department of Political Science. Both are staffed by highly qualified professionals who ensure a high level of teaching.

Training is carried out according to the Bologna system, for 4 years students receive a Bachelor's degree, another year continues in the Master's program, after which the best applicants can continue in the PhD program and get a scientific degree of "doctor of philosophy' in the specialty "052 - political science" (in Ukrainian) classification.)

The study provides a wide choice of disciplines, the full list of which can be found in advance on the websites of the relevant university departments. Some of them are free choice subjects, which allows applicants to compose an individual trajectory of study at least partially. At the same time, we can point out weaknesses in the training of political scientists. Even in the program documents (Development Programs 2020-2026) only the beginning of the transition from knowledge to competence-based approach, which provides other goals of the educational process is noted. It is, in particular, about reducing theory in favor of practice.

Programs for the development of departments stipulate the use of foreign experience of European educational institutions, which provides for the need for scientific and pedagogical internships for teachers of departments, but nothing is specified about the possibility of organizing internships for students (Prohrama rozvytku, 2021).

Internships (political science, research, and teaching assistantships) usually take place within the framework of Kyiv National University, although it would also be useful to intensify work with external structures (state and non-state), as in universities in Germany and Great Britain. This actualizes another problematic place in the training of Ukrainian political

scientists - work with potential employers. Neither training programs, nor departmental development strategies indicate how cooperation with stakeholders takes place and whether they influence teaching and the formation of the educational process.

Obviously, the best graduates can continue their academic careers (to enter graduate school), but not all even the best students are attracted to academic activities. The system of preparation of specialists in political science is in some respects similar to the German one, with the difference that in Germany applicants are more focused on practical work (which consequently gives advantages in job search).

At the Ivan Franko National University of Lviv, political science belongs to the structure of the Faculty of Philosophy. Future specialists-political scientists can study on the basis of several educational programs. In particular, the educational and professional program "political analysis and consulting" (Osvitno-profesiina prohrama "politychnyi analiz i konsaltynh", 2021) was formed in 2019.

The outlined program is aimed at obtaining the professional skills required to perform the functions and typical tasks of activities in the field of political theory, political practice, and analysis (Osvitno-profesiina prohrama "Politolohia", 2019). This program provides cumulative knowledge and professional skills for independent practice in areas of professional work related to politics, government, and local government.

Also, during the training provides practical skills of foreign languages in the specialty and the creation of conditions for academic mobility and training in the specialty "Political Science" in the leading HEAs of Ukraine and abroad (Osvitno-profesiina prohrama "Politolohia", 2019). Training on the program is problem-oriented, involves self-study and gaining knowledge on the basis of their own research.

The purpose of another educational program "Political Communication and PR" is to provide theoretical knowledge and practical skills sufficient to solve complex specialized tasks and various problems in the field of professional activity (Osvitno-profesiina prohrama "Politychna komunikatsiia i PR", 2020). The peculiarity of the specialization program is the formation of future specialists' certain visions of the basic concepts of political communication, stages of its development and specifics of modern forms, knowledge and understanding of the principles of analysis of political communication, its types, and forms, no less important is the understanding of the essence of PR and its role in the political sphere (Osvitno-profesiina prohrama"Politolohia", 2019).

A special curriculum in political science is also provided for Master's degree candidates, the objectives of which are primarily aimed at preparing highly qualified workers in political science (political history and theory,

political institutions and processes, political management, and marketing). The latter are expected to master the methods and tools of analysis, forecasting, and advising in various fields. A special feature of this program is the thorough study of disciplines aimed at obtaining a variety of skills in the fields of political analysis, marketing consulting and management. For this reason, the program is practical and research-oriented.

At the Department of Political Science of the Lviv National University there is the Center for Political Studies. One of its tasks is to attract international experience of political analysis for the elaboration of political processes in Ukraine. The Center also establishes permanent cooperation between political, state, and scientific institutes of the country. It is engaged in systematic research of public opinion on a number of political problems; carrying out various political science research, popularization of political education with a characteristic emphasis on the environment.

At the same time, ensuring a high theoretical level of knowledge goes against the organization of practical activities. Just as at the Taras Shevchenko National University of Kyiv, students' practical activities are reduced to a minimum (in fact, to internships and seminars, which are also theoretical in nature). Although there is academic mobility, the percentage of students who have taken advantage of European academic experience is small.

This is due, in particular, to the fact that the harmonization of legislative support for academic mobility has not been fully implemented. Therefore, it is difficult to provide students with internships abroad. It seems just as difficult to work with stakeholders who do not take an active part in the training of future political scientists.

Political science at the Uzhhorod National University belongs to the Faculty of History. In addition to the teaching process for the specialty of political science, the Department of Political Science of the UNU provides teaching of the course "Political Science" for all faculties. Directly political scientists' study international relations, problems of world politics, basics of conflictology, history of political doctrines, theory of political conflict etc. Specially designed courses are offered for this purpose: "Theory of International Relations", "Contemporary Foreign Political Science", "International Terrorism", "Methodology of Political Studies", "Political Leadership", etc. In addition, given the specificity and basic needs of the Transcarpathian region, bordering Hungary, Romania and Slovakia, the curricula of the UNU compiled by the Department of Political Science are markedly supplemented by materials on the state and prospects of political science in certain countries.

2.6. Some questions about tuition at different universities

It should be noted that despite all the difficulties in training specialists in political science in Ukraine, tuition fees at Ukrainian universities in many respects correspond to European standards. In the U.S., the cost of training in political science master's programs ranges from several hundreds to several tens of thousands of dollars, depending on the type of educational institution (public or private) and its prestige. At the same time, tuition fees for political science majors in France are lower.

For example, at the faculties of law and political science of French universities, as well as at the Institutes of Political Science, tuition fees range from 200 to 700 euros per year. The cost of training for specialized diplomas, as well as training for doctoral studies can be from 3000 euros per year. The most expensive is the Master's degree in Political Science at the Schiller International University, which is considered the most prestigious in the region. Higher education in political science in Germany is free because it takes place almost exclusively at state universities.

Table 1. Annual Tuition Fees for Master's Programs in Political Science (in Euros)

NAME OF EDUCATION INSTITUTION	COST OF THE MASTER'S DEGREE, €
Institut d'Etudes Politiques de Grenoble (France)	of 200
Institut d'Etudes Politiques de Toulouse (France)	of 500
Aix-en-Provence Institute for Political Science (France)	500
Université International de Chiller (France)	18300
Institut d'Etudes Politiques de Paris (France)	of 500 to 4 000
University of Essex (England)	of5 000
Queen's University of Belfast (United Kingdom)	of 5 000
Marshall University (United States)	2400
University of Rhode Island (US)	3700
University of Pittsburgh (USA)	8800
Lviv National University (Ukraine)	1100
Kyiv National University (Ukraine)	1600
Uzhhorod National University	600-800

Source: suggested by the authors.

So, as we can see, the tuition fees for political science in European educational institutions and Ukraine are comparable. At the same time, in our opinion, the content of education significantly differs.

3. Discussion

So, our study significantly differs from the previous ones, first of all, because it is directed to the comparative analysis of European and Ukrainian systems of training of political scientists. This is due to the novelty of our study, because among Ukrainian researchers of political science no one has ever turned to such a problematic. However, if we take the environment of European political scientists, such studios are popular, because they allow us to critically compare the current state of political science and new methods in training.

The results we obtained demonstrate that in Ukraine the emphasis in the education of political scientists is on the theoretical aspect, while in European countries (France, Germany, and Great Britain) along with academic disciplines students develop their practical skills much better. For example, we managed to establish that in some French universities and institutes the practice lasts nine months. In Ukrainian conditions it is impossible to realize such a practical course now because academic mobility does not compensate it, because this system is underdeveloped even at the level of founding documentation.

Of course, the vulnerability of our intelligence is that the analysis of training of both European and Ukrainian educational institutions is made in general terms. For this reason, it is impossible to take into account the specifics of teaching and learning in each academic or educational center. However, in our opinion, in order to start implementing the European experience in Ukraine first of all it is necessary to address the general tendencies. Later we suggest introducing more specific elements of the European experience, its harmonization with the Ukrainian legislation, educational and scientific sphere on the basis of a concrete educational institution.

Conclusions

An important motivation for the professional training of political scientists in Western countries is the system of scholarships (or study grants). Yes, in Germany even private companies or public organizations (foundations) can provide scholarships to students. Academic practice plays an important role in the professional training of political scientists.

Every month students are offered the opportunity to participate in various seminars, round tables, and conferences that can take place in different European countries.

Internships play a notable role in preparing for independent professional activity in higher education in Great Britain, as well as in other Western European countries. For example, the University of Birmingham (England) constantly organizes internship trips for political science students to European Commission structures in Brussels, European Parliament and NATO Headquarters, etc. The same activities take place directly in English political science institutes.

It is established that this practical part of political science education plays no less role than the theoretical part. Teaching in Ukrainian universities in this respect has many differences from the higher schools of the West. In Ukraine, teaching is not carried out in Institutes, and university curricula are mostly theoretical. Only now, plans for the development of political science departments suggest increasing the practical component in the teaching process.

We are talking, in particular, about an increase in internships and intensification of cooperation with employers. However, these trends have not yet been realized. In our opinion, more detailed stages of implementation of European practices have not yet received proper research in the professional literature, so they should be promising areas for further scientific research.

In subsequent studies we plan to propose a program of training specialists, based on specific elements of curricula and experience of leading European universities, which should first be harmonized with the Ukrainian legislation, which can already be involved in the educational and scientific sphere on the basis of a particular educational institution, which will form the basis of our next study.

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Cuestiones Políticas Vol. 40, Nº 79 (2022), 274-291
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Mapping in the context of public administration of intercultural diversity

DOI: https://doi.org/10.46398/cuestpol.4073.14

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Abstract

The objective of the study is to comprehensively analyze the methods of intercultural mapping of communities as a tool for the municipal management of a multiethnic urban community and, thus, determine their effectiveness for the active construction of intercultural practices and reformatting of the urban culture space. The Intercultural Mapping Methodology, developed by the Council of Europe's Intercultural Cities Programme, includes tools such as the Intercultural Cities Index and the Intercultural Citizenship Test, as well as sociological and focus group studies, which further involve a wide range of active residents that identify tangible cultural and intangible values in cities. The use of this technique by the intercultural community of the Ukrainian city of Melitopol has proven its effectiveness as a mechanism to involve representatives of ethnic groups in cooperation with the municipal authorities for the joint development of the city's cultural policy. It is concluded that a comprehensive analysis of the results of the study allowed to determine the priorities and strategies of its development, cultural and creative resources of the territorial community, creating conditions and new opportunities for a dynamic, inclusive and democratic intercultural society.

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Recibido el 15/03/2022 Aceptado el 15/06/2022

Keywords: public management; citizen participation; intercultural city; development strategies; mapping.

Mapeo en el contexto de la administración pública de la diversidad intercultural

Resumen

El objetivo del estudio es analizar de forma integral los métodos de mapeo intercultural de comunidades como herramienta para la gestión municipal de una comunidad urbana multiétnica y, así, determinar su efectividad para la construcción activa de prácticas interculturales y reformateo del espacio de cultura urbana. La Metodología de Mapeo Intercultural, desarrollada por el Programa de Ciudades Interculturales del Consejo de Europa, incluye herramientas como el Índice de Ciudades Interculturales y el Test de Ciudadanía Intercultural, así como estudios sociológicos y de grupos focales, que involucran además una amplia gama de residentes activos que identifican lo cultural tangible y valores intangibles ciudades. El uso de esta técnica por parte de la comunidad intercultural de la ciudad ucraniana de Melitopol ha demostrado su efectividad como mecanismo para involucrar a representantes de grupos étnicos en cooperación con las autoridades municipales para el desarrollo conjunto de la política cultural de la ciudad. Se concluye que un análisis integral de los resultados del estudio permitió determinar las prioridades y estrategias de su desarrollo, recursos culturales y creativos de la comunidad territorial, creando condiciones y nuevas oportunidades para una sociedad intercultural dinámica, inclusiva y democrática.

Palabras clave: gestión publica; participación ciudadana; ciudad intercultural; estrategias de desarrollo; mapeo.

Introduction

The processes of globalization have actualized the importance of cities on the world stage, since human, financial, and information flows are concentrated on their territory, that leads to the growth and change of their structural characteristics. According to Manuel Castells, modern society on a global scale is a “space of flows” (information, finance, labor, other resources), which, based on its own logic of development, identifies certain “privileged” places in physical space (especially cities) (Castells, 2010).

These processes are irreversible and expand the cultural diversity of cities at the expense of migrants at the same time. All of this exacerbates the question of their impact on the consolidation of the urban community and the interaction of cultures within the urban environment.

Globalists' expectations that political or civic identity will displace ethnic or religious identity have been untrue. In fact, ethnic communities pretend to recognition and respect for their cultural identity, as well as for a certain social status of their group. This creates new forms of interaction between ethnic groups and representatives of the titular nation. They need careful study to develop effective policies not only at the state but also at the level of local government.

After all, the main work to meet the needs and harmonize the interests of citizens is performed primarily by municipal authorities at the expense of local resources. Hence the problem of the quality of municipal government of cultural diversity, which implied the relationship management between different ethnic, religious, social communities within the urban community. Existing scientific research on improving public and local government focuses on socio-legal rather than cultural aspects. Therefore, there is a real need for a sociological study of the quality of municipal government of ethnocultural diversity, using new methods of participatory approach that would take into account self-determination, rights and freedoms of residents of the urban community.

1. Objectives

Carry out a comprehensive analysis of methods of intercultural mapping of communities as a tool for municipal government of a multiethnic urban community and determine its effectiveness for the active construction of intercultural practices and reformatting the space of urban culture.

2. Mapping as a definition of resources and development potential of the territorial community

Community mapping is one of the mechanisms of joint cooperation between the authorities and the city community through the methods of participation. Actually, social maps appeared at the end of the XIX century, as part of the emergence of urban planning. One of the first researchers to use the mapping method to display social problems and social information in a spatial context was the social topographer Charles Booth, who compiled "poverty maps" in London in 1889 (Morgan, 2019). In 1895, Jane Adams and her colleagues published maps of living conditions in the neighborhoods of

poor migrants in one of the urban areas of Chicago in the book "Documents and Maps of Hull House" (Addams, 2018).

In the early 1920s, the mapping method was actively used by Robert Park and Ernest Burgess, who used the categories of social space, boundaries and distances, range and zones (Park and Burgess, 1926). That is, the first social maps were part of a wide range of statistical and analytical data. Exploring the problem, the innovators resorted to processing and systematizing empirical material and used mapping as a method of visualizing of a part of the collected information. However, social data were used mainly in geographic information systems, despite the established traditions, until the 1970s.

In recent decades, this trend has begun to change radically. Modern social mapping is a group of methods combined with one object of study: social reality in order to analyze it and further influence it. First of all, it is due to the need to study the context of relations between people for the needs of social design in the development and implementation of social policy, development of comprehensive regional development programmes.

Contemporary researchers (Boiko, 2017; Kappel, 2001; Garcia and Bray, 1997; Meyer, 2020; Minkin *et al.,* 2017; Smentyna, 2017; Tsedik, 2015; Zablodska and Hrechana, 2019) understand social mapping as a public study involving a wide range of active residents who determine the valuable qualities of their habitat, seek opportunities, share their feelings and ideas. Therefore, it is important that this process is balanced and takes into account the interests of different groups.

In addition, there is a need to summarize and take into account new factors regarding the impact of community mapping on participatory decision-making. Today, it is impossible to imagine the development of a democratic society without such decision-making. We note that community mapping is the process of mapping the resources and creating a community image that demonstrates its ability and potential, involving residents in identifying valuable qualities (individual, social, institutional) and creating an image of their city / region, in which everyone would like to live (Borovitinova, 2017).

It is used to map resources (individual, public, institutional), potential, dangers, social values; to collect data for evaluation or monitoring of traditional and innovative knowledge and practices; to present alternative development scenarios; for democratization of decision-making processes and empowerment of community members (Minkin *et al*., 2017).

The mapping methodology itself is usually performed according to the following algorithm: goal setting (what we strive for, what we want to do); understanding who you will work with; identifying opinion of community leaders, you plan to engage with; collection of statistical data; development

of research tools to obtain quantitative and qualitative results; conducting training on the use of research tools among local assets; preparation of a map of the territory of the settlement; conducting research with the help of active community members; analysis of results; preparation of the final publication; publication of results (Minkin *et al.,* 2017).

All this requires considerable time, as well as the development of planning decisions that suit a representative part of the citizens. But we must understand that the result of such a process is a city of a completely different type than we have now.

3. Methods and tools of intercultural mapping

One of the most revealing methods of participatory social mapping is intercultural mapping. It means the mapping of cultural and creative resources of the territory to assess the potential of the creative sector, determine its capabilities and needs.

Today, urban communities can record their cultural practices and resources, as well as other intangible assets – a sense of place and other social and spiritual values by mapping intercultural resources. This technique is aimed at stimulating the social, cultural and economic development of the city through the formation of its image and territorial attractiveness. It also includes an audit of the resources and needs of the city, but through the analysis of the material and subjective field of culture, as well as intangible symbolic space.

Social and technological features of intercultural mapping are manifested in the direct interaction of local governments with the ethnocultural community; in monitoring as a method of researching the needs and requests of the community; in the development and application of indicators to meet the needs of the community, improving the quality of life as the main criteria for assessing the effectiveness of government; in the important role of feedback in the system of governance; in the active participation of the population in setting goals, implementing targeted programs, projects (Minkin *et al*., 2017).

This method, that is one of the active approaches to the development of culture through openness and involvement of the community, began to be used in UNESCO as a methodology or technology for the identification, description, promotion and restoration of cultural resources and values of a particular area.

The mapping, which was launched in Lviv in 2008 became one of the first examples of using the method of cultural mapping in Ukraine. The cultural map of Lviv identified all participants in the cultural life of the

city, as well as what they did, what resources they needed, what relations there were between them. It identified key players, urgent areas of work, projected dangers and threats; determined what were the types of cultural organizations, where they were located and how many people worked there, what resources existed and who received them.

The cultural map helped to understand the role, relations and responsibilities of all subjects of the city's cultural life, and also revealed the cultural potential, directions of strategic planning and organizational development (Cultural planning of Lviv: preparation of a cultural map, 2008).

As interculturalism is an urban phenomenon, in 2008, the Council of Europe initiated a project focusing on cultural diversity – the Intercultural cities programme (Intercultural cities programme, 2007).

Its goal is to turn cultural differences into a stimulus for development. Interculturalism refers to an approach to cultural diversity that goes beyond equal opportunities and respect for existing ethnocultural differences (Council of Europe, 2009). In practice, this means recognizing the values of different cultures and their rights to participate in the creation of a common identity, which is defined by diversity, pluralism and respect for human rights and fundamental freedoms.

Recognition of different cultures includes diversity in formal dialogue and communication, adaptation of governmental and non-governmental institutions to ethnic diversity. This diversity would ensure openness and sufficient flexibility of these organizations to representatives of ethnic groups. Such an approach requires the development of a long-term strategy to transform the social and cultural space, institutions and civic culture.

The notion of the benefits of diversity is at the heart of this approach. It means that diversity is not a threat but an advantage to communities under competent leadership. The work with the concept of diversity is not a way of urban branding, but a philosophy of management and definition of public policy.

The Intercultural cities programme (Intercultural cities programme, 2007) tested a range of methodologies and prepared relevant documents to help local authorities develop and implement a comprehensive intercultural policy covering various areas, such as economic development, urban planning and urban regeneration, and intercultural interaction, mediation, security and participation, etc.

Effective tools for managing cultural diversity include: detailed profiles of participating cities; special guide "Intercultural city: step by step" (The intercultural City Step by Step: Practical Guide for Applying the Urban Model of Intercultural Integration, 2013); examples of the best practices;

Index of intercultural cities (hereinafter – ICC index); study visits, trainings, thematic events and exchanges of innovations with the involvement of politicians, practitioners and activists from each city in discussions with colleagues from around the world (Intercultural cities programme, 2007).

The most effective tool of the Program, which helps to monitor the process of intercultural development of the city, the implementation of its strategy, and offers an assessment of relevant policies and processes of the city, is the Index of Intercultural Cities program (Intercultural cities programme, 2007). The cities which are official participants in the Council of Europe's Intercultural Cities programme undergo regular peer review of their policies, government and practices. The index evaluates the result of the activities of cities on the model of intercultural integration.

The ICC index questionnaire includes the following blocks: city, population, subdivisions, etc.; information on intercultural policy, structures and activities, adherence to the principles of interculturality. The ICC Index also highlights the issues related to education, public services, business and the labor market, civic space, mediation in conflict resolution, language, media and communication.

Separate blocks highlight issues related to international cooperation, intercultural competence, welcome policy for newcomers, leadership and citizenship, anti-discrimination, participation (Intercultural cities programme, 2007). Cities that carry out the ICC-Index survey consistently and repeatedly over a period of time will be able to distinguish upward or downward trends in key indices and, therefore, make much more informed judgments about the long-term impact of their policies. The methodology and principles of data collection for the ICC-Index are presented in detail on the official website (Intercultural cities programme, 2007).

The next tool is the Intercultural Citizenship Test (hereinafter – the Test), which was created to determine the knowledge and awareness of citizens about human rights, their intercultural competence, the perception of diversity as an advantage, as well as the desire to act in an intercultural way.

The test aimed to be both an educational and a political tool to raise awareness of citizens, professionals and politicians about the need to determine urban citizenship. Unlike national citizenship tests for foreign nationals, the Intercultural Citizenship Test allowed any member of the local community to self-assess their skills and willingness to be an active citizen in a diverse society. The test can be used as a supplement to the ICC Index and accompany the development of the Intercultural Strategy of the city.

The test contains a list of basic values of an intercultural citizen: perception of diversity as an advantage; positive and constructive public

participation and openness to interaction; knowledge and understanding; perception; behavior (Intercultural cities programme, 2007).

Another tool for management of intercultural diversity is to identify public opinion through sociological research. The questionnaire toolkit is developed on the principle of "SWOT-analysis", which allows to take into account the opinion of citizens for the successful implementation of intercultural integration of the city. A two-wave survey should be used to achieve this goal. The first wave is grouped on a stochastic approach, but taking into account quota indicators: gender, age, education, area of residence. During the survey, the researchers determine the cultural component of the portrait of the respondent, and make the transition to the second wave, using the method of "snowball" to reach out to other members of a national and cultural community.

The practical implementation of the developed questionnaire will allow to identify the dynamics of change and draw conclusions about the effectiveness of local governments in the implementation of intercultural policy of the city in regular surveys (for example, once a year) (Afanasieva *et al*., 2020a).

The sociologists also use the methodology of focus group research in the format of "World Café", and combine an expert survey with elements of a business game and a group written interview. The main tools of focus group discussions are the key questions: what is the priority for the citizens from the city's intercultural life? What cultural resources are available in the city and which are lacking? How can you personally (or from a professional point of view) contribute to the development of interculturalism? What three things would I change primarily in my city for intercultural exchange, cooperation with other cities? What obstacles can be encountered on the way to the intercultural integration of the city and how can we overcome them? (Afanasieva *et al*., 2020a).

Since 2008, Melitopol has been considering issues of governance, policy, discourse and practice of the city through the lens of interculturalism. Thus, together with municipal administrators, scientists, public organizations, mass media and concerned residents, the city has developed Melitopol Intercultural Integration Plan 2015 – 2020 (hereinafter – the Plan) (Melitopol Intercultural Integration Plan 2015 – 2020, 2016).

As an official participant of the Council of Europe's Intercultural Cities programme, Melitopol was evaluated by the Intercultural Cities Index for the third time (2009, 2016, 2019). According to the experts of the Council of Europe, Melitopol achieved a maximum score of nine out of seventeen indicators of the Index and very high scores in others. Detailed data are available at the link (Intercultural cities programme, 2007).

4. Materials and methods

Melitopol residents took the Intercultural Citizenship Test developed by experts of the Council of Europe's Intercultural Cities Programme (Intercultural cities programme, 2007) from December 6, 2018 to January 12, 2019 through the online survey using questionnaires for self-completion in the Google Form to assess the skills and readiness to be an active citizen in a multicultural community. 311 city residents, including representatives of 25 ethnic groups, took part in the testing.

The Centre for Sociology Studies of Bohdan Khmelnytskyi Melitopol State Pedagogical University initiated the sociological study to identify the role of the social environment in the implementation of intercultural policy of the city. It had been conducted from April 24 to May 8, 2020 by questionnaire in the online survey Google Forms in order to assess the implementation of the Melitopol Intercultural Integration Plan 2015 – 2020 (Melitopol Intercultural Integration Plan 2015 – 2020, 2016), establish social partnership of Melitopol community with the city hall and determine the directions of intercultural integration of the city.

The study involved 500 respondents aged 12 years and older. The sample is unique (the IP address of the respondent is recorded during the online session), stochastic. The theoretical error of the sample does not exceed 4.3% with a 95% confidence level. Demographic characteristics of participants of the study are: gender indicators: women 86%, men 14%; age indicators: 12-15-year-old – 3%; 16-22-year-old; 23-29-year-old – 11%; 30-39-year-old – 24%; 40-49-year-old – 32%; 50-59-year-old – 22%; 60-year-old and older – 3%.

5. Intercultural mapping in the context of determining the strategic priorities of Melitopol

Melitopol considers the issues of governance, policy and practice of the city life through the intercultural lens, so testing for Intercultural Citizenship is an important tool for developing an intercultural strategy of city development.

The first block of testing included questions related to "diversity and knowledge". The test results showed that people belonging to other ethnic backgrounds, religions, languages, genders, ages, according to 42.2% of respondents, "can bring more prospects to any discussion"; 36.0% believe that they are "more loyal to their group and more cohesive"; 26.3% are "more creative"; 18.2% of respondents "better solve the problems of the city", 13.3% of respondents "do not share these values", but 5.5% of respondents said that they "make decisions more slowly".

Melitopol is an intercultural city with a multilingual population, where citizens speak 1-3 languages. 24.4% of respondents say that they speak 4-6 languages, 20.9% of respondents speak more than 10, and 13.5% of respondents – 7-10 languages.

The next block, "diversity – feelings", allowed to learn about the level of development of intercultural relations in the city. In general, 79.7% of respondents would calmly accept the situation "if members of a new family from a neighboring flat / house" spoke another language; 79.2% of respondents would be calm if "there were other religions"; 60.1% would have normal reaction if the neighbors were "football fans-extremists"; 76.4% – if they were "refugees"; 80.8% – if they were "settlers"; 68.8% would normally accept if there "were a same-sex couple"; 50.8% – "if they were Roma", but 49.2% of respondents are wary of this category of population. It indicates a high level of tolerant attitude of citizens to other groups. However, the attitude towards members of the Roma community still remains stereotypical.

Tolerance is also shown towards newcomers and migrants. Thus, 69.1% of respondents believe that the city is hospitable to newcomers, 72.3% calmly accept that there are a lot of migrants in their city, and 65.5% have normal reaction "that some people do not want to identify themselves as a man or as a woman".

The third block "Diversity – Behavior" found that more than half of respondents (55.3%) are quite active, often attending events where foreign-speaking people and people of other cultural backgrounds gather. A significant proportion of respondents (59.5%) are also convinced that newcomers feel welcome in their city and district.

The analysis of the "Participation – Behavior" block showed that 60.1% of respondents actively try to involve people of different cultural or religious origins in various activities at work, at school, in places of cultural leisure, etc. And the respondents themselves take an active part in the life of the city, as indicated by 75.0% of respondents.

The majority of respondents (79.5%) in the block "Equality – Feelings" said that they are "ready to help anyone of other origins (gender, culture, ethnicity, religion, age) in situations where their rights are not equal to others". And 68.5% said they did not feel "the threat that another culture has the right to influence local identity".

The Equality-Behavior block found that a significant proportion of respondents had acquired a sufficient level of intercultural skills in intercultural interaction. In particular, 73.3% stated that they always "interfere if someone is treated unfairly in a public place because he / she has a different skin color, religion, sexual orientation or appearance", and 77.2% try to promote people with equal opportunities to express their opinions during the discussion.

Thus, the results of the study suggest that mostly citizens are aware of their rights, ready to interact with representatives of other cultures in an intercultural way. Therefore, every resident of the city has one or another experience of intercultural communication to achieve competent intercultural interaction. After all, intercultural competence is a tool for success in intercultural interaction, consolidation of the urban community (Afanasieva *et al.,* 2020b).

The next element of intercultural mapping was a sociological study to identify the role of the social environment in the implementation of intercultural policy of the city.

The majority of respondents in Melitopol agree that there are friendly relations between: representatives of different ethnic groups ("yes" – 68.8%; "rather yes than no" – 28.4%); representatives of different religious communities ("yes" – 52.6%; "rather yes than no" – 35.6%).

60.6% of Melitopol residents want to communicate more often in public places with representatives of different ethnic communities, 28.6% of respondents answered "yes, however, all depends on who"; 32.8% of Melitopol residents want to communicate with people of different religious beliefs, 30.8% said "yes, however, all depends on who".

54% of Melitopol youth unconditionally consider that communication with representatives of another ethnic group or religion is a factor of spiritual and moral enrichment. The majority of respondents (63%) do not report any discrimination or negative attitude towards people of other ethnic backgrounds regarding the language of communication. 70.7% of respondents never had to deal with hostility towards people of their nationality, 26.1% "testifies to individual cases", 2.6% answered that it had been "quite often", 0.6% pointed that it had happened "constantly".

The places, where interviewed respondents met hostility, are characterized as follows (in frequency of cases): in the comments to online publications – 47.6%; in the street, in transport, in line, etc. – 42%; in the media (press, television, Internet – 19.9%); in public statements of politicians – 17.3%; in work environment and students' staff – 9.5%; in cultural and leisure institutions – 6.5%; in state institutions – 6.1%. The most frequent manifestations of hostility according to the respondents are the following: "grudge against a person" – 39.4%; "disrespect for the customs and traditions of different peoples" – 30.7%; "neglect of a person" – 29.8%; "xenophobic publications, statements" – 23.9%; "domestic chauvinism and nationalism" – 21.6%; "grudge against religion" – 19.7%; "intolerant statements of politicians" – 17%; "discussion of territorial claims" – 15.1%; "unwillingness to get acquainted with the culture of others" – 11.5%; "divorce on national grounds" – 7.8%; "threat of riots and various kinds of massacres" – 7.3%; "refusal of employment" – 2.8%; "underestimation

of grades in educational institutions" – 2.3%; "refusal to promote" – 0.9%; "refusal to register companies" – 0.9%.

The next block of issues was related to the role of the media in counteracting aggressive speech on ethnocultural grounds.

38% of respondents indicated that they met "from time to time" fakes or propaganda in the media that carries negative information about ethnicity, religion, subculture, LGBT community; 46% "did not meet"; 8% "yes, constantly" meet. Mostly it is displayed in online publications and on television – 66.9%; in public statements – 16%; in the work environment – 5.8%; in state institutions – 3.3%; in municipal institutions – 1.8%). Only 4% of respondents have information about the presence of organizations or municipal and / or non-governmental services in the city to counter fakes, propaganda, manipulation of consciousness.

Regarding the study of the role of intercultural practices, 90.8% of respondents are aware of the city's activities in the field of culture, art with the involvement of representatives of different ethnic communities. 73% of respondents know about institutions and places of recreation where you can meet people of different ethnic origins or different religious tastes, and 14% believe that they are too few for Melitopol.

The responses show a mediocre level of public awareness of the existence of effective public bodies to coordinate the interaction of urban ethnocultural groups. Only about a third of respondents (36.8%) firmly believe that there is a relevant public body in the city (the Council or something similar), that is independent of the city government, and represents all ethnic communities.

The survey showed significant interest of members of the city community in attracting additional funds to promote the principles of community consolidation from the local budget – this idea is supported by 49.2% of respondents. At the same time, 41.2% have doubts about the feasibility and effectiveness of additional funding.

Thus, the sociological survey provided qualitative data on the system of intercultural interaction in the urban space, the weaknesses of the managers of intercultural integration, identified the vectors of cultural development of the community.

During the interaction of the participants of the focus group discussions in the World Café format, a number of issues were discussed regarding the increase of the level of intercultural competencies of the citizens and the formation of a space for safe intercultural interaction in the urban community.

For example, participants cited numerous options for areas where residents may face hostility from people of other cultures.

The situation around the language issue was also discussed. There is a problem of organizing appropriate language courses on the basis of educational institutions for many cultures of the city.

The participants also drew attention to the lack of courses on the history of the native land in educational institutions. This question turned out to be relevant for any age category of citizens.

SWOT / TOWS analysis of the city was conducted according to the results of the ICC Index, the Test for Intercultural Citizenship, community surveys, analysis of current development programs of Melitopol City Council to determine priority strategic directions of intercultural integration of Melitopol. This methodology allowed to formulate 4 development strategies (success strategy, competition strategy, conservation strategy and defense strategy), which are the basis for formulating community development in the long term.

Competition Strategy was chosen as the basic according to the results of the SWOT / TOWS analysis. This strategy provides for strengthening the competitive advantage of the community. Based on it, 3 strategic goals for the development of the city of Melitopol are identified, taking into account intercultural diversity: trust, public services, intercultural competence; public space, solidarity and hospitality; market, business, international cooperation.

Such a comprehensive analysis became the basis for the development of the Comprehensive Program of Melitopol Intercultural Integration 2021-2023 (Comprehensive program of Melitopol intercultural integration 2021-2023, 2021) and its approval by Melitopol City Council (footnote).

Its main goal is to introduce the European model of intercultural integration as an innovative factor in the development of multicultural Melitopol based on increasing the level of respect, trust, mutual understanding and consolidation of the community with all residents, regardless of ethnicity, religion, age, gender, education.

The effectiveness and efficiency of the implementation of strategic directions of the program can be traced through the system of annual monitoring and evaluation of the results of its implementation. This will allow to assess the level of implementation of individual measures and to check the extent to which the expected results have been achieved. Evaluation of the implementation of the Comprehensive Program will allow to track areas that need attention and to make adjustments timely to achieve strategic goals.

6. Results and discussion

Today we can say with confidence that it is attention to the substantive aspects of intercultural practice of Melitopol, reliance on the opinion of the community, national and cultural communities on the preferred forms of intercultural activities (municipal and self-organizing), as well as the systematic development of variable intercultural policy in the conditions of interaction of all aspects of urban society allowed Melitopol to gain its invaluable experience in implementing creative practical initiatives that promote intercultural dialogue in the city.

As practice shows, the very use of the proposed method of intercultural mapping inevitably requires a revision of city policy and the development of a new management strategy that takes into account existing needs and resources (including human capital) and provides comfortable living for citizens.

The successful implementation of the Comprehensive Program of Melitopol Intercultural Integration 2021-2023 (Comprehensive program of Melitopol intercultural integration 2021-2023, 2021) depends on the level of intercultural competence of both municipal managers, politicians and ordinary residents. Therefore, in our opinion, it is important to make more intensive use of new approaches and methods for the development of intercultural competencies of the most active actors in the modernization of the cultural life of polyethnic communities.

Intercultural competence is seen as a set of analytical and strategic abilities of agents of change. To be interculturally competent today means to have a set of models of appropriate behavior, knowledge, skills, to have a developed sensitivity to all groups, which will ensure the functioning of the organization or groups of professionals to work effectively in cross-cultural situations. This will allow not only Melitopol, but also the community of intercultural cities to learn and provide practical assistance to influential politicians in order to focus the efforts of city departments and services to work productively with citizens; identify and expand the rights and opportunities of intercultural innovators; translate ethnocultural diversity into a successful strategy.

Thus, the lack of communicative intercultural competence becomes one of the problems of modern government, which does not allow the modern community to convert maximally a successful communication cross-cultural policy. This problem requires long-term measures with the involvement of the scientific community and educators. First of all, special interdisciplinary research of sociologists, psychologists, managers, etc. is required for the development of programs and courses for the formation of intercultural knowledge, skills, attitudes.

In the long term, those municipalities whose growth relies only on classical factors of production (land, labor, natural resources) may lose their benefits at some stage of globalization. And those municipalities that develop creative "educated" factors of local preferences (intelligence, innovation, information, cooperation, networks, social capital) have a chance to become leaders.

They will be able to position themselves in relation to other communities and territories and gain special competitive advantages in attracting the best investments that provide the creation of innovative enterprises, the formation of higher added value, production mainly of export orientation, new skills of professional management, improvement of infrastructure, integration into the world economy, etc.

Conclusions

Intercultural mapping of community as a method is a scientific basis not only for cognition and forecasting of urban processes, but also contributes to the development of cultural potential of the community, constructing the organization of local self-government on a participatory basis.

The use of a tool such as the Intercultural Citizenship Test, developed by the experts of the Council of Europe, examined citizens' perceptions of intercultural policy and measured the level of intercultural integration of the urban environment, in particular by tracking results by specific geographical areas of the city. In a generalized form, the test results allow us to assess the state and dynamics of various spheres of intercultural life of the community, to identify complex issues, to reflect on the necessary activities and projects.

The results of the public and expert survey to identify the role of the social environment in the implementation of intercultural policy of the city revealed some moments of the intercultural community, determined the current state of intercultural interaction of different ethnic groups, cultures, communities and religions. This allowed to assess timely the effectiveness of cooperation between local governments and the community, to identify priorities in the development of intercultural integration, as well as to identify optimal methods and directions for implementing the intercultural strategy of the city of Melitopol.

The analysis of the focus of group research in the format of "Worldcafé" revealed the maximum creative potential of the working groups, suggestions for improving operational areas and tasks.

SWOT-analysis of the city, based on the results of the Intercultural Citizenship Test, ICC index, materials of the sociological study Melitopol

community regarding the role of the social environment in the intercultural integration of Melitopol, revealed the strengths and weaknesses of the intercultural community, external opportunities that support the city's strengths. On the other hand, it made it clear what were the risks and obstacles to intercultural integration and ways to address weaknesses.

In general, the use of sociological technologies allowed to monitor all structural units of the city hall on the intercultural integration of the social space of Melitopol, as well as timely identify the dynamics of change and draw conclusions about the effectiveness of both municipal government and community.

Summarizing our study, we have every reason to state the need to expand the range of sociological study of the phenomenon of the modern city. Undoubtedly, one of the final and main links of such a study is the strategic planning of socio-cultural development of intercultural cities and their subsequent modernization. We can say that the sociological support of these processes as a marker of their success is becoming a necessary part of the implementation of advanced models of intercultural policy of the modern city on the example of Melitopol.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 292-310
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Effectiveness of gender policy in the activities of the Ukrainian police in the context of intensifying European integration processes

DOI: https://doi.org/10.46398/cuestpol.4073.15

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Abstract

The article offers a comparative legal analysis of the legislation in the regulation of the combat and prevention of gender violence by the police, studying, for this, the best international experience in this area. It indicates the need to define in the law profile the specific subdivisions of the National Police that carry out prevention of domestic violence, gender violence (Department of Preventive Activities; Patrol Service; Youth Prevention Units; District Police Service) to regulate its powers, competences and attributions. It is argued that a number of organizational and technical measures will help to increase the effectiveness of gender policy in the activities of the Ukrainian police: the creation of widely available databases showing statistics on cases of gender-based domestic violence, investigations and punishments, categories of victims and perpetrators. By way of conclusion, the desirability of introducing international best practices in policing in this area is demonstrated, in particular the adaptation of the «Blue Card» procedure carried out by the Polish police.

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Recibido el 29/02/2022 Aceptado el 25/04/2022

Keywords: gender policy; National Police of Ukraine; prevention; domestic violence; gender discrimination.

Eficacia de la política de género en las actividades de la policía ucraniana en el contexto de la intensificación de los procesos de integración europea

Resumen

El artículo ofrece un análisis jurídico comparativo de la legislación en la regulación del combate y prevención de la violencia de género por parte de la policía, estudiando, para ello, la mejor experiencia internacional en este ámbito. Se indica la necesidad de definir en el perfil de ley las subdivisiones específicas de la Policía Nacional que realizan prevención a la violencia intrafamiliar, violencia de género (Departamento de Actividades Preventivas; Servicio de Patrullas; Unidades de Prevención Juvenil; Servicio de Policías Distritales) para regular sus poderes, competencias y atribuciones. Se argumenta que una serie de medidas organizativas y técnicas ayudarán a aumentar la eficacia de la política de género en las actividades de la policía ucraniana: la creación de bases de datos ampliamente disponibles que muestren estadísticas sobre casos de violencia doméstica por razón de género, investigaciones y castigos, categorías de víctimas y perpetradores. A modo de conclusión se demuestra la conveniencia de la introducción de las mejores prácticas internacionales de la actividad policial en este ámbito, en particular, la adaptación del procedimiento "Carta Azul" llevado a cabo por la policía polaca.

Palabras clave: política de género; policía nacional de Ucrania; prevención; violencia doméstica; discriminación de género.

Introduction

One of the consequences of gender inequality in society, unequal distribution of power and imbalance of representation of women and men in different spheres of life is gender-based violence, which is one of the most common problems in measuring modern social space and has a long history. The concept of "gender-based violence" encompasses such acts of violence against a person because of being a victim of violence, as well as the role of people defined by public opinion and their expected behavior. At the present stage of society, the most common types of gender-based violence

in the world are rape, domestic violence, sexual harassment, prostitution, and sex trafficking.

Examples of gender-based violence, which are explained by so-called culture, traditions and customs, are also widespread in the world. For example, early or child (often forced) marriages, female genital mutilation, honor killings (Zaporozhtsev *et al.*, 2012). The determinant of violence is the ingrained stereotype of the dominance of one sex over another in society and the family.

XX-XXI centuries are the era of establishing gender equality - social equality of men and women, the establishment of the foundations of gender parity and gender democracy (Perunova, 2020). The Constitution and other normative legal documents guarantee equality of men and women in Ukraine in all sectors. The country has acceded to all major international commitments in the field of gender equality and women's rights to establish an institutional mechanism for the implementation of key tasks and the practical implementation of the law, including the Ukrainian police.

The Council of Europe`s Gender Equality Strategy for 2018-2023 states that achieving gender equality is a key element in the implementation of the Council of Europe`s mission, which is to protect human rights, uphold democracy and ensure the rule of law, and states that gender equality involves equal rights for women and men, girls and boys, as well as their equal importance, opportunities, responsibilities and participation in all spheres of public and private life (The council of europe's gender equality strategy for 2018-2023, 2018).

Ukraine has created certain conditions for combating and preventing domestic and gender-based violence. In particular, the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" defines the organizational and legal framework for preventing and combating such violence, the main directions of state policy in the field of preventing and combating it, aimed at protecting the rights and interests of victims of such violence (Law of Ukraine "On Prevention and Counteraction to Domestic Violence", 2019). However, as practice shows, citizens remain dissatisfied with the level of public administration in preventing and combating domestic violence in Ukraine, including the Ukrainian police, and regulations in this area are ineffective. These circumstances justify the relevance of this scientific article.

1. Methodology of the study

To achieve the set goals and objectives, to ensure the reliability of the results and conclusions used a system of methods of scientific knowledge.

The dialectical method contributed to the consideration and study of the problem in the unity of its social content and legal form and the implementation of a systematic analysis of gender policy in the activities of the Ukrainian police in the context of intensification of European integration processes.

The system-structural method allowed to study the state policy in the field of protection of children from violence and other illegal actions as a holistic set of interacting elements. The use of statistical methods contributed to the generalization of legal practice; analysis of empirical information related to the research topic. The comparative legal method was used during the review and study of legal literature, the main scientific approaches to solving the tasks of research and analysis of domestic legislation in the process of clarifying its relationship with similar rules of foreign law and practice of its application.

The formal-legal method was used in the study of normative sources of scientific work, which allowed to identify shortcomings of current legislation of Ukraine, which regulates the activities of the National Police of Ukraine in the field of protection of victims of gender violence and other illegal actions, to formulate proposals to improve their activities. These methods in correlation with the general logical methods and techniques (analysis, synthesis, induction, deduction, analogy) allowed a comprehensive and effective study of the peculiarities of the implementation of gender policy in the Ukrainian police.

The scientific and theoretical basis of the article are scientific works of domestic and foreign experts in the field of management theory, administrative law, civil law, criminal law, criminology, sociology and other branches of legal sciences.

2. Analysis of recent research

Issues of developing mechanisms aimed at improving the effectiveness of gender policy in modern conditions have a special place in the scientific research of such scientists as: O. Perunova (Perunova, 2020), A. Blaga (Blaga *et al*., 2012), F. Zaiffert (Zaiffert, 2013), A. Galay (Galay, 2014), K. Guseva (Guseva, 2020), A. Zaporozhtsev (Zaporozhtsev *et al*., 2012), K. Dovgun (Dovhun, 2021), N. Lesko (Lesko, 2019) and many others.

Despite the active research in Ukraine on the protection of victims of gender-based violence, the issue of improving the effectiveness of gender policy in the activities of the Ukrainian police in modern conditions has not been studied separately. In the available scientific works, these aspects were covered either in fragments or within a much broader issue. Instead,

the study of the current state of improving the effectiveness of gender policy in the Ukrainian police in the context of intensifying European integration processes, as well as making proposals on this basis to improve legislation and practice in its application is extremely important and necessary.

3. Results and discussion

3.1. Regulatory and legal regulation of prevention of gender-based violence in Ukraine

The study of the problem of improving the effectiveness of gender policy in the activities of the Ukrainian police in the context of intensification of European integration processes will logically begin with an analysis of legal regulations for the prevention of gender-based violence in Ukraine.

International legal regulation of domestic and gender-based violence is carried out by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Discrimination against Women, and the UN Convention on Marriage, age of marriage and registration of marriage, the UN Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Exercise of Children's Rights and other acts.

In general, it should be noted that the system of international legal regulation in the field of combating domestic and gender-based violence includes a significant number of "soft law" acts, which serve as a basis for improving national legal systems in combating gender-based violence legal acts that have become binding on countries in connection with their ratification. Such acts include the UN Declaration on the Elimination of Violence against Women and the UN Model Law on Domestic Violence.

Among the international legal instruments in the field of combating domestic and gender-based violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Council of Europe convention on preventing violence against women and domestic violence, 2013). To date, Ukraine has not ratified this Convention, although domestic and international experts say that it has now become particularly relevant.

We believe that ratification of the Istanbul Convention would allow Council of Europe experts to monitor Ukraine's compliance with its commitments, and Ukraine would have the right to demand increased accountability for perpetrators of Ukrainian citizens abroad. In addition,

it makes it possible to demand responsibility for Ukrainian offenders who are hiding abroad.

An important aspect in the context of the subject of our study is to identify ways to increase the effectiveness of the National Police of Ukraine as a subject of protection of victims of gender-based violence and other illegal actions. After all, as K. Dovhun rightly points out, domestic violence, gender-based violence is a complex social problem and effective counteraction requires the involvement of various actors who differ in nature, forms and methods of activity, as well as their powers. All state bodies and citizens should take part in preventing and counteracting this negative social phenomenon (Dovhun, 2021).

The system of legislation on the legal regulation of preventing and combating domestic violence by police includes the Constitution of Ukraine, laws of Ukraine "On Prevention and Combating Domestic Violence", "On Ensuring Equal Rights and Opportunities for Women and Men", "On Principles of Preventing and Combating Discrimination in Ukraine", "On Child Protection", as well as the Civil Code of Ukraine, the Family Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and other legislation.

The Constitution of Ukraine (parts 2, 3 of Article 24) stipulates that there may be no privileges or restrictions on the grounds of race, color, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, on linguistic or other grounds (Constitution of Ukraine). One of the key laws in Ukraine regulating the implementation of gender equality is the Law "On Ensuring Equal Rights and Opportunities for Women and Men", which aims to achieve parity between women and men in all spheres of society (Law of Ukraine "On Ensuring Equal Rights and opportunities for women and men"). The provisions that determine the powers of the National Police of Ukraine in this area take an important place in it.

Provisions on preventing and combating gender-based violence were included in Section V-1 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men".

In general, measures to prevent and combat gender-based violence are identical to those that can be used to combat domestic violence in accordance with the Law of Ukraine "On Prevention and Counteraction to Domestic Violence". However, it should be emphasized that such a measure as an urgent injunction against the perpetrator who committed violence under the article is not provided by the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men".

In 2017, the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" № 2229 – VIII was adopted, according to which the bodies of the National Police of Ukraine are included in the entities with appropriate powers to protect victims of domestic violence. It is also worth mentioning the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" № 2227-VIII.

The Code of Ukraine on Administrative Offenses was amended by Article 173-2, as well as amendments were made to the Criminal Code to determine liability for domestic violence (Article 126-1 of the Criminal Code of Ukraine) and non-compliance with restrictive measures, restrictive regulations or failure to pass the program for offenders (Article 390 -1 of the Criminal Code of Ukraine).

Responsibility for certain types of crimes against sexual freedom has also been strengthened. Such changes in the current legislation mobilize and slightly change the activities of the pre-trial investigation bodies of the National Police of Ukraine in terms of determining the circumstances have to be clarified in such criminal proceedings, the use of methods of obtaining evidence of gender-based domestic violence.

The most numerous among the normative legal acts in the researched sphere are by-laws of general action, which directly or indirectly concern the activity of the Ukrainian police. Among them are: Decree of the President of Ukraine № 501/2015 of August 25, 2015 "On approval of the National Strategy in the field of human rights" (National strategy in the field of human rights), Resolution of the Cabinet of Ministers of Ukraine of August 22, 2018 № 658 "Approval of the Procedure for Interaction of Entities Carrying Out Measures in the Sphere of Prevention and Counteraction to Domestic Violence and Gender-Based Violence" (Procedure for interaction of entities implementing measures in the field of prevention and counteraction to domestic and gender-based violence).

Resolution of the Cabinet of Ministers of Ukraine of August 22, 2018 № 655 "On approval of the Standard Regulations on Asylum for Victims of Domestic violence and / or gender-based violence" (Standard provision on asylum for victims of domestic and / or gender-based violence), Resolution of the Cabinet of Ministers of Ukraine of August 22, 2018 № 654 "On approval of the Standard Regulations on the Mobile Brigade of Social and Psychological Assistance to Victims of Domestic Violence and / or Gender-Based Violence" (Standard regulations on the mobile brigade of social and psychological assistance to persons who have suffered from domestic and / or gender-based violence).

Resolution of the Cabinet of Ministers of Ukraine of March 20, 2019 № 234 "On approval of the Procedure for formation, maintenance and access to the Unified State Register of Domestic Violence and Gender-Based Violence" (Procedure for formation, maintenance and access to the unified state register of domestic violence and violence on the grounds of sex), the order of the Ministry of Internal Affairs of Ukraine dated August 1, 2018 № 654 "On approval of the Procedure for issuance by authorized units of the National Police of Ukraine of an urgent injunction against the offender" (Procedure for issuing urgent prohibitive instructions against the offender by authorized units of the National police of Ukraine).

Order of the Ministry of Education and Science of Ukraine of October 2, 2018 № 1047 (Methodical recommendations for detecting, responding to cases of domestic violence and interaction of teachers with other bodies and services), order of the Ministry of Social Policy of October 1, 2018 № 1434 "On approval of the Standard program for abusers" (Standard program for abusers), order of the Ministry of Social Affairs Policy of Ukraine № 564/836/945/577 of August 19, 2014 "On Approval of the Procedure for Considering Appeals and Reports Concerning Child Abuse or Threat of Its Commitment (Ministry of social policy of Ukraine, Ministry of internal affairs of Ukraine, Ministry of education and science of Ukraine, Ministry of health of Ukraine)" (Procedure for consideration of appeals and reports regarding child abuse or threat of its commission), Order of the Ministry of Social Policy of Ukraine № 281 of May 8, 2014 "On approval of Methodical recommendations on the organization of correctional programs for perpetrators of domestic violence" (Methodical recommendations on the organization of correctional programs for persons who commit domestic violence).

The order of the Ministry of Social Policy of Ukraine № 1852 of December 11, 2018 "On the establishment of the State Institution" Call Center of the Ministry of Social Policy of Ukraine on combating trafficking in human beings, prevention and counteraction to domestic violence, gender-based violence and violence against children" (On the establishment of the state institution "callcenter of the Ministry of social policy of Ukraine for combating trafficking in human beings, prevention and counteraction to domestic violence, gender-based violence and violence against children").

These regulations and certain provisions are aimed at introducing an integrated approach to preventing and combating domestic and gender-based violence, expanding the list of tools and instruments to combat domestic and gender-based violence, as well as creating a legal basis for ratification of the Council of Europe Convention on Prevention violence against women and domestic violence and the fight against these phenomena. One of the key roles in this area of activity is played by the bodies of the National Police of Ukraine.

Despite the relatively high activity of the legislator in resolving the problem of combating and preventing gender-based violence, the issue of public awareness in this area remains the most urgent and needs to be addressed urgently. Thus, at present, the real scale of the problem of protection of victims of gender-based violence is difficult to assess due to the lack of comprehensive research on the problem, as well as a systematic approach to the collection of statistical information by various ministries.

The statistics of different ministries often do not match, as this information was collected according to different methodologies. In this regard, N. Lesko notes that in departmental statistics on children there are such paradoxical cases when the number of victims of domestic violence and children who have committed such violence, were given by one total figure (Lesko, 2019). In addition, the current legislation needs to improve the powers of the National Police of Ukraine, as a subject of combating domestic violence, as their powers were spelled out in various regulations and due to their constant reorganization and transfer of powers, the interaction mechanism does not work effectively.

In our opinion, the main areas of improving the effectiveness of the National Police of Ukraine, which protects victims of gender discrimination at the legislative level, include expanding the competence of entities implementing measures to prevent and combat domestic violence, including the National Police, systematization of normative legal acts regulating the order of their activity.

3.2. The main powers of the National Police in the field of prevention of gender-based violence

The main bodies and institutions entrusted with the functions of implementing measures in the field of preventing and combating gender and domestic violence are: children`s services; authorized units of the National Police of Ukraine (On Prevention and Counteraction to Domestic Violence). It is the units of the National Police of Ukraine that are entrusted with the tasks in the field of administrative and legal response to cases of domestic violence, timely detection and prevention of offenses, elimination of their negative consequences. According to the Law of Ukraine "On the National Police" of 02.07.2015 № 580-VIII activities to prevent and combat domestic violence or gender-based violence are referred to its main powers (Law of Ukraine "On the National Police").

Regarding the details of the main powers of the National Police in the field of prevention and counteraction to domestic violence, it is provided in Article 10 of the Law of Ukraine "On Prevention and Counteraction to Domestic Violence", according to which their powers include: detection of facts of domestic violence and timely response to them; reception and

consideration of applications and notifications of domestic violence, including consideration of notifications received by the call center on prevention and counteraction to domestic violence, gender-based violence and violence against children, taking measures to stop it and providing assistance to victims, taking into account the results of risk assessment in the manner prescribed by the central executive body, which ensures the formation of state policy in preventing and combating domestic violence, together with the National Police Ukraine.

Informing victims about their rights, activities and social services that they can use; issuing urgent injunctions against offenders; taking on preventive registration of offenders and carrying out preventive work with them in the manner prescribed by law; monitoring the implementation by offenders of special measures to combat domestic violence during their term; revocation of permits for the right to acquire, store, carry weapons and ammunition to their owners in case of domestic violence, as well as seizure of weapons and ammunition in the manner prescribed by law; interaction with other entities implementing measures in the field of prevention and counteraction to domestic violence, in accordance with Article 15 of this Law; reporting to the central executive body implementing state policy in the field of preventing and combating domestic violence on the results of exercising powers in this area in the manner prescribed by the central executive body that ensures the formation of state policy in preventing and combating domestic violence (Law of Ukraine "On preventing and combating domestic violence").

The Law of Ukraine "On Prevention and Counteraction to Domestic Violence" expands the system of measures to combat domestic violence in comparison with previous legislation. Special countermeasures include an urgent injunction against the offender; restrictive prescription against the offender; taking on preventive maintenance of the offender and carrying out preventive work with him; referral of the offender to the program for offenders.

It is seen that the promptest and effective measures to combat domestic violence will be an urgent injunction and a restraining order against the perpetrator. The other two measures were both aimed at combating violence and at re-educating and correcting the offender. Urgent restraining order is the most effective means of combating domestic violence, which was issued to the offender by authorized units of the National Police of Ukraine in case of imminent threat to life or health of the victim in order to immediately stop domestic violence, prevent its continuation or recurrence. An urgent injunction may include such measures as: the obligation to leave the place of residence (stay) of the injured person; ban on entry and stay in the place of residence (stay) of the victim; prohibition in any way to contact the victim.

An urgent restraining order was issued for a period of up to 10 days at the request of the injured person, as well as on his own initiative by an employee of the authorized unit of the National Police of Ukraine based on the results of the risk assessment. An urgent injunction was handed over to the offender, and a copy is given to the injured person or his representative.

At the same time, it should be noted that the issuance of an urgent restraining order by the police as a special measure to combat domestic violence against the perpetrator is regulated in the situation of a person committing physical domestic violence. The procedure for its application by authorized units of the National Police of Ukraine is limited to cases of a criminal offense committed by the offender.

We share the position of some scholars that in order to meet the needs of preventive activities of the National Police of Ukraine in the use of measures to combat gender-based domestic violence as an administrative offense, it is necessary to amend Chapter 20 of the Code of Administrative Offenses ("Measures to ensure proceedings administrative offenses") and streamline a number of regulations, in particular, the order of the Ministry of Internal Affairs of Ukraine dated August 1, 2018 № 654 "On approval of the Procedure for issuing by the authorized units of the National Police of Ukraine urgent injunction against the offender", interdepartmental order of the Ministry of Social Policy of Ukraine and the Ministry of Internal Affairs of Ukraine dated March 13, 2019. № 369/180 "On Approval of the Procedure for Assessing the Risks of Domestic Violence" (Guseva and Gorbach-Kudrya, 2020).

A restraining order against an offender is a court-ordered measure to temporarily restrict the rights or obligations of a person who has committed domestic violence, aimed at ensuring the safety of the victim. A restraining order may provide for one or more of the following measures to temporarily restrict the rights of the offender or impose obligations on him: prohibition to be in the place of joint residence (stay) with the victim; elimination of obstacles in the use of property that is the object of the right of joint ownership or personal private property of the victim; restriction of communication with the injured child; prohibition to approach at a certain distance to the place of residence (stay), study, work, other places of frequent visits by the victim; prohibition to search for the injured person personally and through third parties, if he is at his own will in a place unknown to the offender, to persecute him and to communicate with him in any way; Prohibition of correspondence, telephone conversations with the victim or contact with him through other means of communication in person and through third parties.

Restrictive measures may be applied not only in the framework of separate proceedings under the conditions specified in Chapter 13 of Section IV of the Civil Procedure Code of Ukraine by civil procedural legislation,

but also in the framework of criminal proceedings. The application of restrictive measures is provided by the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine. The Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" supplements the general part of the Criminal Code with a new section entitled "Restrictive Measures". To Art. 194 of the Criminal Procedure Code of Ukraine was also amended to regulate the application of restrictive measures in criminal proceedings against a person who has committed domestic violence or violence under the article.

It should be noted that, despite the rather detailed list of powers of the National Police, the law does not specify which units work in the field of preventing and combating domestic violence, gender-based violence. P. Bilenko proposes to include in the authorized units of the National Police of Ukraine, which carry out prevention and counteraction to domestic violence: Department of Preventive Activities of the National Police of Ukraine; patrol service of the Ministry of Internal Affairs of Ukraine; juvenile prevention units; service of district police officers (Bilenko, 2019).

In 2017, the National Police launched the Polina project to combat domestic violence. Initially, the project worked in some districts of Kyiv, Odesa, and Severodonetsk, Luhansk regions (Combating domestic violence. a practical guide for police officers. council of Europe project "combating violence against women and children in ukraine"). The project created a new system of interaction between mobile police groups against violence. Gradually, the project was extended to certain districts of Dnipropetrovsk, Odessa and Zaporizhia regions. The mobile teams include representatives of various police units - district police officers and juvenile prevention officers from the Department of Preventive Activities, investigative and operational units, as well as, remotely, the patrol police crew (Newsletter on law enforcement reform in Ukraine, 2017).

It should be noted that the project does not provide for the creation of separate units that will work in the field of combating domestic violence. However, a separate algorithm has been developed between operators of line 102 and patrol, precinct, juvenile police, investigators and operatives to respond to and prevent domestic violence. According to the developed protocol, the operator of line "102" sends a patrol police crew to the scene, who finds out all the circumstances of the incident and in case of a violation, they call a police officer. If violence / offenses against minors were detected, a juvenile prevention worker is involved. In case of a criminal offense, specialists in investigation and criminal investigation are involved.

It should be noted that within the framework of the Polina project, the police interact with public initiatives. For example, La Strada-Ukraine

domestic violence prevention consultants inform subscribers from Polina project areas about the existence of mobile groups to combat domestic violence. In 2019, mobile groups responding to domestic violence were established in 37 cities. It is worth noting that these mobile groups have proven their effectiveness, so it was planned in their further deployment. Since 2018, work is underway to prepare for the spread to other regions of Ukraine (Report of the head of the National police of Ukraine on the results of the department`s, 2019).

Summing up this block of the scientific article, we note that the effectiveness of gender policy in the activities of the Ukrainian police will contribute to a number of such organizational and technical measures: categories of victims and perpetrators; adequate staffing of National Police units responsible for the prevention of domestic violence.

3.3. Best foreign practices of gender policy in police activities

The development of effective mechanisms of gender policy in the activities of the Ukrainian police requires the study of best practices abroad.

A characteristic feature of German law in this area is the focus on the removal of a person who has committed domestic violence from the family.

According to German law, such a person must leave the premises by order of the police for up to 10 days (Blaga, 2012). In addition, there are so-called domestic violence commissions among criminal police units in Germany, which deal with domestic violence cases (Zaiffert, 2013). By expanding their knowledge in this area, employees of these units more effectively investigate and identify the circumstances of domestic violence, establish contact with the victim and the aggressor to stop further cases of violence. It is worth noting that the experience of removing a person who has committed domestic violence from the family is also practiced in European countries such as Austria, Spain, the Netherlands, the Czech Republic, Sweden and others (Kharlamov, 2014).

The police in Austria (according to the Federal Law "On Protection from Violence" and "On Security Police") are authorized to issue (if appropriate) a prohibition order, according to which a person who poses a danger to others (family members, cohabitants, etc.), and its behavior indicates the existing (or potential) the risk of encroachment on life, health, personal liberty, etc., is removed from the place of residence (regardless of family ties and property rights) with a ban on returning there, seizure of keys and determination (temporarily) of another place of residence (in case of resistance to the offender it is applied by police coercive measures) (Amendments to the legislation on prevention and counteraction to domestic violence).

In France, there is an effective interaction between the police and the mobile hotline, which allows you to quickly arrive at the scene of domestic violence. In addition, police units have the right to immediately remove perpetrators of domestic violence from the place of residence with the victim, and the court may order such a measure to combat domestic violence as the use of electronic control bracelets. With these bracelets, the police receive a signal that the perpetrator of domestic violence is approaching the victim and can respond immediately (Galay, 2014).

The positive experience of the Swedish police in preventing gender discrimination is interesting in view of the research. In particular, the Karin project is a pilot project aimed at strengthening cooperation between the police and social services in Malmö. Two forensic investigators and two social workers are in the same room and work closely together to facilitate access to these specialists for victims, in particular children who have witnessed violence.

In addition, both the police and social workers are in constant contact with other organizations and government agencies. When forensic investigators receive a statement, they immediately notify social workers. Social workers contact the woman within 24 hours to assess the need for support and assistance in obtaining adequate protection. Thanks to the project, the female victims noted that the police officers were kind, pleasant and responsive. The women also claimed that they had received useful information about the investigation.

The Blue Charter procedure, conducted and implemented by the Polish police in connection with well-founded suspicions of domestic violence, is noteworthy. This procedure was provided for in the Order of the Chief Commander of the Police of 18 February 2008 № 162 "On the methods and forms of police performance of tasks related to domestic violence under the Blue Charter procedure". This procedure is a very effective measure to combat domestic violence, which was usually caused by gender conflicts.

This is due to the fact that no case of gender-based violence is ignored, accompanied by fruitful work of the police, which carries out a number of measures aimed at eradicating violence in a particular family. Another positive aspect of Poland's experience is the introduction of the "Blue Charter" procedure in the "Blue Charter" procedure, which the victim of domestic violence fills in in a calm atmosphere after the police have taken the necessary measures against the aggressor. After all, in a state of stress after an act of domestic violence, the victim may not always be able to adequately respond to police questions and provide the necessary evidence that will help police develop the right strategy to combat violence in this particular family (Gorbova, 2015).

It should be noted that the similarity of legislation governing the prevention and combating of gender discrimination in Europe is not only a desire to implement the provisions of the Istanbul Convention, but also common social values that are protected - the health and life of a person regardless of gender, peace and well-being of the family, etc. European experience of police work in this area, of course, should be studied and implemented in our country in order to avoid possible mistakes in overcoming gender-based domestic violence in Ukraine.

We believe that the intervention of the authorized units of the National Police in the early stages of violence prevention is a more effective measure in the fight against gender discrimination than any prevention programs. One of the advantages of such an early intervention may be the redistribution of funds for the implementation of other programs useful to society. In addition, it will save time and money spent by social and law enforcement agencies and the judiciary on combating gender-based domestic violence. At the same time, it is important to remember that only by working together can we not only convey to everyone what gender discrimination is and protect against it, but also improve the quality of response and assistance. Creating a safe environment free from violence is a common goal of the entire world community.

Conclusions

Summing up and analyzing what was stated in the article, we can draw the following conclusions.

The main areas of improving the efficiency of the National Police of Ukraine, which protect victims of gender discrimination at the legislative level, include expanding the competence of these entities, systematization of regulations governing their activities.

The relevant law should define specific units of the National Police that prevent and combat domestic violence, gender-based violence: Department of Preventive Activities; patrol service; juvenile prevention units; service of district police officers.

A number of organizational and technical measures will help increase the effectiveness of gender policy in the activities of the Ukrainian police: measures to create publicly available databases that would display statistics on cases of gender-based domestic violence, the course of investigation and punishment, categories of victims and perpetrators.

Intervention by authorized units of the National Police in the early stages of violence prevention is a more effective measure in the fight against gender discrimination than any prevention program. Establishing close

cooperation between the police and other actors empowered to prevent and combat gender discrimination is key to improving the protection of victims' rights.

It is expedient to introduce best foreign police practices in this area. In particular, an effective measure to combat domestic violence due to gender differences is the Blue Charter procedure, which was carried out and implemented by the Polish police in connection with well-founded suspicions of domestic violence.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 311-329
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Investigation and justice of crimes committed under war conditions in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.16

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Abstract

The purpose of the article is to review the topic of investigation and administration of justice in relation to crimes committed during the war in Ukraine, as one of the important elements of transitional justice. The authors focus on the possibility of applying the concept of post-conflict solution in Ukraine after the end of hostilities provoked by armed aggression. The article draws attention to the fact that in order to counter these crimes it must be necessary: to develop effective mechanisms and establish communication within universal jurisdiction with other countries that have experience in investigating Russian military aggressions; extensive use of the capabilities of the International Commission on Human Rights established by the UN Human Rights Council to investigate war crimes committed by the aggressor's armed forces and violations of international humanitarian law, the prepared evidence of which can be used in all international and national

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Recibido el 02/05/2022 Aceptado el 15/06/2022

jurisdictions. It is concluded that it is urgent to borrow positive international experience in the standardization of current national legislation, aimed at optimizing the process of documentation and investigation of crimes against humanity, bringing the perpetrators to justice.

Keywords: war crimes; Rome Statute; International Criminal Court; ratification; Transitional justice.

Investigación y justicia de crímenes cometidos en condiciones de guerra en Ucrania

Resumen

El propósito del artículo es revisar el tema de la investigación y administración de justicia en relación con los crímenes cometidos durante la guerra en Ucrania, como uno de los elementos importantes de la justicia transicional. Los autores se centran en la posibilidad de aplicar el concepto de solución posconflicto en Ucrania tras el fin de las hostilidades provocadas por la agresión armada. El artículo llama la atención sobre el hecho de que para contrarrestar estos crímenes debe ser necesario: desarrollar mecanismos efectivos y establecer comunicación dentro de la jurisdicción universal con otros países que tienen experiencia en la investigación de agresiones militares rusas; uso extensivo de las capacidades de la Comisión Internacional de Derechos Humanos establecida por el Consejo de Derechos Humanos de la ONU para investigar crímenes de guerra cometidos por las fuerzas armadas del agresor y violaciones del derecho internacional humanitario, cuya evidencia preparada puede usarse en todas las jurisdicciones internacionales y nacionales. Se concluye que urge tomar prestada la experiencia internacional positiva en la estandarización de la legislación nacional vigente, destinada a optimizar el proceso de documentación e investigación de crímenes de lesa humanidad, llevando a los perpetradores ante la justicia.

Palabras clave: crímenes de guerra; Estatuto de Roma; Corte Penal Internacional; ratificación; Justicia transicional.

Introduction

Full-scale military operations on the territory of Ukraine and the related temporary occupation of its separate territories by the Russian Federation (hereinafter – the Russian Federation) have challenged not only the national

security of the Ukrainian state, but also the ability to effectively protect and restore human rights and fundamental freedoms in terms of overcoming the consequences of the armed conflict. Such illegal actions have killed and injured many civilians, and forced more than 10 million Ukrainians from illegal military incursions and temporarily occupied territories to flee their homes, leading to influxes of internally displaced persons.

By their nature, crimes committed during the war are one of the most serious and serious crimes known to mankind. In accordance with the norms of international law, the state on the territory of which war crimes are committed is the most active in investigating and bringing the perpetrators to justice (Nazarchuk, 2020). In such circumstances, Ukraine must not only respond adequately to hostilities in its own and temporarily occupied territories, but also ensure that criminal acts are properly investigated and the perpetrators brought to justice. After all, «the duty of any state is to protect its citizens, in whatever situation and in what territory they find themselves» (Investigation of war crimes).

Each category of war crime has its own problems and obstacles. At the same time, there are general problems of pre-trial investigation and administration of justice, which, in our opinion, are inherent in all categories of crimes and which indicate that the poor quality of pre-trial investigation and criminal justice is a consequence not only of war but also inability of criminal justice bodies to act effectively. This situation, in turn, creates serious risks of ineffective investigation, prosecution, violation of the rights and legitimate interests of participants in criminal proceedings.

1. Methodology of the study

The peculiarity of the applied methodology is determined by the main tasks of studying the peculiarities of the investigation of crimes in wartime in the international and national aspects. Solving them involves studying not only the implementation at the constitutional and legal levels and at the level of criminal procedural mechanisms, but also a number of other related legal phenomena. That is why the variety of approaches, methods and means of knowledge to ensure the process of documenting, investigating and prosecuting war criminals is a necessary condition for successful analysis of this phenomenon.

The philosophical and methodological basis of the research is formed on the basis of dialectical, hermeneutic and comparative approaches to the knowledge of legal phenomena. They led to the use of a set of philosophical, general and special research methods. Among the general scientific methods used, first of all, analysis, synthesis, deduction, systemic, historical, comparative, structural-functional, classification, generalization, prognostic and other methods.

In the process of scientific research special legal methods were also used: comparative legal, formal-legal method, interpretation, study of legal practice, method of document analysis, etc. The specificity of the subject of research has led to a combination of certain methodological approaches and principles characteristic of the science of criminal procedure, international, constitutional and criminal law.

2. Analysis of recent research

War crimes directly related to international criminal law are particularly dangerous to humanity and undermine the international security and law enforcement system. Many years of efforts by the international community have yielded fruitful results, which are reflected in the formation of international legal norms that establish the grounds and conditions of responsibility for crimes against peace, security of mankind and international law and order. With the signing of the Rome Statute in 1998, on July 1, 2002, the International Criminal Justice Authority, which is responsible for prosecuting those responsible for genocide, war crimes, crimes against humanity and aggression, has been officially operational on a permanent basis.

To date, Ukraine has also taken some steps at the national level, and the development of Ukrainian law enforcement agencies to document and investigate crimes of military aggression, make numerous changes to criminal and criminal procedure legislation, indicates a desire to optimize investigations into this category of crimes. persons of the aggressor's country.

The work of many domestic and foreign scholars and practitioners is devoted to the research of certain issues of the organization of the investigation of crimes committed during the war, the implementation of the provisions of international law at the constitutional, legal and criminal procedural levels. At the same time, the issue of introducing systematic and effective documentation and investigation of war crimes is becoming especially important in the martial law in Ukraine, as one of the measures to overcome their consequences and an important element of transitional justice.

3. Results and discussion

3.1. National mechanisms for investigating crimes committed during the war in Ukraine

Russia's aggressive war against Ukraine is one of the most obvious violations of Article 2 (4) of the Charter of the United Nations since its entry into force. In addition to the legal consequences for the responsibility of the Russian Federation as a state, these events again aroused interest in individual responsibility for the crime of aggression. One of the steps of Ukraine's adequate response to such the most horrific and daring criminal offenses was to amend the legislation in order to optimize the investigation and bring the perpetrators to justice.

Bills have recently entered into force in Ukraine, which will regulate some procedural issues in the work of courts and law enforcement agencies under martial law. In particular, draft laws № 7117 (on amendments to the Law of Ukraine "On Judiciary and Status of Judges" to change the jurisdiction of courts) and № 7118 (on amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine on additional regulation of law enforcement in complex martial law) (Law Of Ukraine «On Amendments To The Criminal Procedure Code Of Ukraine And Other Legislative Acts Of Ukraine On Additional Regulation Of Law Enforcement In Difficult Martial Law»; Law Of Ukraine «On Amendments To The Law Of Ukraine «On The Judiciary And The Status Of Judges On Changing The Jurisdiction Of Courts», 2022).

Consider in more detail the changes made to the Criminal Procedure Code of Ukraine.

In case of impossibility to enter information on criminal offense into the Unified State Register of Pre-trial Investigations and, accordingly, impossibility to form an extract from this Register, information on registration of criminal offense and commencement of pre-trial investigation may be confirmed by a reasoned decision of pre-trial investigation body. information specified in Art. 214 of the Criminal Procedure Code of Ukraine. Such a document may be considered a proper confirmation of the commencement of the pre-trial investigation and a basis for consideration of the requests of the pre-trial investigation body (Criminal Procedure Code Of Ukraine, 2012).

According to the first part of Art. 615 of the Criminal Procedure Code of Ukraine in the area (administrative territory), where the legal regime of martial law, state of emergency, anti-terrorist operation or measures to ensure national security and defense, repel and deter armed aggression in Donetsk and Lugansk regions, in case of impossibility by law the terms of

the investigating judge of the powers provided by Art. 163, 164, 234, 235, 247 and 248 of the Criminal Procedure Code of Ukraine, as well as the power to choose a measure of restraint in the form of detention for up to 30 days to persons suspected of committing crimes under Art. Art. 109–114-1, 258–258-5, 260–263-1, 294, 348, 349, 377–379, 437–444 of the Criminal Code of Ukraine, these powers are exercised by the relevant prosecutor.

In this case, such a prosecutor is both the prosecutor who exercises the powers of the prosecutor in a particular criminal proceeding, and his leaders. Relevant decisions may be made by the prosecutor in the event that criminal proceedings are instituted against a set of crimes committed by the suspect, at least one of which is a crime under Art. 615 of the Criminal Procedure Code of Ukraine. In other cases, namely in the absence of grounds for the exercise of these powers by the prosecutor, he may apply to the court at the place of investigative (investigative) actions.

Also in the case of criminal proceedings against articles of the Criminal Code of Ukraine, not included in the list provided for in Art. 625 of the Criminal Procedure Code of Ukraine, the prosecutor should change the territorial jurisdiction of the criminal proceedings and transfer it to another district, the region where the court operates (The supreme court has prepared recommendations for criminal proceedings in wartime, 2022; the supreme court stressed the need for urgent legislative changes to ensure the continued administration of justice in wartime, 2022).

The analysis of these norms shows that this version of the law in some way levels the role of defense counsel at all stages of the pre-trial investigation by giving the investigator and prosecutor the opportunity not to involve the latter or involve through audio and video conferences. However, as M. Dyomin rightly points out, the defense attorney will be deprived of the effective performance of his duties without being at the scene and at the scene of the investigation, and therefore there is a real threat of human rights violations by the investigating authorities (Dyomin, 2020).

Such conclusions are prompted by the monitoring of paragraph 1 of part 12 of Article 615 of the Criminal Procedure Code of Ukraine, which provides that the investigator, prosecutor ensures the participation of defense counsel in a separate procedural action as soon as possible, including if necessary - using technical means (video, audio language) to ensure the remote participation of the defender. In case of impossibility to involve a defense counsel for a separate procedural action, such action is carried out without his participation, and its course and results must be recorded by available technical means by continuous video recording (Criminal Procedure Code Of Ukraine, 2012).

It is seen that allowing an investigator or prosecutor to determine a lawyer at his or her own discretion would potentially lead to a number

of violations of human and civil rights and freedoms during criminal proceedings. The «impossibility» of the defense counsel's participation will be determined by the investigator and the prosecutor in the absence of any criteria for making such a decision, which creates additional conditions for the prosecution to abuse its procedural powers (Dyomin, 2022).

In addition, in our opinion, the involvement of a lawyer in video or audio communication will lead to the actual impossibility of his duties, because, for example, without a physical presence at the scene or at the scene of the search can not fully and objectively collect all available evidence. Such restrictions on the rights of the defense also violate the requirements of Article 63 § 2 of the Constitution of Ukraine, according to which a suspect, accused or defendant has the right to defense. After all, the rights and freedoms of this article cannot be restricted, including in conditions of martial law or state of emergency (part 2 of article 64 of the Constitution of Ukraine) (Constitution Of Ukraine, 1996).

The updated criminal procedural legislation of Ukraine has certain peculiarities in terms of regulating the procedure for consideration of motions for the election of a measure of restraint under martial law. Thus, all motions submitted to investigating judges should be considered within the time limits established by the Criminal Procedure Code of Ukraine, but if possible - immediately. If it is impossible for a judge (panel of judges) to consider a request for election or continuation of a preventive measure in the form of detention within a specified period, it may be transferred to another judge, determined in accordance with part three of Art. 35 of the Criminal Procedure Code of Ukraine, or considered by the presiding judge, and in his absence - by another judge of the panel of judges, if the case is considered collectively.

If due to objective circumstances a participant in criminal proceedings cannot participate in a meeting by videoconference using technical means specified by the Criminal Procedure Code of Ukraine, as an exception such participant may be allowed to participate in videoconferencing by other means, attention should be paid to explaining to such a participant his procedural rights and responsibilities. Also, given the objective circumstances, as an exception, it is possible to allow requests for precautionary measures to be considered without the participation of the suspect, with due motivation for such a review procedure (Criminal Procedure Code Of Ukraine, 2012).

If the territorial jurisdiction of criminal offenses at the stage of pre-trial investigation is changed and the materials of criminal proceedings due to hostilities have not been transferred or transferred in full, assessing the risks that justify the application of precautionary measures in general and detention in particular, the investigating judge) is guided by all available materials of the petition for application (continuation) of the precautionary

measure. At the same time, the courts must take into account the imposition of martial law and armed aggression in Ukraine (The supreme court has prepared recommendations for criminal proceedings in wartime, 2022).

It should be noted that in martial law the head of the prosecutor's office has the right to use the powers of an investigating judge under Articles 186, 187, 190, 206, 219, 232, 246, 250 of the Criminal Procedure Code of Ukraine, in the absence of objective possibility of their execution by an investigating judge. As the Criminal Procedure Code does not disclose the meaning of "lack of objective possibility" in the exercise of powers by an investigating judge, the prosecutor will interpret it at his / her own and unrestricted discretion. In this aspect, there is a high probability of interpretation of the concept introduced in the Criminal Procedure Code of Ukraine in their own interests in order to obtain the powers of an investigating judge, which in itself eliminates the role of judicial control in criminal proceedings and violates human and civil rights and freedoms. Therefore, scholars and practitioners rightly point out that in this case it would be logical to construct this rule that such an impossibility for an investigating judge to exercise his powers should be confirmed by an official announcement on the court's web portal (attached to criminal proceedings) and the Supreme Court's failure to a court that will administer justice in a certain territory (Dyomin, 2022).

There are fears that all the «simplifications» mentioned in the Criminal Procedure Code, which are due to the complexity of the investigation of crimes in hostilities and the severity of such crimes (for example, against peace and security of mankind), may be actively used by individual officials in their own interests. «Standard» crimes against property and other criminal offenses, only indirectly related to hostilities. Under such conditions, it would be logical and expedient to introduce simplified pre-trial investigation procedures for certain categories of crimes against humanity, as defined in Article 7 of the Rome Statute and provided for in separate articles of the Criminal Code of Ukraine.

Of course, the changes we have made to the Criminal Procedure Code do not solve all the problems that arise in wartime, such as the timing of investigations, trials, simplification of evidence collection, and so on. We believe that the prospects for such changes to the Criminal Procedure Code require a separate scientific study.

3.2. Organizational aspects of the application of customary international law in the investigation of war crimes

In order to develop appropriate recommendations for optimizing the investigation of war crimes in Ukraine, we identify common problems in this direction: lack of capacity – material and human resources is the most

obvious objective reason for the ineffectiveness of the investigation; general problems of the criminal justice system; lack of experience in war conditions (intensity, number of victims, characteristics of the network of performers, etc.); qualification of torture and other shortcomings of national law.

The organization and methods of investigation, the collection of evidence of war crimes committed by the parties to the armed conflict, are directly affected by the following destructive factors: rapid change in the operational situation; frequent redeployment of military units and subdivisions; death, wounding and captivity of witnesses, victims, suspects in the course of hostilities; change in the situation as a result of bombing, artillery or mortar fire, capture by the enemy; a large number of cases investigated in a limited time; bringing to justice the parties to the armed conflict; a significant time interval from the moment of mass murder to the beginning of the study of mass burial sites, which prevents their identification due to the decomposition of corpses; problems with the formation of the evidence base, as the shootings took place in places that precluded the presence of unwanted witnesses; selective provision of various military information to the criminal justice authorities, ie documents, objects, photographs from drones, decoded recordings of interceptions of radio conversations, etc. about events that could become or were the subject of investigations.

Politicization of the investigation process and the investigation of the border line between national sovereignty and international responsibility, in the area between the legal and political spheres; the nature of the local population's perception of the investigation of war crimes at the national level and the administration of justice within the state for war crimes against persons of the opposite side; illegal comparisons with the actions of the other party and the use of the «shed blood» factor as a «right to commit illegal acts against the enemy» to evade criminal liability for war crimes for unfounded accusations of «cowardice» by investigative bodies not directly involved in hostilities ; unwillingness of the parties to the armed conflict to comply with the legal requirements of the judiciary and a number of international legal provisions; problems of ensuring the testimony of high-ranking foreigners.

Unwillingness of the parties to the armed conflict to comply with the legal requirements of the judiciary and a number of international legal provisions; attempts to stage «committing» war crimes by the enemy; opposition to the investigation; the possibility of armed resistance during detention by the suspect or his colleagues; the problem of slow investigation of crimes of this category, which may exceed all reasonable terms and long periods of detention (Rome Statute Of The International Criminal Court, 1998; Batyuk and Dmitriv, 2021).

In organizing the collection of evidence of war crimes committed by representatives of the military-political leadership of the states, the main

efforts should be aimed at gathering sufficient evidence that provides grounds for accusing those who are most responsible and hold senior political and military positions. Of course, in order to prove their guilt, it is necessary to establish the connection of public policy makers with a set of crimes committed in different areas of armed conflict, to prove that they or under their direct leadership developed and implemented a strategic criminal plan, ie to adopt doctrine «Common purpose», when several criminals act together to achieve the goal (Batyuk and Dmitriv, 2021).

At the national level, members of the investigative task force directly interact with each other, agree on the main directions of pre-trial investigation, conduct procedural actions, exchange information. The General Prosecutor's Office of Ukraine (Instruction On The Organization Of Interaction Of Pre-Trial Investigation Bodies With Other Bodies And Subdivisions Of The National Police Of Ukraine In Prevention Of Criminal Offenses, Their Detection And Investigation, 2017) coordinates their activities on the territory of Ukraine as the initiator of the creation of a joint investigation team. Also, in addition to representatives of law enforcement agencies of the member states of the organization, which are members of joint investigation teams, within the European Union provides for the possibility of involving employees of Europol and Eurojust (Shostko and Ovcharenko, 2008).

The UN General Assembly and the UN Human Rights Council have established mechanisms for certain situations to collect and preserve evidence (Krapivin, 2022).

In particular, in early March 2022, the UN General Assembly adopted a resolution condemning Russia's invasion of Ukraine and calling for the immediate withdrawal of its troops (UN Human Rights Council considers). The UN has also announced the composition of a commission to investigate war crimes in Ukraine. The commission will include three independent members from Norway, Bosnia and Herzegovina and Colombia, who will give an oral presentation on their work at the 51-st session of the UN Human Rights Council in September 2022. A full written report is due in March 2023. In addition, members of the commission will make a report at the 77-th session of the UN General Assembly, which will be held in September (Kalatur, 2020).

On March 4, 2022, the UN Human Rights Council established an international commission to investigate war crimes committed by Russian servicemen and violations of international humanitarian law. These mechanisms usually involve experienced international investigators and prosecutors. They can collect, store and systematize evidence at a high level. Thus, experienced prosecutors have already begun collecting evidence of Russian war crimes for further use in various prosecution mechanisms.

On March 25, 2022, the Prosecutors General of Ukraine, Poland and Lithuania signed an Agreement on the establishment of a joint investigation team to investigate the aggression of the Russian Federation and its war crimes on the territory of Ukraine. The activities of such an international investigative task force will focus on the collection, safe storage and rapid exchange of information and evidence of war crimes of the Russian Federation, collected during investigations in the territory of the States Parties, as well as operational and investigative activities. In addition, it will identify the assets of war criminals in order to freeze and confiscate them (Ukraine, Lithuania and Poland...2022).

Given the limited time, lack of opportunities and resources to organize a simultaneous investigation of a large number of criminal proceedings related to the commission of war crimes in various areas of armed conflict, the task of each international investigative task force should be rapid and high-quality investigative and collecting the maximum amount of physical evidence. At the same time, prosecutors of the international investigative task force should coordinate the investigation of various criminal proceedings, ensure effective exchange of information, promptly and competently report suspicions to the main organizers of war crimes.

3.3. Using the capabilities of the International Criminal Court and the European Court of Human Rights in the context of military aggression in Ukraine

The International Criminal Court (also known as the Hague Tribunal) is an international tribunal established in 1998 to investigate and prosecute those accused of genocide, war crimes and crimes against humanity. It is an institution that is complementary to national jurisdictions, to national criminal justice systems. There is no general principle in international law that protects a person from conviction in different jurisdictions. Even under international human rights law, if a person has been prosecuted for certain acts in one state, he or she may be prosecuted for the same acts in another state, if that state has jurisdiction to do so.

In other words, if we have a person who has been convicted or even acquitted of an act of international crime by a court in the self-proclaimed republics, this decision is not an obstacle for the International Criminal Court to try the case and bring that person to justice. international crime (War and justice: how to effectively use osint and what to do with court decisions in uncontrolled territories, 2021).

It should be noted, however, that the ICC opens proceedings only when the state is unwilling or unable to initiate criminal proceedings and conduct an appropriate investigation. If the international court still opens the main proceedings, the prosecutor of the court independently investigates

crimes, ie collects and examines evidence, conducts examinations, invites witnesses. The International Criminal Court may prosecute those who have committed the most serious violations of human rights and humanitarian law in the territory of a State or against a citizen of that State.

The important point is that the Hague Tribunal focuses not so much on the perpetrators of crimes as on those who give orders or by their inaction make it possible to commit these crimes (Investigation of war crimes: what the international criminal court can help).

The ICC is about individual responsibility, not state responsibility. At the same time, the principle of complementarity applies, ie the ICC does not replace national protection mechanisms, but takes into account only those war criminals who cannot be reached by the national legal system. The ICC may prosecute suspects, but has no authority to make arrests. The court relies on states that have law enforcement agencies to do so. If the perpetrators remain in power, they cannot be arrested. But the accusations limit the ability of these leaders to travel and send a signal to their country that it will remain isolated as long as they remain in power.

Ukraine in 2000, it signed the Rome Statute, the document on the basis of which the ICC operates. After the annexation of Crimea and the occupation of Donbass, Ukraine adopted a Resolution of the Verkhovna Rada recognizing the jurisdiction of the ICC, and later amended the Constitution to ratify the Rome Statute (blocked in 2001 by the Constitutional Court of Ukraine). These changes came into force in 2019, and two years later Ukraine adopted amendments to the Criminal Code of Ukraine in terms of war crimes required for ratification of the Rome Statute (the law is expected to be signed by the President in June 2021). Thus, one step remains to fully address Russia's crimes – to ratify the Rome Statute. At the same time, the jurisdiction recognized in 2014-2015 allows the ICC to collect evidence today (Krapivin, 2022).

Thus, the harmonization of the Criminal Code of Ukraine should be an important step towards the ratification of the Rome Statute – so that the International Criminal Court can fully investigate and prosecute the military-political leadership of Russia.

March 16, 2022 the session of the UN International Court of Justice took place in The Hague, at which a decision was announced on the request to impose interim measures in the case of Ukraine v. Russia on genocide. According to the court's decision, Russia must immediately suspend all hostilities in Ukraine and stop any military or irregular armed groups under its control or influence. The court also ruled that both sides should refrain from any action that could aggravate or prolong the dispute and complicate further proceedings (Ten European Countries Lead).

As of the end of March 2022, 42 countries have already appealed to the International Criminal Court due to Russian war crimes in Ukraine. If the court rules against Russia, those involved in these crimes can be detained in any country that recognizes the jurisdiction of this court (Bega, 2022). Therefore, the occupiers can be detained in any country that recognizes the jurisdiction of the ICC. All those who have committed war crimes against civilians are already potentially under arrest.

In connection with the military aggression of the Russian Federation, on February 28, 2022, Ukraine submitted a request for urgent interim measures in accordance with Rule 39 of the Rules of Procedure of the European Court of Human Rights (hereinafter – ECtHR). Such requests are usually made in the event of a threat to human life and health, such as failure to provide medical care to a prisoner, which may have irreparable consequences. In the case of Ukraine, it is the shelling and killing of civilians (Krapivin, 2022). It is important that Russia is a member of the Council of Europe and recognizes the jurisdiction of the European Court of Human Rights over itself, so this mechanism is fully applicable in this case.

In accordance with the principle of universal jurisdiction, national crimes committed by foreign nationals in foreign territory may be prosecuted within national justice systems. It is also important to note that some countries – Germany, Sweden, Finland – have jurisdiction over all international crimes committed in Ukraine. These are international investigative teams, ie bringing together investigators from different national legal systems to bring perpetrators to justice. Such a mechanism allows to bring to justice not only the military-political leadership of the state, but also a serviceman of any rank who has committed war crimes against the civilian population of Ukraine in any part of the world under the jurisdiction of the special investigation team. mechanism of prescriptions (cards) of Interpol) (Krapivin, 2022).

Among the prisoners of war are those who committed war crimes and who can be prosecuted in Ukraine, ie not extradited in any way, given the principle of extraterritoriality of criminal law (Article 6 of the Criminal Code of Ukraine). The same applies to members of sabotage and intelligence groups, some of whom are citizens of the Russian Federation, and who are accused of encroaching on the territorial integrity and inviolability of Ukraine (Article 110 of the Criminal Code of Ukraine) and sabotage (Article 113 of the Criminal Code of Ukraine). After the end of the war, they can be held accountable under Ukrainian law and serve their sentences in our country.

At present, we can state an unexpectedly quick response from international institutions in connection with the scale of the aggression, so we can say that Ukraine has mobilized (enforced) extremely clumsy mechanisms of international law. From the point of view of the "Hague law"

and the "Geneva law", which form international humanitarian law, we speak of individual responsibility for 1) war crimes; 2) crimes against humanity and the responsibility of the state and its military-political leadership for 3) genocide; 4) the crime of [military] aggression (Krapivin, 2022).

All these crimes are recorded in a number of treaties, and an institute for dispute resolution (courts) of various jurisdictions has been established to find justice if committed. Depending on the type of agreement signed and ratified by Ukraine and the aggressor state, opportunities should be actively used to appeal to various international institutions in order to bring the perpetrators to justice.

3.4. Prospects for the implementation of transitional justice

In the context of the researched issues, the prospects of applying the concept of post-conflict settlement in Ukraine after the end of hostilities caused by the armed aggression of the Russian Federation need to be clarified.

Transitional justice (transitional justice) is a set of principles, processes, measures, practices aimed at restoring justice to victims of large-scale or systematic human rights violations, creating conditions and opportunities for peacebuilding in the post-conflict period or in transforming political systems into authoritarian ones. states). In general, the concept of «transitional justice» (or «transitional justice») is a framework name for the various processes, formats, and mechanisms used in more than 40 post-conflict countries and regions.

Transitional justice is associated with both judicial and non-judicial processes and mechanisms, such as: establishing the truth; prosecution and prevention of impunity; reparation; institutional reforms. At the same time, it is extremely important to introduce all four identified elements in the complex in order to achieve justice and build a harmonious path from a state of war to a state of peace. Transitional justice should be aimed at comprehensively addressing the causes of conflict and related violations of civil, political, economic, cultural and other rights.

Each country that has survived an armed conflict develops its own model of transitional justice, taking into account the political situation, the peculiarities of legal practice, the national mentality. In Resolution 12/11, the UN Human Rights Council emphasizes that «the development of a transitional justice strategy must take into account the specific circumstances of each situation in order to prevent recurrence of future crises and human rights violations and ensure social cohesion, state-building».

However, analyzing the numerous documents and decisions in the structure of UN bodies, it can be concluded that any national approach

should take into account the presence of mandatory measures such as combating impunity, developing national capacity to prosecute perpetrators of gross human rights violations and serious violations of international humanitarian law, fulfillment of obligations regarding fair trials.

Transitional justice approaches make it mandatory to document, investigate and prosecute perpetrators of war crimes, crimes against humanity and gross human rights violations. In today's language, when criminal acts of another aggressor's country are taking place in modern Ukraine, it is extremely important to take measures to overcome the consequences of the war, including full documentation, investigation and prosecution of those responsible for the most serious crimes.

Among the key tasks facing the state and the national legal system in this direction, scholars include: legislative regulation of procedural issues related to special criminal proceedings (in the absence of a person in absentia) in this category of cases; harmonization of national legislation and law enforcement practice in the field of criminal justice to the norms of international criminal and international humanitarian law; determining the mechanism of investigation of crimes against humanity, war crimes, as well as their further trial (Konopelsky and Sviridova, 2020). It is obvious that the relevant work should be carried out in two directions: international and national.

Conclusions

Having conducted a scientific study of the organization of documentation, investigation of war crimes committed during the war in Ukraine, it is necessary to draw the following conclusions.

The introduction of systematic and effective documentation and investigation of crimes committed during the war in Ukraine is one of the key elements of transitional justice, the effective implementation of which is necessary to comprehensively overcome the armed aggression of the Russian Federation. The formation of an effective national justice system in this direction should be based on legislation and law enforcement practice that meets international standards in the field of human rights and legitimate interests.

The highest form of cooperation between the competent authorities in the investigation of war crimes, which are often transnational in nature, should be the introduction of interdepartmental investigative task forces, the number and personnel of which should be determined by the complexity of the crime, the number of episodes, the location of crimes crimes, the number of persons involved in the crime, the need to identify and search them, the amount of evidence and indicative information, etc.

Effective in counteracting crimes committed in the context of military aggression on the territory of Ukraine should be: developing effective mechanisms and establishing communication within universal jurisdiction with other countries that have experience in investigating military aggression by the Russian Federation; extensive use of the capabilities of the International Commission on Human Rights established by the UN Human Rights Council to investigate war crimes committed by the aggressor's military and violations of international humanitarian law, evidence prepared by which can be used in all international and national jurisdictions; borrowing positive international experience in standardizing current national legislation aimed at optimizing the process of documenting and investigating crimes, bringing perpetrators to justice.

In order to prevent the commission of crimes against humanity and war crimes on the territory of Ukraine, as well as to promote the development of an effective national criminal justice system, the Rome Statute of the International Criminal Court needs immediate ratification. At the same time, using the capabilities of the International Criminal Court and the relevant mechanism will bring to justice not only the military-political leadership of the state, but also a serviceman of any rank who committed war crimes against civilians in Ukraine, in the territory of investigative team.

The application of the provisions of the Criminal and Criminal Procedure Code of Ukraine requires focusing on the practice of international criminal courts, doctrine, authoritative comments on international humanitarian law and the provisions of international treaties. At the same time, the list of acts that can be considered violations of the laws and customs of war does not necessarily have to coincide with the list of Art. 8 of the Rome Statute, or a list of serious violations of international humanitarian law under the Geneva Convention or the First Additional Protocol. It can be expanded, but not arbitrarily, but in accordance with international practice.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 330-344
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Dialectics of rights and responsibilities in education

DOI: https://doi.org/10.46398/cuestpol.4073.17

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Abstract

The objective of the article was to analyze the dialectic of rights and responsibilities in education. The importance of education is so great that the thesis of the responsibility of the person to receive education has now been recognized. In order for the right to education to be exercised, the domestic law of states provides for a set of responsibilities for participants in the educational process, the implementation of which actually guarantees access to education. The real economic opportunities of States have a great impact on the real content of the dialectical process of interaction of rights and responsibilities in the field of education. The relationship between the participants in the educational process is regulated at several levels: first, the rules of domestic law and then the contractual level, represented by the statutes of educational institutions, comes into force. It is concluded that, in the most advanced systems, there may be a level of intra-group agreements that are completely voluntary. The practical content of the educational process is influenced by several factors, including ideology, the objectives set by a given society, the traditions and customs that have developed in it.

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Recibido el 14/03/2022 Aceptado el 02/06/2022

Keywords: educational process; legislation; actual content of rights and responsibilities; education law; dialectic of rights.

Dialéctica de derechos y responsabilidades en la educación

Resumen

El objetivo del artículo fue analizar la dialéctica de derechos y responsabilidades en la educación. La importancia de la educación es tan grande que en la actualidad se ha reconocido la tesis de la responsabilidad de la persona de recibir educación. Para que el derecho a la educación pueda ser ejercido, el derecho interno de los estados prevé un conjunto de responsabilidades para los participantes en el proceso educativo, cuya aplicación garantiza realmente el acceso a la educación. Las oportunidades económicas reales de los Estados tienen un gran impacto en el contenido real del proceso dialéctico de interacción de derechos y responsabilidades en el ámbito de la educación. La relación entre los participantes en el proceso educativo está regulada en varios niveles: en primer lugar, las normas de derecho interno y después entra en vigor el nivel contractual, representado por los estatutos de las instituciones educativas. Se concluye que, en los sistemas más avanzados, puede haber un nivel de acuerdos intragrupo que son completamente voluntarios. El contenido práctico del proceso educativo está influido por varios factores, entre ellos la ideología, los objetivos que se fija una sociedad determinada, las tradiciones y las costumbres que se han desarrollado en ella.

Palabras clave: proceso educativo; legislación; contenido real de los derechos y responsabilidades; ley de educación; dialéctica de derechos.

Introduction

The transfer of knowledge accumulated by previous generations of people to new generations (what we call the educational process) is critical for the survival, development and prosperity of both humanity as a whole and its individual elements, which today have the form of states. This postulate has been accepted by people for a very long time, and in the modern world it is consolidated through the creation of a system of rights and responsibilities of subjects acting in the field of education.

The purpose of this study is to demonstrate the fact that the process of education demonstrates the dialectical process of struggle between its components, although the action of each of these components is directed, it would seem, towards a single goal. It experiences the strongest influence of historical factors (in the sense of understanding the content of rights and obligations) and economic factors (in the sense of real implementation of the stipulated rights and obligations).

It may be more expedient not to repeat the generally recognized provisions on rights and obligations, but to investigate the field of education at the level of each individual state, comparing the goals and methods, actually granted rights and practically fulfilled duties of teachers and students, legal and material support of the process by the state, and then compare the results in terms of the resulting progress.

1. Literature review

We are unlikely to find conflicting opinions in the literature regarding the existence of rights and obligations and their content in the field of education. There is no ground for dispute, for scientific discussion here. Everyone agrees with the existence of the right to education as an inalienable human right and the existence of a reciprocal obligation of the state to ensure it.

The publications of the authors in countries with developed education systems do not deal with the issues of rights and obligations at all, since these issues have been settled there for a long time, they are based on the existing legislation and the well-established traditions of society. Judging by the materials published by, say, British authors, this country has focused on raising educational standards, the level of intellectual development of citizens, and improving the quality of educational programs (Perera *et al*., 2016).

But if we turn to research related to the realization of the right to education in African countries, then it will not be unexpected for us those researchers see the main task in ensuring access to education in general, and to more or less quality education, in particular (Evans and Mendez, 2021). In the popular work of Katarzyna Tomaševski, it is rightly noted that the rights associated with education can be divided into three categories - the right to receive education, the rights used in the course of the educational process and the rights that a person can exercise after receiving an education (Tomaševski, 2001).

The works of the authors in the area under consideration are mainly divided into three directions. Firstly, a lot of materials are devoted to the

statement of the fact that in this state the human right to receive education is recognized and legislatively enshrined (see, for example, the works of Melnychuk (2013). Alex Guilherme brings a fresh idea to this reasoning, asking the question: we can voluntarily refuse to temporarily exercise certain rights, for example, the right to health care, but why can't we give up the right to receive education? Because it's our responsibility, he replies (Guilherme, 2016).

This thesis is consonant with the idea that legal relations in the field of education should be classified as interactive, when both parties to the process are obliged to take certain "counter" actions (Valeev, 2011).

The second question that worries researchers in this field is the actual embodiment of the proclaimed rights to education in a particular country. One can name a number of works by Indian authors related to the study of the results of the implementation of the Right to Education Act, adopted by Indian legislators in 2009 (Ojha Seema, 2013). Researchers rightly note the fact that statutory provisions often do not get their practical implementation due to insufficient funding or due to ambiguous interpretation of a certain provisions (Khomyshyn, 2018). Some of the works are devoted to the duties of the teaching staff of educational institutions.

This issue relates more to the moral and ethical area, since the conscientiousness of the attitude towards the performance of one's professional duties can hardly be regulated by legal norms. As an example, Sara Sepulkri can be cited in which she lists as a teacher's duties, in particular, the responsibility to be organized, wear professional clothing, smile, call students by name and answer questions (Sepulkri, 2021) Some authors pay attention to the immediate rights and responsibilities of students, which they exercise in the learning process. Here, the influence of traditional views is more noticeable, since undoubted responsibilities include, for example, adhering to a certain dress code or adhering to the rules of sports games. It is interesting to single out as a special duty the application of the acquired knowledge in practice (Anjum Khan, 2018).

Documents published by government agencies in various countries are considered to be very important sources for studying this topic. They reflect fresh trends that have not yet been analysed by academic scientists. An example is the publication of the Ministry of Education of Ukraine, in which sense of entrepreneurship is listed among the basic skills of the New Ukrainian School, which is completely new for Ukrainian society (The new Ukrainian school conceptual principles of secondary school reform, 2015).

Here is another example that shows how government programs reflect the new tasks of society (and this leads to their consolidation by legislative norms). The National Education Program of India, adopted in 2020, specifically emphasizes that if in the past the state's efforts were

focused on ensuring equal access to education for citizens, today the task is to develop rational thinking, a passion for science and healthy ethical values in students. The teacher is now, as stated in the program "must be at the centre of the fundamental reforms in the education system. The new education policy must help re-establish teachers, at all levels, as the most respected and essential members of our society" (National Education Policy, 2020: 4).

The general conclusion that can be drawn from a review of scientific research in this area is that scholastic reasoning about the existence of rights and their corresponding obligations, in principle, lost their meaning. Research on how to practically improve the quality of education is relevant today. It is important to find out the means to raise the level of education in poor countries - without this they are forever doomed to remain poor. But a country with a poor population for the rest of the mankind is like an uneducated person in a society of educated people - it is only a brake on human development.

2. Methods

Taking into account the specifics of the topic under consideration, the most appropriate when writing this article was the use of the comparative historical, legal and economic research methods.

3. Result and Discussion

3.1. Education as a civilizational value

If we consider dialectics as a process of overcoming contradictions and finding a solution in a situation that is assessed by different subjects depending on their interests in different ways, then it is the most appropriate tool for analysing the interaction of rights and responsibilities in general, and in the field of education in particular. The facts that we know about our past testify to the existence of educational institutions of various types and in various countries since ancient times though in ancient times, getting an education was a privilege that few could take advantage of. Already ancient philosophers began to formulate the idea of the right to education as a natural good of a free person, necessary to satisfy not only the individual interests of a given person, but also the general interests of the state.

It is significant that during the period of development of scientific knowledge under the auspices of Christianity, the idea arose of the necessity of education in order to improve each individual and society as a whole.

Attention is drawn to the transition from the concept of "right" to education to the concept of "necessity" of education. In the modern period, the idea of the right to receive education through the "bridge" of necessity naturally interacts with the idea of the compulsory education for each member of human society.

It is also possible to single out the moral and philosophical component of this process, when the idea of the duty of scientists to make every possible effort to disseminate knowledge, to educate a person interacts with the understanding of not only the right of this person to get an education but of his duty to master the necessary amount of knowledge. Of course, this duty cannot be enshrined in legal norms, but its awareness and universal acceptance can be of great importance for humanity. It seems absolutely correct and timely idea formulated by the Brazilian scientist Guilherme (2016) who believes that education should be understood as a duty, an obligation that all people have to themselves and their communities.

It is impossible to disagree with his arguments, and I would like to add one more to their list. A person without a certain level of knowledge is helpless. He is incapable of investing anything significant into the stream of social production. He finds himself in the position of a parasite, forced to use the fruits of labour and the achievements of other people simply to maintain his physical existence.

And this is especially obvious if we are talking about the current stage of scientific and technological development and are aware of the fact that in the future humanity will be influenced by many factors that require the development of new directions and an explanation of previously unheard-of phenomena.

We have to resolve the contradictions between the development of the technological potential of mankind and the need to preserve an acceptable habitat, to deal with the growing danger of pandemics, inextricably linked with the intensification and acceleration of human movement on the Earth's surface, to look for solutions with regard to energy sources and prevention of natural disasters caused by natural and man-made causes. These are tasks for humanity as a whole, regardless of social, material or ideological differences in groups of people living in certain regions of the planet. Where in this process is the place of a person who has not received a proper amount of knowledge?

3.2. The right to education and the economic basis

Since the importance of education is very great, some authors even question the primacy of the economic basis in the development of society, arguing that its development depends on the level of development of culture and education (Valeev, 2011). It is difficult to fully agree with this thesis,

since the separation from the community of groups of people who are not directly involved in the creation of a surplus product, but who are engaged in the transfer of knowledge accumulated by previous generations, on the one hand, and who assimilate this information, on the other hand, requires a certain level of economic well-being.

Moreover, a special category of people, which we call "scientists" and "thinkers", emerged rather quickly. For them, the main occupation is the "extraction" of new knowledge, and not only through practical experiments, but also by the method of abstract reasoning about the essence of the surrounding world and the place of human in it. I do not think that the thesis that the existence of academic institutions and schools of thought in the ancient world became possible due to the fact that a large category of people called slaves created a sufficient surplus product that could not be used by themselves due to the peculiarities of the economic structure of the then society, would raise an objection.

However, the product taken from them made it possible to contain, in particular, groups of people who devoted themselves to philosophical research that did not have direct practical application. In the same way, the titanic work of monks in the Middle Ages, who created and rewrote chronicles and other repositories of information that brought to our time a huge amount of important and useful data, could not have been carried out if it had not been for the economic ability of society to provide them with the necessary material conditions for life.

Nowadays, mankind creates a sufficient surplus product (the issue of the equitability of its distribution is not included in the area of the article), and this allows us to invest not only in those scientific research that has a direct impact on human well-being, and even not only in those whose significance is of a very distant, even hypothetical, character, but also in those investigations that, according to sound logic, can never bring even the slightest benefit (Universal Declaration of Human Rights, Art.26).

3.3. Actual realization of the right to education

The complex of rights and obligations related to the field of education is rather complicated in the modern world; it includes various forms of social relations functioning in the field of education and upbringing. Its regulation is carried out at several levels, and the specific implementation depends on many factors. All authors writing on the right to education begin their discussion by referring to the 1948 Universal Declaration of Human Rights, article 26 of which states that "everyone has the right to education". At the same time, the requirements are emphasized to ensure free primary and general education, the availability of technical and professional education and access to higher education, which depends only on the abilities of the applicant.

The authority of the declaration is evidenced by the fact that it was signed by 192 states - all members of the UN. However, it should be remembered that humanity is not a subject of law, it does not pass laws and does not sign contracts. Anything related to the concepts of rights and obligations inevitably presupposes the participation or at least the consent of national states.

Such complexes of rights and responsibilities, which require the contribution of material resources for their implementation, and the educational complex, as mentioned above, belongs to them, are generally inconceivable without the most active participation of the states. Here the question may arise whether the right to education should be understood as an inalienable human right or as the right of a citizen of a given state. It seems that it is advisable to proceed from the real state of affairs.

Sometimes the legislation of states speaks of the right of citizens to education (Constitution of Ukraine, 1996, Art. 53). Foreigners and stateless persons are, as it were, taken out of the brackets. In bylaws, this issue can, however, be regulated in one way or another. In the United States, for example, the issue of the right of children of illegal immigrants to education demanded a special decision of the Supreme Court in 1982 (The Background of Plyler v. Doe, 2021).

In some cases, the state guarantees its citizens the right to free education, while for non-citizens it is offered the possibility of only paid education (for example, in the largest German state of Baden-Württemberg, which introduced university tuition fees for non-EU foreigners in 2017) (Studying in Germany, 2020). When an applicant for education wishes to obtain a higher education, he meets the principle of the competitiveness of higher education.

The possibilities of higher educational institutions are limited and it is necessary to prove that you have the best starting level of knowledge compared to others, from which your higher education will begin. But this is not a limitation of the right, but rather the embodiment of the principle of "dependence on merit" proclaimed in the Universal Declaration. The rights of any member of a society can only be exercised within the framework of this society.

The organizational form of the community of people today is the state. States can formulate the norms of their law, correlating them with internationally recognized principles, implementing the content of the latter into the system of domestic law. But it should be remembered that international principles set a minimum standard, and sometimes have the character of recommendations. A more significant influence on the formation of the direction in which the rights are exercised and the responsibilities in the field of education are fulfilled are the ideas dominating in a given society.

These ideas determine the setting of tasks, the implementation of which the given society considers expedient and necessary. For example, if a society considers it necessary and possible to specifically regulate the right to education for certain groups of the population, say, children who, for various reasons, cannot attend school on a common basis, it creates an appropriate comprehensive provision of the rights of these children Illustrative is an edition of the Illinois State Board: Understanding Special Education in Illinois, which explains the rights of students with special needs (Illinois State Board of Education, 2020).

It is important to take into account that the proclamation of the right to education in no way answers the question about the volume and nature of the knowledge gained, about the quality of education. This issue is fundamentally dependent on the social system and economic well-being of a particular society. Therefore, in different states and societies, the concept of education, its standards, criteria for its adequacy may differ very seriously.

They change not only in the course of historical development. They are different in different societies existing at the same time. In one society, reading and writing and basic arithmetic skills are considered sufficient primary education. In another, the student already at the initial period of study gets access to modern information technologies and some skills in their use. Plus, the ideology of each nation, formed due to reasons beyond the scope of this article, has a huge impact on the actual level of education of the population and on the content of educational programs.

If ideology cannot influence the content of such exact disciplines as mathematics, then a wide range of social sciences and even natural science is greatly influenced, for example, by the religious beliefs adopted in a given society, and this applies not only to theocratic states. Economic sciences are largely influenced by ideology. History and social science in general belong to such politicized areas that when the social system changes, say, during the transition from a communist state system to democracy, or from a dictatorship to a system of free elections, these disciplines have to be studied anew.

Many states in their program legislative acts recognize that education is the basis of intellectual, cultural, social and economic development, that its goal is the all-round development of a person, the formation of conscious citizens, and an increase in the intellectual potential of the people. But there are no generally accepted criteria to estimate the actual situation, and they cannot be formulated in the foreseeable period of time, given the real differences in the educational systems of countries.

Those states that set themselves the goal of accelerating the development of education and raising the educational level of the population, in their legislation fix the norms that create the material prerequisites for the

implementation of the proclaimed educational rights. An illustrative (but not alone of course) example of this practice is the legislation of the Philippines, which stipulates that education has the highest budgetary priority.

Moreover, it is explicitly stated that through the payment of adequate remuneration and other incentives, it is necessary to ensure that the best talents in this field are attracted to the teaching corps (Llego, 2021). The internal agreement of society about the priority of the development of a high-level educational system makes education desirable, compulsory and prestigious.

Japan, today being at the top of the technological development rankings, has built its education system purposefully after experiencing severe economic turmoil. The result is obvious, given that only primary education is compulsory here. South Korea has made education the main and prestigious goal of the population, and as a result is leading in the number of people with higher education.

Singapore, with its ideology of meritocracy (where the highest rating in society is received not by origin, but by education and skills) invests 12 billion dollars annually in the educational sphere and competes with Hong Kong for the first place in terms of IQ of the population. Ireland pays for education for its citizens even in private educational institutions. In Poland, which has clearly set itself the goal of being incorporated into world technological progress, lectures for 70% of students are delivered in English.

3.4. Levels of dialectical interaction of rights and responsibilities in the field of education

There are three levels at which the dialectical interaction of rights and responsibilities in the field of education is carried out. At the first level is the issue of the possibility of obtaining education as such, of the freedom of access to the learning process. Here we can talk about the existence of a universal human consensus regarding this problem. At the second level, there are problems of the quality of education, as well as the possibility of obtaining high quality education at the expense of public resources, that is, free of charge for the student and his family. There are significant differences in the volumes and forms of implementation of this provision, depending on the state and social structure of the country, and the level of its economic development.

The third level is the topic of the interaction of the rights and responsibilities of the participants in the educational process, let's call them collectively "students" and "teachers". And since in modern civilization the quality of legal capacity is acquired by people at a certain age, another

group of participants is added to the system of these relationships i.e. parents (legal representatives) of minor students. Each subject of legal relations should understand that as soon as he decided to exercise his right, a number of "mirror" duties arise that regulate his behaviour and make the exercising of the rights by him acceptable for other members of the community. Any right entails a duty to use it in a way that does not violate the rights of others.

Sic utere tuo ut alienum non laedas (use your own so as not to harm another), says the generally recognized principle of Roman law. Therefore, the right of a subject to use any public good, for example, to receive an education, always presupposes his obligation in the process of exercising this right, at least, not to interfere by his behaviour with the receipt of this benefit by another equal subject. Almost everywhere, the enjoyment of the right to education is associated with certain conditions that the subject must fulfil in order to practically realize it. There is always a process of "struggle" between rights and responsibilities, which, in theory, should lead to the most optimal result for society at a certain stage of development.

This is by no means an abstract remark. Participants in the legislative process should always take into account that, when formulating a rule that establishes someone's right to perform certain actions or receive public goods, the corresponding obligations of other subjects should also be provided so that the proclaimed right can be exercised. It goes without saying that specific material conditions must also be taken into account. This fully applies to the education sector.

3.5. Sub-level of regulation: norms of statutes of educational institutions

The charters of specific educational institutions represent the lowest layer of norms that regulate the rights and responsibilities of participants in the educational process. The term "lower" does not mean diminishing the importance of these rules for students, but only reflects the fact that they cannot be contrary to state legislation. The statutes actually take the form of a so-called public offer, that is, an offer to all who wish to conclude an agreement on the basis of provisions already formulated and not subject to discussion.

Of course, as in any public offer, certain requirements are set for potential parties to the contract. If the parents (or guardians) of a student agree with the conditions of study at this college, lyceum, school, and the students themselves meet the requirements for candidates, the contract is concluded, and the students are subject to the rights and obligations provided for by the said contract. The rights and responsibilities of schoolchildren, of course, include natural provisions that ensure the participation of schoolchildren

in the learning process and impose obligations on them not to prevent others from having the same opportunities.

Often, bylaws provide parents with the opportunity to participate in public school government bodies called parental committees. Traditions and customs also play an important role here. Since traditions and customs in different countries can vary greatly, the variety of rules that govern the rights and responsibilities of students and teachers in different educational institutions is very great. In such documents, they often find a place for provisions that are considered generally accepted, relevant for a given country, and important specifically for a given educational institution.

In the popular Ukrainian Lyceum "Leader", for example, rules are specially stipulated for students to come to class at least 15 minutes before the start of classes, the obligation of boys to take off their hats when entering the building, the type of lyceum uniform is described in detail. Lyceum rules include a requirement for students to sit in public transport when all adults are seated (Rules of Internal Order, 2018, art. 2, 3, 4, 5).

American High Point University, among the rights of students, specifically highlights the rule on the possibility of students with disabilities (disabled people) to demand "reasonable accommodations that provide equal access to courses, their content, programs, services and facilities" (High Point University, 2013). St. Mary's College of Maryland not only defines in the most detailed way the list of student violations and misconduct (which includes, in particular, plagiarism, sexual misconduct, cyberbullying and threats), but also regulates the procedure for considering these violations, including the prosecution and defence process, so that Students The Handbook in some of its parts begins to resemble the Criminal Procedure Code (St. Mary College of Maryland, 2021).

The Charter of the Australian Ashwood High School pays significant attention to the requirement to comply with copyright laws, the prohibition of computer games, access to pornographic sites and the transmission of offensive or threatening materials. Responsibility for maintaining and using your network file storage is specifically mentioned (Rights and Responsibilities, 2021). At the American University of Willamette, it was considered necessary to secure the right of the student to be interviewed with any employer right on campus (Code of Student Conduct, 2021). In mentioned above Northbridge International School (Cambodia) public displays of affection between students are considered inappropriate behaviour.

Conclusions

Although the right to education has undoubtedly universal human recognition and value, it can only be realized in specific historical and socio-economic circumstances. The importance of education, the need for any person and society, allows us to speak about the obligation of each individual to obtain the necessary amount of knowledge, and about the obligation of the state to ensure the possibility of obtaining it.

The rights and responsibilities of subjects of the educational process are governed by a complex system of norms, including those with generally recognized international principles, norms of domestic law, traditions and customs of society, contractual forms in the form of statutes of educational institutions and even voluntary reached agreements of participants in the educational process. The task of humanity as a whole and of each state separately is to maximize the level of education, its content and volume.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 345-363
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

International approaches to legal regulation of juvenile justice and juvenile prevention

DOI: https://doi.org/10.46398/cuestpol.4073.18

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Abstract

The article is dedicated to investigation of different approaches in the field of juvenile prevention and juvenile justice. The article examines the features of juvenile justice and juvenile prevention in different countries, in particular, in the United States, Britain, France, the Netherlands, Germany, Italy, Ukraine. The existing models of organizing the activities of the juvenile police, other specialized bodies and institutions for children operating in foreign countries are considered. The issues of organization and implementation of crime prevention among children in different countries of the world have been studied. Special attention is paid to the US experience in the field of juvenile justice and juvenile prevention. In particular, the system of specialized bodies and institutions for children in the United States was studied. International systemic acts on the settlement of juvenile liability are analyzed. The analysis of world models of juvenile justice, in particular, Anglo-Saxon, continental, Scandinavian, is carried out and their peculiarities are singled out. The positive features of each of these models, which can be borrowed, in particular, by Ukraine, have been identified.

Keywords: children's rights; juvenile delinquency; juvenile justice; juvenile prevention; juvenile responsibility.

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Recibido el 28/02/2022 Aceptado el 11/05/2022

Aproximaciones internacionales a la regulación legal de la justicia juvenil y la prevención juvenil

Resumen

El artículo está dedicado a la investigación de diferentes enfoques en el campo de la prevención juvenil y la justicia juvenil. El artículo examina las características de la justicia juvenil y la prevención juvenil en diferentes países, en particular, en los Estados Unidos, Gran Bretaña, Francia, los Países Bajos, Alemania, Italia y Ucrania. Se consideran los modelos existentes de organización de las actividades de la policía juvenil, otros cuerpos especializados e instituciones para niños que operan en varios países. Se han estudiado los temas de organización e implementación de la prevención del delito entre los niños en diferentes países del mundo. Se presta especial atención a la experiencia estadounidense en el campo de la justicia juvenil y la prevención juvenil. En particular, se estudió el sistema de organismos e instituciones especializadas para niños en los Estados Unidos. Se analizan los actos sistémicos internacionales sobre la liquidación de la responsabilidad juvenil. Se realiza el análisis de modelos mundiales de justicia juvenil, en particular, anglosajón, continental, escandinavo, y se señalan sus peculiaridades. Se han identificado las características positivas de cada uno de estos modelos, que pueden ser tomados prestados, en particular, por Ucrania.

Palabras clave: derechos del niño; delincuencia juvenil; justicia juvenil; prevención juvenil; responsabilidad juvenil.

Introduction

Today Ukraine faces the task of implementing the international obligations undertaken in terms of providing children with special care and assistance from the state, the implementation of the provisions of the Constitution of Ukraine on recognition of a person, his or her life and health, honor and dignity as the highest social value, ensuring the right of everyone to the free development of one's personality. Also, given the level of juvenile delinquency, there is a need to develop effective measures to protect the rights of children in conflict with the law.

Ukrainian National Police units are responsible for taking preventive measures with re-education and further social support of a child in conflict with the law. At the same time, the implementation of these areas should strengthen the responsibility of the family, society and the state for the upbringing and development of children, ensuring the rights and freedoms of children in conflict with the law by increasing their legal and social protection, reducing juvenile delinquency.

Today's socio-economic conditions, family upbringing, the negative impact of the environment is closely linked to the causes of illegal behavior of minors, which has its own specifics and is associated with the peculiarities of their age, physical and mental development, incomplete moral development, legal immaturity, etc.

Therefore, today an important role is played by government agencies and social institutions that deal with youth issues and which are responsible for providing opportunities for full and comprehensive development of minors, raising cultural, educational and professional level, their right to social status in society, whose activities are regulated by both international legal acts and legal norms of the state.

The level of juvenile delinquency in Ukraine has increased significantly recently, in particular, there is a type of latent, which is much more dangerous. According to official statistics, the nature of juvenile delinquency often changes, recurrences, criminal offenses related to weapons, etc. are more common. More and more minors are being criminalized, also in connection with changes in the environment, i.e., due to the circumstances that lead to this. Juvenile criminal behavior very often depends on life, educational process, culture, consciousness.

This highlights the need to study the problems in the field of juvenile prevention and juvenile justice in order to reduce juvenile delinquency and the formation of a conscious and progressive society.

1. World approaches to legal regulation of juvenile justice and juvenile prevention

According to resent investigations, the following periodization of the history of juvenile justice can be proposed:

1. the first half of the XX century - the formation of the foundations of the classical model of juvenile justice, which modern Western researchers define as "humanitarian paternalism";
2. 60-70s of the XX century - the crisis of the classical model of juvenile justice, the rise of legal realism and the strengthening of the punitive function of minors;
3. 70-90s of the XX century - managerialization of juvenile justice under the influence of liberalization of the criminal justice system and management of social problems in general;
4. from the 90s of the XX century to the present - the development of new forms of juvenile justice, namely: decriminalization, restorative justice, family-focused approaches (Abeltsev *et al.,* 2000).

The main tenet of juvenile justice in England and Wales is the prevention of delinquent behavior, which means addressing issues related to lack of education, the problems of disadvantaged families and others. According to British experts, early intervention in this area can save the country up to 80 million pounds a year (Akimova, 2015). Thus, the state has developed a number of prevention programs. Among them are the program of inclusion, or inclusion in society of school-age youth (from primary to secondary school), which operates in 110 districts with the highest crime rates. This program combines training, identification of the child's professional orientation and the implementation of primary training in the profession.

Modern UK law is structured in such a way that in the case of an offense committed by a person under the age of 18 who admits his guilt and repents of his actions, his case is not brought to court. Such persons are dealt with by the police, municipalities, other non-governmental organizations that use regulations, the system of agreements, etc. in their work with adolescents. In the case of a serious crime or if it is repeated, the case goes to the juvenile court, which is a special branch of the magistrates' court (hearings are closed, the prosecutor and lawyer speak), and which decides on imprisonment or other restrictions on transfer right, supervision, fines, classes in special centers, etc. (Alauhanov, 2008).

With regard to the French juvenile justice system, the system is currently based primarily on the Juvenile Delinquency Act of 2 February 1945 № 45-174, and includes all stages of justice from investigation to enforcement and supervision of juvenile delinquency, adopted in respect of a minor (Alekseev, 1998).

In France, work with difficult adolescents is more focused on crime prevention. However, a law came into force in 2002 that punishes or punishes juvenile offenders between the ages of 10 and 13, including damages and / or assistance to victims, a ban on contact with individuals or visits to certain places.

The average term of imprisonment for juveniles in France is 1 month. Increasing the use of alternative measures to detention, as well as the "semi-free" detention of prisoners, including through electronic bracelets, would, according to some French experts and politicians, strengthen the family's educational role in the case of convicts (Meditsky, 2008).

In the Netherlands, since the introduction of the Criminal Law on the Punishment of Children in the early twentieth century, judges have been advised to apply various types of punishment to minors (under the age of 18), including those not related to imprisonment. The juvenile justice system of the Netherlands is represented by a prosecutor, a judge who has the authority to conduct cases, make decisions both in case of violation of children's rights and in case of juvenile delinquency.

In general, the Netherlands is characterized by a multi-level system of juvenile justice. At the first stage, the police work with teenagers. If the crime is committed for the first time, but it is not particularly serious (petty theft, soft drugs), the police send the teenager to special municipal services, whose task is to create an alternative to placing the child in closed correctional facilities (Steketee *et al.*, 2021).

German juvenile justice is based on the humane treatment of children, the priority of educational measures, the use of imprisonment only in exceptional cases. The new Juvenile Justice Act of 1990 established a long-standing practice of using alternative forms of punishment (negotiations between the victim and the offender, compensation for damages, a combination of different corrective procedures).

Preventive and rehabilitation programs are reduced to psychosocial support of adolescents, the provision of mediation services in the framework of restorative justice, control of social workers of special public services, educational activities in educational institutions, special trainings and seminars, socially useful activities in which the offender is involved. The judge may also impose a fine, short-term detention, and certain types of community service. Moreover, according to experts, alternative types of punishment are considered not as mitigation of punishment, but to optimize the criminal justice system (Antonyan and Guldan, 1991).

Juvenile justice in Italy was not focused on the humanization of juvenile justice as it was in Germany or the Netherlands. Researchers note the predominance of the punitive paradigm and criminal punishment of juvenile offenders, which can be traced in 1934-1956. Later, until the early 80's of XX century, it was preferable to use administrative measures to influence the social rehabilitation of children (Antonyan *et al.,* 1996).

In Italy, pre-trial probation means the suspension of a certain period of time (usually 8 months) during which the offender is obliged to attend rehabilitation and educational programs, including church-organized events, which is in fact equivalent to some probation. Here significant work is being done by local social services departments, which interact with juvenile services attached to the courts (Ayala *et al.,* 2021).

Let us consider in more detail the existing models of organizing the activities of the juvenile police, other specialized bodies and institutions for children operating in foreign countries. The United States of America is a country in which the system of specialized bodies and institutions for children began to form in the late nineteenth century. In particular, the Illinois Act of 1899 on the Children of the Abandoned, Homeless, and Criminal defined the responsibilities of the police in this area, and introduced a juvenile court and a probation system (Rivman *et al.*, 1999).

Today, the legal framework for policing in the United States is: USA Constitution, Federal Criminal Code, state constitutions, judicial precedents in cases related to police actions in specific aspects (Kokkalera *et al.*, 2021).

The key regulations governing the police, other specialized agencies and institutions for children in the United States are: Juvenile Justice Act (1974), Juvenile Delinquency Prevention Act (2004).

The system of specialized bodies and institutions for children in the United States today includes: police (over 75% of the 13,000 police departments have special services in their structure that deal with children's affairs or implement special programs in this area); temporary detention facilities (there are currently 3,300 such facilities); juvenile prosecutors; juvenile public defenders; juvenile courts; penitentiary institutions for children.

The highest governing body in this area in the United States is the Office of Juvenile Justice and Juvenile Delinquency Prevention, which is headed by an administrator appointed by the President.

At the federal level, there is the Coordinating Council for Juvenile Justice and Juvenile Delinquency Prevention, chaired by the General Attorney, which includes: Ministers of Health, social services, labor, education; Director of the National Police Office for Drug Control; other government officials, including nine non-officials appointed by equal quotas by the President, the Speaker of the House of Representatives and the Senate (Gauhman, 2001).

As we can see, top-level officials in the United States deal with the protection of children's rights and freedoms.

A characteristic feature of the administrative and legal regulation of the police, other specialized bodies and institutions for children in the United States is its focus primarily on correcting the behavior of the child and those around him, rather than punitive measures (Rymarenko, 2005). The algorithm of actions of the police, other specialized bodies and institutions for children's affairs in the USA in case of violation of the rights of the child or commission of the offense by the child provides the following procedures: 1) notification; 2) investigation; 3) intervention; 4) completion of the case.

Depending on the situation, these procedures are carried out with or without the participation of the police.

In particular, reports of violations of children's rights, as well as violations of the law by children, are sent either to the police office, or to the Juvenile Justice and Juvenile Justice Prevention Agency, or to social welfare agencies. The notification can be made by anyone and at any time, and for certain categories of persons (doctors, teachers, social workers) such notification is a professional duty. State laws (Arkansas, Ohio) ensure

the privacy of whistleblowers and guarantee rewards for providing such information.

The investigation of the reported fact is carried out by the competent authorities, in accordance with their jurisdictional powers. An investigation that does not involve police intervention is common; carried out by social workers or other persons who do not have police powers; shall be held immediately or no later than 48 hours after receipt of the notification.

Violation of the rights of the child or the commission of an offense by a child involves the conduct of a police investigation, which is conducted by the police immediately, in cases provided by law - with the participation of social workers. Intervention involves the provision of specific services, support and therapy. It is carried out either by the police or by bodies not endowed with police powers. The police are involved in the completion of the case when there is a question of removing the child from the family, or when the family refuses to cooperate with a social worker, and there are insufficient grounds to go to court (Zane and Pupo, 2021).

The study of the organization and implementation of crime prevention among children in the United States revealed the following:

1. Administrative and legal regulation of preventive activities among children in the United States is aimed at: removal of the causes and conditions of crimes and offenses; prevention of conflict situations in the family; formation of trust between the police and citizens.

2. Priority theories in the field of preventive activities for American criminologists are: the theory of primary prevention, aimed at eliminating external factors contributing to the offense, and the theory of situational offenses - the assumption that most offenses are situational in nature and are committed as a result of a coincidence of circumstances and conditions that encourage and provoke a person to commit them.

   Accordingly, the most effective direction of youth prevention is the timely elimination of criminogenic factors and the creation of anti-criminogenic conditions, in the presence of which the offender abandons his intentions (Alauhanov, 2008).

3. Prevention of delinquency among children is a separate activity of the state in the United States.

   This type of activity is implemented comprehensively, i.e., carried out at the federal level and at the state level: provides for the implementation of measures of general social, material and economic, educational nature; implemented on the basis of long-term large-scale correction and intervention programs; subjects of its implementation are state (police, social services, educational

institutions) and non-governmental (volunteers, municipal institutions) bodies and institutions.

4. The United States has a successful track record of implementing a prevention program that addresses a wide range of issues.

Among others, it is advisable to highlight:

1) programs aimed at strengthening the family;
2) programs aimed at eliminating school risk factors and improving the level of school education;
3) special prevention programs aimed at preventing juvenile delinquency;
4) tertiary prevention programs aimed at preventing recidivism, etc.

Experts on this issue note that the most effective programs are those that are based on a multifactorial approach, cover children from an early age and focus not so much on the child as on the adverse characteristics of the immediate family and social environment (Bundz, 2017).

2. International models of juvenile justice

In accordance with the United Nations Minimum Standards for the Administration of Juvenile Justice of 29 November 1985, due regard must be paid to the implementation of positive measures involving the full mobilization of all possible resources, including the family, volunteers and other groups, as well as schools and other public institutions, in order to promote the well-being of adolescents that should help to reduce the need for legal intervention and effective, fair and humane treatment of adolescents in conflict with the law.

In international standards, there is a provision according to which the world and each country in particular needs a separate system of justice for children, i.e. the existence and functioning of juvenile justice (Belyaeva, 2003).

The purpose of international law, which is the basis for regulating juvenile justice, is to create favorable conditions for establishing the causes of crime and finding effective methods of influence based on specific personal data to achieve social rehabilitation. As there is no analogue of "pure" juvenile justice in domestic law, it is necessary to take into account the many years of foreign experience of existing courts, which have developed in accordance with the legal systems that emerged long before the establishment of juvenile justice.

Juvenile justice itself makes it possible to correctly assess the commonalities and differences in juvenile justice when it comes to its various models (Ischenko, 2017).

Among the main models of foreign juvenile justice are: Anglo-Saxon (Australia, USA), continental (Germany, France), Scandinavian (Sweden).

Indeed, juvenile justice was most developed in the nineteenth and twentieth centuries. The main reason was the large-scale increase in crime in the late nineteenth century. It was at this time that Europe and America were overcrowded with groups of young offenders. All these models of juvenile justice operate on the basis of separate legislation on the judiciary and procedure in juvenile justice.

Thus, in the United States such a basis is the Federal Juvenile Justice and Juvenile Delinquency Prevention Act (1974), in Great Britain a number of laws on children and youth (1908), in Canada - the Juvenile Justice Act (2003), etc.

According to scholars, differences in judicial systems do not relate to the basic specific principles of juvenile justice, but are related to age, social orientation, individualization of the trial and more. For the completeness of the study, in our opinion, it is necessary to analyze these models of juvenile justice and highlight their features and differences (Kresina *et al.*, 2020).

1. Anglo-Saxon model (Great Britain, Northern Ireland, USA, Australia, Canada etc.).

This model provides for limited substantive jurisdiction: the juvenile court considers all types of juvenile offenses, except serious crimes. The first juvenile courts were established in Australia in 1890 and in the United States in 1899. There is no unanimous opinion among scholars about the priority of creating a system of juvenile courts among these countries, but there is reason to believe that in the US this process was most clearly organized and systemic in nature (Kharchuk, 2009).

The US juvenile justice can be characterized from the following positions:

1) the existence of specialization of the judiciary, which provides for the existence of separate rooms for consideration and resolution of cases against minors;
2) the presence of a specialized judge and the isolation of juveniles from adults in places of previous detention;
3) the existence of a simplified trial in the form of an interview of the judge with the defendant behind closed doors;

4) exercise by a judge of the management of institutions of guardianship supervision over minors;

5) wide cooperation of the court with the population of the judicial district, which enabled juvenile courts to use information on the living conditions of offending children (Milovidova, 2013).

In the United States, there are so-called non-state juvenile courts, in which adults either do not participate at all or only manage the proceedings. These courts hear cases of minor offenses and misdemeanors committed for the first time, if the juvenile has admitted his guilt.

Coercive measures used by juvenile courts (attending special classes to overcome drug or alcohol dependence; monetary restitution, obligation to participate in a juvenile court hearing as a juror, etc.) are non-repressive and have significant educational potential. In other words, juvenile justice in the United States is characterized by: an individual approach to the child; special procedure for the trial of juvenile charges; enhanced assistance to minors; implementation of selected measures for minors by the state guardian and the public; discussion with guardians and parents of the appointment of educational and therapeutic measures, etc.

As for Great Britain, the first juvenile court was established in 1905. The positive results of this work were the impetus for the creation of a nationwide system of juvenile courts. Such a system was created in 1909 through the adoption of the Charter for Children.

The existence of juvenile courts has accompanied the emergence of the following rules:

1) juvenile defendants are divided into categories depending on the severity of the committed crime;

2) the presence of parents or other relatives in the court hearing is mandatory;

3) cases are considered separately for each juvenile defendant, even if the crime was committed in complicity;

4) a corps of probation officials has been established at the juvenile court, whose responsibilities include studying the identity of the juvenile offender and the placement of child offenders;

5) the court exercises control over the implementation of guardianship over child offenders. Denominational societies are also typical for England and the United States to help raise children in need of support (Krukevych, 2014).

2. Continental model (most countries in Europe and Latin America, Japan, France, Belgium, Italy, Spain, the Netherlands, Argentina, Colombia, Venezuela, Germany, Switzerland, Austria, Japan, Brazil, Peru, etc.).

In this model, juvenile courts have broad substantive jurisdiction - all types of juvenile delinquency are considered there and, at the same time, the court considers cases of children in need of assistance from the state.

In European countries, juvenile courts began to appear in the twentieth century. They did not have a specific general model, but existed in different versions of the organization, in particular:

1) juvenile tribunals have been set up in Portugal and merged with guardianship courts;
2) in Switzerland (1911–1913), Japan (1923) an autonomous system of juvenile courts was established;
3) in Austria, Spain, guardianship courts for juveniles were established;
4) special laws on juvenile courts were adopted in Egypt and Italy;
5) in the Netherlands, the courts established in 1905 were characterized by the most simplified system of administration of justice;
6) in such Catholic countries as Spain, Italy, Portugal, the church played an important role in juvenile justice;
7) use of the mediation procedure in such countries as Austria, Belgium, Spain, the Netherlands, Germany, France, etc. (Kuznetsova, 1991).

Unlike the countries of the Anglo-Saxon legal system, the juvenile court in Germany did not become separate and autonomous, but acted as a judge of the General Court, where one of the judges was given special powers for one year:

1) consideration of all cases concerning minors aged 12 to 18 who are subject to district courts, and the judge was obliged to conduct a preliminary investigation;
2) guardianship proceedings against juveniles, whose functions were taken over by members of child care unions, who also provided information on the living conditions of juvenile offenders, and by court decision performed the duty of care for juveniles who remained at large;
3) public hearing of cases concerning minors, except in cases of closed court session, provided by law, etc. (Kharchuk, 2009).

In France, juvenile justice emerged much later than in other European countries and required considerable effort. The jury has always played a significant role, and therefore only in this country from the very beginning was provided, in addition to the sole judge, also a tribunal for minors, and later the establishment of a jury for juveniles. Under French liberal law, children under the age of 13 are not liable at all. Full criminal responsibility in France begins at the age of eighteen.

In Switzerland, juvenile justice was launched in 2007. Education is at the forefront. Most often, the juvenile court is limited to warnings or a week of forced labor. Imprisonment is a last resort, which is resorted to only in the case of very serious crimes. But a child can be imprisoned in 10 years, there have been such cases. The upper age limit for "adolescent responsibility" is 22 years (Opatsky, 2012).

Turning to the modern vision of juvenile delinquency and the analysis of the current state of the juvenile justice system in the countries of the continental model, we see that crime in European countries is getting younger. For example, one in three teenagers aged 14-15 in the UK has admitted to having committed an offense at least once in their life, and almost half of Britons (49%) believe that children are a growing danger to adults and to each other.

3. Scandinavian model (Denmark, Sweden, Norway, Finland, Iceland, etc.).

This model, in our opinion, is insufficiently studied by scientists, but on some examples, we can see the peculiarities of the functioning of juvenile justice in the Scandinavian countries, where judicial and administrative juvenile justice are combined.

Thus, there are no separate juvenile courts in Sweden, but there is a juvenile judge in a local court or a juvenile court department for juvenile cases.

The leading role among state institutions dealing with the protection of the rights of minors in the Scandinavian countries is played by the social service, organized on a territorial basis, which allows to effectively, efficiently and address the problems of a particular child by professionals working in its territory.

In Sweden, non-governmental penitentiary institutions for juvenile offenders operate effectively. Within the local community, a significant part of court decisions in juvenile cases are executed, in particular, public works (minor repairs of buildings, cleaning of the territory, etc.). Also, in countries such as Finland and Norway, the use of mediation in the juvenile justice system is relevant (Tereshchuk, 2017).

3. The system of bodies for the supervision of juvenile offenders

In world jurisprudence, the term "juvenile justice" means a system of judicial and law enforcement agencies, specialized government agencies and institutions, public organizations that protect the rights of minors, consider and resolve cases of juvenile delinquency, carry out further reintegration of offenders into society.

The purpose of the juvenile justice system is:

1. increasing the level of legal protection of minors;
2. reduction of juvenile delinquency and neglect;
3. increasing the responsibility of the state and society in the growth and development of children (Babanina *et al.,* 2021);
4. reintegration of juvenile offenders into society.

Many European countries have long adopted a new approach to responding to juvenile delinquency, in the form of so-called restorative justice, where the court gives a contractual opportunity to compensate the victim for physical, material and emotional damage, and thus take responsibility for the crime committed.

Perception of one's actions as a deviation from the norm, the ability to correct what happened, a sincere desire never to repeat such a situation - the main lesson that a teenager must learn after the application of justice.

As a result, effective repentance, awareness of one's guilt and understanding of the seriousness of the damage caused to the victim, followed by its compensation. Conciliation procedures are clearly prescribed in procedural law, do not entail the consequences of a conviction for a juvenile offender and are an effective alternative to repressive measures of criminal justice (Loeber *et al*., 2003).

Most countries in the world now have a system of juvenile justice.

According to the existing organizational models of consideration of cases of juvenile offenders is carried out:

1) specialized juvenile units (boards, chambers) of general courts;
2) a specially formed system of judicial institutions, which is part of the judicial system.

   At the same time, the name of the court, as well as its competence, differs from dealing exclusively with cases of juvenile delinquency and to resolving a wide range of civil and criminal cases, if the party is a minor and children arising from marital relations;

3) non-judicial bodies with special competence (for example, the executive branch).

A feature of the juvenile justice systems of most countries is the wide involvement in the relevant category of affairs of public organizations. In addition, psychologists, educators, and social workers are involved at all stages of juvenile proceedings, making these procedures more child-friendly.

In the USSR, the functions of juvenile justice were in fact entrusted to non-judicial administrative bodies - the Commission on Juvenile Affairs (hereinafter - CSC), which was first formed in 1961. The CSC in the USSR were endowed with broad powers placing them in educational institutions, solving general issues of protection of children's rights.

Later, all cases of administrative offenses against juveniles were transferred to the court. In March 1996, by a joint order of the Chairman of the Supreme Court of Ukraine and the Minister of Education of Ukraine, the Regulations on Judicial Educators were approved (Safiullin *et al.*, 1995).

The main tasks of juvenile prevention units in Ukraine are: preventive activities; maintaining preventive records of children prone to delinquency; participation in locating missing children; implementation of police care in case of neglect of the child; protection of the child's right to education.

Administratively, juvenile prevention units perform two types of tasks: external and internal.

Internal is to ensure the activities of juvenile prevention units, namely: staffing, increasing the level of professional competence of employees, application of incentives to employees, etc.

External covers the performance of direct tasks assigned to the bodies of juvenile prevention, namely: prevention of offenses, administrative; operational search; criminal procedure.

International legal norms and acts of national legislation pay special attention to minors as one of the most vulnerable categories of citizens, which necessitates the creation of special conditions for the protection and realization of their rights (Veselov, 2019). It was not until the early twentieth century that the rights, freedoms and responsibilities of the child were actively developed and enshrined in law.

The changes were due to complex social processes: war, economic crisis, deterioration of quality of life, lack of appropriate medical care, an increase in juvenile delinquency.

In such conditions, children were the most affected category of the population, which in turn was the impetus to reconsider the still existing

views on the child and his position in the legal field. As evidenced by the elaboration of international legal documents in the field of protection of children's rights, these international standards establish the relevant framework, beyond which the state's protection mechanisms are not right.

On October 20, 2010 the so-called Yerevan Declaration was adopted (Council of Europe, 2010), according to which relevant recommendations were provided on the activities of the prosecutor's office in the field of protection of the rights and freedoms of minors in criminal proceedings. All recommendations relate to the role of the special prosecutor, within the functions defined by national law for the prosecutor's office aimed at protecting the rights and freedoms of minors, i.e., in the field of juvenile justice.

Paragraph 3 of the Declaration states that prosecutors are representatives of state bodies that, on behalf of society and for the interests of the state, ensure the application of the law when its violation involves criminal sanctions.

The Yerevan Declaration establishes a number of guarantees for the professional activity of a juvenile prosecutor, in particular, paragraph 19 stipulates that prosecutor must have the necessary and appropriate means to exercise their powers in respect of minors, or that other means must be provided to other competent juvenile services.

In particular, the recruitment system, proper training, the necessary staff, facilities and specialized services to which they should be granted access. In addition, Member States should consider setting up special units or assigning individual staff to deal with juvenile delinquency. In general, the Declaration contains recommendations aimed at ensuring the effective operation of the juvenile prosecutor at all stages of juvenile justice.

Currently the reform of the institutional component of the state system of protection of children's rights is underway. The leading role in this direction is given to the improvement of the law enforcement and judicial system in terms of the formation of juvenile justice in Ukraine (Bondaruk *et al.,* 2021). At present, in Ukraine exist social services, juvenile units within the National Police of Ukraine, but there is virtually no relationship between them. This indicates the actual absence of the juvenile system in Ukraine as a single system and non-functioning laws in this area.

One of the vectors of these transformations is the establishment of the institute of juvenile prosecutor's office in the state. This process must take place in accordance with the requirements of the Constitution of Ukraine and international regulations.

Referring to the national legislation of Ukraine, it should be noted that in accordance with Article 9 of the Constitution of Ukraine, international

treaties approved by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine.

Conclusions

As a result of the investigation, we can say, that there are three effective juvenile justice systems in the world that differ significantly from each other.

Anglo-Saxon system has at its core the substantive jurisdiction of juvenile delinquency, except for felony offenses. Boards are established in cooperation with the public. Their purpose is a preliminary discussion with parents, teachers, social workers.

The verdict is announced taking into account the study of living conditions and socialization of a child, which allows us to predict the possibility of committing an offense in the future. This approach combines prevention, rehabilitation and punishment for offenses.

A characteristic feature of the Continental system is that juvenile courts consider all types of juvenile delinquency and those cases where state intervention is necessary to protect children.

The juvenile system of the Scandinavian model combines judicial and administrative juvenile justice. There is a position of juvenile judge in local courts, the training of which corresponds to the tasks set for work with juvenile offenders.

The leading role is assigned to the social service, which is organized on a territorial basis. The system of training and selection of personnel plays an important role. Staff must have pedagogical, psychological and legal training. Imprisonment is almost non-existent, other non-custodial sentences are preferred. The mediation procedure plays an important role.

Concerning Ukraine, we have to conclude that it needs to embody the best features of these systems. From the Anglo-Saxon model, it is possible to take the example of broad public involvement in the process of minors. It is necessary to consider not only the offense, but to involve the prism of the offender's lifestyle, his or her family, upbringing and living conditions of a child.

From the Scandinavian model it can take a careful approach to training in the system of juvenile prevention, as well as the system of social services. Reliable work of social services should be the first step in the prevention and further re-socialization of offenders.

From the continental model it is preferably to take the mediation procedure as a mechanism for crime prevention.

It is necessary to revive the social component of the state system by changing the legal framework to a modern one and focus on training quality personnel for such a system.

Thus, the creation of a new juvenile judicial and legal system for the protection of juvenile rights should be carried out both by specialized state bodies that administer justice in cases involving minors and non-governmental organizations involved in correction and rehabilitation of juvenile delinquents, juvenile delinquency prevention, social protection of families.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 364-376
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Combating sports corruption: an analysis of international regulations

DOI: https://doi.org/10.46398/cuestpol.4073.19

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Abstract

Today, sport is one of the most developed and highly profitable industries. According to various sources, the annual revenue of industry participants is estimated at at least $145 billion. The article analyzes the relevant international anti-corruption legal acts. We would like to emphasize that the adoption of these documents and the ratification of most of them is an important step in the fight against corruption in sport. At the same time, most of these international standards are aimed at combating corruption, that is, they offer active and punitive measures to combat it. Instead, the authors insist on the priority of preventive measures against corruption. The author's classified approach to measures to combat corruption in sport is proposed. It is concluded that the first step should be to combat corruption in international sports organizations. The effectiveness of anti-corruption measures in this area depends mainly on the transparency of their activities. Another area of corruption in sport is determined to be grassroots corruption. The oldest form of corrupt sport is that which arises spontaneously during competitions between two participants or two teams.

Keywords*:* sports corruption; criminal offences; counterattack to corruption; corporate culture; international conventions.

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Recibido el 15/04/2022 Aceptado el 15/06/2022

Lucha contra la corrupción deportiva: un análisis de las regulaciones internacionales

Resumen

Hoy en día, el deporte es una de las industrias más desarrolladas y altamente rentables. Según diversas fuentes, los ingresos anuales de los participantes de la industria se estiman en al menos $ 145 mil millones. El artículo analiza los actos jurídicos internacionales anticorrupción relevantes. Nos gustaría enfatizar que la adopción de estos documentos y la ratificación de la mayoría de ellos es un paso importante en la lucha contra la corrupción en el deporte. Al mismo tiempo, la mayoría de estas normas internacionales están dirigidas a combatir la corrupción, es decir, ofrecen medidas activas y punitivas para combatirla. En cambio, los autores insisten en la prioridad de las medidas preventivas contra la corrupción. Se propone el enfoque clasificado del autor sobre las medidas para combatir la corrupción en el deporte. Se concluye que, la primera medida debería ser combatir la corrupción en las organizaciones deportivas internacionales. La efectividad de las medidas anticorrupción en esta área depende principalmente de la transparencia de sus actividades. Se determina que otra área de corrupción en el deporte es la corrupción de base. La forma más antigua de deporte corrupto es la que surge espontáneamente durante las competencias entre dos participantes o dos equipos.

Palabras clave: corrupción deportiva; delitos penales; contraataque a la corrupcion; cultura corporative; convenciones internacionales.

Introduction

According to experts, sports corruption has existed for a long time. During the first Olympic Games, athletes and their representatives were bribed in ancient Greece. Greek geographer and writer who lived in the II century BC, Povsaniy called the competition «unconsecrated.» In addition, K. Weber published the work «The Unholy Games: Ancient Olympia between Legend and Reality», in which he described cases of «acquired victories», bribery and «political intrigue». Based on the writings of writers and critics, it can be assumed that the beginnings of corruption in the sports industry appeared shortly after the start of the first Olympic Games in ancient Greece. Corruption is still an unresolved issue (Manukov, 2016: 34).

Nowadays, sport is one of the most developed and highly profitable industries. According to various sources, the annual income of industry

participants is estimated at at least $ 145 billion. Most cash flows flow through international organizations, such as the International Football Federation and the International Olympic Committee. The state of affairs in sports shows that this environment has become one of the most corrupt. For example, evidence of corruption in sports is match-fixing, club tax evasion, and the opacity of agency business (Sokolova, 2019).

This definition of the main features, types and measures to combat sports corruption is essential.

1. Methods

The methodological basis of the study was a set of methods of scientific knowledge. Of the philosophical methods, we used the phenomenological method, which allowed us to analyze normative sources of national and international law. With the help of the abstraction method, we were able to investigate the grounds for the criminalization of illegal corruption in sports. The generalization method made it possible to systematize the types of sports corruption to identify the main areas of combating sports corruption.

The hypothetical-deductive method ensured the implementation of a cross-sectoral approach in analyzing the nature of sports corruption and developing measures to combat its specific manifestations. In addition, we used other methods of scientific knowledge, which in their complex allowed us to ensure the completeness, objectivity, and depth of research on the specifics of combating sports corruption in Ukraine.

2. Results and Discussion

2.1. International anti-corruption legislation in the field of sports

The urgent need to combat sports corruption led to the accumulation of efforts at the international level, which resulted in the adoption of relevant anti-corruption international law: the International Convention against Doping in Sport of October 19, 2005. Ukraine signed this convention on November 18, 2005. and ratified on August 3, 2008.

The Convention contains binding rules for the harmonization of anti-doping legislation, including barriers to the production and use of illicit substances such as anabolic steroids; assistance in financing anti-doping tests; establishing links between the strict application of anti-doping rules, and the provision of subsidies to sports organizations or individual

athletes; conducting regular doping control procedures during and outside competitions, in particular in other countries. The Convention also contains a list of prohibited substances. It is also essential to set up a monitoring group to periodically review this list and monitor compliance (Anti-Doping Convention, 2016).

Unfortunately, the ratification of the International Convention against Doping in Sport has not led to appropriate changes in the criminal law of Ukraine. In particular, it is advisable to supplement Art. 323 of the Criminal Code of Ukraine indicates the scope of the law - sports, and therefore provides for more severe penalties for doping in this area. It is essential to supplement the Criminal Code of Ukraine with an article that will introduce liability for doping (Reznik *et al.*, 2020).

Another important anti-corruption document in sports is the Council of Europe Convention against the Manipulation of Sports. This document was signed on September 18, 2014, in Maglingen as part of the work of the Council of Europe. Ukraine acceded to it on December 21, 2015, and ratified it on November 17, 2016.

Under the Convention, Parties must provide for the possibility of criminal prosecution for manipulating sports if it covers acts of coercion, corruption, or fraud as defined in their legislation, as well as the adoption of legislative and other measures aimed at establishing criminal liability in their national law for laundering of proceeds of crime related to the manipulation of sporting events and the prosecution of legal persons for the offenses outlined in this Convention.

The Convention contains provisions on the cooperation of the Parties to investigate, prosecute, and administer justice in respect of offenses covered by it, including arrest and confiscation. Teamwork is required in full compliance with existing international, regional, and bilateral treaties on mutual assistance in criminal matters and the law of each Party on offenses under Articles 15-17 of the Convention (Article 26). The Convention also provides for the Parties' cooperation with international sports organizations to fight against the manipulation of sports competitions (Council of Europe Convention Against the Suppression of Sporting Competitions, 2014).

It should be noted that the relevant law in Ukraine was adopted before the official signing of the Convention. In particular, November 3

In 2015, the Law of Ukraine, "On Prevention of the Impact of Corruption Offenses on the Results of Official Sports Competitions," was adopted. , elimination of their consequences and application of the proper type of legal liability (On the Prevention of the Impact of Corruption Offenses on the Results of Official Sports Competitions, 2015). In particular, among other things, the analyzed law provided for additions to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine.

Thus, the first was supplemented by an article providing for liability for violating the ban on sports betting related to manipulation of official sports competitions (Articles 172-9-1 of the Code of Administrative Offenses of Ukraine), and the second - an article establishing liability for illegal influence on the results of official sports competitions (Article 369-3 of the Criminal Code of Ukraine) (Bondarenko, 2017).

Another important document, of course, was the Council of Europe Convention on Integrated Security, Protection and Services in Football Matches and Other Sports Events (concluded in San Denis on July 3, 2017, still a document to Ukraine, unfortunately, has not been ratified). At the same time, ratification is significant because, as stated in the explanatory note to the draft Law of Ukraine «On Ratification of the Council of Europe Convention on Integrated Approach to Security, Protection and Services during Football Matches and Other Sports Events», adoption of a law on ratification culture and sports to European standards, in particular in the field of security, protection and services during the organization and holding of football matches and other sporting events (Explanatory note to the draft law of Ukraine, 2017).

Following the Convention, the Parties shall take measures aimed at ensuring safety, protection, and service at football and other sporting events; prevention and prevention of the risk of wrongdoing or misconduct (Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events, 2016).

We want to emphasize that adopting these documents and ratifying most of them is an essential step in combating sports corruption. At the same time, most of these international regulations aim to fight corruption, i.e., they offer punitive, active measures to combat it. Instead, we are convinced of the need for more extraordinary anti-corruption measures. The need for their introduction is because the negative consequences of sports corruption (violation of the principle of protection of good behavior in sports and sports ethics; undermining public confidence; money laundering, etc.), despite criminal liability, are becoming stronger every year.

And this, in turn, leads to: first, violation of Article 49 of the Constitution of Ukraine, which states that the state cares about the development of physical culture and sports, in particular in the context of preventing any undue influence on the course and results of sporting events; secondly, distorting the perception of the social importance of sport for the life of the population in Ukraine, for example in the context of forming and maintaining traditions of healthy living; thirdly, it hurts the health of athletes in the case of doping; fourth, it damages Ukraine's image.

2.2. Anti-corruption measures in international sports organizations

Because of the above, we propose the following measures to combat sports corruption. First of all, it is advisable to divide them by areas. The first is the fight against corruption in international sports organizations. The effectiveness of anti-corruption measures in this area primarily depends on the transparency of their activities. Today, international sports associations are, in a sense, similar to developing countries in a period of economic recovery. Revenues are overgrowing, and regulation is lagging far behind because, at first, they are all non-profit and supranational organizations. The current scandals and investigations are mainly due to developed countries' supranational tax and police authorities.

Public opinion is so vital that it can lead to an investigation into corruption and has the leverage to oversee the investigation. The investigation into corruption in the International Football Federation has already led to several arrests, resignations, and disqualifications of the world and European football leaders.

The positive outcome of these investigations will be the reform of international associations and the development of stricter and more transparent rules for sports business in all areas (Corruption in sports is similar to corruption in third world countries, 2021). Therefore, transparency in access to the finances of organizations is crucial. In particular, we consider it necessary to provide full free online access to information on finances and payments to the Member States, the declaration of management income.

In addition, in our opinion, it is advisable to delineate the administrative and financial functions of international sports organizations because the combination of both administrative and financial powers creates the preconditions for abuse due to a lack of internal control. For example, in 2020, the doping schemes were exposed by the head of the International Weightlifting Federation, T. Ayan. In particular, it is established that, like any other international sports federation, the International Weightlifting Federation regularly receives money from the International Olympic Committee.

From 1992 to 2009, about $ 23 million was transferred to two accounts of the International Weightlifting Federation in Swiss banks, which were not reflected in the organization's financial statements. Only Ayan had access to the accounts. According to research, the fate of at least $ 5.5 million in these accounts is currently unknown.

According to the International Weightlifting Federation rules, the national associations of countries whose athletes have been convicted of doping must pay a fine of up to $ 500,000 per year, depending on the

number of positive doping tests. Such penalties were often paid in cash directly to T. Ayan. In 2013, Azerbaijan had to pay a fine of $ 500,000 for 18 positive doping tests, but the financial report does not specify this amount (Doping coverage and corruption, 2020).

Most modern sports organizations receive financial resources from various sources, such as sports lotteries, ticket sales, advertising, sponsorship, philanthropy, entrepreneurship, deposit operations, property leasing, and many other activities. On the other hand, sports organizations spend money from various channels for their own needs, pay salaries and bonuses to athletes and coaches, pay on loans from commercial banks, make tax deductions.

Thus, the finances of the sports organization are not in a static state, and they are constantly circulating from one payer to another. And even temporarily free money should not be a «dead weight», but bring income to the sports organization, preferably as much as possible. It is necessary that all these tasks of managing the financial flows of a sports organization be entrusted to a particular economic service, which should be headed by a competent specialist who is well versed in both sports and finance - the financial manager.

The financial manager in sports clubs and organizations performs the following functions: performs financial analysis and planning (including business planning); interacts with commercial banks and develops credit policy; together with the management of the sports organization plans the total amount of transfers and financial investments; manages cash flows (for salaries, bonuses, business trips for athletes, coaches and staff of sports organizations), manages taxes; seeks and attracts sponsors (Tasks and functions of the financial manager in sports organizations, 2021).

Another measure to combat corruption in international sports organizations should be the development of corporate culture. Corporate culture is a specific form of existence of an interdependent system, which includes a hierarchy of values that dominate among employees of the organization and a set of ways to implement them, prevailing in it at a particular stage of development (Chernyshova and Nemchenko, 2010).

The importance of corporate culture for a sports organization is that it strengthens cohesion and creates consistency in the behavior of employees. For the latter, corporate culture serves as a compass for choosing the proper behavior necessary for successful work in the organization. Thus, the corporate culture of a sports organization is a set of fundamental values, beliefs, attitudes common to members of the sports organization, which determine the standards or norms of behavior for all its members, including the inadmissibility of corrupt behavior (Hoya, 2013).

To combat corruption, it is imperative to form the correct organizational principles, i.e., the principles laid down in the mission and vision of the sports organization, which will guide the organization in general and its leader, particularly when interacting with the environment working with staff. The formation of organizational values is influenced by social and cultural norms that have developed in society and the importance of critical employees and departments. Thus, without a clear understanding of the characteristics of the corporate culture of a sports organization, you can not start to change the corporate culture. Established values and beliefs are complicated to transform, and even with the psychologically competent introduction of new symbols, heroes, etc., the real change in corporate culture takes years or may require a modification of generations (Zhabakov, 2018).

That is why, for example, now, given the numerous corruption scandals and leadership renewal, the world community has high hopes for the new leadership of the International Football Federation, not only in the fight for honesty in sports but also in the comprehensive development of sports relations in general (Trubitsyna, 2016).

2.3. Measures to combat «grassroots» sports corruption

Another area of corruption in sports is «grassroots» corruption. The oldest form of corrupt sport arises spontaneously during competitions between two participants or two teams—competitor A bribes competitor B to win. Or even competitor A would bribe opponent B to agree to help them win over a third opponent. Such corruption is not planned and occurs when the opportunity to win accidentally arises during a sporting event.

It is a petty (as opposed to severely criminal) corruption that distorts sports results without endangering someone's life and creating substantial social problems. For example, in long-distance races such as the Tour de France, in some circumstances, the victory in the stage takes place between two riders who finish ahead; eventually, one rider bribes the others. In addition, there is spontaneous cooperation between rivals in sports competitions.

In a football match, the players of the two teams talk to each other - just like two cyclists at the end of a stage - or simply signal to their opponents, aimlessly and lazily hitting the ball, that they are ready to make less effort and record the result. Such corruption usually involves cash payments. Winning the Tour de France will «cost» within 100,000 euros.

The specific amount will depend on the circumstances of the race and the type (mountain or not) of the stage. This type of corruption occurs between sports insiders; none of the corrupt employees work outside the sports industry. Sports insiders are athletes/players, coaches, referees,

and sports managers from the club level to international sports governing bodies (Maennig, 2006).

The next type of petty corruption in sports, which is also a place among insiders but has a non-monetary nature - is barter corruption. In such a barter exchange, the corrupt athlete or team A, which is on the verge of declining in the sports hierarchy and therefore absolutely in need of a victory, offers the athlete or team B to allow it to win; the ill-gotten gains are not paid in cash, and later with some of the planned losses taken by A in subsequent matches against B. Barter corruption is difficult to detect because there are no cash flows or temporal indicators. At the same time, there are specific methods of seeing this type of sports corruption (Duggan and Levitt, 2001).

For example, it was possible to detect abuses in Japanese sumo wrestling through meticulous analysis of a significant number of fights. Traditionally, the reward for wrestlers is paid for consecutive systemic victories of several matches in a row. The research carried out by journalists made it possible to identify a disproportionate share of battles won first by some wrestlers for the award and then by others (Maennig, 2006).

It is much more challenging to combat grassroots corruption because it is important to conduct educational activities to educate people interested in sports corruption and unacceptable attitude to corruption offenses. In particular, in this aspect, it is necessary to note the positive experience of the International Criminal Police Organization (Interpol), which developed the program «Fair Sports». The essence of this program is to educate and train key people in sports, how to recognize, resist and report on attempts to bribe or falsify the results of matches; improve the training of law enforcement agencies to investigate corruption offenses or match-fixing. The program includes tools to protect sports from corruption, including national and regional seminars and e-learning modules (Trubitsyna, 2016).

Also, according to foreign experience, the attention of the public and the media to the problem of sports corruption is essential. Corruption can go unnoticed due to the «blindness» of sports journalists, who may be either naively fascinated by the beauty of sports, immersed in daily journalistic routine, or maintain neutrality through symbolic and material gifts from athletes, sports clubs, and organizations. However, for the most part, sports journalism involves efforts to obtain complete information and technically perfectly reproduce modern sports (Numerato, 2012).

An example of a successful journalistic investigation that uncovered corruption abuses is that in 2012 the American L. Armstrong was disqualified for doping and annulled all his results since his return to cycling in 1998. In January 2013, the athlete publicly acknowledged the use of illicit drugs and multiple blood transfusions (The Outstanding Racer Turned Out to Be a Deceiver, 2021).

Journalists of the program «STOP Corruption» revealed the corruption schemes of the President of the Football Federation of Ukraine, A. Pavelko. Every year, the Union of European Sports Organizations allocates 6 million euros to Ukraine within the framework of the Hat-Trick social program for the construction of football fields with artificial turf. These funds are enough to build 300 venues across Ukraine every year, but the Football Federation has decided to dispose of European millions differently.

In particular, the president of the Football Federation of Ukraine, A. Pavelko, decided to build a plant to produce artificial turf for football fields instead of building playgrounds. In 2016, the federation established a limited liability company, «FFU-Production,» and spent 8 million euros on a social program to construct this plant. As a result, domestic coverage turned out to be more expensive than foreign counterparts (Journalists uncovered FFU President Andrei Pavelko's corruption schemes, 2019). According to the Swiss journalist, the president of the Ukrainian Football Association was confident of his inviolability.

However, something went wrong, and he was forced to sign a secret agreement, pay a fine, and even resign from the Disciplinary Committee of the International Football Association, of which he was a member (European journalists have revealed the contents of Palvelki's secret deal with FIFA, 2021). Thus, the role of journalists in combating sports corruption is significant.

Conclusions

Thus, the authors found that at the international level, they have developed a specialized legal framework for combating sports corruption: the International Convention against Doping in Sport, the Council of Europe Convention against Manipulation of Sports, the Council of Europe Convention on Integrated Security, Protection and services during football matches and other sporting events, etc. According to the results of the analysis of these international conventions, the approach proposed in them mainly consolidates measures to combat corruption.

Instead, in our opinion, it is more appropriate to apply measures to prevent corruption in the sports industry. The importance of implementing measures to combat sports corruption in specific areas is tackling corruption in international sports organizations and grassroots sports corruption. It is proposed to fight corruption in international sports organizations by introducing transparency mechanisms, delimitation of administrative and financial functions of international sports organizations, and developing corporate culture. Regarding the fight against grassroots corruption in the sports field, educational activities and active participation of the media in conducting anti-corruption investigations are essential for this.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 377-402
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Criminal law and forensic support in the fight against cybercrime

DOI: https://doi.org/10.46398/cuestpol.4073.20

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Abstract

The article analyses legislation and scientific work on combating cybercrime based on the use of a set of general and special methods, methodological principles and approaches of legal science. It is concluded that with the introduction of the term "cybercrime" in the criminal law of Ukraine, the use of the term "cybercrime" becomes relevant, which should be understood as a socially dangerous crime in cyberspace, a responsibility that is provided for by the Ukrainian law on criminal responsibility and that is also recognized as a criminal offense by international treaties that regulate the matter. Emphasis is placed on the desirability of making appropriate terminological changes in the Law of Ukraine "On the Basic Principles of Cyber Security" and other regulations, as well as taking other systemic measures at the conceptual and organizational level, to identify the main cybersecurity threats and formulate measures to prevent and investigate them, determine a single body for the operational management of all entities whose task is to ensure the cybersecurity, create a system

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Recibido el 16/03/2022 Aceptado el 28/04/2022

of technological means of the national cybersecurity system and establish closer international cooperation.

Keywords: information space; cybersecurity; cybercrime; criminal liability; classification of crime.

Derecho penal y apoyo forense en la lucha contra el ciberdelito

Resumen

El artículo analiza la legislación y los trabajos científicos sobre la lucha contra el delito cibernético sobre la base del uso de un conjunto de métodos generales y especiales, principios metodológicos y enfoques de la ciencia jurídica. Se concluye que con la introducción del término "delito cibernético" en la ley penal de Ucrania, cobra relevancia el uso del término "delito cibernético", el cual debe entenderse como un delito socialmente peligroso en el ciberespacio, responsabilidad que está previsto por la ley de Ucrania sobre responsabilidad penal y que además está reconocido como un delito penal por los tratados internacionales que regulan la materia. Se hace hincapié en la conveniencia de realizar los cambios terminológicos apropiados en la Ley de Ucrania «Sobre los principios básicos de la seguridad cibernética» y otras regulaciones, así como tomar otras medidas sistémicas a nivel conceptual y organizacional, para identificar las principales amenazas de seguridad cibernética y formular medidas para prevenirlas e investigarlas, determinar un órgano único para la gestión operativa de todas las entidades cuya tarea es velar por la ciberseguridad, crear un sistema de medios tecnológicos del sistema nacional de ciberseguridad y establecer una cooperación internacional más estrecha.

Palabras clave: espacio de información; ciberseguridad; ciberdelincuencia; responsabilidad penal; calificación de delito.

Introduction

The global computerization of modern society affects all spheres of human life and the economy, data transmission via the Internet, electronic signatures, key certification, electronic transactions and payments have become the object of illegal actions. This gives grounds to claim that «cybercrime» in the XXI century will be one of the most numerous. In this regard, the issue of cybersecurity of the state and society as a whole is relevant.

In Ukraine, information security is one of the most important functions of the state, because the welfare of the nation depends on the information component. Due to socio-economic problems, Ukraine lags significantly behind the countries party to the Convention on Cybercrime. Cyber wars, cyber terrorism, cyber espionage have become commonplace, so crime in the information sphere is a significant threat to national security in the economy.

The degree of latency of cybercrime remains, which is due to industrial cyber espionage, and the most common types of such crimes are carding, phishing, vishing, skimming, shimming, online fraud and others.

The registered array of criminal encroachments in the analyzed area indicates a significant increase in the level of these crimes in recent years and has the following indicators: in 2015 were recorded 598 crimes, in 2016 – 865, in 2017 – 2573, in 2018 – 2301, in 2019 year – 2284, in 2020 – 2701 crimes (Uniform report on criminal offenses by state).

There is no doubt that today the criminogenic situation requires the development and implementation of measures to prevent criminal encroachments on facilities in the use of computers, systems, computer networks and telecommunications networks. Despite the fact that the Parliament of Ukraine has tried to regulate the relations arising in cyberspace, namely adopted the Law of Ukraine «On Basic Principles of Cyber Security in Ukraine», the state is constantly a victim of cyber attacks, in connection with which the issue of combating cybercrime, proper criminal law and forensic support in the fight against these crimes becomes especially relevant.

1. Methodology of the study

For the achievement of the most reliable scientific results, the methodological basis for the development of methods and methods of scientific knowledge, the storage of such a systematic approach to the consideration of vivid problems in the modern social world. In the process of a scientific joke, scientific and special methods, methodological principles and approaches to legal science were victorious. The basis of the preliminaries is the dialectical method, which is the scientific method of developing social and legal manifestations in these conflicts, development and changes, which gave the opportunity to value the specialness of the critical legal situation. Logic-semantic method of vikoristano for a thorough understanding of the understanding of the legal qualifications of cyberzlochin and preliminaries of basic fig.

The historical-legal method made it possible to see the genesis of the science of thought and to understand the victors of the legal age. The systemic-structural method allows for the significant number of nutritional problems, such as the quality of the quality and the implementation of state policy in the sphere of fighting against this type of evil. The statistical method is used in the process of public relations, grouping and analysis of empirical material and estimates of the most important indicators of the current cyber-problem in Ukraine and society.

The obstinacy of the comparative (comparative) method has given the opportunity to see through the foreign lands near the struggle with the common malignancies. Synergetic method that allows to develop the composition of criminal law characteristics of cybersecurity, as well as the importance of criminal law and forensic mechanisms to combat cybercrime, which is visualized in the structures of scientific knowledge.

2. Analysis of recent research

The issue of legal regulation of activities in the field of combating crime is a constant subject of scientific research of criminologists. This is largely due to the fact that the development of society and relations in it are permanent processes. As a result, crime as a form of social practice is constantly improving, acquiring new forms and manifestations. Therefore, society and the state are trying to respond accordingly to these processes of «improvement» and «self-improvement» of crime. One of the forms of such a response is law-making – the creation, amendment or repeal of regulations governing the fight against crime. Their purpose is to regulate various legal ways of social relations in the most vulnerable spheres of social life.

Criminal law policy, as a system-forming element of crime policy, which, in turn, is an integral part of all public policy, solves its narrower tasks aimed at creating an effective mechanism for protecting key public relations, values, benefits and interests and combating crime. criminal remedies in terms of sustainable development of the state (Kozych, 2020).

Today, cyber attacks harm not only individuals and legal entities, but also states. Every year, hundreds of events are held around the world to discuss current cybersecurity issues. New definitions are constantly appearing in literary dictionaries: cyber intelligence, cyber terrorism, cyber espionage, cyberspace, critical infrastructure, and so on. Cybersecurity and the fight against cybercrime in the 21st century are among the most important issues that require in-depth analysis, development and implementation of high-tech solutions to prevent and detect cyber threats.

The issue of developing effective legal mechanisms for the international fight against cybercrime has been reflected in the works of many scholars. Among them, in particular: A. Savchenko (Savchenko, 2001), M. Karchevsky (Karchevsky, 2017), E. Skulish (Skulish, 2014), T. Sozansky (Sozansky, 2009), M. Gutsalyuk (Gutsalyuk, 2019), M. Shemchuk (Shemchuk, 2018), D. Richka (Richka, 2019), I. Kozych (Kozych, 2020), A. Sakovsky and M. Klymchuk (Sakovsky and Klymchuk, 2019), O. Samoylenko (Samoylenko, 2020) and others.

At the same time, despite the importance of these and other scientific developments, today there are many problems in the implementation of criminal law policy to combat crime in the use of computers (computer), systems and computer networks and telecommunications networks. In particular, there is no comprehensive criminal-legal analysis of the qualification of crimes in this area, the issues of criminal-legal means of combating cybercrime remain unresolved.

At the same time, the issues concerning the procedural capabilities of the operational units of the National Police of Ukraine and other law enforcement agencies in documenting the illegal behavior of persons who have committed cybercrimes remain insufficiently researched. Within the framework of reforming criminal procedural and operational-search legislation, the problems of detailing legislation that would reflect the provisions of the Convention on Cybercrime on obtaining electronic evidence, restricting (blocking) certain information resources (information services), specific conditions for searching and retrieving digital (electronic) evidence.

The above indicates the relevance and timeliness of the chosen topic of the scientific article.

The purpose of the article is to determine the legal nature of cybercrime, the peculiarities of the regulation of legal provisions on this category of crimes. On this basis, it is important to identify the root causes and forms of cybercrime, to develop appropriate ways to combat the criminal law and forensic level.

3. Results and discussion

3.1. International policy to influence cybercrime

From the point of view of the fundamental legal doctrine – cybercrime consists of criminal acts committed with the help of electronic information and communication means. In other words, cybercrime can be any traditional offline crime (such as theft, fraud, money laundering), but

committed on the Internet. Some researchers also single out «hybrid» or «cyber-driven» crimes and cyber-dependent crimes, which have only been made possible by the development of the Internet and related digital technologies.

A number of countries have developed special laws aimed at combating cybercrime. For example, Germany, Japan and China have amended the relevant provisions of their criminal codes to describe and combat cybercrime. Some countries, instead of dividing cybercrime into separate criminal acts, have simply added specific clauses to their national legislation and codes to criminalize the illicit use of digital technology to commit any crime. This approach has resulted in the offender being charged with two crimes at the same time (Cybercrime, Legal Regulation).

Thus, cybercrime as a phenomenon arose solely in the evolution of computer and information technology, and the purpose of criminals is personal and corporate data, which in themselves are valuable or through which criminals can illegally seize money, intangible assets or property or non-property rights etc. Today, there are many types of cybercrime, among which the biggest threats are: online fraud, DoSattacks, interface, malware (viruses), carding, phishing, computer espionage, online extremism (which is increasingly classified as cyberterrorism), personal insult or slander, etc.

Most of the crimes listed above are committed not only in the territory or in the virtual space of one particular country, they can also be of a more global interstate or even international nature. In fact, this creates a need for international cooperation, as one of the main problems faced by law enforcement operatives in the investigation of cybercrime is the difficulty in establishing the identity of the offender, his state and territorial location, as well as the rule of law under which the offender can be prosecuted.

The active fight against cybercrime is carried out in the countries of the European Union, where the necessary legal framework for the protection of cyberspace has been created. The European Union's cybersecurity strategy was adopted in 2013. Its peculiarity is that the strategy covered various aspects of cyberspace, in particular, the internal market, justice, domestic and foreign policy. Together with the Strategy, a legislative proposal on strengthening the security of the European Union's information systems was developed and adopted, and the priorities of the European Union's international policy in cyberspace, as defined by the Strategy (EU International Cyberspace Policy), were identified.

At present, only 10 of the 27 countries of the European Union have developed national cybersecurity strategies. Today, the most protected countries are Denmark, Great Britain, Finland, Sweden, France and the Netherlands (EU International Cyberspace Policy).

It should be noted that the terms “cybercrime” and “computer crime” are often used interchangeably. However, it is the term cybercrime that best reflects the essence of this phenomenon.

The Law of Ukraine “On the Basic Principles of Ensuring Cyber Security of Ukraine” defines cybercrime as a set of cybercrimes. And cybercrime (computer crime) – as a socially dangerous crime in cyberspace and / or with its use, liability for which is provided by the law of Ukraine on criminal liability and / or which is recognized as a crime by international treaties of Ukraine (The Law Of Ukraine “On The Basic Principles Of Ensuring Cyber Security Of Ukraine”, 2017). Thus, today in the legislation of Ukraine there is no clear definition of the concept of “cybercrime”.

The European Convention on Cybercrime outlines a range of socially dangerous acts that may fall under the concept of «cybercrime» at the national level, including illegal access to a computer system, illegal data interception, intrusion into the system, device abuse, forgery and fraud, related to computers; offenses related to child pornography; infringements related to copyright and related rights.

Characteristic features of these crimes are the following: the need for widespread use of special knowledge in the detection and recording of traces of crime in electronic form; organization and transnational character, as national borders are not an obstacle to this phenomenon; information stored in computer systems is short-term; the ability to destroy or alter computer information; detection, recording and retrieval of evidence is a complex process; high level of technical support of offenders; high degree of anonymity; high latency due to the reluctance of victims to inform about such crimes due to distrust in the potential of law enforcement agencies; lack of sustainability of cybercrime due to the constant improvement of computer technology.

It is worth noting that the Council of Europe Convention on Cybercrime is the only binding international instrument in the field of combating cybercrime (Cyber Crime Convention, 2001). It contains a set of basic principles for any country, develops national legislation to combat cybercrime. However, the classification given in the Convention, according to some Western and domestic researchers, is not comprehensive. Initially, the Convention cybercrime was divided into four groups.

Then, in early 2002, a protocol was adopted in addition to the Convention, which supplemented the list of crimes by disseminating racist and other information that incited violence, hatred or discrimination against an individual or group of persons based on racial, religious or ethnic origin. With the development of scientific and technological potential and public relations in cyberspace, this list will, unfortunately, expand. In addition, the crimes listed in the Convention are related to some, but not all, actions that encroach on public safety.

In the report of the Home Affairs Committee of the British Parliament on cybercrime in 2013, cybercrime is divided into three categories:

- exclusively cybercrime, where digital systems are the main target, are also a means of encroachment. This category includes assault on computer systems to destroy the infrastructure of Internet technologies and illegal possession of data;
- existing crimes that have been translated into cybercrime due to the use of the Internet;
- use of the Internet for drug trafficking and as an auxiliary tool for other crimes (Home Affairs Committee E-Crime Fifth Report Of Session, 2013–2014).
- The joint communication of the European Commission in 2013 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions also reveals cybercrime through three main categories:
- traditional types of crimes (for example, fraud, forgery of documents, etc.) committed with the use of electronic communication networks and information systems;
- placement of illegal content in electronic media;
- attacks on information systems, blocking of software of sites and hacking (Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and The Committee Of The Regions, 2013).

Most researchers studying the problem of cybercrime suggest dividing cybercrime into types depending on the object and subject of the attack. The most common divisions as an option are computer crimes and crimes committed with the help of computers, computer networks and other devices to access cyberspace. This position is supported by the fact that the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which considered measures to combat computer-related crime, considered the concept of cybercrime from two perspectives: cybercrime in the "broad" and "narrow" sense.

Cybercrime in the narrow sense (computer crime): any illegal act committed through electronic operations, the purpose of which is the security of computer systems and the data they process. Cybercrime in the broadest sense (as a computer-related crime): any wrongful act committed with the help of computers or involving computers, computer systems or networks, including the illegal possession and supply or dissemination of information through computer systems or networks.

However, the report of the same Congress states that the term "computer crime" was developed to cover both completely new forms of crime targeting computers, networks and their users, and more traditional crimes that are currently committed using or using computer equipment (Tenth United Nations Congress for Crime Prevention and Treatment, 2000).

In addition, the UN Secretary-General's statement "Findings of a study on effective measures to prevent and combat high-tech and cybercrime" uses the term "traditional crime": "The use of new technologies for criminal purposes has led to completely new forms of crime. On the other hand, more traditional crimes are now being committed by new methods that increase the benefits or reduce the risks for criminals (UN Economic and Social Council. Commission For the Prevention of Crime and Crime, 2001).

Foreign scholars, such as Dr. Mike McGuire and Samantha Dowling (England), also believe that cybercrime is a general term used to describe two different but closely related crimes: cyberdependent and cybercrime (cybercrime).

Crimes committed with the use of computers, computer networks or other forms of communication and information technology. Such as spreading viruses and other malware, DDoS attacks, hacking servers to capture network infrastructure or web pages. Such crimes are aimed at damaging computers and network sources.

Cybercrime is a traditional crime that is exacerbated or achieved through computers, computer networks, or other information and communication technologies. They can still be done without the use of information and communication technologies (McGuire and Dowling, 2013).

It can be argued that doctrinal approaches to understanding the concept of cybercrime are different. However, it is worth noting that despite the available alternative definitions, it is the term cybercrime that best reflects the essence of this phenomenon.

According to the classification of cybercrime, it can be concluded that most researchers studying the problem of cybercrime suggest dividing cybercrime into types depending on the object and subject of encroachment: new crimes made possible by the latest computer technology (crimes under Chapter XVI of the Criminal Code of Ukraine); traditional crimes committed with the help of computer technology and the Internet.Legislation on cybercrime, the development of modern mechanisms for identifying and identifying the perpetrators of cyberattacks and the responsibility for the offense should play an important role in preventing an increase in the number of cyberattacks at the national level.

In a global sense, cybersecurity is the implementation of measures to protect networks, software products and systems from digital attacks.

3.2. National mechanisms for combating cybercrime in Ukraine

In Ukraine, at the legislative level, relevant laws and regulations are adopted that regulate relations in this area. As of the end of 2020, the legal basis of cyber security of Ukraine includes the following regulations: the Constitution of Ukraine, the Criminal Code of Ukraine, the laws of Ukraine «On the basic principles of cyber security of Ukraine», «On information», «On information protection in information and telecommunications systems»,»On the Fundamentals of National Security» and other laws, the Doctrine of Information Security of Ukraine, the Council of Europe Convention on Cybercrime and other international treaties, the binding nature of which was approved by the Verkhovna Rada of Ukraine.

To effectively combat cybercrime in Ukraine, following the example of foreign countries, it would be necessary to: create a political basis (conceptual level), improve the system of legislation (legislative level), identify a system of bodies whose main functions would be cyber defense of Ukraine (institutional level). One of the first steps towards creating a political basis was the adoption of the Presidential Decree «On the decision of the National Security and Defense Council of Ukraine of January 27, 2016 «On the CyberSecurity Strategy of Ukraine».

The main purpose of this Strategy is to ensure safe conditions for the use of cyberspace, protection of the interests of the individual, society and the state. Taking into account all the positive and negative sides of the Strategy, Ukraine must create a large high-tech system to ensure the reliability and security of communications in the information sphere (On The Cyber Security Strategy Of Ukraine, 2016).

Adopted on October 5, 2017, the Law of Ukraine «On Basic Principles of Cyber Security of Ukraine» defines the legal and organizational framework for protecting the vital interests of man and citizen, society and the state, national interests of Ukraine in cyberspace, main goals, directions and principles of state policy in cybersecurity , the powers of state bodies, enterprises, institutions, organizations, individuals and citizens in this area, the basic principles of coordination of their activities to ensure cybersecurity (Law Of Ukraine «On Basic Principles Of Cyber Security Of Ukraine»). Undoubtedly, this Law establishes general provisions and defines the main aspects of cybersecurity in Ukraine, but this Law is not a legal tool for practical application in the event of cyber attacks.

According to paragraph 5, part 1 of Article 1 of the Law of Ukraine «On Fundamentals of Cyber Security of Ukraine» cybercrime (computer crime) – a socially dangerous crime in cyberspace and / or with its use, liability for which is provided by the Law of Ukraine on Criminal Liability and / or which is recognized as a crime by international treaties of Ukraine. This law also specifies the objects of cybersecurity, cybersecurity and critical

infrastructure, which are subject to cybersecurity, and the legislator defines the subjects of cybersecurity protection and their powers (Law Of Ukraine «On Basic Principles Of Cyber Security»).

Cybercrime is cross-border in nature, so most states are interested in stopping actions against the leakage of personal data of their citizens on the Internet, and are interested in reducing the number of cyber attacks that interfere with public authorities, hospitals, banks and businesses. In fact, there is a high probability of going unpunished by seizing information that is a state secret, funds from well-known world companies through cyberattacks and interfering in the election process of another country.

Therefore, the effective fight against cybercrime requires greater, faster and more effective international cooperation, and therefore there is a need to unite countries to jointly fight cybercrime in the world (Tkachuk, 2020).

An important piece of legislation that plays a key role in the system of measures to combat cybercrime is the Convention on Cybercrime of November 23, 2001, which was ratified in Ukraine, provides for four groups of crimes involving the use of computer technology as a tool to commit them. The first group includes crimes against the confidentiality, integrity and availability of computer data and systems (illegal access, illegal interception, influence on data, influence on the functioning of the system, as well as illegal use of devices and computer programs). The second group includes crimes related to the use of computer tools (forgery, fraud). The third group includes crimes related to the content of the data. The fourth includes crimes related to copyright and related rights (Cyber Crime Convention, 2001).

In our opinion, the Directive on Network and Information Security, which sets out the general approach and rules of the European Union in the field of cybersecurity (Directive Of The European Parliament And The Council Of The European Council, 2016), needs to be implemented into national legislation. This document is aimed at intensifying cooperation on cybersecurity between the countries of the European Union. We believe that confidential data is the main target of cybercrime attacks.

The General Data Protection Regulation (GDPR) can also be considered a cybersecurity legal standard. After all, in the case of compliance with the requirements of the Regulations, the level of protection of personal information in the digital environment is significantly increased. Therefore, an important task for most countries in the coming years is to develop ways to implement the accepted norms in the field of cybersecurity in practice, which will help reduce cybercrime in the world.

In Ukraine, cybersecurity policy is entrusted to a number of government agencies, namely the State Service for Special Communications and Information Protection of Ukraine, the National Police of Ukraine, the

Security Service of Ukraine, the Ministry of Defense of Ukraine and the General Staff of the Armed Forces of Ukraine, intelligence agencies, the National Bank of Ukraine. Relevant subdivisions operate in each of these bodies.

Despite the large number of criminal proceedings, the Cyberpolice Department does not announce the real results of such investigations. Indicating in the report the number of identified offenders in the amount of 800 people, there is no information about the number of actual sentences against these people and bringing them to justice. It is not clear from the report whether all these individuals have been declared suspects, whether charges have been filed and in what status they are (Nikulesko, 2019).

According to the Convention on Cybercrime, cybercrimes are conditionally divided into four types. The first type includes offenses against the confidentiality, integrity and availability of computer data and systems. This type of cybercrime includes all crimes against computer systems and data (for example, intentional access to a computer system or part thereof; intentional damage, destruction, deterioration, alteration or concealment of computer information; intentional commission, not having the right to manufacture, sell, purchase for use, distribute or otherwise make available devices, including computer programs).

The second type of cybercrime includes computer-related offenses. Such crimes are characterized by an intentional act that results in the loss of another person's property by any introduction, alteration, destruction or concealment of computer data or any interference with the operation of a computer system, with fraudulent or dishonest acquisition, without having to it is a right, an economic advantage for oneself or another person.

The third type of cybercrime covers offenses related to content (content), which is the commission of intentional illegal acts to produce, offer or provide access, distribution of child pornography, as well as possession of such files in their system.

The fourth type is intentional actions related to infringement of copyright and related rights, in accordance with the requirements of the Berne Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Agreement, as well as national legislation of Ukraine.

There are also other classifications of cybercrime, but the proposed convention is the most popular.

3.3. Criminal law mechanisms of fight against cybercrime in Ukraine

The main articles of the Criminal Code of Ukraine, which investigate cybercrime in Ukraine: Art. 176 «Infringement of copyright and related rights»; Art. 190 «Fraud»; Art. 361 «Unauthorized interference in the work of electronic computers (computers), automated systems, computer networks or telecommunication networks»; Art. 361-1 «Creation for the purpose of use, distribution or sale of malicious software or hardware, as well as their distribution or sale»; Art. 361-2 «Unauthorized sale or dissemination of restricted information stored in computers, automated systems, computer networks or on such media»; Art. 362 «Theft, misappropriation, extortion of computer information or its acquisition by fraud or abuse of office»; Art. 363 «Violation of the rules of operation of automated electronic computer systems»; Art. 3631 «Interference with the operation of electronic computers (computers), automated systems, computer networks or telecommunication networks through the mass dissemination of telecommunication messages».

In Ukraine, the most complete statistics on cybercrime are reflected in the departmental statistical reporting of the National Police of Ukraine, in particular in the Report on the results of the National Police, where, in addition to crimes under Ch. XVI of the Criminal Code, designated and others committed with the use of electronic computers: "Infringement of copyright and related rights" (Article 176); "Theft" (Article 185); "Fraud" (parts 3 and 4 of Article 190). This category also includes crimes under Articles 200, 229, 231, h. 3, 4 and 5 of Art. 301 of the Criminal Code of Ukraine (Criminal Code of Ukraine).

In addition, certain indicators of cybercrime under other articles of the Criminal Code are reflected in other statistical reports, in particular the crimes under Art. 3761 "Illegal interference in the work of the automated document management system of the court" – in the Unified Report on Criminal Offenses, which is prepared by the Office of the Prosecutor General of Ukraine.

Section II "Participation of services and units of the National Police in the disclosure of criminal offenses (by type), the pre-trial investigation of which is completed" reflects the results of disclosure (investigation) of criminal offenses under the Criminal Code: "Forgery of documents, seals, stamps and forms, as well as the sale or use of forged documents, seals, stamps"; Crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, etc. Thus, not all traditional crimes committed with the help of computer technology and the Internet are reported as cybercrime.

Some Ukrainian scientists consider cybercrime to be crimes under Articles XVI of the Criminal Code and crimes, the indicators of which are reflected in the report of the National Police of Ukraine.

However, some scientists, in particular Professor AV Savchenko, believe that in addition to the offenses listed in the report, the category of cybercrime may include others under the Criminal Code of Ukraine, provided that the tool for their commission were information network technologies and (or) their consequences will be reflected in cyberspace (Savchenko, 2001).

Cybercrime may include the following: acts aimed at forcible change or overthrow of the constitutional order or the seizure of state power (Article 109); encroachment on the territorial integrity and inviolability of Ukraine (Article 110); treason (Article 111); sabotage (art. 113); espionage (art. 114). The acts provided by such articles of the Criminal code can be carried here also: 132; 145; Part 1 of Art. 158; 159; 161; 163; 168; 182; 232; 259; 263; 295; 300; 303; 307; 312; 313; 328; 330; 345; 3451; Part 1 of Art. 346; Part 1 of Art. 350; Part 1 of Art. 376; 381; 387; Part 1 of Art. 398; 422; 436 (Criminal Code of Ukraine).

The object of cybercrime is public relations, which are harmed by the impact on information circulating in cybernetic systems. The subjects of computer crimes are multifaceted and are determined depending on the norm of the article that falls under the act, but unites them one – they are information that, in various forms, circulates in computer networks, systems and computer networks, telecommunication networks (Richka, 2019).

In our opinion, certain provisions of the legislation should be unified in order to avoid misunderstandings in the definition of acts that fall under the characteristics of crimes in the use of computers, systems and computer networks and telecommunications networks and cybercrime as a whole. Based on the existence in the Convention on Cybercrime and the Law of Ukraine «On Basic Principles of Cyber Security of Ukraine» of the concept of «cybercrime (computer crime)», it is necessary to change the title of Chapter XVI of the Criminal Code of Ukraine «Crimes in the use of computers, systems and computer networks and telecommunication networks «on» Cybercrime».

It is also worth pointing out certain problems with the qualification of cybercrime. According to experts, the main criterion for distinguishing the crimes provided for in Articles 361363-1 of the Criminal Code from others related to the use of computer equipment as a tool or means of committing a crime is the object of encroachment. Thus, the peculiarity of the criminal qualification of crimes against property committed with the use of computer equipment is the need to address the issue of the appropriateness of additional qualification of the perpetrator's actions under articles providing for liability for crimes in the use of computer equipment.

In this case, it should be guided by the fact that the use of computer equipment in committing crimes against property forms an independent crime only when certain damage is caused to the object – the relationship of ownership of computer information, when certain information was illegally destroyed, blocked, modified. And in those cases when certain information systems are used for their intended purpose, additional qualifications are not needed (Gutsalyuk, 2019).

There is also now a problem of criminal qualification of actions that computer users perform in the field of cryptocurrency circulation and the use of artificial intelligence.

Thus, in March 2018, researchers from RWTH Aachen University (Germany) found that the Bitcoin blockchain contains about 1,600 files, where there are scenes of child abuse, with at least 8 files with pornographic content. The blockchain contains external links to 274 video files on child abuse and about 142 links to darkweb. According to scientists, the finding may outlaw the blockchain, but today there are no court rulings in this regard, apparently due to the complexity of criminal law. Anyone who participates in the Mining procedure or owns bitcoins can be involved in the appearance of pornographic content on the network (In Bitcoin Blocks Found Trace Of Child Pornography, 2018).

In practice, law enforcement and judicial officials have many problems qualifying cybercrime. This is especially true in cases of committing this type of crime, encroaching on several objects protected by criminal law.

Most often, errors are found in the qualification of one act, which, at first glance, contains signs of several types of crimes. Thus, the main problem here is to determine the presence or absence in the perpetrator of an ideal set of crimes.

During the commission of a cybercrime, damage may be inflicted on: 1) public relations arising in the course of ensuring (with the help of information and telecommunication systems) the vital activity of a person, society, or the state; 2) traditional public relations, which are provided by information and telecommunication systems; 3) traditional public relations, protected by law, for the harm of which information and telecommunication systems are used, which are not harmed.

The first group of relations is protected by Section XVI of the Special Part of the Criminal Code. These relations are part of the second and third groups of relations, but in the second group they are harmed together with the traditional relations of criminal law protection, and in the third - no.

The ideal set of crimes is considered to be two or more crimes committed in one act. According to the specified groups of relations which are harmed at commission of such act in case of commission of a cybercrime,

it is possible to allocate three groups of these crimes which will have the features of qualification according to the operating Criminal code: 1) crimes in the sphere of use of computers, their systems, computer networks , telecommunication networks; 2) crimes qualified under the relevant article of the Criminal Code based on the object of encroachment with additional reference to the articles of Chapter XVI of the Criminal Code; 3) crimes qualified under articles of the Criminal code according to object of encroachment without the additional reference to articles of section XVI of the Criminal code of Ukraine.

That is, actions with the first and third groups are single crimes, and with the other – an ideal set of crimes. But in the practice of applying the provisions of the Criminal Code in combating cybercrime, acts belonging to different of these groups are often confused. Most often, crimes of the second group are classified under only one article, and vice versa, crimes of the first or third group are classified under several articles, although they do not require additional qualification.

Thus, the article is applied at qualification of the second group of crimes or from section XVI of the Criminal code, or another - according to direct object of encroachment. It is obvious that in both cases the part of the crime of qualification is not covered, which violates the principles of completeness and accuracy of qualification, and in the case of qualification of one act containing one crime under two articles, the principle of prohibition of double incrimination is violated.

As the generalization of judicial practice shows, a significant part of cybercrime occurs in cases where the encroachment on the use of information and telecommunications systems is carried out for selfish motives to steal or seize someone else's property with material damage and is a way to commit property crimes such as fraud (Article 190 of the Criminal Code of Ukraine) or misappropriation or seizure of property through abuse of office (Article 191 of the Criminal Code of Ukraine). In most cases, courts classify the following actions as a set of crimes: under Article XVI of the Criminal Code and the article that provides for liability for a specific crime against property, the method of which was the use of information and telecommunications systems.

However, in some cases, the courts classify these actions only under the articles of Chapter XVI of the Special Part of the Criminal Code of Ukraine.

The authors of the generalization believe that in the latter case, since E. repeatedly fraudulently seized funds through illegal transactions using computer technology, and interference in the work of computer technology is a way of committing a crime against property, such actions need additional qualifications Art. 190 of the Criminal Code of Ukraine (fraud). We believe that there really is a set of crimes, but it is already taken into account in the

Criminal Code in Part 3 of Article. 190, therefore, qualification under this norm is required without additional references to the norms of the Criminal Code (Hrytsiv, 2007).

One of the common problems of criminal law qualification is the question of the qualification of the ideal set of crimes, namely the absorption of one crime by another, which was part of it. This problem still requires a solution by scientists. In particular, T. Sozansky formulates a rule in relation to crimes that have additional objects of encroachment: a set of crimes. " But it is further pointed out that it is quite difficult to determine when an object is additional and when it becomes the main one, especially when assessing cybercrime. He proposes, as an option to address this issue, to determine the public danger of encroachment on the relations that are protected by these objects. If the social danger of the relations protected by the additional object is greater than the main object, then the act forms an ideal set (Sozansky, 2009).

In our opinion, Section XVI of the Criminal Code of Ukraine should be supplemented with qualifiers for committing computer crimes by organized groups and criminal organizations, increasing criminal liability for use of official position, not only to Article 362 of the Criminal Code, but also to other provisions of the section. It is advisable to qualify according to the set of norms of the Criminal Code under Article XVI of the Criminal Code and Article 255 of the Criminal Code of Ukraine and against the background of increased public danger.

We also share D. Richka's point of view that in connection with the emergence of new types of computer crimes, the provisions of the Criminal Code of Ukraine should be supplemented with the following crimes: in the field of financial crimes: skimming, cash trapping, carding; in the field of e-commerce and economic activity - phishing; in the field of intellectual property: piracy, cardsharing; crimes in the field of information security (Richka, 2019).

Also, according to M. Karchevsky, the lack of legal certainty regarding the use of cryptocurrency has a negative impact on the prospects for the development of the IT sector of the economy. This sector is developing most dynamically and is promising given the significant investment in Ukraine's economy. The legal ban on the use of cryptocurrency in Ukraine will not solve these problems, but only create new ones, as Cryptocurrency will be increasingly used by criminals and corrupt people precisely because of its illegal status, while the opportunities for law enforcement, for the same reason, will be significantly limited (Karchevsky, 2017).

At the same time, it should be emphasized that the main issue of criminal law regulation in the field of information resource formation is a clear and consistent definition of the limits of opportunities for effective influence on

public relations by means of criminal law. The multidimensionality and scale of the damage from the uncontrolled information space is beyond doubt. However, it is hardly expedient to solve these problems by supplementing the Criminal Code with new norms.

Proposals to impose penalties for various forms of manipulation of public consciousness are controversial due to the projected inefficiency and declarativeness, their inconsistency with the principles of criminal-political adequacy, as well as the proportionality of positive and negative consequences of criminalization. In addition, the spread of global information technology in general makes methods of restricting or banning content less effective. The solution of the problem is beyond the scope of criminal law regulation and, in our opinion, involves, first of all, systematic work in the field of education and the formation of competitive information products (Karchevsky, 2017).

The growing trend of cybercrime and the trend of «lagging behind» social and legal control over it create an extremely great civilizational threat, which can be overcome only through an organic combination of criminal law and forensic strategies to combat this type of crime. Moreover, as E. Skulish rightly points out, an important component of such a strategy should be more transparent and operational international cooperation in this area, as it is already obvious that it is impossible to control the transnational component of cybercrime and cyberterrorism at the state level. In fact, this set of problems must be addressed immediately by the international community in the XXI century (Skulish, 2014).

In the modern information society, where cyber threats are widespread and will continue to spread, it is important to constantly and systematically, in a timely manner to take effective measures to combat cybercrime, as well as to improve its methods and forms of prevention. This applies to almost all spheres of public and state life, business and socio-humanitarian environment. Given Ukraine's course to enter the global information space, V. Shemchuk expressed the belief that a national model for cybersecurity of enterprises, institutions and organizations, including non-governmental ones, needs to be built; coordination of efforts and interaction of law enforcement agencies, special services, the judiciary, as well as their proper staffing and logistics, exchange of information on the prevention and fight against cybercrime (Shemchuk, 2018).

It should be noted that in order to fulfill its obligations to the European Union, Ukraine is currently carrying out an unsystematic rule-making process by amending and supplementing existing domestic legislation instead of creating and developing basic regulations in the field of information law. In this light, the process of adaptation of Ukrainian legislation creates even more legal conflicts and gaps in the already imperfect domestic legislative array.

To sum up, cybercrime has become a challenge of the 21st century, which can be combated only through joint efforts and not only at the interstate level, but also within the state within the framework of cooperation between the public and private sectors. Given the cross-border nature of cybercrime, it requires the establishment of law enforcement cooperation in the investigation of cybercrime at the operational level; creating and ensuring the functioning of the mechanism for resolving jurisdictional issues in cyberspace.

Along with the listed areas, the criminal law support of the fight against cybercrime needs to be further improved, the implementation of international standards into national legal norms. In addition, the qualification of cybercrime has its own characteristics that must be taken into account. These and other problems in the fight against cybercrime are far from exhausted, they can be considered at international scientific conferences, as well as be the subject of further research.

3.4. Detection and forensic support in the fight against cybercrime in Ukraine

According to Part 3 of Article 7 of the Law of Ukraine «On operational and investigative activities» detection as a type of activity precedes the investigation (On Operational And Exploratory Activity: Law Of Ukraine, 1992).

Today in Ukraine it is possible to identify such subjects of operational and investigative activities that directly or indirectly detect cybercrimes, such as the National Police of Ukraine and the Security Service of Ukraine.

According to § 3 of the Cyber Security Strategy of Ukraine, the National Police of Ukraine belongs to the National Cyber Security System as a body that protects human and civil rights and freedoms, interests of society and the state from criminal encroachments in cyberspace and implements measures to prevent, detect, stop and disclose such crimes. As subjects of cybercrime detection, structural units of the National Police can be divided into two groups:

1) operational units of the Cyberpolice Department are directly obliged to carry out operational and investigative activities by their own methods in order to combat conventional crimes (responsibility for which is actually provided by Articles 163, 176, 185, 190, 200, 301, 361-363-1 of the Criminal Code of Ukraine) (Criminal Code Of Ukraine).

2) other operational units of the National Police (Department of Criminal Investigation, or Department of Economic Protection, or Department of Counteraction to Drug Crime, etc.) that counteract

other, alternative to the Convention, crimes committed in cyberspace and investigated by investigators of the National Police of Ukraine.

The Department of Cyberpolice in relation to such crimes can only assist in the manner prescribed by applicable law, other units of the National Police of Ukraine in the prevention, detection and cessation of criminal offenses - ensures timely receipt of information about crimes committed in cyberspace or related criminal intent

Units of counterintelligence protection of interests of the state in the field of information security, protection of national statehood of the Security Service of Ukraine. The tasks of the Security Service also include the prevention, detection, cessation and detection of crimes against peace and security of mankind, terrorism, corruption and organized crime in the field of government and economy and other illegal actions that directly threaten the vital interests of Ukraine.

From the standpoint of investigative practice, the procedural procedure for initiating criminal proceedings continues from the moment when the subject of investigation became aware of the source of circumstances that may indicate a criminal offense, until he enters information into the Unified Register of Pre-trial Investigations.

The internal organization of investigators at the beginning of criminal proceedings will depend on two factors: legal and non-legal (organizational). The legal factors that determine the forms of initiation of criminal proceedings are related to the nature of the source of circumstances that may indicate the commission of a certain type of criminal offense. Peculiarities of using the functionality of operative-investigative activity for the purpose of detecting a criminal offense are organizational factors that determine the peculiarities of the form of initiation of criminal proceedings for a particular type of crime (Samoylenko, 2020).

Scholars single out the following main organizational forms of initiating criminal proceedings: 1) criminal proceedings were instituted at the request of the victim / notification of a person about a criminal offense (non-alternative form); 2) criminal proceedings were instituted on the basis of materials of operational units obtained as a result of verification of operational information (alternative form) - recognized the complexity of the implementation of verification materials on minor and moderate crimes, which explains the formality of non-alternative form of proceedings; 3) criminal proceedings have been instituted within the framework of the implementation of the materials of the operational search case (non-initiative form) – its prevalence in relation to crimes committed in cyberspace for political reasons, crimes that violate the established order of certain things; 4) criminal proceedings were instituted as a result of detecting a crime committed in cyberspace during the investigation

of another criminal proceeding (initiative form) – its atypicality was recognized, the investigator detects such crimes, usually by accident (Samoylenko, 2020).

In order for information about the commission or preparation of a cybercrime to have the prospect of a pre-trial investigation, it must be confirmed by reliable sources for the investigator. An important component of providing operational units with evidence in criminal proceedings on the fact of cybercrime is the documentation of relevant facts, which is carried out during both operational and investigative activities, and the implementation of operational units instructions of the investigator, prosecutor to conduct covert investigative (investigative) actions. The main operational search methods for detecting criminal offenses in the field of drug trafficking are as follows: controlled delivery; controlled and operational procurement; establishing confidential cooperation; intelligence survey; operational monitoring.

The result of the documentation is the creation of documents that, after appropriate assessment and verification by the investigator, the prosecutor can be used as evidence in criminal proceedings. Such results can be used both to provide evidence in specific criminal proceedings and for other purposes established by the Criminal Procedure Code and the Law of Ukraine «On operational and investigative activities» (Sakovsky and Klimchuk, 2019).

It should also be noted that the detection of such criminal offenses involves obtaining the most complete and reliable information about the signs of preparation or commission of criminal offenses of this kind by identifying the appropriate media. The main means of gathering evidence in the field of criminal justice are investigative (search) actions. The Criminal Procedure Code of Ukraine explicitly states in Art. 93, which states that the prosecution collects evidence by conducting investigative (investigative) and covert investigative (investigative) actions, and the defense, the victim, a representative of the legal entity in respect of which the proceedings may initiate them by submitting to the investigator, prosecutor relevant petitions (Criminal Procedural Code Of Ukraine, 2012).

In the course of such an investigative (search) action as a search, there is a need for qualified detection, recording and removal of such information or its media, taking measures to prevent external (external) influence on electronic traces of crime (eg, power outages, remote access to files and system management, etc.), readiness of investigative bodies to promptly conduct investigative (search) actions in other places where digital information may be stored.

In our opinion, which is based on the results of the relevant survey of practitioners, specific conditions for the search and seizure of electronic

evidence should be introduced. First of all, we see the need to determine the procedurally significant possibility of copying data. Articles 16-18 of the Cybercrime Convention need to be introduced into domestic law, namely the immediate recording and subsequent storage of data by operators, telecommunications providers, hosting providers, resource owners (website, web pages, etc.) to ensure their integrity.

The implementation of the provisions of Article 19 (Search and Seizure of Stored Computer Data) of the Convention on Cybercrime will increase the effectiveness of cybercrime investigations by strengthening the ability to copy, retrieve and block / arrest electronic data. Given the observance of international standards for the protection of owners and users of such information, it is necessary to ensure proper judicial review at the pre-trial stage. Therefore, it is expedient to carry out the relevant procedural actions on the basis of the decision of the investigating judge, the court, and the factual data obtained in such ways to be considered admissible evidence in criminal proceedings.

Of course, these are not all the problems that exist in the practice of detecting and investigating cybercrime in Ukraine. Unfortunately, the requirements for the scope of this type of work, such as a scientific article, do not allow for a detailed analysis of this issue. At the same time, it will encourage other scientists to find ways to optimize the investigation of cybercrime.

Conclusions

The scientific article outlines the features inherent in the criminal law qualification of cybercrime, identifies criminal law and forensic mechanisms to combat cybercrime, developed proposals to improve existing legislation.

At the conceptual level, the search for ways to increase the effectiveness of the fight against cybercrime is to resolve conflicts in the field of legal regulation of the information space and create common rules for its use in both private and corporate interests.

With the introduction of the institute of criminal offenses into the national criminal legislation, the terms «cybercrime» and «computer crime» have lost their relevance, which indicates the expediency of making appropriate terminological changes to the Law of Ukraine «On Basic Principles of Cyber Security of Ukraine» and other regulations. part of the use of the term «cyber offense», which should be understood as a socially dangerous crime in cyberspace and / or with its use, liability for which is provided by the law of Ukraine on criminal liability and / or recognized as a criminal offense by international treaties of Ukraine.

Based on the existence in the Convention on Cybercrime and the Law of Ukraine «On Basic Principles of Cyber Security of Ukraine» of the concept of «cybercrime (computer crime)», it is necessary to change the title of Chapter XVI of the Criminal Code of Ukraine «Crimes in the use of computers», systems and computer networks and telecommunication networks «on» Cybercrime».

In connection with the emergence of new types of computer crimes, the provisions of the Criminal Code of Ukraine should be supplemented by the following crimes: in the field of financial crimes: skimming, cash trapping, carding; in the field of e-commerce and economic activity – phishing; in the field of intellectual property: piracy, cardsharing; crimes in the field of information security.

Section XVI of the Criminal Code of Ukraine is also to be supplemented by qualifying bodies for committing computer crimes by organized groups and criminal organizations, increasing criminal liability in the use of official position, not only to Article 362 of the Criminal Code of Ukraine, but also to other provisions of the section. Due to the increased public danger, it is advisable to qualify according to a set of rules – under Article XVI of the Criminal Code of Ukraine and Article 255 of the Criminal Code of Ukraine «Creation, management of a criminal community or criminal organization, as well as participation in it».

Thus, the formation of an effective system for combating cybercrime in Ukraine requires systematic measures at both the conceptual and organizational and legislative levels: at the conceptual level – to identify the main threats to cybersecurity and formulate measures to prevent and prevent them; at the organizational level - to determine a single body for operational management of all entities whose task is to ensure cybersecurity (cyber units of law enforcement agencies) in peacetime, to create a system of technological means of the national cybersecurity system, to establish closer international cooperation; at the legislative level – to implement in national legislation the Directive on Network and Information Security, which sets out the general approach and rules of the European Union in the field of cybersecurity, and in the field of criminal law – to streamline legislation on the use of common terminology. In the information space in order to comply with its international standards.

In order to increase the effectiveness of the investigation of cybercrime by law enforcement agencies of Ukraine: argued the feasibility of active use of operational and investigative sources of information about cybercrime; proved the need to detail the legislation that would reflect the provisions of the Convention on Cybercrime, on obtaining electronic evidence, restricting (blocking) a certain information resource (information service), specific conditions of search and seizure of digital (electronic) evidence.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 403-416
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Procedural and organizational and tactical features of the search

DOI: https://doi.org/10.46398/cuestpol.4073.21

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Abstract

In the scientific article on the basis of the analysis of the current legislation and points of view of scientist's procedural and organizational and tactical features of carrying out search are investigated, essence and maintenance of activity of participants of the specified investigative (search) action is found out. A methodological system is used, which includes the following levels: philosophical, general scientific and special scientific. Emphasis is placed on maintaining a balance between the tasks of protecting the rights of the individual during investigative (search) actions in the home or other property of the person and the effective fight against crime. Based on the analysis of procedural legislation and scientific literature, the rights and responsibilities of the suspect and other participants in the investigative (search) action are summarized. Emphasis is placed on increasing the importance of the investigator in providing procedural guarantees to the person during the search, as well as on improving the tactics of the specified investigative (search) action. Relevant proposals have been submitted to the criminal procedure legislation of Ukraine and to the tactics of conducting a search.

Keywords: investigation; criminal proceeding; investigative (search) actions; evidence; search.

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Recibido el 06/04/2022 Aceptado el 20/06/2022

Características procedimentales y organizativas y tácticas de la búsqueda

Resumen

En el artículo sobre la base del análisis de la legislación actual y los puntos de vista de los científicos, se investigan las características procesales, organizativas y tácticas de la realización de la búsqueda; se encuentra la esencia y el mantenimiento de la actividad de los participantes de la acción (búsqueda) especificada de investigación. Se utiliza un sistema metodológico que comprende los siguientes niveles: filosófico, científico general y científico especial. Se hace hincapié en mantener un equilibrio entre las tareas de protección de los derechos de la persona durante las acciones de investigación (cateo) en el hogar u otros bienes de la persona y la lucha eficaz contra el delito. Con base en el análisis de la legislación procesal y la literatura científica, se resumen los derechos y responsabilidades del sospechoso y otros participantes en la acción de investigación (búsqueda). En las conclsuiones del caso, se hace hincapié en aumentar la importancia del investigador para brindar garantías procesales a la persona durante la búsqueda, así como en mejorar las tácticas de la acción investigativa (búsqueda) especificada. Se han presentado propuestas pertinentes a la legislación de procedimiento penal de Ucrania sobre las tácticas de realizar un registro.

Palabras clave: investigación; proceso penal; acciones de investigación (cateo); prueba; registro.

Introduction

Of particular importance in criminal proceedings are investigative (search) actions that may be carried out in the home or other property of a person, as their conduct is always associated with restriction of constitutional rights to inviolability of housing or other property, privacy, inviolability of property rights. It is during their implementation that the state must create the necessary conditions for the fullest possible realization of constitutional rights, no one should interfere in the field of human rights, except in cases expressly provided by law.

One of the important procedural means of obtaining evidence is a search, the procedure for which is determined by Art. Art. 234 236 of the Criminal Procedure Code of Ukraine. The essence of this investigative (search) action is to forcibly inspect housing, other property of a person, individual citizens in order to find and seize objects relevant to criminal proceedings, as well as to establish the location of wanted persons and their detention.

The main difference between a search and other investigative (search) actions is its coercive and investigative nature (Shepitko, 2007). First of all, it is about the application of criminal procedural coercion, i.e., the set of responsibilities of the participants in criminal proceedings and the implementation of the tasks of the judiciary. The investigator, regardless of the consent of the searched person, will conduct an inspection of the premises and things belonging to him (Byshevets, 2015). The admissibility of such measures is determined only by a reasoned court decision (Constitution of Ukraine, 1996). The law stipulates that no one has the right to enter a person's home or other property for any purpose. This can happen only with the voluntary consent of the person who owns them, or on the basis of the decision of the investigating judge, except in urgent cases provided for in Art. 30 of the Constitution of Ukraine (Constitution of Ukraine, 1996), parts 1, 3 of Art. 233 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code of Ukraine, 2012).

In law enforcement practice, there are numerous examples of non-performance or improper performance of duties by authorized and other professional participants in criminal proceedings during this investigative (search) action, which negatively affects the rights and legitimate interests of other participants in criminal proceedings, achieving each criminal proceeding. Some violations and omissions are the result of imperfect legal regulation of the search procedure, others – incorrect (conscious or unintentional) interpretation of legal provisions by authorized subjects of criminal proceedings, there are many cases of choosing the wrong tactics. These aspects of procedural and organizational and tactical nature actualize their research.

1. Methodology of the study

The methodological basis of the article consists of general and special methods of scientific knowledge, the use of which is determined by the purpose, object and subject of research (Vasylevych *et al.*, 2021). General scientific methods are presented in the work mainly by methods of formal and dialectical logic (analysis and synthesis, methods of induction and deduction, ascent from concrete to abstract and from abstract to concrete, system-structural method and others). The dialectical method provided clarification of the essence and content of the search in the system of investigative (search) actions, rights and responsibilities of its participants.

The formal-logical method was used in determining the basic legal concepts and categories that make up the content of a scientific article, to interpret the concepts of «commonwealth», «housing», «tactics», to identify problems that arise during the search, and develop ways to solution. With

the help of system-structural, formal-dogmatic and hermeneutic methods the analysis of norms of the current criminal procedural legislation and practice of its application, interpretation of provisions of the corresponding normative-legal acts and materials of judicial practice is carried out. The method of theoretical and legal modeling allowed to substantiate the proposals aimed at improving the procedural order and tactics of the search.

2. Analysis of recent research

Various aspects of the researched issues in the criminal process are the subject of scientific works of criminologists and proceduralists of the modern period (Klymchuk, 2021; Ilyuk, 2020; Dyakov, 2016; Budzievsky, 2013; Dekhtyar, 2014; Saltevsky, 2006). Despite the significant amount of research devoted to the search, many issues related to the conduct of this investigative (search) action remain controversial or partially resolved.

These include: the procedural impossibility of conducting a search at the initial stage of the investigation in the absence of sufficient information about the identity of the searched person; identification of things and documents that need to be removed; tactics of simultaneous searches in one criminal proceeding, etc.

The purpose of the article is to study the criminal procedural status of persons involved in the search, highlight the features of tactical and regulatory nature to ensure the constitutional rights of participants in this investigative (investigative) action, the admissibility of their restrictions, identify gaps in legislation that require doctrinal analysis and regulatory settlement.

3. Results and discussion

The main purpose of the search is to identify and obtain documents and items relevant to criminal proceedings. Thus, in accordance with Part 1 of Art. 234 of the Criminal Procedure Code of Ukraine search is conducted in order to identify and record information about the circumstances of a criminal offense, finding a weapon of criminal offense or property obtained as a result of its commission, as well as establishing the location of wanted persons» (Criminal Procedure Code of Ukraine, 2012).

We share the view of some scholars on the need to improve the legal regulation of the search by expanding the purpose of its search – finding other items and documents relevant to criminal proceedings or securing a civil lawsuit (Shevchishen, 2018). After all, this is the goal of the investigator in many cases.

Among the officials authorized to conduct investigative (search) actions in the home, the exclusive role belongs to the investigator. He is a representative of the state and a person who is endowed with state powers, is responsible for the legality and timeliness of the investigative (search) action. During the pre-trial investigation, all investigative (search) actions are performed by the investigator in charge of the relevant materials of the pre-trial investigation.

In particular, in Art. 236 of the Criminal Procedure Code of Ukraine refers to the exclusive right of the investigator and prosecutor to execute a decision on a permit to search the home or other property of a person (Komarnytska, 2016). The Supreme Court in its decision in case № 466/896/17 of 29 January 2019 noted that the Criminal Procedure Code clearly defines the range of persons entitled to be present during the search, and also clearly indicates that the search is authorized to be conducted exclusively by an investigator or prosecutor who has been granted such a right by a court decision.

If the search is carried out by persons other than the investigator or the prosecutor, these actions should be considered a significant violation of the conditions of the search, the results of such a search, in accordance with the requirements of Art. Art. 86, 87 of the Criminal Procedure Code of Ukraine, cannot be used during the adoption of procedural decisions, and the court cannot refer to them as evidence during the adoption of a conviction (case № 466/896/17 of January 29, 2019).

In practice, there are often cases in which the decision of the investigating judge on the permission to search the home or other property of the person indicates the name of the investigator or prosecutor to conduct it. However, the investigator or prosecutor is later joined by a group of self-proclaimed police operatives, joined by a group of prosecutors, masked special forces and machine guns not mentioned in the ruling. What can a person do in such circumstances? Next to nothing. While the investigator reads the decision to the person or gives it to him to get acquainted with himself, the search has already begun.

Often, the person who gives the decision for review is not the investigator specified in the decision, but is only the investigator in the established investigative task force. In this case, in our opinion, the person has the right to request a decision to establish an investigative task force and check whether the decision states the name of the investigator. At the same time, people who are not specified in the resolution are already in the person's home or other property. Thus, in practice, the requirements of Part 1 of Art. 236 of the Criminal Procedure Code of Ukraine are often not enforced.

There are cases when an investigator arrives for the purpose of a search, whose name is not specified in the decision of the investigating judge,

and presents a decision to establish an investigative task force in which he appears, but this decision does not contain any initial data, ie may be printed in an unknown place, and the decision itself is forged. Given the current criminogenic situation in the country, any unknown persons may enter the apartment, who may later kill the owner or cause bodily harm or illegally deprive him of his property.

One of the main participants in the criminal proceedings, who may be invited to conduct an investigative (search) action in the home, is the suspect. In Part 1 of Art. 42 of the Criminal Procedure Code of Ukraine defines a list of grounds for recognizing a person as a suspect, which is exhaustive.

Thus, the suspect has the right to conduct the investigation of the investigating judge's decision on permission to conduct it, to check the proper certification of the decision, the validity of the decision, the correctness of the address, owner (owner) of housing or other property and receive a copy; to check the IDs of law enforcement officers who arrived to conduct an investigative (search) action; require information about other persons involved in its implementation.

Receive legal assistance from a lawyer; to ensure the safety of their lives and health, respect and dignity; demand the replacement of witnesses in case of their interest in the results of criminal proceedings; to use the native language, to receive copies of procedural documents in the native or other language of the person, and if necessary to use the services of an interpreter; voluntarily give out things that are wanted; refuse to answer questions; give explanations or refuse to give them at any time; ask questions, express their suggestions, comments and objections to the search procedure, which are recorded in the minutes; unimpededly record the conduct of investigative (search) action with the help of video (in compliance with the law).

To appeal against decisions, actions or inaction of the investigator, prosecutor; to declare petitions and objections; to get acquainted with the protocol of the search, to demand inclusion in the protocol of all remarks concerning violation of norms of the current legislation during its carrying out; receive a second copy of the search report together with a description of the seized documents and temporarily seized items attached to it; to demand measures to prevent the announcement of the circumstances of his private life revealed during the search; to ensure the safety of property in housing or other property, and the inability of third parties to access it.

During the search of the suspect's home, his responsibilities to ensure the procedural order of the relevant action and the achievement of its purpose by the investigator and prosecutor are also specific. The analysis of the legislation allowed to single out the following responsibilities of the suspect during the search of his home: if there is a request of the investigator, the

prosecutor - must be present during the investigative (search) action; in the case of a decision of the investigating judge on a permit to search a dwelling or other property - to comply with the legal requirements of the investigator, prosecutor regarding the possibility of unimpeded entry into the dwelling or other property; not to interfere with search operations.

If there is a ban, do not communicate with other persons; to leave the place of the search until its completion and to take any actions that interfere with its conduct, without the permission of the investigator or prosecutor; be subjected to a personal search; not to disclose without the permission of the investigator, prosecutor information that became known to him in connection with participation in the investigative (search) action, as well as information that constitutes a secret protected by law; not otherwise interfere with the search.

Taking into account the composition of persons who may be invited to participate in the search, the legislator in the current Criminal Procedure Code of Ukraine pointed to the possibility of involving a lawyer to participate in this action. This possibility meets the requirements of international law, which provide for the right of any person involved in criminal proceedings to seek legal assistance.

The defense counsel's request for his participation in the investigative (search) action must be mandatory for the investigator. A person whose home is searched, regardless of whether he or she is in the procedural status of a suspect or a witness, requires the right to protection. The absence of a report on an investigative (search) action should be considered a significant violation of the right to defense (Milova, 1998). If previously only a suspect could use the right to legal aid during a search at the pre-trial investigation stage, now other persons interested in this investigative (search) action, including the homeowner, can count on it. The investigator, the prosecutor has no right to prohibit the participants in the search to use the legal assistance of a lawyer or representative. Thus, the investigator, prosecutor is obliged to allow such a lawyer or representative to be searched at any stage of its conduct (Part 3 of Article 236 of the Criminal Procedure Code of Ukraine) (Criminal Procedure Code of Ukraine).

An investigator or prosecutor may invite a victim whose procedural status is defined in Art. 55 of the Criminal Procedure Code of Ukraine. The rights and obligations of the victim arise from the moment of filing a statement about the commission of a criminal offense against him or a statement about his involvement in the proceedings as a victim.

Usually, the victim's participation in the search is carried out on his initiative, namely on the basis of a request to be involved in this action. The expediency and possibility of the victim's participation in the search shall be decided in advance by the investigator or prosecutor authorized to conduct it.

During the investigative (search) action in a person's home, situations may arise in which it is necessary to involve a person whose rights and legitimate interests may be limited or violated during these actions (Part 3 of Article 223 of the Criminal Procedure Code of Ukraine). The legislator has identified a new participant in criminal proceedings, namely another person whose rights or legitimate interests are limited during the pre-trial investigation, ie a person against whom (in particular, his property) the procedural actions specified in the Criminal Procedure Code of Ukraine (paragraph 161 part 1 Article 3 of the Criminal Procedure Code of Ukraine).

Nevertheless, the range of persons who fall under the criterion of «another person whose rights or legitimate interests are restricted during the pre-trial investigation» is not specifically defined. We believe that such persons during the investigative (search) action in the home may include: the owner of the home or other property in which the investigative (search) action is carried out; persons subject to pre-trial investigation but not informed of the suspicion; extras during the identification; a person who is in the home or other property at the time of the search, but is not its owner.

In our opinion, the legislator's omission is the lack of a clear definition of measures to be taken by the investigator to ensure the presence of relevant persons. In accordance with the provisions of criminal procedure law, it was concluded that such measures include: prohibition of investigators to leave the place of search for the period of this procedural action if they were already in housing or other property at the time of arrival of the investigator; summoning investigators of these persons to participate in the investigative (search) action.

At the same time, it is inadmissible to forcibly escort these persons to the place of investigative (search) action or impose a fine on them in case of non-appearance, as these measures to ensure criminal proceedings apply only to the suspect, accused or witness (Part 1 of Article 139, Part 3 of Article 140 of the Criminal Procedure Code of Ukraine).

Having identified the procedural features of initiating and conducting a search in criminal proceedings, we turn to its organizational and tactical aspects.

The necessary stage of the search is preparatory. This stage begins with the collection, verification and evaluation of evidence that indicates that items or items relevant to criminal proceedings are found in a particular place or person. One of the necessary conditions is the imaginary construction of a dynamic model of the planned investigative (search) action. This will help to predict the situation of future action, the degree of participation (movement) of objects and participants, their own actions, as well as their behavior and other participants (Budzievsky, 2013).

In accordance with Part 3 of Art. 234 of the Criminal Procedure Code of Ukraine, the investigator in consultation with the prosecutor or the prosecutor applies to the investigating judge with a request to conduct a search and carries out a number of organizational measures (Criminal Procedure Code of Ukraine, 2012). There are cases when the preparatory stage of the search begins with the results of other investigative (search) actions, including covert ones.

At the initial stage of the investigation, there may be cases when there is a lack of sufficient materials necessary to substantiate the grounds for the search. Therefore, when applying to the investigating judge with a request to conduct a search, the investigator and the prosecutor must be sure that they will be able to justify the expediency of the search.

We consider it appropriate to increase the list of grounds for intrusion into housing or other property of a person. To this end, Part 3 of Article 233 of the Criminal Procedure Code of Ukraine should be supplemented with such grounds as «prevention of loss and destruction of material evidence and traces of crime».

In view of our proposal, this article will be edited as follows «An investigator, coroner, prosecutor has the right to enter the dwelling or other property of a person until the decision of the investigating judge is made only in urgent cases related to saving lives and property or directly prosecuting persons suspected of committing a criminal offense, preventing loss and destruction. material evidence and traces of the crime... ».

Also the necessary condition for a quality search is a thorough preparation of the investigator to conduct it, which includes: a) preliminary collection and analysis of the necessary information, including that characterizing the person being searched; profession and occupation; skills, habits; lifestyle; usual routine in the family, family composition, relationships in the family and with neighbors, the presence of the cottage, garage, vehicle and their location, connections and acquaintances, etc.); place of search (address of the building, its planning; size and condition; possibility of covert approach; nature of the area); wanted objects and documents (the most typical places to hide them, possible methods of camouflage, etc.); b) development of a tactical plan (choice of search time and method of penetration into the premises to be searched; selection of search participants, division of responsibilities and their instruction; security measures; protection of the search site; preparation of vehicles, etc.); c) providing the investigative and operative group that will conduct the search with the necessary technical means (investigator's suitcase, ultraviolet illuminators, means of photo and video shooting, means of packing the seized items, etc.).

The general provisions on search tactics set out in the forensic literature make it possible to formulate certain recommendations of a preparatory

nature in criminal proceedings: detailed organization of searches of several objects in case of sufficient grounds to believe that the crime was committed by members of an organized criminal group; careful division of powers among the members of the investigative task force, clarification of their rights and responsibilities; application of technical means of fixation.

In our opinion, the institute of those who are a relic of the past, because now the use of technical means is able to completely replace these people in the relevant investigative (search) action. We consider it appropriate to exclude the obligation of witnesses when searching or inspecting a person's home or other property. To this end, paragraph 2 of Part 7 of Article 223 of the Criminal Procedure Code of Ukraine should be deleted, namely: «Search or inspection of housing or other property of a person actions».

The search should be sudden (the offender can destroy things and traces) and carried out at the appropriate stage of the investigation depending on the current investigative situation (Denisyuk and Shepytko, 1999), and its results can be used during further interrogation of suspects and others. investigative (search) actions. The suddenness of the search is one of the most important organizational and tactical principles. The search should always be unexpected both for the searched person and for other persons interested in the results of the investigation in the case (Saltevsky, 2006).

Before choosing the organizational and tactical methods of the search, the investigator must solve a number of tasks, namely: to determine the objects to be searched (search objects); items and documents to be searched (search items); the sequence and specific timing of each investigative (search) action. These tasks are solved on the basis of analysis of materials of criminal proceedings. In the process of investigating criminal offenses, the organizational and tactical features of the search of the suspect's home are important.

The objects of search are most often: stolen, misappropriated (things and documents of the victim, vehicle or its parts); tools and means used in committing a criminal offense; records and correspondence, which may indicate the names of the participants and their possible location; clothes and shoes that could be on the face during the commission of a criminal offense; means of camouflage of the person, as well as the stolen (for example, fake license plates when stealing a vehicle).

It is impossible to conduct a search without the factual grounds specified in the criminal procedure legislation. However, some scientists, for tactical reasons, suggest conducting a search of the premises when the investigator knows in advance that it does not contain objects that are important for the investigation of a criminal offense. The investigator's goal is to «lose vigilance» of the searched persons, to hide the relevant search objects in advance. In the future, after waiting for some time, the searched persons,

being in a deception, are quite free to handle objects of interest to the investigation. It is at this point that the investigator is recommended to conduct a re-search (Ivanov, 2004). We strongly disagree with this position.

The expected effect can be achieved in another way. During the interrogation of a person who has information about the location of the searched objects, the investigator may say that he is aware of the futility of the search, as interesting to the investigation weapons, objects, documents and valuables that may be relevant to the criminal case.

The degree of persuasiveness of this argument depends on the level of creative abilities of the investigator. However, a prerequisite for such actions of the investigator is in fact not to conduct a search for some time.

It should be noted that in the situation of conducting a search with the participation of defense counsel there is a problem with the quality of recording the video of the progress and results of the investigative (search) action. O. Shkilnyuk and V. Shmarovoz rightly point out that sometimes a large number of documents are seized during searches, but it is not standardized whether their content and details should be recorded in a video recording.

It is allowed to use as video recording devices to record the search of mobile phones or video recorders, which are the personal property of law enforcement officers. Because the memory cards of such video recorders usually also store the personal information of the phone owner, this means that only a copy of the search record is used.

This state of affairs contradicts Part 3 of Art. 107 of the Criminal Procedure Code, because in the materials of criminal proceedings must be kept original copies of the technical record of the search (Shkilnyuk and Shmarovoz, 2018).

According to the analysis of criminal proceedings, video recordings of searches in criminal proceedings are often carried out by operatives who are unable to ensure their qualified conduct and proper use of video equipment. Video recording of the whole process of investigative (search) action is not always provided. The most common reason is the lack of additional batteries and their qualified maintenance during long searches (Shkilnyuk and Shmarovoz, 2018).

It should be emphasized that the right to unimpeded recording of the search by video belongs to the defense, but it is clear that the subject of this procedural right should be a representative of the person in whose home or other possession is investigative (search) action (Vegera-Izhevskaya, 2018). In our opinion, the involvement in the search of not only the suspect's lawyer, but also a representative of a natural or legal person, for example, when it comes to searches in complex or multi-storey buildings, will not

only control the actions of authorized participants in criminal proceedings. persons, but also contribute to the effectiveness of this investigative (search) action. The legitimacy of such actions will be facilitated by the definition in the criminal procedure legislation of the relevant rights of a natural or legal person in the case of an investigative (search) action in the premises and in the territory belonging to it.

Conclusions

Thus, what is stated in the article allows us to draw certain conclusions of the procedural and organizational and tactical nature of the search.

The procedural procedure for submitting, considering and resolving motions to conduct certain investigative (search) actions, as well as the actual procedure for conducting them, has features related to the restriction of the rights and legitimate interests of the person. Analysis of the provisions of the Criminal Procedure Code of Ukraine, which regulate the procedural procedure of search, shows that they have a vague terminological definition, cause shortcomings in law enforcement in the activities of investigators, limit the procedural capabilities of participants in criminal proceeding.

In our opinion, the search procedure in criminal proceedings needs to be improved. In this regard, we have proposed and justified amendments to the current criminal procedure legislation. In particular, we consider it appropriate to increase the list of grounds for intrusion into the home or other property of a person, as well as to exclude the obligation of witnesses when searching or inspecting the home or other property of a person.

During the search, the priority is to respect the constitutional rights of the individual, the inalienable conditions of legality, validity, expediency and effectiveness of their conduct. The prosecution's adherence to these conditions determines the admissibility of the evidence collected, the assertion and enforcement of procedural rights of the defense, other participants in the investigative (search) action present during its conduct, prevention of disproportionate restrictions on the constitutional rights of relevant persons, and proper implementation of criminal proceedings.

The use by authorized subjects of the criminal process of relevant systematic and generalized knowledge during the initiation and conduct of a search, making legislative changes to the current criminal procedure legislation will help achieve the purpose of the search and the objectives of specific criminal proceedings.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 417-434
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Conceptual principles of state policy of regulation of development of public-private partnerships

DOI: https://doi.org/10.46398/cuestpol.4073.22

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Abstract

The purpose of the proposed research is to form conceptual state policy foundations of regulating public-private partnerships development of countries with economies in transition. The need for substantiation of the regulating state policy of public-private partnership development in the transition economy and transformation processes has determined the topic relevance. The development of theoretical foundations for the state policy is based on systemic and institutional methodological approaches. There were used the method of comparative analysis, statistical analysis, structuring, method of abstraction and formalization. It has been determined that insufficient activity of countries with economies in transition in the public-private partnership projects implementation is due to imperfect legal framework, lack of clarity in the distribution of risks between agreement participants, political crisis and instability, lack of a unified state policy to develop partnerships. The principles of promoting the public-private partnership relations in countries

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Recibido el 03/03/2022 Aceptado el 24/05/2022

with economies in transition have been identified, which include the formation of advanced legal mechanisms and systems of regulatory bodies, that monitor the public-private partnership implementation; stakeholder support by taking into account private interests, public authorities and end users; careful business partners selection. Basic determinants and a set of conceptual requirements for policy formation have been formed.

Keywords: investment; state regulation; state policy; public administration; public-private partnership.

Principios conceptuales de política estatal de regulación de desarrollo de alianzas público-privadas

Resumen

El propósito de la investigación propuesta es formar bases conceptuales de políticas estatales para regular el desarrollo de asociaciones público-privadas de países con economías en transición. El desarrollo de los fundamentos teóricos de la política de Estado se sustenta en enfoques metodológicos sistémicos e institucionales. Se utilizó el método de análisis comparativo, análisis estadístico, estructuración, método de abstracción y formalización. Se ha determinado que la insuficiente actividad de los países con economías en transición en la implementación de proyectos de asociación público-privada se debe a un marco legal imperfecto, falta de claridad en la distribución de riesgos entre los participantes del acuerdo, crisis política e inestabilidad y falta de un estado unificado sobre política de desarrollo de alianzas. Se han identificado los principios para promover las relaciones de asociación público-privada en países con economías en transición, que incluyen la formación de mecanismos legales avanzados y sistemas de organismos reguladores, que monitorean la implementación de la asociación público-privada; apoyo de las partes interesadas teniendo en cuenta los intereses privados, las autoridades públicas y los usuarios finales; cuidadosa selección de socios comerciales. A modo de crotribucion, se han formado determinantes básicos y un conjunto de requisitos conceptuales para la formación de políticas.

Palabras clave: inversión; regulación gubernamental; políticas públicas; administración pública; asociación público-privada.

Introduction

In the context of reforming public administration system, difficult economic situation against the background of pandemic crisis special importance for national economies and individual territories development is intensifying investment activities, which, given limited budget resources, requires additional funding for projects in various economy sectors. Such an effective mechanism for promoting innovation and investment is public-private partnership as an alliance of public authorities and private sector, on the basis of which development projects can be implemented in strategically important sectors of the economy.

However, the realisation of public-private partnership requires an implementation of appropriate measures at the level of public policy and public administration, which will create favorable conditions for attracting and using investment resources, perfect legal framework that can take into account the specifics of government and socio-economic development. Thus, the purpose of proposed study is to form conceptual foundations of public policy to regulate the development of public-private partnerships in transition economies.

1. Literature Review

An analysis of literature on the study subject showed that there is no unambiguous definition of this concept, as scholars and practitioners reveal it from different positions. Subjects of public-private partnership are, on the one hand, private partners, and on the other - public sector, which includes not only public authorities but also local governments, as well as non-profit, non-governmental, public organizations, initiative groups, charitable foundations.

Today, there is no common terminology for all countries, which reveals the relationship of partnership between public authorities and business. This is due to differences in goals, objectives, priorities, regulatory framework, economic development level and specifics of individual countries social policy, as well as functions of public authorities and the degree of public administration development. For example, according to Ball R. research, World Bank, world's leading financial institutions, most European countries use the abbreviation public-private partnership (Ball *et al.,* 2007).

In the UK, term «Private Finance Initiative» (PFI) is used, in France terms «concession» and «mixed economy community» (SEM) are common, in US, Australia and Canada - P3 or Public-Private Partnerships. In Canada, the term «public-private partnership» is not used in all economic activity

areas, but only in the provision of public services and public infrastructure. In countries with economies in transition and post-Soviet countries, the term «state-private partnership» is used due to underdeveloped system of public authorities and regulatory framework peculiarities. Thus, in Ukraine, according to the Law of Ukraine «On State-Private Partnership» state is the initiator of most state-private partnership projects, identifies priority economy sectors, the development of which is impossible solely through state efforts (Law «On State-Private Partnership», 2010).

The most common «public-private partnership» term interpretation is given by the World Bank: « it is an agreement between public and private sides on the production and provision of infrastructure services, which aims to attract additional investment and is a means of improving budget funding efficiency» (Ball *et al.*, 2007: 289).

In turn, UN Economic Council defines public-private partnership as a partnership between a state organization and a private company in the form of medium- or long-term relationships, in which partners agree to work closely with each other to improve services for the benefit of population (Green Paper on Public-private partnerships and Community Law on Public Contracts and Concessions, 2004).

European Investment Bank understands public-private partnership as a relationship established between private sector and public authorities, often with the aim of drawing on private sector resources and / or experience in assisting the provision and supply of state sector assets and services. public-private partnership is considered in more detail by the International Monetary Fund, which considers not only the partnership essence, but also its main characteristics:

1. emphasis on providing services and investing by the private sector;
2. significant risk transfer from the government to private sector. European Economic Commission for Good Governance in the field of state-private partnership includes following in characteristics of public-private partnership:
    - long-term provision and providing of services (sometimes up to 30 years);
    - risks transfer to private sector;
    - variety of contracts forms concluded by legal entities with state and municipal structures (Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions, 2004).

A fundamental description of public-private partnership has been provided by the researcher E. Savas, who noted that:

1. public-private partnership is any agreement in which public and private sectors of the economy come together to produce goods and provide services;
2. public-private partnership - complex, multi-partner infrastructure project;
3. public-private partnership defines formal cooperation between business, society and local authorities in order to develop the territory and improve population living conditions, within which traditional roles of the state and private sector are redistributed (Savas, 2000).

However, the author does not specify conditions under which the interaction of public and private sectors will be defined as public-private partnership. In the interpretation of public-private partnership relationship, E. Klein and D. Theisman emphasize the common goal of partners to create a public-private partnership in the joint production form, in the process of which the distribution of risks, costs and future profits is obligatory. However, authors do not find differences between public-private partnership and other forms of cooperation between state and private sector (Klijn and Teisman, 2000).

Transition economies researchers, such as I. Neykova, share US and Western European scholars' views noting that, the concept of SPP can be implemented in the most important economy areas (social sphere, transport, energy, etc.), in particular in the economy innovation sector (Neykova, 2010). In the context of public administration decentralization, it is advisable to pay attention to the definition given by Zapatrina I. and Lebeda T., who consider public-private partnership as an alliance of public authorities and private business in order to implement projects in a wide range of activities - from the development of strategically important economy sectors to providing public services nationwide or on individual territories (Zapatrina and Lebeda, 2011).

According to Karpa M. (Karpa, 2017), activities of the state partner in the model of state-private partnership are in the plane of ensuring primarily public interests, interests of local communities, solution to state and local issues.

The analysis allows us to note that the reason for differences in the interpretation of public-private partnership is the difference in perception of the importance of partnership between government and business in the modern public administration system (Abramova *et al*., 2007; Koblianska *et al*., 2020; Kosach, 2017). However, common denominator is the interpretation of public-private partnership as a mechanism for cooperation between public administration and business to achieve a common goal while pooling resources to increase benefits for each side.

It is also possible to identify following public-private partnership characteristics: long-term nature of the relationship, sharing of risks, responsibilities, costs between partners, and defining benefits for each side of the partnership (Alexander, 2010; Alexander, 2012; Ayres, 1992).

These approaches to the consideration of this concept also emphasize the interest in public-private partnership for both state and business, which in the future benefits them both. Thus, public-private partnership is a system of cooperation and promotes the innovation development, the formation of innovation infrastructure, budget funds efficient use.

2. Methodology and Methods

The theoretical and methodological basis of the study was formed by scientific works of leading scientists on this topic. The development of theoretical foundations for the state policy formation to regulate the development of public-private partnership is based on systemic and institutional approaches.

To achieve this goal there were used general scientific methods of phenomena and processes cognition: the analysis and generalization of theoretical sources and scientific literature; method of comparative analysis - to compare factors influencing the formation and development of partnerships in different countries; statistical analysis - to study dynamics and identify trends in public-private partnership processes; structuring method - to identify individual factors influencing the formation of policy on certain classification criteria; method of system analysis, method of abstraction and formalization - for the development of state policy conceptual foundations to regulate the public-private partnership development; graphic method - to display the theoretical and methodological material of the study.

3. Results

Current trends in public administration in industrialized countries do not focus on competition, but on cooperation and partnership as the basis of business development. Public-private partnership as a form of interaction between public and state sectors is widespread in many countries around the world due to the possibility of implementation in any area where private and public interests are binded (Büthe *et al.,* 2011; Derhaliuk *et al.,* 2011; Eisner *et al.,* 2018).

We are talking about both small and large-scale long-term investment projects. At the same time, in EU countries, public-private partnership

is considered a priority as a mechanism for combating social inequality and as a factor in the society development. In turn, in United States such partnership is primarily associated with the infrastructure modernization and economic development of cities (Gonta *et al.,* 2016; Gechert *et al.,* 2018; Gonta *et al.,* 2017).

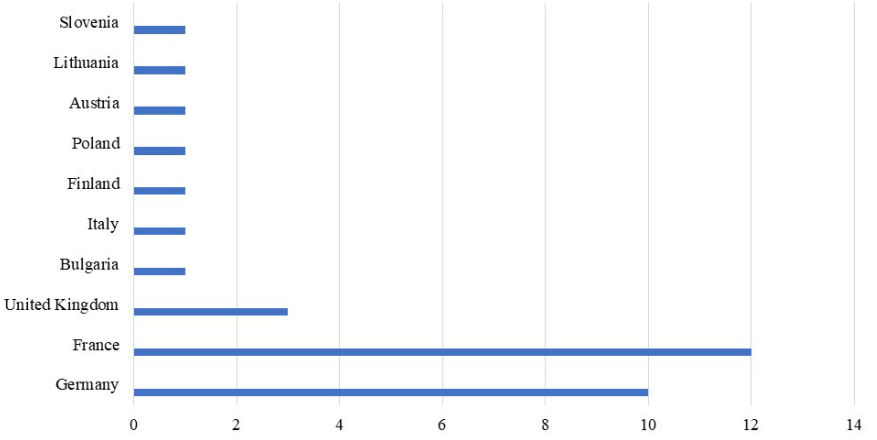
In developed countries, the area of public-private partnership projects - transport and communication facilities (USA, Australia, UK, Spain, South Korea), education, information technology (Germany, UK), health care (UK, Canada), recycling waste (South Korea, Canada), water use (USA). In developing countries, priority is given to the use of public-private partnership in the roads and airports construction, as well as water treatment facilities (India, Brazil, Mexico, Saudi Arabia). Post-Soviet countries and countries with economies in transition prefer the construction of roads, airports, subways and tunnels (Bulgaria, Czech Republic, Poland, Ukraine).

In 2020, Germany came out on top in terms of implemented public-private partnership projects costs among European countries (the total cost of implemented projects was 2.8 billion euros), with 10 projects implemented (Market Update Review of the European Public-Private Partnership Market, 2020). France ranks second in terms of funding, but it is leader in the number of projects (12 implemented projects). In 3rd place, both in terms of quantity and value, the United Kingdom (Fig. 1).

According to Market Update Review of the European Public-Private Partnership Market (2020), the largest number of projects was implemented in the field of education (10), transport (7), cultural and recreational sphere (6). The most significant public-private partnership projects implemented in 2020 include: A3 Road Widening (EUR 1.5 billion) in Germany; - A49 Kassel-Schwalm Motorway - (EUR 1 billion) in Germany - Sofia Airport Concession - (EUR 881 million) in Bulgaria - A465 Dualling Section 5 & 6 - (EUR 716 million) in the United Kingdom - Route Center- Europe Atlantique - (EUR 548 million) in France.

Thus, global trends prove high efficiency of public-private partnership as a form of interaction between the state, business and society. This is confirmed, firstly, by the quantitative growth of public-private partnership s in the world and in the EU (number of projects and total investment in them). Thus, 409 projects worth about $ 100 billion were implemented in 2019. USA, which is 100 projects more than in 2017 and 74 projects more than in previous period (Market Update Review of the European Public-Private Partnership Market, 2019).

Fig.1. Number of public-private partnership projects implemented in European countries in 2020

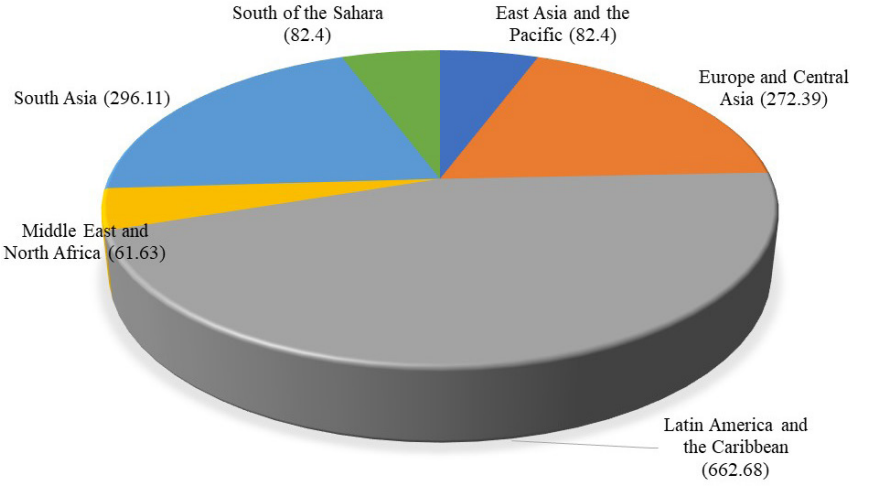


Source: compiled by the authors based on information of the Statistics Service of the European Union.

Another positive trend of public-private partnership processes is the diversification of transaction market by countries and economy sectors. This process has been observed in the EU since 2006. In the United States, public-private partnership diversification has an international focus, meaning that public-private partnership s are used to address socio-economic problems of other countries (for example, projects aimed at developing the medical system in Africa) (Ivanova *et al.,* 2022; Khudolei *et al.,* 2021; Zhavoronok *et al.,* 2022).

If we consider the geographical diversification of public-private partnership projects implementation (Fig. 2), then for the period from 1990 to 2018 Latin American and Caribbean countries are leaders in public-private partnership projects investing – they account for $ 662.68 billion investments (45% of total investment). In second place - countries of South Asia with investments in the same period of $ 296.11 billion. Europe and Central Asia account for $ 272.39 billion in public-private partnership investment (Market Update Review of the European Public-Private Partnership Market, 2019).

Fig.2. Geographical diversification of public-private partnership projects, billion dollars



Source: compiled by the authors based on Market Update Review of the European Public-Private Partnership Market.

State sector participation in the financing of major infrastructure projects is a key form of public-private partnership in Latin America and Southeast Asia. Similar experiences are also common in Morocco, Jordan, Moldova and Slovenia. The main problem facing national economies of many countries in the process of establishing public-private partnerships is to reconcile the contradictions between public sector and business and minimize public-private partnership project each side risks (Kosach *et al.,* 2016; Lytvynenko *et al.,* 2020).

If we consider the experience of implementing public-private partnership projects in countries with economies in transition, the formation of their business-government partnerships began much later than in the world. This is due to the transition of these countries to market economies in the 90s of twentieth century and, as a consequence, slow formation of the business sector, appropriate regulatory mechanisms and a proper regulatory framework. For example, in Ukraine as a post-Soviet country, between 1991 and 2012 only 58 public-private partnership projects were launched, 2 of which were terminated. The basic law regulating public-private partnership relations (according to Ukrainian law - public-private partnership) was adopted only in 2010.

It laid institutional foundations for improving the provision of socially significant services in the industry, especially in infrastructure economy sectors, through the participation of business sector on publicity principles, transparency, proportionality, fairness and non-discrimination. The largest number of public-private partnership projects was implemented in 2012 - 21.

Since 2013, there has been a significant decline in the formation of partnerships between government and business - thus, in 2014 only 1 project was implemented, and in 2015-2016 projects in this area were not implemented at all, although contracts were concluded (in 2015 were concluded 177 public-private partnership agreements, in 2016 - 186).

Instead, in 2019 the number of public-private partnership projects was already 13. As of January 1, 2021, on terms of public-private partnership 192 agreements have been concluded in Ukraine, 39 of which are being implemented (29 - concession agreements, 6 - agreements on joint activities, 4 - other agreements), 153 agreements are not implemented (118 - not executed, 35 - terminated / expired) (Official site of the Ministry of Economy of Ukraine, 2020).

Thus, not all public-private partnership agreements (projects) are being implemented in Ukraine. Main reasons for this are, first of all, the imperfection of legal framework, corruption, lack of clarity in the distribution of project risks between the agreement sides, political crises and instability, unattractive investment climate, lack of a single targeted public policy to develop partnerships.

There are several key points that should promote the development of public-private partnerships, especially in countries with economies in transition:

1. Formation of perfect legal mechanisms and controlling bodies systems that monitor public-private partnership projects implementation.
2. Stakeholder support by taking into account interests of the private sector, public authorities and end users, achieved through open dialogue between partners.
3. Careful business partners selection.

These trends require key changes, which will relate primarily to the regulatory framework of public-private partnerships, and increase private investors confidence to the state as a partner in the proposed relationship. The use of public-private partnership as an effective tool for the development of priority industries is determined, firstly, by taking into account interests of business directly; secondly, increasing use efficiency of the state property and budget funds; thirdly, by stimulating private sector to develop entrepreneurial activity in areas that have the greatest potential

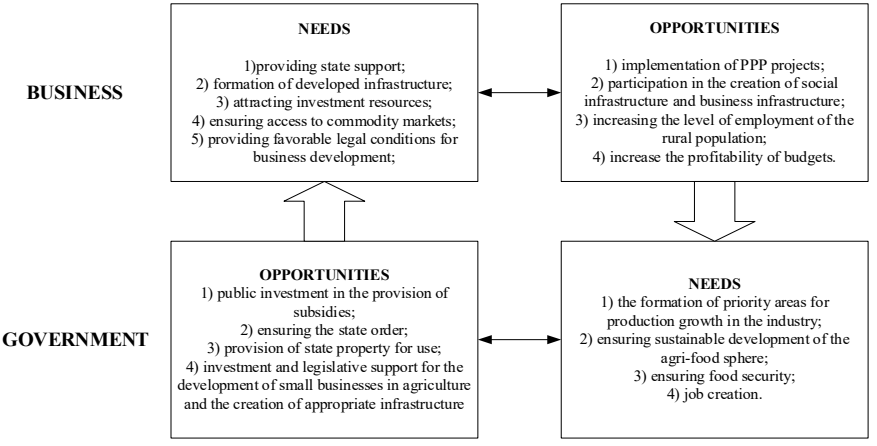
for quality economic growth. These areas are reflected in the state budget expenditures, legislative initiatives and development of strategic programs for public-private partnership.

The state regulation process of public-private partnership relations is accompanied by the formation of appropriate policies and implementation mechanisms.

Public policy goals to regulate the development of public-private partnership are:

- achievement of innovative development, which involves integration of enterprises for the joint development and innovative projects implementation in the priority economy areas;
- expansion of investment opportunities - involvement in public-private partnership relations makes business entities stable and investment attractive by reducing costs and streamlining technological processes;
- development of the institutional environment to ensure effective public-private partnership agreements implementation;
- formation of institutional, economic and legal mechanisms for public-private partnership development, based on the use of appropriate tools;
- formation of strategic guidelines for infrastructure development.
- In this context, the key task of public-private partnership state regulation policy is to find a balance between interests, potential and stimulus of public and private partners, taking into account opportunities of country socio-economic development (Fig. 3).

Fig. 3. Interaction of interests and opportunities of public-private partnership agreement sides



Source: compiled by the authors.

Business and state interests, on the one hand, coincide, as both sides of the partnership are interested in improving economic efficiency, increasing prosperity and profitability. On the other hand, social outcome of the public-private partnership project is a state priority, while business is more interested in making a profit. Coordination of the state and business entities interests in the implementation of state regulatory policy of public-private partnerships development is a complex task, that must take into account legal and organizational principles.

Mutual intersection of considered interests, needs and opportunities for both partnership sides under the influence of state regulatory policy mechanisms determines prospects of public-private partnership projects implementation based on the study of opportunities and prospects for the development of certain management areas. Despite priorities of economic sectors, directions of public-private partnership projects implementation should be consistent with the requirements of market environment and the development of market infrastructure in the presence of legislative restrictions (Fig. 4).

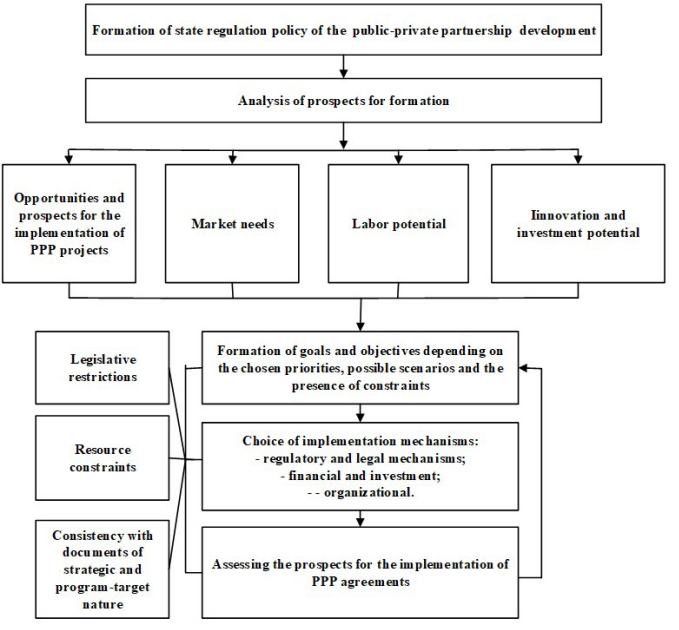
Institutional role of the state is characterized by performing a set of functions and the ability to solve a whole set of issues, arising from changes in internal and external environmental impact on public-private partnership projects implementation. At the same time, market levers, a combination of business development priorities and goals, and state economy sector are

an important factor in intensifying competitive relations, implementing diversification, business integration, reorganization and innovation.

The implementation of state policy of regulating public-private partnership development is influenced by the following factors:

1) Exogenous. The influence of these factors should be separated by levels. Thus, mega-level is represented by such factors as international economic integration, globalization, scientific and technological progress, environmental factor. At macro level, the most influential factors are public economic policy, investment climate, budget financing and state support mechanisms. Mesorevel or territorial is characterized by such factors as geographical location, natural and labor resources, climatic conditions, demographic situation.
2) Endogenous. Factors of this type include level of business structures' potential production, level of innovation potential development, competitiveness of services to be provided under the public-private partnership project, both partners investment opportunities.

Fig. 4. Basic formation determinants of the public-private partnership development state regulatory policy



Source: compiled by the authors.

3) System. Factors such as an effectiveness of market mechanisms (competition, price regulation, regulatory support, financial support, investment and innovation attractiveness of a country or region) have a systemic impact on the implementation of state regulatory policy.
4) Structural. The most influential factor in this group is the ratio of goods supply with socio-aggregate demand for these goods.
5) Institutional (infrastructural support for the public-private partnership projects implementation, the development of public authorities system involved in the regulation of public-private partnership; the degree of public-private partnership capacity development in a particular area; the stability of interaction between public-private partnership entities.

This determines a set of conceptual requirements for the formation of state policy to regulate the development of public-private partnership (Table 1).

The basis for state policy implementation to regulate public-private partnership development is the formation of institutional, economic and legal mechanisms to support and regulate public-private partnership at national, regional and municipal levels. This task is a priority, because without its solution it is impossible to talk about institutionalization of public-private partnership agreements regulation process.

Table 1. Conceptual requirements for the formation of state policy to regulate the development of public-private partnership

Requirement	Contents of the requirement
Integrity	The state policy of regulating public-private partnership development is one of strategic development tools of the state and a component of the state economic policy
Consistency	The effectiveness of state policy of regulating public-private partnership development is based on relevant projects implementation, developed in accordance with monitoring measures.
Motivation	Implementation of measures to motivate business and government officials to initiate public-private partnership agreements
Decentralization	Taking into account principles of public administration decentralization in the formation of priority areas for public-private partnership projects

Source: compiled by the authors based on information of the Statistics Service of the European Union.

The most common tools and approaches for quality implementation of this policy are legal regulation of contractual relations, use of short-term and long-term program documents that contribute to public-private partnership agreements conclusion and their effective implementation, strategic management, as well as implementation of financial, advisory, information support measures.

Comprehensive implementation of these mechanisms is the basis of state regulation process, which, subject to local governments involvement, is transformed into a process of public regulation. This will make it possible to form legal, organizational and economic foundations for the development of priority economic areas not only at the state but also at the regional and municipal levels.

Conclusion

The role of public-private partnership in socio-economic development varies for different countries, but there is a clear tendency to increase its impact on the process of improving the functioning of state sector problematic and priority branches. The state policy of regulating public-private partnership development is an important component of the state socio-economic policy. Its focus on public-private partnership, as an object, is in parallel with the state policy in other areas, related to infrastructure projects implementation based on this type of contractual relationship.

This policy provides a creation of partnership system between government and business, which includes a set of measures to support public-private partnership, provided by relevant government programs. The development of public policy to regulate public-private partnerships development involves structuring goals, setting priorities and specifying tools, as well as development guidelines for public-private partnership subjects, including public authorities at all levels, business, scientific and financial structures.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 435-453
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Administrative and legal regulation of public relations regarding the use of human resources in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.23

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Abstract

The article is devoted to the study of the current problems of administrative and legal regulation of public relations regarding the use of human resources in Ukraine. The problematic aspects of the functioning of the legal mechanism of the public administration in this area are identified and the main directions of its improvement are identified. The authors state that currently one of the key problems of the interaction between the individual and the State is the uncertainty and imbalance of certain components of the legal regulation of this area, the inadequate interaction of the elements of this system. In this regard, proposals have been made to improve the legal and organizational support for the interaction of the issues of administrative and legal regulation of public relations on the use of human resources in Ukraine. It concludes on the desirability of passing a law on general administrative procedure in the field of legal regulation of administrative services in Ukraine, in order to eliminate gaps in relations between public administration bodies (including municipalities) and individuals, highlighted the prospects of widespread application of the e-government practitioner.

Keywords: human resources; administrative and legal regulation; access to information; administrative services; e-government.

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Recibido el 14/03/2022 Aceptado el 28/05/2022

Regulación administrativa y legal de las relaciones públicas con respecto al uso de recursos humanos en Ucrania

Resumen

El artículo está dedicado al estudio de los problemas actuales de la regulación administrativa y legal de las relaciones públicas con respecto al uso de recursos humanos en Ucrania. Se identifican los aspectos problemáticos del funcionamiento del mecanismo legal de la administración pública en esta área y se identifican las principales direcciones de su mejora. Los autores afirman que actualmente uno de los problemas clave de la interacción entre el individuo y el Estado es la incertidumbre y el desequilibrio de ciertos componentes de la regulación legal de esta área, la interacción inadecuada de los elementos de este sistema. En este sentido, se han formulado propuestas para mejorar el apoyo legal y organizativo de la interacción de los temas de regulación administrativa y legal de las relaciones públicas sobre el uso de recursos humanos en Ucrania. Se concluye en la conveniencia de aprobar una ley sobre el procedimiento administrativo general en el campo de la regulación legal de los servicios administrativos en Ucrania, con el fin de eliminar las brechas en las relaciones entre los organismos de la administración pública (incluidos los municipios) y las personas, destacó las perspectivas de una aplicación generalizada del practicante del gobierno electrónico.

Palabras clave: recursos humanos; regulación administrativa y legal; acceso a la información; servicios administrativos; gobierno electrónico.

Introduction

The end of the XX - beginning of the XXI century is marked by the processes of globalization of social and economic institutions, the significant scale and pace of innovative development, which determine the main directions of development of modern society. Besides, ehe COVID-19 pandemic has had a great impact on public relations, the economy, and the financial system of the countries of the world (Nusratullin *et al*., 2021). The main source of innovative development of countries is human resources, which are formed primarily through social investment. The rapid development and introduction of information and computer technologies in the context of globalization, the intellectualization of labor, lead to the transformation of the structure and content of human resources, the nature of its impact on innovative development.

Ensuring sustainable rates of socio-economic development, attracting investment in both fixed assets and technology and human development in accordance with the proposed by the Government of Ukraine economic growth strategy (Strategy of economic growth), is impossible without effective cooperation of government, business, and society (man). According to the Strategy, "by 2024, Ukraine should move to the top group of the human capital index, and life expectancy will grow to 75 years". In addition, today, at the level of official institutions, the system of state management of human development is represented by separate elements, such as management of education, health care, employment, social protection.

These elements are multi-level systems, built on a hierarchical principle, which determines: the scope of management at each level, the sequence and subordination of management levels, distributed functions vertically and horizontally, duties, rights and responsibilities. At each level of management, the placement of elements and the form of their connections implies a certain autonomy. This leads to the lack of: first, a comprehensive approach to the problem of human development management; secondly, responsibility for the available result (Pospelova, 2011).

The state and local governments also shape the sphere of labor, social, institutional, and other mobility for citizens and employers. In market conditions, the formation and competitiveness of human resources are one of the main functions of the state (Libanova, 2008), which should determine the prospects for the domestic economy to a qualitatively new level, the orbit of innovative development.

Solving the complex problem of human resource formation requires the cooperation of all stakeholders in a particular field (health, education and science, culture, environmental safety, public services, etc.), so the main scientific task is to develop organizational and legal measures to implement the principles of governance in the practice of government structures in three main areas: the development of public-private partnerships, the development of public service delivery and the creation of favorable conditions for effective interaction between different levels of public authority (central, regional, local), aimed at achieving a common goal - meeting public needs.

An important problem for the domestic system of government is the search for alternative concepts of public administration and their implementation in modern state-building practice. This issue is particularly relevant given that, having ratified the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other, Ukraine has defined public policy as such that aimed at bringing the standard of living of Ukrainian citizens closer to European standards, rooting European values in all spheres of functioning of the Ukrainian state and society (Melnychenko, 2020).

In this context, the search for ways to reduce the negative impact of transformation processes on the formation and use of human resources, finding opportunities for its development, considering the relationship between the level of socio-economic development of regions and the degree of their differentiation, on the one hand, and human quality resource - on the other.

1. Methodology of the study

The methodological basis of the scientific article is a set of methods of scientific knowledge and general scientific principles of research, which are based on the fundamental principles of the science of public administration and related sciences.

The research is based on systemic and synergetic approaches, as well as a set of methods that ensure their implementation, in particular: logical and semantic - to deepen the conceptual apparatus and determine the essence and content of mechanisms of state regulation of human resource development in Ukraine; comparative analysis - to study the existing methodological approaches, concepts, developments and proposals and to identify patterns, differences, features and common characteristics of the mechanisms of state regulation of human resource development in different countries; system-analytical - for the analysis of legislative acts and other normative-legal documents on the peculiarities of state regulation of human resource development in Ukraine; historical - to study the genesis and development of methodological approaches.

The evolution of mechanisms of state regulation of human resource development in Ukraine in chronological order; analysis and synthesis - to assess the dynamics and effectiveness of mechanisms for state regulation of human resource development in Ukraine; observation and theoretical generalization - to reveal the reasons that destabilize the system of state regulation of human resource development in modern conditions; abstractly logical - for generalization of theoretical positions, establishment of causal relations and formation of conclusions and offers. The information base is legislative and normative acts on issues of state regulation of human potential development, namely: Laws of Ukraine, Decrees of the President of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine, etc.

2. Analysis of recent research

In the period of changing the technological way of life, the rapid development of new methods of production, the leading role of innovative ways of development, researchers pay considerable attention to finding ways to form appropriate to modern conditions of human resources. Among them are the works of T. Pospelov (Pospelova, 2011), B. Melnychenko (Melnychenko, 2020), M. Inshin (Inshyn, 2013), E. Libanova (Libanova, 2008), D. Tereshchenko (Tereshchenko, 2019), A. Shahno (Shahno, 2019), S. Yehorycheva (Lakhyzha and Yehorycheva, 2021) and other scientists.

Without diminishing the scientific achievements of scientists, it is advisable to conduct a comprehensive analysis of factors influencing the formation of human resources at the state, regional and local levels, to determine the features of administrative and legal regulation of public relations with priority of human rights and freedoms. The functioning of the mechanisms of interaction between the system of government, business and society, their optimization in order to form and develop human resources in Ukraine, are insufficiently studied, which necessitates further research efforts in this direction.

The purpose of the scientific article is to substantiate the theoretical foundations and develop practical recommendations for improving the communicative support of state regulation of human resources in Ukraine based on modern concepts of public administration, as well as to formulate proposals aimed at implementing public policy of Ukraine in implementing new means of administrative regulation legal relations at the national and local levels.

3. Results and discussion

In recent years, the concept of human resources has become increasingly popular. Its study with the involvement of this category in scientific use is interdisciplinary in nature and takes place within sociology, economic theory, culturology and other sciences. We consider it important to clarify the relationship between the concept of "human resources" and related ones, such as "human capital", "labor potential" and others. This is important for both theoretical and practical research.

Considered in relation to the individual labor potential corresponds to its workforce, which acts in a certain socio-economic quality (socio-economic form). At the level of society, labor potential should be understood as a social combination of those personal qualities, abilities, knowledge, and skills of people that they use or can use in social production at this stage of its development. Thus, labor potential is only one of the subsystems of a larger category of "human resources".

Human capital means the stock of abilities, knowledge, skills and motivations embodied in the human personality, which arose as a result of purposeful investment in it (Inshyn, 2013), it is all that determines the productivity and quality of human labor, its contribution to socio-economic development (The importance of human capital development in the modern world. What should be the strategy of Ukraine, 2021). Today, the main types of investment in a person are education, industrial training, health care, migration, market information, birth, and upbringing of children. It is worth noting that the term "human capital" is an economic category used by scientists to clarify the role of social institutions, economic analysis of the impact of social factors on the market economy.

"Human resource" is a universal sociological category that can be used for comparative analysis, determining the level of social transformations (characteristics of the country's social power based on its population), assessing the dynamics of social systems (individual societies, communities, regional and municipal society, social organizations, and organizational social groups). But social development must, first, be assessed by changes in the very human essence. The development of society is not only a continuous complication of the social organization of the system, but also the formation of a person with a certain set of physical, educational, social potential.

Thus, the concept of human resources in the scientific literature is ambiguous depending on the industry affiliation in the research field and the debatability of the definition. A broad interpretation of the concept allows it to be applied in different cognitive directions in different interpretations depending on the specifics of the field of scientific knowledge. However, common to all definitions is the understanding of "resource" as a certain potential, a set of accumulated meaningful qualities of the object, which can be purposefully implemented under certain conditions, as well as improved.

In our opinion, the term "human resource" is deeper than the concepts of "human capital" and "labor potential", as it characterizes the socio-economic, cultural, environmental, and other aspects of human living conditions, it reveals ways to realize opportunities in the context of social development. Given the subject of the study, we consider it appropriate to operate in a scientific article with the term "human resource", which is a universal sociological category, which is more characteristic of the sciences of the legal cycle.

The issue of administrative and legal regulation of public relations regarding the use of human resources in Ukraine is complex and needs to be clarified in at least two areas: legislative and law enforcement.

Ukraine has defined the state policy as one aimed at bringing the standard of living of Ukrainian citizens closer to European standards,

rooting European values in all spheres of functioning of the Ukrainian state and society. In this context, the normative regulation of the formation of the mechanism of administrative and legal support of public administration plays a significant role. Such normative consolidation must comply with European standards of public administration, which are based on the observance of the rights and protection of the interests of citizens, the rule of law, the provision of quality administrative services, and so on. At the same time, it is of fundamental importance to improve the activities of public institutions, the procedures they use, and to establish a dialogue between citizens and the authorities on governance mechanisms.

In this direction, starting from 2015, the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine, with the active assistance of Ukrainian and European experts, laid the legal framework for public administration reform in Ukraine, adopting the new Law of Ukraine «On Civil Service» of 10 December 2015. № 889-VIII with the necessary bylaws (Law of Ukraine «On civil service»); Strategy for reforming the public financial management system for 2017–2020, approved by the order of the Cabinet of Ministers of Ukraine of February 8, 2017 № 142 (Strategy for reforming the public financial management system).

The concept of introduction of positions of specialists on reform issues, approved by the order of the Cabinet of Ministers of November 11, 2016 № 905 (Concept of introduction of positions of reform specialists); The concept of optimization of the system of central executive bodies, approved by the order of the Cabinet of Ministers of December 27, 2017 № 1013 (Concept of optimization of the system of central executive authorities); Concept of e-government development in Ukraine, approved by the order of the Cabinet of Ministers of Ukraine dated September 20, 2017 № 649 (Concept of e-government development in Ukraine), National Strategy for Civil Society Development in Ukraine approved on September 26 2021 № 487/2021 (On the national strategy for promotion of civil society development in Ukraine) etc.

In order to transform the system of public administration into a system of public administration and stimulate the participation of civil society in the implementation of state policy on the formation and development of human capital, it is advisable to prepare and adopt laws of Ukraine «On Public Administrations in Ukraine», «On Central Public Administrations» of territorial administration», «On local public administrations», «On social responsibility of business», «On local referendum», «On public budget».

The results of the study show that the current regulatory framework for public administration of human resources includes a number of legislative acts that regulate certain areas of socio-economic activity in Ukraine (education, health care, social protection, etc.). However, there is a lack of legislative acts aimed at the formation and development of human resources

in Ukraine and a central executive body that would coordinate the actions of subjects and objects of government and public relations in the system of «man-power society».

Their absence at this stage of transformation in the country slows down innovation processes, as well as the adaptation of social institutions to work in modern conditions, with the expectation of significant changes in the near future.

Today's tasks for the introduction of e-government in Ukraine are not to create new principles and approaches, but to develop a specific system of measures and sequence of their implementation, determining the size and forms of state legal, political, financial, and administrative support. Such a strategy should be developed not only at the central level, but also at the regional and local levels, considering their specifics.

At the same time, the basis of the relevant transformations in state and governmental structures is the willingness of citizens to use the opportunities of information technology, evaluate their benefits, find new applications directly for their lives, business, social and scientific activities, education and more. This process should be initiated jointly by three sectors - public, public, and business.

Today, e-democracy tools provide many new channels for community-to-government feedback. They also allow the justification of decisions from the authorities to the community. This new circumstance for Ukraine poses new challenges to communication between government and society (Shiyan, 2019). Electronic technologies allow the development of democratic procedures, their importance is that they can be communicative, not just informative. Therefore, the democratization of government institutions, the possibility of increasing the participation of citizens at every stage of government relation contributes to the democratization of the state.

In each country, democratic and human values, as well as ethical considerations, are integral parts of the technological aspects of e-democracy, driven by the demands of democracy, not technology. At the same time, e-democracy does not promote any specific type of democracy and soon will become an integral part of the public administration system, in connection with which the authorities must do everything possible to increase public confidence in government. E-democracy is a form of realization by citizens of their political and civil rights using digital or information and communication technologies.

As a form of realization of rights, e-democracy should be considered as an alternative (subsidiary) option to traditionally recognized ways and practices of law enforcement. Therefore, the purpose of implementation is to promote the expansion of opportunities for the realization of citizens' rights. A feature of e-democracy as a component of the social institution of

democracy in the modern information society is its bilateral usefulness for the subjects of the political-constitutional process. For citizens, it consists in the possibility of real participation in the activities of public authorities, and for the subjects of power relations - in the possibility of obtaining real public opinion.

Prospects for expanding the range of applications and, consequently, increasing the availability of direct democracy procedures through the use of information technology are determined primarily by: the need to create conditions for systematic public involvement in public administration and solve all pressing problems; the need to direct public initiatives in the plane of constructive interaction with the state; requirements for ensuring openness and transparency in the activities of the management staff. In addition, awareness of one's own involvement in state-building processes will certainly contribute to the development of an active civil position as one of the main conditions for the formation of a capable civil society.

In Ukraine the development of e-democracy and e-government is seen as one of the priorities of the Strategy of state policy for promoting the civil society in the context of optimization mechanisms of social dialogue and the institutions of direct democracy (Presidential Decree Ukraine "On strategy public policy development of civil society in ukraine and priority measures for its implementations").

Agreeing with many scholars on the prospects of e-government, it is necessary to state the existence of the following systemic barriers to its spread in Ukraine: uncertainty of public policy in this area, promising ways to implement it; imperfection of the regulatory system; low level of involvement of civil society actors in the processes of improving public policy in the field of e-democracy, as well as in the implementation of its individual tools; insufficient level of information infrastructure development, inequality of access to the Internet and information computer technologies; low level of awareness about the content and peculiarities of using various tools of e-democracy, etc.

The main forms of interaction of civil society with public administration in the countries of the European Union are determined by scientists: the provision of social services; social entrepreneurship; exercising the right of access to public information; conducting public consultations; conducting public examination; conducting public monitoring; formation of advisory bodies, etc.

The main priorities of public administration and administration are: strengthening the foundations of local self-government in connection with the decentralization of public power, improving the effectiveness of management, which is directly related to updating the quality of government, improving the quality of public services, including administrative variety, ie

everything related to the satisfaction of the public interest (Melnychenko, 2020).

We share B. Melnychenko's point of view that the strategic approach to the formation of the communicative space of state regulation of human resources formation involves going beyond the traditional set of such categories as "target audiences", "information flows", "information product" and the transition to communicative influence on structures society, the processes of human resource quality, national security and national interests, taking into account the characteristics of subjects and objects of government (in particular, socio-political and cultural) (Melnychenko, 2020).

The specificity of the partnership is the preservation of each of the parties of relative independence in the main aspects of activity, equality, mutual responsibility. This requires the creation of conditions for mutual understanding and constructive interaction of public authorities, local governments, political parties, public associations and organizations and market institutions in the implementation of socially significant projects aimed at the formation and development of human resources.

This goal is achieved by regulating the processes of information exchange, improving communication channels and cooperation, the use of communication technologies, coordinated programs, plans, tasks, synchronized with the action of communication processes and tools at the national level.

In our opinion, among the main functions of the studied mechanism should be distinguished: analysis and regulation of social relations; development of strategy of communicative activity of public administration and local self-government bodies; organization of effective "feedback" of the authorities with business structures and society (person); public involvement in the discussion and decision-making process; monitoring and prompt response to individual needs, requests of target audiences; ensuring the effectiveness of communications between the authorities and the maximum satisfaction of the interests of all participants and society; coordination, control of public opinion, monitoring of the processes taking place in it, observation of the dynamics of public sentiment; establishment of public control over the activities of public administration bodies and local self-government bodies.

The activities of state executive bodies and other subjects of public administration are not limited to by-laws but are also expressed in the implementation of law enforcement, which is characterized by the issuance of individual acts, which do not create rules of administrative law, but act as legal facts the emergence, change and termination of administrative legal relations are connected.

Law enforcement activity (law enforcement) is usually considered as one of the forms of realization of the right (along with use, execution, and observance). Compared to other forms of law enforcement, it has a significant specificity since only authorized (competent) bodies can apply legal norms. The application of legal norms takes place where the addressees of legal norms cannot exercise their legal rights and obligations without the mediation of the competent authorities. We can say that at a certain stage of law enforcement is connected to the methods of direct implementation - compliance, implementation, use.

Thus, administrative law enforcement is an authoritative activity of public administration entities (state executive bodies and other entities). Applying legal norms, the authorized body exercises its powers in relation to specific life circumstances in relation to specific persons, which is embodied in the form of a law enforcement (individual) act. In other words, administrative law enforcement is a power-organizing activity of public administration entities, their officials, and officials, which consists in the individualization of legal norms in relation to specific subjects and specific life circumstances in an individual (law enforcement) legal act of management (Kartuzova and Osadchy, 2008).

Rulemaking and law enforcement as a result of the activities of public administration tools of public administration in the field of human resources in Ukraine are quite necessary. After all, this, first, makes it possible to interpret far from specific provisions of the laws in order to clarify their holistic meaning. And secondly, such activity results in the personalization of legal norms in relation to specific subjects and specific life circumstances, as a result of which the regulation of public relations in the field of human potential is carried out.

Administrative actions of public administration entities aimed at ensuring the public interest can take a variety of external forms and thus take the form of tools of public administration. The general features of the tools of public administration include by-laws, jurisdiction, proper design, the ability to appeal, and so on.

Creating convenient and affordable conditions for receiving administrative services is one of the main tasks to be addressed by local governments. After all, the main purpose of public administration is to provide services, and it is the quality of services that every citizen evaluates the competence and friendliness of the government.

Analyzing the development of modern administrative and legal science and foreign experience in the legal regulation of relations between administrative bodies and individuals, we can identify the basic requirements that must be met by the law on administrative procedure. This law should establish, on the one hand, the procedure for the adoption and operation

of individual administrative acts is mandatory for all administrative bodies and, on the other hand, procedural guarantees for the protection of the rights of individuals (Mandyuk, 2017).

In our opinion, the general law on administrative procedure should contain the following provisions: it should reflect the constitutional principles of human rights and the principles on which public authority should be exercised; it must determine the grounds and procedure for initiating an administrative case; the procedure for preparing the case for consideration; the procedure for resolving an administrative case, ie direct consideration of an administrative case, adoption of an individual administrative act and its execution; grounds and procedure for dismissal of officials of the administrative body who are considering the case and persons who facilitate its consideration; it is necessary to establish the order and determine the consequences of the introduction of individual administrative acts; the law should establish a list of requirements that an individual administrative act must meet in order to be considered lawful.

Given the subject of the study, special attention needs to be paid to the issue of administrative services, which is currently focused on issues: deregulation and administrative simplification; streamlining the payment of administrative services; decentralization, ie the transfer or delegation of powers to provide administrative services to local governments; e-government.

Article 17 of the Law of Ukraine «On Administrative Services» provides for the maintenance of the Unified State Portal of Administrative Services (hereinafter - the Portal). Its main functions are to ensure: access to information on administrative services; access to the necessary documents (application forms, etc.); possibilities of electronic application for administrative services (in the future), etc. (Law of Ukraine «On administrative services», 2012).

The Portal should be an official source of information on the provision of administrative services, which means that potential consumers of services - the subjects of the application can link directly to the pages of the Portal and the information contained in them when communicating with entities providing administrative services and Administrative Service Centers. In any case, nothing in Art. 17 of the Law should not be interpreted as a ban on the creation of alternative electronic resources dedicated to administrative services.

In order to better understand what a full-fledged national electronic resource for the provision of administrative services should be, it is possible to turn to the best practices of developed democracies. The electronic web resource (portal) for the provision of administrative services in Canada is called «Service Canada». Information about administrative services on the

Portal is grouped by typical life situations. In addition, a list of the 10 most popular questions in the field of public services is presented as a separate group of information.

In accordance with the Communication Policy of the Government of Canada, this Portal may use electronic media resources, social networks of various formats (microblogs, file sharing, blogs and discussion forums) - to provide potential consumers with information about services. In particular, the electronic resource Twitter (for operative distribution of actual and small-volume messages) and YouTube (for placement of video files and presentations) is used.

At the same time, all important messages (changes in legislation, audit results, etc.) are displayed on the portal and through official publications, press releases. The Portal provides protection of private information and personal data of consumers, and also contains detailed instructions on the operation of the Portal and its information policy (Tymoshchuk, 2015).

The French Portal as the official website of French public services is a very popular resource with over 4 million visitors per month. Its purpose is to facilitate communication with the administration for citizens, businesses and public organizations, provide them with convenient access to the regulatory framework and inform them about their responsibilities. That is why the site focuses primarily on the needs of consumers. The portal allows communication not only via the Internet, but also by telephone using a special service.

At the same time, consumers have the opportunity to provide comments and advice on the site and on certain services. The portal provides access to all information in the field of administrative services, structured clearly and simply by sections (groups). The main page lists three main groups of services for the subjects of application: services for citizens, for business, and for associations of citizens. The main page of the Portal also contains a more detailed rubrication of services in the spheres of public relations: issues of foreigners and citizenship; families; labor relations; justice; real estate; health care and social services, etc. (Tymoshchuk, 2015).

Summing up the results of this block of research, it can be noted that the topic of administrative services is clearly one of the most relevant for Ukraine. The government's activity should focus on the quality of services and maximum simplification and deregulation.

It is also necessary to enlist the support of local governments and society in this reform, and to do this we must demonstrate the will to decentralize the powers to provide administrative services. It is important to emphasize that without the adoption of the law on general administrative procedure, the sphere of legal regulation of administrative services in Ukraine will keep many gaps in the relations between public administration bodies (including municipal ones) and private individuals.

The practice of addressing the public not only as an instance of approval / disapproval of certain political decisions, but also as an equal partner of the state in the development of public policy is becoming more widespread. In the countries with the largest Internet audiences, examples of such skilled complicity by active citizens have been most successful: in New Zealand, a public police law revision of the new bill was introduced in 2007, to which any citizen could amend; as a result, 234 proposals were received and taken into account; according to experts, citizen participation has become one of the key aspects in the law preparation process; in the United Kingdom, the Greater Society initiative was launched in 2010 to increase the participation of citizens and non-governmental organizations in solving social problems, involving as many people as possible in making important social decisions; since the end of 2010, the official government website of the initiative has been operating, where anyone can leave comments, links and videos (Dorodeyko, 2011).

The most common e-government tools used in Ukraine today at both the national and local levels are e-consultations, e-petitions, e-appeals, participation budgets (public budgets). Resources have also been created for the publication of datasets in the form of open data, including through electronic platforms such as Civil Society and Government, Smart City or the Single System of Local Petitions, which combine several electronic participation tools (Law of Ukraine «On approval of the concept of the development of electronic democracy in ukraine and the plan of measures for its implementation», 2017).

Different cities of Ukraine have started to implement various tools of e-democracy: e-appeals, e-petitions, e-discussions, e-procurement, e-budgets, e-public budgets (participation). Some cities create different services on their own, such as e-petitions, electronic queues for kindergartens or open data portals, while others use electronic platforms, such as the «Single Petition System» or «Smart City», which combine several e-petitions, participation tools. The choice of the model of e-democracy in cities is entrusted directly to local governments and active citizens (Loboyko and Nakhod, 2017).

A relatively new institution in the systematization of national forms of direct democracy, institutionalized in Ukraine, is the institution of electronic petitions. It was introduced by the Law of Ukraine «On Amendments to the Law of Ukraine «On Citizens' Appeals» Concerning Electronic Appeals and Electronic Petitions» of July 2, 2015. According to it, citizens can apply to the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, local governments with electronic petitions through the official website of the body to which it is addressed, or the website of a public association that collects signatures in support of electronic petitions ("On amendments to the Law of Ukraine «On citizens appeals" regarding electronic appeals and electronic petitions». Law of Ukraine of 02.07.2015).

In fact, this law has provided ample opportunities for the introduction of e-democracy in Ukraine. However, it is not without some systemic shortcomings that complicate the implementation of this form of direct democracy. In particular, the Law gives the right to submit electronic petitions only to citizens of Ukraine, while according to Art. 40 of the Constitution of Ukraine, all (not only citizens of Ukraine) have the right to send individual or collective appeals to the relevant authorities.

At the same time, a significant shortcoming of the Law is the lack of a mechanism for verifying the signatures of citizens in support of the electronic petition and determining the legality of the vote cast in its support. In our opinion, the establishment of a high enough "threshold" for a special procedure for consideration of electronic petitions by higher authorities minimizes the influence of citizens on public policymaking, while all other petitions are considered according to the algorithm of ordinary citizens.

It should be emphasized that the main difficulty in implementing projects in the field of e-government and interdepartmental projects is to organize the process of adopting appropriate standards and harmonization of information technology architectures of various organizations and agencies.

In general, it can be concluded that the implementation of e-government tools provides an opportunity to dramatically improve the quality of public services to citizens. We see a new level of these services in the transformation and improvement of the system of integration of departmental information systems and state, regional and municipal information resources. Integration of interdepartmental cooperation and provision of integrated services through central government portals and portals of regional and local authorities will increase the efficiency of the state apparatus, reduce opportunities for financial fraud, law violations, tax evasion, etc.

Ensuring the competitive advantages of human resources in stimulating the European integration process should include several public policy measures in the fields of education, science, labor market, mobility and management of economic development. Such conclusions are widely confirmed by the experience of the European Union, where the main factor in the development of human resources is to increase productivity and employment, to establish relationships in public relations in the system of "man-government society".

Conclusions

Summarizing the above, it can be argued that the state policy on the formation and development of human resources should focus on areas that

correspond to innovation processes in the economy, considering the needs of Ukraine's entry into the European and world space.

To implement this concept, the state must create an effective legal platform aimed at legislative regulation: reforms in education, health, economy, social security, environmental protection in order to improve the quality of health care, bringing education closer to the needs of the global market and the needs of specialists capable of creating, adapting and using technological innovations, overcoming socio-economic and environmental problems; development of multilevel public administration in Ukraine, which will encourage public administration to form effective communications with local governments, to provide conditions for participation of private and public stakeholders in the formation and implementation of public policy on the formation and development of human resources; introduction of public control, innovative models of public administration and stimulating the development of civil society, which will consist of highly educated enterprising people who are able to change and reform the country, to effectively defend their rights.

Regulatory legal support is needed to modernize the system of public administration and administration; procedures for conducting electronic consultations aimed at developing electronic participation of citizens in public policy making; activities of public and charitable organizations in such spheres of life as protection of human rights, health care, education, social protection of the population, ecology, culture, etc.

Non-governmental, extra-budgetary, non-profit organizations whose field of activity is education, culture, health care, social assistance, housing and communal services, sports, etc. can use resources such as volunteer work, initiative and activity of members, psychological support, alternative material resources in the form of donations, grants, membership fees and direct income from business activities to human resource development.

In the process of creation and gradual implementation of the e-government system in Ukraine, the tasks of information resources management should be solved, namely: creation of information resources necessary for public administration tasks and realization of constitutional rights of different categories of citizens to public information services; creation of an adequate regulatory framework; coordination of branch and regional state structures on formation and use of the state information resources, definition of the order and conditions of their use; ensuring the effective use of state information resources in the activities of public authorities and state institutions.

Ensuring free access of citizens and organizations to information resources in accordance with current legislation; establishment of powers and responsibilities of public authorities, enterprises and organizations,

departments and individual specialists in the formation, protection and use of state information resources; determining the composition of state information resources required at each level of public administration to ensure their formation, forms of submission, collection, introduction, storage, processing and use; monitoring and correction of information resources; organization of protection of state information resources, control of integrity and use.

Ensuring the rights and freedoms of man and citizen through the publicity of the administration is today perhaps the most important in terms of administrative and legal reform of Ukraine. Access to information, e-government of individual administrative acts, administrative agreements will make the analysis of legal facts transparent for regulation by state bodies and non-governmental institutions. At the same time, e-democracy at the state and local levels involves a gradual process of implementation, considering the interests of society and its individual citizens. Such technology should be tested at different levels, implemented gradually and with a reasoned analysis of specialists, experts.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 454-467
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Decentralization as a global trend of democracy development

DOI: https://doi.org/10.46398/cuestpol.4073.24

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Abstract

This research examines the process of decentralization of power as a global trend of democratization. The concept of decentralization of power is revealed and the process of implementation of the reform of decentralization of power in some European countries is highlighted. The relationship between the course of decentralization reform and the index of democracy in countries has been studied. The aim of the research is to identify and analyze the essence, features and experience of decentralization as a global trend of democratization. The realization of the goal requires the solution of the next task - to analyze the experience of decentralization in the context of the development of democracy in the European Union. The solution of research problems became possible due to the use of a complex of general scientific and special research methods. This analytical essay is based on documentary sources. Analyzing the principles and results of decentralization of power in European countries in the study we see the growth of democracy. Decentralization causes a global shift in power, as the distance between citizens and government institutions is reduced.

Keywords: decentralization; regional policy; democracy and citizenship; civil society; public administration.

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Recibido el 14/03/2022 Aceptado el 26/05/2022

La descentralización como tendencia global del desarrollo de la democracia

Resumen

Este estudio examina el proceso de descentralización del poder como una tendencia global de democratización. Se revela el concepto de descentralización del poder y, al mismo tiempo, se destaca el proceso de implementación de la reforma de descentralización del poder en algunos países europeos. Se ha estudiado la relación entre el curso de la reforma de la descentralización y el índice de democracia en algunos países. Mas concretamente, el objetivo del estudio es identificar las características y la experiencia de la descentralización como una tendencia global de la democracia. La realización del objetivo implicó la solución de las siguientes tareas: analizar la experiencia de la descentralización en el contexto del desarrollo de la democracia en la Unión Europea. La solución de las tareas de la investigación se hizo posible gracias al uso de un conjunto de métodos de investigación científicos generales y especiales: sistémicos, estructural-funcionales, históricos, comparativos. Se concluye que analizando los principios y resultados de la descentralización del poder en los países europeos en el estudio vemos el crecimiento de la democracia. La descentralización provoca un cambio de poder global, ya que se reduce la distancia entre los ciudadanos y las instituciones gubernamentales.

Palabras clave: descentralización; política regional; democracia y ciudadanía; sociedad civil; administración pública.

Introduction

Today, the process of spreading democracy in the world has spread to all continents and has become a global trend. The urgency of the formation and development of democracy is based on the growing popularity of democratic values, namely - civic consciousness, human and civil rights and freedoms, awareness, and protection of their own and public interests. Decentralization is an important component of the democratization of authority. At the same time, the processes of democratic transformation in European countries are quite heterogeneous.

If in Western Europe there are quite old and stable traditions of democratic governance, the countries of Eastern and Central Europe are characterized by heterogeneity and instability of these processes. At present, democracy is consolidating in most parts of the world, especially in Central and Eastern Europe.

The urgent task for most countries of the world is the implementation of effective and efficient governance, which is able to bring together the government and ordinary citizens, contributes to meeting their needs at a better level and the realization of democratic values in full. The realization of democratic values is manifested in the conscious and active involvement of citizens in public life, the defense of rights and freedoms, the protection of their own interests, which ensure the viability and sustainability of democracy.

The experience of democratic countries of Europe shows that the introduction of alternative systems of providing quality services to the population in the context of decentralization of authority helps to solve this problem.

In many European countries, the need for decentralization has arisen in connection with large-scale democratization processes and the implementation of market reforms. The collapse of the bipolar system of international relations has led to the unification of approaches to effective governance. The transformation of the world from unipolar to bipolar has accelerated the process of decentralization, as the European Union has become one of the centers of global influence.

The principles of building civil society, efficiency, transparency, openness and accountability, flexibility and subsidiarity are mandatory, as they are the basis for all sectoral policies developed and implemented in the European Union. Reforms in different countries take place in different ways, but the common basis for all countries is the reason for the need for decentralization - to manage the provision of administrative services has the lowest level of government, which can bear the costs and dispose of the results.

In political science, the term “decentralization” (from the Latin “de ...” - a prefix meaning negation, and “centralis” - the middle) - a governing political system designed to implement meaningful practical decisions that are geographically or organizationally outside the direct influence of central government; a political process involving the delegation of certain powers by the central government to the local level in order to optimize the practical solution of issues of national importance, as well as the implementation of specific regional and local programs (Decentralization. A short dictionary of political science terms, Undated).

The transition to decentralization - is a global shift in authority that frees the individual from state care and allows democracy to be built from the bottom up. Democracy presupposes the existence of feedback between the government and the citizen. Citizens should be informed about all actions and decisions of the government, and the government - about the real needs of specific citizens. Only under such conditions will its actions and

decisions be determined by the interests of citizens, social groups and it will be able to adequately respond to their requests (Boryslavs'ka *et al*., 2012).

Decentralization reduces the distance between citizens and government institutions, allows citizens to influence government more effectively. It is one of the arguments for the transfer.

1. Objectives

The aim of the article is to identify and analyze the essence, features, and experience of decentralization as a global trend of democratization. The realization of the aim requires the solution of the next task - to analyze the experience of decentralization in the context of the development of democracy of European Union countries. The object of study is decentralization in the modern political process. The subject - decentralization as a global trend of the development of democracy.

2. Materials and methods

The solution of the research tasks became possible due to the use of a set of general scientific and special research methods: systemic, structural-functional, historical, comparative. The systematic method was used during the structuring and generalization of research papers devoted to the study of the concept and phenomenon of decentralization, its essence, as well as in the process of analysis of decentralization through the prism of democracy.

The structural-functional method was used to differentiate the effects of decentralization on political institutions, political relations, political culture, and consciousness, as well as to define it as a global trend of democratization. The historical method made it possible to show the development of decentralization through the prism of time in different countries. The comparative method was used when comparing the processes of decentralization reform in European countries.

The issue of decentralization in the context of democratization in the field of political science is not new, but it is becoming increasingly important. This issue was devoted to the work of Ukrainian and international scholars and practitioners such as - M. Baymuratov, Ye. Borodin, O. Gulac, V. Zubchenko, I. Koliushko, S. Kvitka, M. Lend'el, B. Malchev, M. Moskalets, R. Oleksenko, T. Sergiienko, A. Tkachuk, O. Venger, V. Yemelyanov and others.

3. Results and discussion

Decentralization of power contributes to the democratic development of the state by strengthening the influence of territorial gromadas, social groups and the general public on matters of public importance. A democratic state involves the public in public governance in order to optimally meet the needs of society and the citizen. As part of the general trend, each country has the features, forms and results of decentralization, the genesis and evolution of relations between central and local government, basic social values.

The implementation of decentralization reforms in the world has various consequences. High-quality reform programs have been well developed and successfully implemented in such democratic countries as Denmark, Finland, Italy, France, Poland, and others. Their results are democratization of society by involving citizens in decision-making, intensification of the political process, improving the quality of public services and functions, more rational use of budget funds, promoting regional development and regional policy, increasing public confidence in government.

The experience of development of foreign countries shows that optimization of territorial organization of authority, strengthening local self-government, formation of self-sufficient territorial gromadas, development of democracy is impossible without decentralization of power, which is the basis for ensuring a high standard of living, providing quality services at the local level.

Decentralization is a necessary condition for a democratization of state power and society, as it contributes to increasing the efficiency of central and local authorities, favorable conditions for the development of the region, the development of local democracy. In European countries, the government is defined as a set of rules and regulations for the exercise of power with respect to and ensuring their openness, public participation, accountability, coordination.

A fundamental aspect of decentralization reforms in EU countries is the active involvement of civil society in order to improve governance and strengthen democratic principles. Among the basic conditions that cause the trend of decentralization as a tendency to delegate powers and responsibilities to local governments, we see – increasing the efficiency of local governments, the introduction of democracy and protection of citizens' rights, increasing the legitimacy of the state (Zhalilo *et al.*, 2019).

The research of the successful experience of decentralization reforms in different countries of the world demonstrates the global trend towards the development of the foundations of democracy. Western European countries have succeeded in creating a viable structure through decentralization to

support the development of democracy and a stable dialogue between the state and civil society.

It should be noted that despite the different algorithms of decentralization in different countries of the European Union, the consolidating elements include the desire to make the public administration system more efficient by bringing citizens and key decision-making centers closer to the interests of gromadas.

The experience of decentralization reforms in the Baltic countries is interesting, where decentralization reform covered legal, administrative-territorial, and fiscal areas, which were implemented autonomously. In the Scandinavian countries, decentralization reform has helped to organize modern local self-government on an agency principle.

In Denmark, the search for the optimal level of decentralization began in 1958 and continued until 2007, when a new division of powers entered into force in the new structure and identified areas for further improvement of decentralized management along with stimulating integration processes for municipal consolidation. As a result, Denmark has become one of the most decentralized countries in Europe.

Expenditures of local self-government after the reform of the consolidation of municipalities, when the average population of municipalities increased from 20 to 55 thousand inhabitants, became stable, and before they were constantly growing. Denmark is one of the countries with the largest municipalities with the largest powers. Most European countries first encouraged the consolidation of small communities and then forcibly united them (Experience of Decentralization in European Countries, 2015).

In Finland, a feature of governance reforms in the 1990s was the implementation of large-scale transformations at the local level. Agency relations between levels of government with broad autonomy, the introduction of market principles in the provision of public services, etc. However, the commercialization and transit of public services to the local level has had a negative impact on the social sphere, which has traditionally been characterized by a high level and quality of service delivery. Later, the Finnish governance reform began to focus on the German experience of gradual transformation using pilot projects (Experience of Decentralization In European Countries, 2015).

In Italy, the result of the reform of decentralization of power was the formation of a three-tier system of organization of power in the country: region – province – commune. The organization of power and the division of powers were introduced with the adoption of the Constitution of the Italian Republic in 1948. In the early 2000s, a thorough reform of decentralization and reorganization of power was carried out.

Expenditures on education, health care, transport networks, civil aviation, and administrative services for industry and business were concentrated in regional budgets. The competence of the regions also includes issues of spatial planning and development. In order to exercise their powers effectively, the regions must be provided with sufficient resources, which include both their own resources and funds within the equal distribution of funds provided by the state to support economic development and reduce social and economic unrest (Experience of Decentralization in European Countries, 2015).

The competencies of the Italian provinces include the support and development of public transport, authorization and control of private transport, roads within the provinces and related infrastructure, care for secondary education infrastructure, economic development, including employment centers, social service centers, cultural promotion, tourism, and sports. A separate task of the province is to support and develop cooperation and partnership between communes.

The tasks of the communes are the introduction and accumulation of local taxes, regulation of local police, health care, primary and secondary education, public transport, provision of social services at the local level, trade permits, garbage collection and disposal, local transport infrastructure and street lighting, social housing (Boryslavs'ka *et al.,* 2012).

Let us dwell on the analysis of the experience of decentralization reform in France. It is one of the countries in Europe where decentralization movements arose in the post-bourgeois revolutions. The experience of decentralization of French power has been used by many European countries. The beginning of the largest in the XX century reform of the administrative-territorial system of France, which took place in the 1980s, date back to the beginning of the presidency of Charles de Gaulle. He proposed a fundamentally new approach to the development of the state and the relationship between the central administration and territorial units (Khrebtiy, 2018).

In 1982, under the Law on the Rights and Freedoms of Communes, Departments and Regions of March 2, 1982, the process of decentralization of government in France began, according to which the regions became an administrative-territorial unit with all necessary powers and headed by a governing council, which is elected by direct universal voting (Experience of Decentralization In European Countries, 2015).

During the 1982 reform, agglomeration communities were created, and commune communities were created for smaller cities. There is also an association of communes to solve a specific problem. There are now 18,000 different commune associations in France, which is also a problem, so the government aims to reduce the number of communes to at least

5,000, although this is considered too much for France (Experience of Decentralization In European Countries, 2015).

In total, between 1982 and 1986, an additional 25 laws and about 200 decrees were passed. New local taxes (in addition to the four main ones) and a global subsidy for decentralization from the state budget have been introduced to compensate for the costs of local governments in exercising their expanded powers. However, it soon became clear that such compensation was not enough.

And this has led to a growing mismatch between the expanded powers of the communes and the insufficient financial, material, human and other resources available to them. Measures were needed to address the problem. As a result, the task of consolidating lower-level administrative units through the development of inter-municipal cooperation has become a priority in further reforms (Hanuschak, 2015).

Assessing the experience of self-government reform accumulated in France over more than thirty years, it should be noted that despite the undoubted positive results (for example, in the field of local government development, inter-municipal cooperation, etc.), many important issues remain unresolved. Contrary to the expectations of the reformers, the administrative-territorial structure of the country has not become simpler and clearer, on the contrary - the number of levels and types of territorial units has increased. Regions and numerous inter-communal associations were added to the three historical levels (communes, departments, and states).

It should be noted and another direction of reform in France. It is about increasing the role of cities in local development through the creation of inter-municipal associations, including cities and adjacent territories. Such a complex way of reform is associated with the lack of public consultation, the application of a purely administrative principle of reform demonstrates the low efficiency and slowness of decentralization reform.

In our opinion, it is appropriate to study the practice of reform in Poland. It was the experience of decentralization in France that formed the basis of the decentralization reform in Poland. In turn, Ukraine is actively borrowing the Polish experience of decentralization. This is due to several reasons: first, Poland is a neighboring state that has common factors with Ukraine – the former post-communist state; a similar chronological framework for the beginning of state-building and problems with finding a model of public administration; secondly, a unitary state with a republican form of government, a democratic political regime, but a parliamentary form of government. It should be noted that the experience of implementing decentralization reform in Poland is successful.

The decentralization reform in Poland contributed to the rapid development of local self-government, improved the quality of life of its citizens, and after the country's accession to the European Union enabled the newly created administrative units to act as equal partners in international cooperation.

According to the Constitution, Poland is a unitary state. In the context of the reform of decentralization of power and the introduction of autonomous units in the administrative division of the country, the Constitution states that the principle of a unitary state is not an obstacle to decentralization of power and is guaranteed by the territorial structure of Poland.

The concept of decentralization is closely related to the concept of subsidiarity, which implies the existence of local self-government, whose functions include addressing issues at the local and regional levels. The essence of the governance mechanism is that local issues are decided by the local community, not by public authorities. The basis of administrative-territorial reform was the principle of decentralization of power in Poland (Tkachuk, 2018).

The reform of decentralization of power and the development of local self-government in Poland began with the adoption of the Law of March 8, 1990 "On Commune Self-Government", which established the basis of local self-government – the commune. The changes came amid the collapse of the pro-Soviet system of "people's democracy." The main task of the commune was to meet the most important human needs. For this purpose, the appropriate infrastructure was created, budget reform was carried out.

With the formation of the administrative-territorial division in Poland, first, the formation of the basic territorial level of government at the gmina level was ensured. The financial component and the distribution of communal property at the basic level were of key importance for the successful implementation of the administrative-territorial reform.

At the legislative level in Poland, a clear mechanism was introduced for the distribution of the revenue side of the budget between the state budget and local budgets, which allowed territorial authorities to form their own budgets and forecast further development of the administrative-territorial unit (Decentralization of Power On The Basis Of Best Foreign Practices And Ukrainian Legislative Initiatives, 2015).

In Poland, the legislative implementation of administrative-territorial reform began with the adoption of the Law "On the Establishment of a Basic Three-Level Territorial Division of the State" of July 24, 1998 (Experience of Decentralization In European Countries, 2015), according to which a three-level territorial division was introduced on January 1, 1999. Poland was divided into gminas (a basic territorial unit), districts and provinces (regions). A new three-tier administrative-territorial division, according to

which the state began to be divided into voivodships, counties and gminas. The state is headed by the president, the voivodships by the voivode, the county by the headman, and the gminas by the voit, the mayor, or the president of the city (Decentralization: World Overview, 2018).

Management at the level of the administrative-territorial division was regulated by the relevant legislation. They identify management and control for each level. Thus, the gmina is governed by the commune council, the district by the district council, and the voivodship by the sejm. The term of office of these bodies is four years.

The reform of decentralization of power in Poland has caused the biggest changes at the lowest level – the level of communes. Local self-government thus gained a real right to manage and dispose of its own resources, gained additional powers and greater responsibility.

An analysis of decentralization reform in Denmark, Finland, Italy, France, and Poland shows that decentralization is the key to increasing the efficiency of public administration. Therefore, the general principles of effective administrative reform in any European country are quite similar. We are talking about the active transfer of powers from top to bottom, compliance with and promotion of the principle of subsidiarity, active involvement of the public in decision-making. Decentralization causes an increase in the role and importance of democratic values in society.

The level of development of democracy in the country is determined by determining the index of democracy. The methodology for determining the democracy index is based on data collection through a survey of expert and public opinion. There is a list of methods that study the level of development of democracy in the world, for example – the method of Tatu Vanhanen, Freedom house, Economist Intelligence Unit. However, the methods are united by the classification of democracy – full, incomplete, transitional (hybrid) and authoritarian regime.

Table 1. Characteristics of the classification of democracy *

Classification	Scores	Characteristic
Full-fledged democracy	8-10	A country where civil liberties and basic political freedoms are respected, high political culture, developed democratic principles. There is a functioning system of government, the independence of the judiciary, whose decisions are binding, and the independent media. The country may have very minor problems in its democratic functioning.

Incomplete democracy	6-7.9	Countries where elections are fair and free, but problems may arise (for example, violations of media freedom), although fundamental civil liberties are respected. Countries have shortcomings in some democratic aspects (underdeveloped political culture, low level of participation in politics, problems in the functioning of the governance system).
Transitional (hybrid) democracy	4-5.9	Countries where there are regular indirect election irregularities that prevent them from being recognized as fair and free. These states often have a government that puts pressure on political opponents, no independent judiciary, widespread corruption, harassment and pressure on the media, no full rule of law, and more pronounced shortcomings than in incomplete democracies in the development of political culture. level of participation in policy, and problems in the functioning of the management system.
Authoritarian regime	less than 4	In countries where there is no political pluralism and free elections, there is absolute dictatorship, violations and oppression of civil liberties, there may be traditional institutions of democracy of insignificant importance. The media are subordinate to the state, the judiciary is not independent, there is censorship and suppression of government criticism.

* Compiled by the authors on the basis of materials of the Democracy Index (2020).

Let's turn to the results of a study of the Democracy Index by the Economist Intelligence Unit in 2020. We have the following figures for the democracy index and the category of democracy of the countries from the list we have considered above in relation to the process of decentralization reforms, namely: Denmark – 9.15; Finland – 9.20; Italy – 7.74; France – 7.99; Poland – 6.85; Ukraine – 5.81 (Democracy Index, 2020). Thus, the category of full-fledged democracy includes Denmark and Finland, the category of imperfect – Italy, France, Poland, the category of countries with a transitional, hybrid regime includes Ukraine. There is a certain correlation between the beginning of the decentralization reform process in the country and the indicator of the democracy index in it.

Table 2. Comparison of decentralization reform and democracy index *

Country	The beginning of decentralization	Democracy Index
Denmark	1958	9.15
Finland	1990	9.20

Italy	2000	7.74
France	1982	7.99
Poland	1990	6.85
Ukraine	2014	5.81

* Own elaboration.

Conclusion

Analyzing the regulatory principles and the results of decentralization of power in European countries in the form of statistical indicators of economic and democratic development, the level of citizen involvement and the impact of information and communication technologies on democracy, we see a tendency to strengthen democracy and sustainable development.

This trend is stable and systemic. Foreign positive experience clearly demonstrates the importance of decentralization for countries that are in the process of profound changes in the system of public administration and regulation of socio-economic relations. It should be noted that for countries in transition, decentralization is an effective way to change the essential characteristics of society and has significant potential and prospects for the development of full democracy.

For Ukraine today, the issue of decentralization seems to be key in the transition from the status of a country in transition to high-quality integration into the EU. That is why it is necessary to study the experience of the members of the European Union, to comprehend it and use it for the sake of democratization and increasing the efficiency of government in Ukraine.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 468-482
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Public actors of international politics: peculiarities of interaction

DOI: https://doi.org/10.46398/cuestpol.4073.25

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Abstract

The objective of the article was to identify the public determination of the activities of international political actors. The methodology combines a systems approach, comparative method, structural and functional analysis, institutional approach, postmodern methodology, logical generalization method, communicative approach, sociocultural analysis and the scenario forecasting method, which ensure to determine the importance of the public elements of the international community. At present, the model of public opinion allows us to see the main trends of public self-expression of political actors and their relationship with social groups. That is, the attitude of the population of certain countries to this problem became the basis of various actions of public political actors. It is concluded that advertising is a prerequisite framework for modern international politics both at the theoretical-conceptual level and at the level of pragmatic activity. Kokkuvõtteks tehti kindlaks, et kaasaegse rahvusvahelise poliitika avaliku sektori osalejad keskenduvad oma tegevuses kollegiaalsele poliitilisele otsustusprotsessile laia ja mitmemõõtmelise arutelu alusel, esitades kõige laiemaid vaatenurki.

Keywords: political actors; international relations; global public policy; international non-governmental organizations; communicative competence.

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Recibido el 20/03/2022 Aceptado el 15/05/2022

Actores públicos de política internacional: peculiaridades de interacción

Resumen

El objetivo del artículo fue identificar la determinación pública de las actividades de los actores de la política internacional. La metodología combina un enfoque de sistemas, método comparativo, análisis estructural y funcional, enfoque institucional, metodología posmoderna, método de generalización lógica, enfoque comunicativo, análisis sociocultural y el método de pronóstico de escenarios, que aseguran determinar la importancia de los elementos públicos de la comunidad internacional. En la actualidad, el modelo de opinión pública permite ver las principales tendencias de autoexpresión pública de los actores políticos y su relación con los grupos sociales. Es decir, la actitud de la población de ciertos países ante este problema se convirtió en la base de diversas acciones de los actores políticos públicos. Se concluye que la publicidad es un prerrequisito marco para la política internacional moderna tanto a nivel teórico-conceptual como de actividad pragmática. Como conclusión se estableció que los actores publicos en la política internacional moderna concentran sus actividades en torno a la toma de decisiones políticas colegiales sobre la base de una discusión amplia y multidimensional con la presentación de la más amplia gama de puntos de vista.

Palabras clave: actores politicos; relaciones internacionales; política pública global; organizaciones internacionales no gubernamentales; competencia comunicativa.

Introduction

Publicity in the context of international research plays the role of a link between the definition of state and non-state actors in international politics. Publicity in international relations is a historically primary form of diplomatic activity, which from the beginning had a ritual-formal character. At the present stage, public political actors in international relations are characterized by diversity in approaches to classification and stratification by levels of influence, participation in decision-making processes, political behavior, etc.

Publicity simultaneously acts as an environment of activity, normative basis, establishment of the game rules, conceptual image, as well as initial conditions for international political action. In the context of globalization and the growing importance of regional and supranational intergovernmental organisations, public political actors will establish one

of the most heuristic subjects of modern international research. Public political actors are a crucial group of actors and institutions that implement the main content of international politics, open to society interactions to solve international problems.

Currently, there is a need to identify the importance of public influence on the international political process from the point of openness. The institutionalization of political discussions, the evolution of transparency in the context of information and communication revolution, the establishment of the particularities of public political actors in modern international relations and international politics overcome the contradiction between formal-institutional and behavioral-activist approaches of assessing the effectiveness of international policy.

The **objective** of the article is to identify the public determination of the activities of actors in international politics. The aim of the article is to establish criteria for demarcation between public and non-public actors in international politics.

1. Methodology of the research

The article uses professional methods of modern political science. In particular, the study uses methods of complex analysis. The methodology combines a systems approach, which reveals the functioning of the global system of public politics in an environment of global social and economic problems.

The comparative method is aimed at reflecting the qualities of the types of public political actors in international relations, establishing the specifics of global and interstate interactions. Structural and functional analysis is aimed at identifying the special functions of contemporary public political interaction actors in the international arena, as well as their relationship in achieving the goals of governments and states, in increasing activity of non-state public political actors condition.

The institutional approach is used to analyze the importance of public politics institutions at the global level and identify trends in the interaction of domestic and international policy. Postmodern methodology is aimed at reconstructing the preconditions for making public political decisions and realizing the interests of diverse political actors in changing conditions. The method of logical generalization provides the formation of a holistic picture of the transformation of international public policy through the participation of new types of public actors.

The communicative approach ensures the establishment of the public political actors interactions` peculiarities as a communicative phenomenon.

The social sciences` methods include socio-cultural analysis and the scenario-forecasting method. They help to determine the significance of public elements of international political interactions based on hypothetical predictions of international political development events.

2. Results and discussion

The institutional environment of publicity of modern international politics consists of many elements that shape the meaning of political activity in international relations. Mechanisms for establishing political alternatives during negotiations, as well as the formation of the agenda and resources for the implementation of decisions are determined on the basis of the correlation between the activities of decision makers and public opinion.

The latter is one of the main dimensions of openness and compliance of international politics with the ideas and requirements of the population. As U. Osée, B. Bijoux, S. Didier and E. François, point out, for a long-time public opinion was perceived as irresponsible, changing, ill-informed and emotional, and public opinion was deemed unfit to participate in the management of public affairs and foreign policy.

It was only from the years 1950, under the influence of some currents in American political sociology, that public opinion has been gradually identified and sometimes legitimized as a factor entering the process of political decision making (Osée *et al.*, 2019).

A complex and multi-level system of expressing a public political position forces experts and scholars to turn to empirical practices of assessing the state of public opinion on the basis of subjective statements of individuals. However, the model of public opinion allows us to see the main trends of public self-expression of political actors and their relationship with social groups.

Global public opinion determines for public political actors a set of acceptable alternatives for making demands in the framework of international politics and consistently achieving optimal solutions. Contemporary African scholars correctly argue that public opinion is called the judgment of citizens on a topical issue (political, economic, social, etc.).

In order to know public opinion, surveys are organized, a technique that involves interrogating a part of the population to find out the opinion of the whole population. But the results of a poll have no legitimacy, because the popular will can only be expressed by the vote. The vote is, in the end, the expression of the choice of the citizens on the great debates of the community. The media are an essential means of expressing the diversity

of viewpoints, which allow everyone to form their opinion (Osée *et al.*, 2019). The mediators in the relationship between global public opinion and global political actors are national elected institutions and the international media.

Creating a free and impartial public that serves as an environment for evaluating draft decisions in international politics requires considerable effort. Therefore, to talk about the existence of independent public opinion, which determines the activities of public international actors we can introduced only in relation to countries with stable democracies. R. Grant, and R. Keohane identified seven types of accountability mechanisms and consider their applicability to states, NGOs, multilateral organizations, multinational corporations, and transgovernmental networks. By disaggregating the problem in this way, they searched for methods to identify opportunities for improving protections against abuses of power at the global level (Grant and Keohane, 2005).

At the same time, the transformation of public opinion of a certain society into a basis for the activities of public international actors requires a significant evolution of the political culture of mass voters and national elites.

The transformation of the world political agenda on the basis of global public opinion is taking place in a more direct way than it has been in previous periods of human development. Using the example of the global problem of struggle against climate change, we can see that the attitude of the population of certain countries to this problem became the basis for various actions of public political actors. In addition to openness and awareness of specific global issues, it is important to be able to motivate citizens to take certain actions that will indicate their position on a particular international issue.

Regardless of perspective, it is important to be aware of the multiplicity of actors and processes that make up the global system. Reminding ourselves of the complexity of international relations equips us with the ability to recognise any overgeneralisations as they are being presented to us by the media, by political leaders, activists, pressure groups and through our social networks, making us more informed, nuanced and rounded in our thinking, reasonably denoted Austrian researcher C. Gebhard (Gebhard, 2016). On the other hand, it is important to be able to give impetus and direction to specific public actors at the international level.

The importance of public opinion for the activities of public political actors at the international level cannot be adequately assessed without presenting the full range of existing political actors. Modern actors in the international political arena are not limited in status, formal subordination or territorial affiliation. They use all means to implement their interests.. In

this regard Kadir Jun Ayhan points that the taxonomy can be categorized into these perspectives: state-centric, neo-statist, nontraditional, society-centric, and accommodative (Ayhan, 2019). Therefore, it is important to establish the determination of the relationship between specific actors and subject aspects of the global public sphere

The public sphere of international relations is expanding not only through public communications and interactions between public broadcasters. It is becoming a network that brings together public actors at different levels of international policy-making. As Yadira Ixchel Martínez Pantoja say:

> Participation of state and non-state actors engaged in shaping the political environment of a host country to advance common interests, with different levels of leadership. A model comprised of state and nonstate actors implementing reactive, proactive and relationship-building strategies and instruments is proposed. In Mexico, regulations for genetically modified (GM) foods have moved from a restrictive to a liberal approach, and this change may be explained by analysing US public diplomacy efforts to promote ideas related to GM foods" (Yadira and Martínez, 2018: 245).

The procedural dimension of the public sphere of international relations is of interest due to the possibility of detailing within the framework of a descriptive approach to those political interactions in international politics that have traditionally been outside public coverage.

Activation of non-state (non-governmental) public political actors as decision-makers in international policy at the present stage is a process of functional replacement of state actors in important sectors of international cooperation. The importance of non-governmental organizations as an empirical articulation of the increasing of the variety of public political actors allows to ensure the sustainability of the international public sphere through the emergence of new initiatives of self-government and lack of vertical subordination and hierarchical links between these new public actors.

In this regard Tanja Bruhl and Volker Rittberger claime that global governance is equated with multilevel governance, meaning that governance takes place not only at the national and the international level (such as in international governance) but also at the subnational, regional, and local levels. Whereas, in international governance, the addressees and the makers of norms and rules are states and other intergovernmental institutions, non-state actors (in addition to states and intergovernmental institutions) are both the addressees and the makers of norms and rules in global governance (Bruhl and Rittberger, 2002). Therefore, it is time to expand the number of subjects of public discussions and develop procedural requirements.

In contrast to group policy or interest group policy processes, the international public sphere is conceptually more represented as a sphere of cooperation than a sphere of competition. At the same time, the commitment to their own needs and internal organizational requirements makes public actors participants in the competition for public attention and attempts to gain an advantage in the processes of resource allocation during communication for state power between public actors.

The transformation of interest policy into the public sphere is one of the important conceptual dimensions for understanding the direction of evolution of modern international politics. I. Yadira and P. Martínez (2019) point, because of their influence on state actors, economic and technological resources, strategies, and instruments of engagement, non-state actors have become resourceful stakeholders of public diplomacy. Multinational corporations, industry groups and NGOs are able to influence policymakers and diplomats and to engage in dialogue with governments and publics.

Moreover, non-state actors are key partners for the implementation of public diplomacy programs. However, some of these non-state actors promote their own ideals and pursue their own interests, especially multinational corporations that want to advance their own agenda, relax regulations, change policies and shape attitudes among policymakers, whereas NGOs try to gain more supporters for their causes and donors, strengthen regulations and change attitudes among publics (Yadira and Martínez, 2019). Therefore the essence of the features of specific public political actors requires a description of the specific mission of each group of political actors at the international level.

The problem of mutual change of groups of public actors of international relations should be considered both from the point of view of structural functionalism, and from the point of view of autonomy of behavior of concrete subjects. At present the functionality of state public actors is influenced, on the one hand, by public requirements for efficiency and effectiveness, and on the other hand - is under pressure from the technological revolution and trends to simplify complex management problems and standartize management situations.

As M. Barnett and K. Sikkink suppose, the study of global governance reflects these changes in the study of world politics. Whereas this was once limited to how states with pre-existing interests create norms, rules, laws, and institutions to regulate their relations, there have been a number of critical additions in the recent past. First, there is a greater interest in the social construction of what is to be governed that is, how a problem becomes defined and gets placed on the agenda.

Moreover, there is a growing consideration of how international and domestic structures, working through conceptions of self and logics of

appropriateness, shape governance structures (Barnett and Sikkink, 2008). Accordingly, state political actors in the international arena are increasingly becoming technical units that do not make strategic decisions, but only carry out their design.

Public criticism of the activities of individual public actors, who are members of various state units, reveals the drawbacks of the authoritarian approach to international relations. The concealment of the goals and objectives of specific actors at a certain stage leads to the rejection of the world order by a certain group of public actors. In accordance with UN System Task Team:

> The post-2015 agenda must re-examine the current modalities of international cooperation and develop the appropriate global governance institutions to ensure transparency, accountability, representativeness and commitment. New forms of cooperation and partnerships will need to consolidate the gains of the past and advance appropriate approaches to meet the challenges ahead. Renewed efforts to strengthen South-South cooperation and enhance regional arrangements deserve attention (Analysis and overview, 2015: 4).

In this regard, the global public sphere should become a space of responsibility and accountability of public political actors who represent the various components of the global political structure from nation-states to global corporations.

It is the public manifestation of non-traditional subjects of international politics at the present stage that acquires the status of a factor of stratification of public actors of international politics. The change in the functional workload and role of state actors will be articulated by independent experts and the international scientific community. As UN experts argue:

> The majority of non-state actors have a valuable contribution to make in finding a collective solution to addressing global collective action problems, such as international security, climate change, continuous food insecurity, global health, and effects of rapid urbanization and migration. Global poverty and inequality are now viewed as an issue of common interest requiring joint action (Analysis and overview, 2015: 5).

The fact that some state public political actors do not notice this or refuse to change their role only deepens the situation of multidimensionality and complexity of the public sphere of international politics

The problem of leading positions in the international public sphere is considered in terms of the status and functionality of institutions of management and representation. At the present stage governance at the global level is a process not so much of administration as of coordinating and securing the interests of the beneficiaries of specific public policies. S. Breslin and E. Nesadurai recognised that non-state or private actors can be closely linked to the state, for instance, in the form of government-

linked corporations or government-created or government-sponsored NGOs, we nonetheless find it useful to maintain a distinction between state and non-state actors for analytical purposes and to avoid presuming an a priori conflation of interests between state actors and non-state actors closely allied to the state. Our interest in these schemes stems from these more novel governing roles undertaken by non-state actors, prompting us to ask whether we can find similar trends in Southeast Asia (Breslin and Nesadurai, 2018).

Thus, public political actors provide a link between the business paradigm and the paradigm of traditional bureaucratic management.

The transformation of the international public sphere into a set of channels of communication between state and non-state actors is a promising project that will remove the traditional obstacles to the regulation of competence fields. It will also make possible to invent more effective means of communicating information and to provide a more complete consideration of alternatives in international decision-making.

The concept of global governance makes it possible to transform public political activity at the international level as a mean of correcting the interdepartmental struggle and restrictions in the areas of application of certain management tools.

S. Breslin and E. Nesadurai emphasized that transnational governance may be found in bilateral spaces between two states, in transnational regional or global spaces, but they can also be located within states as instantiations of governance initiated elsewhere. In fact, a hallmark of transnational private governance is its fluidity across levels as governing agents at one level attempt to regulate the behaviour of subject actors at different sites (Breslin and Nesadurai, 2018). The international public sphere becomes relevant in the conditions of extraterritoriality.

The ability to ensure real progress in the public expression of positions and speaking up on certain areas of international policy is becoming an important factor in international development. At the same time, the subjectivity of public political broadcasters at the international level should be related not only to state sovereignty, but also to economic factors.

Economic public actors at the present stage are not the most dynamic and quantitatively predominant participants in international transactions. S. Breslin and E. Nesadurai very relevantly assume, that despite the very strong commitment to state sovereignty and non-interference in this region, various forms of transnational governance are emerging and/or consolidating where private actors (business firms, NGOs, foundations, experts) engage in or contribute directly to the development of norms, standards, rules and practices that steer the behaviour of other actors towards some principled (or functional) end (Breslin and Nesadurai, 2018).

Hence, state-centrism loses its significance and needs to be replaced.

The introduction of new public actors into scientific circulation requires their testing at all levels: it is a matter of determining the meaning of their activities, describing the structure and specifics of behavior, etc. Within the international public sphere (which also includes Internet communication) is an important factor of self-realization for non-governmental and individual political actors.

The process of transforming a particular citizen's personality as a public broadcaster of the Internet into a subject of international politics is determined by its importance for international affairs and influence on international public opinion, evaluation of political events, experts' activities, etc. These days, it is difficult to predict the quantitative growth and importance of public actors at the international level.

However, we can talk about the formation of a special environment that they form. Michele Betsill correctly indicates:

> While realists dismiss claims about the significance of these actors in world politics, scholars of international environmental politics (IEP) have long recognized their importance, particularly in processes of global governance, and have shaped discussions in the wider discipline of international relations. This largely reflects the fact that non-state actors have had a stronger presence in the environmental issue area than in many other areas of concern to international relations scholars, such as security, trade, and health (Betsill, 2014: 185).

This environment makes it possible to rethink international events and processes.

On the example of specific public political actors, we can see that the realization of selfish interests is a large-scale feature, which will be recorded in the activities of traditional institutions. Opportunities to represent professional interests at the global level demonstrate the potential of public policy actors who can provide a new level of consideration of traditional issues.

The examples of social and labor relations and industrial democracy show the possibility not only of articulating the interests of employees, but also the prospects of forming an agenda to address these issues. T. Otsuka justly points that:

> The question of the UN Re-structuring is also being dealt with. However, the true state of the UN affairs cannot be fully understood by studying its objective, structure and function only; because various factors such as the world situation at the time of the UN establishment, international political dynamics, economic interests, different ways of handling world-wide humanitarian issues etc. deeply affect the existing international organizations (Otsuka, 2017: 105).

Accordingly, the UN itself has been changing its approach to interaction with state and non-state public political actors for a long time.

The transformation of public political actors into a dominant group of international relations` factors at the present stage is reflected on the basis of empirical fixation and statement by the research community. It must be taken into account that in modern Ukraine and abroad conditions are created for the initiative promotion of new public political actors, the disclosure of the social significance of their activities.

Peculiarities of behavior are studied on the basis of those methodological principles that correspond to the paradigmatic guidelines of systems theory and linear development. Yann Richard states that «actorness is based on a set of criteria that we will present and interpret spatially.

Scholars of international relations have never used such an approach; too few consider geographical space an important parameter. In the first half of this article, we will review international relations publications on actorness and focus on their relevance for the EU. Then we will present a geographical interpretation of certain criteria for actorness (opportunity, coherence or cohesion, and effectiveness). In the second half of the article, we will apply the geographical interpretation of actorness to an assessment of the EU's place in international relations in various domains by empirically testing certain of these criteria (Richard, 2013).

At the same time, there are opportunities for substantive understanding of the specifics of public actors on the basis of spatial determination of political events, a new distribution of economic assets, socio-psychological background, etc.

Modernization of state actors in international relations at the present stage is in the direction of implementing the functions of the widest possible representation of public opinion, communication competence, scientific approach to the organization of activities. With a significant resource base, state and governmental public policy actors have an advantage in reaching a promising field of expertise, applying new technologies, identifying leading and secondary international issues that should be put on the international agenda.

As Rebecca Gumbrell-McCormick pointed out, intergovernmental organizations, while acting on behalf of nation-states, do not enjoy analogous powers or legitimacy. The UN system is recognized by and represents the largest number of nation-states on a permanent basis and is granted the legitimate right to use force under very limited conditions (Gumbrell-McCormick, 2008).

The structure of global governance since XX century is also generally focused on modernized leadership among public actors (Cox, 1981). In such

conditions, the international public sphere must preserve the potential of inclusiveness, dispersion, representativeness and opportunities for self-realization of individuals and new social groups (Anderson, 2005).

Awareness of the limited potential of traditional institutionalized public actors in international politics is embodied in such transformations of international political relations as the hybridization of state-public cooperation at the international level. This process consists in jointly solving the problems of global development, taking into account regional specifics, the amount of resources and the essence of the problems that need to be solved and articulated by the international community. The example of social and labor relations can be used as a basis for expanding public public-state cooperation at the international level.

Rebecca Gumbrell-McCormick rightly claims that international industrial relations actors – trade unions, NGOs, employers and their organizations operate primarily at the national level, but they have by now built up a set of institutions at the international level that has remained intact throughout most of the past century. These actors, along with those at the national level, possess a limited common set of norms, on the basis of the ILO core conventions, and these appear to be shared by wide sectors of public opinion (Gumbrell-McCormick, 2008).

This is why such segment requires not only administrative and managerial actions, but also the use of the creative potential of public associations, environmental and social movements (Schroeder and Lovell, 2012).

Thus, the diversity of public actors in international politics acquires the character of opportunities and challenges for the development of the international system. Modern state political actors are forming the fundamental structure of traditional international relations. At the same time, the international public sphere creates space for the implementation of alternative public political actors that can give a new impetus to solve complex international problems and provide a creative approach to modernizing global governance (Kelman, 1970). The use of positive opportunities depends on the initiative of public, individual, economic actors of international interest, which must show their public claims to significance.

Conclusions

Therefore, publicity is a framework precondition for modern international politics both at the conceptual-theoretical and pragmatic-activity level. The theoretical interpretation of the international public

sphere as an environment of free and rational ethically conditioned interpersonal discussions establishes the dimension of public broadcasters and argumentators of international politics.

It actualizes the communicative aspect of publicity of political actors at the international level. It also allows us to consider public actors not only diplomats, but also public broadcasters and commentators on social networks and web hosting.

The sphere of public governance slightly narrows the conceptual definition of the actors of the international political process. Researchers focus mainly on government actors and their partners in civil society and political parties.

Thus, public political actors in modern international politics concentrate their activities around collegial political decision-making on the basis of expanded and multidimensional discussion with the presentation of the widest possible range of points of view. Global public policy is formed as a result of the activities of public political actors of all levels not only in the spatial but also in the temporal dimension (Skodvin and Andresen, 2003).

The ideas and demands of publicity of international political and economic exchanges become the basis for the movements of alterglobalism, criticism of the world order, the requirements of the formation of a policy of balance and sustainable development. Publicity in political activity at the international level determines the effectiveness of its activity, makes transparent the basis for goal-setting political decisions, promotes cooperation on a policy acceptable for everybody.

Publicity also contributes to the stratification of public actors in international politics. This leads to a conclusion about the nature of publicity for each type of international actors, states (governments), non-governmental organizations, national and international level, local communities and business associations. Each of these public actors gets a new perspective of representation and realization of interests.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 483-494
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The legal framework of the foreign policy of the Byzantine in the era of Constantine VII Porphyrogenitus (945-959)

DOI: https://doi.org/10.46398/cuestpol.4073.26

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Abstract

The *aim of the article* is to determine the legal foundations. The *methodological basis* of the study is analysis and synthesis, systems approach, genetic and comparative methods. *Conclusions*: The Byzantine law can be traced to the legislation of Basil I and Leo VI. However, jus gentium (law of nations) did not have sufficient representation in their codes. Therefore, the legal basis of Byzantine foreign policy consisted of customs and traditions that had been formed in diplomatic practice in ancient times. The system of international relations of Byzantium was hierarchical. The legal status of each participant in this system was determined by military power, political potential, tradition and religious identity. The relations between Byzantine and Kievan Rus' can serve as a model of the application of international legal norms, which were based on the treaty of 944, which regulated the legal status of merchants, property rights, mutual military assistance and the use of territories on the coast of the Dnieper River estuary, Beloberezhye and the island of Saint Epherius (Berezan).

Keywords: international law; politics of the Byzantine Empire; Byzantium; Constantine VII Porphyrogenitus; Kievan Rus.

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Recibido el 28/02/2022 Aceptado el 15/05/2022

El fundamento jurídico de la política exterior bizantina en la época de Constantino VII Bagriano (945-959)

Resumen

El objetivo del artículo fue determinar los fundamentos jurídicos de la política exterior del estado bizantino a mediados del siglo X. La base metodológica del estudio es el análisis y la síntesis, el enfoque de sistemas, los métodos genéticos y comparativos. Todo permite concluir que, el derecho bizantino se remonta a la legislación de Basilio I y León VI. Sin embargo, el *jus gentium* no tuvo suficiente representación en sus códigos. Por lo tanto, la base legal de la política exterior bizantina consistía en costumbres y tradiciones que se habían formado en la práctica diplomática en la antigüedad. El sistema de relaciones internacionales de Bizancio era jerárquico. El estatus legal de cada participante en este sistema estaba determinado por el poder militar, el potencial político, la tradición y la identidad religiosa. Las relaciones entre la Rus bizantina y la de Kiev pueden servir como modelo de aplicación de las normas jurídicas internacionales, que se basaron en el tratado de 944, que regulaba el estatuto jurídico de los comerciantes, los derechos de propiedad, la asistencia militar mutua y el uso de los territorios en la costa del estuario del río Dnieper, Beloberezhye y la isla de Saint Epherius (Berezan).

Palabras clave: derecho internacional; política del Imperio Bizantino; Bizancio; Constantino VII Porphyrogenitus; Rus de Kiev.

Introduction

The reign of the emperors from the Macedonian dynasty (867–1056) is rightly considered the era of the "Byzantine encyclopedism" or "Macedonian Renaissance", which is characterised by the flourishing of literature and science. The peak of this epoch takes place during the reign of Constantine VII Porphyrogenitus (945-959). He is credited with authoring, or at least partly concerned with, a series of works on Byzantine relations with neighbouring states and people.

The foreign-policy realities and motives of diplomatic actions described in Constantine VII's writings are often used as classic examples of the development of these spheres of life in the Byzantine state. However, the middle of the X century for international relations within the boundaries of the imperial ecumene was quite a transitional time because the old structures were abandoned while new ones were being formed. In Western Europe, the Carolingian Empire had ceased to exist, and its successor, the Holy Roman Empire, had still not emerged.

In the East, the Abbasid Caliphate lost its political authority and ceased to play the role of a centre of attraction for the Islamic emirates. A few months after the beginning of the independent rule of Constantine VII, the real power in Baghdad was taken by the Shiite Buyid dynasty. These events led to the breaking of familiar political ties within the Muslim world and caused the need for a legal understanding of the changes that had occurred.

The area north of the Black Sea in Eastern Europe was on the scene as well. Khazar Khaganate gradually lost its influence here. At the same time, the relations with the Kievan Rus' underwent sufficient changes in all spheres - political, economic, religious, and military. And therefore, their importance had increased dramatically.

Despite the continuing interest in the study of the foreign policy and diplomacy of Byzantium, as well as the literary legacy of Constantine VII, many of their aspects still cause lively discussions. The problem of the legal norms on which Byzantine foreign policy was based in this era received little attention from scholars. Neither the origins of international law, the extent of its codification, nor the role of custom had been thoroughly addressed.

Therefore, this study aims to determine the legal foundations of the foreign policy of the Byzantine state in the middle of the X century. In this regard, the authors plan to solve such problems as identifying the sources of legal norms of the Byzantine foreign policy and considering the features of their practical application in relations with neighbours, in particular with the Kievan Rus'.

1. Methodology of the research

The methodological basis consists of both general scientific and specific scientific research methods. In considering international relations of the middle of the 10th century, a systematic approach is applied. According to the principles of this approach formulated by L. von Bertalanffy and R. Aron, the Byzantine Empire can be considered as the centre of a particular international system, the "Byzantine Commonwealth of Nations" by D. Obolensky (Obolensky, 1998).

Analysis and synthesis are used in the process of researching historical sources. The analysis detects references to the facts of the application of ordinary legal norms and legal traditions in the treatises of Constantine VII Porphyrogenitus. Synthesis makes it possible to systematise the identified facts.

The genetic method is practised to examine the origins of the legal norms on which the Byzantine elite relied in decision-making in foreign policy. This method traces the evolution of Byzantine international law from antiquity to Constantine VII.

The comparative method allows drawing parallels between the legal norms used in international relations in different epochs. The study compares the development of the principles of jus gentium (law of nations) in Western Europe and the Byzantine Empire.

2. Results and discussion

Legislative reforms became a landmark phenomenon during the reign of the first emperors of the Macedonian dynasty —Basil I (867–886) and Leo VI the Wise (886–912)—grandfather and father of Constantine VII. The codes "Basilika", as well as the "Epanagoge" and "Procheiros", represented the revision of the Code of Justinian. Since the X century, it is "Basilika" that has become the main legislative body, although Corpus juris civilis were still being used for educational needs.

The elements of international law were reflected even in Justinian's Digest. The statements concerning the existence of jus gentium (the law of people) and the possibility of their application not only in relation to the peoples within the empire, but also to the neighbours of Pax Romana are contained in the quotations of Ulpian and Gaius (Merezhko, 2010).

However, the Code of Justinian regulated relations within a state, and therefore the rules it contained had little to do with the Roman Empire's relations with its neighbours. It is significant that the extended treatment of jus gentium of Ulpian's as the legal basis for international relations has survived in the West in the "Etymology" of Isidorus and has remained unknown to the Byzantine East (Grabar, 1901:15).

Therefore, the idea of jus gentium did not get further development in "Basilika". The main task of the legislative codes of Basil I and Leo VI the Wise was to clear the law of obsolete norms. In addition, these codes covered a range of issues related to social and economic life (Kazhdan, 1958). It is also worth noting the works of Ukrainian researchers Roman Oleksenko, Yevhenii Bortnykov, Stanislav Bilohur, Nina Rybalchenko, Natalia Makovetska (2021) and Demian Smernytskyi, Kostiantyn Zaichko, Yurii Zhvanko, Malvina Bakal, Tetiana Shapochka (2021) which was published in 2021.

Foreign policy and diplomacy of Byzantium were practically not reflected in "Basilika". Constantine VII's work on international relations is based more on the tradition and experience of foreign policy existing since antiquity.

A certain stage of systematization of foreign policy experience and norms of the legal tradition of relations with other peoples is the treatise "About embassies" or "About Roman Ambassadors to Peoples". The treatise

is included in the compendium of extracts (excerpts) from works of ancient literature, united thematically. The work on the collection had probably been completed until 945 when the independent rule of Constantine VII began.

Much of the excerpt "About embassies" was taken from the works of authors of the Late Roman Empire (IV-VI centuries). Some of them had diplomatic experience. The most famous in this sense was the author of "Gothic history", Priscus, known for his participation in the East Roman embassy under the Hun chief Attila (448), and Peter the Patrician, the head of the Roman embassy who made peace with the Sasanids in 562.

Apparently, the purpose of writing the treatise "About embassies" is to create a database of information on the history of diplomacy and the legal aspects of foreign policy. The Treatises "On the Governance of the Empire" and the "De Ceremoniis", written during Constantine's VII independent rule, are thematically oriented to modern diplomatic needs and are intended for a small group of readers.

The place of the Emperor and Empire in the surrounding world is determined on the basis of biblical tradition in the form of quotations from the Old Testament. For this reason, Constantine VII Porphyrogenitus, while teaching his son and heir, Roman I, asserted the divine origin of the authority of the Byzantine Emperors, to whom foreigners must pay tribute and bow to: "The ones who inhabit the land" (Constantinus Porphyrogenitus, 1967: 46-47). The power of the Byzantine Emperor is universal. The ruler is to make "the best decisions" for the "common good" (Constantinus Porphyrogenitus, 1967:44-45).

The concept of the "Gob blessed" world leadership of the Byzantine Emperor, which was explained to us by Constantine VII Porphyrogenitus, puts him at the head of an extensive international hierarchy. This hierarchy has the characteristics of an international system. Its peculiarity lies in the existence of "hierarchically organized" sovereignty, i.e., the sovereignty divided between representatives of different hierarchy levels (Merezhko, 2010:63).

Certain ideas about the international hierarchy, headed by the Byzantine Emperor, are given in 48 chapters of the treatise the "De Ceremoniis" (Constantine Porfirogenito, 1828: 686- 692). It contains a list of introductory formulas to official messages sent by emperors to other rulers and ecclesiastical hierarchies. The list includes more than 60 recipients. The materials of the chapter allow us to distinguish several types of hierarchies of international partners of the Byzantines.

The first type of hierarchy is based on the principle of the spiritual kinship of the Byzantine emperor with other addresses. The Pope is seen as the spiritual father of the emperor. A number of rulers of Western Europe –

the kings of Gallia (France), Saxony (Germany) and Bavaria are considered spiritual brothers of the emperor. According to Naumenko, the "king of Bavaria" in this very case is Henry II, Duke of Bavaria (948-955), the younger brother of Otto I, King of Germany (939-973) (Nazarenko, 2001: 256). The status of a spiritual brother, apparently, meant a kind of equality among Christian rulers. However, bearing the title of the emperor already placed the ruler of Byzantine on a higher level in the international hierarchy compared to the kings of Western Europe.

A separate group of "spiritual sons" of the Byzantine emperor were the rulers of Armenia, Alanya, and Danube, Bulgaria. However, their full titles had differences, in which, evidently, one should see the disparity of relationship between the Byzantine emperor and each of them.

The second type of hierarchy was reflected in the value of gold seals (bulls), which were attached to imperial messages. Out of the total number of addresses, such seals are mentioned in relation to 31 rulers. In this group, the Emir of Egypt stands out separately for having received a seal worth 18 solidi. This seal significantly exceeds the cost of the seals for other addressees and, perhaps, is explained by the emperor's attempts to establish closer relations with this ruler (Lugovoi, 2018).

The Caliph of Baghdad with the title of the First Counsellor is mentioned to have received a seal of 4 solidi. The group of rulers who received the message with the seal that cost 3 solidi were the patriarchs of Alexandria and Antioch, the kings of Greater Armenia and Vaspurakan, and the Khazar Khaganate.

The largest group consisted of rulers who received messages with seals worth 2 solidi. This group included 23 recipients from Eastern and Central Europe, Transcaucasia, the Balkans, and Italy.

An important criterion of the ruler's independence or dependence on the empire was the status of the message he received. Messages to independent agents had the status of a letter (grammata). This fact is stated in the context of the description of the empire's contacts with the Pechenegs (Constantinus Porphyrogenitus, 1967: 50-53).

The letters to conquered peoples had the status of an "order" (keleusis) (Stephenson, 2004: 35). Such letters were received by 38 addressees, i.e., almost two-thirds of the total number in the list.

To consider the whole complex of legal norms in their practical application, one can use the example of the relations between Kievan Rus' and Byzantine of the middle of the X century. Contacts of Byzantine with Rus' have a long history, which can be traced back to the first half of the IX century.

According to written sources, the campaigns of the troops of Rus' princes targeting the territories of the empire, as well as its capital, took place in 860, 907 and 941 (The successor of Theophane, 2009: 129-130, 262-263; Symeon the Metaphrast and Logothete, 2014: 186; Liudprand of Cremona, 1930: 185-186;). At the beginning of the X century Leo VI the Wise reported on the danger that came from the military flotillas of the Rus' ("the Scythians") going out along the rivers into the Black Sea (Leo VI the Wise, 2012: 305).

However, the military expeditions of Kievan Rus' aimed at Constantinople ended up with meetings of embassies and the conclusion of bilateral treaties. Kievan Rus' sought favourable terms of the trade on the route "from the Varangians to the Greeks", and its military forced participated in military operations as part of the Byzantine allied troops.

By the middle of the X century, these complicated relations between Constantinople and Kiev had been fully established. In 944, a few months before the beginning of the sovereign reign of Constantine VII, Byzantium concluded a treaty with Rus'. And it ended the conflict that had lasted since 941. The text of the treaty described in the "Tale of Bygone Years" is one of the most comprehensively preserved international legal documents compiled since the time of Justinian I (527-565) (Kuzovkov and Gorbenko, 2019).

On the Byzantine side, the agreement was concluded on behalf of three co-emperors. On the Rus' part, Prince Igor and his family members were represented by 25 ambassadors and 26 merchants. The preliminary statement contained the oaths taken by Rus' side.

A significant part of the articles regulated the trade relations between Rus' and Byzantium: the order of arrival and stay of Rus' ambassadors and merchants in Constantinople was determined, the protection of property rights (the return of runaway servants, compensation for losses, the redemption of captives). A separate group of articles dealt with punishments for crimes.

A number of articles defined the framework of military-political cooperation. The Prince of Rus' was not supposed to fight in the Kherson Thema (in the Crimea). Also, he had to ensure military assistance in the event of an invasion of the Black Bulgars here. Both sides have pledged to provide military help to each other.

Separately, they agreed on a special regime of actions of Kievan Rus' and the Byzantines in the mouth of the Dnieper and the neighbouring territories - Beloberezhye and the island of Saint Epherius (modern Berezan island). The Byzantine side did not claim that these territories were part of its administrative structures (themes), but fishermen from Kherson had the right to engage in their fishing here, and the Rus' could not prevent them from doing it. Kievan Rus' had no right to stay here for the winter.

Perhaps the latter requirement could be explained by the strategic importance of the region. The unlimited presence of Rus' in this region allowed its princes to create a potential stronghold against the maritime threat of Constantinople. Constantine VII himself tells us that Fr. Saint Epherius was used by Rus' travellers on the way "from the Varangians to the Greeks" to re-equip the ships (monoxyla) before the sea voyage (Constantinus Porphyrogenitus, 1967: 60-63). In Western Europe, a similar practice had the Normans who used isles in the river mouths as bases (Noirmoutier island at the river mouth of the Loire River) (Lebedev, 2005: 40, 46).

At the same time, Byzantium could support Rus' expeditions to the Caspian Sea. Probably, a significant part of these military actions took place on the Dnieper, through the Black Sea and the Sea of Azov, along the Don and Volga rivers, and finished off the southern coast of the Caspian Sea (Kuzovkov, 2021).

Archaeological research carried out on Berezan island made it possible to discover antiquities testifying to the presence of Rus' merchants and, probably, military forces here. The Berezan runic stone is an interesting discovery proving the visit of Scandinavians, who travelled along the trade route "from the Varangians to the Greeks". This stone also marked the visits of the Rus' ruling elite.

The memorial writings on the stone date back to the second half of the XI century (Melnikova, 2001:200-202). The Rus' merchant burial complexes date back to the XII century. (Smyrnov and Kuzovkov, 2020). Monuments related to Byzantine-Rus' contacts in the middle of the X century, have not been discovered so far, which may be explained by the poor preservation of the cultural layer of this time.

Apparently, the visit of Rus' Princess Olga to Constantinople should also be considered in the legal field of the treaty of 944. Written sources allow it to be dated to 955 or 957. (Constantine Porfirogenito, 1828: 594 - 598; Rus Primary Chronicle, 1950: 44 - 46). Olga is given the title "Archont" in the treatise "De Ceremoniis". She was accompanied at the solemn reception in the imperial palace by close high-ranking ladies with the titles "archont" or "relatives of archont". The total number of participants in the Olga Embassy was 112 people (Constantine Porfirogenito, 1828: 597). It is estimated that the total number of embassy escorts could reach 1,500 (Litavrin. 2001: 201).

The ritual of receiving Princess Olga reflected the Byzantium view of the international legal status of visitors. The receiving staff, apart from the Emperor and Empress, included courtiers, who were divided into seven ranks (vigil). Princess Olga and her companions were given the appropriate rank. Olga was at the reception with women-courtiers of the first rank (vigil) - zosts - patricies.

Thus, at the time of the reception, the high guest of the Byzantium rulers was symbolically included in the imperial court as the host of the highest rank. The court ritual of the reception emphasized the exclusive status of the emperor and empress. This procedure reflected the Byzantium view of their ruler as responsible for the fate of the entire ecumene, and occupying the highest position among other monarchs.

The author of "Rus' Primary Chronicle" informs us of other aspects of the visit of Princess Olga to Constantinople (Rus' Primary Chronicle, 1950: 44-46). In the centre of his attention is the plot of her baptism, full of folklore motives. According to the source, Olga, who arrived in Constantinople, was baptized from the hands of the emperor. Then, the princess was to receive the title of a god daughter. However, Byzantine sources do not mention her baptism or receiving the title. A possible explanation can be the semi-legendary character of the text "Novella", the author of which exaggerates the international legal success of Olga's visit.

In support of this, the Byzantine emperors Constantine VII and Roman III used the title of the ruler of Rus' in official correspondence— "archon of Rus" costing 2 solidi (Constantine Porfirogenito, 1828: 690 - 691). Constantine VII Porphyrogenitus and his son reigned together from 946 to 959, and their addressee at the time could have been Sviatoslav I, the son of Olga. Thus, the godfather of Olga was Emperor Constantine VII himself. This fact did not cause the changes in the legal status of Rus' in the relationship with the Byzantium. The Rus' was still regarded as a pagan state and was not included in D. Obolensky's conditional "Byzantine Commonwealth of Nations" by D. Obolensky (Obolensky, 1998).

Conclusion

Thus, there are three sources of legal norms on which the foreign policy of Byzantine was based. The first is Roman law, which, through the code of Justinian, found its reflection in the legislation of Basil I (867-886) and Leo VI (886-912). However, the distinctive feature of these legislative codes was their focus on internal problems, and they hardly recorded international law. Jus gentium (law of nations) did not find significant development in Constantinople. It was the source of the division between the Byzantine legal tradition and the Western European legal tradition, which emerged in the XII century.

The second and more significant source of the law of Byzantine foreign policy is the biblical tradition. Biblical texts were used to legally justify the divine origin of the authority of Byzantine emperors and their exceptionally high status in international relations.

The third and most significant source was the ancient and early Byzantine traditions of foreign policy, fixed in customs and literary texts. Emperor Constantine VII Porphyrogenitus attempted to generalise and systematize his works on this basis. When it came to foreign policy issues, his treatises fixed legal precedents for the possibility of using them in diplomatic practice. It allows us to state that the case law can be considered a significant basis of Byzantine foreign policy.

The system of international relations that Byzantine diplomats justified and sought to act within existed in the form of a hierarchy. There laid the main difference from the traditional Westphalian system of international relations, one of the main principles of which was the equality of the participating states. In the middle of the X century, the Byzantine legal point of view considered the ruler of another state or nation as unequal to the Byzantine emperor. Almost two-thirds of the addressees of Constantine VII Porphyrogenitus received order messages (keleusis), which formally emphasized their dependent status. Other parameters of inequality were spiritual kinship, the value of the gold seal attached to the imperial message, and the title used in relation to the addressee.

The entire complex of the practical application of legal norms in Byzantine foreign policy can be analysed on the example of the empire's relations with Kievan Rus'. The treaty of 944 served as the legal basis of Rus'- Byzantine relations in the era of Constantine VII. The articles of the agreement covered a wide range of issues that needed legal regulation. Most of them were devoted to trade and property protection.

The peculiarities of medieval legal thinking were reflected in the special status of a number of territories along the northern coast of the Black Sea—estuaries of the Dnieper, Beloberzhya, and the island St. Epheria (Berezan). They were not administratively a part of Byzantium or Rus' in terms of administrative division, but both sides had limited sovereignty over them. The trade was active on the route "from the Varangians to the Greeks", that went through these territories. But if relations deteriorated, Rus' could use these territories as a springboard for naval attacks on Constantinople.

Another important example of bilateral cooperation, including in the legal field, was the visit of the Rus' princess Olga to Constantinople. The rituals of her reception emphasised the high status of Emperor Constantine VII and equated the guest with the highest court rank of the Byzantine court.

The significant achievements of Byzantine-Rus' relations in the middle of the X century can be seen in a long period of peaceful interaction. However, the unequal legal status of Rus' in bilateral relations motivated its ruling elite to change it. In this context, Olga's baptism can be seen as an attempt to become part of the so-called "Byzantine Commonwealth of Nations".

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 495-505
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

International legal regime of the territory of Crimea after the Russian annexation

DOI: https://doi.org/10.46398/cuestpol.4073.27

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Abstract

The purpose of the research. The purpose of the article consists in determination of the current international legal regime of the territory of Crimea for further proper argumentation of Ukraine's position in interstate disputes with the Russian Federation. Main content. Various forms of foreign military presence on the territory of a state have been studied, such as: occupation, conquest, deployment of foreign military bases, annexation, etc. Determined are signs that characterize the legal regimes of occupation and annexation and their international regulation. Methodology: Review of materials and methods based on analysis of documentary materials of the annexation of Crimea on the part of Russia. Conclusions. Characteristic features of annexation being currently a kind of aggression crime include unilateral declaration of state sovereignty over a territory which have not been a part of this state, as well as the legitimation of annexation through de facto ownership of a territory and international recognition of this fact. According to the international law, there is currently no legal mechanism for the transfer of sovereignty over territory to an aggressor through annexation.

Keywords: forced annexation; conquest; foreign military presence; occupation; sovereignty.

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Recibido el 22/03/2022 Aceptado el 15/06/2022

Régimen jurídico internacional del territorio de Crimea después de la anexión a Rusia

Resumen

El propósito del artículo consiste en la determinación del régimen legal internacional actual del territorio de Crimea para una argumentación adecuada de la posición de Ucrania en las disputas interestatales con la Federación Rusa. Se han estudiado diversas formas de presencia militar extranjera en el territorio de un estado, tales como: ocupación, conquista, despliegue de bases militares extranjeras, anexión, etc. Se determinan signos que caracterizan los regímenes jurídicos de ocupación y anexión y su regulación internacional. Metodología: Revisión de materiales y métodos a partir del análisis de materiales documentales de la anexión de Crimea por parte de Rusia. Conclusiones. Los rasgos característicos de que la anexión sea actualmente un tipo de crimen de agresión incluyen la declaración unilateral de soberanía estatal sobre un territorio que no ha sido parte de este estado, así como la legitimación de la anexión a través de la propiedad de facto de un territorio y el reconocimiento internacional de este hecho. De acuerdo con el derecho internacional, actualmente no existe un mecanismo legal para la transferencia de soberanía sobre un territorio a un agresor a través de la anexión.

Palabras clave: anexión forzada; conquista; presencia militar extranjera; ocupación; soberanía.

Introduction

Recent events in Ukraine have become significant and turning points not only for its history, but also for the whole Europe and the international community in general. Attempts of the Russian Federation to hybridly explain events such as “they are not there” or “it is a special military operation” in order to verbally hide aggression and based on formal grounds not to be formally brought to international legal responsibility are unsuccessful.

On 29 March, 2022, another round of peace talks between Ukraine and the Russian Federation took place in Istanbul, the procedure for resolving the issues concerning the temporarily occupied territories of Donetsk and Luhansk regions and Crimea was discussed there. It was proposed to bring these issues outside the main part of the international agreement on security guarantees for Ukraine and to hold bilateral negotiations on the status of Crimea and Sevastopol during a period of 15 years (Podolyak, 2022).

In these conditions and for future peaceful settlement of the situation it is extremely important to clearly determine the current international legal status of Crimea and the city of Sevastopol after the events of March 2014 and until now.

1. Literature review

On 27 March, 2014, the UN General Assembly adopted Resolution 68/262 "Territorial Integrity of Ukraine", which does not explicitly define the accession of Crimea to Russia as an annexation, but it states that "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force" (Law of UN, 2014).

In addition, on 01 July 2014 the OSCE Parliamentary Assembly adopted the Resolution "Clear, Gross and Uncorrected Violations of Helsinki Principles by the Russian Federation", this Resolution "the Russian Federation's unilateral and unjustified assault on Ukraine's sovereignty and territorial integrity" and "calls on all to refrain from any action or dealing that might be interpreted as recognizing the unlawful annexation of the Autonomous Republic of Crimea by the Russian Federation" OSCE Parliamentary Assembl., 2014.

On the same occasion on 09 April, 2014 the Parliamentary Assembly of the Council of Europe adopted the Resolution "Recent events in Ukraine: threats to the functioning of democratic institutions" where it "expresses regret about the (…) Russian military aggression and the further annexation of Crimea, which are a clear violation of the international law" and stresses that "the results of the referendum and illegal annexation of Crimea by the Russian Federation are not legal and are not recognized by the Council of Europe" (Law of the Parliamentary Assembly of the Council of Europe, 2014).

In addition, on 17 July the European Parliament ruled that "since the Russian occupation and the annexation of Crimea violates international law and Russia's international obligations… (it) considers the annexation of Crimea illegal and refuses to recognize the actual authority of Russia over the peninsula" (Law of the Parliamentary Assembly of the Council of Europe, 2014).

Similarly, "NATO foreign ministers, united in their condemn of Russia's illegal military intervention in Ukraine and Russia's violation of Ukraine's sovereignty and territorial integrity, do not recognize Russia's illegal and illegitimate attempt to annex Crimea" (Law of the Parliament of Europe, 2014).

In its turn, the Verkhovna Rada of Ukraine on 15 April, 2014 adopted the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine", taking into account further changes to be brought, this law defines the accession of Crimea and the city of Sevastopol to Russia as a temporary occupation (Law of Ukraine, 2014).

Thus, the question arises as to whether Crimea and the city of Sevastopol are in fact occupied or still annexed territories of Ukraine in terms of the international law. Hereinafter we are going to use the notion of the territory of Crimea as such that also includes the city of Sevastopol.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers, as well as on Theon the empirical material of national and international legal acts and juridical (forensic) practice.

Comparative analysis and dialectical method of cognition made it possible to comprehensively study various forms of international legal regimes of foreign military presence on the territory of a state. With the help of the synthetic method the international legal regime of the territory of Crimea from the point of view of the international law has been determined.

3. Results and discussion

According to Max Planck Encyclopedia of Public International Law, the regime known as military occupation refers to a situation when forces of one or more states exercise effective control over the territory of another state without the will of the latter. Since such control was often the result of using military force, this regime was defined as "military" occupation, while an occupation which received the consent of the occupied sovereign, is called "peaceful" occupation (Planck, 2021).

Peaceful occupation is characterized by exercising an effective control by one state over the territory of another state when there is no war status between these states. This type of occupation differs from the military occupation (Planck, 2021) which in its turn arises as a result of the use of force in war, and from the so-called "armistice occupation" (occupation based on armistice agreements).

Occupation regime is mainly governed by the Hague Regulations on Laws and Customs of War on Land (the Hague Convention IV) and the Convention on Protection of Civilian Persons in Time of War 1949 (the

Fourth Geneva Convention) (Law of international committee of the red Cross, 1949). According to contents of Article 42 the Hague Convention IV, occupation begins with establishment of actual control over the occupied territory by the hostile army, and ends when the hostile army has lost the actual control over the territory (Leheza *et al.,* 2020).

Thus, while the territory of the state is under the power and control of an invader, and while the latter has an opportunity to exercise its will everywhere in this territory for a certain period of time, the military occupation exists from the international legal point of view.

Article 55 of the Hague Convention IV recognizes an occupying State only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. Therefore, the title to these objects does not pass to the occupying state, i.e., the inclusion of the occupied territory in the occupying state is excluded (Leheza *et al*., 2018).

In addition, articles 2 and 6 of the Fourth Geneva Convention provide that it shall to all cases of partial or complete occupation, even if this occupation does not result in any armed conflict, from the very beginning of any conflict or occupation, until expiration of a single-year period after the general cessation of hostilities.

Thus, the presence or absence of armed resistance does not matter for the international legal qualification of occupation, but the emphasis is made on existence of a conflict between two states, presence of armed forces of one state in all or in a certain part of the territory of another state and the protracted nature of the conflict between these states, i.e., its temporary nature. In view of this, the phrase "temporary occupation" is a tautology.

Military occupation, which occurs outside the state of war, includes *occupatio pacifica* or occupation upon consent. The term "*pacific*" does not mean that occupation is "peaceful" in the usual meaning of the word, or that it is executed without the use of force; this term means only that from the legal point of view such occupation is carried out outside the context of the formal state of war, in accordance with the terms of an agreement, invitation or consent of the occupied state for occupation, within the limits of humanitarian intervention, occupation of the failed state or actual military occupation of a territory with uncertain status (Leheza *et al*., 2021).

Thus, occupation (from the lat . *occupatio*– possession, seizure) is a temporary seizure by the armed forces of one state (occupant, invader) a part or the entire territory of another state, with occupant's taking over all functions of state administration on itself without obtaining sovereign rights to the occupied territory.

It should be noted that various forms of foreign military presence on the territory of a state cannot be equal to occupation. Occupation should be distinguished from conquest, deployment of military bases, peacekeeping forces and peace enforcement forces.

Conquest or subjugation involves acquisition of a territory by force, complete subordination of the defeated side to the victor, which entails the end of the war and the cessation of existence of the defeated state. The occupation is on the contrary characterized by preservation of the power structures of the defeated state (even in exile) and the continuation of resistance and military action against the occupying state. The norms relating to occupation, in particular articles 42-56 of the Hague Regulations, and articles 27-34 and 47-78 of the Fourth Geneva Convention, are not applicable to the situation of subjugation.

According to the generally accepted view formed back in the 19th century, incorporation of the occupied territory (subordination or seizure) has long been a legal way to end occupation. In the legal doctrine there was a clear distinction between the three consecutive stages: military invasion, occupation of the territory and its annexation (Mälksoo, 2005).

However, if a war is outlawed by the international law, then the whole logic of subordination or conquest as ways to end the occupation regime and transfer rights to the respective territory becomes unthinkable. Thus, the international law does not presuppose legal transfer of sovereign rights to an aggressor through annexation Nevertheless, the practice of the Second World War and even that of the period following it, up to the latest events in Ukraine, gives only ambiguous signals about reaction of international law to the situation when an illegal annexation was performed and the situation stabilized (this is especially true with regard to the Israeli occupation of the Golan Heights or the Russian occupation of Crimea).

This clash between the norms of international law, not backed by an adequate system of preventive and reactive measures, and reality, has given rise to the Russia's impunity for its actions in Crimea, and today this impunity has escalated into a full-scale war (Leheza *et al.*, 2021).

Presence of foreign military bases on the territory of a state cannot also be equated with occupation, especially when these bases are located in accordance with the respective agreement concluded between the owing state and the host state providing absence of any conflict armed confrontation or coercion. For example, the deployment of American military bases in Germany, Italy, etc. within NATO, or presence the Russian Black Sea Fleet in Sevastopol until 2014 (Law of international committee of the red cross, 1949).

Presence of peace-supporting forces in the territory of a certain state entrusted with an international mandate to undertake enforcement

measures, (such as the UN International Armed Forces (UNEF), the United Nations Peacekeeping Forces in Cyprus (UNFICYP), United Nations Disengagement Observer Force (UNDOF) etc.) can neither be determined as occupation (Law of The Parliamentary Assembly of the Council of Europe, 2014). On the one hand, a foreign military presence stems from an agreement between the host State and the organization that issues a mandate, and on the other hand it stems from the absence of an armed conflict between these forces and the host State.

A distinction should also be made between the occupation defined in the Hague Convention IV regulating the rules of war, and the occupation referred to in the Protection of Civilian Persons in Time of War.

The concepts of "international territorial management", "direct control" or "international territorial control" should also be distinguished from the concept of occupation. The mentioned concepts refer to situations where the governmental functions on a particular territory are carried out not by a territorial state, but by a body authorized to do so under the international law, i.e. by an international organization, a separate state or a group of states under an international mandate (Leheza *et al.*, 2018).

According to the international law, the principle of the permanent status of an occupied territory consists in the fact that:

occupation of a territory does not entail transfer of sovereignty over this territory to the occupying state:

- an occupying state must respect the rights of persons in the occupied territories;
- an occupying state must comply with the laws of the occupied state, except for cases of an "absolute obstacle";
- an occupying state must respect the duty of loyalty (faithfulness) and belonging of the local population to the occupied state;
- an occupying state is obliged to respect the state property and private property located in the occupied territory;
- the legal effect of measures taken by an occupying state is terminated with the end of occupation (Leheza *et al.*, 2020).

On a more detailed consideration, invariability of sovereignty during occupation provides that:

1) occupation of a territory does not mean annexation of this territory;
2) the laws of an occupied state continue to be applied throughout its territory;
3) exiled government of the occupied state represents this state abroad.

Concerning the first point, it should be noted that the fact of occupation of a territory under *jus in bello* does not give rise to the right to annex that territory, because *jus contra bellum* prohibits any seizure of a territory based on the use of force. This classic formula is often emphasized by both judicial practice and legal science. In defense of this position one can also mention the decision of the Supreme Court of India dated 29 March, 1969 concerning annexation of Goa territory.

This decision stipulated that "military occupation is a temporary situation, which exists *de facto*, and does not deprive the occupied state of its sovereignty and statehood. (...) On the other hand, annexation happens when an occupying state takes possession of a certain territory and makes the occupied territory its property. (...) Military occupation should be differentiated from conquest, when the territory is not only conquered, but also annexed by the conqueror (Law of judgment of the supreme court of India, 1969).

Concerning the second point, continued application of the laws of an occupied state throughout its territory implies that the subjugation of the population to the occupying state should not mean forgetting the obligation to remain loyal to the state of origin (Law of international committee of the red cross, 1949).

Concerning the third point, legal representation of an occupied state by its exiled government abroad provides that the laws and measures taken by the exiled government of the occupied state during the period of occupation shall apply to the occupied territory, because the occupied state retains its sovereignty over the territory despite the occupation.

Moreover, according to Article 42 the Hague Regulations a situation of occupation also take place when the entire territory of a state or a certain part of it is under the authority of rebel forces, which are held there only through the fact of presence (even limited presence) of foreign troops supporting the rebels (Leheza *et al*., 2020).

This definition especially clearly defines the status of the territories in the zone of the Anti-Terrorist Operation/Operation of United Forces (ATO/OUF), which is under control of the United Russian-separatist forces of the so-called "people's militia" of the LDPR, and in fact this zone is controlled by the First and Second army corps of the Southern Military District of the Armed Forces of Russia.

According to the Encyclopedia "Britanica", annexation is a unilateral a formal act whereby a state proclaims its sovereignty over territory hitherto outside its domain which comes into force by means of actual possession and is legitimized through general recognition. This is often preceded by conquering or threat of the use of force without active hostilities and by military occupation of the conquered territory (Leheza *et al*., 2018).

According to the international law, annexation is a form of aggression, and therefore entails international legal liability. This legal liability was first applied to Nazi criminals' accordance with the verdict of the Nuremberg Military Tribunal dated 01 October, 1946.

In addition, the Fourth Geneva Convention distinguishes between occupation and annexation, speaking of "annexation by an occupying state of all or a part of the occupied territory." It follows that the annexation of the territory is preceded by its occupation.

As a rule, as a result of annexation, the local population of the annexed territory within the respective annexing state forms an ethnic (national) minority, and in relation to the ethnic (national) core it is separated from it forms a diaspora of autochthonous origin.

Conclusions

1. Forms of foreign military presence on the territory of a state include peaceful or military occupation, conquest, deployment of foreign military bases, peacekeeping forces and peace enforcement forces, international territorial control and annexation. Each of these legal regimes has its own specific characteristics and influence on preservation or transfer of sovereignty over the respective territories.
2. The international legal regime of the territory of Crimea and the city of Sevastopol is divided into two stages:
    - From 20 February 2014 to 18 March 2014 – from the moment the Russian troops entered the territory of the Crimean Peninsula without distinctions and established actual control over its territory with the simultaneous loss of Ukraine's opportunity to exercise its powers there until the unilateral proclamation of internationally unrecognized sovereignty of the Russian Federation over the territory of Crimea. - this stage unambiguously falls under the features defined by the international law as occupied territory;
    - From 18 March 2014 until now – from the moment of the actual accession of Crimea to Russia - from the point of the international law it should be qualified as an actual internationally unrecognized annexation, and on the part of Ukraine it can be qualified as a continued occupation of its territory by Russia without a universally recognized transfer of sovereignty.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 506-526
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Events in eastern and southern Ukraine in retrospect of post-soviet relations

DOI: https://doi.org/10.46398/cuestpol.4073.28

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Abstract

The purpose of the article is to periodize the study of interstate relations and the course of events in eastern and southern Ukraine in the period: 1991-2015. The historical and comparative-legal method was used to solve the problem posed. The article analyzes the events in eastern and southern Ukraine during 1991-2015, taking into account Russia's influence on social and political processes in post-Soviet Ukraine through the process of forming Ukraine's international subjectivity, which are permanent factors in bilateral relations with the Russian Federation. In this context, Russia's inability to recognize Ukraine as a full-fledged international actor at the legal and substantive level is demonstrated. It is concluded that the events in Ukraine not only provoked the strongest confrontation between the two largest states of the post-Soviet space, but also exposed a number of problems throughout the international security system. The armed aggression of the Russian Federation against Ukraine was accompanied by numerous war crimes and crimes against humanity. The competent state authorities must calculate the amount of material and moral damage caused by Russia.

Keywords: post-Soviet space; Black Sea Fleet; international security; Crimean crisis; invasion of Ukraine

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Recibido el 04/12/2022 Aceptado el 06/06/2022

Acontecimientos en el este y el sur de Ucrania en la retrospectiva de las relaciones postsoviéticas

Resumen

El propósito del artículo es periodizar el estudio de las relaciones interestatales y el curso de los acontecimientos en el este y el sur de Ucrania en el periodo: 1991-2015. Se utilizó el método histórico y comparativo-jurídico para resolver el problema planteado. El artículo analiza los acontecimientos en el este y el sur de Ucrania durante 1991-2015, teniendo en cuenta la influencia de Rusia en los procesos sociales y políticos en la Ucrania postsoviética a través del proceso de formación de la subjetividad internacional de Ucrania, que son factores permanentes en las relaciones bilaterales con la Federación Rusa. En este contexto, se demuestra la incapacidad de Rusia para reconocer a Ucrania como un actor internacional de pleno derecho a nivel jurídico y sustantivo. Se concluye que los acontecimientos en Ucrania no solo provocaron la confrontación más fuerte entre los dos estados más grandes del espacio postsoviético, sino que también expusieron una serie de problemas en todo el sistema de seguridad internacional. La agresión armada de la Federación de Rusia contra Ucrania fue acompañada de numerosos crímenes de guerra y crímenes de lesa humanidad. Las autoridades estatales competentes deben calcular la cantidad de daño material y moral causado por Rusia.

Palabras clave: espacio postsoviético; flota del Mar Negro; seguridad internacional; crisis de Crimea; invasión de Ucrania.

Introduction

Russia's influence on socio-political processes in post-Soviet Ukraine is considered in a significant number of works by domestic and Western authors, so in this study it will be considered only schematically, in order to reveal the mutual influence between the internal and external aspects of the formation of the foreign political identity of Ukraine.

The given list of problematic issues of bilateral relations, is limited to the problematic of subjectness (corporate identity), demonstrates the close relationship between domestic and foreign policy, related to the influence of Russia on the processes of state and nation in Ukraine and the course of foreign policy (social) identification of Ukraine, in particular its relations with the EU, NATO, as well as democratic transformation as a process of internationalization of European norms and standards.

Therefore, the process of Ukraine's foreign policy identification as an international actor is inextricably linked to the assertion of its own independence from the "significant other", the role of which is Russia.

1. Materials and methods

The course of events in the east and south of Ukraine is considered by us on the basis of the use of information sources, applying the following methods of historical research: periodization, historical-genetic and historical-systemic. In historical terms, the periods of research of events in eastern and southern Ukraine are conditionally divided into the following: the beginning of the establishment of relations between Ukraine and Russia (1991-1992); the gas conflict and resolution of the Black Sea Fleet issue (1992-2004); the "Orange Revolution" and processes after it (2005-2012); the political crisis in Ukraine (2013-2014); the beginning of armed conflict in the south-east of Ukraine and the Crimean crisis (2014–2015).

The purpose of this article is to periodize the study of interstate relations and the course of events in eastern and southern Ukraine in 1991-2015, taking into account the fact that Russian policy towards Ukraine has never considered security issues or economic interests as a priority, because Russian-Ukrainian relations are quite different from those between any other two states (Ash *et al.*, 2015; D'Anieri, 2002; Buckholz, 2019; Giuliano, 2015; Loshkariov and Sushentsov, 2016; Malyarenko and Galbreath, 2016).

2. Literature Review

2.1. Statement of the basic material

The Declaration on State Sovereignty of Ukraine, adopted on July 16, 1990, opened a new page of establishment of independent and autonomous Ukraine and played an important role in building a democratic constitutional order in Ukraine. It was since then that the collapse of the USSR and Ukraine's break with the Russian Federation became a reality.

And on November 19, 1990 the USSR and the RSFSR signed a treaty, which entered into force on June 14, 1991. According to it (Art. 1), it was supposed that "The parties acknowledge each other as sovereign states and undertake to refrain from acts that may cause damage to the state sovereignty of the other party", and also (Art. 6) the "Parties recognize and respect the territorial integrity of the Ukrainian Soviet Socialist Republic and the Russian Soviet Federative Socialist Republic within the present borders within the USSR" (Agreement between the Ukrainian Soviet Socialist Republic and the Russian Soviet Federative Socialist Republic, 1990).

From the first days of independence, the Ukrainian leadership in its foreign policy had to consider the interests of neighboring states, groups (blocks) of states, various transnational groupings at the local, regional

and global levels, while implementing its geopolitical plans. First of all, it is necessary to create prerequisites for the establishment of Ukraine as an equal subject of international relations, creating a documentary basis for this, to begin the process of integration into the systems of European and world cooperation in the general political process, to establish independent economic relations in the international arena, to establish bilateral equal relations with the states of the world community and with the nearest neighbors (Hay-Nizhnyk, 2017).

That is why, taking into account the schedule of the world chessboard and the system of balancing of influence and opposition, the political leadership of the country at the dawn of the restoration of its statehood followed the path of non-alignment and neutrality. However, already 1993 in the "Main Directions of Foreign Policy" approved by the Verkhovna Rada of Ukraine it was noted that the proclaimed concept of neutrality could not be an obstacle to full-scale participation of Ukraine in the pan-European security structure (Hay-Nizhnyk, 2017).

On December 1, 1991, at the All-Ukrainian referendum 90.35% of citizens supported the Act of Declaration of Independence of Ukraine of August 24, 1991. And already on December 8, 1991 the leaders of Russia, Ukraine and Belarus signed the Belovezhskoe Agreement on the Establishment of the Commonwealth of Independent States (CIS). As the first president of Ukraine Leonid Kravchuk said in one of his interviews: "Ukraine can be proud of the fact that it is and was, and became in 1991, the country that broke up the Soviet Union - the last empire, the most terrible" (Regnum News Agency, 2016: n/p).

And Ukraine, although it became one of the founding countries of the CIS, did not sign the Decision on the adoption of the CIS Charter. On December 1, 1991 L. Kravchuk elected as President of Ukraine categorically refused to conclude any union treaty - not only political, but also economic, and in May 1992 refused to sign the Agreement on Collective Security of the Commonwealth of Independent States (CIS), the Ukrainian leadership did not go beyond the associated membership and did not sign an agreement on the establishment of the Interstate Economic Committee - the first supranational body of the CIS.

Despite the proclamation to build real partnership bilateral relations with the former Soviet republics in the future, Russia tried to play a leading role in the CIS. Ukraine's second president, Leonid Kuchma, noted in his book "Ukraine Is Not Russia" that society views Ukraine as a historically inseparable part of Russia that broke away by some strange misunderstanding (Kuchma, 2003). The conglomerate nature of the post-Soviet Ukrainian elite has kept the country's political system running for many years. It was based on certain attributes of democracy, such as a competitive political process, caused mainly by many internal factors (Chernyavsky, 2013).

After the collapse of the USSR, it came as a great surprise to both Russia and Ukraine that a significant number of conflict issues related to the division of military property and the severance of many years of ties in the defense and energy spheres emerged. Territorial problems also emerged. As for the defense-industrial complex, Ukraine inherited from the USSR the second largest (40%) part of the military-industrial complex. Among them are 300 such giants as Yuzhmash, Arsenal, Khartron and others.

These enterprises manufactured transport aircraft, missile cruisers, tanks (Ukraine produced about 50% of Soviet combat vehicles), Zenit, Cyclone, SS-18, SS-20, SS-23, SS-24, etc.

The main territorial problem was the ownership of the Crimean Peninsula and the city of Sevastopol, the naval base of the Black Sea Fleet. Back on November 19, 1990 B. Yeltsin and Kravchuk signed the first interstate document that laid the foundation for future relations of independent Ukraine and Russia, stipulating that both sides: "Recognize and respect the territorial integrity... within the currently existing borders within the framework of the USSR" (Wikisource, 2019: 29).

In the early 1990s Ukraine had 15% of the world's nuclear weapons capability (third in the world, after the United States and the Russian Federation). In 1991 its nuclear arsenal consisted of 220 strategic missile carriers with about 1900 strategic nuclear warheads and 2500 tactical nuclear weapons, as well as intercontinental ballistic missiles: 130 SS-19 and 46 SS-24 (totally 1240 warheads), 25 Tu-95 and 19 Tu-160 strategic bombers, capable of carrying cruise missiles with nuclear warheads.

The main striking power of Ukraine's nuclear capability is 46 solid-fuel intercontinental ballistic missiles SS-24 with ten warheads each - a short range of more than 10,000 kilometers (Hay-Nizhnyk, 2017).

On October 24, 1991, Ukraine adopted a resolution of the Verkhovna Rada of Ukraine on its nuclear-free status. All nuclear charges were to be dismantled and exported to Russia, strategic bombers and missile silos were to be destroyed. In return, the Russian Federation and the U.S. provided guarantees of the independence and integrity of Ukrainian territory (Pravo Tech, 1994).

On June 23, 1992 the presidents of Russia B. Yeltsin and Ukraine L. Kravchuk signed in Dagomys an agreement "On the Further Development of Interstate Relations" (Ministry of foreign affairs of the Russian Federation, 1998), which stated that "the parties will build their relations as friendly states" (Art. 1). They "reaffirm their commitment to the principle of open borders between them" (Art. 8) and "cooperate in preventing and settling conflicts that could harm their security" (Art. 10).

They also agreed to continue consultations "on the fulfillment of their obligations under the Treaty on the Reduction and Limitation of Strategic Offensive Arms of July 31, 1991, the Lisbon Protocol of May 23, 1992 and the agreements previously made on the strategic nuclear forces of the states" (Art. 11), and, respectively, on their mutual agreement to continue negotiations" on the establishment on the basis of the Russian and Ukrainian navies in the Black Sea (p. 14) (Ministry of foreign affairs of the Russian Federation, 1998).

At that time, the Russian Federation continued to make territorial claims to Ukraine, in particular: Resolution of the Supreme Soviet of the Russian Federation of May 21, 1992, No. 2809-1 "On Legal Assessment of the Decisions of the RSFSR State Authorities on the Change of Status of Crimea Adopted in 1954," according to which the Resolution of the Presidium of the RSFSR Supreme Soviet of February 5, 1954 "On Transfer of the Crimea Region from the RSFSR to the Ukrainian SSR" was declared "void from the moment of its adoption".

In December 1992 the Congress of People's Deputies of the Russian Federation asked the RF Supreme Soviet to consider the issue of status of Sevastopol, and on July 9, 1993 the RF Supreme Soviet adopted the resolution "On Status of the City of Sevastopol" which granted federal status to the city.

It was then that the Ukrainian Armed Forces were not without difficulty formed in the Crimea, as evidenced by the letter of the Crimean branch of the Union of Officers of Ukraine to the first persons of the country from August 13, 1992 Having analyzed the agreements between Ukraine and Russia from June 23, 1992, June 17, 1993, April 15, 1994, June 9, 1995, we can state the position of Ukraine in the issue of the Black Sea Fleet, in particular on reducing the percentage of ships, vessels and boats belonging to Ukraine (Hay-Nizhnyk, 2017).

The struggle for the fleet, reflected, among other things, in the "war of presidential decrees", brought both sides to the brink of an armed conflict. On April 5, 1992, Ukrainian President L. Kravchuk signed a decree "On the transition of the Black Sea Fleet to administrative subordination to the Ministry of Defense of Ukraine (Ministry of foreign affairs of the Russian Federation, 1998). In response to this action, on April 7 of the same year, the Decree of the President of the Russian Federation B. Yeltsin "On the transition of the Black Sea Fleet under the jurisdiction of the Russian Federation".

The mutually exclusive decrees of the aforementioned top leaders led to a physical confrontation between Ukrainian and Russian servicemen.

Tensions were reduced only after the heads of the governments of Ukraine and Russia signed three agreements in Kiev in preparation for

the "Great Treaty" on friendship and cooperation, which provided for the distribution of the Soviet Black Sea Fleet and further separate basing of Ukrainian and Russian warships. But on April 17, 2005 the third President of Ukraine V. Yuschenko said that the status of the stationing of the Russian Black Sea Fleet on the territory of Sevastopol and the adjacent territories required an urgent review.

Another "sore point" in Ukrainian-Russian relations was the determination of the status of the Kerch Strait, which is the only natural exit from the Sea of Azov to the Black Sea. Bilateral negotiations on this issue were difficult and tense. In December 2003, Presidents Putin and L. Kuchma signed the "Treaty on Cooperation in the Use of the Sea of Azov and the Kerch Strait". Parliaments of the two countries ratified the document synchronously, in April 2004.

The document provided for free passage of merchant and military ships of the two countries through the strait and free access to the ports of Russia and Ukraine for foreign merchant ships.

However, this never happened. Experts explained that Russia did not want to give Ukraine control over the Kerch-Yenikalsky Strait. At the same time, Ukraine proceeded from the fact that the division should be based solely on the administrative border line that existed during the Soviet Union. And according to it, the canal is in the Ukrainian part of the strait.

After Russia's annexation of Crimea on March 21, 2014, the Russian Federation unilaterally declared its territorial right to the Kerch Strait and Tuzla Island, and in June of the same year it was decided to build a bridge across the Kerch Strait and Tuzla Island.

On May 31, 1997 in Kiev Presidents Boris Yeltsin and Leonid Kuchma signed the Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine, which became the basic legal document that was to determine the further development of their bilateral relations (Agreement on friendship, 1999). It enshrined the principles of strategic partnership, recognition of the inviolability of existing borders, respect for territorial integrity and mutual obligation not to use their territory to the detriment of each other's security.

The Article 12 of the Agreement obliged both states to provide "protection of ethnic, cultural, language and religious identity of national minorities on their territories", to reject attempts of forced assimilation of national minorities, as well as to promote creation of "equal opportunities and conditions for studying Russian language in Ukraine and Ukrainian language in the Russian Federation. Duration of the Treaty - 10 years (to 2007).

The end of the XX and beginning of the XXI century was affected by the destruction of the common economic space of the former USSR and became one of the main factors of the crisis state of the national economies of Russia and Ukraine as a whole and of the oil and gas industry in particular.

In the winter of 1992-1993 a series of intergovernmental contacts took place, as a result of which the technical credits were converted into Ukrainian state debt and a plan for their repayment until 1999 was developed. However, the situation escalated to such an extent that gas supplies to Ukraine were restricted for several days. On August 11, 1992 L. Kuchma met with Chernomyrdin, after which Russia resumed gas deliveries. But as early as August 26, Russia announced another 25% cut of gas supplies to Ukraine because of the increasing debt level in Ukraine.

However, the reduction in gas supplies proved to be an ineffective mechanism to ensure repayment of debts. In October 1993. Gazprom offered to repay Ukraine's debts through a long-term lease of a number of facilities in the Ukrainian gas transmission system. The Ukrainian side, however, was unwilling to accept the proposal, because it could have put the country in an extremely difficult situation in the event of a new shutdown of gas supply.

The passage through Ukrainian territory of all Russian main export pipelines and the remoteness of the prospect of alternative routes allowed Ukraine to advance its position on economic issues. In response to the announcement of a gas supply cutoff due to nonpayment for gas delivered to Ukraine, the latter said that in such a case Ukraine would shut down the transit pipelines that run through its territory. This situation became the starting point for the development of an open "gas conflict" between Russia and Ukraine.

Counting on Ukraine's accession to the agreement on forming a common economic space (CES) with Belarus, Kazakhstan and Russia and joint cooperation in high-tech sectors and development of powerful long-term projects, Russia on August 8, 2004 signed an additional agreement to the contract between Russian Gazprom and Ukrainian Naftogas, which set a fixed price for Russian gas at $50 for Ukraine until 2009. The agreement stipulated a fixed price of $50 per thousand cubic meters for Russian gas (compared to an average European price of $160 to $170 at the time).

Simultaneously with the policy of open confrontation over the level of prices for transit gas and the terms of the basing of the Russian fleet, the leadership of Ukraine intensified attempts to communicate with Euro-Atlantic structures. All Ukrainian leaders of the post-Soviet period, from Kravchuk to Zelensky, declared their intention to join them.

With the adoption of the NATO-Ukraine Action Plan in November 2002, annual NATO-Ukraine Targeted Plans began to be developed. Thus, on

April 6, 2004, the Verkhovna Rada adopted a law on free access of NATO forces to the territory of Ukraine. In April 2005, the military doctrine included a thesis on strategic goal of Ukraine: "...Proceeding from the fact that NATO and EU are guarantors of security and stability in Europe, Ukraine is preparing for full membership in these organizations..." (Liga. Zakon, 2005: n/p).

On January 23, 2005, Viktor Yushchenko became President of Ukraine. His foreign policy, like that of his predecessors, envisioned European integration and accession to Euro-Atlantic structures - NATO, first and foremost. A public relations campaign and a number of diplomatic measures were implemented in this context. However, populism, lack of reforms, no effective anti-corruption measures, and internal strife between the branches of power in Ukraine had no chance to sign the Association Agreement between Ukraine and the EU that year, nor to get the Membership Action Plan (MAP) with the NATO.

Russian-Ukrainian interstate relations at that time were complicated with a bitter aftertaste from the conflict over the island of Kosa Tuzla, which could only be resolved after the intervention of the presidents of both countries (Russia suspended construction of a dam 180 meters from the island and was forced to delay armed expansion against Ukraine for decades) and increased geopolitical, energy, trade and economic, energy problems and the like. Since 2008 there has been a significant deterioration, which was reflected in the aggravation of the "gas war" and diplomatic tensions related to the attempt to change Ukraine's foreign policy course from multi-vector to pro-Western.

At the same time, a joint statement "The Order of the New Century for the Ukrainian-American Strategic Partnership" was signed in April 2005 following talks between V. Yushchenko and U.S. President J. Bush. In his speech to the U.S. Congress, Yushchenko stated that the new Ukraine shares Euro-Atlantic values, and therefore his country's accession to the EU and NATO "will strengthen stability throughout the region strategically important to the United States, from Warsaw to Tbilisi to Baku" (Verkhovna Rada of Ukraine, 2011).

In August 2008 the Ministry of Foreign Affairs of Ukraine stated that the Ukrainian side reserves the right under international law and Ukrainian legislation to prohibit the return of ships and vessels of the Russian Black Sea Fleet, which may take part in an armed conflict in South Ossetia, to the territory of Ukraine until the conflict is resolved (Yushchenko, 2014).

In the international arena, the core theme of Ukrainian diplomacy has also been the "Holodomor. Holodomor Remembrance Day was established in Ukraine by decree of L. Kuchma in 1998, and V. Yushchenko in November 2006. Yushchenko signed the law "On the Holodomor of 1932-1933. In

Ukraine, accusing Russia of deliberately "using genocide" against the Ukrainian people. He also recognized Bandera and Shukhevich as fighters for independence and awarded them the titles of Hero of Ukraine. Such actions were very negatively received in Russia (Portnov, 2015; Yushchenko, 2014).

In the fall of 2008, after Russia threatened Ukraine with a trade war during September bilateral trade negotiations, a series of mutual political steps toward each other took place, which, however, turned out to be diplomatically formal. Then it became clear that Ukraine would not be able to get much closer to the EU and obtain a MAP for NATO membership in the near future, and Russia somewhat stopped blackmailing Ukraine, which gave the strange impression of improved relations between the two countries.

At the beginning of January 2009, a second Russian-Ukrainian gas war broke out and Russia stopped supplying natural gas to Europe altogether. After Tymoshenko's unilateral decision on the gas issue with Vladimir Putin, on January 19, 2009 Naftogaz of Ukraine and Gazprom signed gas contracts on gas purchase at USD 450 and transit rate of USD 1 7. This is how Ukraine got a new gas contract with Russia, and passions between the two states subsided for a while.

In late 2012 - early 2013, Russia proposed that Ukraine join the Customs Union (CU) of the EurAsEC as a full member, arguing that it would benefit economically, in particular from the supply of Russian energy at lower prices. However, so far there is a consensus among the Ukrainian elite about the necessity of integration into the European Union and joining the corresponding free trade zone. All Ukrainian parliamentary parties (excluding the Communists) opposed Ukraine's accession to the CU, supporting the course of European integration.

In parallel with the gas diktat and blackmail, the Kremlin put forward a number of geopolitical and military-political ones, such as: limiting cooperation with the EU, preventing NATO from receiving MAPs, preferences for its own goods in trade relations, "protection" of the Russian language, strengthening its military beachhead in Crimea, etc.

Russia offered Kyiv full membership in the CU and was ready to provide Ukraine with $15 billion in direct financial aid, loans, and other preferences. Ukraine was also promised a substantial reduction in the price of Russian gas, which was to bring additional several billion dollars to its budget. Besides, Russia offered some well-known Ukrainian businessmen to take part in what they called "very profitable projects" which should make the business community financially interested in rapprochement with Russia rather than with the European Union.

In this way, the Russian leadership forced Yanukovych to abandon the course of European and Euro-Atlantic integration and implement an anti-Ukrainian humanitarian policy. The main goal was to return Ukraine to the bosom of Russia forever, keeping it under the influence of the Russian Federation and destroying the Ukrainian identity. This meant russification of Ukraine, which became part of the "Russian world" with no chance of maintaining an independent, autonomous state.

Yanukovych and his government purposefully strengthened the Russian military contingent in Crimea by their actions during 2010-2013. According to the Kharkov agreements signed by him on April 24, 2010, the number of Russian troops in Crimea was doubled, and FSB officers were officially allowed to work there.

The next stage of the political confrontation and crisis in Ukrainian-Russian relations was the events of 2013-2014. A week before the Eastern Partnership summit in Vilnius (November 21, 2013), where Ukraine was to sign the Association Agreement with the European Union, Yanukovych announced the suspension of preparations for the conclusion of this agreement. This decision sparked a wave of protests in Kyiv and other major Ukrainian cities. The forceful destruction of the opposition's tent city in the center of Kyiv on the night of November 30 radically strengthened the anti-presidential nature of the protest action.

The main factors behind the protests were the high level of social injustice, enormous polarization of incomes and living standards of Ukrainian citizens, and rampant corruption that permeated all structural components of Ukraine's political system, including the judiciary and law enforcement agencies. A detailed analysis of the economic and domestic political situation in Ukraine during this period is given in the publications (Azarov, 2015) and others (Allison, 2014; Raik, 2019).

After the dispersal of a peaceful rally of students and civic activists on November 30, 2013, a spontaneous rally arose on Mykhailivska Square. The leaders of the three opposition parties: V. Klitschko, Tyahnybok, and Yatsenyuk announced a decision to establish a National Resistance Headquarters. From the very beginning of the confrontation, the protesters chose a course for peaceful protests.

Though, the attempt to draw the protesters into an aggressive confrontation with the law enforcement forces during the storming of the Presidential Administration on December 1 was unsuccessful: the protesters did not join the storming, and opposition deputies and protest leaders shielded the protesters from the law enforcement forces with their bodies.

After the events of December 1, the power contact, although it took place, but more and more passed into a civilized channel and had a local

nature. At the same time, the authorities tried to imitate "popular support" for the course of the government and the President by bringing people to the "Anti-Maidan" - paid rallies held under the flags of the Party of Regions.

The events in Kyiv on February 18-20, 2014, were a dramatic phase of the Revolution of Dignity, during which about a hundred protesters were killed. On February 21, opposition leaders signed with Yanukovych an Agreement on the Settlement of the Political Crisis in Ukraine. It provided for a return to the 2004 constitution, i.e., a parliamentary-presidential form of government, the formation of a "government of national trust", constitutional reform and early presidential elections by the end of that year, as well as the withdrawal of law enforcement forces from downtown Kiev, an end to violence, and the surrender of weapons by the opposition (Kudelia, 2014).

But his signing was not welcomed by the people on the Maidan: the demonstrators demanded that the president resign. On the morning of February 22, Yanukovych fled Kiev. On 22 February, the Verkhovna Rada upheld a resolution on Yanukovych's self-removal from the presidency. On 23 February, Turchynov was appointed acting president.

Since the beginning of the next stage of confrontation and crisis between Ukraine and Russia on February 27, 2014 to the conclusion of the Minsk Protocol "on the cessation of the use of weapons" we will distinguish 3 stages: 1) forceful seizure by Russian special forces of the premises of the Verkhovna Rada and the government of Crimea, holding a pseudo-referendum on March 16, 2014 on the accession of the peninsula to the Russian Federation and the incorporation of Crimea into Russia; 2) April 2014 - proclamation of the illegitimate "Donetsk People's Republic" (April 7, 2014) and the "Luhansk People's Republic" (April 27, 2014), holding bogus referendums during May on their separation from Ukraine; 3) August 27, 2014, when the mass invasion of the territory of Donetsk and Luhansk regions by regular units of the Russian Armed Forces, including those that were part of the 9th Independent Motorized Rifle Brigade, 76th and 98th Airborne Division (Vasilenko, 2014: 31-32).

Let us briefly review the main developments in all of these stages. On February 23, 2014, the Verkhovna Rada of Ukraine ratified the law "On the foundations of state language policy" of July 3, 2012, which, among other things, guaranteed the official use of the so-called "regional languages" on a par with the state language in Ukraine. This means languages which, according to the population census, are considered native languages by more than 10% of the population of the respective region.

Protests in Donetsk and Luhansk oblasts turned into armed confrontation, and the slogans of federalization of Ukraine changed to demands for regional independence (Biersack and O'Lear, 2014; Kulyk,

2019; Matveeva, 2016; Nagashima, 2019; Richey, 2018; Official Statement, 2014; Zhukov, 2016).

In February and March 2014, the executive authorities of Sevastopol and the Autonomous Republic of Crimea (ARC) refused to recognize the legitimacy of the new Ukrainian government. Protests by the local, mostly Russian-speaking population against the actions of the central authorities to replace these authorities began. On March 1, Russian President V. Putin submitted an appeal to the Federation Council "On the Use of Russian Federation Troops in Ukraine" (Administration President of Russia, 2014; Kuzio, 2015; Laruelle, 2016). On the same day, the Council of the Russian Federation unanimously granted the president this authority.

On March 16, the new local authorities in Crimea and Sevastopol organized and held a referendum, despite attempts of opposition from the Ukrainian authorities and pressure from Western countries. The population was asked to answer the question about the possibility of seceding from Ukraine and becoming a part of Russia. On March 17, based on the results of the referendum and the Declaration of Independence adopted on March 11, the sovereign Republic of Crimea was proclaimed, which included Sevastopol as a city with a special status.

On March 18, 2014 in the Kremlin there was signed an agreement on the admission of the Republic of Crimea to Russia. Russia explained its position on the Crimean issue by protecting the local population and trying to bring peace and harmony to this land (Newsti, 2014).

In response to Russia's annexation of Crimea, Australia, Canada, New Zealand, the European Union, and the United States enacted the provisions of the first set of sanctions against Russia. These measures were aimed at freezing various assets, imposing visa restrictions for the persons included in the special lists, and at the same time prohibiting the business entities of the states that had joined the sanctions to continue maintaining business and other relations with the individuals and enterprises included in these lists.

In addition to such restrictions, avoidance of contacts and cooperation with the Russian Federation and Russian enterprises and organizations regardless of the sphere of cooperation was also initiated.

About events in the east of Ukraine, then under the pretext of holding "referendums" there in April 2014 and to support illegal territorial formations, Russian reconnaissance and sabotage groups, paramilitary formations of Russian Cossacks, manned by Chechens - citizens of the Russian Federation (battalion "Vostok"), armed groups of mercenaries "Russian sector" and "Oplot" were exiled to the territory of Ukraine. It was with their participation that administrative buildings in many populated areas of Donetsk and Luhansk oblasts were raided, and attacks were carried

out against Ukrainian Ground Forces units and Ukrainian Air Force aircraft.

On April 17, 2014, quadrilateral negotiations on de-escalation of the conflict in Ukraine were held in Geneva with participation of the highest diplomatic representatives of Ukraine, the EU, the USA and Russia. Subsequently, Russia joined the talks in the Normandy Quartet format, during which the settlement of the Ukrainian crisis was discussed. An important step in this format was the meeting of the leaders of Russia, France, Germany and Ukraine in Minsk on February 11-12, 2015.

The first is a set of actions aimed at implementing the Minsk agreements to resolve the situation in eastern Ukraine. In addition to the actual cessation of shelling and the disengagement by both sides of all heavy weapons from 50 to 140 kilometers to form a security zone. Another document was the Declaration on Supporting the Package of Measures for the Implementation of the Minsk Agreements, adopted by the Normandy quartet leaders.

However, the signing of the February 12, 2015, Minsk documents did not stop the fighting or the withdrawal of Russian troops from Ukraine. It is possible that they were the result of behind-the-scenes agreements between the top leadership of Ukraine, Russia, and leading Western countries.

According to the UN, from April 2014 to July 2016 alone, more than 10,000 people were killed and more than 23,000 injured in the Donetsk and Luhansk regions (BBC News, 2019; Coupé and Obrizan, 2016; Malyarenko and Wolff, 2018; Sotiriou, 2016; Stebelsky, 2018; Wilson, 2016).

As a follow-up to the above, research (Shcherbak, 2016) on thoughts about the further development of interstate events is interesting, which carries a certain degree of sensitivity and doubt, which is confirmed by the number of respondents (Ukrainian and Polish citizens) who hesitate in choosing a particular scenario of developments in relations between Ukraine and Russia, with almost a third of foreigners

3. Discussion

Feeling a loss of control over Ukraine, Putin turned to armed aggression. This is how Russia's armed attack on Ukraine should be qualified, despite the fact that for a certain period the Russian Federation used its armed forces covertly. Its main purpose was to test the readiness and ability of Western democracies to resist the forceful methods of implementation of Russia's revanchist plans.

Significant socio-economic problems in Russia and Ukraine, the corrupt nature of government, and the growing social divide have led to an increase in destructive thinking, under the influence of which there have been calls

for the destruction of the existing order of things to one degree or another. In this situation the ideology of the "Russian world" turned out to be one of the most significant in the Russian socio-political space.

The identity crisis, as well as the acute stage of Russian nationalism, will remain a knotty problem of ethno-political processes in the post-Soviet space in the future. It will be the basis of Russian-Ukrainian relations for decades to come, and, given the borderline nature of the territory of Ukraine, of world political processes as well.

As the Russian opposition politician G. Kasparov notes, the idea of the "Russian world" has become too ephemeral, it has not captured anyone, it is an attempt to maintain a state of manic delirium in society.

In the opinion of the Ukrainian political publicist and journalist V. Portnikov "Ukraine wants to ward off this very thing that destroys everything, inhuman discord - the essence" of the Russian world "and the Moscow Patriarchate" (Portnikov, 2015), and Tomenko notes that the "Russian world" is not just harmful to national interests, it eliminates the very meaning of the existence of the Ukrainian state (Tomenko, 2011).

Analysis of recent events shows that the aggravation of social confrontation occurs mainly through the cultural decay of society, which leads to the archaization of mass consciousness, creating conditions that cast society into a state of social and cultural archaicism.

It is urgent to create a modern research structure that would systematically study and analyze the current dynamics of doctrines like the "Russian world". Because this is a matter of national security and the key to further development.

Thus, Russia's inability to recognize Ukraine as a full-fledged international actor not so much on the legal as on the substantive level, the desire to restore and consolidate relations according to the scheme "center-periphery" forms a negative attitude to rapprochement with Russia, conditioning its perception as an existential threat to international subjectivity of Ukraine.

At the same time, maintaining a certain distance in relations with Russia, which would guarantee Ukraine the preservation of its political sovereignty, lies at the core of its foreign policy identity and determines the process of further formation and filling with concrete "social" content, relying on the political formula "Ukraine is not Russia". It is this aspect of Ukrainian-Russian relations that can be considered a certain constant of intersection of all its key issues in the process of formation of the foreign and domestic political agenda of Ukraine's identity, as well as the point of.

Conclusion

The events in Ukraine not only provoked the strongest confrontation between the two largest states of the post-Soviet space, but also exposed a number of problems in the entire international security system.

The Ukrainian crisis has demonstrated a significant political divide between Russia and the West. It became a kind of marker of how great the differences are in the perception of nation-building, territorial problems, the search for integration models, regional and global leadership, and the distribution of responsibilities of the leading actors in international politics. A fundamentally new page was opened in the contradictions between Russia, on the one hand, and the United States, NATO and the European Union, on the other.

The armed aggression of the Russian Federation against Ukraine was accompanied by numerous war crimes and crimes against humanity. The competent state authorities should calculate the amount of material and moral damage caused by Russia.

Under the temporary occupation of two southern regions of Ukraine, Russia is pursuing a policy aimed at destroying the Ukrainian common civic identity, marginalizing and gradually replacing the ethnic Ukrainian identity with the Russian identity. Now Ukraine has established the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine, which ensures formation and implementation of the state policy on the temporarily occupied territories of Donetsk and Luhansk regions and AR Crimea and Sevastopol, as well as adjacent territories.

Instead, Ukraine, its authorities need to develop a national comprehensive strategy for the liberation of the occupied territories, which would include socio-economic, humanitarian, diplomatic, informational, as well as military components and should have several possible forecasts (both positive and negative) of the development and consequences of future events.

In particular, it is necessary to continue to implement Ukraine's international agreements on the implementation of democratic standards in the context of the signing of the Association Agreement with the EU, especially in the context of overcoming corruption and improving the material well-being of Ukrainian; develop and adopt appropriate regulatory documents aimed at the reintegration of temporarily occupied territories (Donbass and Crimea) to counter the ideas of the "Russian world" to create their own national information project "Great Ukraine", "Ukrainian World", etc.), aimed at consolidation of Ukrainian society; prepare and implement effective state programs for the integration of refugees from the east of Ukraine and Crimea into Ukrainian society; conduct a wide information

and educational campaign to popularize Ukrainian history, in particular the history and culture of the southeastern regions of Ukraine, including Crimea, among all categories of the population.

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Cuestiones Políticas Vol. 40, Nº 73 (2021), 527-538
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Conceptualization of smart-philosophy as a post-modern project of non-linear pattern development of the XXI century

DOI: https://doi.org/10.46398/cuestpol.4073.29

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Abstract

The aim of the study is to analyze smart-philosophy, which refers to the priority research based on the new interaction between man and society. The methodological basis of the study is the synergetic approach, in the context of which new realities are "smart" with innovative potential. The informational approach to the analysis of society is based on the synergetic, nonlinear methodology, the analysis of which is applicable to the global transformation's characteristic of autoreflexive societies of high complexity. It also uses methods for measuring the "smart society" - anthropological and socio-axiological, based on people, education, the movement towards the "society of innovation" and knowledge. It is concluded that the breakthrough in the system of information and communication technologies has determined profound meaningful changes in all spheres of social activity, which is the theoretical autoreflexion of modernity and its dominant direction. The result of the study is the conceptualization of the smart-philosophy of the XXI century as the highest stage of civilizational development of mankind.

Keywords: Smart-society; smart-man; smart technologies; smart economy; smart business.

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Recibido el 14/03/2022 Aceptado el 12/06/2022

Conceptualización de la filosofía inteligente como proyecto posmoderno de desarrollo de patrones no lineales del siglo XXI

Resumen

El objetivo del estudio es analizar la filosofía inteligente, que se refiere a la investigación prioritaria basada en la nueva interacción entre el hombre y la sociedad. La base metodológica de la investigación es el enfoque sinérgico, en cuyo contexto las nuevas realidades son «inteligentes» con potencial innovador. El enfoque informativo del análisis de la sociedad se basa en la metodología sinérgica y no lineal, cuyo examen es aplicable a las transformaciones globales características de las sociedades autoreflexivas de alta complejidad. También se utilizan los métodos de medición de la «sociedad inteligente» -antropológicos y socio-axiológicos- basados en las personas, la educación, el movimiento hacia la «sociedad de la innovación» y el conocimiento. Se concluye que el avance en el sistema de las tecnologías de la información y la comunicación ha determinado profundos cambios significativos en todas las esferas de la actividad social, que es la auto reflexión teórica de la modernidad y su dirección dominante. El resultado del estudio es la conceptualización de la filosofía inteligente del siglo XXI como la etapa más alta del desarrollo civilizatorio de la humanidad.

Palabras clave: sociedad inteligente; hombre inteligente; tecnologías inteligentes; economía inteligente; empresa inteligente.

Introduction

The relevance of the research topic is that the conceptualization of the smart philosophy of the 20th century as the highest stage of civilizational development is a universal factor in the introduction of the postmodern project by means of practical philosophy that legitimizes this type of society. In the matrices of smart philosophy, the «human-society» relationship is being conceptualized, which is the central theme of philosophy. This dimension indicates not only the general theoretical sense of posing the problem, but also its praxeological meaning as a whole for the benefit of man.

A new approach to the new format of man leads to the fact that since the mid-80's. 20th century a smart philosophy is developed as an applied science that studies the problems of a person in a smart society and tries to improve the existence of a person with smart technologies. In this regard, smart society is considered at the level of a three-tier model of the social world:

1) smart-city as a society that requires improvement by smart technologies;

2) smart-city as a system-structural world and an innovative city;

3) smart-city as a social micro and social macro world of everyday life.

1. Methodology of research

Methodology of smart philosophy as a variety of creative and axiological approach is a set of methods, principles, technologies, which are based on value and creative attitude of a creative subject to conceptualization of reality. The methodology of smart philosophy demonstrates a generalized model of interaction between people and society, which they are attempting to recreate through the use of intelligent technologies, the intellectual search for recreating society, the formation of values, standards, criteria of digital society and digital people.

Smart Philosophy is an amalgamation of axiological, metaphysical, substantive methods and principles of cognition of society, education, technology, and human values, which are aimed at the formation of the discourse of the culture of high-intellectual, high-tech society, which is based on the development of creative intelligent technologies.

The methodological foundations of the smart-philosophy model are reduced to using the principles of the study of smart society:

1) constructive;

2) symbolism;

3) idealization;

4) instrumental and functional significance.

The epistemological assumption about the nature and nature of the rationality of a smart society is implicit in the theories of human adaptation to the environment. Anthropological and socio-axiological methods and approaches allow us to disclose the dimensions of a smart society, based on a person, education, movement towards a «society of innovations» and knowledge. The method of reconstruction provides an opportunity to display new strategies of the relationship between man and society in the modern project of postmodernism.

Regulatory methodological ideas are the principle of complementarity of various discourses about the emergence and functioning of smart-philosophy, which makes it possible to comprehend the ambivalence of the social and political processes of the information society. The concept of

sustainable digital development economy is today the most powerful and important, as it can lead a country out of the crisis on the path of sustainable digital development and develop strategies and priorities for the future that cover large-scale digital industries (Nikitenko *et al.,* 2019).

The methodological and general scientific significance of the theory of smart society as the basis for the development of modern smart philosophy creates the conditions for the formation of a new smart worldview. A new smart worldview that can be defined as a system of views on the world that necessitates overcoming entropic processes in society and requires the use of smart technologies for the arrangement of a person and his way of life.

A new smart worldview requires that the ideas of a rational (innovative) discourse aimed at the sociocultural and socioeconomic progress of society be realized in it. "The new world view of the 21st century is a noospheric worldview that aims to realize Vernadsky's idea in ontological socio-natural processes" (Voronkova *et al*., 2021: 122). The anthropological dimension of a smart world outlook comes from a mind that promotes a proper understanding of the subject of research and acts as a necessary condition for understanding the cultural and logical category of smart philosophy (Voronkova *et al.,* 2021).

The research problem is the conceptualization of the dimensions of smart-philosophy, which is determined by the development of smart technologies, based on the types, specifics and prospects for the development of the information society. An essential feature of all European models of smart philosophy is a rationally organized person who equips his being in accordance with the laws of informatization, which requires the improvement of smart technologies.

The purpose of the study is to analyze the dimensions of smart-philosophy, which testify to the progress of the information society, which is evolving towards a smart society. The reflexion of a smart society is based on anthropological, spiritual-aesthetic, axiological foundations, because a person owns a "social body" capable of acting in the spiritual and aesthetic processes of the society-existence in correlation with sociocultural activity (Voronkova *et al*., 2022).

2. Conceptual-categorical research apparatus

Conceptualization of the measurements of smart-philosophy provides extrapolation of innovative information technologies and multi-formatting of the society, which harmonizes the factors of culture, science, art, education, which requires the introduction of smart technologies. Multiprocesses in the information society are associated with logical-mathematical, logical-

semantic, multi-semantic poly-models-structures and such methods of information transfer as television, telephone, fax, which modify and develop all the processes of informatization. As a result of this evolution, a «smart society» emerged as a postmodern project in the non-linear paradigms of practical philosophy (Voronkova, 2020).

For us, it is very important to characterize the term «smart». Smart is a property of an object that characterizes the integration in the given object of elements previously unrelated, which are carried out using the Internet. For example, Smart-TV, Smart-Home, Smart-Phone Smart-technologies, which lead to the expansion of labor mobility: education, public service, design and other fields of activity. Recently, global trends in the development of Smart: Smart cities began to emerge; Smart-country; Smart-Mobility; Smart-economy; Smart-education; Smart-life.

The modern concept of Smart-government is based on the new Smart Networks platform, and modern design detail is modified by introducing various types of design (graphic, ecological, web-design). The Smart Networks platform foresees the use of communication networks to manage systems of different nature. A reasonable network is expressed as the realization of the three components of the development of the Internet:

1) inter-machine interaction (M2M), that is, technologies that allow machines to exchange information among them or transmit it unilaterally;
2) the calculation (SS);
3) analysis of large data (Big Data). Therefore, the logical continuation of the information society is a smart society (smart-society), which develops on the basis of Smart-technologies (Castells, 2000).

Note that for the first time the term «smart society» was introduced by P. Drucker in 1954, the first letters of which designate: S – Self-Directed; M – Motivated; A – Adaptive; R – Resource enriched; T – Technology. Smart criteria, which must meet the objectives: 1) specific – specific (what needs to be achieved); 2) measurable – measurable (in what the result will be measured); 3) attainable – achieved (through which you can achieve the goal); 4) relevant – actual (determining the truth of the goal); 5) time-bounded – the relationship with a specific time (the definition of the time relationship with a specific time (the definition of the time interval after which the goal can be determined.)

The term «smart» in Russian means a reasonable one, that is, one that has a number of trans discursive intentions that promote the development of intelligent technologies and the formation of a rational society in its various modern versions. The key characteristic of the term «smart» is the ability to interact with the environment and to provide a system of skills

community to react to changes in the external environment: 1) adaptation to conditions that are transformed; 2) independent development and self-control; 3) effective achievement of results, which in general are theoretical post-modern authorship (Buhaychuk *et al.*, 2022).

3. Results

3.1. Concepts of the development of the smart society and its semantic dominants

In the process of the evolution of civilization, the concepts of a smart society were formed in the basis of modern state programs in South Korea. In South Korea, the National Social Agency developed a "Smart Society Strategy", which is extremely relevant. The concept of smart society penetrates into all spheres of human life – management, business, education, design – makes them flexible, intelligent, intellectual with the use of knowledge and innovation. The development of a smart society is associated with the beginning of an era of knowledge that has evolved into the mind and intellect that formed the Smart Society.

It is proved that the basis of the Smart Society is the development criteria of the «knowledge society», digital technologies, and digital society – all that are called the "digital era" of civilization. Smart-society includes a project to develop a strategic-innovative perspective for intelligent work, which is the basis of a reasonable (innovative) city that is based on a reasonable infrastructure, and plays a central role in creating an innovative culture (Buhaychuk *et al.*, 2022).

Smart economy, smart innovation. Smart innovations give rise to the problem field of a new paradigm for the development of society, which is considered the most important factor in the formation of a smart society, which is based on the concept of smart economy. It is no coincidence that this increase is fixed in the document «Europe 2020: A strategy of intelligent, sustainable and inclusive development» (Smart growth) – a strategy that includes the development of neo-economy or a reasonable economy.

Neo-economy is based on knowledge and innovation and promotes sustainable development, based on more efficient use of innovative resources. This concept is based on inclusive growth and the strengthening of high employment of the population, which is generally conducive to the development of the human factor, its resources (Kyrychenko, 2019).

Smart economy is an economy that is based on comprehensive modernization and innovative development of all areas based on next-generation technologies that provide high added value, energy efficiency,

the formation of a quality environment and social stability and are moving towards the development of the fourth industrial revolution –Industry 4.

The meaningful filling of the Smart Economy is based on energy-saving technologies and ecological infrastructure in which a new quality of services is generated, which users themselves generate, citizens of the smart society, interacting with public authorities and private businesses not vertically but horizontally, making business intelligent and creative. At the same time, such a situation is expected for the "fifth level service", when the service itself "finds" the client, and not vice versa.

The effectiveness of ICT allows enterprises to achieve significant economic success due to the problematic field of rapid adaptation to the rapidly changing business environment, the use of remote offices, continuous communication with consumers and partners. Smart society cooperates in a nationwide network in which labor activity is organized on the basis of the formation of collective (social) intelligence, which gives rise to «smart work».

As a result of the evolution of the information society into the smart society, as a result of the development of civilization, new demands are being made for labor resources, in the context of which the mastering of collective network competence is the main one (Sadovnicova *et al.,* 2020).

"Smart society" includes the development of "smart technologies", education, city management, and the formation of new technologies, which is associated with the development of the Internet and contributes to the effectiveness of the new role of information technologies, which act as the only infrastructure of a new society that is determined by intellectual technologies (Kyrychenko, 2017).

3.2. Development of Internet technologies and education as the basis for the development of smart-philosophy

The development of Internet technologies and education creates unique conditions for the emergence of a project for new labor relations with employees and employers. Within the framework of innovative technologies – smart stuffing, new high-tech approaches to attracting staff are being formed. It is proved that specialists who work in the same team for a common result are used consistently, and the majority of workers can perform labor functions in a remote mode. The implementation of smart-stuffing technology takes place on the basis of the distributive intellectual Internet b2b platform, with which employers at a considerable distance attract and redistribute among themselves the available competences of employees, and also conclude contracts with remote workers using electronic document-accounting.

The relevance of the research topic is that information and innovation technologies as a factor in improving the efficiency of economy and business in the context of globalization 4.0 represent a set of norms, values, views, technologies and algorithms of action, which underlie evolutionary changes that transform all spheres of activity. Information and innovation technologies in the form of innovations stimulate the development of business and local economies, contributing to improving the well-being of the population (Cherep *et al.*, 2019).

The evolution of education today comes from e-learning to the formation of the Smart-University, which acts as a catalyst for innovation in education: promotion at the national level; a cyber-learning system in cyber-universities.

Education, which is formed through the use of electronic and collective technologies, is becoming more widespread and effective, and accordingly, smart education prepares smart citizens who are highly intelligent and use the most advanced information technology. Foreign scientists believe that the development of such sectors as Smart Transport, Smart Energy, Smart Education will lead to the emergence of a Smart World, determined by digital technologies in the context of information and globalization (Trusova *et al.*, 2021).

We uphold the view that the necessary condition for the formation of a smart society is a smart education, based on the formation of smart competences as part of the formation of information competence, which includes: knowledge of the smart environment and the order of forming interaction with it; skills of searching and using smart resources and smart technologies. Interaction in a smart environment should be carried out in the context of interaction with the media environment and cyberspace, which allows the individual to adapt to the realities of today (Rybalchenko *et al.*, 2021).

3.3. The Digital Economy of the Internet Age

The digital economy of the Internet era helps to increase the national «human resources». Part of the «human capital» is formed by the development of a smart society and contributes to the increase of «additional property», that is, intellectual capital. In order to timely meet unique challenges and maintain their competitiveness, organizations must have access to human resources at the right time, contributing to the development of «human capital», which is an intellectual platform, personnel and social innovation. It is this vector of the development of smart philosophy that requires its contextualization in modern practical philosophy.

3.4. The principles of the work of smart-business and smart innovations in modern practical smart-philosophy

The mission of smart-business is to provide h**i**gh-quality, highly professional services and introduce innovative technologies and solutions in business management, as a result of which client companies will grow rapidly and successfully develop their business. The principle of smart-business is the formation of long-term relationships with customers as a result of effective staff management and the formation of a package of service quality, which is identified through Smart-innovations that give birth to a new paradigm of a smart society.

Conclusions

Thus, the formation of a smart society shows that the world is in a state of systemic global changes and a global transformation of mankind. As a result of the changes, new requirements are formed, which are put forward to labor resources, the management of collective network competence is in demand.

1. Postclassical receptions of the modern state of the new smart-philosophy project act as a key factor in the global struggle for leadership in the modern world. The ability of citizens to adapt quickly to changes in the environment is determined by the speed of mastering innovations and, first of all, by the level of mastering modern educational technologies – e-learning, which actualizes nonlinear features of the project dynamics.
2. New concepts of smart-competencies and smart culture are a condition for the development and self-development of the subject, his smart education, which includes the formation of an informational outlook, the development of the cognitive and activity of the subject to a smart environment that represent the perspective development of the society.
3. The subject of the smart society of modern media discourse should adapt to this environment in the context of global challenges, develop the psychological stability of the subject to the influence of negative (entropic) destructive manifestations of this environment, be able to protect their internal and personal information field.
4. Smart society as one of the leading concepts-markers of the information society emphasizes the fact that man is not only an economic and political cell of society, but also a sociocultural phenomenon that incorporates all cognitive-creative, cognitive-learning, rational-value.

5. The breakthrough in the ICT system has determined the profound meaningful changes in all spheres of human life; therefore, today there is every reason to speak about the evolution of the information society into a smart society that continues its non-linear progressive development in the network of the 21st century.

Recommendations

1. In the context of the conceptualization of smart philosophy as a post-modern project of non-linear progressive development of the 21st century, the following areas should be singled out:
    a) To promote the training of professional specialists:
    b) To form an elite of humanitarian managers capable of implementing the policy of smart philosophy, forming the key tasks of humanitarian nomination:
    c) Promote personal growth and activity self-determination (anthropological vector); c) develop strategic thinking that contributes to the achievement of a smart society.
2. To promote the development of a smart worldview of managers based on the development of individual abilities, the ability to analyze the phenomena of public life, practical skills in decision-making.
3. To promote the development of smart technologies, which are combinations of scientifically based techniques and special techniques of indirect influence on society through the management of smart technologies.
4. To promote the development of a smart culture based on a culture of interaction in a smart environment, the implementation of smart security measures, computer and information ethics.
5. To promote the development of smart cities and smart technologies, behind which the future of civilization.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 539-549
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Special characteristics of a person who commits a crime associated with the illegal transplantation of human anatomical materials

DOI: https://doi.org/10.46398/cuestpol.4073.30

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Abstract

This article aims to clarify the features of the forensic characteristics of a person involved in the commission of crimes related to the illegal transplantation of human anatomical material. This research uses a comprehensive approach to study the problems under analysis; systematic method and methods of comparative law to analyses judicial practice and cases of illegal transplantation of anatomical parts from various countries in order to establish the moral and psychological characteristics of the offender and, finally, to determine the possibility of using this information during the pre-trial investigation of criminal proceedings of this category; statistical: to collect and analyze empirical data on research practice in the transplantation of anatomical materials to confirm the representativeness of the results. It is concluded that, as a rule, the person who commits these crimes is male from 25 to 50 years old, unmarried, works in a medical institution or organization, has a complete higher education, as well as special medical knowledge and skills. However, the geography of these criminal offenses showed that the location for illegal transplantation is irrelevant.

Keywords: forensic characteristics; criminal; illegal transplantation; human anatomical materials; pre-trial investigation.

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Recibido el 15/03/2022 Aceptado el 27/05/2022

Características especiales de una persona que comete un delito asociado con el trasplante ilegal de materiales anatómicos humanos

Resumen

Este artículo tiene como objetivo esclarecer los rasgos de las características forenses de una persona involucrada en la comisión de delitos relacionados con el trasplante ilegal de material anatómico humano. Esta investigación utiliza un enfoque integral para estudiar los problemas bajo análisis; método sistemático y métodos de derecho comparado para analizar la práctica judicial y los casos de trasplante ilegal de partes anatómicas de varios países con el fin de establecer las características morales y psicológicas del delincuente y, finalmente, determinar la posibilidad de utilizar esta información durante la investigación previa al juicio de los procesos penales de esta categoría; estadístico: para recopilar y analizar datos empíricos sobre la práctica de investigación en el trasplante de materiales anatómicos para confirmar la representatividad de los resultados. Se concluye que, por regla general, la persona que comete estos delitos es masculina de 25 a 50 años, soltera, trabaja en una institución u organización médica, tiene una educación superior completa, así como conocimientos y habilidades médicas especiales. Sin embargo, la geografía de estos delitos penales mostró que la ubicación para el trasplante ilegal es irrelevante.

Palabras clave: características forenses; delincuente; trasplante ilegal; materiales anatómicos humanos; investigación previa al juicio.

Introduction

The increasing need for transplantation as a method of treatment of persons whose lives are in real danger, the difficulty in obtaining material from living donors, the problem of "maintaining the health of the living", the lack of evident differences in the effectiveness of transplantation of organs and tissues from living and non-living donors, all these factors foreground the problem of donating transplant material from the dead.

Although in the case of organ transplantation from living persons there are some positive aspects connected with the quality of the donated organs, the development of better methods of removal and keeping organs obtained from the corpse opens unlimited perspectives for transplantation and guarantee health maintaining options for living persons who, as a result of the organ removal and surgical intervention experience serious

difficulties. Therefore, solving the problem by expanding the circle of living donors, indications for such surgery, agitation of relatives of patients to donate their organs for transplantation is unacceptable, because in this situation saving lives and health maintaining is done by harming the health of another person.

The way to obtain donor material from a corpse today is the most adequate. Many people die every year in the world, their organs can be used to save the lives and health of millions of patients in need. However, the process of obtaining a donor organ from a corpse from a legal point of view is not sufficiently resolved. In addition, the problem of crime control in the field of posthumous organ and tissue donation is aggravated.

Such criminal acts may take place by violating the statutory procedure for the transplantation of human organs or tissues. In addition, they may be related to: 1) illegal trade of human organs or tissues; 2) participation in a transnational organization engaged in such activities; 3) the murder of a donor before the use of his organs or tissues after death. The first two types of criminal acts fall under the signs of a crime under Part 1, 4, and 5 of Art. 143 of the Criminal Code of Ukraine (Law of Ukraine, 2001).

However, in terms of this problem, they have special features. Thus, the specifics of violation of the statutory procedure for transplantation of human organs or tissues in such cases may be in the form of non-compliance with regulatory restrictions on obtaining consent for their use.

1. Methodology and methods

Conducting this research, we have taken into account the objectives of the study, and therefore we have used both general and special scientific methods. The first group includes the following ones: logical method, dialectical method, comparative method, statistical method, and systems analysis method.

The group of special scientific methods includes survey methods (in the form of an anonymous survey conducted in the second quarter of 2021 and covered 65 investigators) and expert assessments, testing, experimentation, method of generalizing indicators, and study and analysis of forensic documents. The main criteria for choosing the empirical material were the purpose of the study, the resonance of the studied problem in the society, and the quantitative level of accumulated facts in this sphere.

The used general scientific methods have enabled us to conduct a multifaceted study of the forensic characteristics of the offender. The comparative method, in particular, has allowed analyzing cases of the illegal transplantation of the anatomical parts in different countries to identify

typical social, demographic, moral, and psychological characteristics of the offender and to establish the possibility to use them in the pre-trial investigation of criminal proceedings of this category.

Survey methods have been used to get to know the situation with criminal offenses in the field of illegal transplantation in Ukraine and a method of generalizing indicators has been used to establish quantitative data on the state of the investigative practice connected with the transplantation of donor organs. Some forensic characteristics of a person who commits criminal offenses in the field of illegal transplantation have been found out with the help of expert assessments method, testing, experiments, and study and analysis of forensic documents.

The analysis of the obtained data has allowed establishing the norms of development and interrelation of the illegal transplantology determinants in Ukraine, as well as to single out quantitative and qualitative indicators of the characteristics of a criminal, confirming the representativeness of the results.

2. Results of the research

During the pre-trial investigation of a criminal offense, the identity of the offender or the identity of the crime victim is a key element of the forensic depiction. The offender identity is studied in various sciences, such as criminal law, criminal procedure, criminology, forensic science, etc. It is difficult to overestimate the importance of studying the identity of the offender for the science of criminology.

The study of forensic features of certain categories of criminals allows to development of typical models of offenders, so this knowledge will facilitate the process of identifying and finding a criminal, studying the personality of an accused, choosing the most effective tactics and methods of pre-trial investigation, identifying causes and conditions.

Today it is impossible to achieve a high quality of crime investigation without the use of knowledge from various fields of science and technology in the process of its implementation (Ruvin, 2019). The urgent task of forensic science today is the need to achieve a state in which a set of tools and methods of crime investigation, in conjunction with the provisions of the science of criminal procedure, would be the only legal mechanism that can effectively ensure the solution of criminal proceedings in article 2 of the Code of Criminal Procedure (Law of Ukraine, 2019).

In the forensic literature, there are significant differences in opinion about the structure and content of the personality of the offender as a central element of forensic characteristics. Based on the analysis of

existing points of view (Belkin, 2000; Kudriavtsev, 2011; Sierhieiev, 1971; Matusovskiy, 1999), etc.) on this issue concerning crimes such as trafficking in minors, illegal adoption and substitution of children, we introduce the most acceptable, in our opinion, the structure of the forensic characteristics of the offender, consisting of the following items:

1) social-demographic, legal and moral-psychological characteristics, and properties;

2) natural connections with other elements of the forensic characteristics of a certain criminal offense.

Thus, the elements of social-demographic nature include the following: gender, age, education, profession or occupation, marital status, place of residence, social origin, social role in social-political life, civil relations, production, family, and household sphere. In turn, the indicators of moral and psychological nature include psychological peculiarities and characteristics (level of mental development and intelligence, abilities, skills and abilities, emotionality, temperament, volitional qualities) and moral qualities (interests and needs, values, attitudes to various social and moral values, capabilities and habits).

Under the signs that characterize the degree of legal awareness of the offender, it is accepted to understand his/her attitude to the law, legal behavior in the norm or pathology, etc. It is important to confirm the presence or absence of facts of past anti-social or illegal behavior (record of past administrative offenses, detention, criminal conviction).

According to the stated above, we can judge the predisposition of the individual to commit criminal offenses, alone or in a group, and about the motivation of their anti-social behavior. The act of buying and selling anatomical transplantation involves the presence of at least two perpetrators, the seller, and the buyer, as well as the recipients who receive them for themselves and the donors who have agreed to give the organ or tissue for transplantation for a reward.

However, as noted by Kozachenko O.I., an interesting experience in resolving the issue of informers has been gained in Spain, where there are no legal norms that would regulate or at least provide the possibility of using informers during illegal transplantation (Hribov and Kozachenko, 2019).

In this context, it should be noted that illegal transplantation can be performed only by a transplant surgeon with the use of appropriate special equipment and strict rules of transportation. Such specialists are divided into the following categories: 1) doctors who have licenses and they operate because they have a strong need of financial resources; 2) doctors who have a license and have the funds, but participate in an illegal operation, because transplantation is a hobby in life, but this type of surgeons is a very rare

phenomenon; 3) a doctor, from whom a license has been taken away for another type of offense; 4) a final year student who, for known or unknown reasons, has not received a diploma or certificate. The second case is when a certified doctor could not find a job according to the diploma or just has difficulty getting a job (Vilks, 2005).

Organized crime groups are diversifying their criminal activities and therefore have the opportunity to respond quickly to the situation, without forgetting to make a profit in new markets and detect new illegal sources, which in the future give them huge profits and is not associated with a high risk of detecting criminal activity.

That is why the illicit trafficking of human organs and tissues is very attractive and profitable, because of high demand and a constant shortage of supply, as organs can be taken from living or non-living without consent of relatives or can be abducted from the morgue under the guise of legal medical activity.

Today, the Unified Register of Judgments contains only one justifiable sentence concerning illegal transplantation (Judicial bodies of Ukraine, 2012). Thus, according to the verdict of the Ivano-Frankivsk Town Court of Ivano-Frankivsk region from January 20, 2014, it is stated that in the actions of the accused PERSON_7, PERSON_8, PERSON_9, PERSON_10, PERSON_11 there is no corpus delicti provided for in parts one and five of Art. 143 of the Criminal Code of Ukraine, as the latter did not perform transplantation, which as a special method of treatment is to transplant a recipient of an organ or other anatomical material taken from a person (donor-corpse), but removed anatomical materials for further manufacture of bioimplants.

The removed tissues from the dead were collected all over Ukraine, sent to Germany, and ready-made bioimplants were received from there. Relatives of the deceased were asked if they agreed to remove cartilage or bone elements when dissecting the corpse. Relatives of the dead were promised quick and free autopsy procedures so that they would not oppose the removal of tissues. There was no specific package of documents for these seizures. The forensic experts who performed these procedures do not consider themselves guilty. It is said that the discrepancy could only be in the technical non-compliance with the law.

However, in relation to the actions of the accused PERSON_7, PERSON_8, PERSON_9, PERSON_10, PERSON_11 incriminated in the indictment, which were expressed in the fact that the latter by deception selected consent to take anatomical formations, tissues, components and fragments of victims, without informing them of the possible number of anatomical formations that will be removed, taking the consent of persons who do not belong to the category of close relatives of the deceased and other

persons who undertook to bury the deceased and have a death certificate, getting illegal benefits (funds) in envelopes for hard working conditions, whether it is possible to trade anatomical formations, or any other actions brought in the prosecution, which the prosecution considers illegal – in this case, the pre-trial investigation body during the pre-trial investigation have to determine the correct legal qualification of these acts and incriminate the accused, in case of corpus delicti, the relevant articles of the Criminal Code of Ukraine, as these acts of the accused in the removal of anatomical formations were carried out without a specified purpose (transplantation), so these acts are not covered by Article 143 (Judicial bodies of Ukraine, 2012).

This may indicate gaps in existing legislation and the need for additional changes that could prevent any misconduct and manipulation in this area. The presence of only one sentence in the Unified Register of Judgments indicates the high latency of this type of crime, as well as the complexity of the evidentiary procedure during the pre-trial investigation because, given the situation with supply and demand in the transplant market, the issue of illegal organ transplantation of poor countries (including Ukraine) is a serious problem (see Fig. 1) (Khidhir, 2019).

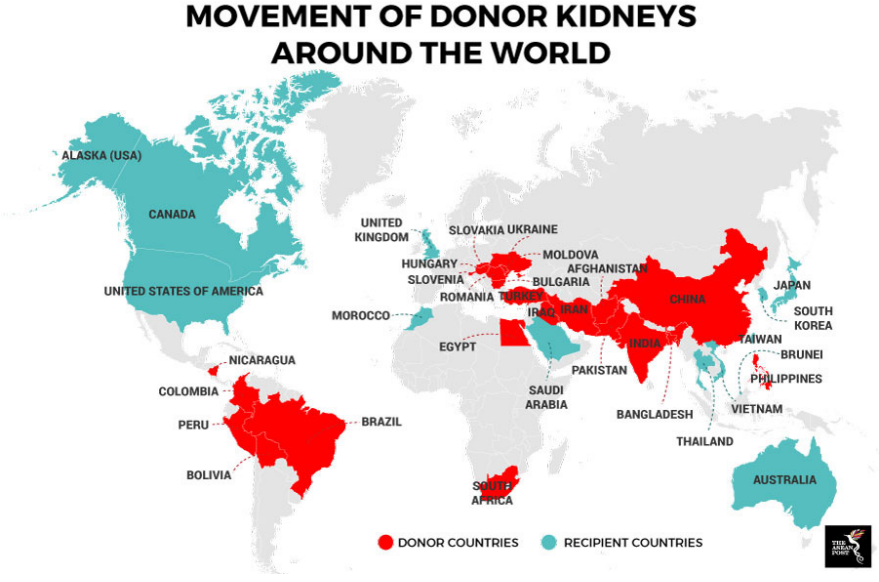

Fig.1 The survey of respondents revealed that a characteristic feature of the perpetrators of such crimes is that they are committed by males – 78.3% and females – 22.7%.

The next important social-demographic feature of the forensic characteristics of the offender is his educational level. In science, it is believed that a low level of education is more indicative of the criminal behavior of the person. However, in our case, the criminal factor is not the low level of education of criminals, but the level of personal culture associated with it, which is determined, in addition to education, by the content of spiritual needs, leisure, and social-political activity.

The study found that higher education had – 82.3%; incomplete higher education – 5.2% and secondary special education – 7.1%; complete secondary education – 4.2% and no education and prior work experience – 1.2%. Thus, it can be argued that those involved in the commission of criminal offenses related to illegal transplantation are characterized by a highly educated presence of a significant arsenal of medical knowledge, which is inherent in medical professionals, including heads of departments, doctors.

Still, on the subject of social-demographic components, there is an interesting trend when a married person is more prone to committing official crimes than an unmarried person. At the same time, the criminological literature unanimously recognizes that the presence of a family stabilizes a person's behavior, strengthens his social and role functions, and, therefore, is a deterrent to committing a crime. As noted by I.V. Kyryliuk, and we can agree with this, medical workers who are married are most prone to committing official crimes, because low incomes of doctors to support and meet the needs of the family can be a catalyst for extortion, bribery, corruption, etc. (Kyryliuk, 2012).

Our study found that a significant proportion of criminals were in a family relationship of 34.2%, were not married – 61.1% and divorced 4.7%.

Regarding the social role of a person in society, our study showed that the most criminal offenses are committed by employees of medical institutions – 42.9%, followed by persons holding managerial positions – 15.2%, students – 7.8%, persons who do not work anywhere – 11.5%; temporarily not working – 9.9% and entrepreneurs – 12.7%.

Regarding the geography of the crime, it should be noted that these criminal offenses are not tied to the place, as they are committed both in cities (67.5%) and in villages (31.2%) and other settlements (1.3%).

3. Discussion

Nowadays, a medical professional, who can act as a seller and a buyer, is a person from medical personnel engaged in the transplantation of organs or tissues and who violates the established procedure. These are usually

people aged between 25 and 50, with higher or secondary medical education. This is primarily because most criminals are formed as individuals with significant life experience and relevant skills. As a rule, these persons are appointed to responsible positions when they have significant work and life experience.

As a rule, they illegally transplant anatomical parts being a part of a group by prior conspiracy or as part of an organized group created to commit the specified criminal offense. Groups can be formed both within one institution (sale of anatomical materials by the chief medical officer with the help of service personnel) and within several organizations (sale of anatomical materials using morgues, private medical companies, etc.).

The nature of illegal offenses connected with transplantation indicates the group nature of criminal acts, which was confirmed among the respondents (87.3%). These criminal offenses are committed by several criminals or criminal international groups, which include persons of different fields of knowledge, professions, and social status, and perform, accordingly, clearly assigned functions for the preparation, commission, and concealment of these crimes.

However, the efforts of organized groups are coordinated and cover several operations and logistics functions, in particular: organizing a trip to another country: booking tickets, opening a visa, making passports; hotel reservation; development of relevant documents; financial transactions; medical records; blood and tissue testing, etc.

Thus, it was found that forensic characteristics are important for the pre-trial investigation of criminal offenses related to the illegal transplantation of anatomical materials. Knowing this characteristic will help the pre-trial investigation authorities to plan and carry out investigative (search) actions of particular criminal offenses. Filling the gaps in the existing legislation and understanding the need for additional changes would prevent any wrongdoings and manipulation.

This is considered to be a crucial task in the development of the transplantation market in Ukraine, as our country is listed among the donor countries, not recipients. Having basic information about the criminal who commits illegal transplantation will ensure better and faster investigation. The study provides an opportunity to form a forensic portrait of a person who commits criminal offenses in the field of illegal transplantation, as follows: a male person aged 25-50 years, single, with a complete higher education, working in medical institutions and organizations, having special medical knowledge and skills.

Conclusion

Transplantation is comparatively new and that's why a difficult and not fully regulated field of crime procedures. It is for sure the worldwide problem which is especially grave during unstable social and political situations. The main studied by us aspect is the work of pre-trial investigators and prosecutors.

Based on the stated above, it can be noted that knowledge of the forensic characteristics of a criminal person committing criminal offenses related to illegal transplantation of anatomical materials will enable pre-trial investigators and prosecutors to perform their functions more actively: to identify and assess shortcomings in the planning and implementation of the investigation of these criminal offenses.

Thus, our study provided an opportunity to form a forensic portrait of a criminal who commits criminal offenses in the field of illegal transplantation, which includes the following characteristics: a male person aged 25-50 years, single, working in a medical institution or organization, has complete higher education, as well as special medical knowledge and skills. However, the geography of these criminal offenses showed that the location for illegal transplantation is irrelevant.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 550-569
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Analytical Work on Missing Persons Search: Modern View of the Problem

DOI: https://doi.org/10.46398/cuestpol.4073.31

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Abstract

The article is devoted to the analysis of law enforcement agencies' activities to search for missing persons. The purpose of the study is to examine the peculiarities of the analytical work of law enforcement agencies on missing person's search. The methodological bases are general scientific and special scientific methods and techniques of scientific knowledge (systemic, formal-logical, structural-functional, sociological, historical and axiological). It is concluded that the criteria for law enforcement agencies to search for missing persons are the general state of search work, search for certain categories of missing persons, trends and processes that cause missing persons, causes and conditions of missing persons, results of police operations and special operations conduct. It is determined that the consolidation and combination of efforts of different units and services during the search work helps to increase the number of facts of locating missing persons. Attention is paid to the identification of factors influencing the assessment of the search work. The state of the international search for

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Recibido el 14/03/2022 Aceptado el 22/05/2022

missing persons is analyzed. The necessity of using the positive experience of European countries in the outlined activities is substantiated.

Keywords: analytical work; law enforcement agencies; missing person; crime; digital forensics.

Trabajo analítico sobre la búsqueda de personas desaparecidas: Vías modernas de los problemas

Resumen

El artículo está dedicado al análisis de las actividades de los organismos encargados de hacer cumplir la ley para buscar personas desaparecidas. El propósito del estudio fue examinar las peculiaridades del trabajo analítico de los organismos encargados de hacer cumplir la ley sobre la búsqueda de personas desaparecidas. Las bases metodológicas fueron los métodos y técnicas científicas generales y científicas especiales del conocimiento (sistémico, formal-lógico, estructural-funcional, sociológico, histórico y axiológico). Se concluye que los criterios para que los cuerpos y fuerzas de seguridad busquen a las personas desaparecidas son el estado general del trabajo de búsqueda, búsqueda de ciertas categorías de personas desaparecidas, tendencias, causas y condiciones de las personas desaparecidas, resultados de las operaciones policiales y realización de operaciones especiales. Se determinó que la consolidación y combinación de esfuerzos de diferentes unidades y servicios durante el trabajo de búsqueda ayuda a incrementar el número de hechos de localización de personas desaparecidas. Se prestó atención a la identificación de los factores que influyen en la evaluación del trabajo de búsqueda.

Palabras clave: trabajo analítico; las fuerzas del orden; persona desaparecida; crimen; forense digital.

Introduction

The search for missing persons is directly related to the modern methods of combating crime and is one of the main principles for ensuring the safety of individuals by law enforcement agencies, the central place among which belongs to police organizations.

The basis of the organization of police activities is analytical work, which is a constant research process of management, covering a wide range of organizational measures and methodological techniques for studying and

evaluating information about the state of research work, the structure and dynamics of crime, the level of public order and security, the results of practical activities of relevant government agencies, as well as the conditions under which these tasks are undertaken.

A slight tendency towards insufficient increase in the number of unidentified persons is observed in Ukraine in recent years. If 13.4 thousand people were wanted at the end of 2019 according to statistics, then the number of wanted in this category amounted to 13.9 thousand people (+ 1.3%) at the end of 2020 (Statistics, 2020). The increase in these indicators is primarily due to improved quality of response to applications and reports of citizens and the transparency of their registration by law enforcement agencies. This makes it possible to obtain reliable data on missing persons.

However, statistics do not fully reflect the real state of the problem, as crimes committed against missing persons are characterized by a high degree of latency. Therefore, paying attention to the analytical work of criminal police units by the scientists will allow not only to study the quantitative indicators of activity, but also to take into account the specifics of the region where the missing occurred, peculiarities of the specific situation of the missing and the category of wanted. Qualitative analysis of the state of search work allows to give a correct assessment of the situation and to develop effective measures to search for missing persons.

1. Theoretical framework

The analysis of scientific publications shows that Fedorenko *et al.* (2020); Ishchuk (2016); Kryvolapchuk *et al.* (2020); Ostapovich *et al.* (2020); Pleskach and Stashchak (2018); Valieiev *et al.* (2019) made a significant contribution to the development of theoretical provisions on the search for missing persons, the organization of law enforcement personnel management, and the definition of areas for optimizing search work.

Some aspects of the investigation of crimes related to missing persons are also presented in the works of the following scientists: Albul (2010); Boichuk (2018); Nykyforchuk and Chemerys (2020); Shapovalenko (2018); Yevdokimova *et al.* (2020).

The following researchers should be noted among foreign scientists on the subject: Amoore and De Goede (2005); Birzu (2017); Bjerregaard and Lord (2004); Bufkin (2004); Butorac *et al.* (2015); Holmes (2016); Mikšaj-Todorović and Butorac (2017); Newiss (2004); Paşniciuc (2017); Plass (2007); Sozer (2014); Stevenson and Woolnough (2016). It is established that the works of these scientists cover a wide range of issues:

motives that provoke a person to leave the place of residence, anthropology (identification) of missing persons, geography of missing persons, study of the living environment of missing persons, peculiarities of their DNA identification, directions and prospects of police organizations' activities, etc. However, the issue of analyzing the state of law enforcement search work requires additional scientific study.

Given the above, the purpose of the study is to examine the peculiarities of the analytical work of law enforcement agencies on missing person's search. The main tasks of the study are to assess the state of modern police activities in the search for missing persons, as well as to identify directions for improvement.

2. Methodology

The methodological basis of the research was the involvement of systematic and operational approaches, which allowed to determine the state of police activities, to identify patterns of relationships inherent in its structural elements, as well as to define directions for improving law enforcement search work to achieve positive results.

The methods of comparative jurisprudence were used in the work (during the analysis of legal norms regulating the activities of various subjects in the field of search for missing persons), content analysis of documents, publications of scientists on this topic, formal-logical (in studying legislative and departmental regulatory enactments), structural and functional method, as well as elements of sociological, historical and axiological methods of cognition.

These methods have comprehensively allowed identifying the directions and boundaries of the study of the problem, as well as provided an opportunity to fully and comprehensively disclose it, to develop the doctrine of the police search for missing persons.

The information base of the research consisted of police materials, statistical information and the results of opinion polls, in particular:

- assessment of the activities of the National Police of Ukraine with the help of a survey of criminal police officers of 12 oblasts of Ukraine, conducted during January-May 2021 (a total of 145 people);
- statistics and examples of Interpol's activities (Interpol, 2021);
- Europol information resources (Europol, 2021).

The survey was conducted according to a specially designed questionnaire among 145 criminal police officers from 12 oblasts of Ukraine

who took advanced training courses at the National Academy of Internal Affairs (Kyiv, Ukraine).

The research was performed according to the requirements of the Regulations on Academic Honesty of the National Academy of Internal Affairs, which were developed based on Ukrainian and world experience of ethical rulemaking. This document was approved by the Academic Council of the National Academy of Internal Affairs (Protocol No. 5 of March 27) and implemented by the order of the Rector of the Academy (Order No. 422 of March 30).

According to its provisions, the members of the scientific community are guided by the rules of ethical conduct and professional communication; respect the principles, values, norms, rules, and conditions of academic honesty in their activities. The preliminary consent to participate in the research was obtained from all respondents.

3. Results

Analytical work should be considered as the basis of law enforcement activities, which is an ongoing research management process, covering a wide range of organizational measures and methodological techniques for studying and evaluating information about the state of search work, the structure and dynamics of crime, the level of public order and security, the results of practical activities of state bodies to perform their law enforcement tasks, as well as the conditions under which these tasks are undertaken, which provides targeted management and evaluation of the effectiveness of management influences.

According to the organization of the National Police (Law of Ukraine on the National Police, 2015), the analysis and assessment of the criminogenic situation are carried out by the departments of organizational and analytical support and rapid response, which includes analysis of the state of public safety and order, protection of human rights and freedoms, public and state interests, as well as the fight against crime.

The functions of these units include monitoring the criminogenic situation and organizing the response to its changes:

1. collection, assessment, analysis of information on the criminogenic situation within the service area, criminal offenses, violations of public safety and order, other emergencies and response measures taken by units of the Chief Directorate to eliminate deficiencies;
2. preparation of reports on criminal offenses and other events not related to them, as well as the exchange of information about them with other state authorities;

3. participation in the organization of the activities of situational centers / departments, working groups for coordination of actions and management of police forces and means during mass events, public holidays and emergencies;
4. participation in the development and control over the implementation of standard operation plans together with the interested police units.

Indicators of the state of search for missing persons partially reflect the criminogenic situation (Parr and Fyfe, 2012). Therefore, monitoring of data on the status of the search for such persons should include information on the number of missing persons of different categories and unidentified corpses at the beginning and end of the reporting period, the presence of coincidences on the distinguishing features of missing persons and unidentified corpses, detection of criminal signs of missing persons or unidentified corpses with signs of violent death, territorial belonging to the support agency of the police, where the registration of the relevant fact took place.

This information is tracked at different intervals: monthly, quarterly, semi-annually, and annually.

The analysis of data for the month is carried out in the territorial and subordinate police bodies for timely response to changes in the operational situation, making the necessary adjustments to the planned activities, deployment of forces and means involved in the search.

It is also needed to assess the state of the search work with the obligatory reflection of the changes that have taken place in its dynamics, to explain the reasons for such changes, the most relevant and specific to the region problems, as well as to develop comprehensive measures to improve the organization of the search. Information on the number of opened and closed missing person cases is subject to analysis.

The validity, timeliness of their opening, centralized registration and deregistration of persons and vehicles, the circumstances of the search (time, place, method, etc.) and the effectiveness of search activities, the role and contribution of other police bodies and units in the search are analyzed.

Analysis of the state of the criminogenic situation in general, and search work in particular, is important in organizing the activities of criminal police units to search for missing persons. First of all, the concentration of all information coming from different sources for its further use is organized in the relevant departments. In addition, the materials of criminal proceedings, the results of police operations, individual measures, etc. are subject to study.

Criminal police units that search for missing persons analyze the work at various levels including national, regional and local. In general, analysis is a

method of scientific research of objects, phenomena, etc. by decomposition, division into constituent parts as opposed to synthesis.

The search work on missing persons should be analyzed in the following areas (Table 1):

- information on the search for missing persons (all categories);
- among them became victims of criminal offenses;
- among them minors (separately upon the missing of which criminal proceedings have been instituted, missing in the territory of hostilities, female minors, those who have become victims of criminal offenses, including women, among them the ones who have left home or special institutions);
- adult women;
- other categories of wanted persons (among them, mentally sick);
- among them in the territory of hostilities.

Table 1. Quantitative indicators of missing persons in Ukraine for 2016-2020

Years	Total number of missing persons	Became victims of crimes	Minors	Women	Mentally sick	Missing in the territory of hostilities	Changes in indicators in percentage
2016	12900	76	70	2873	792	508	–
2017	13100	33	91	3048	857	533	+1.3 %
2018	13400	23	60	3054	912	689	+ 2.4 %
2019	13700	12	65	3117	974	790	+ 2.2 %
2020	13900	11	67	3162	988	815	+ 1.3 %

Source: authorship.

Apparently, considerable attention is paid to vulnerable categories of persons: minors, women, mentally sick, as well as missing persons in the territory of hostilities in eastern Ukraine. This is typical not only for Ukraine, but also for other states. For example, according to a 2017 report by the International Narcotics Control Board, the proportion of victims of physical and sexual violence among women in the world is very high at 40 to 70 per cent, especially for women providing sexual services (Report of the International Narcotics Control Board, 2017). At that time, it should be noted that according to the head of the National Police of Ukraine, this indicator remains quite high in 2019-2020, despite the significant efforts of the police (Report of the Head of the National Police of Ukraine, 2020).

In addition, according to Interpol, the international wanted list accounted 7552 missing persons from around the world including 164 Ukrainians as of early June 2021.

The state of the international search for missing persons in Ukraine is presented in Table 2 in general.

Table 2. Quantitative indicators of internationally wanted persons in Ukraine for 2016-2020

Years	Declared internationally wanted	Criminal proceedings have been instituted	Became victims of crimes	Minors	Women	Mentally sick	Changes in indicators in percentage
2016	116	108	–	5	30	1	–
2017	240	234	–	6	55	1	+51.7 %
2018	294	286	–	7	68	1	+ 18.4 %
2019	343	330	–	5	75	2	+ 14.3 %
2020	393	382	–	6	81	2	+ 12.8 %

Source: authorship.

There is a positive trend towards an increase in the number of missing persons on the international wanted list, which allows to significantly involve the capabilities of international police organizations and national law enforcement agencies of Interpol member states. It should be emphasized that the reasons for such growth are the termination of cooperation between Ukraine and many countries around the world; Ukraine's integration into Europe; strengthening economic cooperation with EU countries; migration processes, etc.

In the context of international cooperation concerning the search for missing drivers of vehicles, it is established that criminal groups operate in the European Union, whose members are involved in kidnappings, premeditated murders and involvement of drivers in criminal activities using secure mobile communication systems, devices for blocking GPS / GSM signals and means of counteracting their detection.

It has been proven that the most effective counteraction to such criminal acts is carried out by Europol, whose experts use digital forensics tools such as a mobile field office equipped with a universal forensic extraction device – UFED.

For example, a large-scale operation in January-July 2020 on the exposure of the Encroached encrypted telephone network, which was used by the members of organized crime groups in the EU and the UK,

made it possible to reduce the impact on the crime situation. Appropriate conditions were created for the installation of technical equipment in order to overcome the encryption technique and obtain access to user correspondence as a result of the actions of law enforcement officers.

A large number of violent crimes (including premeditated murders) and crimes related to drug trafficking were prevented and solved in the process of the special operation. About 800 people involved in committing criminal offenses in European countries were arrested (Interpol, 2021).

At that time, according to Europol data for 2021, 19 people were exposed and taken into custody by police forces of Spain, Portugal and Bulgaria, under the auspices of Europol, in the process of conducting a joint operation on documentation of the activities of a criminal group with international relations, which was engaged in car theft in Madrid (Spain). 85 wanted cars were searched. GPS / GSM signals blocking devices of all types and means of counteracting their detection were seized during the searches (Europol, 2021).

The analysis of statistical data during police operations at the state or regional levels also deserves attention. Such operations are carried out on the basis of an analysis of the state of search work, when negative trends are identified, for example, a significant increase in the number of unidentified missing persons within the reporting period.

Such operations are aimed at stabilizing the criminogenic situation within the service area. Concentrating police efforts on search work usually helps to reduce the number of missing persons, including the identification of unidentified corpses.

Assessment of the search work can be carried out at several levels: national, regional and local. If statistical data are of primary importance at the first two levels, then it is impossible to give an objective assessment of the activities of a particular body or unit without taking into account the specifics of the work at the local level.

It is possible to identify factors that may affect the assessment of analytical and search work given the experience of the authors (Fyfe *et al.*, 2014; Kryvolapchuk *et al.*, 2020; Newiss, 2006; Parr and Fyfe, 2012).

1. Geographical location of the service area:

- urban or rural area;
- resort village or region;
- the presence of reservoirs;
- the presence of forests;

- a large number of abandoned areas of industrial enterprises;
- features and number of adjacent agencies;
- the state border crossing through the service area.

2. Socio-demographic peculiarities:

- a large number of people who go to work in other settlements and abroad;
- a large number of people engaged in vagrancy;
- the presence of ethnic minority settlements;
- a large number of people who abuse alcohol and drug users.

According to the State Statistics Service, the migration reduction in 2020 amounted to 7635 people, in 2019 – 8765 people (while in 2014 – 22592 people) due to the events in eastern Ukraine and the financial crisis (Statistics, 2020).

Along with this, the migration of the population from small and medium-sized cities to large ones quite often becomes a factor that negatively affects the criminogenic situation in the region (Nykyforchuk, 2019; Parr and Fyfe, 2012).

Availability of institutions for the care of socially vulnerable persons and closed medical institutions (including private ones) within the service area:

- location of boarding schools and other institutions for the care of orphans and children with mental and physical disabilities;
- availability of psychoneurological institutions;
- availability of anti-tuberculosis dispensaries;
- availability of rehabilitation centers and religious organizations that can provide shelter to the homeless and provide treatment for drug and alcohol addicts.

On January 24, 2020, the police officers of the Chief Directorate of the National Police of Ukraine in the Donetsk oblast exposed a group of persons engaged in labor exploitation of vulnerable categories of citizens such as drug addicts, homeless people, etc. About 30 people were held in a house called the Temple. Some of these individuals were reported missing (Report of the Head of the National Police of Ukraine; 2020).

3. Location of transport infrastructure facilities:

- availability of large railway junctions, stations, bus stations, air, river and seaports;

- location of large enterprises with their own trucking stations that carry goods over long distances;
- passage of long-distance and international routes through the service area.

It should be noted that transport facilities are an important means of transporting drugs, weapons and ammunition, currency, petroleum products and precious metals for organized crime. Sophisticated systems of smuggling of these items are created on leased or purchased tourist and charter flights.

To illustrate these positions, let us give the following example. The coordinator of the criminal group, who arrived from Turkey, was detained at Lviv airport on May 31, 2021. This person belonged to a group of persons who committed crimes in the Transcarpathian oblast.

A total of seven members of the group, which systematically committed serious and especially serious crimes (including kidnappings), were reportedly suspected and detained. 23 searches were conducted in Lviv and Mukachevo, during which more than 50 firearms, 15 automatic weapons, two pump-action rifles, ten PM pistols, five Fort-17 pistols, and five TT pistols, six grenades, more than 40 magazines, ammunition, devices for silent firing were confiscated.

In addition, an arsenal of cold steel weapons, thermal imagers, radios, GPS trackers, special-purpose clothes and bulletproof vests used in criminal activities were found. Swiss watches, gold jewelry, valuables, currency, six vehicles used to prepare and commit crimes, and drugs were detected at the residence of the members of the criminal organization (Nykyforchuk and Chemerys, 2020).

Large-scale penetration of criminal groups is also observed in seaports, through which transit of prohibited items through the territory of Ukraine takes place.

Continuing our research, it should be noted that the presence or absence of these factors must be taken into account when assessing the search work of the police. For example, the number of unidentified missing minors in one district of the city where the boarding school is located will be higher than in the adjacent district of the same locality without such institutions.

In our opinion, it is appropriate to identify the following factors of the criminogenic situation in a large city that affect the organization and procedure of search activities, including in the direction of searching for missing persons:

- availability of close ethnic, family and cultural ties;

- high intensity of migration;
- formation of compact social groups of migrants who do not recognize the principles of dominant culture, legal norms, have anti-social orientation;
- the presence of high demand among migrants for "services" of corrupt officials of public authorities and local governments;
- formation of a basis for strengthening the influence of transnational criminal groups;
- increasing the level of social tension in society, the spread of ideas of racial and national intolerance;
- "export" of crimes, the commission of which is not typical for the respective territories (or isolated cases of their commission are registered).

The specifics of resort settlements and localities deserve special attention during the analysis and assessment of search work (Palanychko, 2012). After all, the functional purpose or specialization of the resort region determines the qualitative and quantitative specifics of the contingent of people coming for treatment and recreation, and the level of socio-economic development is determined by the infrastructure of the settlement, the volume of services provided to meet the needs of the pleasurers. In addition, the specifics of the organization of operational units are influenced by the category of the resort town or region.

Let us note that it is impossible to make a comprehensive analysis of the criminogenic situation, as well as to correctly assess the tasks to be solved, for the following reasons:

1) latency of crimes;
2) intentional recharacterization of crimes when accepting applications and notifications of crimes from citizens for various reasons;
3) distrust of the population in law-enforcement bodies;
4) constant amendments to the current legislation;
5) incomplete and comprehensive consideration of applications and notifications of missing;
6) making a decision on applications and notifications of citizens, which does not correspond to reality.

The work on establishing the location of the missing person begins from the moment of receiving the application (notification) for the missing person. Accordingly, the analysis of the search work can be carried out

taking into account the criminogenic situation within the service area of a particular agency. Success in finding people often depends on the level of awareness of National Police officers about the work situation.

According to the authors, this includes knowledge of the circumstances of missing persons (theory, data of persons and their distinguishing features) that took place within the service area of a particular agency and related police units. Awareness of the facts of detection of unidentified corpses and their distinguishing features. As a rule, the National Police is informed about the fact of missing persons through the operator of the police telephone line.

Information on the number of missing persons, whose whereabouts are established during the period of 24 hours, i. e. before the opening of criminal proceedings and entering information into the Unified Register of pre-trial investigations is important to analyze and assess the criminogenic situation within a particular area.

In our opinion, police officers have the opportunity to establish the fact that the murders in different regions were committed by the same persons thanks to the qualified analysis of the criminogenic situation and the assessment of the data obtained during the search for the missing persons. In such situations, an important place is occupied by the study of data on the situation of a missing person, as these data are the core of analytical work (Newiss, 2006).

This is logical, because these data contain information about other elements of the forensic characteristics of crimes, most often determine the method of committing this illegal act, affect the specifics and structure of the mechanism of the crime, including premeditated murder; to a large extent when studying the situation of committing a particular crime, you can see the manifestations of some personality traits.

That is, it is necessary to have information about the situation of committing specific crimes within the service area in order to assess the operational situation within the service area as a whole. The situation of commission of a crime should be considered as a certain system, which sees different kinds of interaction between objects, processes and phenomena both before and at the time of the commission of a criminal offense.

Whereupon characterizing the place, time, climatic, material, industrial and other environmental conditions, as well as the specifics of the behavior of persons involved in the illegal act, should include psychological links between them and other factors of objective reality.

It is necessary to develop a new digital model of analysis of the search work, integrated with the existing databases of the National Police in order to optimize the search work. Digital forensics tools (VICAP, 2021) are used

in Western countries to solve a number of tasks, including those related to analytics. After all, the effectiveness of criminal police units in locating missing persons depends on analytical activities, the basis of which is the monitoring of search performance that is currently carried out with the widespread use of IT technologies.

To confirm this position, we present the results of a survey of 145 criminal police officers from 12 oblasts of Ukraine who took advanced training courses at the National Academy of Internal Affairs. 97% of respondents consider it appropriate to constantly improve existing databases in accordance with the needs of the search work. 73% supported the need to use mathematical models in the analysis of the criminogenic situation, 75% of respondents believe that such an analysis increases the possibility of establishing the facts of a series of crimes with regard to missing persons.

In addition, 95% of police officers surveyed stressed the need to improve the existing police information and search systems in terms of automating the process of detecting matches on the features: "missing person – unidentified corpse". Instead, 64% of respondents consider it appropriate to expand the capabilities of the existing electronic systems by integrating new subsystems, which will increase the amount of information processed by the program and speed up the search process.

4. Discussion

It is worth agreeing with Ishchuk (2016) on the need to adopt the best practices of the United States and the EU in the solving of murders related to missing persons, where promising directions are the use of information and analytical systems in creating a psychological portrait of an unknown criminal, as well as improvement of forensic records in terms of identifying unidentified corpses. The successful experience of the United Arab Emirates appears interesting in creating a national DNA database.

In addition, Sozer (2014) devotes his research to the peculiarities of DNA identification of the bodies of those killed in mass deaths, which is becoming relevant for the establishment of missing persons in eastern Ukraine in the war zone.

In this context, the research of Shapovalenko (2018) on the use of information and telecommunication technologies and measures related to obtaining information in the field of telecommunications is also of interest for the research. It should be noted here that Ukraine does not yet have sufficient technical capacity to use the results of such studies in full in practice, in contrast to European countries. This is due to the need to retrofit hardware by telecom operators to the latest fifth generation standards ("5G").

Research and scientific inquiries of such scientists as Aleksandrov *et al.*, (2021); Birzu (2017); Kubaienko *et al.* (2021); Mannapova *et al.* (2020); Newiss (2004); Zeigler-Hill *et al.* (2017) rightly emphasize the study of individual characteristics of a particular missing person, as well as the characteristics of the last place of residence (stay) of the missing person and his reference environment (possible acts of violence, the nature of interpersonal relations with other people, etc.). This approach is undoubtedly of great practical importance, because, as practice shows, a significant number of missing cases occur repeatedly.

Thus, our research expands the horizons of analytical work on the search for missing persons in Ukraine. This makes it possible to attract positive foreign experience, as well as to qualitatively organize further actions of law enforcement agencies and ensure their interaction in the direction of establishing the location of missing persons.

Conclusions

Our research, which was based on the analysis of modern scientific approaches and statistics, as well as the viewpoints of police practitioners, allowed us to draw the following conclusions.

Analytical work allows tracking the work of law enforcement agencies to search for missing persons according to the following criteria:

- the general state of the search for missing persons in general or within a certain service area (in the area of hostilities);
- the state of search for certain categories of missing persons (minors, women, mentally sick, foreigners, etc.);
- identification of the categories of missing persons most vulnerable to the commission of crimes against them (female minors, truck drivers, prostitutes, etc.);
- trends and processes that cause persons' missing;
- causes and conditions of missing persons;
- priority areas of search work to increase the efficiency of the relevant units of the Police;
- results of police operations and special operations conduct, etc.

The assessment of the search work of law enforcement agencies at the local level is influenced by the following factors: geographical location of the service area; socio-demographic factors; availability of transport infrastructure facilities.

The implementation of high-quality analytical work by the police on the search for missing persons provides an opportunity to detect latent crimes and serial killings of persons of this category. Conducting police operations to search for missing persons ensures the consolidation of the efforts of various units of the Police in search work and helps to reduce the number of undetected missing persons.

In today's reality, the analytical work of the Police requires the use of IT technologies, namely: the creation of a digital model of the operational environment with the possibility of its automatic analysis. It is a spatial information model that is as close as possible to real time and combines all the data on missing persons and their associates.

Data on the state of the search for missing persons are the initial information in the implementation of analytical work by criminal police units.

The state of search work reflects the criminogenic situation within the service area of the police agency. Although the search work differs in its own specifics, it has much in common with the work on the solving of crimes, the central place in which is taken by the analysis of the criminogenic situation. This is directly related to the processes of ensuring law and order in the development of modern society.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 570-582
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Political causes of the Ukrainian revolution: theoretical aspects of the issue

DOI: https://doi.org/10.46398/cuestpol.4073.32

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Abstract

The purpose of the article was to conduct a theoretical analysis of the political causes of the Ukrainian revolution. The methods of analysis, synthesis and correlation used made it possible to study political conditions and factors in relation to psychological, economic and cultural factors. It was determined that the causes of the revolution are a permanent political crisis, a conflict between the government and the opposition, the ineffectiveness of the actions of the institutions of government and the actions of the opposition; together with changes in the socio-economic structure, the *religiosification* of society and the influence of political factors on the development of abnormal social behaviors, among other factors. The research carried out allows us to conclude that a relationship of stable factor «social disorientation - social anomie - social cynicism - social madness» has been formed in the Ukrainian public consciousness. Therefore, the algorithm for the growth of revolutionary feelings under the influence of socio-political factors shows that this relationship has a tendency to repeat itself and is characterized by a narrowing over time.

Keywords: political motives of the revolution; permanent crisis; political phenomenon; society; history.

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Recibido el 26/04/2022 Aceptado el 15/06/2022

Razones políticas de la revolución ucraniana: Aspecto teórico del estudio del tema

Resumen

El propósito del artículo fue realizar un análisis teórico de las causas políticas de la revolución ucraniana. Los métodos de análisis, síntesis y correlación utilizados permitieron estudiar las condiciones y factores políticos en relación con factores psicológicos, económicos y culturales. Se determinó que las causas de la revolución son una crisis política permanente, un conflicto entre el gobierno y la oposición, la ineficacia de las acciones de las instituciones de gobierno y las acciones de la oposición; junto a cambios en la estructura socioeconómica, la religiosificación de la sociedad y la influencia de factores políticos en el desarrollo de comportamientos sociales anormales, entre otros factores. La investigación realizada nos permite concluir que una relación de factor estable "desorientación social - anomia social - cinismo social - locura social" se ha formado en la conciencia pública ucraniana. Por lo tanto, el algoritmo para el crecimiento de sentimientos revolucionarios bajo la influencia de factores sociopolíticos muestra que esta relación tiene una tendencia a repetirse y se caracteriza por un estrechamiento en el tiempo.

Palabras clave: motivos políticos de la revolución; crisis permanente; fenómeno político; sociedad; historia.

Introduction

The scientific appeal of studying various aspects of revolution is explained by the fact that there are no other phenomena in human history where the interconnection of political and social processes and their change mechanisms would appear on such a large scale and in a short period of time.

The necessity to study the issues of radical changes in the state and society is determined by the fact that "revolutions have become an inherent fact of our existence and to understand them is to understand the future" (Arendt, 1997: 24). Accordingly, the importance of analyzing the causes of revolution is determined by their role in socio-political change and occupies one of the main places in research.

Scientific interest in the study of the causes of cardinal action dates back to the ancient period. Thus, in Book V of " The Politics" the philosopher Aristotle comes to the conclusion that the cause of public discontent is the misunderstanding of citizens about equality and justice; accordingly, "since they do not get their share in public administration, they rise up in revolt" (Aristotle, 1983: 526).

Since the middle of the nineteenth century, when a wave of revolutionary demonstrations swept across Europe, the study of the causes of revolution became systematic. In this period, when political and social structure fractures became most prominent, theories that would later become the basis for practical revolutionary action began to take shape.

The need for research in the twentieth century after the revolution in Russia and China, and then in other regions of the world, gave new impetus to the study of revolutionary processes. According to the scientific demand, the interest in the study of revolution was reflected in the works of C. Brinton, R. Darendorff, T. Garr, T. Parsons, P. Sorokin and many other foreign specialists. The content analysis of contemporary Ukrainian studies shows that the works of A. Kolodia and S. Salnikova are devoted to the issues of the revolution.

However, despite the great number of scientific publications, studying the impact of political processes on the growth of radical public sentiment are still quite relevant today. This is caused by specifics of studying the revolution and the diversity of concepts in determining its causes.

The problem solution is also complicated by the unclear concept content, the variability of identifying the factors and development conditions, the course of events, and final results of the revolution. This complexity reflects the rather contradictory development of the post-Soviet countries, the Arab East and Latin America. However, despite the great number of scientific concepts of the revolution, the issues of determining its political causes and factors remain insufficiently studied. That is why this aspect of the problem has become our research object

1. Objectives

The aim of the article is to determine the political reasons for the actualization of revolutionary actions in the modern history of Ukrainian society. The article takes as its starting point that the initial condition of revolution is the imbalance of the socio-political system. The set goal is realized by solving the following tasks: defining the political conditions and factors of revolution; highlighting the relationship " domestic state policy - change in social consciousness; defining the growth algorithm of revolutionary sentiments under the influence of political factors.

2. Materials and methods.

The article applies a research model that emphasizes the political component as a possible cause of revolution. The methodology and such

methods as analysis, synthesis and correlation applied in this model allow us to consider political conditions and factors in interrelation with psychological, economic, legal, demographic, cultural and other factors. Also, such modeling research allows for a detailed and most accurately define the revolutionary " cause-action" relationship.

3. Results and discussion

The revolutions at the beginning of the 20th century gave impetus to the development of a new interest in the revolutionary phenomenon. American scientists characterize the concept as follows: "Revolution is a broad group of single-order concrete-historical phenomena in a relatively short period of political transformation of society" (Goldstone, 2015: 32). According to S. Huntington, revolution is:

> A large-scale, rapid and violent growth of political activity beyond the existing structure of political institutions.... The preconditions for revolution are, first, the inability of political institutions to be channels for new social forces to enter politics and new elites to govern, and, second, the desire of social forces that are excluded from politics to participate in it - this desire usually comes from the inherent feeling of the group that it needs some symbolic or material gains, which can only be achieved by making their own demands in the political sphere (Huntington, 2004: 229).

However, R. Darendorff emphasizes the distinction between social and political revolution:

> The word revolution has long been used to denote two different forms of abrupt transformation. ...The first is deep transformations, changes in the core structures of society, which of course take time. The second is rapid transformations, in particular the change in power holders within days or weeks through explicit and often violent action.Therefore, the first can be called a social revolution and the second a political one" (Darendorf, 1998: 26).

Such a polemic in the concept definition is caused not only by the diversity of scientific concepts, but also by the fact that modern scientists apply at least three ambiguous and sometimes contradictory scientific research models, each of which applies its own methodology in the study of the problem.

The first model: "the study of the revolution's natural conditions" was applied by C. Brinton, T. Garr, H. Eckstein. The second model, in which the cause is defined by T. Skocpol, J. Goldstone, J. Foran as a set of necessary and sufficient conditions and takes into account the role of all, even the

smallest factors. The third model identifies one factor, which is defined as the "cause of the revolution". The following research approaches are used in this model.

1. The study of various political factors, which have led scientists to develop various theories of revolution. This approach was used in the studies of V. Timasheff, S. Huntington.
2. There are economic factors that determine the impact of economic crises or political and economic modernization of the State on the growth of revolutionary sentiments in society. This research focus is noted in the works of G. White, I. Kramnick, and M. Olson.
3. The socio-psychological approach is characterized by the study of various aspects of individual and social behavior. This approach was used in the studies of C. Johnson, P. Sorokin.

Our article does not divide revolution into social and political, as political crisis and conflict are interconnected with social contradictions. This relationship is described in some detail in the political crisis concepts of J. Goldstone, state collapse and revolution of T. Scotchpol. Also, political conflicts and crises are interconnected phenomena: the conflict may be the beginning of a political crisis, and the crisis may be the basis of the conflict. Protracted conflict can involve several political crises, and a set of socio-political conflicts can be the cause of a crisis.

We have identified a number of political conditions and factors that had the greatest influence on the development of the revolutionary situation in Ukraine.

1. Socio-political crisis as a permanent state of society. An objective condition for the creation and further continuation of the revolutionary situation in Ukraine is the relationship system formed after the collapse of the USSR, due to the change in the political state structure. The changes took place primarily in the political and economic sphere and were accompanied by a significant drop in state revenues.

Ukraine's GDP in 1994 declined to 54.4% of the 1990 level, and 64% of citizens were below the poverty line (Korablin, 2015). Later on, the situation became more complicated: in 1999 Ukraine's GDP was 40.8% of the 1990 level (Ukrainian Statistics Committee, 2007). And, despite some improvement in 2004, the situation did not improve much.

2. The conflict between the government and the opposition. In Ukrainian politics this conflict was formed from the beginning and was most acute at the end of L. Kuchma's presidency in 2004 in the confrontation between the pro-government presidential candidate V. Yanukovich and the opposition V. Yushchenko. The government

proved unable to build relations with the opposition in dealing with foreign policy issues and the ultimate goal of state development. Such a confrontation was earlier characterized by N. Timasheff: "If the knot of contradictions between the government and the opposition within the state has reached such proportions when symptoms of loss of flexibility become apparent, then a revolution will begin (Timasheff, 1966: 370).

3. Inefficiency of governing institutions actions. In 2013, which was relatively stable in the socio-economic aspect, such political factor as inefficiency of governing institutions became the most acute in Ukraine. Its effect was exacerbated by the fact that the presidential power became almost unlimited, and accordingly, the lack of conditions for new social forces to participate in politics. S. Huntington described this factor as follows:

> Social groups that rise and fall and and rigid political institutions that are what a revolution is made of. Revolution takes place where political participation is limited and political institutions are fragile. The main cause of revolution is the inability of political institutions to ensure the participation of new social forces in politics." At the same time, the state of the economy is a factor "of insignificant importance both for the revolution and for the revolutionaries" (Huntington, 2004: 279-280, 281).

It should be emphasized that Ukrainian state-building had finally come to a standstill by 2014. The Ukrainian state did not meet the Ukrainians' aspirations, especially those of the younger generation that grew up in the independent era. Ineffective management in the absence of a specific social contract brought Ukraine far behind not only European countries, but also throughout the post-Soviet space.

All political elites of the country, regardless of their political orientation, are responsible for such a state of governance. However, in a number of ways Yanukovych's reign was worse than all previous Ukrainian governments. During his presidency the growth of authoritarianism in interconnection with corruption reached a critical point. This state of the state as a cause of the revolution is reflected in sufficient detail in the studies of P. Calvert, E. Obershall, H. Eckstein and C. Tilly.

4. The actions of revolutionary forces. Analysis of the content of theories and concepts of revolution allows us to conclude that one of the causes of radical change is the actions of revolutionary forces. In 2013-2014 the negative attitude to the police due to its corrupt nature was used by the opposition to violently change the government, and the moral state of law enforcement agencies proved to be a trigger for protests.

However, in order to achieve success, social and material conditions are necessary, the main elements of which are: the goal, the personnel and the necessary means. And the absence of at least one of these factors makes it impossible for a revolution to occur (Calvert, 1970).

The lack of dialogue between the government and the opposition led to an increase in activity in the revolutionary events of the far-right forces. The need for such "mobilization of resources" was pointed out earlier by E. Obershall. According to him:

> Mobilization refers to processes through which a group of discontented people unite and invest their own resources to achieve group goals. ...Social control refers to similar processes, but in terms of the power and competing with them opposition parties or their associations. ... Big parties engage in a struggle for the same resources, and each tries to cut off resources from those parties that did not initially participate in this competition (Obershall, 1973: 16-84)

And if at the first stage the actions of the protesters were related to the mass and peaceful nature of the protests, then as the events developed there was a consolidation of the revolutionary forces.

The main and peripheral opposition parties united into a single revolutionary bloc, whose goal was not only to change the ruling elite, but also the foreign policy course of the Ukrainian state. The sources of financing were determined: they were the funds provided by the representatives of business, whose losses were not compensated by any benefits from the authorities, as well as, donations from ordinary citizens. The leaders of the revolutionary parties gained confidence in political support for their actions from external actors.

Note that most concepts of revolution define violence as its main feature. Thus, H. Eckstein calls revolution an internal war, the potential of which is determined by the ratio of forces in confrontation with power (Eckstein, 1965). In the process of protest actions, the power bloc of the revolution was formed. And if at the initial stage " Right Sector" performed the functions of paramilitary protection of Maidan, then later it was joined by groups of soccer fans who had experience in clashes with law enforcement agencies and individuals with experience in combat operations.

6. Changes in the socio-economic structure of society. An objective condition for the development of the revolutionary situation in Ukraine is the transformation in the system of relations of the social structure of society associated with the change of socio-economic formation, redistribution of public wealth in favor of the minority and destruction of the established stratification order (Idrisov, 2019b). In previous studies, we noted that:

> The established system of survival of the vast majority of the country's impoverished population in the 1990s began to correspond to the characteristic formulated by P. Sorokin in the early 20th century, when a law-abiding citizen becomes a thief and a bandit, a worker becomes a beggar, an aristocrat goes to the market to trade. ...Such disappearance of brakes in people's behavior can lead to the disintegration of society, when people abandon civilized behavior (Idrisov, 2019a: 40).

7. The relegitimization of society as an element of domestic politics. This concept, proposed by R. Blakey, reflects the deformation of previous social and cultural norms. Because of its ambiguity, it refers either to an objective condition or is interpreted as a self-sufficient objective factor that is the cause of revolution.

Thus, R. Blackey calls the myth of a "bright future" ingrained in the public consciousness a revolutionary condition (Blackey, 1976). M. Lasky argues that the main condition of revolution is "people's desire to realize the dream of a better society through political action or violent rebellion" (Lasky, 1977: 417). A. Obershall described the spread of utopianism and mythologizing in society as a factor under the influence of which:

> An idea of a better world and a fairer society is created, an unfavorable comparison of the ideal and future opportunities with the current conditions... is made, which undermines legitimacy of the regime, its institutions and weakens the determination of the ruling classes to resist change (Obershall, 1973: 84).

The mechanism of this condition/factor in Ukraine in 2004 is described by V. Burlachuk in "Power, Ritual and the Orange Revolution". Characteristic signs of its manifestation in 2019 were the development in Ukrainian society of the mythologem of "the servant who will faithfully serve his people", and protest voting caused by frustration (Idrisov, 2019: 73).

8. A change in the objective conditions of social interaction. The cardinal and in a short period of time transformation of the socio-political system has led to the emergence of a conflict situation both between the government and society, and in society itself. And its further persistence contributed to the transition of various factors from the state of "possibility of revolution" to the state of "realization", where the "conditions" are the basis for the formation of a revolutionary causal relationship. As research shows, the resulting imbalance between society's previous socio-economic expectations and the new domestic policy of the state, which does not match them, leads to a straightforward degradation of most social groups.

And already in the mid-1990s this imbalance manifested itself in Ukraine

in the development of social disorientation - low sensitivity to social norms and individuals' lack of understanding of their hierarchy. Its result was an abnormal demoralization of the Ukrainian society, noted already in 1992 for 85 % of inhabitants of the country. Such changes in society in times of crisis have been previously described by T. Parsons, P. Sorokin.

Analysis of changes in the social structure of society has shown that the growth of social demoralization is interconnected with the growth of social anomie and the development of aggressive attitudes in society, including extremist ones. At the same time, the indicators of the growth of individual value-normative uncertainty are interconnected with the development of the revolutionary situation (Merton, 1992: 120).

Changes in the objective conditions of social interaction that occurred in Ukraine in the 1990s caused the deformation of social and cultural systems, which led to social disorientation and further - the development of social anomie in all social groups of Ukrainian society. Ukrainian sociologists note that in such a state of society "an amoral majority" is actively formed, and the previously valid norms of human decency and responsibility regulating the behavior and relationships of people begin to be perceived by the majority as norms of behavior of "moral outsiders" (Golovakha, 2002). A real indicator of social anomie becomes the criminalization of society, moving to the legislative and judicial level, deforming the collective understanding of justice (Salnikova, 2013: 24).

A peculiar reaction to anomie is social cynicism. E. Golovakha gives it the following characteristic: The destruction of social capital..., where citizens openly agree with judgments characterizing most people as dishonest, dishonest and untrustworthy. The majority's assessment of the majority essentially means a social self-assessment that is independent of educational level and occupation" (Golovakha, 2014: 53).

The formed "immoral majority" elects a similar governing elite to the government. And the new political elite, which has already come to power, in order to strengthen its position in access to resources, builds an "amoral order", including through various models of electoral choice, increasingly splitting society.

The transformation of social behavior continues in the manifestation of the next factor: the development of social insanity. Its content and characteristics are considered in sufficient detail in the studies of M. Foucault. T. Garr characterizes it as a factor reflecting the beginning of a fierce struggle of certain social subjects for status, power and resources, where the goal of the parties is the neutralization or complete destruction of the opponent, occupying a position incompatible with the interests of the other party (Garr, 2005: 422-423).

Such a condition, where the emotional prevails over the rational, may remain a local phenomenon. However, it can also lead to sociopaths, incomparable in their scale of impact on the public consciousness: to armed conflicts within the country on political or ethnic grounds (Idrisov, 2019).

9. The influence of political factors on subjective conditions and factors. The mechanism of transformation of the ways of individual interaction as a consequence of changes in the objective conditions of functioning of the social system is shown in sufficient detail in the works of C. Brinton, P. Sorokin. In Robert Merton's study of the structural mechanisms of development of non-normative social behavior it is proved that:

The indicators of growth of anomic demoralization are interconnected with the growth of aggressive moods in society, including those focused on extremist actions. A similar correlation can be traced between the unpredictability of the development of the revolutionary situation and the growth of indicators of individual value-normative uncertainty (Merton, 1992: 121-122).

Let us note that our chosen research model allows us to highlight the "cause-action" interconnection, where the "action" factor includes the revolutionary cause and the revolution trigger mechanism. Without a revolutionary cause, it is impossible to activate a revolutionary situation, so it is an independent phenomenon with the external characteristics of a cause. The trigger mechanism of the revolution, or trigger, is a provocation by the current government for such forceful actions that will discredit it and cause sympathy in society for revolutionary actions.

Thus, the belief in injustice embedded in the social consciousness of Ukrainians that the actions of the current government are unfair and the desire to embody the formed utopia about a better society (to live like in Europe) became a reflection of the revolutionary situation that developed at the end of 2013.

Accordingly, the president's failure to sign the association agreement with the EU was a revolutionary reason. In this case, the occasion became a condition triggering the revolution mechanism as a causal mediator, and its trigger was the student beating on the Maidan on November 30. In 2004, the opposition's version of rigged presidential election results was adopted as a revolutionary reason, and the trigger for the revolution was the accusation of the current authorities of poisoning one of the candidates for the Head of State (Idrisov, 2019a).

Conclusions

The analysis of the theoretical discourse about the political causes of revolution, presented in our article, allows us to formulate conclusions regarding the objective and subjective conditioning of revolutionary processes. The main cause of the Ukrainian revolution is the political conditions and factors that manifested themselves in a sociopolitical crisis. The conflict between the government and the opposition, caused by ineffective actions of the state governance institutions, the lack of conditions for the participation of social forces in politics and the inability of new elites to enter the government, has become permanent for the state.

Ineffective domestic policy of the state and the transformation in the social structure relations system led to a change in social consciousness. The influence of political factors on subjective conditions and factors led to the transformation of structural mechanisms in the individual interaction ways and to the development of non-normative social behavior. The growth of anomic indicators of individual demoralization is directly correlated with the growth of aggressive attitudes in society.

Under the influence of objective conditions having a relative inertia and objective political factors changing with each electoral cycle, a stable factor interrelation "social disorientation - social anomie - social cynicism - social madness" has formed in the Ukrainian public consciousness. The growth algorithm of revolutionary sentiments under the influence of socio-political factors shows that this interrelation has a tendency to recur and is characterized by a contraction in time.

Since this article presents the theoretical aspect of the study of our chosen problem, in our future publications we plan to verify the presented findings by conducting empirical research.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 583-599
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Cyber security as the basis for the national security of Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.33

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Abstract

The goal of the article is to identify cybersecurity issues as a component of national security and suggest ways to solve them. The topic of the research is the cyber security of Ukraine. In the course of the research, the following methods were used: dialectical method, formal and legal method, comparative-legal method and scientific abstraction method. As a result, the legal acts governing cybersecurity in Ukraine are analyzed, the cyber security actors are determined and their functions are defined. Practical implementation. There is a need to establish and implement an annual plan for the implementation of the Cyber Security Strategy, which should detail the actions to ensure cyber security, identify specific measures, deadlines and responsible actors. It is concluded that, ways to improve the cybersecurity system (as part of national security), which will update the legal mechanisms of cybersecurity, create cybersecurity infrastructure at the global level, establish effective interaction between cybersecurity actors regardless of their departmental affiliation and / or form of ownership, including with the owners of critical infrastructure and non-state owned information), are in their primary phase.

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Recibido el 03/03/2022 Aceptado el 25/05/2022

Keywords: cybersecurity; information and communication technologies; national security; security strategy; cyberterrorism.

La ciberseguridad como base para la seguridad nacional de Ucrania

Resumen

El objetivo del artículo es identificar los problemas de la seguridad cibernética como un componente de la seguridad nacional y sugerir formas de resolverlos. El tema de la investigación es la seguridad cibernética de Ucrania. En el transcurso de la investigación se utilizaron los siguientes métodos: método dialéctico, método formal y legal, método comparativo-legal y método de abstracción científica. A modo de resultado, se analizan los actos jurídicos que rigen la seguridad cibernética en Ucrania, se determinan los actores de la seguridad cibernética y se definen sus funciones. Implementación práctica. Existe la necesidad de establecer e implementar un plan anual para la implementación de la Estrategia de Seguridad Cibernética, que debe detallar las acciones para garantizar la seguridad cibernética, identificar medidas específicas, plazos y actores responsables. Se concluye que, las formas de mejorar el sistema de seguridad cibernética (como parte de la seguridad nacional), que actualizará los mecanismos legales de seguridad cibernética, crear infraestructura de seguridad cibernética a nivel global, establecer una interacción efectiva entre los actores de seguridad cibernética independientemente de su afiliación departamental y/o forma de propiedad, incluso con los propietarios de infraestructura crítica y de información de propiedad no estatal), están en su fase primaria.

Palabras clave: ciberseguridad; tecnologías de la información y la comunicación; seguridad nacional; estrategia de seguridad; ciberterrorismo.

Introduction

Information and communication technologies are one of the most important factors influencing the formation of priority areas of development of the 21st century, which accounted for the achievements of mankind in the practical implementation of new electronic information technologies. There is a development of informatization processes related to expanding the access to information resources and means of their production for all categories of the population (Dovhan and Doronin, 2017).

Although current global development trends are based on the widespread introduction and application of information and communication technologies, they simultaneously raise the issue of information security and cyber security (especially for critical information infrastructure), due to the increasing number and complexity of cyber incidents that enhance the risks of natural and man-made nature (Order of the Cabinet of Ministers of Ukraine No. 1009-r, 2017).

According to the materials of the International Forums in Davos (2018 –2019), the problem of cyber security is particularly acute, affecting virtually all spheres of human life and activity (humanity suffers losses of more than $ 400 billion per year because of cyber-attacks) (Bykov *et al.*, 2019).

The large-scale WannaCry virus attack, which took place on 12 – 13 May 2017, affected tens of thousands of computers around the world: for example, in the UK, a number of medical facilities across the country were forced to deny patients services even in emergencies due to failure of most computer systems; in Spain, the Ministry of Energy and a telecommunications company were attacked; in Germany, the computers of the railway company's control centers were infected, as a result of which the control system failed; in France, car manufacturer Renault was hit by a massive cyber-attack; Portugal Telecom, the largest telecommunications service provider, was attacked in Portugal; in China, about 15% of educational networks were affected; computer systems of shopping and office centers, networks of hospitals and gas stations, postal service, railway stations, as well as government agencies were attacked (the probable damage caused by the WannaCry virus in the first four days exceeded $ 1 billion) (Dovhan and Doronin, 2017).

This phenomenon clearly demonstrates how modern society depends on the stable operation of information systems. Cyber security is considered as a strategic problem at the State level, which affects all segments of society (Dovhan and Doronin 2017).

That is, the formation of the information society gives new impetus to the traditional threats to State security and creates fundamentally new challenges for the national security system. In such conditions, the search for new opportunities to ensure the security of the State becomes especially important in view of the formation of a new field of confrontation – cyberspace.

Although Ukraine began entering the information space only in the early 1990s of the 20th centuries, but it led to a spike in computer crime resulted in the development of appropriate legal instruments, adapting them to new technologies. The activity of the world's leading countries in cyberspace, profound changes in attitudes to domestic information policy necessitates the development of recommendations on short- and long-term priorities for the transformation of the domestic cyber security sector.

The urgency of this problem is also determined by the rapid development of a new type of illegal activity – transnational computer crimes, a sharp increase in criminal computer professionalism, active migration of criminals and organization of their actions, interethnic nature, which significantly complicated the criminogenic situation (Borysova, 2007).

The state and degree of threats in cyberspace have led to the State's response to strategic documents in the area of national security of Ukraine. Challenges and threats to Ukraine's national security in cyberspace resulted in the creation of the Cyber Security Strategy of Ukraine, which was implemented by the Order of the President of Ukraine of March 15, 2016 (Order of the President of Ukraine No. 96/2016, 2016). The incorporation of its provisions led to the adoption of the Law of Ukraine "On the Basic Principles of Cybersecurity in Ukraine" (Law of Ukraine № 2163-VIII, 2017), which is a comprehensive special piece of legislation in the area of cyber security.

Despite some ambiguities in the text of the statute and possible issues with its practical application, it should be noted that the period of formation of the national legislation in the area of cyber security has begun, and the main act of special legislation initiating the relevant legislation has been adopted (Dovhan and Doronin, 2017), as well as the corresponding body of legislation, which constitutes direct legislation in the field of cybers-security, has been established.

However, the problem of their real implementation and coherence, accelerating the incorporation of a set of international documents, especially the EU and NATO ones (the number of which is growing rapidly), coordination and interaction of major objects and actors of cyber security remains relevant.

The analysis of the practical introduction of regulations in the area of cybersecurity shows a number of problematic issues that prevent the creation of an effective system of countering threats in cyberspace (such as terminological uncertainty, lack of proper coordination of relevant agencies, Ukraine's dependence on foreign software and hardware, difficulties with staffing the relevant structural units, etc.) (Dubov, 2010).

1. Methodology

The methodological basis for the research was laid by the system and structural method and the method of ascension from the abstract to the concrete. In combination with the method of analysis, they have become an effective tool in the study of theoretical and methodological principles of ensuring cyber security in Ukraine.

The philosophical and ideological basis for the study is the dialectical method of scientific knowledge of cyber security as a legal category in contradictions and changes, which created an opportunity to assess the historical development of this phenomenon, the establishment of the legal institution and the formation of modern paradigm of cyber security.

With the help of the formal and legal method the concept of research categories was substantiated, the conceptual categorical apparatus was formed. The comparative and legal method was used in the study of domestic legislation on legal support for cyber security in view of cyber threats. The method of scientific abstraction allowed to propose substantiated measures to combat threats in the area of cyber securit**y.**

2. Literature Review

The issues of counteraction to illegal acts in the area of high technology are revealed in the works of a number of domestic and foreign scientists.

Sushko (2021) provided the definition of cyber security, which, according to her opinion, is the practice of protecting networks, devices, and applications from damage or theft. Besides, she emphasized that quit often the concepts of "cybersecurity" and "information security" are applied in parallel, but they are totally different: information security deals with the means that protect personal data and cyber security is the activity aimed at the protection of systems, programmes and electronic data from attacks.

For example, Delesline (2021) considered the difference between IT security and cyber security and comes to the conclusion the first concept is broader one: information technology focuses on the systems that store and transmit digital information, while cyber security deals with protecting electronic information stored within those systems.

Lopez (2022) provided an overview of the state of cyber security in the UK for the period 2016 – 2021. She underlined the increasing role of Internet technologies on the British economy, but at the same time stressed on the growing number of cyber-attacks. That is why she proposed the measures the UK government should undertake to prevent them and minimize their adverse effect.

Part of the research has been undertaken precisely in the context of the scientific rationale for the provision of cyber security; in particular, Bakalinska and Bakalynskyi (2019) analyzed the prerequisites and features of Ukrainian legislation in the area of cyber security, identified problems and prospects for its further development in terms of assessing existing dangers and threats, identified the areas for adapting domestic cyber security legislation to the EU standards within the implementation of the provisions of the Association Agreement between Ukraine and the EU.

Bykov *et al.* (2019) covered such types of protection of cyber security as legal, informational, organizational and psychological one, in humans' centric networks, concluding that the most significant among cyber threats are the methods of social engineering.

Kosinova *et al.* (2021) addressed the regulation of cyber security policy implementation relationships in the EU and Ukraine. The authors analyzed the system of legal instruments of the EU institutions in the area of cyber security, specified mechanisms for adopting cyber policy in the EU Member States, explored their main capabilities, means of implementation and EU institutions responsible for the functioning of secure European cyberspace (including the EU Cyber security Agency).

Stanislavskyi (2020) studied national cyber security strategies, summarized the trends in cyber security systems of leading countries and their associations, the State of international cooperation, defined the list and content of scientifically based capacity-building proposals to enhance Ukraine's ability to adequately address cyber security threats and to develop national cyber security.

Bratel *et al.* (2021) investigated the threats to the information security of Ukraine, and, in particular – to its cyber security. They also examined the legal status, powers and tasks of rule-of-law institutions to ensure this kind of security of our country.

Diorditsa *et al.* (2021) analyzed cyberterrorism as a threat to Ukraine's cyber security. The authors believe that nowadays with the development of information technologies the great harm to the interests of the State could be caused precisely through cyberspace.

Thus, the scientists analyzed the system of legal acts of Ukraine in the area of national cyber security, noted positive changes in the implementation of cyber policy in Ukraine, including the development of the Cybersecurity Strategy of Ukraine for 2021 – 2025 (Order of the President of Ukraine No. 447/2021, 2021; Press-Center of the National Security and Defense Council of Ukraine, 2021), identified the shortcomings in the regulation of cyber security and compliance with national legislation, but ignored the issues related to the implementation of practical tasks of cyber security as a component of national security.

That is why, the purpose of the article is to identify the problems of cyber security as a component of national security of Ukraine and suggest the ways to solve them.

3. Results and Discussion

On March 15, 2016, the Cyber Security Strategy of Ukraine – a strategic planning document – was adopted (Order of the President of Ukraine No. 447/2021, 2021). Later, the Laws of Ukraine "On the Basic Principles of Cybersecurity in Ukraine" (Law of Ukraine № 2163-VIII, 2017), "On the National Security of Ukraine" (Law of Ukraine No. 2469-VIII, 2018), which legitimized the status of the Cyber Security Strategy, were adopted. During the development and adoption of this Strategy, the government took into account the current trends in security policy in world politics, as over the past five years, strategies such as strategic planning documents have been adopted in almost all countries of the world (Dovhan and Doronin, 2017).

The Law of Ukraine "On the Basic Principles of Cybersecurity in Ukraine" (Law of Ukraine № 2163-VIII, 2017) is the concept of development of cyber security, which defines the category-conceptual apparatus, objects, subjects and principles of cyber security, the structure of National cyber security system and the tasks of its main components, mechanisms of public-private and public-State partnership, etc.

It should be noted that logically, this Law as the concept should precede the Cyber Security Strategy of Ukraine (that was adopted a year earlier), which affected the quality of its implementation. The adoption of this Law (Law of Ukraine № 2163-VIII, 2017), as well as the Law "On the National Security of Ukraine" was an important factor influencing the essence of the measures proposed in the draft annual action plans for the implementation of the Strategy.

If the first one solved the problem of regulating public relations in the area of cyber security and outlined the national cyber security system, the second one clearly defined their place in the national security system.

The Law (Law of Ukraine № 2163-VIII, 2017) determines: legal and organizational basis for ensuring protection in cyberspace; main goals, directions and principles of State policy; the capacities of actors and the main principles of their coordination.

The Strategy separates the area of "cyber security and security of information resources" and "information security", as well as identifies its priorities: development of information infrastructure of the State; establishment of cyber security system, development of a computer emergency response network (CERT); cyberspace monitoring in order to timely detect, prevent and neutralize cyber threats; enhancing the capacity of law enforcement agencies to investigate cybercrime; ensuring the protection of critical infrastructure, State information resources from cyber-attacks; reforming the system of protection of State secrets and other information with limited access, protection of State information

resources, e-government systems, technical and cryptographic protection of information.

That is, both the Strategy and the Law (Law of Ukraine № 2163-VIII, 2017) distinguish the elements of the cyber security system, their general functions and tasks, but the organization of their interaction is practically undefined; it means that it should be regulated at the level of regulations (including by-laws) of the executive branch.

The Order of the President of Ukraine of June 07, 2016 No. 242/2016 (Order of the President of Ukraine No. 242/2016, 2016) approved the Regulation on the National Coordination Center for Cyber Security (i.e., before the adoption of the Law of Ukraine "On the Basic Principles of Cybersecurity in Ukraine").

The competence of the National Cyber Security Coordination Center is enshrined in Part 2, 5 of the Law of Ukraine "On the Basic Principles of Cybersecurity in Ukraine" (Law of Ukraine № 2163-VIII, 2017); in particular, the Center coordinates and monitors the activities of security and defense actors, ensuring cyber security, makes proposals to the President of Ukraine on the formation and refinement of the Cyber Security Strategy of Ukraine, ensures cyber security, etc.

The task of performing all procedures, including regulatory ones, is entrusted to the State Service for Special Communications and Information Protection of Ukraine (Law of Ukraine No. 3475-IV, 2006). The Law of Ukraine "On the Basic Principles of Cybersecurity in Ukraine" (Law of Ukraine № 2163-VIII, 2017) amended the Law of Ukraine "On the State Service for Special Communications and Information Protection of Ukraine", which includes: accumulation and analysis of data on acts and / or attempts to commit unauthorized acts on State information resources in information and telecommunication systems, as well as their consequences, informing law enforcement agencies to take measures to prevent and cease criminal offenses in this area;

ensuring the functioning of the Government's computer emergency response teams CERT-UA (CERT is the English abbreviation "computer emergency response team"), which were established as teams of cyber incident information-gathering experts, the classification and neutralization of these incidents);

co-ordination of the activities of cyber security entities in relation to cyber security;

introduction of organizational and technical model of cyber defense, implementation of organizational and technical measures to prevent, detect and respond to cyber incidents and cyber-attacks and eliminate their consequences;

informing about cyber threats and appropriate methods of protection against them;

ensuring the implementation of the information security audit system at critical infrastructure facilities, establishing requirements for information security auditors, their certification (re-certification);

co-ordination, organization and audit of vulnerability of communication and technological systems of critical infrastructure facilities for vulnerability;

ensuring the functioning of the State Center for Cyber Defense (Law of Ukraine No. 3475-IV, 2006; Liha and Tech, 2021). In case of detection of cyber incidents and cyber-attacks that may pose a threat to national security or defense capabilities, the State Center for Cyber Defense and Counteraction to Cyber Threats of the State Service for Special Communications and Information Protection of Ukraine shall inform the National Cyber Security Coordination Center and provide the necessary information from the State Register on critical infrastructure facilities for the formation (adjustment) of the Cyber Security Strategy of Ukraine and other strategic decisions in this area (Stanislavskyi, 2020).

The State Service for Special Communications and Information Protection of Ukraine has proposed a Protocol of joint actions of key actors in cyber security, cyber defense actors and owners (managers) of critical information infrastructure facilities and in preventing, detecting, ceasing cyber-attacks and cyber incidents, as well as eliminating their consequences (Letter of the State Service for Special Communications and Information Protection of Ukraine No. 05/02-526, 2019), which provides for the exchange of information in response to cyber incidents and cyber-attacks (although it is mandatory only for public information resources with the application of the Procedure for Coordination of Public Authorities, Local Governments, Military Units, Enterprises, institutions and organizations, regardless of ownership, to prevent, detect and eliminate the effects of unauthorized actions on State information resources in information, telecommunications and information and telecommunications systems (Order No. 94, 2008).

In accordance with this procedure, these entities in the case of an attempt to commit and / or committing unauthorized actions in relation to information and telecommunications systems carry out the following actions:

- Take measures to immediately inform the State Special Communications Service by sending an appropriate electronic message in the form enshrined by this Procedure.
- CERT, which acts as a coordinator within the State Service for Special Communications and Information Protection of Ukraine,

within 24 hours should be informed by the security administrator of the information and telecommunication system, against which attempts or unauthorized acts are detected.

- Owners / managers of information and telecommunication systems should take measures to preserve (fix) signs of unauthorized actions and implement, among other things, the recommendations of the coordinator, as well as the physical access of his (her) representatives to implement measures to block and localize negative consequences of unauthorized actions and restore system.

Formally, the system seems to be working, but based on examples from the more advanced countries of the world, it does not take into account a number of domestic realities. The Law (Law of Ukraine № 2163-VIII, 2017) defines the main actors of the national cyber security system (and their specific tasks), cyberdefence actors, as well as a system of bodies to coordinate them. Indeed, the cyber security system has already been established for key players in the national cybersecurity system, as well as the coordination of their activities has been determined. But remains more significant in the number and range of entities not covered by these security protocols.

The objects of protection in information and telecommunication systems are the relationship of ownership of the information and software processed therein and the software that is designed to process this information. The actors of protection of information in information and telecommunications systems in addition to information owners are: information managers (on the basis of a contract or on behalf of the owner of information); system owners; system managers (on the basis of a contract or on behalf of the system owner); users (consumers of information and telecommunication services).

Although the Protocol should logically apply to the main actors of cyber security, cyber security entities and owners (managers) of critical information infrastructure, but the justification prior to its elaboration indicates not to extend its rules to cyber incidents, which are not related to unauthorized actions on State information resources. Similarly, the Law (Law of Ukraine № 2163-VIII, 2017) does not apply to internal (local) computer networks not interacting (not connected) to global computer networks.

Relationships developed using social networks, as well as "private" electronic information resources (apparently non-State ones) are not regulated by the Law "On the Basic Principles of Cyber security in Ukraine" under certain conditions – lack of information that needs to be protected by law (Dovhan and Doronin, 2017).

However, in the course of privatization, some of the critical infrastructure has already been privatized and, accordingly, the information contained in their information and telecommunications systems does not belong to the State, and therefore they are not formally protected. Moreover, the General Requirements for Cyber security of Critical Infrastructure do not address the exchange of information on cyber-attacks and cyber incidents at all.

This problem, in a slightly different context, has already been considered by the scientists, who noted that in the general problem of cyber security of critical infrastructure is particularly relevant in the development and implementation of organizational and legal mechanisms for strategic management of cyber security (Stanislavskyi, 2020). However, the issue of ensuring co-operation between the National Cyber Security Coordination Center, the State Cyber Defense Center, the Governmental Computer Emergency Response Team of Ukraine CERT-UA and other computer emergency response teams remains unclear, as well their interaction with international cyber security centers.

The division of responsibilities of special institutions to secure the State's cyberspace is unclear. This problem is a continuation of the regulatory uncertainty and, in particular, the lack of strategic documents with such segregation of duties (with a determination of the responsible agency) would be made.

The National Coordination Center for Cyber Security (under the National Security and Defense Council) does not have the appropriate capabilities, but practically coordinates only the main actors of cyber security in Ukraine, the list of which essentially includes the entire power unit and the main form of work of the Centre is the acceptance at its meeting s of instructions to other State bodies on the basis of information provided by both the main actors of cyber security and the special agency – the State Service for Special Communications and Information Protection of Ukraine.

But latter is the specially authorized agency in the area of special communications and information protection, and cyber security is not just about communication and information security. The system and related procedures of the State Service for Special Communications and Information Protection have been built up for decades to ensure the protection of information that is a state secret (of various status and level).

Therefore, the primitive inclusion of cyber threats in the list of tasks (and competencies) of the Special Communications and Information Protection of Ukraine is not effective; this is also understood by the authorities, since they have created (albeit on the basis of an already existing structure of the State Special Communications) a specialized unit – the State Center for Cyber Defense. Again, CERT-UA is a practically «fire brigade» for responding to computer emergency events (like other similar teams in the

world), one of the main functions of which is to interact with CERT of other countries.

Formally, the State Service for Special Communications and Information Protection should collect proposals from other entities, formulate a draft Action Plan on the implementation of the Cyber Security Strategy and submit it for approval to the National Security and Defense Council and the government (followed by a corresponding draft order of the Cabinet of Ministers of Ukraine at all stages of the development and adoption).

But such a plan has not been approved since 2019, which is not least due to the tendency to apply mechanisms of related law (information protection) addressing the challenges of cyber security and the imbalance between the interests of non-State actors (trying to ensure the integrity of their own information electronic resources, including those that provide critical infrastructure) and the strategic capabilities of the State Service for Special Communications and Information Protection in the area of cyber security (considering that these functions should be performed by the State Center for Cyber Security and the Government Computer Emergency Response Team (CERT-UA).

As a result, this work is not carried out systematically, the feedback between the State agency and private entities is not provided, which leads to either neglect of relevant proposals or implementation of strategic planning in the form of actual summarization of submitted proposals without appropriate adjustment. As a result, a significant part of cyber security entities, which are not the main actors of cyber security in Ukraine, remain outside the development of annual plans (Stanislavskyi, 2020).

It is also important to stress on the lack of effective interaction between cyber security actors in the context of minimizing the threat of cybercrime, taking preventive measures and investigating cybercrime.

Currently, the existing mechanisms of co-operation are limited to informing the law enforcement agencies of Ukraine about the detected unauthorized actions. However, in the absence of officers of operational units, pre-trial investigation agencies, prosecutors, judges with sufficient knowledge, skills and abilities in the area of information technology and cyber security, it is important to develop appropriate mechanisms for cooperation and involvement of other cyber security actors in the implementation of measures to prevent, detect and cease cybercrime. This issue is especially acute due to the need for an effective response of the State to the manifestations of transnational cybercrime, cyber terrorism and other illegal manifestations that threaten the cyber security of the State.

The analysis of the unified reports of the Prosecutor General's Office of Ukraine on registered criminal offenses and the results of their pre-trial investigation for the period 2019 – 2021 indicated low efficiency of pre-

trial investigation of cybercrime, which includes the suspension of criminal proceedings for lack of suspicion.

These problems cause the inefficiency of cyber security policy as the component of national security of Ukraine and require the changes in certain elements of this system:

- Updating the current Cyber security Strategy and the mechanism for its implementation by clearly defining its tasks (including the time frame for the implementation).
- Development and adoption of the annual State Plan for the implementation of the Cyber Security Strategy.
- Determination of specific measurable results of the Plan's implementation.
- Providing feedback during in formulating the Plan with stakeholders (including non-State critical infrastructure), the disruption of the normal functioning of which (due to the implementation of cyber security threats) may affect national and regional security; i.e., they should be equal partners in both the formation of the Plan and its implementation.
- Financing the implementation of measures to protect information and telecommunications systems of critical infrastructure of non-State ownership should be carried out at the expense of funds provided in the state budget for the implementation of the Cyber Security Strategy Implementation Plan.
- The State Center for Cyber Security should be presented not as a separate specialized unit within another agency, but as a separate entity with appropriate subordination and funding, which will focus solely on cyber security (rather than protection of information constituting official or State secrets), develop a planning mechanism for the implementation of The Strategy, ensure cooperation between cyber security actors (both state and non-State ones), the national coordinator and the Government.
- In order to coordinate the activities of critical infrastructure facilities, a person who has the functions of countering cyber threats and interacting with the State Center for Cyber Security should be included by the State.
- Central authorities that control the areas with critical infrastructure facilities should receive regulatory documents with the list of such objects, possible threats and actions taken to implement such threats in each of the possible situations and the capacity to provide cyber protection in-house.

- Developing and consolidating the mechanisms of interaction of the cyber security actors during the pre-trial investigation of cybercrimes in the criminal procedural legislation of Ukraine.
- Enshrining the possibility of conducting special criminal proceedings subject to all legally defined conditions in criminal proceedings on cybercrime in the Criminal Procedure Code of Ukraine.

Conclusion

Thus, Ukraine began to create a system of cyber security, for which a number of regulations were developed, the actors were identified and their functions in the area of cyber security were determined. However, the situation in the domestic cyber security sector is characterized by several significant problems:

1) the Cyber Security Strategy is formulated without taking into account the current state of cyber threats, systematic regulations identifying threats to Ukraine in cyberspace, rapid development of computer and communication technologies;
2) the annual plan for the implementation of the Cyber Security Strategy (which should detail the actions to ensure cyber security, determine specific measures, deadlines and responsible actors) is not drawn up;
3) the National Security Strategy of Ukraine does not partially meet the risks in cyberspace, as it only states the need to fulfill the task of developing a cyber security system (guaranteeing cyber resilience and cyber security of the national information infrastructure, including in the digital transformation), but only identifies the need to complete capabilities of cyber security and cyber defense actors and strengthening their coordination system.

In the absence of developed and implemented national standards and technical regulations at the level of critical infrastructure facilities (including information critical infrastructure) of non-State ownership, lack of information and communication technologies harmonized with relevant European standards, the actors that should provide cyber security (as a component of national security), solve the problems of securing cyberspace, are more focused on combating criminal acts with the use of information and telecommunications systems.

The proposed ways to improve the cyber security system (as part of national security) will update the legal mechanisms for cyber security, create cyber security infrastructure at the global level, establish effective

interaction between its actors regardless of their departmental affiliation and / or ownership (including with the owners of critical and information infrastructure of non-State ownership), increase the efficiency of pre-trial investigation of cybercrime.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 600-613
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Problematic aspects of the serving of sentences by specific groups of convicted persons

DOI: https://doi.org/10.46398/cuestpol.4073.34

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Abstract

The objective of the article was to analyze problematic aspects of the execution of the sentence by certain groups of prisoners. The research methodology includes hermeneutics, formal and logical method, dogmatic method, synergistic method, system method and generalization method. In the proceedings of the investigation, the terms «serving a sentence» and «serving a sentence» are revealed and their differences are determined. The bodies of execution of sentences and their classification are considered. It clarifies the opinions of scientists on the classification of convicts, provides legislative consolidation of groups of convicted on various grounds (age, sex, severity of crime, recidivism, recidivism, illness). Decisions of the European Court of Human Rights on improper detentions analyzed. The main problematic aspects of the execution of the sentence by certain groups of prisoners, such as men, women, minors and tuberculosis patients, are presented. In the practical signified investigation, they identify some problematic issues that arise during the serving of sentences by certain groups of prisoners.

Keywords: court decision; classification of convicts; penitentiary institution; social and educational impact; serving a sentence.

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Recibido el 14/04/2022 Aceptado el 15/06/2022

Aspectos problemáticos del cumplimiento de las penas por grupos específicos de condenados

Resumen

El objetivo del artículo fue analizar aspectos problemáticos del cumplimiento de la pena por parte de determinados grupos de reclusos. La metodología de la investigación incluye la hermenéutica, el método formal y lógico, el método dogmático, el método sinérgico, el método de sistema y el método de generalización. En los resultados de la investigacion se revelan los términos "cumplimiento de condena" y "ejecución de pena" y se determinan sus diferencias. Se consideran los cuerpos de ejecución de las penas y su clasificación. Se aclaran las opiniones de los científicos sobre la clasificación de los condenados, se proporciona la consolidación legislativa de grupos de condenados por diversos motivos (edad, sexo, gravedad del delito, reincidencia, reincidencia, enfermedad). Se analizan las decisiones del Tribunal europeo de derechos humanos sobre detenciones indebidas. Se presentan los principales aspectos problemáticos del cumplimiento de la pena por parte de determinados grupos de reclusos, como hombres, mujeres, menores y enfermos de tuberculosis. En el significado práctico de la investigación, se identifican algunas cuestiones problemáticas que surgen durante el cumplimiento de las penas por parte de determinados grupos de reclusos.

Palabras clave: sentencia judicial; clasificación de los condenados; institución penitenciaria; impacto social y educativo; cumpliendo una condena

Introduction

Recently, the issue of serving a sentence has been actively studied both by domestic and foreign scholars. Improving the institution of execution of imprisonment is due to the fact that the correct application of all elements of penitentiary policy will be the only way to motivate the lawful conduct of convicts while serving their sentences, as well as the development of such behavior after release.

But there are still problems. Difficult adaptation to the conditions and procedures in penal institutions, as well as a number of problematic issues that arise during serving a sentence, are a clear example of the fact that the system does not work in some situations. Negative attitude of the administration towards certain groups of convicts, non-provision of medical care or its untimely provision, lack of qualified psychologists, and, as a result, - fail to provide psychological assistance, avoidance of educational and social work and lack of basic sanitation.

The number of ECHR decisions on improper detention and violation of Article 3 of the Convention indicate the presence of problematic aspects that arise during the serving of sentences by certain groups of convicts, including men, women, minors, tuberculosis patients sentenced to life imprisonment, recidivists, etc.

Thus, the aim of the article is to reveal and analyze problematic aspects of serving a sentence by certain groups of convicts.

1. Methodology

The methodology of the article is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, subject matter of the research.

The method of hermeneutics is used in the process of studying the texts of relevant legislative acts and the views of scientists on the classification of convicts and peculiarities of serving sentences by different groups.

The use of formal and logical method allows to analyze the norms of the current penal enforcement legislation and the practice of its application.

Dogmatic method is applied to study the terms "serving a sentence" and "execution of punishment"; logical method makes it possible to determine the difference between these concepts.

Synergetic method is useful in studying the ECHR judgments on improper detention and the breach of Article 3 of the Convention.

System and structural method allow to present the classification of different groups of convicts and penal institutions.

The method of generalization helps to draw relevant conclusions and suggestions.

2. Literature Review

The United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Office on Drugs and Crime, 2015) along with other legal instruments, adopted by the UN on penitentiary issues, constitute the international law institution for the protection of the human rights of persons deprived of liberty as part of a single system of international law, the mechanism for its implementation, and also play a significant role in increasing respect for democratic rights and freedoms, in strengthening peace and democracy.

The European Penitentiary Rules (Council of Europe, 2006) is a version of the European minimum standard rules for the treatment of prisoners, adapted to modern priorities and values of civilized society. They were approved by the Committee of Ministers of the Council of Europe on 12 November 1987 and recommended to the Member States of the Council of Europe for implementation in their legislation and practical activities. The rules do not have the status of international legal instrument, but are recognized internationally as affirming the progressive understanding of the penitentiary system as a holistic social organization and the mechanism of its service to the interests of the society and the State.

Among modern researchers who consider the issue of serving sentences by convicts, we propose to pay attention to Reznichenko (2009). In the Thesis "Peculiarities of fulfillment and serving punishment in the kind of imprisonment by convicted women" the author considers the peculiarities of the impact of punishment on the identity of women, the order and conditions of detention of convicted women, the peculiarities of execution and serving a sentence for convicted pregnant women, etc.

We can also name Tavolzhanskyi (2015), who in his monograph "Social and educational work with convicts" considers theoretical foundations for the organization and procedure for social and educational work with convicts. The researcher states that at present the level of legal regulation of social and educational work with convicts does not correspond to its understanding and practical application. Social and educational work is aimed at correcting prisoners; it is a complex activity that includes social assistance to convicts, providing psychological, pedagogical, economic, legal and informational assistance, which contributes to the ability to exist independently during and after serving the sentence. release.

Stadnik (2017) in his dissertation research "Execution of penalty as deprivation of freedom in regard to juvenile delinquents" analyzes the activities of educational colonies to implement a set of measures aimed at correction and resocialization of minors, and also points out that despite all this is clearly expressed punitive function. in the conditions of detention of minors.

Vasylyk (2021) devoted his work "Criminal-executive principles of imprisonment for a definite term" to a comprehensive analysis of the content and features of criminal-executive principles of punishment, and revealed the world's best practices in ensuring the execution of imprisonment.

Razgildiev and Nasirov (2019) investigated the concept of "serving a sentence by convicts", described the difference between the definitions of serving the sentence and execution of punishment and justified their aim.

Pryimachenko *et al.* (2021) presented the psychological profile of juvenile convict, as the authors state that the level of crime among young

people has increased lately, which necessitates the improvement of the methods of education and correction of these persons in penal institutions.

However, these works did not fully address the issue of some problematic issues that arise during the serving a sentence by certain groups of convicts.

3. Results and Discussion

Social, cultural and economic factors, the development of civil society and the state as a whole, as well as international standards of treatment of convicts are taken into account in the serving of sentences. According to Article 5 of the Penal Enforcement Code of Ukraine (Law of Ukraine No. 1129-IV, 2003), execution and serving of sentences are based on the principles of inevitability of execution and serving of sentences, legality, justice, humanism, democracy, equality of convicts, respect for human rights and freedoms, mutual responsibility of the State and a convict, differentiation and individualization, execution of punishments, rational application of coercive measures and stimulation of law-abiding behavior, combination of punishment with corrective influence, public participation in the activities of bodies and institutions of execution of punishments in cases provided by law. Thus, the conditions of serving a sentence are based on national legislation in force during execution and serving sentence, taking into account international legal acts.

The legislator uses the concept of serving a sentence along with the term "execution of punishment", but does not provide its definition. These terms refer to a single process of punishing convicts, but they apply to different actors.

Thus, the execution of a sentence is the functioning of authorized bodies, which are obliged to implement certain legal restrictions provided by a particular type of punishment for a crime in their activities, ensure the exercise of the rights of the convicted person and the performance of his or her duties throughout the term of imprisonment. The serving of sentence, on the other hand, refers to convicted persons, who, on the basis of a court sentence, must perform their duties under the law for a specified period of time (Shablystyi, 2018).

Thus, the basis for execution and serving of a sentence is a court judgment that has entered into force, other court decisions, as well as the Law of Ukraine on Amnesty and Pardon (Article 4 of the Law of Ukraine No. 1129-IV, 2003). That is, punishment is a measure of State coercion and its implementation is entrusted to government agencies and institutions. Penal institutions are: the central executive body that implements the State policy in the area of execution of criminal penalties and probation, its territorial administrative bodies, authorized by probation authorities.

Penitentiary institutions in Ukraine are detention homes, penal institutions, special educational establishments (educational colonies), and remand centers. It should be noted that penitentiary institutions are divided into open penitentiary institutions (correctional centers) and closed penitentiary institutions (correctional colonies). Correctional colonies are split into colonies of minimum, medium and maximum levels of security. In cases established by law, the execution of criminal punishments is also carried out by the bodies of the State executive service, military units, guards, disciplinary battalions.

Along with this, there is also a classification of convicts. Struchkov (1985) characterizes the classification of convicts as the activity, in the process of which convicts are divided into categories (groups) on the basis of statutory requirements. According to him, the classification of convicts is necessary to prevent the influence of a negative group of persons on those who are characterized positively.

Shmarov and Melentiev (1971) understand under the classification of convicts their division into relatively homogeneous groups (categories) depending on the degree of public danger, correction and other factors.

We agree with the views of scientists, because the main task of the classification of convicts is to create special conditions for the differentiation of the punitive educational process, aimed at different categories of persons.

For example, adults, as well as minors who have reached the age of 16 at the time of sentencing and who have been convicted of criminal offenses are kept in detention facilities. Conscripts, military personnel under contract, officers performing military service are serving sentences in the disciplinary battalion. Persons serving a fixed term of imprisonment and life imprisonment are kept in correctional colonies.

The legislator clearly establishes the types of correctional colonies, in which different groups of people serve their sentences. For example, the persons sentenced to deprivation of liberty for crimes committed through negligence or minor crimes for the first time or persons transferred from minimum security colonies with general conditions of detention and medium security colonies serve sentence in minimum security correctional facility with facilitated conditions. Men sentenced for the first time to imprisonment for minor crimes, women convicted of minor, serious and especially serious crimes, convicts transferred from young offenders' institutions are serving their sentences in minimum security penal colonies with general conditions of detention;

women sentenced to life imprisonment; women who have been sentenced to death or life imprisonment by pardon or amnesty; men sentenced for the first time to imprisonment for serious and especially serious crimes; men who have previously served a sentence of imprisonment; men convicted

of intentional misconduct while serving a sentence of imprisonment; prisoners transferred from maximum security colonies may also serve their sentences in the medium security sector of this type of correctional colony;

men sentenced to life imprisonment may also serve their sentences in the sector of maximum security of a correctional colony of this type;

men sentenced to life imprisonment; men whose life sentence has been replaced by life imprisonment; men who have been sentenced to death or life imprisonment by pardon or amnesty; men convicted of intentional especially serious crimes; men convicted of committing an intentional serious or especially serious crime while serving a sentence of imprisonment; men transferred from medium security colonies, etc. may serve their sentences in correctional colonies of maximum security;

convicted juveniles serve their sentences in educational colonies; persons with tuberculosis are kept separate from other prisoners.

Thus, we presented the classification of convicts according to gender, age, gravity of the crime and other circumstances that affect the conditions of serving the sentence.

According to Article 92 of the Law of Ukraine No. 1129-IV, separate detention of men, women, minors and adults has been established in the colonies. The following types of convicts are also held separately: sentenced to life imprisonment; convicts whose life sentence has been replaced by life imprisonment; convicts whose death penalty or life imprisonment has been commuted to pardon or amnesty; convicted of a crime under Part 5, Art. 255 ("Establishment, direction and participation in a criminal association or criminal organization"), Art. 255-1 ("Identification or dissemination of criminal influence"), Art. 255-2 ("Organizing, facilitating or participating in a criminal assembly") of the Criminal Code of Ukraine (Law of Ukraine No. 2341-III, 2001). Those sentenced to imprisonment for the first time are held separately from former prisoners.

Men sentenced for the first time to imprisonment for crimes committed through negligence, as well as convicts who have previously worked in the courts, prosecutors' offices, the judiciary, law enforcement agencies, and persons, who have practiced law (at their own request) are held separately.

The conditions for serving a sentence by the above-mentioned groups of convicts are enshrined in the Criminal Executive Code of Ukraine (Law of Ukraine No. 1129-IV, 2003); Order of the Ministry of Justice of Ukraine No. 680/5, 2017; Order of the Ministry of Justice of Ukraine No. 2823/5, 2018; Order of the Ministry of Justice of Ukraine and Ministry of Health of Ukraine No. 1348/5/572, 2014; Order of the State department for the enforcement of sentences No. 33, 2000., etc.

Among the international instruments governing the regime and conditions of imprisonment are the United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Office on Drugs and Crime, 2015) and the European Penitentiary Rules (Council of Europe, 2006).

The urgency of issues and problems of serving a sentence have always attracted the attention of scholars and the public. This concerned the conditions of serving a sentence, the attitude of the administration of institutions to certain groups of convicts, failure to provide medical and psychological assistance in a timely manner, lack of educational, social work, etc.

According to the Concept of State Policy in the Sphere of Reforming the State Penitentiary Service of Ukraine (Order of the President of Ukraine No. 631/2012, 2012), improving the conditions of detention of convicts should be achieved by improving the organization of nutrition, detention conditions, enhancement the quality of medical care, improving the organization of social, educational and psychological work. etc. But are they really being realized?

Thus, the European Court of Human Rights in the case of Dykusarenko v. Ukraine of 09 April 2020 (applications №7218 / 19 and 17854/19, 2020) found a violation of Article 3 of the Convention due to inadequate conditions of detention of the applicant in the Dnipro Penitentiary Institution №4. This was manifested in the absence or poor quality of bed linen, lack of toiletries, lack or insufficiency of food, lack or insufficiency of electric lighting, lack or limited access to showers, lack of privacy for toilets, low quality drinking water, mold and dirt in the cell.

The Court was guided in its decision by the principles established by the case-law on inadequate conditions of detention, in particular by the judgment in the case of "Muršić v. Croatia" (Application № 7334/13, 2013), which found that serious lack of space in prison cells is considered a very influential factor and could constitute a violation.

The ECHR judgment in case of Bilyy v. Ukraine (applications № 11356/17 and 45420/19) of 13 January 2022 found a violation of Article 3 of the Convention due to the inadequate conditions of the complainant's detention in Kyiv detention facility. This was manifested in the absence of fresh air, insufficient sleeping space, the cell was infected with parasites / rodents, lack or poor quality of bed linen, lack of privacy when using the toilet, lack of toilets, mold and dirt in the cell, lack or limited access to hot water, lack or limited access to showers, overcrowding, passive smoking, poor quality food.

Thus, we can see that the problematic aspects of the conditions of detention, nutrition and personal hygiene of convicted men still remain relevant, despite the implementation of the Concept (Order of the President of Ukraine No. 631/2012, 2012).

The next group of convicts are people with tuberculosis. Among the rights of convicts provided by the Order of the Ministry of Justice of Ukraine No. 2823/5 are the right to receiving medical care and treatment, including paid ones. Characteristics to be considered in assessing the compatibility of a person's health and conditions of detention are the medical condition of the convict, the adequacy of medical care provided in the conditions of detention and the appropriateness of detention in view of health (case Mouisel v. France, Application No. 67263/01, 2003).

Thus, in the case of Melnik v. Ukraine (application no. 72286/01, 2006) the ECHR found that "the applicant had been diagnosed with tuberculosis almost two and a half months after he first complained of intermittent shortness of breath and mucous cough. The Court considers that the inaccuracy of the previous diagnosis confirms the applicant's complaints about the inadequacy of the medical care provided, the short-term detection of the disease or the failure to isolate the applicant and provide him with adequate and timely treatment.

The Court also found that upon arrival at Penitentiary Institution No. 316/83 the applicant had not been examined by a doctor for possible tuberculosis. After the diagnosis, he was transferred to a special institution, but long-term treatment for tuberculosis led to side effects – visual impairment and dizziness. Hygiene and sanitation conditions, given the concentration of prisoners, could also have worsened the applicant's health. Thus, the Court finds the violation of Article 3 of the Convention due to overcrowding, inadequate medical treatment and unsatisfactory sanitary conditions of the penitentiary institution.

According to the Procedure for providing medical care to convicts (Order of the Ministry of Justice of Ukraine and Ministry of Health of Ukraine No. 1348/5/572, 2014), preventive medical examination is performed once a year in penal institutions in order to detect and prevent the spread of infectious, parasitic diseases, detection of somatic and mental diseases among convicts.

If the convict has expressed a desire to visit a doctor, he (she) can sign up for an outpatient appointment. Outpatient reception of convicts is carried out by a medical worker every day at the hours determined by the head of the medical unit (paramedic station) in agreement with the administration.

The medical officer, along with the staff of the regular penitentiary institution's shift, verifies daily the general state of health of convicted persons when visiting cells in disciplinary isolators, cell-type rooms, solitary confinement cells, solitary confinement cells, pre-trial detention centers, correctional colony-type (sector) cells of the maximum-security level. If the convicted person complains about the state of health, the medical worker makes appropriate appointments or enrolls the convicts for outpatient

reception. Outpatient reception is carried out by a doctor in specially equipped offices in the abovementioned premises by prior appointment made by a medical worker, in the absence of a medical worker – the staff of the regular shift of the penitentiary institution.

According to the Concept (Order of the President of Ukraine No. 631/2012, 2012), improving the quality of medical care should be achieved by improving the quality of medical care for detainees and convicts suffering from tuberculosis, HIV/AIDS and other socially dangerous diseases by arranging sections of pre-trial detention centers for detainees with tuberculosis in anti-tuberculosis institutions, development of the infrastructure of health care institutions of the State Penitentiary Service of Ukraine.

However, as we can see, the established rules are not always followed, which in turn leads to the violation of the general health of convicts, dysfunction of organs, the emergence of pathologies and serious diseases.

Regarding serving of a sentence by convicted women, the key factor here is socio-educational or socio-psychological work. In this regard, Sarycheva (2017) notes that the work of the social pedagogue, who, above all, must objectively assess the individual characteristics of convicted women, is also important. Along with the psychologist, the social pedagogue should observe not only the actor – the woman, but also her environment in places of imprisonment.

In this case, attention should also be paid to those women, who have children under the age of three or pregnant women, as the process of serving a sentence and all the consequences of such punishment have a devastating impact on this category of convicts. As a result, the negative impact of places of detention is reflected on children.

Social and educational work is a purposeful activity of the personnel of penitentiary agencies and institutions, as well as other social institutions to achieve the goal of correction and re-socialization of convicts (Article 123 of the Law of Ukraine No. 1129-IV, 2003). The urgency of such work is due to the fact that women, serving a sentence, is a vulnerable group due to their social status, and the problems of adaptation to the order and conditions of serving a sentence have their own specifics.

But can we say that social and educational work solves the problem of adapting to the order and conditions of serving a sentence? Of course not. A woman is more emotional by nature. When she enters a penitentiary institution, especially for the first time, she experiences psycho-emotional stress, she is more vulnerable to the influence of other “authoritative” convicts, as a result of which she retains all acquired antisocial habits and beliefs after the release. We believe that it is extremely important to conduct psychological work with convicted women, which will help them to adapt to all existing conditions and procedures.

Analyzing the procedure for serving sentences by juvenile offenders, we noted that profile of emotional experiences arising from the conditions under which sentences are served, the environment and attitude of the administration is more pronounced in juveniles than in adults (men and women). Thus, at the beginning of serving a sentence (up to 6 months) there is an increase in emotions such as anxiety, fear, aggression, depression, loss of meaning in life, hopelessness, feelings of loneliness, etc. in minors.

Some of these psychosocial states accompany the child throughout the sentence. In order to acquire a certain "status" in the colony, a minor may claim that he or she has a criminal record, offenses that he did not commit, serious "ties" to the outside world, etc. Given the attitude of the administration of the institution, other convicts, their subjective attitude to life circumstances, the juvenile may incorrectly assess the measures of educational influence applied to him (her).

This may be expressed in violation of the rules of the procedure established by the regime or assistance to the administration in certain matters. Psychologically, this can be expressed in frequent changes in behavior, mood, reflection, reconsideration of the views and so on.

According to Ohnieva and Ohnieva (2011), corrective work with persons serving sentences, finding and applying new forms and methods of influence to correct them, are more effective ways to prevent recidivism than the regular supervision after release. Education is a priority, since the main goal of the State is to eliminate infantilism, legal nihilism, legal ignorance among convicts. We support this view of scientists, and believe that the involvement of a qualified psychologist is an important factor in working with minors. To listen to a child, to help him (her) learn how to distinguish his (her) state, to change attitudes to the situation, to have a hard time together – all these are necessary elements in working with juvenile delinquents who need to find an adult ally.

Conclusion

Thus, among the problematic aspects of serving sentences by certain groups of convicts are the following:

1. Men – lack or poor quality of bed linen, insufficient food, lack of privacy for toilets, mold and dirt in the cell, lack of access to shower and hot water, etc.
2. Patients with tuberculosis – inadequate medical treatment, untimely treatment, failure to provide isolation, unsatisfactory sanitary conditions that cause deterioration of health, etc.

3. Women and minors – inefficient social and educational work, failure to provide or untimely provision of psychological assistance.

Taking into account international recommendations and current legislation, we believe that the following will help to improve the conditions and procedures for serving sentences:

1. Introduction of medical and preventive measures, with which the state of health of the convicted person can be quickly ascertained, taking measures for proper treatment, while improving housing and sanitation conditions.
2. Implementation of re-socialization measures that will help to adapt to the conditions of the penitentiary institution and restore its social status after release.
3. Adoption of rehabilitation programs taking into account the psychodynamics of convicts at different stages of serving a sentence, as well as mandatory psychological assistance.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 614-632
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Political and legal preconditions for supervision and control over the observance of factory law in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.35

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Abstract

The objective consists in the investigation of the mental, domestic and cosmovisive requirements for the formation of factory legislation and the institution of supervision and control over its observance; to discover the ideological basis of the social reform of intersubjective relations, the formation of ideas on the content of the right to work in political and legal thought and, thus, to be able to reveal the particularities of the organizational and legal model of supervision and control in the imperial period. Taking into account that legislation serves as an indicator of the legal materialization of ideas and values, to determine the political and legal requirements for the establishment of the institution of supervision and control of compliance with factory legislation, an axiological approach, a set of general criteria and special legal methods are used.It is concluded that the period initiated by the bourgeois revolutions was accompanied by the search for an ideological justification for the rapid changes and transformations in the development of social relations in the field of free labor. The factory inspections of the Russian and Austro-Hungarian Empires, created on the basis of the English model, were characterized by the ability to monitor compliance with factory legislation.

Keywords: supervision; control; factory legislation; factory inspections; ideology.

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Recibido el 15/03/2022 Aceptado el 22/05/2022

Requisitos previos político-legales para la formación de la institución de supervisión y control del cumplimiento de la legislación fabril en Ucrania

Resumen

El objetivo consiste en la investigación de los requisitos mentales, domésticos y cosmovisivos para la formación de la legislación fabril y la institución de supervisión y control sobre su observancia; para descubrir la base ideológica de la reforma social de las relaciones intersubjetivas, la formación de ideas sobre el contenido del derecho al trabajo en el pensamiento político y jurídico y, asi, poder revelar las particularidades del modelo organizativo y legal de supervisión y control en el período imperial. Tomando en cuenta que la legislación sirve de indicador de la materialización jurídica de ideas y valores, para determinar los requisitos políticos y legales para el establecimiento de la institución de supervisión y control del cumplimiento de la legislación fabril, se utiliza un enfoque axiológico, un conjunto de criterios generales y métodos legales especiales. Se concluye que el período iniciado por las revoluciones burguesas, estuvo acompañado de la búsqueda de una justificación ideológica para los rápidos cambios y transformaciones en el desarrollo de las relaciones sociales en el campo del trabajo libre. Las inspecciones de fábrica del imperio ruso y austrohúngaro, creadas sobre la base del modelo inglés, se caracterizaron por la capacidad de supervisar el cumplimiento de la legislación fabril.

Palabras clave: supervisión; control; legislación fabril; inspecciones de fábrica; ideología.

Introduction

The implementation of the social function of the state, in particular, the need for the latter to intervene in relations between employees and employers to ensure social harmony as part of global peace remains relevant and acute issue from the beginning of the free labor market. Political powers, which are the expression of liberal ideology, minimize the role of the state, focusing on the driving force of the free market and the freedom of the individual from interfering in his personal life. Proponents of the Social Democrats emphasize the need to maintain the decisive influence of the state on the sphere of wage labor.

The issue of delineating the limits of state intervention in labor relations becomes especially relevant in connection with the need to identify trends in the further development of labor legislation, creating an optimal organizational and legal model of supervision and control over its

observance. The current state of public relations development in Ukraine requires proper regulatory and institutional support (i.e. promoting the implementation, protection and defense) of labor rights.

The search for political and legal solutions to regulate the sphere of hired labor, in which the lion's share of the population is involved, necessitates taking into account the historical experience of labor relations, addressing the origins of their formation, which correlates with the analysis of factory law.

The formation of supervision and control in the field of hired labor was accompanied by its organizational and legal design in the form of the institute of factory inspection in a number of European countries. The legal system of Ukraine, whose ethnic lands in the late nineteenth century were part of the Russian (85 %) and Austro-Hungarian empires (15 %) (Hrytsak), was at the stage of «legal centralization and neutralization of conditions for the development of national law» (Miroshnichenko, 2012: 188). At the same time, legal customs and traditions have left their mark on law enforcement practice in these lands.

Legal thought of scholars at that time developed, showing attention to the justification of the law concepts, distinguishing between police law and rule of law, social nature of law, serving as: "...a kind of key to understanding the laws, nature and trends of law that do not die with changing socio-economic formations and undergo transformational changes in the process of statehood development" (Zhygalkin, 2016: 137).

That was a time associated with the formal consolidation of substantive norms in the field of wage labor regarding the protection of the most vulnerable categories – minors, women or those who determined the peculiarities of working time accompanied by procedural rules aimed at ensuring compliance with factory law. There was a demonstration of general civilizational trends that the factory legislation of each state was formed under the influence of a number of political, socio-economic, ideological factors, which led to specifics of normative and law enforcement activities.

It is difficult to disagree with the opinion of the famous professor O. M. Bykov, who served in the factory inspection and was directly involved in the development of labor bills under the Provisional Government of Russia, that «... factory laws may be more than any other piece of law and closely dependent on general economic and cultural conditions of the state»(Bykov, 1909: 269).

Another researcher of factory law, jurist, public figure L. M. Nisselovich emphasized:

> To determine with greater or lesser accuracy the reasons that caused this or that change in law; to find out, as far as possible, the views and principles that

guided the legislature in this or that change: this is the task of the one who studies the history of law (Nisselovich, 1883: XI-XII).

The ethnic Ukrainian lands became part of the Russian and Austro-Hungarian empires in the late nineteenth and early twentieth centuries. The aim is to explore both worldview mental and domestic preconditions for the formation of factory law and the institution of supervision and control over its observance, to clarify the ideological basis of social reform of bourgeois relations, the formation of ideas about the content of the right to work in contemporary political and legal thought, the peculiarities of organizational and legal model of supervision and control in the imperial period.

1. Research methodology

The law serves as an indicator of the legal materialization of ideas, values, ideologies that were dominant in society at a certain time and in their peculiar intertwining in the communicative discourse of persons directly involved in rule-making activities influenced the formal consolidation of legal norms. it is necessary to characterize the development of law in the political and legal perspective from the standpoint of the axiological approach.

Postulating the intersubjectivity of values, allowing to take into account the bearers of the latter as an individual and society or humanity as a whole (Gorobets, 2012) – axiological approach allows to consider the development of law as part of legal reality, which is a reflection of axiosphere and normospheres in the aggregate of their unity and interaction. As Western researcher E. Darian-Smith observes, «our conceptions of justice change over time and they are linked to economic power, social values and moral feelings that are not universal, apolitical or static» (Darian-Smith, cited: Gryshchuk, 2019: 6).

The choice of methods was determined by the aim. During the study, both general (dialectical) and general scientific (analysis and synthesis) and special legal research methods (historical, teleological, formal and legal) were used, based on the requirement of a comprehensive analysis of political and legal phenomena.

The dialectical method made it possible to analyze the nature of the change in ideology as a set of ideas and views, in particular, on the nature of the social reform of bourgeois relations. The method of analysis and synthesis provided an opportunity to critically comprehend and synthesize scientific advances in the understanding of labor rights as an object of their protection and defense.

The historical method, thanks to the use of such techniques as retrospective analysis, historical comparison allowed to outline the features of factory law due to political and legal development, to determine the causal patterns of the institute of factory inspection.

The teleological method allowed to determine the impact of direct and indirect goals pursued by lawmakers in the development of factory legislation. The application of the formal-legal method inherent in legal research has allowed to focus on the subject and features of factory law in general and the institution of supervision over its observance, in particular, in terms of modern development of labor law.

2. Results and discussion

2.1. Ideological basis of social reform for bourgeois relations

The consequence of the bourgeois revolutions known as the «Spring of the Peoples», which took place in a number of European countries in 1848-1849, including the Ukrainian lands of the Austrian Empire and the Kingdom of Hungary (Bukovina, Galicia, Transcarpathian Ukraine), drew attention to legal equality and freedom as principles that were the basis for the formation of law rule on the basis of liberalism.

The Russian Empire embarked on the path of bourgeois development after the abolition of serfdom in 1861, which began the transition from class to class (civil) society in the preservation of autocracy and the political regime of the police state, which left its mark on the nature of lawmaking and law enforcement.

The police state, dating back to the period of enlightened absolutism in Europe, was a kind of «secularized absolute monarchy based on theories of natural law and social contract, according to which the monarch was given power over his subjects for the common good» (Kholod, 2006a: 15). Such a «common good» was understood as a public value, the responsibility for the achievement of which, however, was assumed only by the state, while acquiring a police character. Professor of Jurassic Imperial University M. M. Belyavsky stated: «In the struggle for theories of socialism and individualism, power and freedom, altruism and selfishness, centralization and decentralization, there are efforts of people to achieve the ideal of public policy – the general welfare of citizens» (Belyavsky, 1904: 5).

The idealistic ethical trend that underlie the justification of the public administration system in the police state is known as eudemonism, defining «the basis of morality of man's desire for happiness» (Dictionary of Ukrainian language). The appointment of a police state was seen as

contributing to the common good. Variations in the meaning of the term «good» Academic Explanatory Dictionary calls «good, happiness», «... all that a person needs in life» (Dictionary of the Ukrainian language).

A characteristic feature of eudemonistic theories (H. von Wolf, I. G. von Justi), which V. M. Hessen called the «political philosophy» of the police state, was «the smallest regulation of what is» important «for the state – and everything is important» (Hessen, 1902: 5).

In 1871, the publicist R. I. Sementkovsky, in a preface to his translation of Robert Mohl's book, emphasized: «Life has too eloquently persuaded governments to create a utopia» (Mohl, 1871: C. II).

As a reaction to the governance of the police state in the eighteenth – first half of the nineteenth century, the teachings of liberal individualists became widespread in its classical manifestation with the value justification of freedom as independence from the state (Hessen, 1902).

Four groups of arguments have been put forward in favor of this view: (1) philosophical, which postulates the recognition of law as inherent in human nature (J. Locke). It followed that the task of the state can only be the protection of human rights, because the state itself people create in accordance with the terms of the social contract for the protection of natural rights; (2) the economic argument of the doctrine of the Physiocrats, developed by A. Smith and his followers, about the non-interference of the state in economic life as an integral condition of technological progress.

The state was given the role of guardian of the safety of the production process; (3) a political argument put forward by representatives of the liberal school (B. Constant, E. Labule), the main message of which was the understanding of freedom not so much as participation in power, but as independence from power; (4) psychological argument (W. Von Humboldt, J. W. Mill) with the definition of human activity as a necessary condition for their development: «the smaller the state, the greater the individual» (Hessen, 1902: 10-11).

Thus, in the views of proponents of liberalism, the police state gave way to the rule of law in its liberal interpretation – «minimal» state with the least optimal impact on economic relations (Yakovyuk, 2000).

Such ideological messages actualized the process for formation of objective law with its potential possibilities of introducing a model of formal definition of rights, freedoms and legitimate interests of citizens protected by the state. The period initiated by the bourgeois-democratic revolutions in Europe led to the consolidation of the inalienable (natural) rights of the first generation, including the right to life and equality before the law. Thus, the idea of natural human rights, nurtured by early modern thinkers, began to be embodied in legal acts that consolidated the achievements

of revolutions, reflecting the views characteristic of classical liberalism (Malinov, n/y).

These are so-called negative rights, which were aimed at protecting a person from any unwanted interference or restriction that violates his freedom. The importance of the state was to protect security and law and order, to establish «rules of the game» that would reconcile public and private interests. This approach to the role of the «gendarme state» was substantiated by representatives of the individualistic theory of the law rule (W. Humboldt, I. Kant, J. G. Fichte) (Hessen, 1902: 11).

The very term «rule of law» was introduced into scientific usage by Robert von Mohl in the 30's of the XIX century (Palienko, 1906). Experience of state and legal development of a particular country, embodying the worldview of the role and importance of law for state and social construction.

The history constitutionalism development in Austria, begun during the revolutionary events in Europe in 1848-1949, was restored after a period of reaction to the adoption of the December Constitution of 1867, which defined the foundations of Austro-Hungary as a dual monarchy.

In Russia, the process of transforming unlimited autocracy into a constitutional monarchy began during the revolution of 1905-1907. Secretary of State J. S. Witte, commenting on the revolutionary events, summed up: «Russia has outgrown the form of the existing system. It seeks the rule of law on the basis of civil liberty» (Witte, cited in: Palienko, 1906: 134).

The liberal ideology of individualism negatively understood political freedom as the non-interference of the government in private life and seeing the need for legally equal actors for progressive development. It did not solve the problem of economic inequality. The last issue was perhaps the most acute and directly related to the political and legal justification of models for regulating relations between workers and industrialists. As the well-known Ukrainian jurist M. I. Palienko wrote in 1906, liberal politicians defended formal freedom and:

> Overlooked or even deliberately ignored the real freedom of the individual and the interests of those economically oppressed social classes whose condition could not be improved onlyby the guarantee of formal rights to freedom in the implementation of the principles of the government non-interference, free initiative and competition (Palienko, 1906: 146).

In the 80's of the XIX century, in Austria, with the support of some conservatives, a Christian social movement with demands for social reformism was gaining ground (Lokhova, 2016). Against the background of socialists' calls for reforms based on social justice and state assistance to

improve the situation of the impoverished, there was a revision of views on the role and tasks of the rule of law, justifying the need for the latter positive activities to improve the financial situation.

Unable to stand the test of time, the principle of individualism was gradually replaced by the tendency to fill the law with social content (socialization) (Bostan and Bostan, 2008), ie the predominance of public interests over the interests of individual members of society.

In the middle of the XIX century, German scholar F. Stahl defined the essence of the law rule» – not that the state maintains the rule of law and protects the rights of citizens without administrative tasks, but only in the manner and nature of these tasks» (Palienko, 1906: 147). As a result, the rules of police law were inferior to the administrative ones, which determined the limits of the powers of state bodies in various spheres of government on the basis of the expediency principle and legality.

In the post-reform Russian Empire, bourgeois reforms and measures aimed at the legal consolidation of new social relations were accompanied by a struggle between conservative and liberal bureaucracy, the line between them was less significant in resolving the labor issue. Proponents of liberal views, especially economic liberalism from his "laissez-faire" (from the French "allow doing") did not see the need for state intervention in relations between employers and workers based on the principle of freedom of contract.

But in contrast to Austria, where the Liberals opposed the adoption of social legislation by the conservative government of Taaffe, and the Social Democrats put pressure, in the Russian Empire, according to Russian economist and jurist V. P. Bezobrazov, "nothing like this struggle was" (Bezobrazov, 1888: 13).

By the way, V. P. Bezobrazov, being a moderate liberal, supported the legislative definition of mutual rights and responsibilities of industrialists and workers, their judicial and administrative protection. At the same time, the scientist warned "against any interference in the economic relations between landlords and employees, in the economic content of the contract and the resulting economic living conditions" (Bezobrazov, 1888: 111).

As a representative of conservative ideology, the founder of the idea of social monarchy, which later transformed into the idea of the welfare state, L. von Stein, appealing to his conclusions: "Public administration in this area. Only in this sense we understand the task of the administration to establish the order of labor in industry" (Bezobrazov, 1888: 112).

The theory of the welfare state emerged as a response of German conservatives to the threat of revolutionary change, offering instead an alternative to social reform "from above" (Kochetkova, 2008). L. von Stein's

position on the need for state regulation for stabilization was also accepted by Austrian conservatives (Grandner, 1994). Reflecting on the role of the state, L. von Stein emphasized:

> ...governance should not provide personal development, spiritual, physical, economic or social, but only the conditions for them", in particular in the economic sphere, government activities should be only additional. Only with the optimal performance of the state's function of internal governance "highest good can be true freedom (Stein, 1874: 50-51).

L. von Stein saw the social function of the state not in the "subordination of one interest to another, but in the harmonious resolution of these contradictions" (Stein, 1874: 525). Aiming to find a way to eliminate contradictions in the state with the help of the state, the scientist proposed a solution for the working class to "change its dependent position due to the nature of labor, in an independent, materially free position" (Kochetkova, 2008: 70).

This could not be done by eliminating social inequality as such, but by reducing its severity by creating decent living conditions for all citizens.

Thus, the property of liberal ideology was the justification of the rule of law, which in the field of labor relations was embodied in the requirement of legal equality for workers and employers and freedom of contract. Instead, the property of conservative ideology was under the pressure of socialists and the threat of revolutionary change was the justification of the welfare state with the need to influence the latter to support the worker as an economically weaker party to the employment contract.

Such ideological currents developed in parallel, being initiated by social changes after the bourgeois-democratic revolutions, and continue today in their new political variations to offer various political and legal ways of regulating social and labor relations. At the same time, modern scholars agree that «... social and legal state – are interdependent and complementary features of a developed rule of law» (Vavzhenchuk, 2016: 320).

2.2. The right to work in political and legal thought of the late XIX – early XX centuries

The ideologists of the welfare state drew attention to the value of social rights, the need to resolve the issue of the labor ratio and capital with the assistance of the state, which was widely discussed in scientific journals. Thus, the scientist I. E. Andrievsky, who wrote the preface to the work of L. Von Stein published in Russia, drew attention to the fact that the human person, equal and free, can be that way under an integral condition – the

right to work (Andrievsky, 1871: CXLIV). A. I. Elistratov considered the right to work (the sphere of economic initiative of citizens) as a component of the right to personal freedom, seeing in it «public-legal regulation of the relationship between workers and entrepreneurs» (Elistratov, 1910: 88).

At the same time, there was no mentioning of legal consolidation of the right to work at that time. As V. M. Hessen, a jurist, public and state figure, ideological leader of the school of «revived natural law», emphasized in lectures on police law given in 1901-1902 at the Alexander Military Law Academy, «the right to work» is not recognized by the state» (Hessen, 1902: 372).

A lawyer, one of the founders of the Cadet Party, S. A. Kotlyarevsky, reflecting on the proclamation of the right to work in the Constitution of the Second French Republic, concluded that this «... did not lead to any results. There can be no serious legal claim where there is no awareness of the objective possibility of its implementation «(Kotlyarevsky, 1915: 348).

The subject of legal regulation of relations between workers and employers at that time was mostly the reduction of excessive working hours of exhausting work, especially for vulnerable categories such as minors and women, i.e. hygiene and safe working conditions, which were seen as part of the right to life that was negative in its nature.

At the end of the XIX century, when the labor issue became relevant, including due to the significant increase in strikes, the right to a dignified existence, which was associated with a positive understanding of the state's function to ensure it, began to be widely discussed by thinkers.

On the one hand, this process developed under the influence of the concept of socialists, on the other hand, it led to the transformation of liberalism, the separation of its social diversity. S. A. Kotlyarevsky, emphasizing that outside the socialist ideology strengthens the idea of the right to a dignified existence of all citizens, concluded: «... the idea of the right to a dignified existence is already something more than a pious wish: it begins to bind the legislator, and we feel that such cohesion will only grow «(Kotlyarevsky, 1915: 349).

Significant contribution to the development of the right to a dignified existence understanding, which was considered in close connection with the right to work, was made by such jurists, philosophers, politicians and public figures as S. M. Bulgakov, S. I. Hessen, B. O. Kistyakivsky, P. I. Novgorodtsev, Y. O. Pokrovsky, V. S. Solovyov, representing mostly the school of "revived natural law" and justifying the right to work as arising from the right to life, ie relating it to natural human rights, the status of which the latter had the best reason to claim all the rights of the "second generation" (Malinov, n/y).

Thus, S. I. Hessen included the right to work, the right to exist, the right to a short working day in the catalog of "social and natural rights of man and citizen" (Great Ukrainian Law Encyclopedia. Vol. 2: 138).

The appeal of thinkers to the problems of natural human rights with the central idea of individual freedom testified to the protest against state absolutism. It is urgent to mention philosophical and legal reflections of P. D. Yurkevych with his conclusion that "human rights depend on their dignity..." (Yurkevych, 2001: 605). Among the social ideas of Lesia Ukrainka, who drew attention to the promotion of human dignity as the highest value (Donchenko, 2016).

Liberal legal idea in Ukrainian legal thought developed in the teachings of M. P. Drahomanov with an emphasis on universal values, the priority of the human person in the pursuit of happiness and prosperity (Kruglashov, 1992), the rationale that the "full will of every person" will always be the goal for all governments" (Great Ukrainian Law Encyclopedia, Vol. 2: 251).

The socio-political ideal of Ukrainian scientist S. A. Podolinsky was civic socialism, he meant a society in which the people govern and manage all economic, political and cultural processes (Donchenko, 2016). In his work "Crafts and Factories in Ukraine" he wrote: "Every working man should have free access, on equal terms with all rights, to the work community to which he has the greatest commitment..." (Podolynsky, 1880: 125).

Thus, the period initiated by the bourgeois-democratic revolutions put on the agenda the consolidation of the first generation rights. Its status was claimed by the natural right to work. Without labor man can not ensure his existence and the importance of creating safe working conditions. Their provision was regarded as part of the realization of the right to life. This, in its turn, necessitated the development of factory law.

2.3. Factory law, supervision and control over its observance

Returning to the post-reform (1861) events related to the preparation of factory bills in the Russian Empire, it should be noted that there was the competition between St. Petersburg and Moscow industrialists, intensified during the economic crisis of the late 1870s – early 1880s. Ukrainian economist, later Secretary General of Finance in the Government of the Ukrainian Central Rada, M. I. Tugan-Baranovsky analyzed in detail the reasons for the «humanity» of St. Petersburg manufacturers and «freedom» of Moscow ones in the state intervention in relations between industrialists and workers (Posse, 1906).

The government was influenced by strikes and the spread of «secret socialist propaganda among the workers» (Materials on the publication of the law, June 2, 1897 on the restriction and distribution of working time in

factories: 88). Making a historical digression of the procedure for adopting factory legislation, V. M. Hessen concluded: «The development of our factory legislation is not on the initiative of the government – but due to external shocks, requests of manufacturers and, in part, workers' strikes. Hence its unplannedness, fragmentariness, contingency» (Hessen, 1902: 75).

In practice, this state of development of draft factory laws demonstrated the contradictory nature of the work of commissions convened in Russia in the period from 1859 to 1879 (chaired by a member of the Council of the Minister of the Interior, chairman of the commission to revise factory and craft statutes A. F. Stackelberg, Adjutant General P. M. Ignatiev, Minister of State Property P. A. Valuev), and witnessed the general trend for the principle of freedom abandoning in relations between labor, capital and the accompanying principle for freedom of workers' organizations, workers' representation and strikes, i.e. public instruments of protection for employees' legitimate rights and interests, which did not correspond to the very nature of the autocracy (Kholod, 2006b: 175).

Thus, the Law of June 3, 1886 "On the employment of workers in factories, plants and manufactories and the mutual relations of manufacturers and workers" (Supreme Approved Opinion of the State Council, 03-06-1886), providing for the conditions of conclusion, performance and termination of the employment contract with the fixation of the latter in the workbook, testified to state intervention in the relationship between workers and industrialists – holy of holies" liberal freedom of contract.

As a result, denying both workers and industrialists the freedom of contractual relations, the tsar inevitably embarked on the path of public care, interference from above in the labor relations of workers and industrialists, their petty regulation to prevent labor conflicts (Kholod, 2006b), demonstrating the implementation of the police state policy.

The main purpose of resolving the labor issue was to prevent workers' strikes, which showed a steady upward trend. In this situation, the government of the Russian Empire decided to put relations between industrialists and workers "under the strict control of special oversight bodies", thus deciding "to further restrict the freedom of the employment" (Materials on the publication of the law, June 2, 1897 on restriction and the distribution of working time in the establishments of the factory industry: 5).

In the Russian Empire, the establishment of factory inspections was initiated by the Law «On Minors Working in Factories, Factories and Manufactures» of June 1, 1882 (Supreme Approved Opinion of the State Council, 01-06-1882). In Austria-Hungary, the Law on Labor Inspections was adopted on June 17, 1883.

Relations, which were subject to the rules of supervision and control, they had purely administrative, organizational and public law feature. At the same time, these relations have become those regulated by factory laws and have since been associated as an integral part of factory (industrial, labor) law in terms of their law enforcement and human rights goals and social purpose.

However, at the time of formal consolidation of such norms, factory law was a sub-branch of police (administrative) law, which was determined by the nature of the policy implemented in practice.

In general, factory law had a number of features. First, it was of a guardian nature. The latter was clearly evident in the legal framework of factory inspectors, who, in addition to the power to oversee compliance with the law, could interfere in relations between workers and industrialists, prevent conflicts and promote their settlement, care for workers, education of minors.

The purpose of these measures was to ensure «public peace», prevent strikes, which, on the one hand, provided for the supervision of workers, on the other – obliged industrialists to improve working conditions. A contemporary of the events, economist V. P. Bezobrazov, responding to the condition of law, wrote about the preventive activities of the factory inspection, that «... is generally in the care for the mutual relations of masters and workers...» (Bezobrazov, 1888: 56).

The scientist justified the need for its functioning as a special body of the police state, of course, understanding the latter as a characteristic of that time interpretation as a public administration body and the transfer of inspection from the Ministry of Finance to the Ministry of Internal Affairs «not only useless but harmful, capable of increasing the arbitrariness of police actions and causing various abuses»(Bezobrazov, 1888: 62, quoted by Kupriyanova).

However, the Law of the Russian Empire of June 3, 1886 and the adopted «Rules on the Supervision of Factory Industry and the Mutual Relations of Manufacturers and Workers» enshrined the guardianship nature of supervision, which reflected the essence of police policy on labor issues. Reacting to such changes, V. M. Hessen commented: «The government does not have a social program. Current law is the product of police considerations, not social policy» (Hessen, 1902: 313).

In support of his conclusion, the scientist cited, for example, unresolved at the law level, issue of sanitation in factories, which was extremely important from a social point of view, but was of secondary importance from the police point of view, because of unsanitary work conditions, will not lead to strikes (Hessen, 1902). The same opinion was held by L. S. Tal, noting that statesmen in the nineteenth century were guided mostly by «police and financial considerations rather than social motives» (Tal, 1918: 6).

Secondly, the factory legislation of the Russian Empire was largely based on Western European legal acts. Thus, the law of England was taken as the basis for the legal regulation of factory inspections. This had its positive aspects, at the same time the haste in the preparation of the bills «by stationery on strange... foreign models» (Bezobrazov, 1888: 18) with balanced consideration of the state of domestic development, international standards and national characteristics.

However, at that time the specifics of the organizational and legal basis for the factory inspection in the Russian Empire was determined by the political regime of the police state, embodied in the remnants of serfdom, lack of free labor traditions. Austria was called the most similar to Russia in the organization of labor supervision among all the countries of Western Europe (Bykov, 1909).

This commonality between Russian Factory Inspection and the Austrian Industrial Inspection, and at the same time the difference between the latter's activities and those of the British Inspection, was oversight of internal labor regulations, which was seen as interfering with freedom of employment and guardianship of policies.

Thus, Austrian Factory Inspection, like Russian one, was a centralized system of bodies within the Ministry of the Interior Arrairs, acting as a mediator to prevent and resolve conflicts between workers and industrialists, overseeing the living conditions of workers and educating minors (Bykov, 1909). However, in 1900 about 93.3 % of Ukrainian population of Galicia and Bukovina was supported by growing crops, 2.5 % received income from fishing, and 1.7 % from trade, the industrial population, which came under the supervision of factory inspections was small (Levynsky, 1914).

Third, one of the shortcomings of the factory laws was the lack of defined legal liability and specific sanctions for violations of regulations, which led to ineffective legislation and complicated supervision and control activities. In particular, most of the complaints were about the implementation of the Law of the Russian Empire "On the duration and distribution of working time in the factory and mining industry" of June 2, 1897.

In the Journal of the meeting of senior factory inspectors of the Kiev district from April 1, 1900 it was noted: "Thus, it is extremely difficult, almost impossible, to establish the fact of the agreement coercion with the workers to serve as a basis for bringing managers to justice" (CDIAC of Ukraine. F. 574. D. 1. C. 205. P. 58-59).

The article of the newspaper «Halychanyn», presenting the report by the industrial inspector A. Navratila on Galicia and Bukovina in 1892, complained that the institute of industrial inspectors «has weak staff and is deprived of the right of execution (the right to enforce decisions)» (The labor movement in Ukraine (1885-1894): collection of documents and materials: 304).

The guardianship nature of the supervision was also evidenced by the subject of its implementation, which was defined quite broadly and required additional interpretation, as it provided for the observance of «proper landscaping and order». Landscaping is understood as «good ordering, provision of everything necessary; orderliness» (Dictionary of the Ukrainian language), and the term order is generally ambiguous and in relation to the previous term implies a state when everything is done, performed properly, in accordance with certain requirements, rules, etc.; order» (Dictionary of the Ukrainian language).

That is, on the one hand, we have the use of those concepts that characterize the component of police law – police improvement, on the other hand, we note the use of evaluation terms, which did not contribute to the effective implementation of supervisory activities. As V. P. Bezobrazov noted, «The surprises, difficulties and complaints of the industrial world about the introduction of new factory orders are explained by some very significant shortcomings of the laws: incompleteness, ambiguity, contradictions, and practical inconvenience in many of them» (Bezobrazov, 1888: 18).

The subject of supervision was specified in determining the powers of the factory inspection (Article 54 of the Statute of Industry of the Russian Empire), namely: (1) supervision of the implementation of regulations on the employment of minors and their attendance at primary schools; (2) overseeing the implementation of mandatory regulations and rules issued by the Chief of Factory and Mining Presence; (3) monitoring the compliance of manufacturers and workers with the rules that defined their responsibilities and the relationship between them; (4) supervision of compliance with the rules on steam boilers; (5) supervision of compliance with the rules on the distribution and duration of working time (Factory laws. Collection of laws, orders and explanations on Russian factory law: 160-161).

Thus, supervision was exercised over the implementation of legislative provisions and over the rules of the procedure. As the terms of employment were recorded in the established payroll and the oral form of the employment contract was not allowed, the compliance with the terms of the contract was subject to the inspections.

It was the intervention of inspectors that caused the greatest dissatisfaction among industrialists. Private Associate Professor of Kyiv University V. Ya. Zheleznov, researching in the early twentieth century the factory law, came to the conclusion of its importance, which was the gradual recognition and implementation of the «principle of social regulation and control in the industrial sphere» (Zheleznov, 1903: 56).

Conclusions

The period initiated by the bourgeois revolutions was accompanied by the search for ideological justification for the further development of social relations in the field of free labor that emerged as a result of serfdom abolition. At the same time, the achievement of liberal ideology was the substantiation of the rule of law features. It was embodied in the form of the of legal equality requirement for workers, employers and freedom of contract in the field of labor relations.

The achievement of conservative ideology, although under pressure from socialists and the threat of revolutionary movements, was the justification of the welfare state with the need to influence the latter to support the worker as an economically weaker party to the contract, isolating the «social idea of governance.»

This was a period for the formal consolidation of the first generation's rights. At the same time, the right to a dignified existence, which was associated with a positive understanding of the state's function to ensure it, began to be widely discussed by jurists, especially representatives for the school of «revived natural law», laying the ideological foundations. Such processes necessitated the development of factory law with the establishment of labor protection norms for minors, women, occupational safety, health, organizational and legal mechanism for their observance to be reflected in the institute of factory inspections.

The English-style factory inspections for both the Russian and Austro-Hungarian empires were characterized by the possibility of overseeing the compliance with legislation, internal labor regulations and workbooks as interfering with the freedom of contract and certifying the guardianship policy of the state characterized by detailed regulation of social relations in the field of hired labor. At the same time, the lack of defined legal responsibility and specific sanctions for regulations violation caused inefficiency of both legislation and activities to supervise and control its observance.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 633-654
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Specific characteristics of corporate rights under Ukrainian legislation

DOI: https://doi.org/10.46398/cuestpol.4073.36

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Abstract

The article is devoted to the study of the peculiarities of the exercise of corporate rights under the civil law of Ukraine in order to identify their specific characteristics. Through a documentary methodology, close to legal hermeneutics, it was concluded that the participant of a legal entity (company) may have not only corporate rights but also other rights over this legal entity (company). Therefore, it is not enough to say that the rights of a person whose participation is defined in the authorized capital are corporate. It is important that the content of these rights is due to the ownership share (share, number of shares) in the authorized capital of the legal person (company). It was also found that intangible corporate rights must be distinguished from the personal intangible rights of the individual. The concepts of "non-economic rights" and "non-economic personal rights" are not identical. In relation to a person, intangible rights should be divided into two types: non-economic rights that are not closely related to a person (e.g., non-economic corporate rights); intangible rights that are closely related to a person and are inseparable from a person (personal intangible rights).

Keywords: corporate rights; economic rights; non-economic rights; public limited company; limited liability company.

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Recibido el 14/04/2022 Aceptado el 26/06/2022

Características específicas de los derechos corporativos bajo la legislación ucraniana

Resumen

El artículo está dedicado al estudio de las peculiaridades del ejercicio de los derechos corporativos bajo la legislación civil de Ucrania para identificar sus características específicas. Mediante una metodología documental, próxima a la hermenéutica jurídica, se llegó a la conclusión de que el participante de una entidad legal (empresa) puede tener no solo derechos corporativos sino también otros derechos sobre esta entidad legal (empresa). Por lo tanto, no basta con decir que los derechos de una persona cuya participación se define en el capital autorizado son corporativos. Es importante que el contenido de estos derechos se deba a la participación de la propiedad (acción, número de acciones) en el capital autorizado de la persona jurídica (empresa). También se encontró que los derechos corporativos intangibles deben distinguirse de los derechos intangibles personales del individuo. Los conceptos de "derechos no patrimoniales" y "derechos personales no patrimoniales" no son idénticos. En relación con una persona, los derechos intangibles deben dividirse en dos tipos: derechos no patrimoniales que no están estrechamente relacionados con una persona (por ejemplo, derechos corporativos no patrimoniales); derechos intangibles que están estrechamente relacionados con una persona y son inseparables de una persona (derechos intangibles personales).

Palabras clave: derechos corporativos; derechos patrimoniales; derechos no patrimoniales; sociedad anónima; sociedad de responsabilidad limitada.

Introduction

Subjective corporate rights are characterized by certain features of implementation, which give grounds to distinguish them from other civil rights. These features of the exercise of corporate rights should be called essential because they reflect their legal nature. The essential features of the exercise of corporate rights, at present, include legal definitions of this concept, as well as legal norms that determine the status of their subjects.

However, the signs of the exercise of corporate rights are not sufficiently studied in modern theory of civil law. Judicial practice raises a number of questions to which there is no unambiguous answer either in law or scientific literature. A unified approach to the signs of exercising corporate rights has not yet been developed.

Acts of the legislation of Ukraine contain different definitions of corporate rights, which complicates the study of the signs of their implementation. These shortcomings can be eliminated by identifying and clarifying the essence of the principles of exercising the subjective rights of members of companies.

Thus, domestic special legal acts regulating the exercise of corporate rights in various organizational and legal forms of companies, separately provide for rights that do not belong to each (any) participant (shareholder), but only to those who have the necessary, the size of the share (number of shares) in the authorized capital established by law, for example: 5, 10, 95, etc. percent. These corporate rights have a number of features of their implementation compared to the rights granted to all other participants (shareholders).

From the analysis of the provisions of the acts of civil legislation of Ukraine, which contain the concept of subjective "corporate rights", as well as establish the features of the legal status of their subjects, we can identify a number of signs of such rights. These features reveal the essence of corporate rights; in this sense, they are constitutive because they reflect the content of corporate rights. Based on the analysis of legal provisions and own scientific position, we can identify the following signs of the exercise of subjective corporate rights:

1) Conditionality of the exercise of corporate rights by property participation in the authorized capital of a legal entity.
2) Exercise of corporate rights in relation to joint-stock companies, limited and additional liability companies.
3) Exercise of non-property and property corporate rights.

1. Methodological Framework

The normative and legal basis of this article was the provisions of the Civil Code of Ukraine and special legislative acts governing the exercise of corporate rights. The empirical basis of the study is the materials of the practice of litigation on the protection of corporate rights by the courts of Ukraine. The dialectical method of cognition accompanied the whole process of scientific research and allowed us to consider trends in the development of legislation on the exercise of corporate rights in the context of European integration.

The formal-legal method was used in the analysis of legal norms governing certain features of the exercise of corporate rights and the practice of their application. Sociological methods of cognition were used

in the analysis of regulations, court decisions and other documents. The hermeneutic-legal method was used in the process of interpreting the rules that determine the characteristics of the exercise of corporate rights.

Techniques of legal analysis was used in the study of the signs of the exercise of corporate rights with the help of legal techniques. Some methods of comparative law were used for comparative analysis of signs of corporate rights with other civil rights that may have participants (shareholders) of companies in relation to these legal entities.

2. Results and discussion

2.1. Conditionality of the exercise of corporate rights by property participation in the authorized capital of a legal entity (close connection with the size of the share (number of shares)

Only entities whose share is defined in the authorized (composed) capital of a legal entity have corporate rights. Moreover, a person who is the sole member of the company owns one share in the authorized capital, the amount of which is one hundred percent. The authorized capital of a legal entity does not have to have several shares.

The certainty of the share in the authorized capital means that corporate rights can be exercised only in relation to legal entities that: 1) have authorized capital; 2) there are shares of participants (participants) in their authorized capital (Zikalo, 2013).

These features of corporate rights U. Yarymovych consider to be characteristics of "corporate legal entities": the presence of authorized (composed) capital; determination in the authorized (composed) capital (property) of the participant's share, which gives him or her corporate rights (Yarymovych, 2012: 31). As points out I. Lukach a participant's share in the authorized capital makes it possible to distinguish corporations from other legal entities where there is no authorized capital divided into shares (Lukach, 2016).

Some scholars question this legislative provision. Thus, according to the authors of the textbook "Economic Law of Ukraine", such an approach is impractical, because regardless of the type of enterprise (unitary or corporate) the essence of the relationship between the founder (participant) and the enterprise is the same and corporate enterprises are the same.

The only difference is the presence of not one, but two or more owners of corporate rights in corporate enterprises, but this limit is actually erased with the introduction of the possibility of creating sole proprietorships (Gaivoronsky and Zhushman, 2005). A similar position is supported by O.

Kibenko on the example of the legal conclusions of the Grand Chamber of the Supreme Court: corporate law is a right that arises from participation in the capital of a legal entity. It does not matter whether such capital is divided into shares or not, the legal entity has one or more participants (Kibenko, 2019).

It is difficult to agree with this interpretation of corporate rights in relation to the relevant legal entities. The difference between corporate and unitary legal entities is not in the number of their founders (participants), but in the nature of the legal relationship between them and the legal entity.

As rightly points out Yu. Beck, the creation of an enterprise by one founder is not the only criterion for determining the unitary type of enterprise, other criteria must be taken into account, including the distribution of authorized capital, enterprise management, income distribution, etc. (Beck, 2013). Legal entities are divided into unitary and corporate, including depending on the method of establishment and formation of authorized capital (fund) (Tsikalo, 2008).

A unitary legal entity is not the owner of the property assigned to it, but acts on other legal regimes of property, for example, on the right of trust property and the right to manage someone else's property (fiduciary fund), etc. The owner of the property of a unitary legal entity is its founder, who should be held civilly liable for the obligations of the legal entity created by him. A corporate legal entity always acts on the right of ownership, and its founder (founders) acquires (acquire) corporate rights over it (Tsikalo, 2010). As a general rule, a corporate legal entity and its founder (s) cannot be held civilly liable for each other's obligations.

Representatives of legal science emphasize the different legal regimes of property of unitary and corporate legal entities in the context of possible corporatization of state and municipal unitary enterprises. Thus, O. Belyanevich and O. Podtserkovny drew attention to the fact that the transformation of unitary state and municipal enterprises and organizations into companies will change the legal regime of property of these legal entities to property rights, as corporate enterprises are given ownership of their assigned property (Belyanevych and Podtserkovny, 2019).

The Commercial Code of Ukraine emphasizes that a corporate is a legal entity formed, as a rule, by two or more founders. The caveat "usually" means that it may have one founder; not always two or more founders take part in the creation of a society. Therefore, the basis for the division of legal entities into corporate and unitary should be taken not the quantitative criterion of the founders (participants), but the nature of the legal relationship between them and the legal entity.

Determining the share of the founder (participant) in the authorized capital of a legal entity means that the content of its rights is in connection

with the property participation in the authorized capital, i.e., due to the size of the share. In the absence of division of the authorized capital of the enterprise into shares, its founders (participants) have no corporate rights. As a result, there can be no corporate rights in unitary enterprises (Kravchenko, 2009).

Even those authors who see the similarity of relations in unitary legal entities with corporate legal entities, do not call these relations actually corporate. According to A. Smityukh, the relationship between a unitary enterprise and the same person who already acts as the sole participant of the enterprise in relation to the activities of the unitary enterprise are different from property relations, the rights of this person to the enterprise are not real, they are inherent with the corporate rights of the participant of a corporate enterprise in relation to such an enterprise are not exclusive rights to property, but exclusive rights to a person (Smityukh, 2018).

It is worth agreeing with those scholars who propose to establish a closed list of organizational and legal forms of legal entities in the Civil Code of Ukraine, including corporate ones. It will be useful to define an exhaustive list of organizational and legal forms of legal entities. It should take into account world experience and practice, such as: EU law, English law and US law, which are world leaders and landmarks for many countries and strategic partners for Ukraine in particular (Ilchenko, 2021).

It should also be borne in mind that a person whose share is determined in the authorized capital of a legal entity may have not only corporate but also other rights to this legal entity, which are not related to property participation in its activities.

Other rights of a participant of a legal entity include, for example, labor rights, the content of which does not depend on property participation in the authorized capital. Labor rights are exercised outside the corporate relationship. This is expressly provided in paragraph 3 Part 1 of Art. 20 of the Commercial Procedural Code of Ukraine, according to which, the jurisdiction of commercial courts includes cases in disputes arising from corporate relations, except for labor disputes. The difference between corporate and labor relations is also noted in the scientific literature: that is, labor participation in the LLC is not part of the rights of its members (Spasybo-Fateeva, 2012).

Thus, a member of a legal entity (company) may have not only corporate but also other rights to this legal entity (company). Therefore, it is not enough to say that the rights of a person whose share is defined in the authorized capital are corporate. It is important that the content of these rights is due to property participation (share, number of shares) in the authorized capital of the legal entity (company). In the Law of Ukraine "On Joint Stock Companies" this feature is highlighted by the phrase: "rights

arising from the right of ownership of shares" paragraph 8 Part 1 of Art. 2 of the law (Verkhovna Rada, 2008).

Given such a feature of the exercise of corporate rights as the conditionality of their content by property participation in the authorized capital, the provisions of Part 1 of Art. 14 of the Law of Ukraine "On Limited and Additional Liability Companies" can be estimated critically (Verkhovna Rada, 2018). According to this legislative provision, the members of the company have the right to make their contributions to its authorized capital not in full immediately, but within six months from the date of state registration of the company.

Hence, at least six months after the establishment of a limited liability company (additional) liability, its members may not participate in the activities of the company, having, at the same time, certain shares in the share capital.

The existence of the said legislative provision could be justified only in combination with another requirement of the law, namely the minimum size of the authorized capital of a limited or additional liability company. As the current Law "On Limited and Additional Liability Companies" does not set requirements for the minimum amount of authorized capital of the company, it is impractical to postpone its payment in full. As noted by I. Spasybo-Fateeva, the authorized capital of the LLC no longer performs the guarantee function, but is only intended to certify the scope of corporate rights of its members and determine the amount of those claims that they (or their heirs or creditors) may make to the company (Spasybo-Fateeva, 2012).

Ukrainian legislator has abandoned the "pro-creditor concept" of authorized capital, the main purpose of which is to protect the interests of creditors; for which norms are set regarding the minimum amount of authorized capital (Hort, 2009). The main function of the authorized capital should be to protect the interests of creditors (Kibenko, 2006).

The authorized capital of limited and additional liability companies consists of contributions from its founders (participants). As it (authorized capital) does not have to be paid during the first six months, the members of the company are not obliged to make their contributions until this period expires. Until the expiration of the six-month period from the date of state registration of limited and additional liability companies, its members may not make contributions to the authorized capital (Gabov, 2019).

As a result, the participant's share during this period may not correspond to the actual contribution specified in the state register. This may lead to a lack of property participation of the person in the authorized capital of the company of which he is a member.

From the above legislative provision, it is concluded that the exercise of corporate rights by members of limited and additional liability companies during the first six months of its existence depends not on property participation in the authorized capital of the company, but on the size of the share specified in the state register.

In accordance with Part 2 of Art. 15 of the Law of Ukraine "On Limited and Additional Liability Companies" if the participants have not made (not fully made) their contributions to repay the debt, the general meeting of participants may take one of the following decisions:

1) On the exclusion of a member of the company who has arrears of contributions.
2) On the reduction of the authorized capital of the company by the amount of the unpaid part of the share of the participant of the company.
3) On the redistribution of the unpaid share (part of the share) among other participants of the company without changing the amount of the authorized capital of the company and the payment of such debt by the relevant participants.
4) On the liquidation of the company.

At the same time, the Law of Ukraine "On Limited and Additional Liability Companies" does not establish the legal consequences of non-adoption of such decisions by the general meeting of the company. In essence, making such a decision is a right of the company, not its duty. In this regard, there may be a situation when a limited liability company, the authorized capital of which is not fully paid, will continue to operate after the expiration of six months from the date of its establishment.

Even with the adoption of the Law of Ukraine "On Limited and Additional Liability Companies", the question of the impact of the value of the participant's share in the authorized capital of a limited and additional liability company on the exercise of its corporate rights after the deadline for full contribution remains unsolved.

Analysis of other provisions of the Law of Ukraine "On Limited and Additional Liability Companies" makes it possible to question the position on possible non-consideration of property participation (payment of shares) in the authorized capital of the company in determining the voting results at the general meeting.

Thus, according to Art. 2 of the Law of Ukraine "On Limited and Additional Liability Companies" members of the company who have not fully contributed, are jointly and severally liable for its obligations within the value of the unpaid part of the contribution of each of the participants.

This means that the amount of liability of the company's members for its obligations is determined by the real monetary value of the share, and not just in percentage terms. In accordance with Part 1 of Art. 12 of this law, the size of the authorized capital of the company consists of the nominal value of shares of its members, expressed in the national currency of Ukraine. Thus, the authorized capital of a limited and additional liability company expresses the amount of actually made contributions of participants.

The share of a participant of a limited (additional) liability company may be alienated until its full payment only in the part in which it is paid (Part 3 of Article 21 of the Law of Ukraine "On Limited and Additional Liability Companies"). Therefore, the unpaid part of the share in the authorized capital cannot be the object of civil turnover.

According to Part 10 of Art. 24 of the law, the company pays to the participant who left the company, the value of his share or transfers the property only in proportion to the amount of the paid part of the share of such participant. Hence, certain provisions of the Law of Ukraine "On Limited and Additional Liability Companies" directly indicate the legal (practical) importance of property participation in the formation of the authorized capital of limited and additional liability companies, i.e. the actual payment of shares.

Such position is supported in the scientific literature. Thus, O. Yankova proved economic conditionality of the participant's right to lead and receive dividends by fulfilling the obligation to pay for purchased shares or corporate rights (Yankova, 2000). According to I. Spasybo-Fateeva, a person cannot have corporate rights if he or she has not made a property share in the company (Spasybo-Fateeva, 2012). N. Slipenchuk considers that the acquisition of subjective corporate rights should be associated with property participation in the formation of authorized capital (Slipenchuk, 2014).

In order to regulate relations regarding the exercise of corporate rights of members of limited and additional liability companies, as well as to eliminate contradictions between certain provisions of civil law, it is necessary to exclude from the Law of Ukraine "On Limited and Additional Liability Companies" additional liability until the end of six months from the date of state registration of the company. The founders of the company must be obliged to make their full contributions by the day of state registration. Such a change will result in the formation of the authorized capital of a limited and additional liability company in full at the time of its establishment, as provided for in the establishment of joint stock companies (paragraph 7 of Part 5 of Article 9 of the Law of Ukraine "On Joint Stock Companies").

In this regard, it is necessary to set out Part 1 of Art. 14 of the Law of Ukraine "On Limited and Additional Liability Companies" as follows: "Each founder of the company must fully contribute to the authorized (composed) capital before the date of state registration of the company".

As a result, Article 15 of this law should be deleted from it. In addition, the first part of Article 17 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations" should be supplemented with a new paragraph "5-1" as follows: "a document confirming the contribution to the share capital". In the absence of such a document, the state registrar will have the right to refuse state registration of a limited liability company (additional) liability (paragraph 7 of Part 1 of Art. 28 of the Law).

In modern conditions, the founders of the company at the time of its state registration can form the authorized capital in any amount that will meet their economic capabilities. After the establishment of the company, the size of its authorized capital is subject to increase an unlimited number of times. Such changes will result in exclusion from Art. 21 of the Law of Ukraine "On Limited and Additional Liability Companies" of the third part on incomplete alienation of shares.

Given the content of corporate rights, such a feature as the definition of share, includes the connection with the property share in the authorized capital of the legal entity. In other words, the rights of a person, the share of which is determined in the authorized capital of a legal entity (company), are corporate not only because they belong to such a person, but because their content is related to property participation in the authorized capital; due to it.

This feature of corporate rights indicates that there is no need to indicate an exhaustive list of specific subjective corporate rights in the definition of this concept. It is impossible to specify all corporate rights in the definition, at least because they can be established not only by law but also by local legal acts of the company. The incompleteness of the list of corporate rights, which contains the definition set out in the law, indicate I. Spasybo-Fateeva and T. Dudenko, who believe that it is obvious the need to supplement non-property rights with the right to information, and property rights – with the right to demand payment when leaving the company or, in certain cases, the payment of the value of shares (Spasybo-Fateeva and Dudenko, 2005).

Thus, the nature of the legal relationship between a unitary or corporate legal entity and its founder (participant) is not identical and depends on whether the share of the founder (participant) in its authorized capital is determined and whether the size of this share affects effective rights of the founder (participant). A corporate entity is a legal entity with the authorized capital divided into shares (share) of its participants (participants), the

amount of which determines the exercise of subjective rights of participants (participants).

2.2. Exercise of corporate rights in relation to joint-stock companies, limited and additional liability companies

The conclusion that corporate rights exist only in business companies can be drawn from the list of rights that are defined as corporate. In particular, the mandatory corporate rights established by law (Civil Code of Ukraine, Laws of Ukraine "On Joint Stock Companies" and "On Limited and Additional Liability Companies") include the right to dividends.

This right is the corporate right for the exercise of which, the participants in civil relations participate in the activities of the company. It is for the purpose of receiving dividends that a person acquires corporate rights. The main feature of corporate rights is that their implementation is aimed at satisfying property interests and obtaining property benefits by participants in corporate relations (Shevchuk and Beaver, 2018).

Fundamental to the characterization of corporate rights is their property nature (Kravchenko, 2010). Therefore, the rights of a participant of a legal entity that do not provide for the possibility of receiving income, in particular, dividends, do not belong to the corporate. All, without exception, corporate rights entities should have the right to receive dividends (Ovchinnikov *et al*., 2019).

In turn, a person (participant, shareholder) can receive income from participation in the activities of only a business entity. According to I. Spasybo-Fateeva, the meaning of shares is the benefits they provide: income, participation in management. The second seems to be a means to achieve the first, but for large investors. Small and medium-sized investors cannot count on the return on participation in management.

They do not set this goal. They have one goal left - earnings from shares. Their sources are dividends, exchange rate differences (Spasybo-Fateeva, 2005). Corporations will be those companies in which the authorized capital is divided into shares, the participants have the right to a part of the company's profit and to participate in its management. If some of these rights are absent from the members of the companies, such companies cannot be recognized as corporations. Thus, members of non-profit companies do not have property rights to participate in the distribution of profits (dividends), because they are non-profit. And even if they make a profit from a certain activity, it is not distributed among the participants (Spasybo-Fateeva, 2014).

As noted by M. Sokolovsky, subjective corporate law is a separate type of subjective civil rights of a person as a member of a business partnership

(Sokolovsky, 2017). According to the authors of educational sources on corporate law, the basis for the distinction between business and non-business organizations is the category of subjective corporate law, which is owned only by members of business organizations (Luts, 2007).

And in the case of non-profit organizations, the legal relationship of its members with the established legal entity is fully covered by the category of membership. V. Sazonov singles out one of the signs of corporate relations as their emergence between subjects endowed with corporate legal personality as an element of civil legal personality; on the one hand, a business legal entity of private law (business organization), and on the other - its members (Sazonov, 2020).

However, this position does not have unequivocal support in the legal literature. Thus, S. Rabovska draws a different conclusion. According to her, since the ownership of corporate rights is not considered entrepreneurship, the definition of corporate law should not be about the right to receive a certain share of profits, but - the income of the organization.

The author explains this by the fact that the goal - to make a profit is a necessary feature of entrepreneurial activity (Rabovska, 2005). Since the ownership of corporate rights is not considered business, the legal entity in which the corporate rights arise, does not aim to make a profit. This, in turn, according to the scientist, may mean that corporate rights are not always related to the company.

The fact that a person who is a subject of corporate rights has the purpose of making a profit does not mean that this person (directly) engages in entrepreneurial activity. In addition to the special purpose - to make a profit, business activity is also characterized by other features, in particular, the presence of state registration as a business entity (Syvyy, 2017).

As for the persons who have a share in the authorized capital of the company, they are not required to state registration as business entities. Only the presence of all signs of entrepreneurship in the aggregate, indicates the relevant type of activity. The goal is to make a profit, just one of the signs of entrepreneurial activity, which is not enough to recognize a certain activity as entrepreneurship. In addition, the entrepreneurial goal cannot be reduced to profit.

A necessary feature of the business goal is the statutory ability to distribute (withdraw) this profit among the members of the company (Chechovskaya, 2016). If the law does not provide for the distribution of profits between the participants of the legal entity, the fact of its receipt may not be a sufficient sign of entrepreneurial activity. In other words, the entrepreneurial goal has two elements:

1) The fact of receipt of profit (income) by the company.

2) The possibility of its distribution (withdrawal) between the members of the company.

Although a person's corporate rights are not a business for which a corporate legal entity arises, it is always a business entity, as only a business entity can pay a dividend. A corporate partnership can only act as a business partnership, i.e., one that aims to make a profit and then distribute it among the participants (Tsikalo, 2007).

In Art. 84 of the Civil Code of Ukraine, legal entities that have the purpose of making a profit and its subsequent distribution among the participants were called business associations. Business associations, in turn, include business associations or production cooperatives. In their capital (statutory, compound, share) the founders determine their shares. However, the size of the share affects the exercise of the rights of participants, determines them only in a joint stock company, as well as in limited and additional liability companies. In the legal literature, they are called associations of property (Kharytonov and Saniahmetova, 2003), or capital (Yurkevych, 2016).

And although the names used are conditional, as such companies can be created by one person who becomes their sole participant (Part 2 of Article 114 of the Civil Code of Ukraine), they reflect the legal relationship of the rights of participants (shareholders) with the size of the share (number of shares) in the authorized capital.

For example, the number of votes of the members of these companies during the decision-making of the general meeting, the amount of dividends, the value of assets in case of liquidation, etc., determines the size of the share (number of shares) in the share capital. Members of associations of property (capital) exercise the right to vote, dividends, to participate in the distribution of assets in liquidation, etc., respectively (in proportion) to the size of their share (number of shares).

The exercise of the rights of members of general and limited partnerships, as well as members of production cooperatives, does not depend on the size of the share in their capital (composed or share). Thus, corporate rights belong only to shareholders, as well as members of limited and additional liability companies.

This position is supported in the science of civil law, but it is based on other arguments. Thus, taking into account the legal nature of the memorandum of association, V. Kossak does not include the corporate rights of participants in general and limited partnerships Asin the absence of a status that defines the relationship between the company and its members, the relationship between the parties (the founding agreement on the establishment of general and limited partnerships) is not corporate. This is a relationship of a civil nature, to the regulation of which can also be applied the general provisions of contract law.

Accordingly, the conclusion of a memorandum of association for activities within a general or limited partnership is the emergence of civil rights and obligations between the parties to the agreement. The latter is the main document designed to regulate the relationship between the parties. Therefore, there is no need to grant full and limited partnerships the status of a legal entity (Kossak, 2016).

According to I. Spasybo-Fateeva, in order to resolve the issue of what a Ukrainian corporation is, a certain criterion should be chosen for classifying legal entities as corporations (Spasybo-Fateeva, 2021). Obviously, this criterion should be the presence of the division of authorized capital into shares that determine corporate rights.

In turn, the existence of corporate rights indicates that these rights belong to the members of the corporation (because it is logical that the members of the corporation have corporate rights, and the founders, members of other legal entities other than corporations do not have corporate rights). K. Leonov came to the conclusion that corporate rights arise only in certain business companies - limited liability companies and joint stock companies, whose capital is divided into shares between the participants (Leonov, 2021).

To conclude the analysis of this feature of corporate rights, it remains to add that they arise in relation to joint stock companies, limited and additional liability companies not only because the authorized capital of these companies determines the size of shares of participants (shareholders), but because these shares (number of shares) affect the exercise of corporate rights; determines their volume.

2.3. Exercise of non-property and property corporate rights

There are two types of corporate rights: non-property and property. This feature has repeatedly been noted in the scientific literature on civil law. For example, I. Spasybo-Fateeva believes that corporate rights are a combination of property (the right to receive a certain share of profits (dividends) of a legal entity and assets in the event of its liquidation) and non-property rights (the right to participate in its management) (Spasybo-Fateeva, 2004).

However, not all authors see corporate rights as intangible. For example, O. Velykoroda came to the conclusion that corporate rights, including the right to participate in management as one of the powers of corporate rights, do not belong to personal non-property rights (Velykoroda, 2010). The scholar made this conclusion on two grounds: the management of the company is carried out for profit; the right to govern may be alienated.

However, other non-property rights of a member of the company, as well as the right to participate in management, such as the right to audit the company, the right to obtain information about the company, the right to withdraw from the company are also exercised, usually for further profit. In addition, such types of shareholders' rights as non-property rights are directly reflected in the definition of corporate rights contained in Art. 2 of the Law of Ukraine "On Joint Stock Companies". It seems that the arguments presented by the author are not enough to draw a conclusion about the purely property nature (absence of non-property features) of corporate rights.

Non-property corporate rights should be distinguished from personal non-property rights of a person (Book Two of the Civil Code of Ukraine). The concepts of "non-property rights" and "personal non-property rights" are not identical. In relation to the person, non-property rights should be divided into two types:

- Intangible rights that are not closely related to the person ("impersonal" intangible rights, which include corporate intangible rights).
- Intangible rights that are closely related to the person and are inseparable from a person (personal intangible rights).

One of the features of personal non-property rights is the impossibility of their transfer by succession, including the transfer on the basis of the transaction to other persons. For example, in accordance with paragraph 1 of Part 1 of Art. 1219 of the Civil Code of Ukraine personal intangible rights are not part of the inheritance, i. e. cannot be transferred. This feature distinguishes personal non-property rights from other non-property rights that can be transferred by succession.

At the same time, in the field of corporate legal relations, non-property rights are subject to transfer from their subjects to other persons. Thus, according to Part 1, 2 and 7 of Art. 7 of the Law of Ukraine "On Joint Stock Companies" shares of a joint stock company may be alienated, inherited or transferred to the successor of the legal entity.

In accordance with Part 1 of Art. 21 and part 1 of Art. 23 of the Law of Ukraine "On Limited and Additional Liability Companies" the participant of the company has the right to alienate his share; in case of death or termination of a member of the company, his or her share passes to his or her heir or successor without the consent of the members of the company.

Such features as: lack of economic content (monetary value), close connection with the person, the impossibility of abandoning them, the inadmissibility of their deprivation, as well as lifelong action (parts 3 and 4 of Article 269 of the Civil Code of Ukraine) are characteristic only of personal non-property right.

Some scholars do not consider non-property corporate rights to be personal non-property rights of an individual. Thus, according to I. Sarakun allocation of personal non-property rights to a separate group is debatable, as the powers of the participants constitute the content of the right to participate in the management of the company, and it can be exercised through an authorized representative. Therefore, it is not inseparable from a member of the company (Sarakun, 2007).

As for the non-property nature of corporate rights, it should be noted that the term "non-property" is used as the antithesis of "property" rights, i.e., non-property rights are rights that have no property content (Kravchenko, 2010). As for the non-property component of corporate rights, they are guided by property corporate rights. At the same time, its intangible component can hardly be described as a personal intangible right in its sustainable sense (Jornokuy, 2011).

One of the types of non-property right, which is inextricably linked to its subject, and can be transferred from one person to another not only under the contract, but also on the basis of a unilateral transaction (e.g., will), is the right to participate in the company. According to V. Kravchuk in case of death of the participant the object of inheritance can include: 1) a share in the authorized capital; 2) the right to participate in the company, if it is expressly provided in the charter (Article 1219 of the Civil Code of Ukraine).

Thus, there may be cases where only the share is inherited, and cases when the share is inherited alongside with the right to participate in the company. As a result of inheritance, corporate rights may arise in full (both in terms of share and in terms of participation) or incomplete (only in respect of shares in the share capital) (Kravchuk, 2009).

O. Hnativ believes that the right to participate in governance is an intangible right. It may not be alienated or transferred to another person separately from other rights or in isolation from a share security, but it does not belong to the personal non-property rights of an individual under Book II of the Civil Code of Ukraine (Hnativ, 2016).

Another position is held by V. Vasilieva, who believes that corporate law should be considered as a complex aggregate object of civil rights, consisting of independent subjective rights, which constitute the content of corporate law. These include non-property rights and property rights. It is the existence of property rights that allows the introduction of corporate law into civil circulation as an independent object (Nekit, 2021). Therefore, corporate rights are part of the estate and can be acquired as a result of inheritance (Vasilieva, 2007).

Some researchers of personal non-property rights of legal entities express the opinion about the possibility of transferring these rights (personal non-property) to successors, in particular, in the process of termination of the

legal entity. Thus, according to S. Popova, personal non-property rights of a legal entity are terminated with its termination or are inherited by a successor. Regardless of the termination of a legal entity, its individual rights (including personal non-property) continue to exist in those cases that were initiated and not completed by it (Popova, 2018).

Personal non-property rights of an individual are a type of non-property civil rights, which include, but are not limited to, corporate rights.

Conclusions

The exercise of corporate rights has certain features that allow to distinguish them from other civil rights: the conditionality of the exercise of corporate rights by property participation in the authorized capital of a legal entity; exercise of corporate rights in relation to joint-stock companies, limited and additional liability companies; exercise of non-property and property corporate rights.

A member of a legal entity (company) may have not only corporate but also other rights concerning this legal entity (company). Therefore, it is not enough to say that the rights of a person whose share is defined in the authorized capital are corporate.

It is important that the content of these rights is due to property participation (share, number of shares) in the authorized capital of the legal entity (company). In the Law of Ukraine "On Joint Stock Companies" this feature is highlighted by the phrase: "rights arising from the right of ownership of shares" (paragraph 8 of Part 1 of Art. 2 of the Law).

The nature of the legal relationship between a unitary or corporate legal entity and its founder (participant) is not identical and depends on whether the share of the founder (participant) in its authorized capital is determined, and how the size of this share affects the implementation of the rights of the founder (participant). A corporate entity is a legal entity with the authorized capital divided into shares of its participants (shareholders), the size of which proportionally determines the exercise of subjective corporate rights.

In Art. 84 of the Civil Code of Ukraine, legal entities that have the purpose of making a profit and its subsequent distribution among the participants were called business associations. Business associations, in turn, include business associations or production cooperatives. In their capital (statutory, compound, share) the founders determine their shares. However, the size of the share affects the exercise of the rights of participants, determines them only in a joint stock company, as well as in limited and additional liability companies.

For example, the number of votes of the members of these companies during the decision-making of the general meeting, the amount of dividends, the value of assets in case of liquidation, etc. determines the size of the share (number of shares) in the share capital. Participants of property associations (capital) exercise the right to vote, to dividends, to participate in the distribution of assets in liquidation, etc. in proportion to the size of their share (number of shares).

Thus, corporate rights belong only to shareholders, as well as members of limited and additional liability companies. Corporate rights arise in relation to joint stock companies, limited and additional liability companies not only because the authorized capital of these companies determines the size of shares (number of shares) of participants (shareholders), but because the size of these shares (number of shares) affects the implementation of corporate rights; determines their volume.

Non-property corporate rights should be distinguished from personal non-property rights of a person (Book Two of the Civil Code of Ukraine). The concepts of "non-property rights" and "personal non-property rights" are not identical. In relation to the person, non-property rights should be divided into two types:

- Non-property rights that are not closely related to the person (for example, corporate non-property rights);
- Intangible rights that are closely related to the person and are inseparable from a person (personal intangible rights).

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 655-670
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Criminal Law Aspect of the Violation of Environmental Law in the context of armed aggression against Ukraine

DOI: https://doi.org/10.46398/cuestpol.4073.37

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Abstract

The objective of the study was to analyze, in a comparative legal framework, violations of environmental law in the context of armed aggression against Ukraine. The research method was a dialectical combination of the proven general and private scientific methods of legal knowledge. They emphasize in the Research Results that scientific advances can be used to solve the serious problems that arise in the legal regulation of criminal liability for environmental crimes in the context of armed aggression against Ukraine, as well as in general processes aimed at improving the environmental situation as a whole. It is concluded that the problems of criminal liability for environmental crimes in the context of armed aggression against Ukraine are managed, as far as doctrine is concerned, in the need to study the problems that currently exist in this area, in order to develop effective means of combating environmental crimes. In this regard, the optimization of the solution of environmental protection problems as a result of aggression against our State is possible on the basis of inter-State cooperation.

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Recibido el 15/04/2022 Aceptado el 14/06/2022

Keywords: environmental threats; environmental law; environmental crime; armed conflict; criminal law in armed conflicts.

El aspecto penal de la violación del derecho ambiental en el contexto de la agresión armada contra Ucrania

Resumen

El objetivo del estudio fue analizar, en un marco jurídico comparativo, las violaciones del derecho ambiental en el contexto de la agresión armada contra Ucrania. El método de investigación fue una combinación dialéctica de los métodos científicos generales y privados probados del conocimiento jurídico. Destacan en los Resultados de la investigación que los avances científicos pueden utilizarse para resolver los graves problemas que surgen en la regulación jurídica de la responsabilidad penal por delitos ambientales en el contexto de la agresión armada contra Ucrania, así como en los procesos generales destinados a mejorar la situación ambiental en su conjunto. Se concluye que, los problemas de la responsabilidad penal por delitos medioambientales en el contexto de la agresión armada contra Ucrania se gestionan, en lo concerniente a la doctrina, en la necesidad de estudiar los problemas que existen actualmente en este ámbito, con el fin de desarrollar medios eficaces de lucha contra los delitos medioambientales. En este sentido, la optimización de la solución de los problemas de protección del medio ambiente como resultado de la agresión contra nuestro Estado es posible sobre la base de la cooperación interestatal.

Palabras clave: amenazas ambientales; derecho ambiental; delito ambiental; conflicto armado; derecho penal en conflictos armados.

Introduction

The focus of criminology on crimes and harms committed by and against humans has broadened over time (Brisman and South, 2019).

Normal human activities and their interaction with nature can be disrupted in times of war. As is known, any military conflict is determined by the initial stage of its origin and the final drawing up of the normative-legal basis of the process of regulating the consequences of the conflict. In most wars of the 19th and 20th centuries the main cause of military conflicts was natural resources: oil, coal, gas, timber, diamonds, etc. Almost

all large-scale wars had environmental consequences. An effective way to undermine the economic potential of the enemy and reduce his fighting ability was to influence elements of the biosphere or technogenic objects in the course of military operations. As a consequence of the above, therefore, we can affirmatively say that environmental offenses are an inherent feature of war.

Practice shows that technical, political, economic, national, and other conflicts can lead to negative environmental consequences. For example, military actions, blockades of communication routes, and other forms of conflicts related to the adoption of decisions that cause environmental damage due to the direct destruction of environmental objects. At the same time, inter-ethnic and other conflicts distract from solving a number of traditional environmental problems.

The authors analyzed the criminal law norms that enshrine responsibility for environmental crimes in Ukraine in the context of armed aggression against our state, as well as the analysis of criminal legislation and problems of implementation of criminal responsibility for environmental crimes in foreign countries.

1. Theoretical Framework or Literature Review

It should be noted the fact that so far there is no legal and academic research in the field of environmental law of Ukraine regarding violations resulting from armed aggression against Ukraine. That is why in the sphere of scientific interest there is a question of how the Ukrainian legislation will solve the problems of preventing environmental crimes for the future to protect the environment, as foreign experience could be used for the development of domestic criminal legislation aimed at protecting the environment.

The relevance of this study, given that the leadership of our state is interested in the problems of protecting and improving the environment arising from the ongoing armed aggression against Ukraine, and as a result of which the people of Ukraine suffer seriously, violates their fundamental rights, including, and ecological.

An analysis of scholarly works on violations of environmental law during armed conflicts reveals a clear link between armed aggression against a state and violations of environmental law. For example, Nixon (2018) examines the consequences of environmental law violations and environmental offenses themselves stemming from the Vietnam War, while Cusato (2018) has chosen the same subject of study, but in another country, Kuwait, after the end of that country's war.

As for the relationship of political aspects and environmental law, for this reason, the very concept of environmental security Kornieiev and Melnyk, (2021) as stated by the authors includes a set of measures to ensure a certain state of the natural object and state guarantees to ensure the safe operation of human life.

Undoubtedly, a relevant and significant factor of objective nature is the practical impossibility of receiving and registering information about environmental crimes from the territories not controlled by the Ukrainian authorities (the Autonomous Republic of Crimea and certain territories of Donetsk and Luhansk oblasts).

We note that members of the public, in particular, the International Charitable Organization "Ecology-Law-Human", make attempts to study the consequences of the war in eastern Ukraine on the environment and public health. However, we agree with the fair comments of Turlova (2017), it does not affect the registration in the established procedural order of environmental encroachments in the specified territories. Consequently, the issue of criminal liability in the scientific circle of domestic scientists remains little researched.

2. Methodology

The methodological basis of the study of the criminal-legal aspect of the violation of environmental law in the context of armed aggression against Ukraine was tested by general scientific and private methods of scientific knowledge, in particular, the dialectical method, methods of formal logic – analysis, and synthesis, comparison, description, classification, methods of induction and deduction, systems, comparative legal and formal-legal methods.

3. Results

Provision of criminal liability for environmental offenses and attribution of their environmental consequences in the context of armed aggression against Ukraine is due to such reasons as:

1. The ecological nature of the act. If we analyze military practice, it is possible to separate a special distinctive tendency - the environment is considered as a direct object of military influence, changing the goals and character of modern war (military conflicts). The distinction of the environmental component of offenses committed during military conflicts from others is that the implementation of specially designed programs (operations) with the purpose

of total destruction or local destruction of the ecological system in the territory of the enemy for the maximum facilitation of the implementation of strategic or operational-tactical tasks.

2. The global nature of the manifestation. The consequences of environmental offenses during armed conflicts are extremely severe and may affect the interests of several states.
3. The consequence of violations of environmental law during armed conflicts is an environmental disaster that threatens human existence. Environmental catastrophe is usually understood as natural disasters or disasters caused by processes of human activity, which have a long-term (often irreversible) negative effect on the environment and human beings, spreading over a fairly large territory.
4. It is always an intentional act. Methods of waging environmental warfare can be: the physical extermination of fauna and flora, the destruction of the environment by various agents of biological, chemical, or physical nature, provoking a man-made disaster through the destruction of environmentally dangerous objects, the impact on the biosphere (its elements), the occurrence of natural disasters have a certain focus. Assessment of the methods of warfare is determined by the possibility and availability of methods of destruction and the tactics of their application.

Environmental offenses in a military conflict are those that are used not only by means specifically designed to destroy the environment but also through the use of weapons systems that originally had a different intended purpose (weapons of mass destruction, conventional weapons, non-lethal weapons, etc.).

The use of military means is complex, which increases the effectiveness of their defeat on the environment. As an example, we can mention the fact that the use of the "Grad" system (field 122-mm multiple rocket launcher BM-21) for firing in an armed conflict leads to the release of hazardous chemical substances - raw materials, semi-products of weapons, which leads to an excess of their concentration in the atmosphere to a level which may be equivalent to the use of chemical weapons.

Disasters of special danger usually occur as a result of ecological wars (or as a consequence of military conflicts with ecological consequences), and terrorist acts with ecological consequences (ecological terrorism). Even the limited use of special means or military equipment against environmentally dangerous technical facilities or components of the biosphere can lead to the inevitable destruction of the environment over a large area.

It should be noted that the appearance in the Criminal Code of Ukraine of a special chapter providing for criminal responsibility for environmental crimes should be considered as an important advanced achievement of legal science in the field of improving the criminal regulation of environmental protection and strengthening criminal liability for damage caused to the natural environment.

However, theoretically, the problem of criminal responsibility for environmental crimes in Ukraine in the context of armed aggression against Ukraine has not been given enough attention, despite the crisis state of the environment in the country during martial law. Criminal protection of the environment in Ukraine is characterized by the extreme imperfection of criminal legal norms, gaps in criminal legislation, and soft sanctions for illegal actions in the environmental sphere.

This is reflected in the fact that the Criminal Code of Ukraine uses the model of an indirect way of protection for environmental elements, based on the fact that the criminal protection is primarily subject to the ownership of environmental objects, rather than the objects themselves directly.

It can be concluded that the environmental offense in the context of armed aggression against Ukraine is a guilty and socially dangerous act or omission enshrined in the criminal law that encroaches on the environmental order and safety of the population and territories of natural resource use in Ukraine, and consists in direct illegal use or impact on natural objects that serve as the public property of the Ukrainian people (Denysyuk *et al.,* 2021).

Regarding the definition of the object and objective aspect of environmental crime in the legislation of Ukraine, the latter allows stating that as the object of environmental crimes in the criminal law acts the totality of social relations, ensuring the protection of the natural environment and environmental safety of society, and the list of direct criminal offenses and objects of environmental crimes can include the environment in general and its individual components. The determining specificity of the objective side of environmental crimes, as well as the way of committing an environmental crime, is an increase in the degree of public danger of this group of criminal acts.

Latency of environmental crime due to the objective aspect of the act is a complex problem, its solution requires the efforts of not only law enforcement, but also the legislative bodies of Ukraine.

4. Discussion

Human societies are fundamentally linked to global environmental systems and are transforming ecological conditions in dramatic ways, such that the current epoch has been termed the Anthropocene (Lengefeld, 2020). The environmental damage or pollution also threatens the rights of future generations to enjoy a clean and healthy environment as an impact of the principle of ubiquity (Ali, 2020). Ecology has a direct, though not the main, influence on the development of forms and methods of armed struggle, and on the nature of warfare.

Active influence on natural processes makes it possible to create simple and economically destructive means that produce results that leave other weapons of mass destruction far behind. Environmentally destructive practices continue to disproportionately affect the poor and disenfranchised as well as more-than-human spaces and lives (Forsyth *et al.*, 2021).

In addition, natural conditions can be influenced remotely, at a considerable distance from the place at which the "strike" is directed, which creates favorable opportunities for covert warfare. Unlike traditional crimes, environmental crimes (and environmental harms) frequently have long-lasting and irreversible effects (Nurse, 2020). It is for this reason that many of the world's democracies have criminalized violations of environmental law in their legislation.

Over the past four decades, criminal, as opposed to civil or administrative, prosecutions have assumed an increasingly visible role in US environmental law enforcement (Johnson *et al.*, 2020). At the same time, as practice shows, critics of existing systems of justice and regulation have long pointed to the failures of these systems to protect the environment, prevent environmental crimes, and prosecute environmental offenders (White, 2018).

The peculiarity of the institute of environmental norms of criminal law should be defined as its complexity since the system of legal responsibility includes not only criminal but also administrative, land, forest, water, and environmental law norms. At the present stage, the criminal law to combat environmental crimes has undergone significant changes, especially taking into account the ongoing armed aggression against Ukraine.

In society and at the legislative level there should be a different approach to the legal assessment of environmental crimes. Environmental crime refers to the violation of laws intended to protect the environment and human health (Dagras, 2021). Priority should be given not to economic interests concerning material damage caused as a result of armed aggression against Ukraine, but to the restoration and protection of the environmental interests of the Ukrainian people, conditions that are favorable for human life and health.

In environmental protection it is important to implement the following basic principles: ensuring an environmentally safe environment, the formation of a human ecological worldview, and the priority of environmental safety requirements in all areas of the national economy, which is ahead of the nature of environmental protection measures, the greening of material production, the mandatory environmental expertise, the combination of incentives and responsibilities in environmental protection, etc.

Environmental Protection Agencies (EPAs) have been involved in citizen science initiatives for decades, engaging with citizens to protect and restore our environment (Rubio-Iglesias *et al.*, 2020).

The world community has long been aware of the fact that the environment and its components are the common heritage of mankind. All state management in the industrialized world faces social demands to combat problems of environmental pollution and degradation (Steinebach, 2019).

Environmental protection and rational use of its resources is an important problem of our time, in the solution of which the main conditions are trust and mutual understanding between states, conducting a unified environmental policy in their territory, and, most importantly, the development of environmental legislation.

Inter-state legal responsibility takes into account the legal consequences for the subject of international law, who has violated its and international obligations, including in the field of regulation of environmental relations, which include, among other conditions, the duty of the violating state to compensate the damage caused to other subjects of international law, and in some cases to their natural and legal persons.

Issues of international legal responsibility are reflected in the UN Charter, the UN Convention on the Law of the Sea, and other documents. Currently, there are more than 200 bilateral and multilateral treaties in the field of environmental protection. The current (once) international law of state responsibility is shaped by the International Law Commission's Articles on the Responsibility of States for internationally wrongful acts, generally endorsed in state and judicial practice as consonant with custom (Paparinskis, 2020).

In 2020, the Stop Ecocide campaign convened a panel of experts, tasked with drafting a definition of ecocide capable of being incorporated into the International Criminal Court's mandate (Doran *et al.*, 2021). Only through the joint efforts of the global community can we overcome the consequences of environmental violations. Examples are open knowledge-sharing platforms, joint procurement of recycled materials, technical standards on the environmental performance of products or processes, and many others (De Stefano, 2020).

In the long human society, people's awareness of environmental protection has experienced from scratch, distinguished process (Tan *et al.*, 2018). The consequences of environmental crimes are especially noticeable during wars. The consequences of military conflicts on the environment can be obvious: the destruction of industrial facilities, environmental warfare, and indirectly. "Widespread environmental" can be defined as the war that took place in Vietnam. A variety of chemicals were used in the war. Forests and crops were destroyed by napalm over a huge area. Herbicides and defoliants destroyed vegetation on 360 thousand hectares of cultivated land and affected more than 40% of the areas under crops.

The Vietnam War resulted in large areas of increased soil erosion and acidity, and some plant species and useful microorganisms living in the soil disappeared without a trace. Only 18 out of 150 bird species survived, amphibians and insects were almost completely destroyed, and many species of fish in the rivers. Vietnam was a union of predicament, reflection, and conflict (Nixon, 2018). These are the ecological consequences of this war.

The Iraqi war against Kuwait in 1990-to to 1991 also had grave environmental consequences, even though there was no deliberate use of environmental weapons in this armed conflict. The ecological consequences were lakes of oil, sites of extinguished fires, bird corpses on the coast, and yellowed mango thickets adorning the coastal tropical zone. Scientists note that the clouds of smoke and soot that swept over southern Asia may have affected the rainy seasons and significantly reduced harvests.

The latter circumstance is a sign of environmental warfare. Through an examination of the practice of the UNCC, the overarching purpose of this paper is to draw attention to some problematic dimensions of the compensation regime for the environmental impact of the 1990–91 Gulf War, and thus raise questions on its capacity to influence future responses to environmental damage in the context of contemporary armed conflicts (Cusato, 2018). It should also be noted that military conflicts lead to a decrease in population in a particular region, which cannot but affect the environment.

Environmental criminal law provides for measures targeting the most serious environmental offenses and improving the enforceability of environmental provisions (Solodov and Zębek, 2020). Consequences of violations of environmental law in the context of armed aggression against Ukraine are difficult to predict, but it is possible to provide for responsibility for them, in particular criminal responsibility.

Thus, Section VIII of the Criminal Code of Ukraine provides the basis of criminal liability for environmental violations, which specifies the main points of combating crimes against the environment and lists the most

dangerous criminal offenses in the field of environmental security (Criminal Code of Ukraine, 2001).

As to the violations of environmental law in the context of armed aggression against Ukraine, in accordance with this section of the Criminal Code, they are: violations of the rules of environmental security, pollution or damage of land, pollution of atmospheric air, destruction or damage to objects of the flora (Criminal Code of Ukraine, 2001). Article 68 of the Law of Ukraine "On Environmental Protection" points out that violation of Ukrainian legislation on environmental protection leads to disciplinary, administrative, civil, and criminal liability (Law of Ukraine on Environmental Protection, 1991).

It should also be noted that in the Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice on cases of crimes and other offenses against the environment" the generic object is defined as "the constitutionally guaranteed right of citizens to a safe environment, as well as public relations in the sphere of protection and reproduction of the natural environment, rational use of natural resources, ensuring environmental safety of human life" (Resolution of the Plenum of the Supreme Court of Ukraine, 2010).

Due to globalization and advanced technology, negative environmental consequences resulting from industrial and commercial operations worldwide (Al Agba, 2018). The current ecological situation in Ukraine has extremely negative parameters (Ladychenko *et al.*, 2019). Ukraine is characterized by a high concentration of industrial potential, the basis of which is the coal mining, metallurgical, chemical, agricultural industry, machine-building, and energy.

Over a long period of operation of these facilities, a large amount of industrial waste with a high content of toxic and poisonous substances has accumulated and stored in dumps, sumps, and tailings dumps. Combined with the high population density and developed infrastructure, these factors create additional risks for Ukraine regarding violations of environmental law on its territory during an armed conflict.

In the context of armed aggression against Ukraine, the issue of nuclear safety is relevant for our country. The definition of "nuclear safety" is contained in Article 1 of the Law of Ukraine "On Nuclear Energy Use and Radiation Safety" as compliance with norms, rules, standards, and conditions of nuclear materials use ensuring radiation safety, as well as compliance with acceptable limits of radiation impact on personnel, population and natural environment established by safety norms, rules and standards (Law of Ukraine on Nuclear Energy Use and Radiation Safety, 1995).

According to Article 3 of the Law of Ukraine On Nuclear Energy Use and Radiation Safety, one of the main tasks of nuclear legislation is to define the basic principles of radiation protection of people and the natural environment, and one of the basic functions of the state administration body in the field of nuclear energy use and radiation safety (Law of Ukraine On Nuclear Energy Use and Radiation Safety, 1995) is to implement the Nationwide Targeted Environmental Program for Radioactive Waste Management (Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030, 2019).

The countries, in which the technology of active influence on the environment for military purposes is sufficiently developed, can carry out a policy of "ecological blackmail" against the states that do not develop such technologies, and also do not create funds for control and counteraction to environmental violations. An example of such blackmail is the aggression against Ukraine, namely the seizure of the Chornobyl nuclear power plant and threats to use nuclear and chemical weapons on the territory of our state.

From its very beginnings, transnational law has engaged with the categories of 'global', 'local', and 'territory'— the very concepts which are challenged by Anthropocene realities (Webster and Mai, 2020). There are many ways to count green crimes at the local, national, and international levels (Lynch, 2019).

Environmental crimes in the context of armed aggression against Ukraine, exist on three levels, in particular, in our opinion, are: cruel treatment of animals, destruction of historical and cultural monuments - environmental crimes against public health and public morals (national, local level)), violation of safety rules at nuclear energy facilities and at explosive facilities - environmental crimes against public safety (international level), ecocide - environmental crime Only a small number of the cited examples allow us to assert the global nature of the danger of environmental crimes committed in the context of armed aggression against Ukraine since they involve significant harm to human life and health and the environment.

It is obvious that in today's world there are already ways of activities affecting the environment with a military purpose, and that the consequences of any armed conflict are the commission of environmental offenses. Such methods are, for example, destruction of the ozone layer, scattering and formation of clouds and clouds, initiation of earthquakes, creation of tidal waves, like tsunamis, influence on tropical cyclones, and use of atmospheric currents to transfer radioactive and other substances.

As an example, blackmail of one state against another during an armed conflict regarding the possibility to use nuclear weapons or the threat to destroy a nuclear power plant, as is the case in the context of

armed aggression against Ukraine. The Nuclear Treaty underlies grave implications for an environment that may ensue from the use or testing of nuclear weapons or other nuclear explosive devices (Upadlahyay, 2017).

It is clear that each of these methods poses a danger not only to the participants of the armed conflict, but also to other states, so it is important to make appropriate changes to the Criminal Code of Ukraine with criminal liability for these threats or use of nuclear weapons.

The national natural resources of Ukraine need special criminal law protection. Thirty years of human rights refer to a set of generations that directly or indirectly affects all human beings and future generations (Beigi, 2019). Accordingly, the environmental damage caused by violations of environmental law due to armed aggression against Ukraine remains an important issue in the development of questions of responsibility in the field of environmental protection in Ukraine.

Restorative justice is a process whereby all the parties with a stake in a particular offense come to voluntarily to collectively resolve how to deal with the aftermath of the offense and its implications for the future (Wijdekop, 2019; (Babanina *et al*., 2021) Legislating criminal liability for environmental offenses in the context of armed aggression against our state in domestic law is necessary. In summary, it is clear that the nation has reached a point at which decisions about the way forward in environmental protection need to be made (Olden, 2018).

Conclusions

Based on our research, we can conclude that the main violations of environmental law in the context of armed aggression against Ukraine are:

1. Purposeful technogenic influence by “non-military” means on certain areas of the biosphere, which will inevitably cause natural disasters on the territory of our state in the future, weather and climate changes, ozone holes, destruction of ecosystems, violation of mental and physical health of the population of Ukraine.
2. Purposeful influence on the natural environment to create unfavorable conditions for human life: the destruction of the environment, the enemy, equipment, and weapons, undermining the economic potential of Ukraine, and psychological and physical pressure on the enemy.
3. Causing harm to the enemy by affecting his environment: pollution or contamination of air, water, soil, destruction of flora and fauna.

Violations of environmental law in the context of armed aggression

against Ukraine can be considered as a set of actions, or measures taken by the enemy over a long period, with a certain intensity of armed conflict, the parties to which as the main (or primary) means use destruction (significant destruction) of the environment, the consequence of which may be an environmental disaster.

Analysis of criminal legislation indicates that, firstly, there are still legal gaps in the regulation of the studied public relations, which requires early elimination. Secondly, at the moment, crimes in the field of nature protection in the context of armed aggression against Ukraine, although they do not represent an increased public danger, environmental damage is much more serious than property damage since its consequences are inevitable.

The above indicates the relevance, importance, and timeliness of the chosen topic of the study on the nature of environmental crimes, causes, and conditions of their commission, as well as the need to develop a system of preventive measures in the area under study.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 671-692
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Civil Society Transformation in the Context of Political Radicalism in Eastern Europe

DOI: https://doi.org/10.46398/cuestpol.4073.38

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Abstract

The article studies the current changes taking place in the civil society sector of Eastern European countries under the impact of intensifying radical action on the political environment. One of the key areas of progress of modern states is a further development of democratic values, which depends largely on the activity of the civil society sector. In this regard, the aim of the study was to examine the main problems and areas of change in the development of the civil society sector during the period of intensification of political radicalism in some Eastern European democracies. Methodologically, they used the empirical results of a survey of citizens of Eastern European countries to determine areas of development and key issues of civil society. In conclusion, a comparative analysis of the level of development of the civil sector and the degree of radicalization in Eastern European countries revealed the correlation between the development of civil society and radical policy frameworks.

Keywords: civil society; political activity; democracy; political radicalism; extremism in Eastern Europe.

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Recibido el 03/04/2022 Aceptado el 15/05/2022

Transformación de la sociedad civil en el contexto del radicalismo político en Europa del Este

Resumen

El artículo estudia los cambios actuales que se están produciendo en el sector de la sociedad civil de los países de Europa del Este bajo el impacto de la intensificación de la acción radical en el entorno político. Una de las áreas clave del progreso de los estados modernos es un mayor desarrollo de los valores democráticos, que depende en gran medida de la actividad del sector de la sociedad civil. En este sentido, el objetivo del estudio fue examinar los principales problemas y áreas de cambios en el desarrollo del sector de la sociedad civil durante el período de intensificación del radicalismo político en algunas democracias de Europa del Este. Metodológicamente se utilizaron los resultados empíricos de una encuesta a ciudadanos de países de Europa del Este para determinar las áreas de desarrollo y los temas clave de la sociedad civil. En conclusión, un análisis comparativo del nivel de desarrollo del sector civil y el grado de radicalización en los países de Europa del Este reveló la correlación entre el desarrollo de la sociedad civil y los marcos políticos radicales.

Palabras clave: sociedad civil; actividad política; democracia; radicalismo político; extremismo en Europa del este.

Introduction

The countries of Eastern Europe, which have been moving towards democratic values for several decades, are characterized by a noticeable expansion of the radical political environment. The impact of political centrism is weakening, with extremist rhetoric spreading in both right-wing and left-wing ideological lines, thus giving rise to authoritarian and populist approaches to achieving their own goals. There is no doubt that the latter is a matter of concern, as migration-, security- and terrorism-related issues are acute for the European Community.

The role of radicals in public preferences was intensified by broad participation of radical parties, their electoral support, as well as influence on government institutions. Besides, some political frustration with "classical" policy aggravates the need for radical action by different political parties. This is the reason for calls for anti-globalization, dissatisfaction with existing elites, opposition to EU immigration policy. Radicalism is inflated by socio-economic crises, a sharp decline in living standards, totalitarian political regimes, and a ban on pluralism.

Radicalism manifests itself as an extremist and uncompromising propaganda of one's own beliefs, preferences, views, concepts intended for decisive radical changes of existing public institutions. Political radical actions are manifested through the provocation of riots, terrorist acts and other violent actions. Radical representatives of political movements are incited to reject any compromises, negotiations, agreements. The main reason for right-wing radicalism is thrive to completely change the existing system in order to restore the traditional regime. Left-wing radicals support changes and further establishing a fundamentally new order.

In such a situation, civil society, which is actively involved in addressing global, regional and national issues, cannot stay aside. Civil society is required to make appropriate internal and external changes because of the use of authoritarian, xenophobic and other negative sentiments by radical parties with the purpose of enhancing representation in government. These transformations are aimed at protecting basic democratic values, including human rights and freedoms, gender equality, protection of vulnerable groups, and so on based on interaction with local communities and the electorate through collective action.

Radical left-wing parties aggravate the contradictions between the market peculiarities of economic development and public administration, supporting the expansion of social security and advocating for the rights of employed citizens (Kutiyski *et al.,* 2021). Political radicalism relies on a low level of confidence and a negative attitude towards national and European policies. The intensified Euroscepticism is also the result of radical parties' preferences.

Radical political models are significantly different from existing fundamental norms and values that exist in the political, legal and social systems. Determining the values and goals of ideology, which involves violent actions to achieve them in radical cases, remains the key issue. Anti-democracy, authoritarianism and nationalism can be defined the properties of radicalism, while xenophobia, populism and racism are peculiar for the manifestations of the concept (Carter, 2018). There is an opinion that the extremist parties set the agenda, while the centrist parties accept the most important issues on this basis. This role of radical ideology is even stronger in Eastern Europe, because socio-cultural problems are more pressing in post-communist societies (Heinisch *et al.*, 2021).

In essence, civil society is disposed to support democratic values, understanding the importance of social reconciliation, establishing security in society, a tolerant attitude to different cultures, religions and nationalities. The participation of civil society organizations in the political and social spheres is becoming paramount against the background of radical ideology in the Eastern European countries, which have a totalitarian history.

In view of the urgency of the selected subject matter, the aim of this study is to analyse the existing needs and ways of transforming civil society in the context of political radicalism as a phenomenon in modern democratic Eastern European countries. The aim involved the following objectives:

- Study the current problems of civil society in the context of a European democracy.
- Identify key needs for civil society development.
- Analyse the state of activity and the level of development of the civil sector.
- Study the degree of radicalization in the selected countries and the danger it poses to society
- Suggest ways for developing civil society towards deterring radicalization in Eastern European countries.

1. Literature review

The Covid-19 pandemic has aggravated threats to society related to compliance with the foundations of liberalism and liberal democracy. The crisis reveals the fragility of national constitutions, a contradictory understanding of the rule of law and democracy, thus foregrounding the crucial role of civil society. The public sector must evaluate the actions of the elite, directing social discontent into the public sphere and requiring civic participation.

The illiberal policies of governments in the last decade call these regulatory conceptions of directed development into question. Some active political actors in EU Member States such as Bulgaria, Hungary and Poland are inclined to consider that the civil society participation and oversight of democratic transformation are not necessary. Illiberal ideas (isolationist restrictions, the dominance of individual nations and the alienation of minorities) emerge in contrast to liberal-democratic values (respect for civil society, tolerance). Various legal measures, targeted controls, and indirect transfers of public funding seriously undermine the existence of civil society organizations (CSOs) in Eastern European countries (Wessenauer and Hunyadi, 2016; Human Rights First, 2017). The rejection of civil society is not, however, new in European history.

The concept of civil society has travelled a long and difficult path along with various crises of the liberal narrative. Governments of both the Western and the Eastern countries have tried to ignore the demands of transparency and civil rights, either to strengthen oligarchy without hindrance or to fight terrorism effectively. Civil society research requires more systemic,

cross-sectoral, comparative and transnational views with regard to new challenges caused by illiberal pressures. On the example of the countries of Eastern Europe, this question shows how integrated approaches contribute to the development of modern civil society practices under the influence of both the state and radical politics (Marzec and Neubacher, 2020).

Radicalization that leads to violence can take different forms depending on the context and time period, and can be based on different ideologies. Right-wing extremism is a form of radicalization associated with fascism, racism and ultranationalism. This form of radicalization is characterized by the violent protection of racial, ethnic or pseudo-national identity, and is associated with radical hostility to government, minorities, immigrants and / or left-wing political groups. Left-wing extremism is a form of radicalization that focuses primarily on anti-capitalist demands and calls for the transformation of political systems, that are considered responsible for creating social inequality. This policy may ultimately use violence to meet its own needs (CPRMV, 2022).

In a liberal-democratic regime, radical positions on both sides of the political spectrum combine ideological radicalism with a discourse that contrasts certain social strata against a wide range of political elites (Adams *et al.*, 2006). But ideological views that were once considered marginal or extreme are becoming more widespread, as former marginalized parties may become parliamentary (Polyakova and Shekhovtsov, 2016).

Minkenberg (2015) maintains that traditional and new splits do not structure party competition in a stable way, except for ethnic split. The role of collective identities has been central to understanding party competition in Eastern European countries, and has been the subject of research that analysed transitional events in post-communist countries (Gyárfášová and Mesežnikov, 2015). Sociocultural sources of political controversy still include historical insults and national traumas (Minkenberg, 2015). The delayed European integration has also promoted the emergence of right-wing radical parties, as the major political parties had to protect strict membership conditions imposed on countries joining the Community (Harmsen, 2010). The newly established, mostly right-wing radical parties, began to bridge a Eurosceptic anti-reformist gap.

The diversity of Eastern European countries in terms of ethnic heterogeneity, economic activity and cultural heritage is reflected in Eastern European radical parties. Ethnicity and language strengthen radical policies in some countries (Bulgaria, Estonia, Slovakia, Romania, Latvia). More ethnically homogeneous countries (Poland, Czech Republic) have radical politics focused on anti-Roma rhetoric, as well as on social and religious issues. Despite new forms of radicalism in Eastern Europe, liberal democracy is incompatible with the concept of societies where the titular majority play the only role.

Democracy empowered minorities and politicized the protection of minority rights. In some cases, there was an immediate negative response to diversity and inclusiveness, reflecting the emergence and growth of post-authoritarian policies. After the problems with the establishment of major electoral institutions passed, dissatisfaction with the opportunities offered to minorities with the new liberal-democratic order led to the counter-mobilization of radicals (Buštíková, 2018).

Radical parties in Eastern European countries have unique features that distinguish them from Western European partners (Ronald and Norris, 2016; Mudde, 2016): left-wing positions in the economy, the relationship between identity and political reforms, which leads to the association of minority politics with democratization, the coexistence of radical parties with radicalized major parties.

As opposed to other parties in some political systems, Eastern European radical right-wing parties tend to have left-wing rhetoric about economic policy (Allen, 2017). Their political platforms are protection against market instability, increasing social spending and intensified government control in the economic sphere, which excludes foreign participation in free markets and property ownership. Economic and other socio-demographic features are not reflected on the parties' economic policy platforms.

The reason is the nature of economic risk, which involves a relationship between voting, income levels and occupations; identity-related economic problems (loss of national identity, perceived injustice of the economic system). Changes in the hierarchy of ethnic groups through democratic processes also weaken economic considerations based on ethnic peculiarities of economic issues (Siroky and Cuffe, 2015).

Political radicalism is a set of diverse phenomena that have a common protest and a radical demand for profound changes in society. These are the condemnation of the established social order and the economic, cultural and political elites that support it, the rejection of the institutions underlying the current political system, the belief that social and political structures must be radically transformed (Muxel, 2020).

The culture of political protest has become more generalized, legitimized and more demanding. In this context, the potential for radicalism or greater familiarity with its range of views and actions, especially among the younger generations, has expanded significantly (Muxel, 2019). Significant changes in citizens' political practices are becoming increasingly apparent — from protests in polling stations to radicalism in the streets. Collective forms of mobilization are becoming diverse (flash mobs, online gatherings, boycotts) (Isin and Nielsen, 2008), and are creating a civic vision that includes a radical dimension of what political activity means. In this complex environment, civil society must form a vision for the further development

of the European Union and other political institutions that will promote gradual deradicalization of political and social activities.

2. Methods

1. The research procedure provided several stages. The first stage involved an analysis of the needs and directions of civil sector development in some Eastern European countries in order to identify key trends and issues of civil society. The second stage provided for identification of the main indicators that describe the activity of civil society and the degree of radicalization of society. The final stage involved data processing and drawing the main conclusions. The methods of graphical analysis, scatter plots, comparative analysis and evaluation were used.

The following Eastern European countries were proposed to be used as a sample: Poland (Pl), Czech Republic (CZ), Bulgaria (BG), Slovakia (SK), Croatia (HR), Slovenia (SK), Romania (RO), Lithuania (LT), Latvia (LV), Estonia (EE), which can sufficiently reflect the main problems and trends in compliance with the aim, based on the existing available data.

Empirical materials of the 2019 European Union survey from which data for the selected countries were singled out were used as empirical tools. A graphical analysis of the obtained data was conducted based on the survey results (directions of EU development, importance of the electorate's votes, importance of development of political spheres, areas of activity of civil society organizations). The relationship between the importance of the vote in the EU and the degree of favour to the EU allowed grouping the selected countries according to national trends.

The study of civil society development indicators in the context of radical political influences in Eastern European countries in 2020 involved several indicators. The number of civil society organizations, the Democracy Index and the CSOSI (Civil Society Organization Sustainability Index) were taken as the basis of civil society development indicators. The number of radical parties in the country and the Terrorism Index were used as indicators of radicalization in Eastern Europe. The use of the Global Terrorism Index (GTI) allowed to identify the level of terrorist threat in Eastern Europe, which may indicate the degree of radicalization of the country. A comparison of the selected countries was made based on the data obtained, and the key directions of changes in the civil society sector under the influence of the radicalization of the political environment in Eastern Europe were identified.

3. Results

More than a decade after the economic and financial crisis of 2008, the European Union has started to move in a positive direction from an economic point of view. Since the 2019 European elections, the positive attitude and support of the EU citizens has remained strong. The level of optimism about the future of the European Union is improving, as is the general sense of satisfaction with democratic changes in Europe. At the same time, most Europeans are also firmly convinced that human rights, freedom of speech and gender equality shall be further maintained. Fewer respondents express the opinion that the EU is on the right track in relation to the proportion of people who believe that things in the EU are going wrong during 2011-2019 (Figure 1).

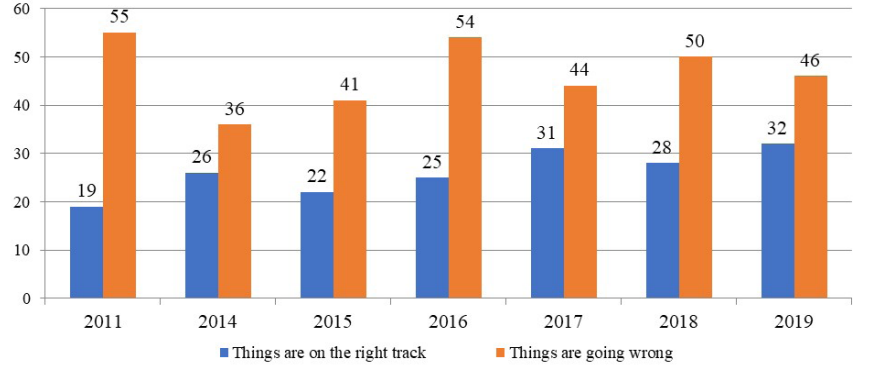

Figure 1. Respondents' perception of the appropriateness of EU development directions, %.

At the same time, the 2019 European elections and the active participation of citizens in the latter had a positive impact on the increased satisfaction with democratic development in the European Union. Respondents rated free and fair elections (75%), freedom of speech (74%), and respect for fundamental rights (73%), with clear improvements in the fight against disinformation in the media (48%) and anti-corruption (43%). There were 52% of Europeans who approved democratic changes in the European Union, and 56% share this view regarding their own country. Poland shows the highest level of satisfaction (73%), Romania — 34%, Croatia — 33%. It is also worth noting that in some countries, the overall degree of satisfaction with European democracy is higher than satisfaction with national democracy. These differences are particularly noticeable

in Croatia, Latvia, Lithuania, Bulgaria, Poland and Romania. As regards national changes, Poland and the Czech Republic have shown the highest increase in support for EU democracy since spring 2019 (+13 pp, +11 pp, respectively) (Schulmeister *et al*., 2019).

A scatter plot (Figure 2) provides some national examples of public opinion trends. For example, the general feeling that the vote is important in the EU is quite strong in Croatia and Slovakia (upper left quadrant), while the level of support to EU membership in the same countries remains relatively low. For comparison, the lower right quadrant includes those countries where overall positive views of the EU are not reflected in the same positive perceptions of citizens that their voice matters in Europe.

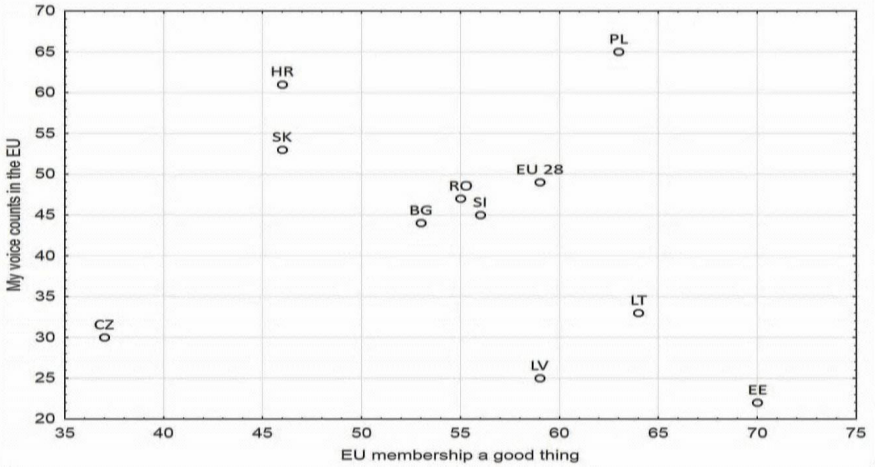

Figure 2. Correlation between the importance of the vote in the EU and the level of support to the EU.

The perception of the importance of the vote is influenced by additional factors, which are formed by national socio-political contexts. There is a vision of the importance of the vote in one's own country rather than in the EU. The only exception is Romania, where 47% of respondents believe that their vote counts in the EU, and 44% share this view with regard to their country. Respondents in Estonia (22%) are the least likely to agree that their vote counts in the EU (Figure 3).

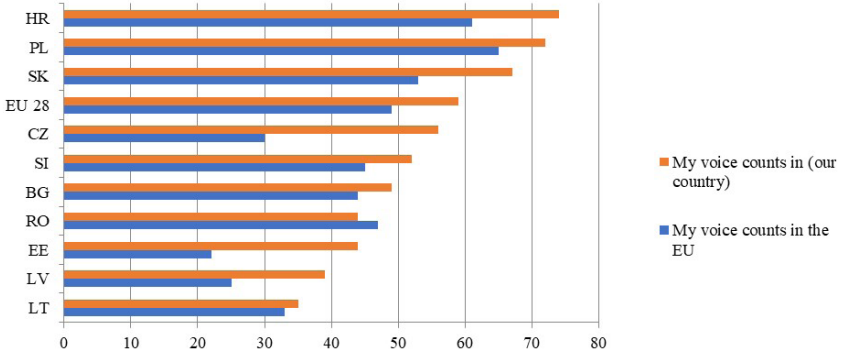

Figure 3. Perception of the importance of the electorate's vote in their own country and in the EU, %.

The ranking of priority issues for European citizens over the last year shows an increased relevance of the fight against climate change compared to the decreased importance of the migration problem (Figure 4).

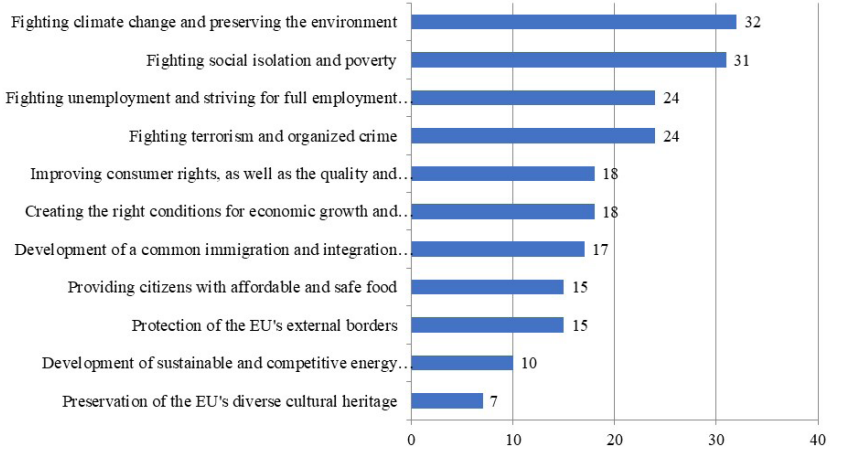

Figure 4. The importance of developing certain policy areas

In 2019, the issue of environmental protection is a predominant political priority for the future activities of the European Parliament. The fight against social exclusion and poverty ranks second (31%), the fight

against terrorism and organized crime (24%), as well as the fight against youth unemployment and the pursuit of full employment across the EU (24%). Romania (17%), Latvia (15%) and Bulgaria (14%) are the countries with the lowest level of interest in environmental protection (Schulmeister *et al.*, 2019). According to the selected Eastern European countries, the protection of human rights worldwide is the most important issue in most countries (Figure 5). Blue colour in Figure 5 shows protection of human rights around the world, green — freedom of speech, purple — solidarity between the EU and the poor countries.

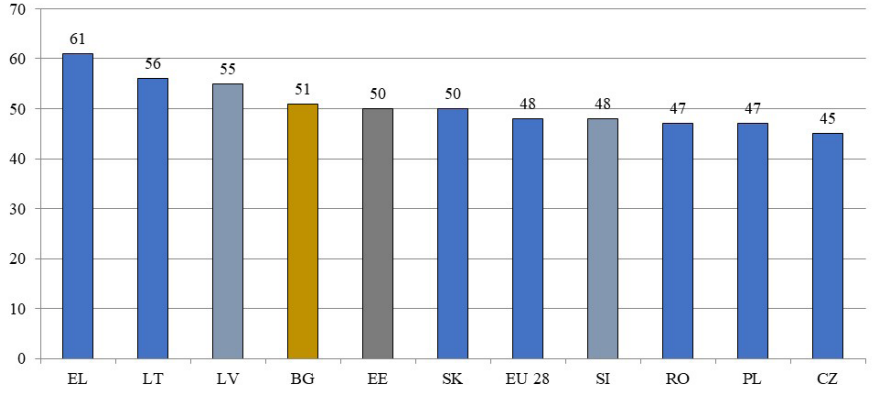

Figure 5. Determining the values to be primarily protected by the European Parliament, %.

Civil society surveys (EU, 2020) show that less than half of the population actively interacts with civil society organizations (CSOs), but CSO communication activities have a wider impact. Nearly eight out of ten talks about activities they have seen over the past two years that have influenced their behaviour. Referring to public dialogue, almost half say that there have been public communications in their field in the last 12 months, although in fact less than one in five has been involved.

Less than a quarter said they participated in public communications last year. Nearly three-quarters of those who know about public consultations in their area say it has been helpful. The main reasons are that public communications are a way to give citizens information about local politics, inform about various problems, get the results of measures taken by local authorities.

Country-specific information was obtained when asked about the degree of awareness of public organizations on issues important to them. The

highest percentage was found in Poland, the lowest — in Romania (Figure 6).

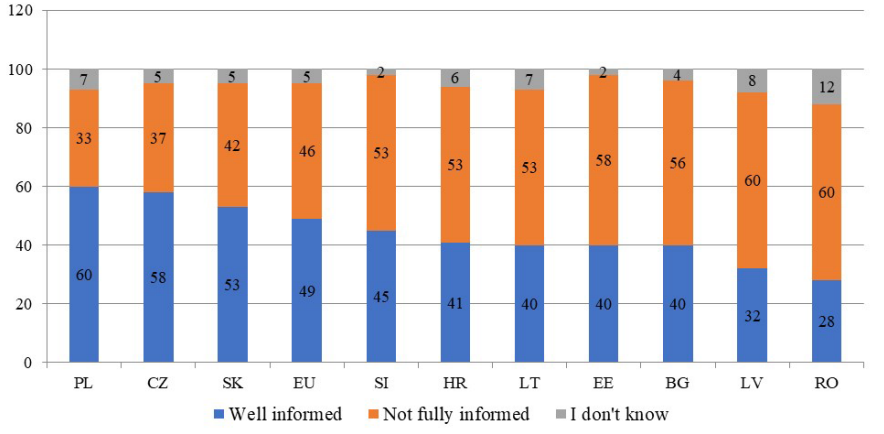

Figure 6. Awareness of public organizations about important issues for citizens, %

The range of issues of CSO activity in the selected countries formed the following priorities (Figure 7).

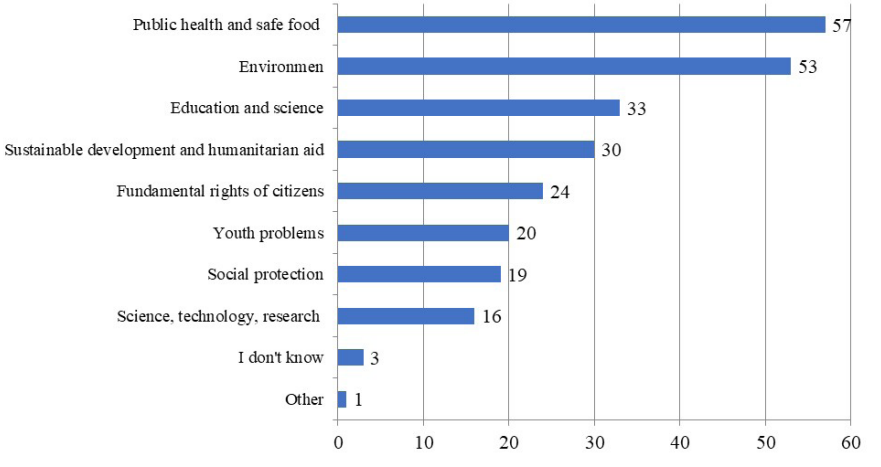

Figure 7. Priority areas of activity of civil society organizations in the EU, %.

The distribution of key CSO topics is presented in Table 1. As for other important areas, sustainable development and humanitarian aid are least frequently mentioned in Lithuania and Estonia (11%). There are countries where at least three out of ten respondents say that fundamental and civil rights should be a priority for CSOs in their country: the Czech Republic (31%) and Poland (30%). This is the opinion of 13% in Estonia and 14% in Lithuania. The share of respondents who believe that social protection should be a priority for their country's CSOs ranges from 40% in Slovenia, 36% in Latvia and 30% in Estonia to 9% in Romania (EU, 2020).

If we compare the priorities of respondents who are already involved with CSOs with those who do not cooperate with CSOs, they see the environment (59% vs. 48%), sustainable development and humanitarian aid (38% vs. 24%), or fundamental rights of citizens (27% vs. 21%) as priority areas. There were 47% of respondents who said that they cooperate with public sector organizations in their country. Donation is one the most common ways (27%). CSO donations are mentioned by 4% of respondents in Romania and 8% in Bulgaria. There were 16% of respondents who encouraged other people to cooperate with CSOs; 15% took part in demonstrations or similar events organized by CSOs; there were 15% of volunteers who regularly participated in various events of CSOs; while 14% interacted with CSOs online or on social networks; 51% said they did not cooperate with CSOs (EU, 2020).

Table 1. Priority areas for civil society organizations in their own country

	Public health and safe food, %	Environment, %	Education and science, %
Poland (PL)	59	49	25
Czech Republic (CZ)	51	53	34
Slovakia (SK)	57	58	25
EU	57	53	33
Slovenia (SI)	71	57	18
Croatia (HR)	59	44	29
Lithuania (LT)	52	48	37
Estonia (EE)	54	52	38
Bulgaria (BG)	69	48	40
Latvia (LV)	65	42	34
Romania (RO)	69	33	41

Source: EU, 2020.

There were 5% of respondents in Estonia who said they actively encourage others to participate in CSOs. The share of respondents who took part in demonstrations or similar events organized by CSOs ranges from 20% in the Czech Republic and 18% in Poland to 4% in Hungary and 5% in Romania and Estonia. Respondents in Slovenia (19%) say they regularly volunteer for CSOs, while this figure is only 3% in Romania. There were 5% of respondents in Romania and Hungary who said that they cooperate with CSOs mainly online or on social media (EU, 2020).

A comprehensive study of the state of civil society organizations in Eastern European countries, it will be appropriate to determine the number of NGOs, their opportunities for existence and development, the general state of the environment conducive to democratic values, and radical environment, provided the following results (Table 2). Considering the data in Table 2, it can be noted that the largest number of civil society organizations in relation to the population of the country is established in Estonia, Lithuania, Latvia and Slovenia. This indicates a certain civic activity. Bulgaria, Poland and Romania showed the lowest results.

Table 2. Indicators of civil society development in the context of radical political influences in Eastern Europe, 2020.

	Number of CSOs	Population (million people)	CSO Sustainability Index	Democracy Index Freedom House/The Economist Intelligence Unit	Number of radical parties	Terrorism Index
Poland	143,000	38.19	2.9	4.93/6.85	5	0.239
Czech Republic	135,465	10.7	2.6	5.64/7.67	6	0.315
Bulgaria	20,000	6.91	3.5	4.54/6.71	2	0.172
Slovakia	59,844	5.44	3.0	5.29/6.97	3	0.029
Croatia	38,980	4.21	3.4	4.25/6.50	2	0
Slovenia	27,986	2.1	3.0	5.93/7.54	1	0
Romania	117,510	21.23	3.7	4.43/6.40	3	0
Lithuania	40,500	2.71	2.5	5.64/7.13	4	0.229
Latvia	24,849	1.86	2.6	5.79/7.24	2	0.115
Estonia	22,574	1.22	2.1	6.07/7.84	1	0.057

Source: Composed on the basis of (USAID, 2021; Freedom House, 2020; EI, 2021; Bustikova, 2019; Nordsieck, 2020; Parties and Elections in Europe, 2021; Institute for Economics & Peace, 2021).

The CSOSI reports on the state of civil society sectors. It addresses: legal environment, organizational capacity, financial viability, advocacy, service delivery, infrastructure and public image. Estimates for each area range from 1 (highest level of sustainability) to 7 (highest barriers) (USAID, 2021). According to this assessment, Estonia (2.1), Lithuania, Latvia and the Czech Republic had the highest rates among the selected countries, while Romania (3.7), Bulgaria and Croatia had the lowest rates.

For greater objectivity, the Democracy Index was further determined by data provided by international institutions (Freedom House and The Economist Intelligence Unit). Accordingly, the development of a democratic environment is observed in Estonia (6.07 / 7.84), Slovenia, the Czech Republic. The group of countries with the lowest indicators of the Democracy Index included Croatia (4.25/6.5), Romania, Bulgaria.

The largest number of radical parties is registered in the Czech Republic (6), Poland and Lithuania, while Slovenia and Estonia have the lowest results (1 each). According to the Terrorism Index, the highest risks are identified in the Czech Republic (0.315), Poland and Lithuania. The rate of terrorist threat in Croatia, Slovenia and Romania is 0 according to own methodology.

4. Discussion

The study expands the analysis of the changes that have taken place in the civil society system, given the significant influence of the ideology of political programmes of radical major parties in Eastern European countries. The question arises: is the impact of the development of democratic institutions on the agenda of radical parties noticeable.

Unfortunately, the study did not include all Eastern European countries, given the full set of data, but the available range of countries showed different levels of civil society development and features of a radical political environment. This allowed to obtain representative results. Regarding the general methodological approach, the number of indicators describing the level of development of the civil sector and political radicalization should be expanded.

Theories that describe democracy emphasize the importance of an active civil society and citizen participation in order for democratic norms to work. But the emergence of radical parties proves that a weak civil society reinforces anti-democratic extremism and leads to the success of undemocratic forces (Buzogány, 2021). The study confirms the findings (Berning and Ziller, 2017), which show that high-level social trust reduces the benefits of radical parties in the Netherlands. At the same time,

comparative studies of voting in Western Europe have found no clear evidence that participation in NGOs will reduce the share of votes of radical political parties (Rydgren, 2009).

In case of change of the liberal-democratic government in Eastern Europe, a large radicalized main party that could make a difference in the country's political space could be a probable initiator. The question is the role of the right-wing radical party in these changes based on the development of topical issues and ideas or, conversely, blocking the democratic departure, based on an alternative channel for protest. Most studies in Eastern Europe considered right-wing parties as the Western equivalent of the radical movement. But such an approach is considered insufficiently justified, if right-wing radical parties contribute to the dismantling of democratic rule by undermining constitutional systems of checks and balances (Buštíková, 2018).

Therefore, the analysis of surveys of citizens on problematic issues in Eastern European countries revealed some pessimism about the appropriateness of the EU policies. At the same time, there is a significant commitment to freedom of speech, guarantee of fundamental human rights, and others. Satisfaction with European democracy is higher than satisfaction with national democracies. The impact of the votes in the European and national political system remains important.

Preservation of the environment is a key political priority (32%). Counter-terrorism (24%), immigration policy (17%) and the preservation of diverse cultural heritage (7%) are of much less concern. The main problem for the selected countries is the protection of human rights worldwide (except Bulgaria and Estonia). Voters are concerned about the implications of European legislation for their own country and the EU's activities at regional and local level.

Awareness of CSOs about important issues exceeds 50% in only three countries (Czech Republic, Slovakia, Poland). Health and food safety (57%), environment (53%) and education, skills and training are the main directions of CSOs. Cooperation with CSOs is realized at the level of participation in events, volunteering and donations. Cooperation also takes place online or on social networks.

A comparison of data on Eastern European countries shows some dependencies. Increased CSOSIs demonstrate that reducing barriers to the development of the civil society sector increases society's activity and allows establishing more civil society organizations and involving more people in civic activities. The indicator of the development of democratic principles in the country — the Democracy Index determined through different methodological approaches correlates with this thesis. The higher value of the index confirms the increased opportunities for the development of civil society organizations (Latvia, Lithuania, Estonia, the Czech Republic).

The degree of political radicalization in Eastern European countries is as follows. First, the countries with the largest number of radical parties (6 to 4) are identified as problematic in terms of terrorist threat (although these indices (0.315 to 0.229) are relatively low for Europe). Second, there are a small number of radical parties in those countries that have high activity of civil society organizations and high values of the Democracy Index. The exception is Lithuania, where 4 radical parties are registered.

It can be noted that despite the growing trend of radicalization in politics, voters and the civil society sector do not consider issues related to the impact of radicalism on society as one of the key issues. This follows both from the analysis of socio-political needs and from the current development of democracy in Eastern Europe. The same can be stated about the political environment, where the main problems of society are foregrounded by classical parties. An analysis of the study (Heinisch *et al.*, 2021) revealed that right-wing radical parties did not really affect the relevance of problems among major political parties, as there was no link between their policy agendas.

Studies of party behaviour in Eastern Europe revealed different reactions from major parties to their radical rivals: adaptation, partial cooperation with isolation, and a lack of noticeable response (Heinisch *et al.*, 2021). This may indicate some gaps that can be filled by civil society organizations that promote democratic values and shape social demands for further socio-economic development.

The complex relationship between the growing number of radical parties in Eastern Europe and the impact of the recent economic crisis in Europe and the change in labour relations in the region was clarified. Other studies suggest that support for radical parties is inflated by overt or covert xenophobia, low levels of trust in the national political elite, and dissatisfaction with the complexity of democratic processes (Minkenberg, 2019; Mudde, 2017).

Unfortunately, radicalization sometimes converts into terrorist acts, which is an unacceptable approach to a well-established understanding of political, legal and social activities. But judgments about radicalization can be based on processes that arise as a result of social conflicts and are marked by intergroup activities. This includes the search for identity, prejudice, ideology, antisocial attitudes and behaviour (Beelmann, 2020; Timbro authoritarian populism index, 2021).

In this case, we see that the gradual overcoming of the post-communist past, the active development of democratic values and the transformations taking place in the civil society sector allow making statements about shifting emphasis. The issues of environmental protection, public health and the economy are becoming important for the societies of Eastern

Europe. In this context, the opportunities of civil society organizations should ensure the socialization of certain segments of the population through educational programmes, grants, cultural exchanges, which will reduce immigration issues, expand the penetration of democratic values, strengthen Europeanization.

Conclusion

An important objective of civil society is to control the positions of radical forces, because their impact on the electorate, as well as their potential and real power can directly or indirectly shape modern politics. This sets out key challenges for key political players and political institutions at both national and EU level. As radical parties that have the support of a certain part of society direct their actions to certain reforms in their own country, it is important for civil society to support the pro-European position. Despite the intensified rhetoric of the right-wing parties of the European Parliament in 2019, radical political forces have their own support. Political players who implement illiberal methods weaken the democratic values of the socio-political systems of both their own country and the EU.

Political decisions that strengthen democratic achievements become the main approach to the partial deradicalization of society. Civil society is one of the elements in this model, which must communicate with voters, while solving problems caused by radical right-wing parties. The development of civic initiatives largely determines overcoming the contradictions associated with radical approaches in politics, which are the consequences of both the subjective nature of the political environment and the existing problems in the economy, culture, social protection. The study proves the correlation between the development of civil society and democratic institutions to reduce radicalism in the political environment in Eastern European countries.

This is in line with the concept of broader voter information on the EU's agenda, country's security, domestic policy, immigration, economic development and minimizing radical policies. Based on the introduction of democratic values and principles, human rights through the active functioning and state support of civil society, this approach will reformat the key issues in Eastern European countries that contribute to the spread of political radicalism. The obtained results can be used in shaping the policy of further development of civil society in countries facing radical political manifestations. Further research may provide for the search for the main factors that intensify the activity of civil society, as well as the analysis of those factors.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 693-712
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Forms of implementation of legal policy in the field of civil law

DOI: https://doi.org/10.46398/cuestpol.4073.39

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Abstract

One of the most pressing modern problems of international law is the study of the characteristics of the regulation of civil law, as well as the forms of application of legal policy in the field of civil law. The guidelines for the development of private law policy are not only related to the development of legislation and the improvement of civil law doctrine, but also to the reform of judicial approaches in the examination of civil law disputes. The aim of the study is to form a scientific understanding of legal policy in the field of civil law, taking into account its current state. The multiplicity of objectives is dictated by the search for legal tools that optimize the existing mechanism of regulation of civil law as a solid basis to guarantee the effective application and full protection of the subjective rights and legitimate interests of civil law. In carrying out the study of the subject, the traditional scientific methods of knowledge were applied in jurisprudence, whose basis is the method of materialist dialectics, which allows to provide a comprehensive analysis of the processes under study in their conditionality and historical interrelation.

Keywords: legal policy; private law; civil law; legal regulation; forms of application.

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Recibido el 12/04/2022 Aceptado el 15/06/2022

Formas de aplicación de la política jurídica en el ámbito del derecho civil

Resumen

Uno de los problemas modernos más acuciantes del derecho internacional es el estudio de las características de la regulación del derecho civil, así como de las formas de aplicación de la política jurídica en el ámbito del derecho civil. Las orientaciones para el desarrollo de la política de derecho privado no sólo están relacionadas con el desarrollo de la legislación y la mejora de la doctrina del derecho civil, sino también, con la reforma de los enfoques judiciales en el examen de los litigios de derecho civil. El objetivo del estudio es formar una comprensión científica de la política jurídica en el ámbito del derecho civil, teniendo en cuenta su estado actual. La multiplicidad de objetivos viene dictada por la búsqueda de herramientas jurídicas que optimicen el mecanismo existente de regulación del derecho civil como base sólida para garantizar la aplicación efectiva y la plena protección de los derechos subjetivos e intereses legítimos del derecho civil. En la realización del estudio del tema se aplicaron los métodos científicos de conocimiento tradicionales en la jurisprudencia, cuya base es el método de la dialéctica materialista, que permite proporcionar un análisis integral de los procesos en estudio en su condicionalidad e interrelación histórica.

Palabras clave: política jurídica; derecho privado; derecho civil; regulación jurídica; formas de aplicación.

Introduction

The political, social, and economic processes taking place in Ukraine prompt the search for a legal balance between property and other interests of various social groups, within which a balance must be found in the system of inter-branch relations of civil law and other legal branches, both private and public.

Civil law, despite the fact that it is largely stable and at the same time dynamic area of legal regulation, cannot cover all existing legal problems of private law, directly outside its scope. Accordingly, the study of forms of implementation of legal policy of Ukraine in the sphere of civil law is an urgent need both for the scientific community and for legal practitioners.

1. Development

At the present stage there is a significant increase in the volume of adopted normative legal acts, there are new legal provisions in the field of civil law, there is an active process of reforming the entire branch of civil law, taking into account the guidelines adopted in the international legal community.

Legal policy is a kind of-guarantee policy because its purpose is to structure the legal sphere, in its content serves as a civilized system of national, social, economic, and other relations. An imperfect legal policy and weak legal framework, containing gaps and contradictions in the legal acts, with unclear priorities, significantly complicates the civil turnover and hinders the development of the state.

2. Highlighting the scientific problem and setting research goals

In the modern political system, the law performs the most important task - it gives legitimacy to political decisions and, accordingly, ensures state power in general. The formation of the main directions of development in the legal sphere allows to determine its main priorities, to streamline law-making activity, i.e., to ensure the creation of an effective mechanism of legal regulation. The solution of such a problem can be achieved through the formation of legal policy, designed to balance, and streamline the legal life.

It is the above reasons that actualize the task of meaningful, systematic formation of consistent activities of state bodies to regulate relations in the field of civil law.

3. The object and subject of the study

The object of the study were public relations that develop in the field of legal policy in relation to civil law, the mechanism and practice of its implementation.

The subject of the study is the legal policy of Ukraine in the field of civil law, its objectives, priorities, principles, and forms of implementation.

4. Tasks

To achieve the goal of the study the following tasks are set:

To explore the legal nature and essence of legal policy in the field of civil law as an independent type of legal policy.

To identify the importance of legal policy in the field of civil law in the construction of the mechanism of civil legal regulation.

To analyze the system of goals, tasks, and means of implementation of the legal policy in the field of civil law.

To propose ways and measures to optimize the modern legal policy in the field of civil law.

5. Methods and materials

In addition to the above methods the formal-logical method of research was applied, which allowed to assess individual legal concepts and existing in the science judgments about legal phenomena. Reliability and theoretical and practical validity of the study are provided by the use of other techniques and methods, the choice of which is conditioned by the specific goals and objectives formulated in the article.

Normative legal base of the article consists of the Constitution of Ukraine, civil legislation, as well as other normative legal acts on the topic of research.

The main part of the works is devoted to the essence of legal policy, the subject of civil law, its functions and principles, the system of sources of civil law regulation.

When preparing the article, the theoretical basis was formed by the works of Ukrainian and foreign authors on the history and theory of law and state, in particular: Dovhert, 2019; Muzyka, 2021; Harmathy, 2021 and others.

6. Results

Although the science of law, exploring the relationship between law and politics and social and economic progress, has evolved over the past four decades, this field of study remains unfamiliar to many scholars, lawyers, and policymakers (Lee, 2019).

The legal policy of the state is developed, carried out on the basis of interaction of all actors in the political system of society, and receives a concentrated expression, including in state target programs, concepts of development, in international treaties concluded by Ukraine, in laws and other normative legal acts of Ukraine, as well as in other official documents. Civil law initiative all over the world is aimed at measuring legal certainty in different national legal systems (Genicot, 2020).

Legal and political stability is an important prerequisite for economic development. Although political stability cannot be created by laws alone, an effective legal basis for political governance, such as a constitution, can promote political stability. Political stability is not synonymous with democracy; although the freedom of a state's citizens is often considered a key component of prosperity, it has historically been observed that the promotion of democracy, while an important value, does not necessarily lead to economic development (Lee, 2020). The will of each individual is an important right; this freedom is protected by human rights (Kudeikina and Palkova, 2020).

As L.A. Muzyka notes, civil law policy is an integral part of the legal policy of the state, and accordingly - social (and public policy in general), which can play an important role in the life of every person, society, and state. Actually, such state activity should precede the practice of formation and application of civil legislation. In turn, without a scientific substantiation of civil law policy, the legislator often acts at random, "using" instinct where science could create a rigid and reliable basis (Muzyka, 2016).

In our opinion, the definition of legal policy in the field of civil law should be understood as scientifically sound, systematic, and consistent decision-making by public authorities, local governments, their officials, non-governmental institutions, and organizations in the optimization of the mechanism of civil legal regulation, as well as providing these sub-directives to act to implement these decisions.

It is obvious that legal policy is a multilevel legal formation, which includes a three-tier structure, namely - at the first level - ideas, principles, goals, objectives that constitute a certain conceptual basis of policy in a certain area of law, and their absence will destroy the process of building a system as a unity of natural connections. This level is the starting point, a certain kind of basis, the philosophy of legal policy, from which all its other components will proceed.

Regarding the second level, it includes the legal and political conditions, by which it is necessary to understand the circumstances of legal and political life that have developed in a certain period of time. Such conditions determine the trajectory of further activity and are at the same time the object of influence since any changes in the legal regulation must lead to

the establishment of the planned legal and political conditions. The level of content of legal policy is significantly influenced by the specific overall situation in the country and the existing social needs and interests.

The third level of the content of legal policy is the strategy and tactics of legal development. Legal strategy includes the issues of prospective planning and forecasting, conceptual and long-term approaches to the development of legal practice, while the tactics of legal development are the means and techniques of achieving the intended goal in the field of legal regulation. The technology of selection and justification of the need for legislative enshrining should be the basis for the formation of legal policy.

It is important to understand that a multilevel legal policy is not a mechanical merger of politics and law, because it is a creative process of applying law to solve political and managerial problems in all spheres of life. For this process to be successful, it is necessary to have a clear idea of what factors of law affect its effectiveness. These include a clear understanding of what law is, what its role in public life is, and how best to use it.

Thus, the purpose of legal policy in the civil sphere is to ensure, through consistently organized legal means a real guarantee of the possibility of exercising and protecting subjective civil rights and legitimate interests, the creation of an integral system of legal regulation.

The ongoing period of formation of new civil legislation in Ukraine entails both conceptual theoretical problems and difficulties in the creation of individual structural elements of legal structures and legal mechanisms due to objective reasons. Modern civil society as a multicomponent social formation poses to the state more and more complex policy problems that are not easy to solve.

We agree with N.O. Davydova (2021) that: the tendencies of its development as defining directions, advantages in the activities of the authorities, taking into account the norms of civil law. Highlighting trends in the development of civil policy creates favorable conditions for the implementation of its main tasks in the national and international legal field. Trends in civil policy: development of categorical and defining materials, conceptual provisions and strategic directions of civil policy:

- Providing civil policy with aspects of a scientific nature and validity, consistency and expediency.
- Development of a new civil policy based on the recognition of human and civil rights (development of principles of civil policy).
- Strengthening the rule of law in the field of civil relations.
- Development of positive decisions of civil court practice, taking into account the provisions of the judicial and legal reform; improvement of civil legislation.

- Development of a single national long-term legal civil policy of the state and determination of its main priorities.
- Openness, transparency of civil policy (communicating its provisions to citizens) modernization of the content of legislation on civil policy should become a tool for harmonizing public and private relations, unifying common goals in the areas of interaction with international allies.
- Search for new forms and methods of improving civil legislation.
- Creation of favorable conditions for the development of civilized regulation of civil law relations.
- To form a general concept of legal policy, to determine its main components, objective requirements and criteria, development trends, social orientation.
- To create a concept of civil policy in order to orient legal science and civil practice towards a common understanding and strict adherence to the basic principles of legal policy.
- A clear civil policy will contribute to the formation of a legal worldview in state and public institutions and citizens, a high level of legal culture and responsibility.

The social orientation of civil policy is the achievement of legal, social progress of the country, taking into account the world trends in the development and democratization of social relations" (Davydova *et al.*, 2021).

The study of legal policy in the field of civil law should also take into account the fact that technologies related to artificial intelligence are developing rapidly. As a consequence, artificial intelligence is used in many areas of life and increasingly affects the functioning of society (Ziemianin, 2021).

The issues of civil law and state assumed particular importance in countries where the system of planned economy was established in accordance with Marxist theory. In these countries, a central political direction prevailed, and civil law was mixed with elements of public law. After the collapse of the system, a new state, a new economic and legal system was to be created (Harmathy, 2021), and an analysis of the threats and failures of the democratization process in Eastern Europe provides important insights into the functioning of political institutions and their interaction with law (Segert, 2017).

Fundamental issues of civil law and the role of the state are of theoretical and great practical importance, and the most productive changes in civil

law are associated with consistent systemic measures of formation of mechanisms for exercising civil rights (substantive, obligatory, corporate).

When the system of norms regulates a verified sequence of actions, leading the subject to the actual receipt of a good. This is the task of any developed legal order, associated with substantial expenditures, both intellectual and material in nature, and expenditures of time.

The world economy is developing against the backdrop of global challenges that affect the functioning of the mechanisms of social reproduction. The world is currently undergoing significant global changes and transformations (Stolitnii and Makhinchuk, 2019).

The processes of European integration and the impact of globalization on the national legal system, new global challenges are the factors prompting the development of sustainable and dynamic legal policy. From the methodological point of view, it is extremely important to harmonize domestic private legal tools with international legal acts in the field of private law, among which the Sustainable Development Goals adapted for Ukraine (2015-2030), the Association Agreement between Ukraine and the EU can be highlighted.

It is obvious that the process of adaptation of Ukrainian legislation to the EU legislation cannot be rapid, there are too many questions about the essential impossibility of the latter in some sectors of Ukrainian legislation due to the inconsistency of many of its norms and institutions with the relevant components of EU legislation (Hetman, 2012).

The development of jurisprudence continues to grow in accordance with the existing laws in society, not coinciding with the law in legal development. This is not due to the rigid nature of law, only regulating general nature, and the process of its formation takes a long time (Rohaedi, 2018). Simultaneously with this process, private and civil rights are recognized in both law and jurisprudence, with rapid social and economic developments (Zhang, 2016).

As noted by A.S. Dovhert, for the start of the process of re-codification of the Civil Code of Ukraine, now there are the necessary factors and prerequisites, among them in particular: the availability of standards-models of international acts; experience in re-codification of civil codes of France and Germany – "bastions" of private law; legislative example of new EU members - former socialist countries; the necessary capacity of domestic private law science (Dovhert, 2019).

The purpose of improving the law has been, and continues to be, to be aware of the techniques and processes of law reform used throughout the world in civil law, and to strive (to the extent possible) to assess how tangibly the effectiveness of these mechanisms in implementing the law is improving in practice (Teasdal, 2017).

According to the Plan of legislative work of the Verkhovna Rada of Ukraine for 2020 it is supposed to update the Civil Code of Ukraine in accordance with the new political, economic and social conditions, to bring it in line with EU requirements and best international practices in this sphere, elimination of mistakes, duplications and gaps, as well as transferring to the Civil Code of Ukraine the Family Code of Ukraine, certain provisions of the Commercial Code of Ukraine, the Labor Code of Ukraine, the Housing Code of RSFSR, the Law of Ukraine "On Private International Law" (cl. 21).

It is obvious that the research should also pay attention to the issues of legal policy in the field of civil law, given the political events that are now taking place in Ukraine: the temporary occupation of the Crimean Peninsula and the armed aggression of the Russian Federation against Ukraine.

Reasonable is the position of L.A. Muzyka, who notes that the problem areas of relations that require close attention and response from Ukraine, its officials and individual citizens are nationalization and forced seizure of property of different forms of ownership (state property of Ukraine, communal property of territorial communities of Crimea, private property of legal entities) of persons of Ukraine and private property of citizens of Ukraine); forced re-registration and liquidation of Ukrainian legal entities; conclusion of transactions contrary to Ukrainian legislation; confiscation of property of Ukrainian church communities; violation of human and citizen's rights and the occupied territories; privatization of housing in the occupied territories; conclusion, implementation and defense in relations for the transportation of goods, cargo and passengers to/from the occupied territory (Muzyka, 2016).

No less important is law-making policy as a form of implementation of legal policy in the field of civil law, which in legal science is understood as a scientifically sound, consistent, and systematic activity of state and non-state structures aimed at determining the strategy and tactics of law-making, at creating the necessary conditions for effective law-making work.

The process of law-making is determined by legal policy. At the same time, the norms created as a result of law-making allow us to assess the correctness of the strategy of the state's activity in the sphere of legal regulation, including civil, in particular, about how it corresponds or does not correspond to the generally recognized international principles and norms, theory and practice of building a state of law.

This process is very important, since the defects of law-making have a negative impact on the effectiveness of legal policy in the field of civil law, in particular, they include: systematic exit of the legislator beyond the sphere of legal regulation, which entails the appearance of acts without legal content; inconsistency of domestic legislation with international obligations of Ukraine; lack of hierarchy of normative legal acts in the civil

legislation; presence of gaps in civil law; disregarding the legal content of civil law in the system of legal regulation.

Elimination of these deficiencies in the process of law-making will contribute to the creation of appropriate conditions for the implementation of the legal policy of the state in the field of civil law in accordance with its priorities.

In order to successfully solve those problems that face the law-making policy of Ukraine in the field of civil law, it must be based on a system of certain principles, which, in our opinion, include scientific validity, consistency, predictability and consistency, the principle of continuity.

Regarding the main priorities of this form should include such as the creation of an effective mechanism of legal regulation; ensuring the necessary legal conditions for the real, comprehensive development of the individual, the development of a democratic state governed by law and the development of civil society institutions; building a system of civilized, based on the law, interaction between society and the state.

Universal means to achieve these goals of law-making policy in the field of civil law are its inherent basic principles of systematic approach, information support of law-making activity, compliance with legal technique in the creation of normative legal acts in the field of civil law.

Ukrainian law-making policy in the sphere of civil law of the state has two main levels of implementation: national and regional, within which there are problems and specific ways to solve them. The most dynamic level of law-making policy of Ukraine in the field of civil law in modern conditions is the regional level, which can be explained by the solution of problems arising at this level. They require active use of various forms and methods of law-making policy with an emphasis on scientific potential of regions and interaction of regions among themselves.

The law-making policy of Ukraine in the sphere of civil law is embodied mainly in the adoption, amendment and abolition of normative acts and contracts, and one of the priority tasks is that they should be united into a single system. The basis for the formation of law-making policy should be the urgent need for legal regulation of certain areas of public relations for the benefit of the population, both the entire country, and that part of the population, which is included in certain regions.

Lawmaking policy is not only an expression of the political will of the lawmaker, but also, first, a complex legal technique for selecting and systematizing normative content, necessary and adequate to certain social, political, economic, institutional realities (Andreescu, 2016).

Consequently, law-making of state bodies in the field of civil law can be divided into law-making of representative authorities and law-making

of executive authorities, while the decisive role of law-making belongs to representative authorities, which adopt the most important normative acts - laws.

As for the law enforcement form of legal policy in the field of civil law, it is implemented in documents of individual, personalized nature, called law enforcement acts. They are issued on the basis of legal norms and legal facts, determine the rights and obligations of specific subjects in different situations.

Individuals or groups, such as civil society representatives, companies, government agencies or officials, and donor organizations with a common social or political goal, are involved in the lawmaking process; they are not necessarily participants in the same organization: they are united by a common policy goal. For individuals and organizations cooperating as a political community, a common goal guides all of their activities, part of which is the development of the law (Vel *et al.*, 2017).

Enforcement policy is heterogeneous, as a general generic concept, it is concretized in different directions of state activity to manage the processes of power implementation of legal norms. Each of these directions of law-enforcement policy, along with common, has some specific features, which allows to distinguish its varieties within the framework of a single law-enforcement policy.

As a criterion for classification, we can consider the system of current law (constitutional, criminal, administrative); subjects forming and implementing law enforcement policy (law enforcement policy of legislative, executive, and judicial authorities); objects of its managerial influence (law enforcement policy on citizens, stateless persons, foreign citizens); degree of achieving the goals set (effective and ineffective).

Thus, no less important form of implementation of legal policy of Ukraine in the sphere of civil is law enforcement, that is, the form that is conditioned by the interests of political power; which is a kind of general legal policy of the state, characterizing its managerial activity in the field of implementation of law by using special political and legal means, expressed in a set of program-directive instructions, organizational and managerial means and directions (trends) of law enforcement practice.

It is obvious that its existence is mainly determined by the need for adequate implementation of public-law interests enshrined in the relevant legal norms, taking into account the dynamics of public relations, goals of legal policy, needs and opportunities of law-enforcement practice.

In our opinion, it is advisable to highlight the main elements of the content of the law enforcement policy of Ukraine in the field of civil law, namely: part of the preparation of programs and the provision of appropriate orders

for their implementation - these are the means of ideological management of law enforcement (introductory part of law enforcement policy); part of the organization and management, this is a human resource, selection and appropriate qualification training of personnel of law enforcement agencies, as well as their activities and control over such activities, as well as ensuring the coordination of their activities (the main part of law enforcement policy); part of the generalization and summing up is a reflection of the main directions of the development of law enforcement, the real use of means and methods of solving legal cases (the final part of the law enforcement policy).

Regarding the issue of civil law policy, it determines the conditions created by the state for the development of civil-law relations. Forms views on the activities related to the execution of contracts, implementation of business activities, etc. This policy coordinates the entire human rights system in the emergence of disputes between the state represented by its bodies and individual citizens (Lobodenko, 2019).

Although all human rights must be aligned on the same basis, their implementation must have a well-defined and general order. In doing so, clear shared priorities allow states to have a more concrete and achievable implementation plan that serves both as a guide for states and as parameters for human rights oversight bodies (Quintavalla and Heine, 2019).

It should be noted that in recent years the human rights movement has been challenged by events and trends around the world, including terrorism, right-wing nationalism, and authoritarianism (Kuosmanen, 2021). People's actual experiences with human rights reveal which are most common in their daily lives and thus provide a possible basis for assessing their relative importance and for adopting appropriate policies (Montgomery, 2002).

It should be remembered that personal rights are rights inherent to the individual, endowed with reasonableness and conscience, they are fundamental rights provided for by the supreme law of the state. The peculiarity of fundamental rights is that they are subjective rights, necessary for the life of the citizen, his freedom, and his dignity, necessary for the development of the human personality, secured and guaranteed by the constitution and laws (Popescu, 2013).

An important form of implementation of the legal policy of Ukraine in the sphere of civil law, which largely depends on the compliance with the real goals and objectives of the real results, is a legal interpretation policy - scientifically sound, consistent and systematic activities of government and non-government agencies aimed at determining the strategy and tactics of the interpretation of legal provisions, creating the necessary conditions for effective interpretation of legal prescriptions.

The problem of interpreting the law by clarifying the text of the norm of law the actual will of the legislator is quite relevant at the present time. As part of the formation, implementation and improvement of this form requires the development and adoption of clear recommendations on the procedure, competence, boundaries of interpretation, etc.

Interpretation of norms of law is an intellectual and volitional activity of the legislator, which is carried out according to the principles and with the help of interpretations and is aimed at clarification and/or specification of the content of law norms for understanding and applying them in practice. Interpretation may be enshrined in special acts of interpretation, scientific-practical commentaries to legislation, doctrinal sources, and other external forms of interpretation (Liutikov and Bilous, 2021).

Both the private-legal sphere in general, and the sphere of civil law in particular, are quite a mobile system, which are completely amenable to reform. In connection with the allocation of the civil sphere there is a need to analyze it from the position of private-law policy, carried out by the state.

Legal policy in the field of civil law in the development of the rule of law state, taking into account the acquisitions of EU member states with a sustainable democratic development, is built with a reasonable balance of politics and law.

On the one hand, law and all its forms of expression and manifestation (legal consciousness, legal culture, legal mentality, legislative acts, judicial practice, normative treaty, legal custom, legal doctrine, principles of law, etc.) become necessary foundations of politics, sensible measures of politics and political relations.

On the other hand, legal policy in this area is formed and implemented on the basis of the constitutional idea of the power of the people, the recognition of the people as the only source of state power, with the help of democratic norms and institutions, within the framework of a reasonable relationship between the government and the population, the state and civil society.

The main difference between legal policy at the modern stage of development of society is that nowadays human rights are a criterion of the legal nature of politics, the activities of the subjects of politics and the political system, as well as the legal quality of political decisions.

Legal policy in the field of civil law is aimed, firstly, at the systematic and systematic development of civil legislation in accordance with a scientifically based concept, a thorough analysis of judicial practice and foreign experience.

The theory of division of law into private and public and belonging of civil law to private is important and necessary for further development of

modern doctrine of civil law and stopping the attempts to revise it within the framework of subjectivism and idealism; construction of civil law doctrine on the basis of ideal legal constructions, detached from socio-economic realities. An example of the named phenomenon can be the theory of a single property right, which encroaches on such a fundamental value of civil law as property and ownership rights, as well as on the diversity of their forms.

Secondly, legal policy in the field of civil law is aimed at establishing a close and stable connection between civil law and civil law - the core of private law and the fundamental branch of domestic law. Without this connection, the stable further development of civil legislation is impossible, although they try to destroy it under the slogan of the convergence of private and public law.

However, the obvious fact is that it does not depend on the will of people whether these or those branches of law exist or not, because they are objectively existing, conditioned by the material conditions of society. Science cannot create a system of law, it can only properly recognize, investigate, and highlight it.

The formation of legal policy in carrying out legal reforms of the civil law system should be carried out in two directions: the modernization of the substantive content of legal forms and the creation of an effective procedural mechanism for the implementation of legal prescriptions.

It is clear that only the duality of legal policy directions in their interaction ensures the effective functioning of the mechanism of legal regulation. Without the substantive content the capabilities and obligations of the subject will be unfulfilled and the procedural options for their implementation will remain unfulfilled; without the form of implementation of capabilities and obligations they can only be something like a "declaration", promised by the state.

It is an undeniable fact that the system of both substantive and procedural law, providing normative expression of private interests, contains a significant number of public law norms, which confirms another trend in the development of legal policy - the integration and interpenetration of private and public elements.

It must be stated that at the present stage of development of Ukrainian statehood as parallel processes take place, on the one hand, the introduction of private law elements in the sphere of public law ("privatization" of land legislation by strengthening contractual, in fact civil law relations, cases of private and private-public charges in criminal proceedings), and on the other - public law elements in the system of private law ("publicization" of private law, especially family and labor law, and also, in a certain article).

It should be noted that at each particular stage of development of civilization private-legal regulation of public relations, which constitute the subject of civil law, to some extent must be adjusted by public-law elements. At that, the limit of necessary and permissible intervention is objectively determined by concrete-historical conditions of society's existence.

It is necessary to emphasize the importance of legal policy in the field of civil law of the Civil Code of Ukraine, which acts as a kind of private law charter. It includes norms of intersectoral significance (for example, for labor, family, housing, business law), which establish the guiding principles and the system of civil law, the range of relations regulated by it, the legal status of the subjects of civil law, the grounds for their rights and obligations, fixing the general provisions on the contract, ownership, and other civil law institutions.

According to the above, it is necessary to note the conceptual function of legal policy. It consists in the fact that it acts as a reference point and direction of movement, providing the structural unity of the system of law as a whole. Legal policy in the sphere of civil law should include the principal provisions, the basic ideas and serve as a kind of ideology in the creation, implementation, as well as monitoring and, where necessary, control over the implementation of legal norms.

It is obvious that the desired result can be obtained by developing programs, concepts of legal policy in the civil sphere, which will cover not only the legal means, and concerning both organizational, and material, and, if necessary, human resources needed to solve problems of national importance.

The civil law programs proposed for development will not replace the normative provisions and at the same time will make it possible to coordinate different areas of activity to achieve a common goal: to link economic, political, social, and legal systems.

It is clear that the overall goals of legal policy in the sphere of civil law are the sustainable development of private law in general, ensuring a reasonable combination and balance of private and public interests in society, maintaining private initiative for the benefit of economic, legal, political, and spiritual development of society as a whole. A reasonable balance of interests is ensured by laws and agreements, the terms of which, in the absence of a peremptory norm, become the subject of a judicial dispute (Svirin *et al.*, 2019).

We can conclude that as the means of implementation of legal policy in the field of civil law, first of all, we must distinguish legal acts. But, in general, the set of means of implementation of civil-law policy should be understood much wider - it is a totality of directly allowed or legally prohibited techniques, methods and legal tools used by the subjects of legal policy, to achieve its goals and objectives.

7. Discussion

In the course of the study, the authors achieved their goals and objectives.

The legal nature of legal policy in the sphere of civil law is multicomponent in its content and acts as a purposeful, comprehensive, science-based activity to form and implement the political will of the state and civil society actors in achieving strategic goals and tactical tasks of transforming society on the basis of creating and increasing the effectiveness of the mechanism of legal regulation through the use of legal means in the civil sphere.

Political-legal means aimed at suppressing private interests, particularly in civil law, and subordinating them to public interests, as well as the replacement of the concept of "public interest" with the concept of "majority interest", speculation with the concept of "state interest" generates oppression, social and spiritual degradation of society, unjustified change of values, which may ultimately lead to the uncertainty of individuals in exercising and protecting their rights and distrust of the state.

In the conditions of ongoing legal reform in Ukraine and the creation of the foundations of legal policy in the sphere of civil law it is necessary to take into account the scientific achievements. In accordance with this it is necessary to state that by no means always, especially at the level of regional law-making, there is an appeal to legal scholars, whose task is to provide scientific advice in the creation of legal acts.

The consequence of this phenomenon is the loss of the important state of the systematic nature of the normative array and the emergence of technical and legal errors.

It should be particularly noted that in creating the foundations, the formation of the concept and principles, in accordance with which will develop not only the system of civil law, but also the system of private law as a whole, the scientific experience is even more important.

Most of the problems in the formation and implementation of legal policy in the field of civil law arise due to the lack of clear and specific ideas about its goals and objectives. In turn, it is in the absence of a clear strategy for the entire civil law policy in modern Ukraine is the main reason for its inconsistency, especially in determining the tasks and means of implementation.

Essential for the proper formation and understanding of the essence and nature of civil legal policy is a scientifically sound definition of goals and objectives. However, in any case, for the formation of directions and full-fledged institutionalization of legal policy in the sphere of civil law it is also important to recognize the study of the means of its implementation, otherwise the full structure of the policy itself becomes difficult to comprehend.

The creation of a clear system of principles, as well as the consistency of their content, the elimination of multiple interpretations affects the effectiveness of legal practice, especially in cases where there are conflicts of law or identified gaps in the law, and applying the law are forced to base their decisions not on specific rules, but on the original primary sources, with the legality of their decisions determined by the correct use of principles.

Civil legal policy, which in general is focused on optimizing the mechanism of civil legal regulation, is a special kind of legal policy of the state, insufficiently investigated. Further scientific research of this issue is relevant, because without a verified and structured civil legal policy we cannot talk about systematic activity of domestic legislator and effective application of scientific developments in the field of civil law in practice.

Ignoring this aspect demonstrates the low-quality and slow process of implementation and protection of subjective civil rights and legitimate interests of individuals and legal entities, which certainly affects the mechanism of civil legal regulation as a whole. And the matter here is not only low legal culture and legal activity of citizens, but also the imperfection of the whole mechanism of civil legal regulation, which the state bodies have developed for the needs of ordinary legal relations.

In our opinion, on the basis of the proposed changes for the legal policy in the sphere of civil law, which were discussed above, it is important to form both a holistic view of the directions of development of civil-law branch, and its separate subdivisions - real law, law of obligation. If we know how the system of civil law will develop in the future, we can partially predict future problems and find appropriate ways to eliminate them. In order to solve this problem, modern comprehensive studies of the system of civil law branch as a whole and legal policy in the sphere of civil law are necessary.

The essence of civil legal policy is just in the implementation of a set of measures, ideas, and programs in the field of civil legal regulation for the fullest implementation and protection of subjective civil rights and legitimate interests of individuals and legal entities.

The above justifies the practical relevance of civil legal policy and the need for its implementation in real life, since the proposals made on the topic of this study will increase the level of realization of the rights, freedoms and legitimate interests of individuals and legal entities, effective protection of violated or disputed rights, as well as improve the mechanism of civil legal regulation through the development and approval at the legislative level of the relevant state programs, in particular, the concept of civil legal policy of Ukraine.

Conclusions

We can conclude that the primary goal of modern legal policy can be defined as a comprehensive and systematic improvement of the mechanism of civil legal regulation for the most effective implementation and full protection of subjective civil rights and legitimate interests of individuals and legal entities. At the same time, it should be noted that the purpose of legal policy in the field of civil law is a permanently changing phenomenon, as public relations in recent years are experiencing a period of dynamic transformation and reforming.

Forms of implementation of legal policy in the sphere of civil law can be protective and regulatory, depending on the direction of their focus, organizational and functional, depending on the nature of the norms themselves, normative legal acts of international and national level, by-laws adopted by the relevant subjects within their powers, depending on their influence. Since the legal means listed above are diverse and different in content, it is advisable for subjects of legal policy in the field of civil law to competently combine and combine in their use.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 713-725
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State regulation of the development of the digital economy infrastructure

DOI: https://doi.org/10.46398/cuestpol.4073.40

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Abstract

The purpose of the study was to base the principles of state regulation of the infrastructure of the digital economy in the current conditions. In the methodological, a systematic approach was used, which allows to consider the state regulation of the infrastructure of the digital economy as a complex system, whose structure is manifested in the relationships and interactions between the components of the economic system. The tools for regulating the development of the infrastructure of the digital economy are highlighted, including: advancement of innovation infrastructure, intensification of risk investment processes of technology companies, modernization of the higher education system, implementation of state digital economy programs, use of public procurement, public investment and concessional loans, communication technologies, coordination of actions between the administrative bodies that regulate the processes of digitalization of the economy. In conclusion, it should be noted that regulation must be based on a clear objective of infrastructure development, foundation of state regulation tools, which provides a comprehensive decision-making apparatus to regulate the development of digital economy

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Recibido el 03/03/2022 Aceptado el 26/05/2022

infrastructure and have, without losing sight of the impact of threats and risks to economic development in general.

Keywords: government regulation; digital economy infrastructure; management methods; management tool; economic policy.

Regulación estatal del desarrollo de la infraestructura de la economía digital

Resumen

El objeto del estudio fue fundamentar los principios de la regulación estatal de la infraestructura de la economía digital en las condiciones actuales. En lo metodologico se utilizó un enfoque sistemático, que permite considerar la regulación estatal de la infraestructura de la economía digital como un sistema complejo, cuya estructura se manifiesta en las relaciones e interacciones entre los componentes del sistema económico. Se destacan las herramientas de regulación del desarrollo de la infraestructura de la economía digital, que incluyen: adelanto de la infraestructura de innovación, intensificación de los procesos de inversión de riesgo de empresas tecnológicas, modernización del sistema de educación superior, implementación de programas estatales de economía digital, uso de la contratación pública, inversión pública y préstamos concesionales, tecnologías de la comunicación, coordinación de acciones entre los órganos administrativos que regulan los procesos de digitalización de la economía. En conclusión, cabe señalar que la regulación debe basarse en un objetivo claro de desarrollo de infraestructura, fundamentación de las herramientas de regulación estatal, que proporciona un aparatode toma de decisiones integral para regular el desarrollo de infraestructura de economía digital y tener, sin perder de vista el impacto de las amenazas y riesgos para el desarrollo económico en general

Palabras clave: regulación gubernamental; infraestructura de economía digital; métodos de gestión; herramienta de gestión; política económica.

Introduction

Modern global relations, their complexity, diversity and multi-vector necessitate the use of extensive information and communication technologies, which provides digitalization of economic processes. The

digitalization of the economy is a platform for economic development that affects all areas of economic activity. Modern relations in such areas as transport, healthcare, retail, banking and finance, education and others cannot be imagined without the use of the digital technology infrastructure. Modern global challenges, such as the COVID-19 pandemic, are increasingly relevant to the development of the digital economy infrastructure under the influence of government regulation.

The development of the infrastructure of the digital economy contributes to:

- Ensuring economic and information security of socio-economic development of the country with the use of the digital technologies.
- Increasing the use of the existing economic potential of the country by expanding opportunities for the use of potential, including humans.
- Increasing the competitiveness of the country's economy in the international market, through faster dissemination of knowledge and information, which contributes to the innovation of economic development.
- Reduction of barriers to the development of business structures and their promotion in international markets through the use of the digital technologies;
- Ensuring the principles of social interaction and improving the living standards of the population of all territories of the country.
- Ensuring increased efficiency of production activities of economic development entities through the use of the principles of Industry-4.0, etc.

Today, the digital economy is seen as a direction of social development, a certain way of life, the sphere of the economy, a new basis for economic development and security, a new platform for business and social development. The purpose of this study is to substantiate the principles of state regulation of the digital economy infrastructure in current conditions.

In the context of the methodological basis of this study, a systematic approach was used, which allows to consider state regulation of the digital economy infrastructure as a complex system, the structure of which is manifested in the relationships and interactions between components of the economic system. The methodology of a systematic approach to state regulation of the development of the digital economy infrastructure involves compliance with such principles as:

- The principle of analysis, which provides for the unity of the theory

of public administration and practice.

- The principle of catalysis, which involves the attractors of the process of public administration of infrastructure development of the digital economy.
- The principle of strategizing, which is the need to build foresight of possible scenarios for the development of infrastructure of the digital economy and get from this socio-economic effect.
- The principle of harmony, which takes into account the existing structure of the economy and the development of new sectors of the economy in terms of using existing potential.
- The principle of synergy, according to which management decisions will help to obtain a synergistic effect on the intensification of the infrastructure of the digital economy and the effect on economic growth.
- The principle of consistency, which provides for the management of decisions to take into account the sequence of structural changes.

The application of a systematic approach and the principles of analysis, catalysis, strategy, harmony, synergy and consistency will help increase the effectiveness of state regulation of the development of the digital economy infrastructure.

1. Literature Review

Many scientific studies have been devoted to the issue of public administration in the context of digitalization and development of the digital economy infrastructure. Among the scientists we would like to mention are the following: Adriaens (2021); Casalino (2010); Cosmulese (2019); Derhaliuk (2021); Djakona (2020); Flensburg (2020); Kholiavko (2021, 2022); Mengs (2021); Novachenko (2020); Popelo (2021); Pujadas (2019); Rukanova (2021); Samoilovych (2021); Sazonets (2018); Shkarlet (2020), Tulchynska (2022), Zhavoronok (2021) and others.

The authors' study (Sazonets *et al.*, 2018) analyzes the most effective practices of the digital public administration in the context of realizing the innovative potential of the national economy. Researchers have studied that China's digital administration system has its advantages in realizing the innovative potential of the national economy, as it significantly restrains the growth of corruption.

The aim of the article (Adriaens and Ajami, 2021) is to analyze current trends and features of infrastructure and the digital economy, namely the

financing and management of basic services for society. The authors argue (Rukanova *et al*., 2021) that digital infrastructure innovations have the potential to ensure the visibility of circular economy flows. Researchers have shown that there is very limited research on how digital infrastructure innovations can enable and support the management of the circular economy.

In the article (Flensburg *et al*., 2020), scientists have developed a structure that provides a basis for measuring and comparing digital communication systems in national or regional contexts. Researchers (Pujadas *et al*., 2019) have found that while digital platforms tend to be seamlessly presented as the infrastructure of a shared economy, the formation of infrastructure boundaries is political and performative, meaning that it is involved in ontological policies that have implications for the sharing of responsibilities.

German scholars (Mengs *et al*., 2021) are considering modernizing the provision of public services through digitization. The article (Novachenko *et al*., 2020) is devoted to the research and analysis of the use of information technologies to increase the level of economic efficiency and trust in public administration in Ukraine. The authors applied the concept of the digital management in order to integrate the interaction of municipal and state structures with business, civil society institutions and the population.

Scientists (Casalino *et al*., 2010) have presented a model of system dynamics, in order to determine the benefits of the digitization process in Italian public administration. According to the authors, the systems approach allows to consider many important aspects of the problem of digitalization and provides a broad analysis.

The study (Shkarlet *et al.,* 2020) analyzes the theoretical and practical aspects of infrastructural and regional development. The article of scientists (Samoilovych *et al*., 2021) reveals the features of the digital transformation of regions in the context of information economy development. The aim of the authors' scientific work (Popelo *et al.,* 2021) is to study the functions of public administration of regional development in the digital transformation of the economy.

The article (Derhaliuk *et al.,* 2021) deals with the state policy of transformation of potential-creating space in the context of intensification of regional development. The issues of developing methodological approaches (Tulchynska *et al.,* 2022) to the assessment of innovation in the Polish and Ukrainian regions in the light of digitalization are extremely important. The articles of scientists (Cosmulese *et al.,* 2019; Djakona *et al*., 2020; Kholiavko *et al*., 2021, 2022; Zhavoronok *et al*., 2021) reveal the role of higher education in the development of the digital economy and the priority areas for increasing the adaptability of universities to the conditions of digitalization.

2. Results

The digital economy infrastructure includes the branching of platforms, networks and communications, the availability, modernity and state of technical means for communication, equipment to cover the Internet, software and more. The digital economy infrastructure provides the dissemination of knowledge and information, the implementation of social products and services for all members of society regardless of their location, the movement of financial resources, the administration of diverse systems and processes and more.

To develop the digital economy infrastructure, it is necessary to ensure the appropriate quality of institutional support, which consists in the formation of effective and efficient institutional and legal bases, supported by the implementation of the state strategy on state policy of digitalization of the economy.

Also, for effective state regulation of the digital infrastructure development, it is important to branch out and develop state and non-state public institutions, institutions, organizations that provide not only regulation but also stimulate the development of the digital infrastructure. Digital infrastructure provides the development of the digital technologies and their dissemination in all spheres of social activity, which contributes to the digitalization of social development processes.

State regulation of the development of the digital economy infrastructure must include the following elements (Fig. 1):

- Formation of a clear goal to be achieved as a result of state regulation of the development of the digital economy infrastructure and have a positive effect on economic growth through harmonization of economic processes and taking advantage of the digital economy taking into account the security of economic development.
- Substantiation of the tools of state regulation of the development of the digital economy infrastructure should be in accordance with the innovativeness of economic development through the dissemination of knowledge and information with the introduction of specific forms, methods and models of management decisions.
- The principle of comprehensive decision-making to regulate the development of the infrastructure of the digital economy in the context of security of its operation.
- Taking into account the impact of economic threats and risks of economic development in making management decisions to regulate the development of the digital economy infrastructure.

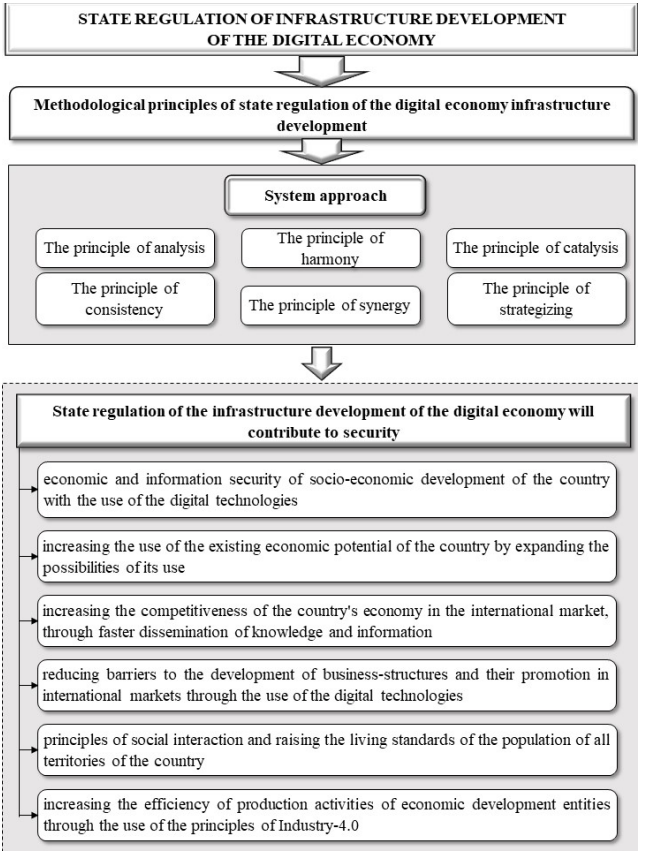

Fig. 1. Methodological principles of state regulation of the digital economy infrastructure development. Source: built by the authors.

State regulation of the development of the digital economy infrastructure should provide for multi-vector methods of state regulation, which should include:

- Firstly, administrative methods of state regulation, involving the use of permits and administrative tools, tools for public administration of digitalization of the economy, the adoption of necessary instructions for digital economies, decisions, orders, issuing permits for activities in the field of information and communication technologies, introduction and substantiation of technical requirements and regulations in the field of the digital technologies.

- Secondly, normative-legal ones, which provide for the improvement of the normative-legal field of the digital economy infrastructure development through the adoption of necessary laws and regulations on stimulating the development of the digital economy infrastructure.
- Thirdly, economic methods related to providing financial and economic incentives in the field of information and communication technologies and the development of infrastructure of the digital economy in general. Economic methods of state regulation of the digital economy infrastructure development may include such tools as direct state financing in the form of budget subsidies and subventions, regulation of credit rates, tariffs, taxation of the digital sector entities, customs regulation, etc.
- Fourthly, organizational methods include the use of tools and means of regulation, organization and functioning of the digital economy, harmonization of global and national standards for the development of the digital economy infrastructure; state regulation in determining the priorities of development of this area and ensuring their implementation through the program-target method;
- Fifthly, socio-psychological methods that involve the development of the digital culture of the population, increasing the competence of the population to use digital technologies, attitude to the importance of information and digitalization.

The use of such methods of state regulation of the digital economy infrastructure as administrative, regulatory, economic, organizational and socio-psychological allows to increase the effectiveness of state regulation, as well as to establish close interaction of all components of the digital economy infrastructure.

In addition to the outlined methods of state regulation, the tools of state regulation of the development of the digital economy infrastructure should be singled out, which should include:

- Development of innovation infrastructure that provides the processes of digitalization of the economy by domestic developments and implementations.
- Intensification of investment processes through the development of collective investment institutions, public-private partnerships, incorporation of financial infrastructure.
- Intensification of venture financing of technology companies.
- Modernization of the system of higher education, training and retraining in the direction of increasing the digital competencies of the workforce.

- Introduction of modern educational programs that combine science, technology, engineering and mathematics, which form a new constellation of specialists in digital economics.
- Creation of a system of informing economic entities about the opportunities and benefits of digitalization of economic processes at different levels.
- Implementation of state programs for the development of the digital economy and coordination of strategies and programs for the development of the digital economy infrastructure.
- Use of public procurement, public investment and preferential lending for the development of information and communication technologies.
- Coordination of actions between regulatory and administrative bodies regulating the processes of digitalization of the economy.

State regulation of the development of the digital economy infrastructure should be based on the following requirements for the management process:

- To use program-prognostic models of management of the development of the digital economy infrastructure of principles of development of the digital economy built on foresight.
- Modernization of the economy taking into account the security of the processes of digitalization of the economy.
- Providing information competencies of representatives of state, regional and local authorities to increase the efficiency of digitalization processes of socio-economic development management.
- Transformation of outdated principles of functioning of the system of social and labor relations, education system, etc. in the direction of using information and communication technologies.
- Purposefulness of state regulation of the infrastructure development of the digital economy, which makes it possible to obtain a synergistic effect for the development of the country's economy.
- Consensus between the authorities, taking into account the processes of decentralization of power in the context of economic security and the development of information and communication technologies to ensure the digitalization of economic processes.
- To take into account the specific features of economic process management based on the experience of European countries on state regulation of the development of the digital economy infrastructure (Fig. 2).

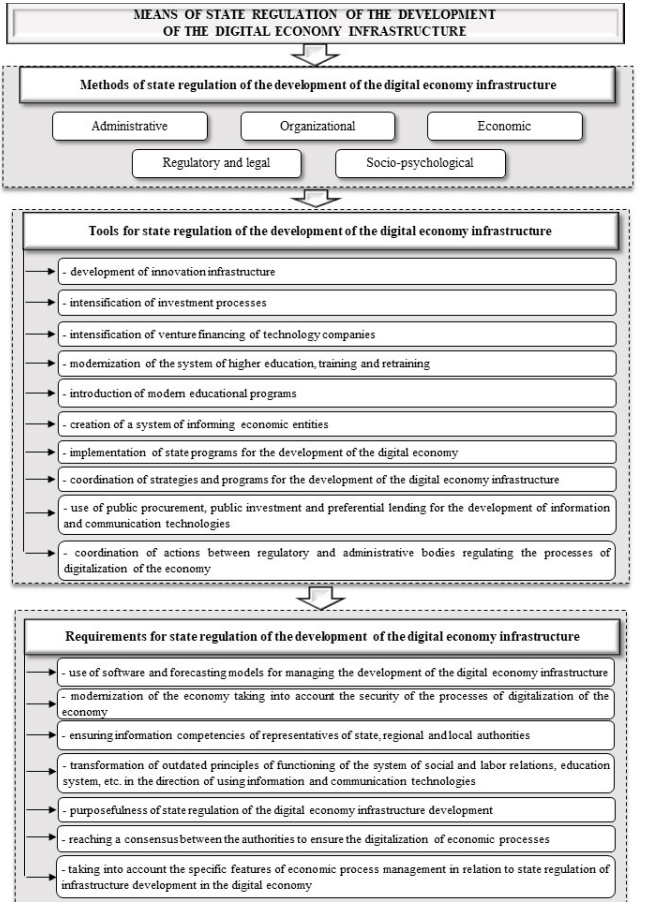

Fig. 2. Means of state regulation of the development of the digital economy infrastructure. Source: developed by the authors

The infrastructure development through government regulation makes it possible to intensify activities in the digital sector and the economy as a whole. Thus, increasing the share of information technology and the digital sector in value added and gross national product. Thanks to the state's regulatory measures in the direction of developing the infrastructure of the digital economy, equal access to all citizens of the country to information, knowledge and services that can be obtained through the use of information and communication technologies should be achieved.

This, in turn, helps to improve the quality of life of the population throughout the territory, regardless of the remoteness of the place of residence to cities and centers of socio-economic development. Ensuring the infrastructure of the digital economy provides benefits for businesses through increased competitiveness as a result of increased production efficiency, resource efficiency and the ability to find partners and consumers using information and communication technologies. Also, the infrastructure development should be focused on European cooperation, activation of European and global markets with a high level of security and trust between partners.

Conclusion

The use of a systematic approach to substantiate the principles of state regulation of the development of the digital economy infrastructure makes it possible to note that regulation should be based on a clear goal of infrastructure development, substantiation of state regulation tools, provide comprehensive decision-making to regulate digital economy infrastructure development and take into account the impact of threats and risks to economic development.

The scientific novelty is the substantiation of the use of administrative, regulatory, economic, organizational and socio-psychological methods, tools of state regulation of the digital economy infrastructure, which under the conditions of using a systematic approach and adherence to the principles of analysis, catalysis, strategy solutions makes it possible to increase the effectiveness of government regulation and ensure the interaction of all components of the infrastructure of the digital economy.

Further research is required on the issues of state regulation of intensifying the use of the advantages of the digital economy in social development in order to increase the competitiveness of the economy on the world market.

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Cuestiones Políticas Vol. 40, Nº 72 (2022), 726-740
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Electronic Evidence in Administrative Proceedings

DOI: https://doi.org/10.46398/cuestpol.4073.41

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Abstract

The study established the role of electronic evidence in the system of administrative procedures in Ukraine and in the member states of the Council of Europe. Direct observation, comparison and analysis of the content of the documents were used. The key results of the study were the peculiarities identified from the use of electronic evidence in administrative procedures among the 47 member states of the Council of Europe; established sources of creation, origin of electronic evidence to be used in administrative procedures; the resolute attitude of the European Court of Human Rights and the Committee of Ministers of the Council of Europe towards electronic evidence in administrative proceedings. Unlike paper documents, electronic documents require special attention to their review, search and involvement in the case. It is concluded that the study of electronic evidence should be approached from the point of view of the knowledge and skills of specialists, experts and interpreters who have the appropriate license and experience. The prospects for further investigations are establishing the importance of law enforcement agencies in the field of cybersecurity in ensuring the integrity of electronic evidence used in administrative proceedings.

Keywords: administrative proceedings; administrative court; electronic evidence; electronic documents; digital law.

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Recibido el 15/01/2022 Aceptado el 12/03/2022

Prueba Electrónica en Procedimientos Administrativos

Resumen

El estudio estableció el papel de las pruebas electrónicas en el sistema de procedimientos administrativos en Ucrania y en los estados miembros del Consejo de Europa. Se utilizó la observación directa, la comparación y el análisis del contenido de los documentos. Los resultados clave del estudio fueron las peculiaridades identificadas del uso de evidencia electrónica en procedimientos administrativos entre los 47 estados miembros del Consejo de Europa; fuentes establecidas de creación, origen de pruebas electrónicas para ser utilizadas en procedimientos administrativos; actitud decidida del Tribunal Europeo de Derechos Humanos y del Comité de ministros del Consejo de Europa hacia la prueba electrónica en los procedimientos administrativos. A diferencia de los documentos en papel, los documentos electrónicos requieren especial atención a su revisión, búsqueda e implicación en el caso. Se concluye que el estudio de la evidencia electrónica debe abordarse desde el punto de vista del conocimiento y las habilidades de especialistas, expertos e intérpretes que tengan la licencia y experiencia adecuadas. Las perspectivas de nuevas investigaciones están estableciendo la importancia de los organismos encargados de hacer cumplir la ley en el campo de la ciberseguridad para garantizar la integridad de las pruebas electrónicas utilizadas en los procedimientos administrativos.

Palabras clave: trámite administrativo; juzgado administrativo; prueba electrónica; documentos electrónicos; derecho digital.

Introduction

The issue of their role of electronic communication technologies in the relationship between government and society is acute in the age of their rapid development. At the same time, there is a rapid comprehensive transformation of the results of governmental activity into electronic form.

The opposing parties in the administrative proceedings are public authorities and local self-government bodies, on the one part, and individuals and legal entities — on the other. The parties use a variety of evidence, including electronic, to protect their interests. In this regard, the public need has prompted to enshrine electronic evidence in the legislation. It is expected that electronic evidence in judicial proceedings will soon become the only type of evidence (Polishchuk, 2019).

Electronic evidence is a relatively recent addition to the instruments of evidence in judicial proceedings. After all, one should know their distinctive features and characteristics to properly assess the possibility of

using electronic evidence. Most electronic gadgets are now permanently or intermittently connected to other digital devices or networks (internal or Internet). Traces of created files and history logs can form a large volume of electronic evidence (Weir and Mason, 2017).

The collection of digital evidence is relevant in all types of judicial proceedings. Public authorities have powerful legal opportunities to collect the necessary evidence, including digital (Kasper and Laurits, 2016). The functioning of the national system of administrative justice has certain features that distinguish it from other judicial proceedings. The purpose of administrative proceedings is to effectively protect the rights, freedoms and interests of individuals, the rights and interests of legal entities from violations by power entities (Verkhovna Rada of Ukraine, 2005). Therefore, individuals and legal entities are not on an equal footing with the state in obtaining and using the necessary electronic evidence to protect their rights and interests.

Besides, the case law is ambiguous in deciding which electronic evidence (in what form or on what medium) to consider admissible instruments of evidence. The issue of electronic evidence research is becoming increasingly important in view of the frequent controversial debate among lawyers and the ambiguous case law on the relevance and admissibility of electronic evidence in administrative proceedings. The procedure for registration, submission and examination of electronic evidence remains unregulated (Manzhula, 2020).

In judicial proceedings in general, electronic evidence means a proof that is stored in electronic form by the service provider or on their behalf at the time of its request and consists of: data on the signatory, access data, transaction data and content data (Tosza, 2020). In this regard, the Committee of Ministers of the Council of Europe emphasizes on the necessity of appropriate and secure manner of collecting the electronic evidence as the risk of destruction or loss of this type of evidence is much higher than of non-electronic ones, so the specific procedure of collecting and seizing the electronic evidence must be developed.

Evidence in electronic or printed form is a different type of independent complete evidence that can be used in administrative proceedings (Alifian Geraldi Fauzi et al., 2021).

However, electronic evidence can be found in emails, digital photos, ATM transaction logs, in text documents, messenger histories, files saved in accounting programmes, spreadsheets, in the history of Internet browsers, on a computer hard drive, in tracks of the global positioning system (GPS), logs of hotel electronic door locks, video or audio files. However, digital evidence has no physical weight, but it is difficult to destroy it without leaving electronic traces. At the same time, they are easy to change, copy and easier to access (Dubey, 2017).

The aim of the article is to establish the significance and features of the use of electronic evidence in the administrative proceedings at the national level and in the member States of the Council of Europe. The aim involved a number of objectives: study the features and characteristics of the use of electronic evidence in courts during administrative proceedings; analyse probable sources of origin and creation of electronic evidence; identify possible forms of electronic evidence and their features that enable them to be appropriate and admissible evidence.

1. Methods and Materials

The study was conducted by studying modern scientific thought and position on the peculiarities of the use of electronic evidence in administrative proceedings in the world and at the national level. The legislative regulation of the procedure for submission and examination of electronic evidence in the administrative courts of the member States of the Council of Europe was compared.

To achieve the aim of the article, the concept of electronic proof was studied, the typical structure of an electronic document and the role of a digital signature in it were clarified. The author developed types of electronic evidence in administrative proceedings by source of origin and source of creation, and distinguished the features of electronic evidence among other types of evidence.

The study was conducted using the following methods: *direct observation* established the opinion of modern scholars and researchers in the field of administrative proceedings; *the method of comparison* helped to identify common features and differences that distinguish electronic evidence among other types of evidence*; the method of analysis of the content of documents* allowed determining the main forms of electronic evidence that occur during administrative proceedings.

The means of obtaining the necessary sources of information were the views and positions of scholars on the use of electronic evidence in administrative proceedings. There were a total of about 30 sources and references used.

2. Results

The growing need for the use of electronic evidence in administrative proceedings indicates the rule-making development of the European Union (hereinafter — the EU) legislation. In the internal market, the eIDAS Regulation sets the standard for electronic signatures, electronic messages,

timestamps, electronic delivery services and website authentication certificates. The fundamental principle of the eIDAS Regulation establishes the presumption of legal force of electronic evidence. The eIDAS Regulation is used in the interstate financial transactions, one of the parties to which is a European organization (Jokubauskas and Świerczyński, 2020).

Electronic evidence consists of three main elements: binary data (ones and zeros); a storage device on which this data can be stored; software for the proper reading, decoding and interpretation of this data. Evidence of modern financial transactions or documents can in fact only be in electronic form.

The specifics of the study of documentary evidence are that witnesses are involved in this process. The evidence which contains factual data, not indirect information is considered to be real (Stanfield, 2016). The Law of Ukraine "On Electronic Documents and Electronic Document Circulation" contains a definition of the term "electronic document". In particular, an electronic document is a type of document that is electronic data, the mandatory part of which is the details and digital signature (Verkhovna Rada of Ukraine, 2003).

Besides, the evidentiary information recorded on a paper document differs from that contained on an electronic medium. The hard copy (paper) is inextricably linked physically with information and information cannot exist by itself without it. On the contrary, electronic data can be moved between different media without distortion. In addition, the environment of electronic evidence can be many different media, where data reading and interpreting requires software created by humans. Complex issues may arise regarding the integrity and security of electronic evidence due to their unique characteristics, although the authentication of complex forms of electronic evidence will differ from less complex forms of electronic evidence, such as emails or text messages.

The European Committee on Legal Co-operation conducted a study on the use of electronic evidence in administrative proceedings among the 47 member States of the Council of Europe. It was established that none of these states has normatively defined rules on the procedure for obtaining electronic evidence. Polish law does not provide for the definition of any type of "electronic evidence" in all types of proceedings. In Turkey, the Code of Administrative Procedure also does not provide for separate rules on the procedure for submitting electronic evidence. Croatia, Czech Republic, Estonia, Greece, Romania and Serbia provide for the obligation to certify electronic evidence with an electronic signature.

In France, a party may submit a copy of a website or a screenshot to prove a legal fact, but the court may deem it necessary to request information to clarify it. In Lithuania, court rules provide for the submission of original

documents, and if copies are provided — the notary or lawyer involved in the case must certify them. An electronic digital signature is used to identify the person who signed the electronic document, not its contents (Avramenko, 2019). Among the surveyed European countries, the use of a modern electronic signature demonstrates the authenticity of electronic proof in Belgium and Spain. In England and Wales, as well as in Montenegro, the law on electronic signatures provides for the reliability of electronic evidence, which is duly certified by an electronic signature.

If electronic evidence violates standards or special procedures, the court will evaluate it in an ordinary way, taking into account all the technical evidence provided. In turn, the court usually requires that copies of Internet websites be provided in such a way as to preserve their authenticity (Mason and Rasmussen, 2016) (Figure 1).

There are ways to ensure authenticity of copies of electronic evidence	**There are legal provisions on the procedure for presenting evidence**	**A particular form of the electronic signature is required**	**Certain types of electronic evidence are distinguished**
Andorra, Croatia, France, Lithuania, Turkey	Croatia, Poland, Serbia	Estonia, Belgium, Ukraine, Czech Republic, Germany, Greece, Romania, Montenegro	Latvia (electronic documents, demonstration evidence), Turkey (electronic data accepted as documents)

Figure 1: Electronic evidence in different countries

Source: Authors.

However, the guidelines of the Committee of Ministers of the Council of Europe on the use of electronic evidence in administrative proceedings state a different position. Courts should not deny the legal force of electronic evidence just because it does not contain a digital signature. It should also be noted that the probative value of electronic evidence is determined exclusively by the court, taking into account national law. Courts should also be aware of the probative value of metadata and the possible consequences of not using it. Besides, electronic evidence must be submitted in its original electronic format without the need to submit it in

hard copy. As for their admissibility and reliability, there are no priorities for other types of evidence.

In our opinion, the adoption of the Guidelines by the Council of Europe is of great importance for improving the process of using electronic evidence in administrative proceedings. These principles must be adopted and put into practice by lawyers, judges and IT professionals. Moreover, the efficiency of the modern justice system be significantly increased only with the help of electronic evidence (Oręziak and Świerczyński, 2019).

The European Court of Human Rights has repeatedly recognized electronic documents as appropriate evidence for the protection of citizens' rights in the course of administrative proceedings. The examples are as follows.

- The case of *Catt v. The United Kingdom*. The Court held that there had been a violation of Article 8 (right to respect for private life) of the Convention. It found, in particular, that the personal data stored in the police database were of a political nature and that such information needed special protection;
- The case of Gaughran v. The United Kingdom. The court ruled that there had been a violation of Article 8 (right to respect for private life) of the Convention. The Court found that the United Kingdom's actions constituted a disproportionate interference with the applicant's right to respect for his private life, which could not be considered necessary in a democratic society. The court also noted that the decisive factor was not the duration of storage of the man's personal data (DNA profile, fingerprints and photograph), but the lack of certain measures to preserve them (European Court of Human Rights, 2021).

The collection of electronic evidence has its peculiarities. In particular, digital evidence is stored on servers owned by service providers. Most providers are foreign entities of American descent: Google (which owns YouTube), Facebook (which owns Instagram and WhatsApp), Microsoft (Skype); Apple and Amazon. However, such data can be managed by their Europe-based branches. In this case, the servers can be kept in large data centres in another country. For example, a huge Facebook data centre is located in Sweden (Sverdlik, 2018).

According to the source of origin, electronic evidence in administrative proceedings is divided into three groups (Figure 2).

Obtained from publicly available Internet sources	Substantive evidence	Identify the user (not content)
- from websites; - from social networks.	- stored on servers (e-mail; cloud storage); - stored on electronic media or devices (digital documents; photos; videos)	- metadata; - traffic data; - GPS coordinates about the movement of a person or vehicle; - digital signature; - login and e-mail name

Figure 2: Types of electronic evidence in administrative proceedings by source of origin

Source: Authors.

Digital data	Analogue data	Digitilised data or things (created manually or mechanically)
Digital photo, video, audio recordings of a digital video camera etc.	Records of a video camera or voice recorder that uses a video or audio tape, digitilised or used with a suitable device, if available.	Scanned hard copies of documents, paper photos, camera film negatives etc.

Figure 3: Sources of electronic evidence in administrative proceedings

Source: Authors.

Electronic documents are a particularly important form of electronic evidence. However, the best form of electronic evidence is the original (primary) data, not a digital or digitalised copy (Institute of Advanced Legal Studies, 2019).

In turn, we propose to single out the following forms of electronic evidence that are accepted in administrative proceedings: electronic

document; media data; databases; digital traces of activity on electronic devices.

Electronic evidence is equivalent to other types of evidence, in particular: physical evidence, witness statements, expert opinions, etc. (Zlenko *et al*., 2019). The Supreme Court ruled that judges should not consider printed e-mails to be improper evidence because all types of evidence have the same legal force (Supreme Court of Ukraine, 2018). However, the Universal Declaration of Human Rights imposes certain restrictions. Personal correspondence through electronic devices can be used as evidence either with the consent of the addressee and the addresser of the messages or by court decision, if the content of the messages contains relevant evidence (United Nations, n. d.)

An electronic document is a document that is created in electronic form without its prior setting out on paper, and signed with an electronic signature in accordance with the law (Karasev *et al.,* 2021). In this case, metadata (file information) is part of the electronic document.

Any evidence, electronic or material, if collected in violation of the law will be considered inadmissible by the court (Leroux, 2004). For the admissibility of electronic evidence in court, two conditions must be met simultaneously: 1) they must be obtained with the permission of the competent authorities; 2) they must be validated by information technology experts (Moussa, 2021).

The rules on the admissibility of electronic evidence generally do not depend on the complexity of such evidence. However, the amount of evidence to establish the reliability of digital data may vary depending on the complexity of the evidence. The use of digital evidence can create additional tools to establish the truth during litigation. At the same time, if we responsibly collect, store and use them, they can retain their authenticity and provability for a long time (Global Rights Compliance, 2017).

In this regard, the Committee of Ministers of the Council of Europe emphasizes that electronic evidence should be collected in a proper and secure manner. Given the higher risk of potential destruction or loss of electronic evidence compared to non-electronic evidence, Member States should establish procedures for the safe caption and collection of electronic evidence.

Traditional methods of storing electronic data — printing, blocking cloud or server storage — are largely dependent on the operator or administrator. So, traditional methods are not effective in the age of big data. They should be replaced by cybersecurity agencies, timestamp certification and a blockchain system (Shang and Qiang, 2020). A blockchain is an electronic structure in which individual network nodes record shared data to their storage. In other words, each network node has a repository that stores data

hosted on multiple nodes (Kim *et al.,* 2021). Besides, the imposition of large fines on those who destroy electronic evidence is a well-established case law in the United States to prevent the destruction or damage of electronic evidence (Nechyporuk, 2020).

The use of artificial intelligence at the stage of analysis and evaluation of evidence is unacceptable, as it violates the main principles of justice: legality and fairness. Interpreters should be involved to establish the true meaning of evidence and legal norms (Karasev *et al.,* 2021).

The main features of electronic evidence in administrative proceedings, which distinguish them from other types of evidence, are: the amount of electronic evidence is larger because they are faster and cheaper to create; it is more difficult to get rid of electronic evidence, because traces remain on electronic devices after their removal; the content of electronic evidence can change (be distorted) even without human intervention; electronic evidence requires special protection against damage; unlike paper evidence, they can be copied from one device (media) to another; electronic evidence is faster to find; the court should involve specially trained experts for a fair assessment of electronic evidence.

3. Discussion

In scientific sources, electronic evidence in administrative proceedings is understood as evidence that is stored in electronic form, which reflects the results of the activities of authorities or persons and contains: data on signatories, access data, transaction data and content data (Tosza, 2020). We partially agree with this definition. Digital evidence must have four mandatory features to be legally admitted to trial: they must be reliable, accurate, comprehensive, and convincing (Yeboah-Ofori and Brown, 2020). Admissibility of evidence is such a sign that provides the legitimacy of their involvement in the case (Edward and Ojeniyi, 2019).

It is considered that evidence in the form of electronic information and electronic documents, as well as documents printed on paper are the types of equivalent and independent evidence that can be submitted in the proving process to the state administrative court (Alifian Geraldi Fauzi *et al*., 2021). At the same time, digitally signed electronic documents may be modified by a third party. Verification of documents and digital signatures allows finding out whether the electronic document was changed after signing.

Research shows that there is no special law or procedure for evaluating electronic evidence in many countries. However, judges can do this in two ways: either with the help of experts or digital evidence specialists; or draw conclusions based on simple electronic evidence that is accurately considered (Chaudhry *et al.,* 2020).

In turn, a specialist who examines electronic evidence must have certain knowledge and skills, in particular: be able to investigate the case; have sufficient knowledge of a specific problem; sufficient legal knowledge; appropriate communication skills (for oral and written explanations); sufficient knowledge of the language contained in the electronic evidence. As a rule, the ISP provides the requested electronic data directly to the requesting authority. However, sometimes coercive state intervention in such a process is necessary. At the same time, the combination of the results of all possible tools used to extract evidence and study all data sources, electronic or not, will significantly improve the effectiveness of establishing the truth in the case (Reedy, 2020).

All the advantages and possibilities of electronic evidence in administrative proceedings are promising and inevitable. Video conferencing is an important means of simplifying and speeding up the collection of electronic evidence, however, it is not widely used. The diversity of administrative cases and people's capacity to access electronic evidence and electronic devices on which they can be attached to the case reflects the principle of access to justice in the country. To this end, the government must propose and provide ways for society to access e-justice (Putrijanti and Wibawa, 2021).

Conclusions

Electronic evidence is important in administrative proceedings, as it is the main evidence of the activities of public authorities. It is proposed that administrative courts make extensive use of electronic evidence, as it will become the main type of evidence in the near future. Unlike paper documents, electronic documents require special attention to their study, search and involvement in the case. To ensure the admissibility of electronic evidence, courts must pay special attention, as they are easy to destroy, damage or modify. They are easier to access and easier to find the necessary proof.

Not all member States of the Council of Europe have ways to ensure the authenticity of copies of electronic evidence or legal provisions on the procedure for presenting evidence. Not all countries also require a specific form of electronic signature to establish the admissibility of electronic evidence. In this regard, there must be a presumption of admissibility of electronic evidence in administrative proceedings. At the same time, the study of electronic evidence should be approached from the perspective of knowledge and skills of specialists, experts and interpreters who have the appropriate license and experience.

Electronic evidence in administrative proceedings is used ambiguously and chaotically, without taking into account their features and characteristics. Courts should involve relevant specialists for the examination of electronic evidence in the course of administrative proceedings, and take into account the sources of origin and creation of electronic evidence for their comprehensive assessment.

An electronic document is a form of electronic evidence, and a digital signature allows identifying the signatory of an electronic document. This simplifies the procedure for examining the appropriateness of electronic evidence. In most Council of Europe member States, the absence of a digital signature does not deny its legal force, as all types of evidence are equivalent. In this case, the administrative court must adhere to the principle of individual consideration of each case and verify electronic evidence from the moment of their creation, transmission, reception, storage and collection.

Electronic documents can also be encoded to prevent others from viewing and modifying them. Electronic evidence is a broader concept than an electronic document.

The prospect for further research may be the role of cybersecurity law enforcement agencies in maintaining the integrity of electronic evidence in

administrative proceedings.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 741-753
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Public management for sustainable development: current challenges and future trends

DOI: https://doi.org/10.46398/cuestpol.4073.42

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Abstract

The objective of the article was to study the mechanism of public administration, which manifests itself at the state and municipal levels of regulation of socioeconomic processes in society. During the research, methods such as logic, dialectic and modelling were used. The result of the study was that an effective solution to societal problems is possible in terms of maintaining a stable interaction of public administration entities on the basis of effective communication in terms of public recognition and support from the authorities currently operating. The scientific novelty justified the need to support a variety of constructive forms of cooperation within the public administration between government officials, private companies and NGOs in the digital transformation to achieve the sustainable development of public administration. The practical significance of the study is that ways to improve the system were proposed in the context of digital transformation.

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Recibido el 15/03/2022 Aceptado el 28/05/2022

It is concluded that a qualitative change in the interrelations of the system with an application of modern digital technologies of public administration is urgent, as a key means of modernizing the formation of various public information resources.

Keywords: public administration; public administration; transformation; civil society; socio-economic relations.

Gestión pública para el desarrollo sostenible: retos actuales y tendencias futuras

Resumen

El objetivo del artículo fue estudiar el mecanismo de la administración pública, que se manifiesta en los niveles estatal y municipal de regulación de los procesos socioeconómicos en la sociedad. Durante la investigación se utilizaron métodos como el lógico, el dialéctico y el de modelización. El resultado del estudio fue que es posible una solución efectiva a los problemas de la sociedad en términos de mantener una interacción estable de las entidades de la administración pública sobre la base de una comunicación efectiva en términos de reconocimiento y apoyo público de las autoridades que actualmente operan. La novedad científica se justificó la necesidad de apoyar una variedad de formas constructivas de cooperación dentro de la administración pública entre los funcionarios del gobierno, las empresas privadas y las ONG en la transformación digital para lograr el desarrollo sostenible de la administración pública. La importancia práctica del estudio es que se propusieron formas de mejorar el sistema en el contexto de la transformación digital. Se concluye que urge un cambio cualitativo en las interrelaciones del sistema con una aplicación de las modernas tecnologías digitales de la administración pública, como medio clave de modernización de la formación de diversos recursos de información pública.

Palabras clave: administración pública; administración pública; transformación; sociedad civil; relaciones socioeconómicas.

Introduction

The system of public administration from the perspective of the national economy is a unity of different forms of socio-political and economic interaction between official structures of management, representatives of

private business, and non-profit associations. One of the most important elements of this management are technologies of state and municipal regulation of the economy.

As features of public administration, it is necessary to distinguish the following elements:

1. Making policy and management decisions based on the qualified professional activities of specially trained managers in the regulation of the economy and the implementation of entrepreneurial activity on an individual and collective basis.
2. Existence of interdependent cooperation between different subjects of social and economic processes and availability of wide opportunities for participation of representatives of power structures, the private sector of the economy, and non-profit associations in coordinated cooperation on the elimination of social problems.
3. Public and municipal authorities, when performing their functions and powers fixed by law, are accountable to society with regard to the consequences of their functioning.
4. Political decentralization, which is embodied in the delegation of some powers from central to territorial governments, leads to a reduction of managerial tension in relation to key structures of state regulation.
5. Targeted activity, developed and implemented according to a certain plan, in accordance with the existing conditions of development of society and market relations.

It is obvious that in one of its aspects the current stage of development of Ukrainian society is characterized, on the one hand, by increasing contradictions between modern management with its inherent alienation of the objects of management from management decision-making, and, on the other hand, by the objective need to strengthen the public nature of management.

A concrete manifestation of these processes is found in the aggravation of contradictions between the interests of the individual and the state, which most adversely affects both the function of public relations, the quality of human relations, as well as undermine the authority of government, thereby contribute to the weakening of efficiency and security of governance, and thus the weakening of economic security of Ukraine.

1. Theoretical Framework or Literature Review

Scholars responded to this crisis with a wide range of comparative studies and theoretical alternatives that addressed the "big questions" of public administration (Liu, 2021). This article states the authors' position on current challenges and future trends in public administration, in particular, the digital transformation in public administration. The starting point was the assertion that digital technology opens up new opportunities for the further introduction of public administration by results. A review of the literature on this issue allowed us to identify the main approaches to the definition of digital transformation in the field of governance.

Thus, A. Scupola and Mergel studied the digital transformation of public administration in Denmark (Scupola and Mergel, 2021), MM Young, J. Bullock, and JD Lecy, using Salamon management tools, suggest three main ways in which artificial discretion can improve public administration at the task level: (1) increasing scalability, (2) reducing cost, and (3) improving quality (Young *et al*., 2019).

It should also be noted that domestic scientists from different fields of knowledge have paid attention to public administration in the economic sphere in Ukraine. Thus, the scientific works of Holovko *et al.* (2020) are devoted to the identification of subjects who, in the conditions of administrative and legal reform and changes in the guidelines in the relationship between the state and the citizen, carry out public administration, and the emphasis is placed on the sphere of relations that cover the essence of public administration.

The analysis of domestic and foreign practices of using digital technologies in the planning, monitoring, and evaluation of managerial decisions and public policies allowed to formulate proposals for the priority areas of digital technology in the further development of the principles and procedures of management by results.

In particular, digital technologies allow to minimize the time lag between the achievement of results and the appearance of data on their achievement; significantly increase the number of data sources and indicators that can be used for planning, monitoring, and evaluation of the performance and effectiveness of government; reduce the risk of deliberate distortion of reporting data.

2. Methodology

The methodological basis of the research is a dialectical method of cognition of socio-legal phenomena. In addition, the logical method (in the

presentation of all material, the formation of recommendations, suggestions, and conclusions); method of system analysis; method of comparative law; method of modeling; method of reference to the conclusions of institutional economic theory, digital computer technology, and other sciences was used.

3. Results

The content of executive power (public administration) as an independent type of state activity is a set of functions, which directly manifests power and organizational content of public administration, which is carried out in various procedural forms through constant information exchange between the subject and object of management based on direct and reverse connections.

Consequently, the function of public administration can be defined as a part of the managerial activity of the state, carried out based on the law or another legal act by executive authorities by their inherent methods of performing the tasks of public administration. The formation of institutions of public administration assumes that they:

1. Have certain state-authoritative powers and, thus, the ability to influence the development of socio-economic processes in society and, therefore, be responsible for their condition.
2. Have opportunities and abilities to act within their own competence on behalf of the state enthusiasm.
3. Function in conditions of a combination of strict normative regulated activity in a formal-procedural way with a sufficiently broad possibility of making volitional decisions based on subjective interpretation of both the situation and the legislative norms regulating it.
4. Directly engaged in the work of preparing, making, and implementing decisions in the executive and administrative activities of the state, and, in most cases, these actions entail noticeable economic and other social consequences for the entire society or any part thereof.

To identify and optimize interdepartmental interaction in the system of public administration, the purpose, tasks, and content of the administrative-administrative process, within which the specified interaction is carried out, are important. At the same time, it is not important at all that works on interaction can constitute a meager part of the whole process, they must be identified, tied to the process, and only then it will be possible to decide on the possible elimination of interaction (for example, through the use of information technology).

One of the main characteristics and directions of improvement and modernization of the system of interaction between state and municipal authorities and representatives of private business is the transformation of the basis of organization and functioning of public regulation of socio-economic relations in modern society. One of the key forms of reflection of the mentioned modernization is the expansion of electronic ways of formation, compilation, and transmission of various information data as a key economic resource.

In this regard, the development and practical development of digital technologies, allow significantly optimizing the development of management decisions of public administration structures. The growing and deepening reliance on AI and machine learning technologies in the public sector has been diagnosed as "transformative" for public administrations (Young *et al*., 2019). This creates the basis for building a promising system of electronic public-management services for enterprises and organizations of various forms of ownership, as well as for individual citizens.

Public administration at the present stage acts as a mechanism, a way by which the state in practice pursues a policy to reform various contradictions (individual, group, national, territorial, class, etc.) and to meet the material, social, cultural needs of different population groups. This is achieved through specific actions of organizational, economic, financial, political, legal, etc. nature in the system of public administration, including different stages of administrative preparation and implementation of necessary managerial decisions, through which there is coordination and implementation of state policy.

In a modern democratic state, public administration is a central link in the implementation of public policy. It relates to society as a whole and its bases and manifestations, to the state, to the activities that are primarily focused on achieving general social goals and the expression of public opinion. Public administration is a form of implementation of public power, which has special organizational and power structures, has unique means of coercion, not in the arsenal of personal or corporate power, establishes the rules of conduct of a special kind. It is stimulated by public interest and is aimed at regulating certain public relations.

At the same time public power is considered as a static phenomenon (belonging to the people, body, official), and public administration - as a dynamic relation, that is, the action of public power. The content of public administration includes certain forms of territorial state-authoritative organization of the population within the entire state territory, established structure and organizational-legal ways of implementation of people's power, specially designed institutions - the apparatus of power and persons, hierarchically subordinated, exercising functions of power within its apparatus.

The dominant role of public administration is to ensure a balance between public and private interests, where public interests must include those needs on which the existence and development of society as a whole depend, and private interests are recognized and guaranteed by the state. The most important element in ensuring this activity is the public interest, designed, on the one hand, to provide the basis of society and the state as a condition of universal existence, and, on the other hand, to guarantee the satisfaction of private interests in their singular and concentrated expression.

It is important to add that public interests can be optimally realized only jointly, while private interest is a more individualized concept, they reflect personal preferences, taste characteristics, habits, and so on. At the same time, participants in relations, which arise in the process of public administration, can be classified as those who exert a concerted influence on specific public relations by means of specific methods, tools, forms and aiming to secure public interests and those who fall under the influence of such a concerted influence (Holovko *et al.*, 2020).

In public administration today, many new reform ideas mingle, offering new diagnoses of governmental problems and courses of action (Ingrams *et al.*, 2020). In our opinion, the improvement of the system of public administration should take place in such areas as:

- *Improvement of the system of public services*. In this case, a service should be understood as a method of satisfying the needs of individuals and legal entities. If it is implemented by the state, then accordingly we are talking about the provision of public service. It should be noted that the mechanism of providing public services works with significant drawbacks. For example, the procedure of registration and issuance of passports, registration at the place of location, state registration of real estate transactions require physical and legal persons significant time expenses. We see the solution to such problems in reducing administrative procedures and document flow, changing the work of government agencies, expanding the range of paid services, as the sham gratuitousness of such services only provokes the growth of corruption.
- *Increasing opportunities for public participation in public management procedures*. Formation of bodies of executive power outside of close interaction with the institution of elections, the high degree of their independence in determining the forms and methods of implementation of powers do not exclude the possibility of replacing the interests of the people (population) by officials' own needs.

- According to the above, simultaneously with the highest forms of direct democracy, such as referendum and free elections, other various forms, which, though not generating a generally binding result, allow public officials to inform the actual needs of civil society, to make socially useful adjustments in the activities of executive power bodies Such forms include, for example, the right of citizens to gather peacefully, without weapons and to hold meetings, rallies, walks and demonstrations, provided by the Constitution of the Russian Federation. Such forms of direct citizen participation in the exercise of state power as public discussions of topical issues of socio-economic development, draft regulations and other socially important decisions, public (public) hearings, people's law-making (public) initiative, opinion polls contribute to the consideration of the interests of the population in the implementation of the functions of the executive branch**.**
- *Development of the system of self-regulatory organizations in the sphere of economy*. As self-regulation, we understand the regulation of certain markets and spheres by business entities themselves without state interference. Self-regulatory non-profit organizations are non-profit organizations established for the purposes of self-regulation, based on membership, uniting business entities based on the unity of the sector of production of goods (works, services), or uniting subjects of professional activity of a certain type.

The implementation of self-regulation in certain areas are created independent from the state and public authorities' associations of participants of economic activity, which establish standards and rules of conduct in the relevant market segment, ensure control over compliance with them, regulate conflicts. We can express the opinion that self-regulatory organizations are a special form of consolidation of that part of the public which is active primarily in the sphere of market relations and seeks the most harmonious regulation of economic activities**.**

- *Transfer of powers from the state level to the regional level.* This decentralization, aimed at bringing public administration closer to the population, has an obvious positive effect, namely the motivation for inter-municipal consolidation in the country, the creation of appropriate legal conditions and mechanisms for the formation of wealthy territorial communities of villages, settlements, and cities, uniting their efforts in solving urgent problems.
- The new model of financial support for local budgets, which have gained a certain autonomy and independence from the central budget, has also proven its worth. Decentralization, in particular, brings some benefits, on the other hand, decentralization is not fully realized to offer and increase government accountability (Andhika, 2018);

- *Introduction of a short-term moratorium on changing the system and structure of state executive authorities*. Although administrative reorganization has been a major political instrument in many democracies, there has been limited research on its effects (Hong and Park, 2019). The reorganization of the system and structure of executive authorities should be carried out gradually, an accelerated reorganization is likely to cause delays in the provision of public services.
- *Increasing the motivation of civil servants*. Promptness and quality of public services should be a guaranteed basis for their career development. Since the very beginning, the public sector has been highlighted as a responsibility, a duty, and a calling instead of merely being a job because, these employees are supposed to be motivated by the ethics of serving the public in contrast to employees working in private sector organizations (Zubair *et al.*, 2021).

4. Discussion

One of the outcomes of the 20th century, a lesson learned at the cost of huge social cataclysms was the relative, but very important advantage of the democratic model of socio-political institutions, relations between governors and governed, established in Western countries (Bila-Tiunova *et al.*, 2019).

It is quite obvious - the violation of the balance of public and private interests has as a direct consequence the dynamics of the growth of threats to the economic security of the country, to the weakening of the state and the economy, as well as guarantees of the rights and legitimate interests of the subjects of public activity. In modern socio-cultural conditions of domestic practice gets additional relevance to increase the publicity of the mechanism of state policy to ensure economic security.

This necessarily involves the reduction of administrative procedures and administrative actions - reducing the number of documents for citizens to obtain a public service; the use of new forms of documents; reducing the number of interactions between citizens and officials of public authorities and local government.

The foregoing allows us to conclude: the main role of public administration as a factor in the consolidation of society in general and regional solidarity society, in particular, to assess the effectiveness and safety of public administration is expressed in the elimination of imbalances of private and public interests.

If we consider that the defining element of public administration is the public interest, it becomes clear that it is designed not only to serve as a kind of guarantor of the foundations of society and the state but also in this role to ensure the procedure for the optimal implementation of private interests of citizens of the state.

Public administrations are investing in the digital transformation of their citizen-oriented services and internal administrative processes (Scupola and Mergel, 2021). In the scientific literature, digital transformation is viewed primarily in terms of transforming the processes of public service delivery. Across the world, governments aim for the transformation of public administration, to adapt to a changing environment and address societal challenges (Lindgren and Van Veenstra, 2018).

Today's challenges prompt the search for new, more effective mechanisms of public administration. The role of digital transformation of public administration is as follows:

- In improving the efficiency of public administration, including the quality of public services;
- Reducing costs of the state, business, and/or citizens associated with the implementation of certain state functions.
- Increasing the productivity of civil servants in the provision of public services and the implementation of control and supervisory activities through the standardization, modernization, and automation of administrative and management processes, the introduction of electronic document management, creation of departmental and interdepartmental databases.
- Reducing the cost of creating and administering information resources and systems through the reuse of information technologies and services.
- Increasing the level of trust of citizens and businesses in the authorities and officials, support for their decisions, etc.

The more efficient management, carried out within the concept of new public management, taking the place of the traditional administrative management and borrowing for this purpose market principles in the production of public services, was faced with the need to solve the contradictions of a valuable nature.

It also proved insufficient the role of the state in coordination and communication with civil society associations, businesses, trade unions, which is the cause of a new crisis and has necessitated another change of paradigms. These contradictions and the tasks to manage them are obviously inherited by the new paradigm, not yet conceptualized.

The crisis phenomena arising in the processes of modern public administration at the present stage and the new political reality are considered together, their interdependence is undoubted. It is no coincidence that the problem of the new political reality has been actualized simultaneously with the problem of governance, with the aggravation of the crisis of public administration. There is, of course, nothing unusual in the emergence of a new political reality, because it reflects inevitable changes in the development of political reality as such.

The modernization of the socio-economic sphere is directly related to the digital transformation of life support. With the development of new technologies, there has been a dramatic leap for many government agencies on issues of fundamental reform and reorganization. Adapting to the evolutionary process of digitalization has allowed public administration to push the boundaries of new possibilities.

Conclusions

Given the modern challenges that face the system of public administration, the transformation in the formation of elements of sustainable public administration has a number of parameters:

1. Rational combination of economic, administrative, legal, and social means of creation and regulation of modern production-consumption system based on coordination of position of state and municipal authorities and representatives of private business.
2. Development and use of innovative approaches to the implementation of public-management regulation of private-business relations, taking into account the need to carry out public-management functions in conditions of socio-economic instability. Establishment of good methods of situational management of municipal and urban management on the terrain of macro-regions, regions, and individual municipalities (in districts, in cities).
3. Optimal prediction and elimination of various cyberthreats that can hinder the further modernization of public administration in the sphere of socio-economic relations. Related to this is the development of science-based means of anti-crisis regulation to provide the necessary support from the state to small and medium-sized businesses.
4. Radical change in the totality of means of revealing quantitative and qualitative changes occurring in different sectors of economy and life spheres. The specifics and dynamics of changes in the private and entrepreneurial sphere as one of the main sources of

tax revenues and, accordingly, the development of innovative methods of economic analysis of the qualitative characteristics and functions of economic entities with an expanding role of private and entrepreneurial initiatives are a priority. The establishment of various forms of socio-economic partnerships and the use of modern electronic technologies for the formation and use of information resources of public administration.

5. A qualitative change in the system interrelations and relations with a wide application of modern digital technologies of public administration as a key means of modernization of the formation and use of diverse information resources.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 754-767
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Investment activity in the era of digitalization: economic-legal support and perspectives of procedural protection

DOI: https://doi.org/10.46398/cuestpol.4073.43

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Abstract

Recently, digital technologies (blockchain, cyber-physical computing, big data, etc.) have been playing a significant role in the development of the world economy and society. Their rapid implementation changes traditional processes and affects the economic situation, investment climate, and the general development of the state and public services. Such changes affect investment activity, transform economic relations, and, therefore, there is a need to study the prospects for the development of economic and legal support of investment activities in the digital age. The work aims to study investment activities in the digital age. The subject of research is the analysis of patterns and general theoretical aspects of their development. The methodology consists of hermeneutic, system-structural, structural-functional, historical-legal, comparative-legal, and formal-logical methods. As a result of the study, the investment activity in the conditions of digitalization was analyzed through the prism of economic-legal support, and the nuances of the formation of the "digital" gap between developed countries and countries with developing economies.

Keywords: investment activity; digitalization; economic and legal support; digital economy; investment strategy.

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Recibido el 14/05/2022 Aceptado el 11/06/2022

La actividad inversora en la era de la digitalización: sustento económico-jurídico y perspectivas de tutela procesal

Resumen

Recientemente, las tecnologías digitales (cadena de bloques, computación ciberfísica, big data, etc.) han jugado un papel importante en el desarrollo de la economía y la sociedad mundial. Su rápida implementación cambia los procesos tradicionales y afecta la situación económica, el clima de inversión y el desarrollo general del estado y los servicios públicos. Dichos cambios afectan la actividad de inversión, transforman las relaciones económicas y, por lo tanto, existe la necesidad de estudiar las perspectivas para el desarrollo del soporte económico y legal de las actividades de inversión en la era digital. El trabajo tiene como objetivo estudiar las actividades de inversión en la era digital. El tema de investigación es el análisis de patrones y aspectos teóricos generales de su desarrollo. La metodología consta de los métodos hermenéutico, sistémico-estructural, estructural-funcional, histórico-jurídico, comparativo-jurídico y lógico-formal. Como resultado del estudio, se analizó la actividad inversora en condiciones de digitalización a través del prisma del soporte económico-legal, y los matices de la formación de la brecha "digital" entre países desarrollados y países con economías en desarrollo.

Palabras clave: actividad inversora; digitalización; apoyo económico y jurídico; economía digital; estrategia de inversión.

Introduction

Modern digitalization processes require significant investments, especially digital and network and the latest technologies / tools for their application. The state of the Ukrainian economy and the matter of having a model of digital transformation raises the issue of attracting investment to ensure a permanent investment process that would cover all areas of innovation breakthrough and components of socio-economic development.

In current conditions of the development of public relations, digitalization changes informatization. Digitalization should be understood as a systematic approach to the use of digital technologies to increase productivity, the competitiveness of production and accelerate socio-economic development. That is, digitalization involves the creation of a digital system that can operate independently, has analytical and predictive functions, and solves problems independently.

More and more research is being given to the "digital economy", which is seen as a system of social, economic, and technological relations between the state, business community, and citizens and that operates in the global information space through the widespread use of digital network technologies that lead to continuous innovation change to increase the efficiency of socio-economic processes. The digital economy can be considered as a separate segment of the economy, which is a set of investments to increase the efficiency of existing business processes through the development and implementation of new technological solutions and the development of current technologies; opportunity for businesses to invest in IT to reduce the cost of their products and develop their portfolio of proposals.

In this context, investment trends that directly or indirectly affect digitalization play an essential role. This circumstance testifies the need to develop and implement a comprehensive framework investment policy for the digital economy, taking into account the digital development strategies of individual countries and companies. Therefore, this paper is about investing in digital transformation as a key to the fruitful integration of developing economies into the global economy and helping reduce the digital divide and meet investment needs. But to properly ensure the implementation of investment activities, there must be effective instruments of economic-legal support. Given this, in this paper, much attention is paid to the problematic issues of economic and legal support of innovation and development prospects.

Having identified digital transformation as one of its priority areas, Ukraine has already made great strides in the operation of ProZorro systems and the launch of electronic services in the public and private sectors. But to date, the government does not understand how much money should be spent on digitization, and when it comes to the benefits of the transition to such digital services, at least the goal is to move away from domestic corruption and make people's lives easier (Nazarova, 2019).

Given the importance of digital transformation, it is equally important to create and ensure the effective functioning of a clear legal mechanism for regulating economic relations that arise and develop in the field of innovation, and, therefore, it is appropriate to further study the economic activities in this area, their legal regulation and formulation proposals for its further improvement under everyday conditions of digitalization of the economy.

1. Theoretical Framework or Literature Review

Even though investment activity in the era of digitalization at this stage is not a widely studied topic, some issues of investment activities are devoted to many scientific papers, articles, and monographs.

In particular, Androschuk (2017), Atamanova (2009), Budarna (2017), Vinnyk (2009) Vrublevska (2016), Glibko and Strizhkova (2019), Ivanova (2014), Korneeva (2018), Kudryavtseva (2020), Kukhar (2008), Lyubimov (2010), Ostapenko (2021), Podtserkovny (2013), Poedynok (2013), Fedulova (2020), and Sosnin (2020) studied certain aspects of investment activity.

Problems and prospects of innovative economic development in the context of Ukraine's integration into the European Research and Innovation Space have become the subject of research by Androschuk (2017). The author comments that for the expansion of innovation in Ukraine it is required, first of all, to create an effective institutional environment that will ensure economic growth, talent development, and increase human evolution. The researcher is convinced that Ukraine has a high educational and scientific potential, capable of producing various innovations in the form of ideas, scientific results, patents, but it has a weak mechanism for their implementation in economic activity.

In this regard, first of all, it is necessary to develop an effective mechanism for implementing the results of innovation and create a compelling institutional environment that will ensure the evolution of talent and raise the level of human development. All this should ensure a further increase in living standards. The reorientation to a high-tech way of further growth is an unalterable one for Ukraine. At the same time, the state must rely on high-quality human capital, including a high level of research and patent activity is a major but not sufficient condition for the development of the country's innovative economy.

Problematic issues of systemic economic and legal regulation of relations in the innovation sphere have become the subject of research Atamanova (2009).

Legal means of forming the investment potential of Ukraine were studied in detail by Budarna (2017). The researcher remarks that despite all the complexity of legal regulation of investment activities and, moreover, the investment policy of the state, the fact remains undisputed that the prerequisite for investment relations should be the prior accumulation of the necessary investment potential, which, under certain conditions, should take the form - investing. Also, the author noted that the peculiarity of the modern system of legal regulation to reproduce the investment potential of the country is to supplement the general principles of economic-

legal support of investment activities in the country as a whole and the relationship with economic interests.

Given this, the legal support for the formation of investment potential of countries involves the definition of: sources of investment resources for investment and technological problems; mechanism of accumulation of investment resources from various sources; the process of distribution of generated and attracted capital by the most efficient activities, taking into account real buys; the mechanism for ensuring the efficient use of asset resources, and; the mechanism for compensation of possible investment losses. In turn, among the tax tools that should encourage businesses to self-investment, the researcher called regressive taxation and investment tax credit.

Problems of economic-legal support of innovative investment have become the subject of research by Vrublevska (2016). Glibko and Strizhkova (2019) investigated the legal provision of virtualization of the infrastructure of the national economy of Ukraine.

Ivanova's article (2014) summarizes theoretical approaches and develops practical recommendations for investment support for the implementation of an innovative model of Ukraine's economy based on existing experience in the world. The author notes that the state policy in establishing a model of innovative development of the country should be based on investment mechanisms of an innovative nature.

The state sets priorities for innovation and investment development and financially supports strategic areas of structural change at the macro and regional levels. By solving the problem, the researcher sees the improvement of the investment climate, development of the investment market and investment infrastructure, creation of effective mechanisms of public-private partnership in infrastructure investment, development of a system of preparation of programs and projects for public investment.

The role of the state in promoting investment in the digital economy was surveyed by Korneeva (2018).

Kudryavtseva work (2020) is devoted to the study of problems arising from the lack of legislation on investment security of the state, which is part of the national economic security of the country as a whole and is to systematically prevent threats of a critical shortage of investment resources through the creation and state support the relevant legal investment procedure.

In the dissertation Kukhar (2008) drew attention to the fact that the task of the state is to ensure efficient and stable functioning of the investment market and involves its activities in certain areas, including: investment policy, including its economic, legal, legislative and organizational components,

by developing and adopting the Strategy and State programs of investment development of the country; implementation of investment policy by establishing and ensuring the legal investment order; implementation of investment policy through the implementation of state regulation of investment activities through legal means aimed at minimizing investment risks and maximizing the transparency of property status of participants in investment relations; implementation of investment policy through state support of investment activities; implementation of investment policy by the state as a participant in investment relations; implementation of investment policy by carrying out activities as an investment entity, in particular, joint investment activities, as well as a recipient of private and foreign public investment in their own objects of public investment.

Lyubimov (2010) singled out the concept and criteria of investment security in his work.

Ostapenko (2021) devoted her attention to the study of the processes of systematization and the need for meaningful modernization of the economic legislation of Ukraine. The researcher considered the history of the modern economic legislation of Ukraine and studied its comparative legal aspects. The paper establishes that the formation of national economic legislation should be determined by the content of a coherent and socially acceptable scientific concept of the national model of market economy in current conditions. The lack of such a state-approved program concept is one of the main factors in the chaotic and reactive nature of economic legislation, which in turn, there is a loss of systemic and effective legislative consolidation of economic relations both in the norms of the Basic Law and in the norms of economic and related branches of legislation of Ukraine.

Foreign trends in the development of legislation and science of economic law in his work described Podtserkovny (2013). Poedynok (2013) considered investment activity as a type of economic activity and justified the need to consider investment activity in a broad and narrow sense.

The task is to identify and substantiate global trends in investing in digitalization and the formation of the digital economy, to reveal the compliance of Ukraine's economy with these processes and relevant challenges; to develop proposals for deepening investment policy for the digital transformation of socio-economic development put Fedulova (2020). Another scholar, Sosnin (2020), studied the phenomenon of digitalization as a new reality in Ukraine.

2. Methodology

During the study, general theoretical and special scientific methods were used, namely: hermeneutic, system-structural, structural-functional, historical-legal, comparative-legal, and formal-logical.

Thanks to the hermeneutic method, the peculiarities of the interpretation of the law in the study of investment activity were studied. Given that the hermeneutic method of interpreting the rule of law is the tool that can be used to solve the problem of double meaning, through hermeneutic analysis of the law, the problematic aspects of the legal regulation of investment have been clarified. In particular, the use of the hermeneutic method involved the analysis of the text through the division into subtilitas intelligendi (understanding), subtilitas explicandi (interpretation) and subtilitas applicandi (application).

Through understanding, it has become possible to understand the rules of law expressed through signs transmitted by the legislator and perceived by the investor, central executive bodies, etc. through external written expression. The concept of subtilitas in the hermeneutic method can be translated as "subtlety, dexterity, art", according to traditional hermeneutics, these procedures were considered not so much as the methods we use, but certain skills that require special spiritual sophistication.

Unfortunately, in practice, there is a paradoxical situation when the legislator seeks unambiguous text, the highest judicial bodies of the state are interested in ensuring uniform interpretation of the law, and the law enforcer tries to use its ambiguities (errors, gaps, etc.) to his advantage, often substituting the content of the law for his interpretation.

There is a conflict of interpretations between the legislator and the law enforcer. Simultaneously, the interpretation leads to an increase in possible options for understanding the rule of law. The variety of options provides ample opportunities not only to abstractly clarify the meaning of the legislative rule but also to identify the interests behind the norm and the goals of the legislator. Each of the described problems has an individual character, and therefore, solving it, it is necessary to establish all the factors influencing such a decision.

The study of problematic issues of investment in the digital age has become possible through the use of the system-structural method. With the help of the tools of this method, investment activity was studied as a whole set of elements in the set of relations and connections between them, i.e., considered as a system.

Such a method as structural-functional allowed to study investment activities in the period of digital transformation through the structural dismemberment of the holistic phenomenon of "investment", where each

element of the structure has a specific functional purpose. Through the two main approaches of this method - structural-functional, the functions of investment activities and the structures that perform these functions were clarified.

The chronology of the development of investment activity and its vectors, including investments in the period of digitalization and legal regulation of the researched activity were surveyed using the historical-legal method.

The comparative-legal method allowed to compare different conditions in which investment activities are carried out, including the legal realities of different countries in order to identify similar or different features between investing in the context of digitalization, as well as the terms that denote them. This method contributed to the accumulation of empirical knowledge.

Various formal-logical methods were utilized for in-depth study of the subject. For example, the method of analysis was used to analyze the components of digitalization and features of investment activities in such conditions. The synthesis made it possible to combine the selected elements into a single whole. The generalization helped to highlight the general features of investment activity and draw conclusions on the ways of development of investment activity in the conditions of digitalization.

3. Results and Discussion

Before considering the problematic aspects of economic and legal support of investment activities in the digital age, we will define the key concepts: investment activities, public investment policy, etc.

Article 12 of the Economic Code of Ukraine (hereinafter - the EC of Ukraine) stipulates that the state uses various means and mechanisms to regulate economic activity to implement economic policy, implement targeted economic and other programs and programs of economic development. However, the EC of Ukraine does not contain definitions of economic policy and state regulation of economic relations. Although, the text of Art. 9 of the EC of Ukraine contains meaningful provisions on the differentiation of economic policy into economic strategy and economic tactics, and the legal consolidation of economic policy conditions in legislation in the form of programs of the Cabinet of Ministers of Ukraine, targeted economic development programs, etc. (Law 436-IV, 2003).

The Law of Ukraine "On National Security of Ukraine" establishes the definition of "national security of Ukraine" and among the principles of state policy in the field of national security and defense highlights military, foreign policy, state, economic, information, environmental security, etc., and, among the main areas of state policy, National Security of Ukraine (in

the economic sphere) highlights only the improvement of the investment climate, increasing the efficiency of investment processes (Law 2469-VIII, 2018).

Regarding the definition of investment activity, the provisions of the Law of Ukraine "On Investment Activity" allow us to conclude that the legislator includes in the content of investment activities various actions of the subjects of this activity (primarily investors), which are carried out at different stages of the investment process - from the decision to invest to the termination of investment activities in general (Law 1560-XI, 1991). However, this law does not specify that investment activity is an economic activity.

According to scientists, state investment policy is a systematic and purposeful activity of certain state bodies to create and implement a special algorithm of measures for the development of the investment market or its segments through the formation of regulatory support for investment relations, application of the necessary means of their state regulation and direct participation of the state as a subject of these relations, based on the agreed model of such a market, which is enshrined in the State Investment Development Program.

The investment market is the object of state investment policy and is a system of socio-economic relations aimed at ensuring the process of reproducing competitive production of goods and services through the mechanism of meeting investment demand through investment supply of relevant investment goods formed in the process of accumulating investment potential.

A crucial component of the state investment policy is the legal investment policy, which is also part of the general legal policy of the state. Due to its implementation, the law-making process is organized to determine the priorities of legal regulation and the system of basic legal means, mechanisms, and regimes in order to establish the optimal legal investment order.

The legal investment policy of the state is formed and implemented under the condition of the existence of a number of economic and legal imperatives, including:

- Obligatory and permanent existence of legal investment policy in the state.
- Ensuring the functioning of legal investment policy mechanisms of legal liability for violation of the order of its formation and implementation.
- Investment pluralism in all segments of the investment market, the priority of innovative investment, etc. (Kukhar, 2008).

The next concept is "investment". It is used at different levels of management:

- At the international level – investments in the world infrastructure and economy of international and regional unions (associations).
- At the state level – investment in the economy at the national level; at the regional and local levels – investments in the economy of the region, local communities, etc.
- At the enterprise - investment in machinery, equipment, real estate, R & D, development of staff and specific employees; purchase of shares, bonds, etc; at the household level also talk about investment, when buying durables, expensive jewelry, works of art, education and training, etc. (Bryukhovetskaya and Buleev, 2019).

Today, the world is actively implementing information strategies "government-business" and "society-business". The policy aimed at encouraging public administrations to implement modern information and communication technologies, per the implementation of the digital development strategy under the "government-business" scheme (government-to-business) extends to such areas as: creating or promoting e-government services for individuals and companies and improving the work of governments by increasing transparency and accessibility of information.

An important achievement of the government's transition to the use of modern digital technologies is the implementation of the concept of "government-to-society". To increase public confidence in government action, it is necessary to increase the transparency of state institutions through the introduction of open databases of government operations. Improving public and business access to information will have an extremely positive impact on investment sentiment, improve the investment climate in the country, as transparency and clarity have always attracted the attention of investors.

The main digital tools for promoting investment that can be used by the state are information online portals and online windows, which will provide investors with all the necessary information and free access to rules and regulations on the regulatory system and legal framework, which will increase the transparency of investment activities in the country, as well as simplify access to administrative procedures and increase the efficiency of administrative services for investors.

The practical implementation of the digital transformation of investment policy requires the creation of appropriate institutional conditions that will allow enjoying the benefits of digital development. Undoubtedly, the advantages of digital development, which have a significant impact on

investment activities, include the emergence of new financial instruments and channels of financial services, increasing the speed of operations, reducing transaction costs, overcoming information asymmetry, and more. In this context, it is noteworthy to ensure the gradual transformation of the investment regulation system to the requirements of the digital economy (Korneeva, 2018).

Therefore, an important component of economic development is to stimulate investment in digitalization. To do this, in the field of investment activities to ensure the support of investment projects requires:

- formation of general rules for the creation and evaluation of special investment regimes:
    - a list of new approaches to obtaining tax benefits,
    - reduction of insurance premiums for both private investors and investment companies implementing various projects;
- development of specific measures of state support in one of the following forms:
    - providing benefits for project financing;
    - providing benefits for the payment of property tax and land tax;
    - compensation of the investor's investments due to various tax revenues from the investment project,
    - stabilization of regulatory and tax conditions.

Regarding the existing situation, official statistics record the introduction of the web, cloud technologies, big data with varying intensity in enterprises of the Ukrainian economy. However, statistics show extremely disappointing results regarding investment in Ukraine:

1. a significant decrease in foreign direct investment (equity) in the economy of Ukraine in 2017 (31230.3 million dollars) compared to 2016 (32122.5 million dollars);
2. in terms of economic activities, the share in "Information and Communication" in 2017 was only 5.5%, in "Professional, scientific and technical activities" - 5.9% (Table 1);
3. in terms of sources of financing capital investments in the economy of Ukraine, own funds of enterprises and organizations account for the largest share, which is also almost stable in dynamics, which does not allow to talk about opportunities for economic growth, especially digital;

4. there is a decrease in the already low share of foreign investors (Fedulova 2020).

Conclusions

1. Investment and digital transformation in today's conditions of social relations are a whole, because the development of digitalization of economic processes is impossible without investment, and the most effective investment tools are directly related to the digital economy.
2. The state must take various measures to attract investors, placing a key focus on private investment, which will allow for comprehensive measures to develop the digital economy and make noticeable positive changes in the country's economy.
3. In the face of global challenges, the latest technologies in the difficult times of the world economy and society can be a driver of critical problems and encourage investors to reshape investments in priority areas, which today are digital technologies. However, for such re-profiling, there must be an appropriate legal framework and mechanisms that can effectively ensure the implementation of such economic activities.

Further research will be focused on the study of investment support mechanisms.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 768-785
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Role of Sports Contracts in International Trade Contracts

DOI: https://doi.org/10.46398/cuestpol.4073.44

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Abstract

Sports activities, which were originally considered entertainment, have become a large industry and, consequently, their commercial dimensions have gained special prominence. Iurged to address this problem in the form of scientific research the fact that, now, sport is an independent commercial phenomenon, both in civil and international trade. Thus, in the first place, the concept of sports contracts is analyzed. This research has used descriptive, analytical methods and bibliographic research with valid legal sources to collect information. The results ofthe study showed that the formation and dissolution ofthe sports contract is subject to special rules, international and national, which have distinguished it from the general rules of other contracts. Therefore, due to the expansion of professional sport, special regulations in various sports-related fields are an undeniable necessity and, at the same time, a novel field for scientific legal study.

Keywords: sports; trade contracts; international sports; professional athlete; sponsor.

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Recibdio el 17/03/2022 Aceptado el 24/05/2022

El papel de los contratos deportivos en los contratos de comercio internacional

Resumen

Las actividades deportivas, que en un principio se consideraban entretenimiento, se han convertido en una gran industria y, en consecuencia, sus dimensiones comerciales han cobrado especial protagonismo. Impulsó a abordar este problema en forma de investigación científica el hecho de que, ahora, el deporte es un fenómeno comercial independiente, tanto en el comercio civil como internacional. Así, en primer lugar se analiza el concepto de contratos deportivos. La presente investigación ha utilizado métodos descriptivos, analíticos e investigación bibliográfica con fuentes legales válidas para recolectar información. Los resultados del estudio mostraron que la formación y disolución del contrato deportivo está sujetas a normas especiales, internacionales y nacionales, que lo han distinguido de las reglas generales de otros contratos. Por lo tanto, debido a la expansión del deporte profesional, las regulaciones especiales en diversos campos relacionados con el deporte son una necesidad innegable y, al mismo tiempo, un novedoso ámbito para el estudio científico jurídico.

Palabras clave: deportes; contratos de comercio; deportes internacionales; deportista profesional; patrocinador.

Introduction

International contract law is a very important branch of international trade law that plays a great role in international and cross-border trade connections; so, most international trade connections are formed in contracts. The recognition of various legal aspects of such contracts is undeniable. Familiarity with the common terms and conditions of such contracts, which can be referred to as the general rules of international contracts, is necessary, regarding the diversity and multiplicity of international contracts. Trade globalization has been the result of contemporary history, which has created a deep-rooted and extensive process in trading. The growing trade is now moving beyond national borders as an evolving reality.

Globalization transforms the free flow of trade every day and removes the traditional and cumbersome rules and regulations (Shiravi *et al*., 2019). However, before going to any discussion, the scope and meaning of legal rules or regulations should be taken into account. Sports contracts may be divided into two categories, national sports contracts, and international sports contracts according to sports law and international trade law

subjects. National sports contracts are accomplished within a country, and the contract parties should have the citizenship of a similar country; the rules governing that contract are subject to the laws of that country.

Therefore, its international description should not cast doubt on its inclusion in the rules and regulations of civil law. In other words, they are not different in terms of their subordination to civil rights and the current rules and regulations in civil law(Klepikova *et al*., 2021). Examples of sports contracts include standard player contracts, coaches 'contracts, doctors' contracts, staff contracts, sports facilities contracts, marketing or sponsorship contracts (Maleki and Yaghoub, 2017).

Since sports have long been transformed from entertainment to profitable business for federations and players, and because they have national and international regulations, sports contracts in international and cross-border fields are progressing day by day. In this article, we will first examine the principles governing international trade agreements in the first place, and then we will explain sports contracts and their types and methods of dissolution in the next ones.

2. International Trade Contracts

2.1 Conceptology

One of the most important issues in international trade is the regulation and conclusion of international trade agreements. International trade agreements include the three terms "contract", "commercial" and "international". A contract is an agreement that establishes a relationship between two or more parties. These relationships can be in the field of buying and selling, renting, mortgaging, guaranteeing or providing financial facilities.

A commercial contract is a contract that is concluded for business purposes and to meet business needs. Contracts that are made to meet personal needs are called consumer contracts. It is worth noting that here commercial contracts are not in contrast to civil contracts - as is the case in some legal systems such as France - and therefore, if the contract is not for personal or family use and is intended for business and income, it is subject to commercial contracts (Shiravi *et al*., 2019).

An international clause indicates that the parties to the contract are trading across borders or that the contract is intended to be executed across borders. A contract that is concluded and executed within the framework of a country is considered an internal contract and is out of the scope of discussion.

There are many different types of international trade contracts, at the top of which are contracts for the purchase and sale of goods and services, according to which materials, tools, equipment, machinery, technical and engineering services, etc. are traded. Transport contracts, insurance, financial facilities, commercial representation, international distribution, licensing, technical and production cooperation, participation in investment, construction, operation and transfer, various methods of mutual trade of other contracts It is internationally important and is widely used in international trade (Barr, 2011).

International contracts differ from domestic contracts in many ways. The most important difference is the relationship between international treaties and more than one national system. Unlike domestic treaties that are concluded and enforced within the framework of a national legal system, international treaties have at least two national systems.

International contract law is a very important branch of international trade law and plays a great role in international and cross-border trade relations, so that it can be said that most international trade relations are formed in the form of contracts. Therefore, understanding the various legal aspects of such contracts is undeniable, and given the diversity and plurality of international contracts, familiarity with the common terms and conditions of such contracts, which can be referred to as the general rules of international contracts, is necessary. A sports contract is a type of contract that is somehow related to sports affairs.

Examples of sports contracts include standard player contracts, coaching contracts, staff contracts, sports facilities contracts, marketing contracts or attracting sponsorships in sports contracts concluded between sports clubs and athletes and coaches.

2.2 Arranging an International Contract

The first step in arranging and concluding international trade agreements is to determine the goals and how to achieve them. The contract must first be designed to achieve the desired goals and then based on that plan, the terms of the contract must be set. After determining the general framework of the contract, one of the parties usually prepares the initial draft of the contract for further negotiations (Shiravi, 2018).

The initial agreements are the next step in setting up contracts. In daily transactions, negotiations and contract conclusions are done at the same time, as if someone goes to a store to buy a product and after knowing the value of the transaction and its price, buys the desired product. However, in social and economic relations, there are many cases where the parties are not able to finalize and conclude their contract immediately for some reason, and it is necessary to prepare before concluding the contract or to

agree to the negotiating parties (Shiravi, 2010). Preliminary agreements are becoming more and more important in economic and business life. This is especially important in international trade relations, investment projects, and the formation of joint venture companies.

Preliminary agreements refer to a set of charters, contracts, agreements, agreement noting, protocols, etc. These preliminary agreements and contracts may be brief or, conversely, very complex and detailed. This agreement may contain all the basic terms of the futures contract or may contain only a series of vague and general obligations. In some preliminary agreements, the parties explicitly stipulate that their agreement has no legal effect, and they express the desire of the parties to negotiate and conclude the main contract if an agreement is concluded.

Conversely, some of these agreements imply specific or vague obligations to the parties. It is as if the parties are committed to continue the negotiations and conclude a final contract, the details of which are not yet known. Also, in many cases, preliminary agreements do not specify whether or not they have legal effect (Shiravi, 2010).

In the next step of contract formation, we determine the form of the contract, which may be concluded in various ways. An international contract may be concluded orally or by letter exchange, fax or e-mail. However, the vast majority of international agreements are in writing. This does not mean that most contracts are concluded by signing a written contract, but rather in most contracts, the order is made in writing or accepted by sending the goods with an invoice.

An important issue in the contract is whether it is concise or detailed. In a detailed contract, the rights and obligations of the parties, the contract termination cases, rewards and penalties, dispute resolution, the governing law, and other details are described in detail. The shorter the contract, the greater the governing law inclusion in interpreting and supplementing the provisions of the contract. Whether a contract is made briefly or in detail depends on the type of contract, the applicable law, and the complexity of the contractual relationship. The higher the contract value, the longer it takes, or the more complex the subject matter is, the more detail the contract should be.

In such cases where the contract must be valid for a long time, the contract must have the necessary power to be able to withstand future changing events and happenings. The parties in this type of contract must consider the possibilities and future events and anticipate how to deal with them. These types of contracts may include conditions that increase the flexibility of the contract in the face of changing circumstances and avoid contract fragility. Contracts that seek to regulate complex relationships between the parties should also be prepared in more detail.

An important principle that is taken into account in the contract is that the contract terms should be as transparent and precise as possible so that it clearly indicates the intention of the parties. Since the conventional meaning of words and phrases is considered in the interpretation of the contract, it is necessary to pay attention to their conventional meanings in choosing words and phrases. The meaning of conventional meanings is the meaning and concept of a kind of words and phrases according to all situations, appropriate to the type of profession, class, and specialized field.

If the conventional meanings of words and phrases are not clear, it is recommended to explain the meanings of those words and phrases in the definition section. When a phrase is defined in a contract, an arrangement must be made to specify where in the contract the use of those words and phrases has a defined meaning and where it has a conventional meaning.

2.3 Provisions and Scope of Principles Governing the Regulation of International Sports Trade Contracts

Today, the "Principles and Rules" represent a set of principles and rules of contract law that are common in national legal systems or in compliance with the specific requirements of international commercial transactions with applicable legal rules in their contract. The parties to the contract may, instead of choosing the "law" of a country, choose the "principles and rules of law" as the governing law of their contract. In international sports trade agreements, this issue becomes more important as the parties are subject to different legal systems and are more unstable.

For this reason, in these contracts, the parties sometimes anticipate the circumstances that may occur after the conclusion of the contract and make it difficult to execute the contract. This prediction is usually made in the form of a condition called hardship condition. In fact, by anticipating such conditions, the parties determine the obligation of the contract in an unpredictable event that leads to the difficulty of implementing the contract and the loss of its balance. However, in most cases, such conditions are not included because predicting several conditions requires knowledge and experience about this situation and can not be expected from uninformed parties.

On the other hand, imposing contract terms on unskilled parties due to the lack of such terms is far from fair and just. In this situation, theories such as hardship are introduced. Principles and rules governing the regulation of international trade agreements in this article (1-2-6) have defined hardship, after emphasizing the principle of contracts necessity. This article stipulates that hardship is created when:

The occurrence of accidents will fundamentally change the balance of the contract, either due to the increase in execution costs or due to the decrease

in the exchange value that the party receives. 2) The accident occurs or becomes public after the conclusion of the contract. 3) The accident could not have been reasonably considered by the loser. 4) The accident is out of the control of the party and 5) the risk of the accident is not accepted by the loser.

When the disputes are referred to the International Court of Arbitration for Sport, the rules of law are considered. According to the opinions issued by this authority, the principle of equality of arms, the principle of good faith, the principle of equality and proportionality, the principle of fair judgment, have all been emphasized and approved (Panagiotopoulos, 2014).

3. The Nature of the Sports Contract

Sports law covers a variety of issues. One of the most important issues that can be considered in sports law is the category of "sports contract" because it can be said that the most basic element of professional sports is the sports contract. When a contract is signed and a relationship is established between sports activists, no competition will take place and many issues in sports law will not be relevant. For example, the salaries and duties of coaches, players, clubs, sports equipment sellers, journalists, sports representatives, club doctors, sponsors, etc. are defined on a contract, and none of these issues are conceivable until a contract is concluded.

Before regarding the main topics, it is necessary to provide a comprehensive definition of the sports contract and specify the desired contract from other examples of the sports contract. no specific definition has been found so far regarding the sports contract; according to the rules and regulations of the sports federation and the contract of those who work to conduct the competition, the sports customs, and contracts sports, the definition can be achieved with certainty in the sports contract as it is said: it is a contract whose subject is directly or indirectly related to sports, whether the subject of the contract is directly about sports activity or the terms that are unavoidable for doing sports activities.

The only sports contract that deals directly with sports activities are the clubs' contracts with players, but if the subject of a sports contract is something that is unavoidable for a match, there will be many different examples. Among sports contracts, like the contracts of coaches, team doctors, sports lawyers, sports representatives, journalists, sponsors, etc., clubs' contracts with players are the most important and main sports contracts.

Because athletes and players use all the efforts that provide the equipment and supplies for the competition, and perform sports activities

in the form of competition, in fact, they play the last role in the professional sport of the players; if they are not players, preparing the equipment for the competition will be in vain. Therefore, it can be boldly claimed that the most important and main sports contract is the clubs' contract with the players.

Determining the legal nature of a sports contract requires an analysis of the issues that make up the framework of a sports contract, without which the contract will lose its formality and legitimacy. For this purpose, we consider the sports contract's body.

A) The Player

One of the parties in the sports contract is the player. A player is a person who devotes all his time and talent to training and education in a particular sport and has chosen sports as his main job so that they allocate time to it. In professional sports, each player's skills and physical and mental strength are unique in their kind, and clubs use their players to benefit from their sports abilities, which builds the sports personality of the players. It is also the most important and the only selection criterion. This makes the sports contract being in the category in which the personality of one party plays a key role and is the main reason for the contract. On this basis, the contract is concluded under the supervision of the player.

B) Club

With different types of sports contracts, we find that clubs are one of the permanent and main parties to these contracts; For example: in the contract of construction of sports facilities and equipment, purchase of equipment and their transportation, television, and radio broadcast of matches, employment of technical and administrative staff of the club and contract with players, etc., one of the fixed parties is the club. For this reason, it can be argued that clubs are one of the building blocks of professional sports, which on the one hand, as employers, conclude contracts with players and control their sports activities, and on the other hand, by concluding various sports contracts provide the ground for competitions.

Today, sports clubs are often established and managed as stock companies, and their shares are also offered on the stock market like Chelsea, Real Madrid, Manchester United.

3.1 Types of Sports Contracts:

3.1.1 Coaches' Contract

The employer-employee relationship between a team or institution and the coach is similar to the usual employer-employee relationship

in the business world. The coaching contract is somewhat similar to the employment contract, in which the nature of the work, the duration of the employment, and the salary are specified. However, unlike the standard contract of athletes, the contract of coaches, especially prominent and well-known people, has independent and unique clauses.

3.1.2 Medics' Contract

Physical activity requires the presence of a physician. Injuries are inevitable in sports competitions; therefore, rapid diagnosis and treatment by a qualified physician are very important. The doctors are independent contractors and, as a result, the hiring party will not take responsibilities under the principles of proxy liability. In fact, a doctor's contract is a type of employment contract that has certain terms and conditions.

3.1.3 Employee Contract

The employer-employee relationship differs from independent contractor in various areas such as personal responsibility, taxation, insurance, salary-pension, and dismissal. Therefore, recognizing the difference between the two is very important. If it is proven that there was an employer-employee relationship, the action of the employees will make the employer responsible for losses; Therefore, many employees hire contractors to ensure that they arrange the contract in such a way that the employees are recognized as independent contractors.

3.1.4 Contract for Sports Facilities

When an amateur sports club or professional team does not have land, it is necessary to sign a contract to rent it. In addition to how the venues are used (game schedules, training grounds, locker rooms, parking lots, etc.) as well as the workings of financial sponsors and advertisers, other factors such as rent, payment methods, and special services by the owner should be considered.

3.1.5 Marketing Contract

Marketing and sponsorship contracts, like other contracts, mention the parties, time limits, obligations of the parties, and their terms. A sponsorship agreement, whether between a company and a player or between a company and a sporting event, is a binding agreement in which either party is required to meet its obligations. It is clear that the language of the contract must be clear in various cases, such as the obligations of each party in unpredictable circumstances, such as disputes, natural disasters, player injuries, or the sponsor's bankruptcy.

4. FIFA Rules in Contracts

The rules of international organizations, such as the World Football Federation (FIFA), apply to international competitions, and the national clubs and teams are required to comply with them. Otherwise, penalties will be the suspension of membership of the club or national team of the violated country, in which the organization and international competitions will follow. The rules of these international organizations are also authoritative regarding the rules of the game, but the rules of these institutions are guidelines regarding the transfers of players, the formation of clubs, and the starting matches (Guillermo, 2014); however, in many cases where national law is impartial on a matter, it refers to the rules of international institutions.

FIFA defines a minimum for a contract, and any contract that meets the 31 conditions set by FIFA is a minimum professional contract. It is a good thing if the federations come up with a ready-made format to standardize the appearance of the contracts. On the other hand, they must also allow the parties to enter into additional conditions or remove some of them. The "principle of contractual freedom" is a universal and transnational rule and has been considered in Iranian civil law.

The Executive Committee of FIFA on November 24, 2008, by sending Circular No. 1171, emphasized the same international principle. The title of this circular is the minimum contract requirements of a professional player, and in this section of the letter, 13 important contract headings are explained. According to the section of the letter, a valid contract is a contract that has 13 headings and assignments, meaning that it has listed the minimums that must be assigned, and no maximum can be assigned to these 13 items.

Another point is that these 31 items should be in the football contract, but the content of these items is determined by agreement between the player and the club and the federation has no right to interfere in the content. These include party specifications, definitions, club commitments, player commitments, salaries and benefits, dispute resolution, and more.

4.1 Sponsership and Advertising Contract (Sponsorship)

Sponsorship is a commercial contract in which a sponsor pays a certain amount of money to a person with a commercial reputation or provides them with goods, services, and other facilities. In return, by receiving certain salaries and through promotional activities by individuals, they enhance their business position and expand the sales of their products and services (Wong, 2010). Sports advocacy, which is considered the cornerstone of all sports marketing arrangements, is of great value and importance in this field.

On the other hand, famous athletes earn high income through sponsorship contracts, which is even more than what they earn on the field. For example, in 1999, Schumacher, a well-known car racing driver, earned $ 80 million through personal sponsorship contracts (Yousefi and Hassani, 2010).

On the other hand, a sponsorship deal brings huge benefits to clubs because companies compete with sports activists for contracts and pay them millions of dollars to promote a wide range of their products (Wong, 2010). Sponsorship sports organizations and athletes are shortcuts for sposers to offer their products to a large number of consumers and penetrate the market as soon as possible (Thornton, 2010).

Of course, there are very special cases in which advocacy is not done for a direct commercial purpose; Among them is a contract between Barcelona and UNICEF, under which even the Spanish club is obliged to pay money to help the child protection fund in exchange for the UNICEF name on the club's shirts, but it must be admitted that such cases were rare. Moreover, commercial intentions motivate sports parties and businesses to enter into sponsorship agreements (McDonnell and Moir, 2013). Sports sponsorship contracts fall into several categories:

4.1.1 Collective Sponsorship Contracts

A sports sponsorship agreement is an agreement between a sponsor and a group of sports organizations, including clubs, leagues, national organizations, or international sports institutions, to use their credit to promote the supportive business. In the club sponsorship contract, the sponsor's trademark and letters are affixed to the team uniform and equipment of the club, and signs and promotional items are displayed on the ground and at the entrances of the club's sports fields.

The latest sponsorship deal was signed in 2015 between Chelsea Football Club and Japanese company Yokohama (a car tire manufacturer) for 40 million in five years. This is the type of contract that is common in some sports, according to which the name of the sports club is changed to the name of the sponsor or a word reminding the sponsoring business is added to the name of the club.

4.1.2 Personal Sponsorship Contract

However, in EU law, there is no distinction between collective and individual supportive contracts; but in American law, personal protection is an independent form of such agreements (Nafziger and Ross, 2011). This agreement is a contract between an athlete and a business company, according to which the company, as a sponsor, obtains permission to use the name, image, signature, etc. of an athlete in advertising his products and services (Spengler *et al.*, 2016).

The use of celebrities in advertising is considered an effective business strategy to help promote new products, increase market share for existing brands and find new ways to communicate with customers (Li, 2011). With the boom of the market economy, the image of a person and his personal and physical characteristics have gained considerable value, so the name and image of the star in today's society are considered a valuable commodity. Natural or legal persons use the visual rights of stars to promote and develop their goods and services (Jafari and Mokhtari, 2016). On the other hand, many outstanding athletes earn a significant portion of their income from sponsorship and commercial certification (Czarnota, 2012).

4.1.3 Stadium Naming Contract

Another new and special type of sponsorship contract, which first developed in the United States over time, gained a prominent place in Europe; it has become very popular in the world since 2000. The phenomenon of naming stadiums and sports fields and even Platforms are called sponsors (Blackshaw, 2011). At present, the importance and application of naming contracts have been proven as an effective way to promote brands and improve the competitive position of firms (Neils, 2012). These successes are usually long-term, unlike individual and collective support agreements. The biggest naming rights contract, for example, was signed in 2004 between Arsenal Football Club and the Fly Emirates to 100 million over a 15-year period, under which Arsenal renamed their own stadium to Emirates.

4.1.4 TV Broadcasting Rights Contracts

The right to broadcast and satisfy the needs of fans watching national football matches and other disciplines are the most important segments of holding matches until the World Cup receives their acceptance as well as the broadcasting of these matches and events. Beyond the media and entertainment aspect of this event, the right to broadcast ensures profitability and income not only for the club as a broadcast of each country's league but also for the organizers of prestigious international competitions such as the AFC and the Asian Club Cup. The Asian Cup, as well as FIFA, will be held to host a variety of competitions, from the Junior World Cup to the Adult World Cup.

In today's world, clubs make big money through television broadcasting rights. If the clubs can earn money this way to cultivate players and sell these players, they can buy any player at any price they want. They can even attract international players and sell their games internationally. In 2010, the German Bundesliga earned 1.5 billion euros from German football matches, nearly 750 million euros from television broadcasting rights and ticket sales are a huge number in the world.

In European stadiums, they have even made suites that have all the facilities of a private home, and families rent them out every year to encourage their team, and they can have a good time whenever the match takes place. The rent of these suites is about 50,000 euros per year, and a club earns a considerable income by renting them.

Recent advances in technology have introduced a new player in the field of sports broadcasting. Virtual advertising is a type of digital technology that allows television advertisers to use logo names, animated images, and computer-generated brands. In sports competitions, these advertisements may even be shown during the broadcast of a live television match. As this type of advertisement is used in the broadcast of football matches, even bowling can be seen in various sports competitions. This type of technology has been used since 1995, which has reached its peak in recent years and is commonly seen in various sports.

In 2000, due to the lack of resources and rights in these cases, there were many problems, and one of these problems was the reluctance and consent of companies to have virtual environmental advertising. In fact, many commercial contracts related to virtual environmental advertising remained impartial. Despite the free trade market in the United States, there were numerous restrictions on virtual advertising under the applicable law. First, the inconsistencies became apparent when virtual advertisements for products had to be replaced without obtaining permission from the owners of places where the advertisements could be actually installed.

The cost of virtual advertising is somewhat equal to the so-called old and traditional advertising. In baseball, for example, the cost of a virtual ad is equal to showing a traditional ad for 30 seconds, when showing the result of a match. However, we must also add the cost of producing virtual advertising to this price. Despite the high costs of this type of advertising, due to their benefits, this type of advertising still plays a significant role, which highlights the need for legal standards of broadcasting competitions at the regional level (Deutsch, 2000).

4.1.5 Sports License Contracts

A license is an agreement whereby the holder of intellectual property, called a licensor (licensor), authorizes another person, called a licensee (licensor), to exercise all or part of his exclusive rights under certain conditions and for a period of time. It is known and gives in a specific territory and usually with limitations (Poltorak, 2004).

Teams, Leagues, Athletes, and International Organizations benefit from the reputation they have gained by licensing their trademarks to large companies producing sports or non-sporting goods which are mentioned as “Sports Goods License Agreement”. This contract includes the products

ranging from sports items to food and toys, etc., or the services related to logo, and other sports trademarks (Rosner and Shropshire, 2004: 183).

This license allows sports activists to establish themselves in the market and become a brand; earning money increase their reputation, without the need to spend exorbitant costs, while the risks of production and the success of the business started by the licensee. In addition, sports licenses are considered an effective tool in protecting trademarks and maintaining the credibility and reputation of sports personalities (Masteralexis *et al.*, 2011). From the licensee's view, the bachelor's degree contract provides an opportunity in the first place to benefit from the reputation and popularity of athletes and teams, which results in more credibility and faster market penetration. In addition, companies can increase the price of their products and increase their revenue level by simply adding a logo or trademark to their pre-manufactured products. In addition, the sports license contract opens new distribution in sports stadiums and fan clubs, which will greatly help the development of the business (Bruton, 2015).

4.2 Dissolution of the Sports Contract

Obligations under the contract may be dissolved for one of these cases:

1- By Performance

2- By agreement

3. By Rescission BY

4- By Operation of Law

5- By breach of contract - By Breach

6- Due to the impossibility of executing the contract - By Frustration

In the first place, the contract may be completed and executed satisfactorily, in which case the contract is terminated and there is no room left for dissolution. On the other hand, the parties may agree to their lack of obligations without the involvement of an external cause or the fault of one party, the obligation falls under the rule of law. This in itself may involve a variety of situations, sometimes the next law prohibits the obligations under the contract. The next case, in which the sports contract may be dissolved by agreement, is also referred to as dissolution right or voluntary dissolution.

In the case of contract dissolution, one of the methods of compensating for the damage caused by the contract breach is to terminate the contract as if the contract never happened. Contract law in this way refers to the termination, and it is assumed that the parties will be returned to their pre-contractual position. Each termination or dissolution of a contract, although having more or less the same result, takes place in different situations.

In the latter case, if one of the parties is exonerated from fulfilling his obligations, his failure to fulfill the obligation will not be considered a violation. An unpredictable event that makes it very impossible or difficult to fulfill the obligations can lead to his exoneration of non-fulfillment of the obligations. during the validity of the contract without either party's violation, an event may occur that makes the continuation of the contract impossible or illegal, or it causes such a fundamental change in the circumstances; as a result, the contract becomes something completely different from what the commitment is made first, in which case the contract will end automatically.

Conclusion and Recommendations

International trade contracts are based on very important principles, most of which are general legal principles that civilized nations such as the principle of free will, the principle of good faith, the principle of proportionality, and fair judgment, which result in a very strong framework. And enable the implementation of contracts. One of the most important and practical contracts in the field of international trade, which is cross-border, is sports contracts. In addition to adhering to international trade contract terms under the national regulations, there are many types of sports contracts, depending on whether they are directly or indirectly related to sports, are examined in detail in the study.

Sports contracts, in addition to emphasizing physical and mental health, encouraging team activities, paying bonuses and salaries to players, have been able to have a great impact on the rules and regulations of the contract. Also, national and international federations have tried to help the growth of the field at the international level by uniting and removing obstacles to the transfer of players and creating an equal structure to improve education and coaching.

Also, by concluding sponsorship agreements with sponsors, the television broadcasting agreements, and clubs, in addition to economic growth and economic prosperity of sports, were able to have a great impact on creating a culture and encouraging people to use mass media and growing companies by advertising. Therefore, in addition to players and clubs, sports contracts have not been able to bring other prominent players into the field.

In this research, we first got acquainted with the concept of sports contracts and parties' main parts or parties to the contract and then analyzed the types and varieties of such contracts. Then, in the last part of the article, we examined the methods of dissolving the sports contract. In summarizing the written material, we came to the conclusion that sports contracts are

among the contracts; if they have similarities to national contracts, due to special regulations, they have a special legal institution and establishment. In international organizations, federations and the sports refereeing court, have greatly contributed to the authenticity and strength of such contracts.

The research conducted in this study showed that one of the issues that are specific to international sports contracts is the conflict between the personal rights of athletes, the clubs' rights, or unions' collective rights. The gradual movement of sport towards professionalization and the development of the relationship between sport, sports assets trade, and human talents have certainly led to the emergence of sporting commercial contracts in the near future.

Contracts, the dimensions of which are also subject to various ambiguities, will not be a way to solve these difficulties, and it is necessary to formulate appropriate sports regulations, both at the national level, the international federations and to adopt efficient and desirable procedures, especially in the executive standards of unions to face the problems of this field and adequately secured the salaries of sports activists, players, and other factors.

Despite the existence of laws and regulations related to contracts, unfortunately, there are few resources on sports law, especially sports contracts, both national and international. Therefore, in the position of providing suggestions for future research, the issues that are considered in the field of sports in the specific meaning of sports, are strongly felt.

Today, as sports are increasing day by day, and they are gaining more legal framework and organizational authority, it is also great to review international organizations that have taken action in the field of sports or specific sports. Also, in the field of comparative science, the regulations governing sports in Iran can be contributed with other countries and written in the form of research, relevant to federations. The significant progress of countries in certain sports can be an important example in sports.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 786-797
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Vaccination campaign against COVID-19 in Ukraine: Current Problems of State Educational Policy and Outreach Work of Higher Medical Educational Institutions

DOI: https://doi.org/10.46398/cuestpol.4073.45

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Abstract

The study is dedicated to the coverage of the peculiarities of the organization of the vaccination campaign against COVID-19 in Ukraine, all this, to analyze the achievements and current problems of the outreach work of medical institutions of higher education. This paper is an independent scientific research review with an analysis of the questionnaire data on the problematic issue. The study was based on the application of a series of theoretical and empirical methods: analysis, systematization and generalization of data on the search for the characteristics of the organization of dissemination work in higher medical education institutions; questionnaire survey to the participants of the educational process.The survey involved 250 respondents from the aforementioned medical HEIs. The results established the awareness of the participants and also testified to the feasibility and importance of strengthening outreach activities in the selected higher medical education institutions**.** We conclude that consistent disclosure about the risks, uncertainties and availability of vaccines fosters public confidence in vaccination.

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Recibido el 04/04/2022 Aceptado el 12/06/2022

Keywords: vaccination campaign; disclosure; institutions of higher medical education; national security; pandemic threats.

Campaña de vacunación contra el COVID-19 en Ucrania: Problemas actuales de la política educativa estatal y de la labor de divulgación de las instituciones de enseñanza médica superior

Resumen

El estudio está dedicado a la cobertura de las peculiaridades de la organización de la campaña de vacunación contra el COVID-19 en Ucrania, todo ello, para analizar los logros y problemas actuales de la labor de divulgación de las instituciones médicas de enseñanza superior. Este trabajo es una revisión de investigaciónes científicas independientes con un análisis de los datos del cuestionario sobre la cuestión problemática. El estudio se basó en la aplicación de una serie de métodos teóricos y empíricos: análisis, sistematización y generalización de los datos sobre la búsqueda de las características de la organización del trabajo de divulgación en las instituciones de educación médica superior; encuesta por cuestionario a los participantes del proceso educativo. En la encuesta participaron 250 encuestados de las mencionadas IES de medicina. En los resultados se estableció la concienciación de los participantes y ademas se atestiguó la viabilidad e importancia de reforzar las actividades de divulgación en las instituciones de educación médica superior seleccionadas**.** Se concluye que una divulgación coherente sobre los riesgos, las incertidumbres y la disponibilidad de las vacunas fomenta la confianza del público en la vacunación.

Palabras clave: campaña de vacunación; divulgación; instituciones de enseñanza médica superior; seguridad nacional; amenazas pandémicas.

Introduction

Vaccination is one of the safest and most effective methods of protection against many infectious diseases. According to World Health Organization (WHO) experts, increasing global awareness of the importance of vaccination can save a significant number of lives. The COVID-19 pandemic has repeatedly increased the importance of immunization for both individual and collective protection (Chertakova *et al.*, 2020).

In recent years, however, there has been a decline in the rate of immunization worldwide. This is why the vaccine campaign against Covid-19 has faced several challenges. To date, domestic and foreign medical scientists have noted that mistrust of vaccination has hindered the expansion of immunization coverage and have suggested strategies to address this problem.

The concept of "mistrust of vaccination" has entered medical practice (Yakovenko, 2020: 72–77), which has been defined as situations where people either delay or refuse immunization despite the availability of services. The problem is complex and context-specific. Its nature may vary according to time, place, and specific vaccine type. Factors such as indecision, uncertainty about the vaccine, irresponsibility, and mistrust can have an impact. In addition, the most important factor in refusal to immunize can be considered a lack of public awareness of the importance of vaccination in the fight against COVID-19 (Zakharchenko, *et al.,* 2022).

As the experience with COVID-19 has shown (Syamila *et al*., 2021), all structures of the state must cooperate in the fight against infectious diseases. A special place in outreach belongs to medical institutions: institutions of medical care as well as institutions of higher medical education, which are called upon to actively inform the population about the benefits of vaccination and the risks associated with refusal to vaccinate. And the best way to address the problem of vaccine hesitancy is through awareness-raising activities that are democratic and based on full respect for human rights (Pidyukov *et al*., 2021).

Consequently, the purpose of the article is determined by highlighting the peculiarities of the organization of the vaccination campaign against COVID-19 in Ukraine and analysis of modern achievements and problems of awareness-raising work of medical institutions of higher education.

1. Material and methods

The above goals and objectives of the study determine the use of such theoretical and empirical methods as: analysis, systematization, and synthesis of data to identify the features of the organization of outreach work in institutions of higher medical education; questioning the participants of the educational process to identify the level of awareness of the peculiarities of the organization of vaccination campaigns.

The study was conducted during 2021 at the Department of Linguistics of the Faculty of Foreign Citizenship Training of the Ivano-Frankivsk National Medical University and the Department of Faculty Therapy of the Faculty of Medicine of the Uzhhorod National Medical University. The

study involved 250 respondents of these medical HEIs. A number of works by leading domestic and foreign scientists have been devoted to the study of the phenomenon of population vaccination (Kozlovskyi *et al*., 2021), which analyzed the fundamental principles of this process (Kaliuzhnaia *et al*., 2018), noted the feasibility of using mass vaccination when spreading infectious diseases in education (Orenstein and Ahmed, 2017); emphasized the importance of educational work among the population on the importance of mass vaccination (Mollarasouli *et al*., 2022).

However, these diverse studies did not cover all aspects of the functioning of vaccination campaigns, and the factual data obtained from numerous questionnaires concerned mainly subjective public opinion, skepticism about the role of information resources in health issues, lack of necessary knowledge about vaccination, etc. Thus, the scientific novelty of the article lies in a multifaceted and at the same time comprehensive and holistic consideration of the role of outreach activities of medical HEIs during the vaccination campaign against COVID-19.

2. Results

Conducting mass vaccination campaigns as part of prevention or in response to disease outbreaks that have widespread consequences is one effective measure to prevent the spread of disease and reduce mortality rates. However, due to the need for physical distance to reduce the spread of COVID-19, many countries have decided to postpone such campaigns. Therefore, choosing the optimal strategy for outreach work in the countries of the world and Ukraine, in particular, has experienced certain difficulties.

The challenge during such work was to balance the benefits of safe and effective anti-epidemic measures against the risk of increasing the rate of spread of the new infection, which could affect the system of basic health care delivery. In considering this question, one must first rely on a detailed examination of epidemiological data (Supriyadi, 2021). In a prolonged COVID-19 pandemic, providing the necessary knowledge to counteract the spread of coronavirus disease is an essential element in the phase of organizing a vaccination campaign. At the same time, even though the topic of vaccination is relevant and topical, there is resistance from the population.

Thus, the source of necessary, above all, reliable and scientifically sound information for the population should be a medical professional or a medical educator. Since the implementation of the vaccination campaign is based on the operation, dissemination, and recording of a significant amount of information, the place and role of employees of institutions of higher medical education change significantly - a great responsibility is imposed.

In addition to performing their professional duties, the scientific and pedagogical staff of medical HEIs becomes not only a transmitter of certain information, but also a source of information, trust, and persuasion. By engaging in the organization of the vaccination campaign, scientific and pedagogical employees of medical HEIs take on the responsibility of informing the population about the vaccination process as a social phenomenon, the involvement of resources, the choice of vaccine, possible reactions, etc. Proper public awareness, data analysis, and monitoring become essential for building a competent outreach effort on the need for vaccination against COVID-19.

In this regard, the logical and quality organization of the databases at all levels of the vaccination program requires significant attention, in particular, and with all the necessary requirements to protect the confidentiality and reliability of the information disseminated. Inaccurate, falsified, or unverified information provided to the public could jeopardize the implementation of the vaccine campaign as a whole and negatively impact the process of establishing the evidence base for adult immunization.

Therefore, one should proceed with caution and consider all possible risks (Mollarasouli *et al.*, 2022). Errors and inaccuracies in outreach work can lead to negative consequences. Hence, the development and step-by-step implementation of reliable channels of communication and information transfer between all participants of the process by medical HEIs is of paramount importance.

According to the above, to organize a quality vaccination campaign against COVID-19, outreach activities should be implemented in stages. The main stages include the following (Remmel, 2021):

- Conducting an assessment of the possible consequences of an outbreak according to basic epidemiological criteria.
- An analysis of the possible benefits of a mass vaccination campaign and an assessment of the country's capacity to implement the process safely and effectively (Iacobucci, 2021a).
- Consideration of the possible risks associated with the intensified spread of COVID-19 as a result of a mass vaccination campaign.
- Selection of optimal algorithms of actions according to the epidemic situation with the spread of COVID-19.
- Analysis and consideration of best practices in Europe and the world.

The step-by-step development of vaccination outreach activities confirms the importance of the role of scientific and pedagogical employees of medical HEIs in improving the effectiveness of the organization of the

vaccination campaign against COVID-19 (Iacobucci, 2021b), which is also determined by their performance of certain functions (Fig.1).

Taking into account the new functions of scientific and pedagogical employees of medical HEIs, it was decided to conduct a pilot study to find out the level of their influence on society and the expediency and necessity of outreach activities by them (Komykh and Nedria, 2022).

Before the start of COVID-19 vaccination outreach work, a questionnaire survey was conducted among employees of several institutions of higher medical education. A total of 250 respondents participated in the survey and were asked several questions on their understanding of the importance of COVID-19 vaccination.

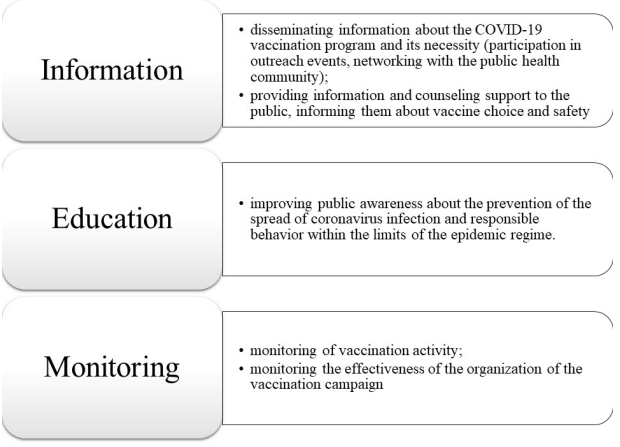

Fig. 1. Functions of medical HEIs educators in the organization of COVID-19 vaccination campaign outreach activities.

Source: author's development.

Survey participants were asked to express their opinions on the criteria of "very important," "important enough," and "not important." So, the results showed that 70 respondents considered COVID-19 vaccination as very important and necessary, 120 as important enough, and 70 as unimportant. These surveys are shown in the chart (Fig. 2).

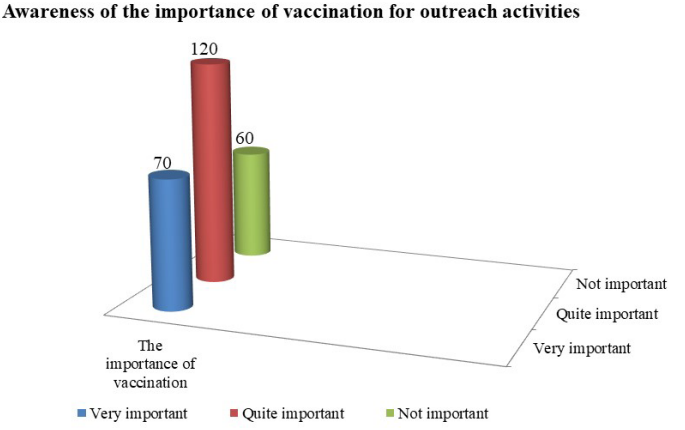

Fig. 2. Vaccination Awareness to Awareness Raising Data.

Source: author's development.

Awareness of the importance and necessity of vaccination is complex when all channels of receiving data on this process are involved. So, the survey participants were asked a number of questions about awareness of vaccination issues and their possession of certain information on this issue. Respondents were asked to evaluate the level of satisfaction with the informational work of the HEIs on vaccination, the level of awareness of vaccination, and the level of sufficiency of the vaccination material.

The evaluation criteria were "very good", "good enough" and "not good enough". So, the results of the survey were distributed as follows: very good satisfaction with the information work of the HEIs was evaluated by 84 participants, fairly good by 114, and not good enough by 52. Very good awareness of vaccination issues was evaluated by 71 respondents, good - by 124 and not good enough - by 55. 60 participants evaluated the materials on vaccination issues as "excellent", 118 participants as "good" and 72 as "not good enough". These surveys are shown in the chart (Fig.3).

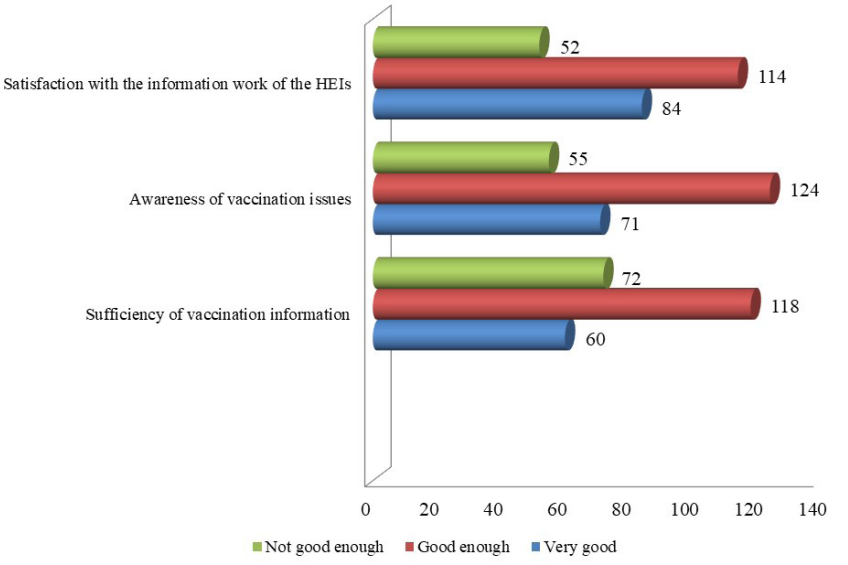

Fig. 3. Data on evaluation of certain moments of COVID-19 vaccination prior to outreach activities.

Source: author's development.

The results of the surveys conducted revealed low awareness among participants and showed the need to strengthen and improve outreach efforts at selected medical higher education institutions.

More than 120 informational messages of thematic nature (types of vaccines, positive effect of vaccination, consequences of refusal from vaccination, etc.) were placed on the websites of selected medical HEAs, more than 80 reminders about the benefits of vaccination, formation, and stability of immune protection developing after administration of various types of vaccines against COVID-19 available in Ukraine were placed.

Presentations were organized by leading HEIs experts to promote knowledge about the COVID-19 vaccine campaign. Data from selected studies conducted around the world on post-vaccine immunity were presented in an accessible form.

Roundtables, webinars, and meetings of scientific circles were held to which different segments of the population were invited.

In addition, students from the named medical schools also joined the work and actively participated in health education work among the

population on vaccination to improve knowledge and literacy of the population about diseases, types of vaccines, complications in case of non-vaccination, etc.

After a series of COVID-19 vaccination outreach activities, a follow-up survey and questionnaire were administered to participants. The questions on the questionnaires remained the same. The response parameters were the same.

So, the results showed that after a series of COVID-19 vaccination outreach activities, 100 respondents considered COVID-19 vaccination very important and necessary, 130 respondents considered it important enough, and 20 respondents considered it unimportant. These surveys are shown in the chart (Fig. 4).

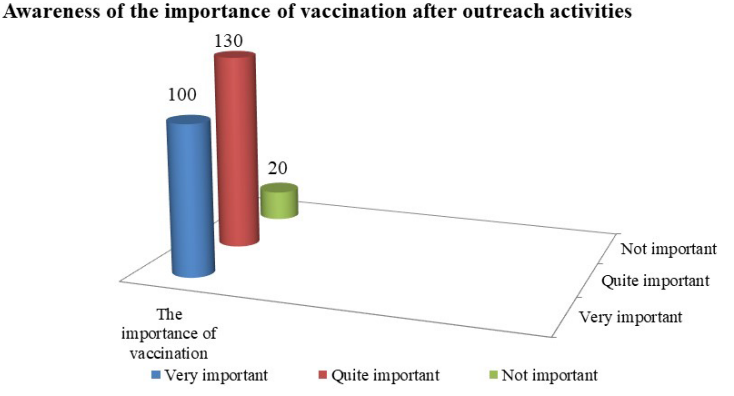

Fig.4. Data on vaccination awareness after outreach activities.

Source: author's development.

The results of the survey assessing the outstanding points of the vaccination campaign were distributed as follows: very good satisfaction with the information work of the HEIs was assessed by 101 participants, "good enough" - 119 and "not good enough" - 30. Very good awareness of vaccination issues was shown by 91 respondents, "good" - 29. The sufficiency of vaccination materials was rated as "excellent" by 84 participants, as "good" by 140, and as "insufficient" by 26. These surveys are shown in the chart (Fig. 5).

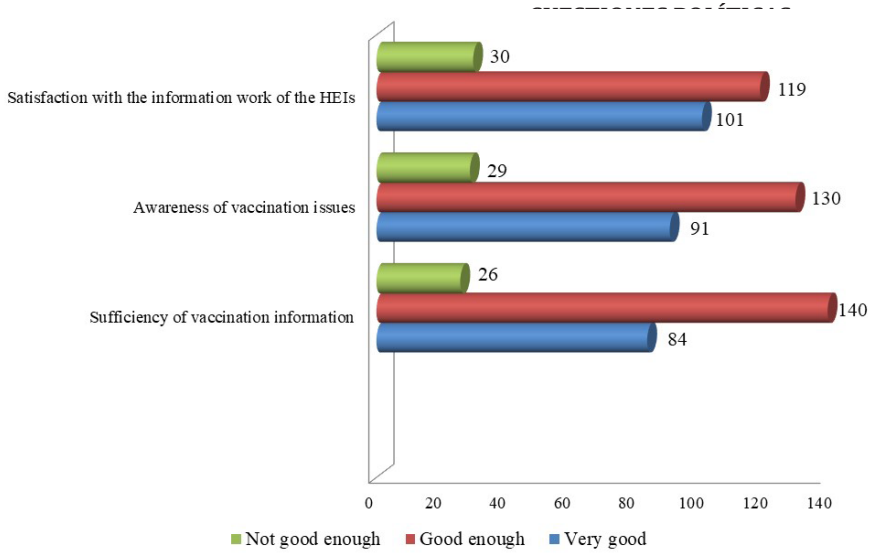

Fig. 5. Data on evaluation of certain moments of COVID-19 vaccination prior to outreach activities.

Source: author's development.

The results of the surveys found increased awareness among participants and demonstrated the feasibility and importance of strengthening and improving outreach efforts at selected institutions of higher medical education.

3. Discussion

When analyzing the calligraphic aspects of the impact of vaccination outreach measures, subjective aspects should not be excluded as well. It should be noted that there is no universal strategy that could be an effective mechanism and guarantee 100% readiness for vaccination. Subjective factors include public mistrust of the vaccination process (Schaefer *et al.*, 2021). Distrust of vaccination may be a consequence of doubts about the safety of vaccines, but it is only one of the underlying factors (Mahase, 2021).

A number of factors can lead to distrust of vaccination, such as: negative beliefs based on myths, e.g., that vaccination leads to infertility in women; misinformation; distrust of professionals or the health care system; the influence of authority figures, etc. (Mahase, 2019). The magnitude of the problems and the specific conditions may be different, but they must be taken into account when planning and implementing public awareness and

vaccination activities. Therefore, it is essential to effectively develop and establish channels of communication with the population.

Conclusion

The main barriers to developing a positive attitude toward the vaccination process are fear of the risks of complications, dissatisfaction with the quantity and quality of information about vaccinations, uncertainty about vaccine effectiveness, and underestimation of the severity of the possible course of the disease. Overcoming these barriers is one of the most important professional tasks assigned to health care providers today. Consistent, transparent, meaningful, and proactive outreach on risks, uncertainties, and vaccine availability will build public trust in vaccination.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 798-818
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Adolescents' legal socialization in extracurricular environment by art technologies

DOI: https://doi.org/10.46398/cuestpol.4073.46

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Abstract

The objective of the article was to analyze the legal specialization of adolescents in an extracurricular environment through art technology. The published results highlight the theoretical and practical aspects of the problem of the legal socialization of adolescents, which takes place in an extracurricular environment. The methodology of the research was represented by the theoretical study of this problem in its aspects: philosophical, legal, pedagogical, sociological and psychological, as well as by the experimental work with a sample of (342 adolescents). It has been shown that for the legal socialization of adolescents in non-formal education centers it is necessary: the application of axiological ideas and concepts of legal education, philosophy, legal pedagogy of adolescents in education through art technologies; the organization of cognitive-communicative interaction and communication as a means of increasing the legal socialization of the; consideration of the age characteristics, perspective and value changes of adolescents growing up in society. It is concluded that the structure of the legal socialization of adolescents should be considered as a holistic system in which different dimensions interact.

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Recibido el 14/04/2022 Aceptado el 16/06/2022

Keywords: legal socialization; adolescents; extracurricular environment; non-formal education institutions; art technologies.

Socialización legal de los adolescentes en un entorno extraescolar a través de la tecnología del arte

Resumen

El objetivo del artículo fue analizar la socialización legal de los adolescentes en un entorno extraescolar a través de la tecnología del arte. Los resultados publicados ponen de relieve los aspectos teóricos y prácticos del problema de la socialización legal de los adolescentes, que tiene lugar en un entorno extraescolar. La metodología de la investigación estuvo representada por el estudio teórico de este problema en sus aspectos: filosóficos, jurídicos, pedagógicos, sociológicos y psicológicos, así como por el trabajo experimental con una muestra de (342 adolescentes). Se ha demostrado que para la socialización jurídica de los adolescentes en los centros de educación extraescolar es necesario: la aplicación de ideas y conceptos axiológicos de la educación jurídica, la filosofía, la pedagogía jurídica de los adolescentes en la educación por medio de las tecnologías del arte; la organización de la interacción cognitivo-comunicativa y la comunicación como medio de aumentar la socialización jurídica de los; la consideración de las características de la edad, la perspectiva y los cambios de valores de los adolescentes que crecen en la sociedad. Se concluye que la estructura de la socialización legal de los adolescentes debe ser considerada como un sistema holístico en el que interactúan diferentes dimensiones.

Palabras clave: socialización jurídica; adolescentes; entorno extraescolar; instituciones de educación extraescolar; tecnologías del arte.

Introduction

Addressing the problem of adolescents'legal socialization should be comprehensive, our research work interest is the analysis and generalization of this process at theoretical and practical levels. The socio-economic and political crisis, that Ukraine finds itself needs new solutions that meet the requirements of the time. A modern teenager, who in the future must become a worthy citizen of its country, must be educated in legal issues, have a high level of legal education – an important component of human legal culture.

The question of the essence of individual legal socialization in most studies is revealed in the context of legal education, «legal behavior» (Burdonosova, 2011; Kolomiytsev, 2006; Costanzo and Krauss, 2018; Chapman and Hobbel, 2010; Orlova, 2008; Oleksenko, 2017), prevention of marginal behavior (Pisarev, 2010) and others. The purpose of the research work is to highlight the theoretical and practical aspects of the adolescents'legal socialization, which takes place in an out-of-school environment and with the help of art technology.

1. Methodology

The research work methodology consists of theoretical research of this problem in terms of philosophical, legal, pedagogical, sociological and psychological aspects, as well as experimental work (ascertaining, formative and control stages of the study). The study of the problem of adolescents'legal socialization in out-of-school education institutions was carried out in the period from 2018 to 2021 study year. There are 342 teenagers took part in the experimental work.

2. Situational diagnosis

2.1. Main developments and achievements of the period

In the legal socialization content, we see the presence of positive legal attitudes, which are expressed as readiness for legal action, active desire to deter other adolescents from delinquency, participation in maintaining law and order in the reference group, etc. (Costanzo, 2018).

The objective process of achieving a high level of their legal education.

In the study of legal socialization, we are impressed by the ideas of scientists (Jackson, 2020), name the three ways of studying the relationship, for example, between the police and citizens: the subjectivity of the justice perception; mechanisms linking legitimacy procedural justice; statistical methods for estimating causal mechanisms.

Scientists emphasize the importance of understanding the concept of justice, because most of our actions must be guided by a sense of justice (Jackson, 2020). It should be emphasized that socio-normative ideas of the individual consist of moral, residual and legal aspects of social reality. Our life in society takes place through identification, imitation and reflection (Uskova, 2020).

As a result of a survey, observation, analysis of scientific sources, we found that legal socialization consists of theoretical and practical components. In our opinion, the adolescents'legal socialization in the out-of-school environment covers the following system of knowledge, which form:

1) general knowledge of law and order (Stevens, 2018);

2) knowledge of the social environment (Basyouni, 2011);

3) knowledge of the individual.

The success of the system of knowledge on legal socialization in the out-of-school environment depends on the following provisions:

- The quality of legal attitudes for the legal activities' implementation by both representatives of out-of-school educational institutions and adolescents themselves (Levesque, 2019).
- The current state of adolescents in accordance with the actualization of legal knowledge, the desire to learn legal values, the desire and ability to protect them.
- In our opinion, there are certain peculiarities in the activities of out-of-school educational institutions and that is why, taking into account these provisions, we point out the principles included in the content of legal adolescents'education in out-of-school educational institutions:
- The principle of focusing on the legal values of society in relation to the adolescents'interests, needs, feelings and emotions in out-of-school education (Reardon, 2015).
- The principle of systematic, consistent legal education and compliance of educational influences with the level of adolescents 'legal education.
- The principle of taking into account the positive attitudes in the adolescents'legal education, focus on lawful and law-abiding human behavior.
- The principle of autonomy of adolescents'choice in law enforcement activities in accordance with the available social experience in out-of-school education institutions.

The analysis of the references gives us the opportunity to emphasize that in the structure of adolescents'legal socialization, as components, the following stand out: cognitive, value-motivational, behavioral.

The essence of the presented components is manifested in their focus on the legal valuesof society, on improving the conditions that lead to law and order in society.

2.2. Limitations and outstanding conflicts

Nowadays it is recognized that one of the socialization effective means is art therapy. It both diagnoses the human condition, and treats, and brings that deep positive «Feeling of self», which is called «happiness», because it satisfies the most important fundamental human need – the need for self-actualization.

Working with art technologies variety is based on the belief in the creative basis of human, where the main goal is focused on harmonizing the personality development through the development of the ability of self-expression and self-knowledge. Art technologies allow get to know yourself and the world around you, develop creative opportunities, as well as establish relationships between people.

In different countries there are different models of art technology, initially it was only visual art: painting, graphics, photography, drawing and modeling. Modern art technologies have a much larger number of areas, such as bibliotherapy, Mascotherapy, fairytaletherapy, origamitherapy, dramatherapy, musictherapy, colortherapy, sandtherapy, gametherapy, chewing circles and more.

In the context of our research work, we believe that art technology is able to perform educational, corrective, diagnostic and developmental functions. It should be noted the high effectiveness of art therapy when working with adolescents. The use of art techniques gives teenagers the opportunity to strengthen their memory, develop attention, thinking and decision-making skills. Art technologies are used in individual and group work, are especially relevant for various trainings.

One of the important issues in the diagnosis of adolescents'legal socialization is its proper measurement, concerning the disclosure of criteria, indicators and characteristics of levels. We take into account that legal socialization is a social phenomenon and is connected with the legal consciousness and legal culture that has developed in our country. But as a phenomenon, the legal socialization of adolescents can be measured taking into account the state of each defined structural components (cognitive, value-motivational, behavioral).

In our research work, we focus on the age of 11 to 15, which is characterized by the beginning of human growth in the legal culture of society, as adolescents move from childhood to adulthood.

3. Proposals, actions and experiences

Taking into account the theoretical aspect of the topic of our research work, we highlight the criteria of legal socialization of adolescents and, accordingly, their indicators:

cognitive criterion, in our opinion, should be revealed through the following indicators: theoretical knowledge of law, law and order in society, awareness of the importance of law and order for human life in society, in extracurricular social environments, the presence of figurative legal thinking according to age, recognition of various legal systems, different societies, predicting the consequences of legal and illegal behavior.

The next criterion is a *value-motivational criterion,* in which the indicators are understanding of legal values, recognition of one's own law-affirming activity as a value, motivation to serve a legal society, interest in the requirements of legal behavior aimed at maintaining law and order.

The third criterion is *behavioral criterion,* the indicators of which we have identified: the ability to distinguish between legal and illegal behavior, experience of legal behavior, participation in legal and legal activities of out-of-school educational institutions, movements, public organizations, self-control, ability to establish relationships with others legal system of society.

During the development of these criteria, indicators of legal education, we realized that very fast results for a high level cannot be expected, because the involvement of adolescents in the public association should be gradual, unobtrusive.

3.1 Selection of diagnostic tools

During the research work, we considered it expedient to develop diagnostic tools that comprehensively combine the listed ideas, provisions, theses related to the process of legal socialization, the formation of legal behavior skills. Therefore, it is important to develop methodological tools with which we can measure the dynamics of adolescentslegal socialization, respectively, cognitive, value-motivational and behavioral areas.

We believed that for a more thorough analysis of the adolescents'legal socialization should take into account both qualitative and quantitative aspects, which is why we considered that the measurement of levels – should be carried out in accordance with the study of the desire to assert the ideals of law enforcement.

We noted aadolescents'*high level* when they recorded the formation of deep knowledge about law and order in society, the legal education of the individual, responsibility for actions and illegal behavior, understanding

age of legal systems characteristics in different societies, recognition of different legal systems in different societies.

The *middle level* is characterized as follows: the adolescent has, but not fully, knowledge of law, law and order in society, the legal education of the individual, he does not always understand the importance of responsibility for actions and misconduct, does not always recognize the existence of different legal systems in different societies.

The *low level* of legal socialization is characterized: adolescents do not have knowledge about law, law and order in society, about legal educationpersonality, they don't understand the importance of responsibility for actions and wrongdoing, and does not know about the different legal systems in different societies.

Such adolescents rarely think about predicting the consequences of legal and illegal behavior, but at the same time recognize the need for legal values. Adolescents with a low level of legal socialization are characterized by insufficient motivation to serve the legal community, at the bottom there is rarely interest in the requirements of legal behavior aimed at maintaining law and order with respect to human freedom, very rarely there are positive emotional states when discussing legal issues.

Thus, the main criteria we included cognitive, value-motivational, behavioral with appropriate indicators, that in the complex, the measured quality of each indicators are three levels of adolescents'legal socialization in out-of-school environment, which in our study is represented by out-of-school institutions – high, medium, low.

3.2. Structure and stages of the experiment

The study of the problem of legal socialization of adolescents in out-of-school education institutions was carried out in the period from 2018 to 2021. We conducted the experiment, taking into account its sequence, stages, system.

Thus, at the first stage, which took place from 2018 to 2019, we conducted questionnaires, surveys, testing (statement).

At the second stage (from 2019 to 2020) we introduced organizational and pedagogical conditions that provided an opportunity to change the levels of legal socialization of adolescents in out-of-school education (the formative experimental work).

At the third stage – 2020 – 2021 b – we conducted a control section of the experimental results, in which we agreed and compared the data obtained on the ascertaining and shaping experiment.

The purpose of our experiment was to test the effectiveness of organizational and pedagogical conditions of adolescents'legal socialization in out-of-school educational institutions, which are based on the use of art technologies.

Tasks of experimental research:

- Substantiation of organizational and pedagogical conditions of adolescents'legal socialization in out-of-school education institutions and verification of their effectiveness.
- Fixation of changes in the levels of adolescents'legal socializationat the beginning and after the experiment, development and implementation of organizational and pedagogical conditions of adolescents'legal socialization in out-of-school education institutions.

3.3. Statement of research work

At the first stage of the research experiment (2018–2019), we identified the purpose, objectives of the study, conducted a statement of the adolescents'legal socialization in out-of-school education and analyzed the results.

The tasks for the observational experiment were as follows:

- selection of experimental bases;
- development of questionnaires, testing, tasks that will identify the level of adolescents' legal socialization in out-of-school education;
- to generalize data on the current level of legal socialization of adolescents in out-of-school education institutions.

At this stage, we used questionnaires, testing, surveys, observations and so on. From the number of adolescents who attend extracurricular educational institutions in their free time, conducting human rights, legal education and legal education work, we chose the experimental and control groups for the experiment, where the experimental group was represented by 164 adolescents and the control group – 178 adolescents.

The peculiarity of the activities in out-of-school educational institutions is that the groups are united by certain interests in communication and not by age.

We conducted a statement experiment in 2018–2019 with adolescents who visited public organizations. These are, in particular, the CO«Large Families», «Tree», the charitable Organization «Agape Ukraine», Charitable Foundation, the Mariupol Charitable Foundation «Pilgrim», the CO «Parental Protection». We conducted diagnostics with adolescents

with the help of an author's questionnaire in Kyiv, Melitopol, Mariupol and Kherson (Ukraine).

Analysis of the data using the «continue the sentence»-method showed that adolescents cannot always clearly define what the legal system is in our country, and most of them could not tell what legal systems exist in different societies in general. Here are examples of more common answers to the question «Legal socialization of the individual is...»: «... respect for rights» (T.), «... ability to be responsible for their own actions» (O.), «... help in a difficult situation» (D.). We also measured such an indicator as understanding the age characteristics of legal systems in different societies, the recognition of different legal systems in different societies.

We will add that concerning this indicator we fix only external understanding (for example, answers of teenagers were such: «yes, in different societies react differently to human rights» (D.), «of course that in our society not so, as, for example, in other countries» (B.). Most students could not formulate their own answer, citing the fact that they were not interested in this question. In general, the systematization of data on the cognitive criterion is presented in Frame No.1.

Frame No.1-Cognitive criterion

(Statement data in the experimental and control groups, %) - 2018

Level	Experimental group	Control group
high	10	10.3
average	41.75	43.1
low	48.25	46.6
All	100	100

Source: authors development (2018).

An alarming fact is that a high level of legal education was recorded only in a small number of adolescents (yes, in the experimental group – 10%, in the control group – 10, 3%). The following data were recorded at a low level: experimental group – 48.25%, control group – 46.6%.

We measured the value-motivational criterion with indicators. It should be noted that more than half of the surveyed adolescents generally recognize the need for the existence of legal values and the need for their own law enforcement activities (in the experimental group – 42.5%, in the control group – 47.2%).

We diagnosed the presence of motivation to serve the legal society as an indicator of the value-motivational criterion through conversations with adolescents, observation of their emotional states. Given the results, we note that a certain proportion of adolescents have insufficient motivation to serve the legal community. Thus, there is a need to increase this indicator, because without the available motivation to serve the legal community there will be no success in the process of legal education and legal socialization of adolescents in out-of-school education.

Data on the value-motivation criterion are given in Frame No.2.

Frame No.2-Statement data on the value-motivational criterion (Experimental and control groups, %) – 2019.

Level	Experimental group	Control group
high	10.6	11.1
average	45.2	42.5
low	44.2	46.4
All	100	100

Source: authors development (2019).

Thus, we see that most of the surveyed adolescents have a low level of value-motivational criterion.

Behavioral criterion was also subject to measurement.

We present the data on the third criterion of Frame No.3

Frame No.3. - Statements on the behavioral criterion (Experimental and control groups, %)

Level	Experimental group	Control group
high	6	11
average	48	81
low	46	86
All	100	100

Source: authors development.

All indicators were summarized by us in a single table to summarize the indicators of the level of legal socialization. The data are contained in frame No.4.

Frame No.4-Source: authors development - 2019

Level	Experimental group	Control group
high	9.4	9.7
average	44.45	43.7
low	46.15	46.6
All	100	100

Source: authors development (2019).

Thus, the results of the ascertaining stage prove that according to the criteria and indicators the state of legal socialization of adolescents in out-of-school education institutions asexperimental and control groups are almost the same.

3.4. Steps for conducting a molding experiment

In the second stage (2019–2020), we studied the experience of public associations in the field of legal education and legal practices. At this stage, despite the study of scientific literature on law, philosophy, pedagogy, psychology, sociology, we conducted interviews with representatives of out-of-school educational institutions, the general scope of which was focused on human rights work. We also performed a molding experiment, analyzed the results.

The main tasks of the molding experiment:

- approbation of the content, forms and methods of legal socialization of adolescents in out-of-school education institutions and substantiation of its effectiveness;
- development and implementation of materials to improve the legal socialization of adolescents during communication in out-of-school education institutions;
- elaboration of materials, exercises, classes based on the use of art techniques for the development of legal thinking in adolescents, the formation of legal behavior, gaining legal experience.

We give a description of the molding experiment. Thus, the experimental work was carried out in the conditions of various out-of-school educational

institutions, the activity of which is based on the protection of human rights (CO «Large Families»,«Tree», organization «Parental Protection» and so on) among adolescents who attend various leisure activities of educational nature.

At this stage, we have substantiated the organizational and pedagogical conditions of adolescents' legal socialization in out-of-school education, in particular, their effectiveness.

Note the organizational and pedagogical conditions in our research work:

1. application of axiological ideas and conceptsof legal education philosophy, legal pedagogy in teenagerseducation by art technologiesmeans;
2. organization of cognitive-communicative interaction and communication as a means of increasing the level of adolescentslegal socialization in out-of-school education institutions by means of legal education training;
3. taking into account the age characteristics and worldview and value changes of adolescents who grow into the legal culture of society in the process of training work based on the use of art technologies.

The first organizational and pedagogical conditionwas implemented during the testing of the content, forms and methods of adolescentslegal socialization.

For adolescents of the experimental group within the implementation of the first organizational and pedagogical conditions, we used the technology of working with plastic materials, aqua mosaic, technology of working with art-thread and more. Collage turned out to be one of the most interesting art technologies for teenagers. Collage is a very good way not only to change certain views and moods, but also an effective way to remember the information obtained.

Among the different ways of making collage, we suggested that teenagers create an individual thematic/focused collage. Work in this art technique involved the participants receiving an envelope with these sentences in the amount of 8 questions. With paper (A–1 size), scissors, glue, and a bunch of colored magazines, the teens had to mark sentences and add illustrations of how they understood the essence of these questions, which included:

1. Is it difficult for us? Is it possible to perform a good deed and get a positive experience?
2. What is the basis of a teenager's legal experience? and so on.

At the end of this exercise, we received quite different collages, teenagers were happy to demonstrate their work, actively discussing the content of the selected illustrations. In addition, in such a conversation we had the opportunity to ask additional questions and direct the thoughts of adolescents in accordance with the understanding of the legal aspects of personal development.

In the next exercise, we tried to explain to teenagers the essence of the concept of «legal values». Adolescents were especially interested in information about internal communications on the Internet in different countries, they were also interested in thinking about their own behavior in different cities and in different areas. In this context, it is appropriate to recall the possibility of using the Internet to broadcast educational materials (YouTube, Moodle, Zoom, etc.). Distance education technologies - distance education are convenient and effective (Ivzhenko, 2020). for the legal socialization of adolescents, we believe that remote technologies are the technologies of the future that need to be studied and mastered almost today.

An art technique such as blotting (a technique of drawing based on random splashes of ink) was used in conjunction with the conversation. Before each participant of our exercise there was a set of gouache paints, paper (A-4size), brushes and glasses with water. With a pencil, we suggested that teenagers conditionally divide the sheet into 4 parts. Next, for 20 seconds, participants had to randomly, at their own discretion, put blots in each part of the sheet. After that, we asked four questions as follows: we read the first question, and at this time the participants have to complete the full image in the first square, using the same blots.

We asked the following questions: «How would you be a passenger of the liner, and all its passengers suddenly found themselves on an unknown island, what rights would you enjoy? etc. Discussing with teenagers their thoughts on the answers to questions and impressions from working in the art technique, a positive mood was recorded, additional ideas for art work, as well as many other options for constructing questions for legal socialization. Regarding the most difficult moment in this exercise, the teenagers answered unequivocally: they didn't know where to start.

In order to implement the second and third organizational and pedagogical conditions, we have developed a legal education training "Rights and responsibilities: from the origins to the present", which is based on a meaningful component for adolescents' cognitive-communicative interaction and communication on legal issues in institutions extracurricular education.

To perform the next exercise «Masquerade»were prepared the following materials: colored paper, cardboard (3 sheets of A–4 size), scissors, glue,

punches, foil tape. The content of the exercise provided for the production of three masks by teenagers. It takes 10 minutes to make each mask. At the team's command, the participants had to prepare the first mask they wore in case they did not comply with certain legal norms. The second mask had to be made as one that teenagers had to try on in their lives at a time when any of their rights were violated. The mask should also have a name.

After working with the second mask – the same discussion continued in the group. The third mask was supposed to mean a legally conscious person, and it had to be made by combining the two previous masks and transforming them into a single, original one. The exercise ended with a discussion of the masks' name, teenagers were happy to tell life stories and situations in which such masks would be appropriate.

To test the effectiveness of organizational and pedagogical conditions of adolescents' legal socialization of n out-of-school education, we conducted a control section, in which both groups took part: control and experimental.

To conduct a re-cut to establish the level of legal socialization of adolescents, we used the same methods as during the ascertaining stage of the study (survey, testing, questionnaires, discussions, observations, tasks, participation in actions, flash mobs, presentations, etc.).

The generalization of the obtained data according to the set of indicators of the cognitive criterion is presented in Frame No. 5.

Frame No.5-Measurement of cognitive criterion

(Comparison of the control slice with the data

obtained at the statement stage of the experiment, %) - 2020

Level	Experimental group		Dynamics	Control group		Dynamics
	contr. stage	const slice		contr. stage	const slice	
high	10	24,6	+14,6	10	11,5	+1,5
average	41,75	56,62	+14,87	43,1	45,6	+2,5
low	48,25	18,87	-28,38	46,6	42,7	-3,9

Source: authors development (2020)

Thus, the positive dynamics of the participants of the experimental group in relation to the cognitive criterion was recorded.

The data of the control section were systematized, and, accordingly, the average value was derived, which recorded the dynamics of changes in the indicators of the value-motivational criterion. Data are presented in Frame No.6.

Frame No.6-Data on the measurement of value-motivational criteria

(Control slice, %) - 2020

Level	Experimental group		Dynamics	Control group		Dynamics
	contr. stage	const slice		contr. stage	const slice	
high	10,6	34	+23,4	11,1	12,8	+1,7
average	45,2	51	+5,8	42,5	47,9	+5,4
low	44,2	15	-29,5	46,4	39,3	-7,1

Source: authors development (2020).

Thus, we observe a positive trend in the participants of the experimental group in terms of value-motivational criterion.

Behavioral criteria were also diagnosed. We systematized and generalized the general data on the behavioral criterion in comparison with the conducted observational experiment. We have recorded a positive trend towards the formation of indicators of behavioral criteria. Changes took place in the experimental group (high level – 22.3%, medium level – 53.7%, low level – 24%). Adolescents in the control group recorded results that remained almost unchanged (high level – 11.34%, medium level – 48.08%, low level – 40.58%).

The obtained data are presented in the following Frame No.7.

Frame No.7-Generalized data on the measurement of behavioral criteria

(Comparison of the control slice with the ascertaining stage, %) - 2021

Level	Experimental group		Dynamics	Control group		Dynamics
	contr. stage	const slice		contr. stage	const slice	
high	7,6	22,3	+14,7	7,8	11,34	+3,54
average	46,4	53,7	+7,3	45,4	48,08	+2,68
low	46	24	-22	46,8	40,58	-6,22

Source: authors development (2021).

To establish the general results of the formative experiment, during which the organizational and pedagogical conditions of legal socialization of adolescents were introduced, the data obtained by us according to all the defined criteria were summarized in a generalized table. Visually, the dynamics are presented in Frame No.8.

Frame No.8 -Generalized table on the dynamics of the levels of adolescents' legal socialization of (control section of the formative experiment) - 2021

Level	Experimental group		Dynamics	Control group		Dynamics
	contr. stage	const slice		contr. stage	const slice	
high	9,4	26,9	+17,5	9,7	11,9	+2,2
average	44,45	53,8	+9,35	43,7	47,2	+3,5
low	46,15	19,3	-26,85	46,6	40,9	-5,5

Source: authors development (2021)

3.5. Generalization of the molding experiment results

We found that according to the results of the formative experiment, the state of legal socialization in the participants of the control and experimental groups is different. It is significantly improved by adolescents of the

experimental group. To summarize the results obtained at the ascertaining stage of the study, we used K. Pearson's criterion x^2. To calculate, we used the formula:

$$\chi^2_{emp} = N \cdot M \sum_{i=1}^{4} \frac{(\frac{n_i}{N} - \frac{m_i}{M})^2}{n_i + m_i}$$ (Teorema Pirsona, 2021).

In the control section of the experiment, we found the dynamics of the levels of legal socialization for each of the indicators, tested the hypothesis, summarized our results.

We provide an analysis of the results obtained by us at the end of the molding experiment of the control section.

Thus, with the help of control slice data, we tested the null hypothesis regarding the data on the distribution of participants in groups that are independent values.

To calculate x2emp, a table was compiled Frame No.9.

Frame No.9-Calculation for the calculation of x2emp on the control section of the molding experiment - 2021

The level adolescents' legal education	Empirical frequency ni	Theoretical frequency ni	$n_i - n_i'$	$(n_i - n_i)^2$	$(n_i - n_i)^2/n_i'$
High	26,9	11,9	15	225	18,9076
Average	53,8	47,2	6,6	43,56	0,9229
Low	19,3	40,9	-21,6	466,56	114073
All	100	100	-	-	31,23777934

Source: authors development (2021)

Thus, according to the calculations, the null hypothesis was rejected, and an alternative was accepted. We can note that the control and experimental groups have significantly different levels of legal socialization. At the ascertaining stage of the experiment, the data were the same, and after the introduction of organizational and pedagogical conditions of legal socialization, we saw positive changes in the participants of the experimental group.

We will provide qualitative results of the experimental group after the introduction of organizational and pedagogical conditions of legal socialization in out-of-school education institutions.

Thus, the results of the experiment proved the validity of the hypothesis that this area of adolescents' education will be more effective if it is carried out through the introduction of organizational and pedagogical conditions of legal socialization in the out-of-school environment.

Conclusion

The structure of adolescents' legal socialization in the out-of-school environment, which is considered as a holistic component system (cognitive, value-motivational, behavioral components) is substantiated. The cognitive component has the following meaning: the presence of knowledge about law, law and order in society, awareness of the importance of law and order for human life in society, in extracurricular social environments; manifests itself in the argumentation of legal thinking, respectively, adolescence and individual characteristics, recognition of different legal systems in different societies, predicting the consequences of legal and illegal behavior.

Value-motivational component combines legal values and motivation to serve society, moral, social needs also interest in the requirements of legal conduct, which is aimed at maintaining the rule of law, taking into account human freedom on both the personal and interpersonal, social and global dimensions. The behavioral component is related to legal activities, experience of legal behavior, actions in accordance with the existing legal system in society, which is expressed through self-control, self-preservation, justice, benevolence, consideration of other people's interests, cooperation with others and more.

It is proved that the essence of the presented components is manifested in their focus on the legal values of society, on improving the conditions that lead to law and order in society.

In the study, taking into account the component structure of adolescents' legal socialization of, the relevant criteria and indicators are specified, the levels of legal socialization of adolescents in out-of-school education institutions are characterized.

The study presents the developed organizational and pedagogical conditions of legal education of adolescents in out-of-school education, experimentally proved their effectiveness:

1. application of axiological ideas and concepts of philosophy of legal education, legal pedagogy in education of teenagers by means of art technologies;

2. organization of cognitive-communicative interaction and communication as a means of increasing the level of legal socialization of adolescents in out-of-school education institutions by means of legal education training;
3. taking into account the age characteristics and worldview and value changes of adolescents who grow into the legal culture of society in the process of training work based on the use of art technologies.

We believe that there is external (content, structure, processes of designing and constructing the process of legal socialization of adolescents in out-of-school education) and internal factors (personal traits of adolescents, their motivation, interests, desire to communicate, etc.). Taking these factors into account also contributed to the improvement of the educational process in out-of-school education institutions.

In the process of introducing factors into the organizational and pedagogical conditions, it was established how the levels of legal socialization of adolescents' change. We noted aadolescents' high level, when they recorded the formation of deep knowledge about law, law and order in society, the legal education of the individual, responsibility for actions and illegal behavior, understanding of the age characteristics of legal systems in different societies, recognition of different legal systems in different societies.

The middle level is characterized as follows: the adolescent has, but not fully, knowledge of law, law and order in society, the individual legal education, theydoes not always understand the importance of responsibility for actions and misconduct, does not always recognize the existence of different legal systems in different societies.

Such a teenager does not always correctly predict the consequences of legal and illegal behavior, but at the same time recognizes the legal values. Such a teenager has a lack of motivation to serve the legal community, sometimes there is an interest in the requirements of legal behavior aimed at maintaining law and order with respect to human freedom, and when discussing legal issues sometimes there are positive emotional states.

The low level of legal socialization is characterized as follows: adolescents do not have knowledge of law, law and order in society, the legal upbringing of the individual, theydoes not understand the importance of responsibility for actions and illegal behavior, and does not know about different legal systems in different societies. Such adolescents rarely think about predicting the consequences of legal and illegal behavior, but at the same time recognize the need for legal values.

The research work does not definitively cover all aspects of the adolescents' legal socialization in the out-of-school environment. In

our opinion, further research is needed: substantiation of the system of adolescents' legal socialization in the national and international dimension, taking into account globalization, digitalization, acceleration of cultural exchanges; development of theoretical and methodological bases of multidimensionality of legal education and legal educational programs in work with teenagers; comparative analysis of legal education practices of out-of-school education institutions in foreign countries.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 819-836
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Representations of the Russian Orthodox Church to the European Organizations (2002-2021): from religion to politics

DOI: https://doi.org/10.46398/cuestpol.4073.47

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Abstract

The aim of the article is to reveal the importance of the instruments of the Russian Orthodox Church in the European space: the Representation of the Russian Orthodox Church in the European institutions and the Representation of the Russian Orthodox Church in the Council of Europe. The *methodological basis* of the study is a comprehensive interdisciplinary approach that uses systemic, civilizational, historical-chronological and structural-functional methods. Everything leads to the conclusion that the activities of the missions are designed to contribute to the achievement of the foreign policy objectives, both religious and spiritual and State of the Russian Federation. By interacting with foreign media and civil society institutions, the offices of the Russian Orthodox Church promote a positive image of Russian Orthodoxy and the idea of a "Russian world", creating a more favorable image of these ideas in the world for Russia's foreign policy. In this way, we see that the Orthodox Church has intensified its external activities in the twenty-first century. At the same time, it is often not only religious but also political, attesting to the greater rapprochement of the "New Russia" with

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Recibido el 14/04/2022 Aceptado el 03/05/2022

the Russian Orthodox Church, which continues to perform secular tasks on the foreign policy front.

Keywords: Russian Orthodox Church; Russian Federation; religion and politics; European Union; international organizations.

Representaciones de la Iglesia Ortodoxa Rusa en organizaciones europeas (2002-2021): de la religión a la política

Resumen

El objetivo del artículo es revelar la importancia de los instrumentos de la Iglesia Ortodoxa Rusa en el espacio europeo: la Representación de la Iglesia Ortodoxa Rusa en las instituciones europeas y la Representación de la Iglesia Ortodoxa Rusa en el Consejo de Europa. La *base metodológica* del estudio es un enfoque interdisciplinario integral que utiliza métodos sistémicos, civilizacionales, histórico-cronológicos y estructural-funcionales. Todo permite concluir que las actividades de las misiones están diseñadas para contribuir al logro de los objetivos de política exterior, tanto religiosos como espirituales y estatales de la Federación de Rusia. Al interactuar con medios extranjeros e instituciones de la sociedad civil, las oficinas de la Iglesia Ortodoxa Rusa promueven una imagen positiva de la ortodoxia rusa y la idea de un "mundo ruso", creando una imagen más favorable de estas ideas en el mundo para la política exterior de Rusia. De esta manera, vemos que la Iglesia Ortodoxa ha intensificado sus actividades externas en el siglo XXI. Al mismo tiempo, a menudo no solo es religioso sino también político, lo que atestigua el mayor acercamiento de la "Nueva Rusia" con la Iglesia Ortodoxa Rusa, que continúa desempeñando tareas seculares en el frente de la política exterior.

Palabras clave: Iglesia Ortodoxa Rusa; federación rusa; religión y política; unión europea, organizaciones internacionales.

Introduction

Religious organizations are playing an increasingly active role in in the political processes of the modern world. They become influential participants in international relations in a globalizing world, remaining sometimes in the shadows, "behind the scenes" of events unfolding interstate or intrastate relations and contradictions. The influence of religious organizations on

the political destinies of the country, states and the entire world community can be clearly traced, for example, in the activities of the Vatican or Islamic institutions.

The Russian Orthodox Church (ROC) also seeks to occupy its niche in international relations. Obviously that the real activity of the Russian Orthodox Church in the international arena is not limited to the Soviet slogan "struggle for world peace" imposed on it. From now on, the Russian Federation, as in former communist times, supports the Russian Orthodox Church, which in turn supports Russia's international prestige.

In the XXI century there is an increase in the interaction of the ROC and the Russian Federation in various spheres of life of the country, not only in the spiritual, but in the practical terms also. In March 2003, Patriarch Aleksiy II at a meeting of the Collegium' Ministry of Foreign Affairs of the Russian Federation informed on the Russian Orthodox Church's vision of the Russian diplomacy strategic objectives, given the role the ROC assigns to Russia in the international arena. According to the Russian Orthodox Church, Russia should become one of the international poles of the world, one of the decision-making centers. The Church, according to the Patriarch, has its point of view on the most important issues of political life and openly proclaims it. In turn, Russian Foreign Minister Igor Ivanov stressed that close contacts with the Russian Orthodox Church enrich the diplomatic service with a broader vision of the country's national interests.

The relevance of the chosen topic is facilitated by the fact, that it remains poorly studied today. Some aspects of the issue were raised by Russian scientists: Olga Tserpitskaya (2011), Petr Kasatkin (2010a; 2010b), Roman Lunkin (2018; 2020), and Ukrainian scientist Oleksandr Trygub (2012; 2014), but there is no summary work. It should also be borne in mind that the situation in the international arena and inside the Russian Orthodox Church has changed significantly over the last decade.

Thus, the place and role of the Russian Orthodox Church in international relations is becoming very relevant today. Therefore, the authors aim to reveal the importance of the ROC instruments in the European space – the Representation of the Russian Orthodox Church to the European Institutions and the Representation of the Russian Orthodox Church in the Council of Europe (Representation of the Russian Orthodox Church in Strasbourg).

1. Methodology of the research

The methodological basis of the study is a comprehensive interdisciplinary approach. In the course of the research both general scientific theoretical

methods (systemic, civilizational) and special political science methods (theory of political systems, structural-functional, comparative analysis) were used.

In considering the conceptual foundations of cooperation between the Russian Orthodox Church and the Russian Federation, the author followed a systematic approach, which clarified the role and place of the Russian Orthodox Church in the international arena, comprehensively reveal the internal logic of the ROC's international activity in the context of Russian Federation' foreign policy in a globalized environment.

In the study of political problems of international relations and global development, which includes the research topic, the institutional approach is of great importance. The use of the historical-chronological method in the positivist key played an important role, as all events are revealed in a logical sequence.

The use of these methodological tool made it possible to fully and objectively solve this problem.

2. Results and Discussion

2.1. The Representation of the Russian Orthodox Church to the European Institutions

The Representation of the Russian Orthodox Church to the European Institutions (further – 'Representation in EI') was established on July 17, 2002 in Brussels with the blessing of Patriarch and the Holy Synod of the ROC "taking into account a widening dialogue of the Russian Church with European international organisations". The primary purpose of this decision was to enable the ROC to participate in discussions about the future of Europe. Numerous theological, philosophical, ethical and social issues also played an important role in the debate about the future EU constitution. In addition, the mission planned to engage in ecumenical cooperation with other Church' organizations located in Brussels, as well as to communicate with the public (Trygub, 2012).

The official message of Patriarch Aleksiy II of Moscow to the European Commission President Romano Prodi states, that many members of the Russian Orthodox Church live in the current EU countries, as well as in the candidate countries. With the accession of Eastern European countries to the EU, the Moscow Patriarchate hopes that the Russian Orthodox Church will gain more weight and will be able to contribute to the creation of European integration structures (Representation of the Russian Orthodox Church to the EU in Brussels begins to work, 2002).

At a reception on the occasion of the mission' beginning of the Representation of the Russian Orthodox Church to the European Institutions, Bishop Hilarion (Alfeev) of Podolsk (now Metropolitan of Volokolamsk) on February 5, 2003, noted that "in recent years, the Russian Orthodox Church has a steadily growing interest to European problems. This is due to several factors. First, after the fall of the 'Iron Curtain', new opportunities opened up for dialogue between the European Union and the former members of the so-called 'Eastern Bloc'.

Secondly, the significant increase in the number of communities of the Russian Church in the European Unions' countries in recent years has made the participation and presence of our Church in the religious, cultural and social life of Europe more tangible. Third, the planned accession the States of the Orthodox tradition and the Baltic States to the European Union, which includes about 300 parishes of the Moscow Patriarchate, creates additional opportunities for interaction between our Church and European political structures...

The Russian Orthodox Church is not indifferent to the face of Europe in the near future, the place of religious communities in European law, and the role of the Orthodox tradition in Europe.

The Russian Church feels an integral part of the process of European integration and seeks to contribute to the formation of the spiritual and cultural identity of the new Europe...

The tasks of the newly created Representation are in some respects consonant, but by no means identical to the tasks of the Permanent Mission of the Russian Federation to the European Institutions" (**Reception on the Occasion, 2004**).

We see that the speech of the head of 'Representation in EI' clearly shows a trend towards political cooperation between the Church and EU structures, as well as the relationship with the Russian authorities in the face of the Russian Permanent Mission to the EU in achieving state goals.

According to the official position of the Russian Orthodox Church, the goals and objectives of the Mission are as follows:

- Direct dialogue of the Moscow Patriarchate with European intergovernmental institutions;
- Participation in discussions on European integration, the rights of believers in EU countries, human rights law, migration law, interethnic and interreligious peace, social justice, European security, bioethics, ethical aspects of the use of modern technologies;
- Establishing regular contacts and interaction with the representations of the Orthodox Churches in the European Union (the Patriarchate

of Constantinople, the Cypriot, Romanian and Greek Churches), as well as with various structures and representations of the Catholic Church, Protestant communities and inter-Christian organizations;

- Providing reliable information about the ministry and doctrine of the ROC to Western and domestic media (Representation of the Russian Orthodox Church to the European Institutions, 2002).

During 2002-2009, the General Administration was headed by Metropolitan of Volokolamsk Hilarion (Alfeev), Head of the Department for External Church Relations of the Moscow Patriarchate.

Since 2009, the top management of the Russian Orthodox Church cannot decide on the head of the 'Representation in EI', appointing temporary acting: Archpriest Anthoniy Il'yin (2009-2013), Archpriest Dmitriy Sizonenko (2013-2016), and Abbot Philip (Ryabykh) (2016 –present). At the same time, Philip (Ryabykh) is also the head of the Representation of the Russian Orthodox Church to the Council of Europe in Strasbourg and concentrated in his hands all the representative functions of the Russian Orthodox Church in the European political arena.

In 2009, due to the creation of a special Secretariat of the Moscow Patriarchate for foreign institutions, the hierarchical subordination of 'Representation in EI' changed. The Foreign institutions were subordinated not to the Department for External Church Relations of the Moscow Patriarchate (DECR), but directly to the Patriarch. Previously, their activities were supervised by the Chairman of the DECR, who nominated candidates for the positions of their leaders to the Synod. However, in accordance with the amendments adopted by the Council of Bishops in 2011, foreign institutions were finally removed from the competence of the Chairman of the DECR.

At the same time, DECR remains the main institution that monitors the development of international activities of the Russian Orthodox Church in all major areas. He to oversees and continues cooperation with the representations of Moscow Patriarchate in international organizations (Tserpitskaya, 2011).

Regarding the activity of 'Representation in EI', only in the first years it has achieved considerable results in its activity, based on European approaches and classical technologies of public relations. During 2002, a website was created (http://orthodoxeurope.org) containing numerous materials in English, French, German and other languages. The official "Europaica Bulletin" has started to be published, which is available on the website and sent by subscription to everyone.

The bulletin was designed as a means by which the 'Representation in EI' will inform the Western public about its work, the participation of the

Russian Orthodox Church and other Christian Churches in the process of European integration, as well as explain the official position of the Moscow Patriarchate on topical issues. On February 2004, 34 issues of the bulletin had been published; the number of its subscribers exceeded 4,000. Among the readers of the bulletin are representatives of Christian Churches from different countries of Europe and the world (Orthodox, Catholics, Protestants), members of the European Parliament, politicians, scientists, public figures. On February 27, 2004, a Russian-language version of the bulletin was published.

In 2010, the "Europaica Bulletin" stopped publishing the 179th issue in May 2010 (even earlier, in 2008, the Russian-language supplement "Orthodoxy in Europe" was discontinued). The official website content of 'Representation in EI' (http://orthodoxeurope.org) was suspended, the latest notes in the "News" section are dated the end of 2010. According to the official position, "the official website of the Department for External Church Relations of the Moscow Patriarchate has started publishing information in four European languages – English, French, Italian and Greek, and all readers are asked to refer to this site" (Trygub, 2012:71-72).

As a result, the effectiveness of purposeful missionary work among the European community has declined significantly due to the blurring of the readership of the official website of the Department of External Church Relations. This naturally excited the management of Russian Orthodox Church and the site 'Representation in EI' was restored to a new address (http://orthodoxru.eu).

Until 2015, 'Representation in EI' worked quite actively in close contact with the Representations of the Patriarchate of Constantinople and the Greek Orthodox Church in the European Union, as well as with the Brussels Representations of the Roman Catholic Commission of Episcopal Conferences of Europe, with the Commission "Church and Society" of the European Churches Conference and other Christian missions in Brussels. The regular contacts with the media were organized.

The official contacts of 'Representation in EI' with the religious and political leaders of Europe were quite active. Only during 2002-2003, the head of 'Representation in EI' Bishop Hilarion, met leaders and officials' representatives of European international organizations (European Commission, European Parliament, Council of Europe, NATO, etc.), also with diplomats accredited to these organizations from the different states of world on a regular basis.

Thus, in 2003, Bishop Hilarion met the Secretary General of the Council of Europe W. Schwimmer; Permanent Representative of the Russian Federation to the European Communities, Ambassador Extraordinary and Plenipotentiary V. Likhachev; Permanent Representative of the Russian

Federation to the European Communities, Special Representative of the President of the Russian Federation for the Development of Relations with the EU Minister M. Fradkov; Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Russian Federation to the North Atlantic Alliance, General of the Army K. Totskiy; Adviser to the President of the European Commission on Social Affairs M. Weninger.

Her Majesty Queen Paola of Belgium, Russian Foreign Minister Igor Ivanov, the Head of the Evangelical Lutheran Church of Finland, Archbishop Jukka Parma, and others also visited the Brussels Office of the Russian Orthodox Church (Main Events, 2004).

The political basis of these meetings can be clearly seen in the bilateral dialogue between Bishop Hilarion and the President of the European People's Party Wilfried Martens, which took place on January 24, 2008. In particular, Episcope Hilarion stressed that "bilateral relations with the Russian Orthodox Church will create a platform for dialogue between the European People's Party and Russian civil society." (Bishop Hilarion, 2008).

Representatives of the Russian Orthodox Church, through 'Representation in EI', took part in the annual (since 2005) meetings of the European Union leadership, led by the President of the European Commission Jose Manuel Barroso, with the European religious leaders. The issues discussed at the meetings were very diverse.

Thus, at the 7th meeting on May 30, 2011 at the headquarters of the European Commission more than twenty representatives of traditional religious organizations of the European Union gathered to discuss the topic: "Cooperation for Democracy and Mutual Prosperity: A Common Aspiration to Promote Democratic Rights and Freedoms." The discussion touched on a much wider range of issues, including immigration, interfaith and intercultural dialogue, the situation in the Middle East and North Africa, and many others.

The Russian Orthodox Church was officially represented by the Deputy Chairman of the DECR, Abbot Filaret (Bulekov). The event was also attended by Archpriest Anthony Il'yin, a representative of 'Representation in EI'.

In his speech, Abbot Filaret noted that with the undoubted importance of annual high-level meetings, it is necessary to develop a permanent mechanism for dialogue between EU institutions and religious organizations. The representative of the Moscow Patriarchate also stressed the responsibility of Europe, its secular authorities, civil society and religious leaders in defending religious freedom in Asia, the Middle East and North Africa, where ancient Christian communities were in serious danger.

Abbot Filaret expressed concern that believers most often face the impossibility to openly express their position in the European Union on the moral problems of modern society. The participants of the meeting emphasized that freedom of religion and the adequate role of religion in the public sphere are conditions for fruitful cooperation to achieve the above goals.

According to Abbot Filaret, the main focus of his work in "Representation in EI", is "expert analysis of current political and legislative initiatives of the European Union, which concern the Orthodox Churches." (Representatives of the Russian Orthodox Church Took Part in a Meeting, 2011).

Since 2005, cooperation between the Russian authorities and the Russian Orthodox Church has been officially announced. On November 3, 2005, the representative of 'Representation in EI', Bishop Hilarion (Alfeev), met the Head of the Permanent Mission of the Russian Federation to the EU, Ambassador Extraordinary and Plenipotentiary V. Chizhov. During the meeting, the prospects of cooperation between 'Representation in EI' and the Permanent Mission of the Russian Federation to the EU were discussed (The Russian Orthodox Church and the Permanent Mission, 2005).

Russian diplomats quite often invite representatives of the Russian Orthodox Church to official meetings. Thus, on March 21-22, 2011, a regular meeting of the Russia-EU Parliamentary Cooperation Committee took place in the European Parliament in Brussels. Acting representative of the Representation of the Russian Orthodox Church to the European Institutions, Archpriest Anthony Il'yin, was present at the meeting as an invited participant. In his speech, he touched not only on religious, but also on political issues (Trygub, 2012).

With the onset of the Russian-Ukrainian conflict in 2014 and the deepening gap between Ukrainian Orthodoxy and the ROC, 'Representation in EI' regularly has rhetoric about the need to protect the Orthodox in Ukraine. Emphasis was placed on the need to protect the rights of religious communities and individual believers at the European level through the OSCE, the Council of Europe and the European Court of Human Rights.

For this, in May 27, 2017 on the basis of the Ukrainian Orthodox Church (to enter the canonical field of the Russian Orthodox Church and actually its satellite) "in connection with the need to convey the position of the Ukrainian Orthodox Church on important ideological, religious, social and socio-political issues" the Representation of the Ukrainian Orthodox Church to the European Institutions was formed. Archimandrite Victor (Kotsabu) was appointed the head of this institution, who was later ordained Bishop of Baryshivskyi, Vicar of the Kyiv Metropolis (The Synod of the Ukrainian Orthodox Church, 2017).

In fact, the leadership of the Russian and Ukrainian Orthodox Churches appealed to the EU institutions to protect the religious rights of citizens and the status of the Ukrainian Orthodox Church (UOC), reaffirming the idea, that the Ukrainian crisis cannot be resolved only in a bilateral format between Russia and Ukraine. This issue should include a revision of the EU's relations with Ukraine and Russia's relations with the European Union (Mironenko, 2018).

The key to understanding the foreign policy strategy of the Russian Orthodox Church is the visit of Patriarch Kirill to Strasbourg on May 26-27, 2019. The leader of the ROC met, in particular, the Council of Europe's Secretary General Thorbjørn Jagland and the Council of Europe's Commissioner for Human Rights Dunja Mijatović. At the end of the visit, the Patriarch spoke in defense of conscience freedom:

> I am constantly raising the issue of Ukraine, and especially here in Strasbourg, because this topic is directly related to human rights and religious freedom. In the European country, the rights of a huge number of Orthodox believers were grossly violated (Lunkin, 2020:159-160).

The result of the "pro-European" policy of the patriarchate was the intensification of activity the Representation of the Ukrainian Orthodox Church to the European Institutions and separately the Representation of the Russian Orthodox Churches at the Council of Europe and other organizations in Strasbourg (headed by Abbot Philip (Ryabykh). Since 2019, the Representation in Strasbourg publishes a report on the violation of Christian rights in Europe, where most of it is dedicated to Ukraine.

The Synodal Department of the ROC for the Church's interaction with society and the media also regularly declares the rights of believers, appealing to the case law of the European Court of Human Rights and the principles of religious freedom. According to Russian researcher Roman Lunkin, such rhetoric can be seen as a political declaration for the tactical purpose of putting pressure on Ukrainian politicians. At the same time, the Ukrainian factor only accelerated the recognition of certain European values in the foreign policy strategy of the Russian Orthodox Church (Lunkin, 2020).

2.2. The Representation of the Russian Orthodox Church in Strasbourg

On March 24, 2004, the Holy Synod of the Russian Orthodox Church decided to establish the Representation of the Russian Orthodox Church in Strasbourg (further – 'Representation in Strasbourg'), which is entrusted to conduct a dialogue and present the position of the ROC in the Council of Europe. Abbot Filaret (Bulekov) was appointed the first representative of the ROC in Strasbourg.

Metropolitan Kirill (Gundyaev), the head of the Department for External Church Relations of the Moscow Patriarchate, noted: The activities of the Council of Europe, the oldest European international organization, are of great interest to the Church. The Council of Europe is one of the personifications of integration processes that affect all aspects of the life of the peoples of the continent, including their spiritual traditions. The parishioners of the ROC, which is the largest religious community in the post-Soviet space, also feel the influence of the work carried out within this organization.

The Russian Orthodox Church saw its place in the implementation of one of the key areas of the Council of Europe's work – the protection of human rights, as "the realization of human rights is impossible without religious freedom." Therefore, interfaith dialogue, recognized and supported by the member states of the Council of Europe, should become the starting point for building a 'Greater Europe', which respects traditional spiritual values (Kirill, 2006).

2004 was mainly an organizational year for 'Representation in Strasbourg' – the formation of a 'team', setting priorities, preliminary meetings with leading politicians of 'Old Europe'. Only on September 14, 2005, the Permanent Representative of the Russian Federation to the Council of Europe, Ambassador Aleksander Orlov, gave a reception at his official residence on the occasion of the beginning of the 'Representation in Strasbourg' and the arrival of Abbot Filaret (Bulekov). The reception was attended by the Consul General of the Russian Federation in Strasbourg Vladimir Korotkov, the Catholic Archbishop of Strasbourg Joseph Dori, and the Vatican Representative to the Council of Europe Monsignor Vito Rallo.

In last quarter of 2005, Abbot Filaret held a series of meetings to explain the position of the Moscow Patriarchate on education, freedom of conscience, gender issues, freedom of religion, and more. During the autumn session of the Parliamentary Assembly of the Council of Europe (October 3-7, 2005), the abbot met individual deputies on "Women and Religion in Europe" and "Education and Religion"; On October 10 and December 20, Council of Europe's Commissioner for Human Rights Alvaro Gil-Robles met Abbot Filaret to discuss a wide range of issues between the Council of Europe and the CoE Commissioner for Human Rights with various institutions of the Moscow Patriarchate, human rights in Europe, and religious education, in secular schools, etc.; November 21 – Meeting with the Secretary General of the Council of Europe Terry Davis, etc (Trygub, 2014).

It should be noted that all activities of 'Representation in Strasbourg' were constantly under the control of the Ministry of Foreign Affairs of the Russian Federation. This is evidenced by the regular meetings of Abbot Filaret with Russian diplomats, their care of the 'Representation

in Strasbourg'. Thus, on June 14, 2006 in Strasbourg, Abbot Filaret met Deputy Minister of Foreign Affairs of the Russian Federation Aleksander Grushko, who was in charge of European and Euro-Atlantic organizations, and on October 4 the same year Abbot Filaret met Minister of Foreign Affairs of the Russian Federation Sergei Lavrov.

It is interesting that such close cooperation was not hidden, but veiled. This is evidenced by the interview of Abbot Filaret to the Interfax-Religion correspondent on November 5, 2009, where he noted:

> The Ministry of Foreign Affairs and the Permanent Representation of Russia [in Strasbourg] have been providing us with all possible assistance from the very beginning. This does not mean that we are a unit of the Russian diplomatic corps. At the same time, we have always emphasized that the representation of the Moscow Patriarchate does not represent the Church in the Russian Federation, but Orthodox believers in all countries of the canonical territory of the Russian Orthodox Church... (Lozitskaya, 2009: n/p).

A landmark event in the history of 'Representation in Strasbourg' was the visit of Patriarch Alexiy II on October 2, 2007 the session of the Parliamentary Assembly of the Council of Europe by invitation of its President Rene van der Linden. The offer to the spiritual leader of the largest Orthodox Church in the world to speak on topical issues of the European agenda was an expression of the readiness of representatives of the political elite of all European countries – members of the Council of Europe to listen to the voice of modern Orthodoxy.

Patriarch Alexiy not only addressed the PACE deputies, but also answered a number of questions concerning religious education, respect for the feelings of believers, intercultural and interreligious dialogue, the death penalty, and others. This, in turn, testified the readiness of the Russian Orthodox Church for a real dialogue with the Council of Europe on the whole spectrum of mutual interests. At the same time, certain issues (religiosity, same-sex marriages, etc.) provoked discussion among deputies.

The Patriarch also touched on political issues. Thus, Alexiy II touched upon the Kosovo problem, noting: "The negotiation process must be made open to all those who can have a positive influence on it. Thus, Kosovo still does not pay due attention to the peacekeeping potential of religious communities. The Russian Orthodox Church, which has extensive experience in peacekeeping, is ready to help bring peace." However, the Patriarch's proposal to join the peace process in the region of Europe where human rights and the rights of religious and ethnic communities are constantly and severely violated has not provoked any response from the Council of Europe (Trygub, 2014:160-162).

In 2011, Abbot Philip (Ryabykh) was appointed to the official 'Representation in Strasbourg' (New Representative of the Moscow Patriarchate, 2011), who became the leader of the European policy of the newly elected Patriarch Kirill (Gundyaev). Since 2016, Abbot (now Archimandrite) Philip has united all the representative functions of the Russian Orthodox Church in the European arena under his leadership.

'Representation in Strasbourg' pays great attention to the possibility to influence the decision of the European Court of Human Rights, which is located in this city. Thus, on July 9, 2012, Abbot Philip (Ryabykh) met the Council of Europe's Commissioner for Human Rights Nils Muižnieks. A representative of the ROC handed over a document of the ROC on human dignity, freedom and human rights, adopted by the Council of Bishops in 2008 to the Commissioner for Human Rights.

The priest also expressed concern over the increasing number of cases of interference of secular state and public institutions in the internal affairs of religious associations, stressed the inadmissibility of insulting believers and desecrating their shrines, noted the need to protect the rights of believers to defend morals and public life according to religious doctrine, for example, in the formation of legislation governing the creation and life of the family, the relationship between the sexes, the origin of human life and departure from it, the activities of the media, education (Representative of the Russian Orthodox Church in Strasbourg, 2012).

One of the most important tasks, which have been implemented throughout the decade of 'Representation in Strasbourg', is to try to influence the moral and legal initiatives of the European Union. Thus, in June 2011, in connection with the summer session of the Parliamentary Assembly of the Council of Europe (PACE) in Strasbourg, the discussion on the recognition of same-sex marriage in Europe, gay parades and sanctions against those who disagree with these phenomena intensified again in the media and on the Internet.

'Representation in Strasbourg' published on its official website a report by Russian legal experts "On the right to critically evaluate homosexuality and on legal restrictions on the imposition of homosexuality", where it criticized the support of a number of European structures, in particular the European Court of Human Rights, for this issue (Representative of the Russian Orthodox Church in the EU, 2011).

The purpose of this step is to promote an objective and comprehensive discussion on discrimination based on sexual orientation and gender identity. The Representation of the Russian Orthodox Church to the Council of Europe welcomes the wide-ranging discussion of the above-mentioned report by Russian experts. The Representation will also be interested in discussing the report of the Council of Europe's Commissioner for Human

Rights following the public appearance of his text (Russian experts have prepared a report, 2011).

At the same time, 'Representation in Strasbourg' expects that as a result of joint efforts of various public organizations, religious unions and the ROC, European countries will disagree with the position of the European Court of Human Rights and will defend traditional values, as a result of which the European Court of Human Rights will be forced to change its decision. Such confidence in the effectiveness of these measures is based on the positive practice in previous years.

Thus, on May 15, 2006, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament approved a report on the "EU Framework Strategy on Non-Discrimination and Equal Opportunities". 'Representation in Strasbourg' took an active part in the preparation of the document within the framework of expert-consultative interaction with the deputies – members of the Committee.

The result of this interaction was the inclusion in the final text of the report the concept of "distributive justice", which allows the realization of the collective rights of vulnerable groups, mainly ethnic minorities in Europe which will be the basis for the development of a system of so-called "positive actions". This system will be used by the European Union to ensure proportional representation of different groups of the EU population in all spheres of life, including politics and public administration (The European Parliament, 2006).

In the last five years, the activities of the European representations of the Russian Orthodox Church have focused on the Ukrainian issue and the protection of the rights of believers in Ukraine (we have already discussed this). In his interview at the end of 2018, Philip (Ryabykh) noted that "two thirds of violations of the rights of European Orthodox believers in 2017 occurred in Ukraine," and in accordance with its commitments under the European Convention on Human Rights, Ukraine "must protect religious communities from physical and verbal attacks by third parties." (Interfax Interview with Abbot Philip (Ryabykh, 2018). Thus, the Russian Orthodox Church through 'Representation in Strasbourg' tried to organize pressure on the Ukrainian political circles.

Conclusions

Thus, the Representations of the Russian Orthodox Church are a new form of foreign institutions, created to establish a dialogue with the world community, to protect traditional Russian values at the international level (through the popularization of the ideas of the "Russian World"), protection

of the rights of Orthodox believers through European institutions, bringing to the attention of international organizations and the authorities of foreign states the views of the ROC on topical issues, as well as increasing the influence of the Russian Federation in the international arena.

The activities of the Representations are designed to contribute to the achievement of both religious and spiritual and state foreign policy goals of the Russian Federation. Interacting with foreign media and civil society institutions, the missions promote a positive image of Russian Orthodoxy and the idea of the "Russian world", creating a more favorable image of these ideas in the world for Russia's foreign policy.

In this way, we see that the Russian Orthodox Church has intensified its external activities in the 21st century. At the same time, it is often not only religious in nature, but also political, which indicates the further rapprochement of "New Russia" with the Russian Orthodox Church. It continues to carry out secular tasks on the foreign policy front, continuing the historical traditions of both imperial politics and the Soviet post-war use of the Church in its political interests.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 837-853
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Theoretical and methodological bases of formation of legal competence of future specialists of non-legal specialties

DOI: https://doi.org/10.46398/cuestpol.4073.48

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Abstract

The objective of the study is a comprehensive analysis of the formation of the legal competence of future specialists of non-legal specialties by reviewing the educational programs of the main specialties in the participation of legal disciplines, describing the difficulties faced by students of non-legal specialties in the study of legal disciplines, all of which, allows to identify the methodological characteristics of the teaching of the legal disciplines for the direction of the students. Varied methodological tools were used, including philosophical methods of knowledge (dialectical, metaphysical, synergistic), general scientific and specifically scientific (compilers, comparative). The main results of the work are the definition of the problems of higher education in the formation of educational programs for students of non-legal specialties and the identification of the typical problems faced by students of non-legal specialties in the study of legal disciplines. A set of methodological

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Recibido el 26/04/2022 Aceptado el 22/06/2022

techniques is proposed in the teaching of legal disciplines for students of non-legal specialties.

Keywords: legal competence; legal disciplines; educational program; teaching methodology; non-legal specialties.

Bases teóricas y metodológicas de la formación de la competencia jurídica de los futuros especialistas de especialidades no jurídicas

Resumen

El objetivo del estudio es un análisis exhaustivo de la formación de la competencia jurídica de los futuros especialistas de las especialidades no jurídicas mediante la revisión de los programas educativos de las principales especialidades en la participación de las disciplinas jurídicas, la descripción de las dificultades que enfrentan los estudiantes de las especialidades no jurídicas en el estudio de las disciplinas jurídicas, todo lo cual, permite identificar las características metodológicas de la enseñanza de las disciplinas jurídicas para la dirección de los estudiantes. Se utilizaron herramientas metodológicas variadas, incluyendo los métodos de conocimiento filosóficos (dialécticos, metafísicos, sinérgicos), científicos generales y específicamente científicos (compiladores, comparativos). Los principales resultados del trabajo son la definición de los problemas de la educación superior en la formación de programas educativos para los estudiantes de especialidades no jurídicas y la identificación de los problemas típicos que enfrentan los estudiantes de especialidades no jurídicas en el estudio de las disciplinas jurídicas. Se propone un conjunto de técnicas metodológicas en la enseñanza de disciplinas jurídicas para estudiantes de especialidades no jurídicas.

Palabras clave: competencia jurídica; disciplinas jurídicas; programa educativo; metodología de la enseñanza; especialisdades no juridicas.

Introduction: Research Problem

Law as science provides the “framework” of public relations, creating a matrix for social interactions. Legal policy determines the ideological direction of the desired relations between people, group members, and subjects of law, for this purpose distinguishing socially useful and illegal

behavior. The globalization of social reality affects all spheres of life, including education. Modern configurations establish the demand for education. For example, according to a recent UNICEF report, households account for 30% of total educational expenditures worldwide and 39% in low- and lower-middle-income countries (UNESCO, 2021a). Education should predictably contribute to a peaceful, just, and sustainable future.

Knowledge of basic legal concepts is essential for the individual as a citizen of the state, regardless of professional direction or other individual factors. Such legal competence should be obtained at the level of school education, including knowledge of one's rights and duties, understanding of the principles of law, ability to defend one's rights and interests, including in interaction with public authorities, elective skills, and forms of implementation of labor and civil legal relations, etc. (Babanina *et al.*, 2021).

Vocational education is designed to equip a person with the necessary knowledge and skills in accordance with the specialty and direction. The level of integration of legal knowledge into professional education is essential for proper professional competence. Obtaining legal information necessary exclusively for a person's social life cannot compensate for the need to form the legal competence of a future specialist of non-legal specialties (Pohosian *et al.*, 2021).

The level of demand for legal knowledge and its direction clearly depends on the chosen specialty and specialization. There is no single model and countervailing approaches. Therefore, the theoretical and methodological toolkit, which is chosen by the teacher to convey legal knowledge to the student audience, is important. The peculiarity will act individualized complex and system of legal knowledge and skills for the target audience, so the effective work of the educational and pedagogical team is of particular importance in the area under study.

The unresolved scientific problem is that in the practical aspect it is necessary to take into account the variable determinants of social processes. This implies a departure from the classical form of receiving an academic education, adding synergetic methodological means of learning for the most effective receipt of in-demand qualifications. A competitive specialist combines state-of-the-art knowledge with the skills of knowledge updating, the ability to respond to transformational changes in professional and socio-social directions.

This requires a new way of thinking about the subject. The development of critical thinking and skills of knowledge renewal, the ability to learn throughout life is a professional globalization skill for students of non-legal specialties, which will ensure the retraining of a specialist in the future. Education that points solely to a knowledge of the norms of current

legislation as ontological truth, without the application of critical thinking, argumentation, comparison, and logical analysis of the casual situation and trends in legal norm development, loses relevance for the professional direction of non-legal specialists.

The student must not only master the legal thinking skills but also understand the trends of legal policy development in his professional sphere, see the multidimensionality of globalization-legal phenomena and processes.

The unresolved issue is also the formation of communicative skills, provided through the development of tolerant perception of others, finding mutual understanding with representatives of different groups, regardless of age, religious, cultural, and professional orientation, so learning to respect the rule of law, equality, and justice, promoting non-discrimination policies and protection of human rights and freedoms - an important skill of future professionals in the knowledge of any, including non-legal.

Therefore, the study of the peculiarities of formation of legal competence of specialists of non-legal specialties is important enough for the doctrine and practice contains significant unresolved scientific problems, concerns a wide range of educational specialties and directions, is actualized in connection with the globalization processes of social and legal relations of today.

1. Research Focus

This research article focuses on the main methodological aspects of updating the teaching of legal disciplines for students of non-legal specialties. The main focus of the study is focused on the problems that arise among students of non-legal specialties in obtaining legal competence and the development of proposals for effective teaching of legal disciplines for such students.

1.2. Research Aim and Research Questions

The aim of the article is a comprehensive study of the formation of legal competence of future specialists of non-legal specialties.

Objectives:

1. To analyze the educational programs of the main specialties on the involvement of legal disciplines.
2. To describe the difficulties faced by students of non-legal specialties in the study of legal disciplines.

3. To identify the methodological features of teaching legal disciplines for students of non-legal.

The section "Literature Review" contains an analysis of the previous scientific refinements in the field of professional competence of students of non-legal specialties and the place of legal knowledge and skills in it. The section "Methodology" contains an indication of the use of the author's approaches and methods to the subject of research, in particular, the method of the survey on the developed author's questionnaires, which was conducted in three regions of Ukraine during 2020-2021.

The section "Results and Discussion" presents the research of educational programs on the main specialties for the involvement of legal disciplines; highlights the difficulties faced by students of non-legal specialties in the study of legal disciplines; defines the methodological features of teaching legal disciplines for students of non-legal disciplines. The "Conclusions" section contains key statements and theses to which the authors arrived at during the analysis and substantiates the prospects for further research in a particular area.

2. Literature Review

Scientific sources have not paid much attention to this important issue by lawyers and pedagogical experts alike. Extensive attention has been paid to the subject in the context of legal socialization and the definition of a comprehensive approach in teaching for non-legal students (Schäfke *et al.*, 2018). Scholars also focus on the role of legal knowledge in times of pandemic threats and its potential in distance learning (Querci, 2021).

In the theoretical aspect, the researched issues of legal competence formation are analyzed through the construct of lifelong learning (Puhach, 2021), focusing on the European standards of higher education (Spyrydonova, 2021), as well as the importance of legal practice for the educational process (Bortnyk, 2021). Scientific advances of the new generation emphasize the need to update pedagogical methods, arguing that they should be the subject of constant reflection of teachers and administrators of universities, the development of curricula of law schools should be aimed at developing the intellectual abilities and curiosity of students (Vargiu, 2021).

The psychological attitude of professional sphere representatives to students who study non-core disciplines and methodological proposals in Questions about the knowledge of laws by specialists in other professions are devoted to the work of B. van Rooij (Van Rooij, 2020).

There are a number of doctrinal developments concerning the level of legal competence of students of certain specialties, in particular, on the specific academic needs and problems of students from creative media and art history to acquire legal knowledge and skills Sherstoboeva and Dubrovina (2021) the role of business law for courts of business administration (Reems , 2021; Khan, 2021), the teaching of business law in the mastery of the material by law and non-law students (Jianjian, 2018), the methodological challenges of future physicians' mastery of legal regulation of abortion (Cohen *et al.*, 2021), and forensic toxicology (Damian *et al.,* 2019).

3. Methodology

3.1. General Background

The methodology is based on a three-level system of methods and approaches. The first level considers philosophical methods, in particular the dialectical method - applied in establishing established and newest teaching methods; metaphysical method - to highlight the external factors affecting the educational process; synergetic method - to determine the hypothetical consequences of the implementation of updated pedagogical methods.

The second level of the methodology includes general scientific methods: analysis and synthesis, analogy, abstraction. Among special scientific methods (the third level) was used compilatory, with the help of which it was possible to compare the level of demand for legal knowledge in various non-legal specialties. The comparative method made it possible to analyze the practice of acquisition of legal competencies by students of different specialties.

3.2. Sample / Participants / Group / Instrument and Procedures

The representativeness of the author's provisions is substantiated by using the method of the survey, which was conducted in different regions of Ukraine during 2020-2021 by using the author's questionnaires. The participants of the survey are allocated into two groups. The first includes undergraduate students studying in all specialties, except "Law". First-year students were deliberately excluded from the survey, as their level of familiarity with the future subjects offered in the educational program may be insufficient to answer the questions.

Three leading institutions of higher education of Ukraine (the State Higher Educational Institution "Uzhgorod National University", the National University "Lviv Polytechnic", the Kyiv National University of Trade and Economics) were chosen for the survey. The number of respondents

was 342 people. The study was carried out by self-filling questionnaires by students in papers. Hypothetical statistical error - 2%.

The second group of respondents - practicing physicians with various years of medical practice to establish the demand for legal competence for medics. The number of respondents was 76. Doctors work in Lviv, Transcarpathian, and Kyiv regions. Hypothetical statistical error is 1.5%.

3.3. Data Analysis

The analysis was conducted by the authors of the article based on the use of the method of data collection and the method of analysis of the results, the search for relationships, and differences in the arrays. The statistical method was used to transfer the obtained results to the whole totality of information. Using the analysis of relations, we determined the degree of influence of the factor of the absence of "Medical Law" subject on the negative legal competence of the respondents of the second group of the survey.

4. Results and Discussion

Legal competence is necessary for a member of society and a specialist, so legal education is used to obtain it as an additional element of professional competence. The latter without legal knowledge cannot be formed since practice requires possession and use of legal norms a priori as a basic element of understanding of authority and professional status.

Legal education should be understood as a set of measures of educational, training, and informational nature aimed at creating appropriate conditions for the population to acquire legal knowledge and skills, as well as the process of acquiring legal knowledge, skills, and abilities to form the legal culture and competence of an individual to exercise the rights of conduct of the attitude and tasks of a particular professional branch of law. Legal competence is the result of legal training based on the legal consciousness of the person, formed at the expense of the development of the future professional's own views, position on the socio-legal reality.

The purpose of legal education is to organize an effective learning process for each student by conveying legal information, monitoring and evaluating its assimilation. Analysis of the catalog of educational programs. Recent scholarship advocates the introduction of interdisciplinary approaches to legal studies (Schäfke *et al.*, 2018), implemented for all approaches and majors, both legal and non-legal.

Let us analyze the Ukrainian national practice. The analysis of educational programs of National University "Lviv Polytechnic" allows to

point out that the educational process contains an insignificant number of subjects of legal direction and mostly all of them belong to the block of disciplines to choose from. The results are presented in Table 1.

Table 1. Law courses at the National University "Lviv Polytechnic"

Name of specialty	Name of the law course
Information, Library, and Archives	Legal support of professional activity; Legal basics of communication with the authorities
Finance, banking, and insurance	Legal Basics of Business Activities
Marketing	Legal Basics of Business Activities
Environmental Design	Labor law
Software Engineering	Labor legislation
Computer engineering	Normative-technical documentation of the branch (mandatory)
Cybersecurity	Normative legal support, standards, and policy of information and cyber security
Journalism	Legal norms of journalism in Ukraine
Psychology	Legal psychology
Management	none
Logistics	none
Industrial Engineering	none

Drawn up by the authors based on an analysis of Lviv Polytechnic National University. Majors' directory. Retrieved from: https://www.uzhnu.edu.ua/.

As for the educational programs of Uzhgorod University, the situation is much simpler. Most majors contain the subject "Jurisprudence" ("History and Archaeology", "Philology", "Economics", "Entrepreneurship", "Trade and Stockbroking", etc.) or none at all ("Medicine", "Dentistry", "Forestry"). Only one specialty – "Cybersecurity" offers a selective course "Legal Basis of Information Protection".

Almost the same approach is used in the educational programs of the Kyiv National University of Trade and Economics. "Jurisprudence" as a general course is offered to students of "Information Systems and Technologies", "Finance", "Banking and Insurance", "Marketing"; for "Tourism" a course on labor law is selected; for "Food Technologies" it is considered that legal competence is not needed at all.

According to the authors, this analysis demonstrates that there are no unified approaches to educational programs, higher education institutions independently determine the necessary level of legal competence.

The improvement of the higher education system is based on the indicators of educational development worldwide, and in this regard, given the global trends (Shobonova *et al.*, 2020). The UN Educational, Scientific and Cultural Organization in its new global report "Reimagining our futures together: a social contract for education" points out that education, especially vocational education, should act as a new social contract that should unite the world "around collective efforts and provide the knowledge and innovation needed to shape a stable and peaceful future for all who are anchored in social, economic and environmental justice" (UNESCO, 2021b).

Unfortunately, Ukrainian universities are at the initial stage of forming special approaches to higher education. Let us allow ourselves to criticize the approach of the State Educational Institution "Uzhgorod National University" and the Kyiv National University of Trade and Economics, where the basics of law is a general discipline without analyzing the demand for legal knowledge within the specialization and qualification of the student.

In general, for some majors in HEE is not enough and the number of legal subjects offered to choose from, in particular for the specialty "Cybersecurity" we consider it appropriate to focus on information law as the main legal branch, without which their professional competence is incomplete. Also, for students of management, logistics, food technology specialty it is necessary to study the basics of at least business law; forestry - environmental law; medical and dentistry - medical law.

Let us turn to the experience of leading universities. Experts argue not only about the need for specialization, but also the systematic updating of educational courses. In addition to environmental law and environmental law, European universities, with the financial assistance of the European Union, are introducing a mandatory course on energy transition law, "Comparative Climate Change and Energy Transition Law between the EU and the United States," which has been taught since 2019 (Smith *et al.*, 2019). This example reflects the demand for knowledge not of general rules and principles of law, but industry-specific specialized law and practice.

The results of the author's survey also illustrated the actualization of legal knowledge among students (**Fig.1**). Almost 68% of respondents indicated the demand for legal disciplines.

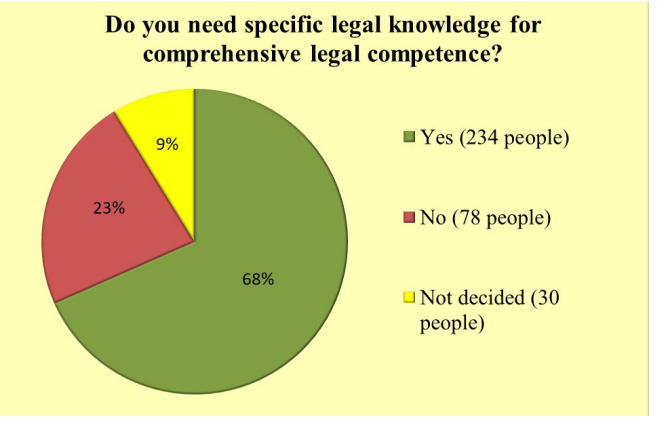

Fig.1. Drawn up by the authors according to the results of the author's survey

So, the majority of students understand the importance of legal competence for their professionalism in the future. However, almost half believe that legal subjects are not enough in their educational program (see **Fig. 2** for details).

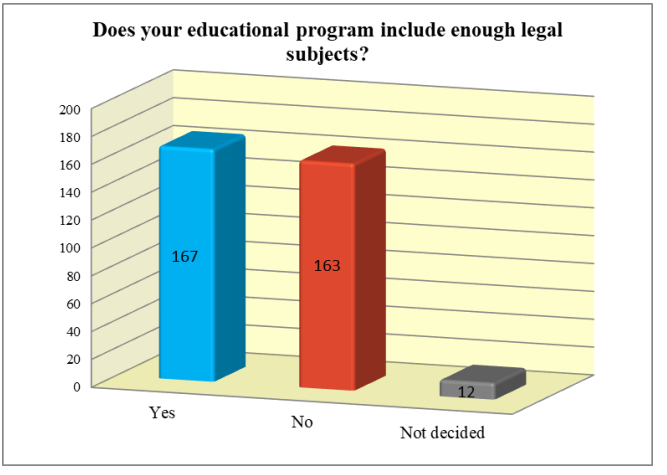

Fig. 2. Drawn up by the authors according to the results of the author's survey.

Students face a great deal of difficulty in obtaining legal competence. As N. Nikonova, the requirements for law students can be an overwhelming task for students in other majors. Therefore, it is necessary to adapt the material, to simplify it if possible (Nikonova, 2020). H. Ambaras Khan argues that law is perceived as a difficult topic and takes a lot of time. This subject needs to be presented in a way that is acceptable to students to attract attention and interest. During the Covid-19 pandemic, all teaching is done through an online platform. The instructor must have a good teaching plan to ensure that students are able to learn and enjoy the subject of law (Khan, 2021).

Our survey of students also confirmed the difficulty of legal knowledge for their perception (Fig. 3).

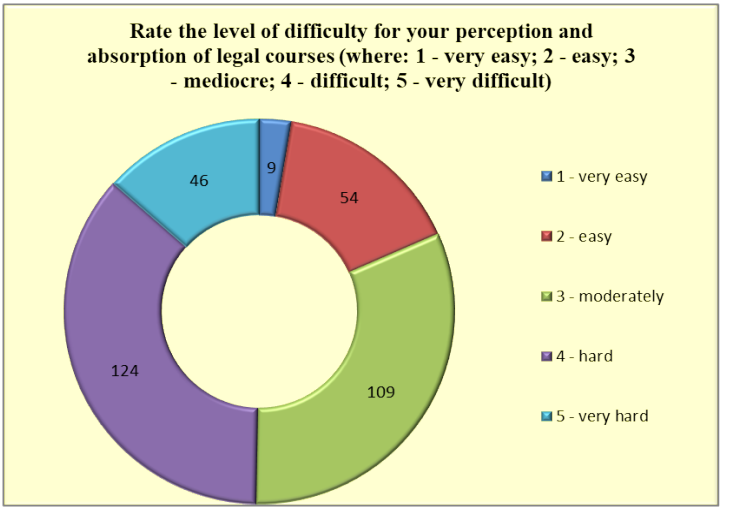

Fig.3. Drawn up by the authors according to the results of the author's survey.

Content analysis of preliminary research and the author's survey allowed us to group the problems in the study of legal disciplines into such groups:

1) the complexity of the material for perception;
2) the volume of the legal course;
3) the material is very boring and uninteresting;
4) low professional and pedagogical competence of the teaching staff;

5) lack of understanding of the need to apply legal knowledge in the future for professional competence.

Despite the problems in obtaining legal competence, it is still in demand and necessary for specialists in a particular specialty. Let us illustrate this with an analysis. Another study we conducted among physicians demonstrated the demand for knowledge of medical law. In particular, when asked if they told a patient's close relatives his diagnosis without prior consent, 89% responded in the affirmative.

We should add that such behavior is contrary to national standards in health care. 56% of doctors do not see the need to ask a minor over 14 years about consent to treatment, because they believe that these issues should be discussed with the parents before adulthood. The above shows the lack of knowledge about the specifics of the legal regulation of issues of medical secrecy, the provision of medical services to a minor patient, so the principle of confidentiality is practically not respected in the health care system of Ukraine.

If medics had received knowledge in the sphere of medical law when studying in HEE, the results of legal errors would have been lower. Medical law as a complex institute of law has formed recently in the post-Soviet space (three to five years), so it is just beginning to be introduced as an academic discipline among medical students.

Peculiarities of teaching legal subjects for law students are manifested in the fact that the knowledge they acquire is important for their future specialization, but in contrast to the profile, disciplines require additional adaptation to acquire knowledge. This applies to legal tools, conceptual and categorical apparatus, understanding of the system of law and the system of legislation, and key concepts of general theoretical jurisprudence.

The teacher should not rely on the fact that students of non-legal specialties have the necessary basic knowledge to perceive the specialized rules of law. For example, in presenting any legal subject, especially in the first lecture classes, emphasis should be placed on the basic concepts that will be used later to enrich the student's lexical toolkit.

In particular, it is appropriate to focus on the fact that jurisprudence uses such concepts as "legal person" instead of the commonly used "firm" or "enterprise"; to explain the difference between the legal force of laws and bylaws and interpretative legal acts from the previous two; to distinguish crime and misconduct; to recall the system of public authorities and the structure of the judicial system of the country.

The set of methodological and conceptual and categorical apparatus depends on the legal course offered to students. We consider it necessary to provide in the introductory class some general methodological provisions for the enrichment of theoretical concepts of legal sense.

Another important feature of gaining knowledge is that the approach used in the educational process should be aimed specifically at the student of a particular specialty. Suppose when expounding "Entrepreneurial Law" for law students, one should focus exclusively on topics that have not been the subject of other courses, in particular, within the framework of economic law, civil law, tax law, customs law, budget law, shareholder law, etc.

However, when teaching the same course for students of non-legal specialties (economists, logisticians, financiers, managers) it is necessary to expand the subject of the discipline to include the main provisions of related subjects. It is important that the specialist who will develop and teach the relevant course be familiar with the educational program and the individual plans of the student. Thus, the discipline will be an effective component of a single set of educational components.

To reduce the level of complexity of the material, it is methodologically correct not only to simplify it but also to adjust the student's evaluation criteria. The level of knowledge of the subject cannot be the same as that of law students. Law students often study in law schools certain existing attitudes, personalities, qualities, interests, values. Typically, individuals with well-developed linguistic skills, reading a lot of material, writing, and rhetoric come to study. Therefore, professional outcomes among non-law students cannot be achieved with the same course model, teaching styles, and strategies adopted for teaching law students.

A methodological shift in teaching approaches from the general normative to the specifically casual is necessary for a better perception of the material. A sign of successful learning in any field of endeavor is the ability of students to retain information from the course. The way to achieve this goal is for instructors to create comprehensible factual situations in the form of problems stemming from jurisprudence.

The sharper and more vivid the subject matter, the more likely students will engage in class discussions and remember what they have learned. The ability to model legal situations, to make decisions that do not violate legal procedures when applying knowledge plays an important role in a professional's qualifications. The main indicator of assimilation of legal knowledge, abilities, and skills acquired by the future specialist is the ability to show the degree of their readiness to work consciously using the information received.

By democratization and humanization of education, an important condition in the formation of legal competence is that the student is considered as an active subject of the educational process, his subjective experience, cognitive needs and abilities, future professional interests and requests, his individual and personal characteristics. determine the success of higher education. Consideration of employer and student opinion is a necessary principle of formation of modern professional education.

Conducting a co-design of curricula, literature can lead to greater student engagement, motivation, and learning, contribute to the development of graduate qualities and positively influence the relationship between students and teachers. An important methodological approach to overcoming the problem of alienation from the law is the cooperation of all participants in the educational process.

Skills of independent mastering of knowledge have a key place for students extracting higher education, the individual pace of learning, independence in mastering the acquired knowledge takes priority. The task of researchers in establishing the correct vector of knowledge acquisition and determining the proper vector of independent work, monitoring and supervising this process.

In the period of globalization changes, the dominance of technical ways of obtaining knowledge, computer education of students - all this contributes to independent work. Students can systematically update legal knowledge, in particular, follow the changes in legislation and practice through the official Internet representations of public authorities (Supreme Council, President of Ukraine, Commissioner for Human Rights, Ministries and departments). They usually contain not only normative legal acts but also an unofficial interpretation by specialists.

Also positively assess the public access to decisions of all levels of the judiciary and local authorities, legal registries. Therefore, it becomes relevant to use the technology of independent work to form university students' skills of independent mastering of knowledge and skills, development of their ability to self-improvement and self-education, rapid response to changes in the law, and the state.

And in conclusion, we note that in the context of pandemic threats, legal competencies can serve as a subject of social communication and contribute to the reduction of social tension among students, which is due to distance learning. Socialization activities are an essential part of the educational process, as well as other non-formal and informal educational opportunities that derive from participation in the social life of the university.

Through the introduction of social distancing activities, students may feel isolated, depressed, and anxious, and thus face unprecedented challenges in achieving their academic goals. Law courses are creative, fostering discussion, argumentation, and motivation, so they provide an opportunity, unlike exact academic subjects, to feel free, socially engaged. Quercin, I. motivates that the activity of teaching law can help de-escalate some of the side effects of quarantine on students while also generating innovative changes in society. Methods exist and can be developed to create rich learning environments where the law is a tool for participation and inclusion, despite the problems associated with long-term e-learning and distance education (Querci, 2021).

Conclusions

Analysis of the educational programs of students of non-legal specialties in the three leading universities of Ukraine has demonstrated the lack of unified approaches to educational programs, higher education institutions independently determine the required level of legal competence and often do so without applying special methodological approaches, violating international legal standards in the field of education. The practical problem of higher education is the study of the general course of law basics, which only indirectly contributes to the development of professional competence, or often the lack of legal disciplines at all, but the demand for the competitiveness of a specialist.

The results of the survey of students demonstrated their interest in the study of complex legal and professional disciplines, they emphasized the insufficiency of such disciplines, as well as their difficulty for perception. Typical problems faced by students of non-legal specialties in the study of legal disciplines were identified: the complexity of the material for perception; the volume of the legal course; lack of curiosity of materials; low professional and pedagogical competence of the teaching staff; lack of understanding of the need for legal knowledge application in the future for professional competence.

The need for legal competence is demonstrated by reviewing the results of a survey of practicing physicians in the area of medical and legal issues and the need to deepen the knowledge of the latter in the area of medical law is indicated.

It is proposed for the application of the following methodological techniques in teaching legal disciplines for students of non-legal specialties: additional adaptation to the acquisition of knowledge by explaining the used legal tools, conceptual and categorical apparatus, understanding of the system of law and the system of legislation and key concepts of general theoretical jurisprudence.

Individual pedagogical approach aimed at the student of a particular specialty and avoiding the unification of material for all areas, including law students; simplification of the material of the discipline and correction of the criteria for assessing knowledge; transition from the general normative to a specifically causational approach in teaching; intensification of communication and cooperation between the teacher and the student in order to adjust work programs and lecture material; formation of the skill of independent mastering of knowledge and skills, which will facilitate the possibility of renewal of knowledge during life; using legal disciplines as a springboard to overcome the problems of pandemic nature in education.

Prospects for future studies analyze the specifics of obtaining legal competence by specialists in certain areas and the demand for them in practice, the possibility in the future to update knowledge during life.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 854-867
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Aproximaciones a las políticas educativas en la escena global de la postpandemia COVID-19

DOI: https://doi.org/10.46398/cuestpol.4073.49

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Resumen

La pandemia de COVID 19 tuvo un impacto multidimensional inusitado en la humanidad en su conjunto creando o recreando en su decurso nuevas o renovadas formas de relación entre las personas, las comunidades y el estado, en tanto ente articulador de las relaciones sociales y de los espacios de desarrollo humano. En este contexto, es usual el uso general de las TICs en los procesos de enseñanza-aprendizaje en todos los niveles del sistema educativo, en detrimento del encuentro persona a persona afectado por el distanciamiento social. El objetivo del artículo consiste en describir un marco conceptual útil para redefinir las políticas educativas acordes con las nuevas realidades que caracterizan en Ecuador los escenarios postpandémicos. Metodológicamente se trata de una investigación documental, analíticas y prospectiva. Los autores concluyen que la inversión en educación se plantea como urgente ya que sus espacios materiales y simbólicos significan para la mayoría de los jóvenes la oportunidad más legitima para formarse, alcanzar mejores oportunidades y ascender socialmente, situación que reduce las dinámicas de conflictividad social.

Palabras clave: políticas educativas; escenarios socioeducativos; educación de vanguardia; análisis prospectivos; desarrollo humano.

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Recibido el 04/04/22 Aceptado el 12/06/22

Approaches to education policies on the global scene of the post-COVID 19 pandemic

Abstract

The COVID 19 pandemic had an unusual multidimensional impact on humanity as a whole, creating or recreating new or renewed forms of relationship between people, communities and the state, as an articulating entity of social relations and spaces of human development. In this context, the general use of ICTs in teaching-learning processes at all levels of the educational system is common, to the detriment of the person-to-person encounter affected by social distancing. The objective of the article is to describe a useful conceptual framework to redefine educational policies in accordance with the new realities that characterize post-pandemic scenarios in Ecuador. Methodologically it is a documentary, analytical and prospective research. The authors conclude that investment in education is considered urgent since its material and symbolic spaces mean for the majority of young people the most legitimate opportunity to train, achieve better opportunities and ascend socially, a situation that reduces the dynamics of social conflict.

Keywords: education policies; socio-educational scenarios; cutting-edge education; prospective analysis; human development.

Introducción

Encarna un lugar común plantear a la educación, una vez más, como un factor primordial de desarrollo integral en sociedades como las latinoamericanas en general y, ecuatoriana en particular, donde las fuerzas de la entropía son impulsadas en cada momento por un conjunto de problemáticas insatisfechas en el orden político, económico y social que en su conjunto erosionan los espacios de gobernanza y gobernabilidad democrática. En palabras más simples, Ecuador alberga en su seno múltiples grupos vulnerables que, aun hoy en pleno siglo XXI, no han podido superar sus dificultades de pobreza, exclusión y falta de oportunidades para el adelanto de sus proyectos de vida, como condición de posibilidad para vivir una vida de dignidad y calidad.

En este marco situacional propio de los llamados países del sur global, en los cuales, al decir de Morales *et al.,* (2019) el programa de la modernidad con todo lo que esta encarga, se ha vivido de forma parcial y segmentada para beneficio de las elites económicas y sociales ubicadas históricamente en el vértice del orden social, la educación puede aportar algunas soluciones concretas cuando se busca impulsar el desarrollo individual y colectivo de

las capacidades humanas[5] o, en una perspectivas más instrumental, las habilidades y destrezas que convierten a las personas no solo en mano de obra capacitada al servicio de las fuerzas productivas, sino además, en actores protagonistas de sus propios mundos de vida.

No obstante, conviene también des-idealizar a la educación, ya que su poder verdadero es limitado cuando la pobreza, la exclusión, la corrupción y la violación estructural de los derechos humanos, son fenómenos generales íntimamente relacionados a la esencia de un sistema político de carácter seudodemocrático que más allá de su fachada jurídica e institucional a tono con la vanguardia de la teorías euro-liberales de mayor divulgación en el mundo, está diseñado por un contrato social hegemónico de espaldas a los verdaderos intereses nacionales, lo que no significa que, los autores de este artículo suponen en comunión con la teoría marxista clásica, que la dominación social sea un fenómeno vertical donde una elite de poder impone su proyecto político (bloque histórico) e ideológico al resto de la sociedad.

Se trata más bien de un orden de cosas multidimensional donde de una u otra manera los grupos vulnerables en condición de emergencia social han consentido –por acción u omisión– su subordinación, hipótesis que los hace actores activos en la responsabilidad que implica la construcción cotidiana de sus propios espacios de convivencia y libertad, a contravía de todas las hegemonías y, no actores pasivos, siempre condicionados por las relaciones de saber y poder que limitan su capacidad, conciencia y recursos para construir una mejor sociedad desde las bases y desde las relaciones multiculturales e intersubjetivas.

En este orden de ideas, conviene preguntar entonces ¿Qué tipo de educación puede aportar algunas soluciones concretas cuando se busca impulsar el desarrollo individual y colectivo de las capacidades humanas? ¿Cuáles habilidades y destrezas convierten a las personas no solo en mano de obra capacitada al servicio de las fuerzas productivas, sino, además, en ciudadanos protagonistas de su propia realidad? Obviamente, existen muchas respuestas posibles a estas preguntas, sin embargo, los autores del artículo proponen una reflexión politológica bajo la hipótesis preliminar de que la resolución de estas y otras interpelaciones similares demanda, previamente, describir un marco conceptual útil para redefinir las políticas educativas acordes con las nuevas realidades que caracterizan en Ecuador los escenarios postpandémicos.

5 En este punto tomamos el concepto de **capacidades humanas** de la filósofa norteamericana Martha Nussbaum, para quien se trata específicamente de las posibilidades inconmensurables de ser y hacer en el marco de un proyecto de vida elaborado desde la soberanía individual propio de una persona autónoma. Además, la discípula de Amartya Sen define la noción de **capacidades internas** como: rasgos de la personalidad, capacidades intelectuales y emocionales, estado de salud y de forma física, aprendizaje interiorizado o habilidades de percepción y movimiento. Configuran habilidades y destrezas particulares en cada persona; y las **capacidades básicas**, son: facultades innatas de la persona que hacen posible su posterior desarrollo y formación multidimensional (Nussbaum, 2012).

El presente trabajo de investigación y reflexión se divide en cuatro secciones particulares. En la primera (Literatura revisada) se describen de forma sucinta las principales obras que sirvieron de guía en la resolución del objetivo planteado; en la segunda, (Aclaratoria metodológica) se explica al lector las técnicas y procedimiento que se utilizaron para organizar las fuentes y, al mismo tiempo, procesar la información recabada; en la tercera sección, (análisis y discusión de resultados) se presentan los principales aportes de la investigación para; finalmente, en la cuarta sección, arribar a las principales conclusiones de la investigación, conclusiones que por lo demás no tiene ninguna prevención de generalidad deductiva o nomotética.

1. Literatura revisada

En esta sección se muestran críticamente los autores e ideas que hicieron posible el desarrollo de la investigación, condicionando nuestra visión del tema, no desde una postura de falsa neutralidad, sino más bien desde definidas posturas políticas e ideológicas que oscilan de la izquierda al pensamiento liberal libertario, configurando, en consecuencia, un marco teórico de la educación eclíptico y quizá hasta contradictorio en el que se combinan diferentes voces, ideas y conceptos filosóficos.

Muy seguramente la imagen idílica de la educación como una potencia casi infinita para resolver todos los problemas objetivos de una comunidad determinada se origina en el pensamiento pro marxista del siglo XX en obras clásicas como *La pedagogía del oprimido* de Paulo Freire. Para el célebre autor brasileño la dominación que reduce la vida de las personas en condición de pobreza a su mínima expresión se desarrolla en buena medida como resultado de una superestructura ideológica internalizada por generaciones en los imaginarios colectivos de los comunes, dado que:

> Para dominar, el dominador no tiene otro camino sino negar a las masas populares la praxis verdadera. Negarles el derecho a decir su palabra, de pensar correctamente. Las masas populares no deben "admirar" el mundo auténticamente; no pueden denunciarlo, cuestionarlo, transformarlo para lograr su humanización, sino adaptarse a la realidad que sirve al dominador (Freire, 2008: 163).

En este hilo argumentativo, la superación de problemas estructurales como: la pobreza, la exclusión, la violencia y la falta de oportunidades empieza por la creación colectiva de una *nueva conciencia crítica y emancipadora* frente a las contradicciones del orden social vigente. No obstante, a pesar de lo atractivas que pueden resultar estas ideas queda claro que todos los experimentos marxistas históricamente existentes terminaron configurando estados totalitarios donde paradójicamente se incrementó aún más la pobreza y la precariedad material en un clima de

férreo control social, formal e informal, donde no hay espacio para la crítica de la estructura hegemónica de poder, ni mucho menos, para una vida de libertad y calidad en sintonía con el "hombre nuevo" socialista.

En todo caso, la referida obra realza el potencial libertario de la educación, de modo que, una renovada política educativa, que por cierto, no tiene necesariamente que ser planificada y ejecutada por la ficción estatal[6], sino por las comunidades autoorganizadas de forma libre y autónoma, puede desarrollar una experiencia educativa de liberación en todos los niveles y modalidades del sistema educativo; educación libertaria que no sería subsidiaria necesariamente del pensamiento marxistas, sino que debe responder al enfoque de los derechos humanos y al pensamiento crítico y asociativo en el marco del dialogo inter-ideológico (Villa y Berrocal, 2019), capaz de tomar eclécticamente y si complejos lo mejor de cada ideología para adaptarlo a los requerimientos y necesidades de una realidad social particular.

Otro insumo importante para el desarrollo de esta investigación fue la obra de Martha Nussbaum (2012; 2015). Para esta pensadora liberal el propósito fundamental de la educación, en todos los niveles y modalidades del sistema educativo, es coadyuvar al desarrollo de las capacidades humanas, mucho más cuando reconoce que el modelo neoliberal no posee una agenda para el desarrollo social ni, mucho menos, la economía de mercado es suficiente para apalancar el desarrollo humano. Desde su perspectiva las capacidades centrales de la persona humana que todo modelo político, económico y educativo debe promover para ser sostenible se despliegan en el siguiente "decálogo laicista":

- **Vida**. Poder vivir hasta el término de una vida humana de una duración normal-, no morir de forma prematura o antes de que la propia vida se vea tan reducida que no merezca la pena vivirla.
- **Salud física**. Poder mantener una buena salud, incluida la salud reproductiva; recibir una alimentación adecuada; disponer de un lugar apropiado para vivir.
- **Integridad física**. Podre desplazarse libremente un lugar a otro; estar protegidos de los ataques violentos, incluidas las agresiones sexuales y para la elección en cuestiones reproductivas.

6 Hablar de una ficción estatal significa suponer que el estado es una estructura material y simbólica de poder reificada, tal como argumentan Morales y otros (2020), quienes desde una relectura critica de algunos filósofos marxistas como Georg Lukács y Axel Honneth argumentan que la reificación consiste en suponer que ciertos objetos y estructuras de poder político, como el estado, construidas históricamente al calor de la acción antrópica intersubjetiva tienen vida propia y autonomía existencial y, en muchos aspectos, escapan del control humano, discurso que es abiertamente una ficción perceptiva profundamente internalizada en los imaginarios colectivos de la política.

- **Sentidos, imaginación y pensamientos**. Poder utilizar los sentidos, la imaginación, el pensamiento y el racionamiento, y hacerlo de un modo "verdaderamente humano."
- **Emociones**. Poder sentir apego por cosas y personas externas a nosotros mismos; poder amar a quienes nos aman y se preocupan por nosotros.
- **Razón práctica**. Poder formarse una concepción del bien y reflexionar críticamente ante la propia vida.
- **Afiliación**. Poder vivir con y para los demás, reconocer y mostrar interés por otros seres humanos, participar en formas diversas de interacción social.
- **Otras especies**. Poder vivir una relación próxima y respetuosa con los animales, las plantas y el mundo natural.
- **Juego**. Poder reír, jugar y disfrutar de actividades recreativas.
- **Control sobre el propio entorno**. a) Político. Poder participar de forma efectiva de las decisiones públicas que gobiernan nuestra vida. c) Material. Poder poseer propiedades (tanto muebles como inmuebles) (Nussbaum, 2012).

Las condiciones propias del formato artículo arbitrado no permiten discutir el alcance y significado de cada una de estas capacidades que se explican por sí mismas, basta reconocer que son capacidades con pretensión de universalidad ya que, sin duda, su desarrollo puede beneficiar a la persona humana sin importar en que contexto sociocultural este inmersa (oriente u occidente). No obstante, reconoce que al menos en la educación universitaria o superior el principal obstáculo que adquiere un *proyecto educativo en capacidades* está en un paradigma global de formación para el lucro que destina la mayoría de sus recursos materiales y cognitivos en el desarrollo de programas financieros y tecnológicos que niegan el potencial epistemológico de las humanidades, las ciencias sociales y las artes (Nussbaum, 2015).

Por último, para contextualizar el impacto de la pandemia de COVID-19 en la dimensión educativa de Latinoamérica y el Caribe, fue revelador un informe del Banco Mundial (2021) relativo a los costos, consecuencias y posibles respuestas ante el impacto de la pandemia de COVID-19 en el sector educativo de América Latina y el Caribe. En síntesis, el documento indica que el impacto global de la pandemia en la región se expresó en tres dimensiones concretas e interconectadas:

a. Cierres de escuelas por la emergencia sanitaria y proceso de virtualización educativa. Aquí se destaca la cantidad de escuelas cerradas por la pandemia y la puesta en marcha de procesos de

enseñanza-aprendiza mediante las TICs, que a la postre terminaron precarizando el logro de los objetivos programáticos y al mismo tiempo obstaculizando el desarrollo de las capacidades, en consecuencia:

> (…) la educación a distancia no puede reemplazar la educación en la escuela. Todas las métricas de aprendizaje están empeorando drásticamente y los efectos de la pandemia también impregnan muchas otras áreas de la vida de los estudiantes. Los estudiantes de grupos de menores ingresos son los más afectados (Banco Mundial, 2021: 84).

b. Capacidad o incapacidad de los sistemas educativos de la región, para ajustarse a los desafíos post pandémicos: "(…) de modo que puedan empezar a recuperarse de las dramáticas pérdidas de aprendizaje y de los otros efectos negativos de la pandemia" (Banco Mundial, 2021: 84). Incluso para el momento que se escriben estas líneas cobra mayor fuerza la hipótesis de una tercera ola de COVID-19 o de una de sus variantes o mutaciones que lleve de nuevo a una dinámica de re-virtualización de los procesos educativos, de modo que se requiere una educación versátil que en el futuro próximo transite según las circunstancias de la virtualidad a presencialidad o semi-presencialidad.

c. La crisis de la educación en la región crea las condiciones de posibilidad para preparar las instituciones educativas, invertir los recursos necesarios y definir las políticas públicas que recuperar las significativas perdidas de aprendizaje y reduzcan los variados efectos negativos en la educación generados por la pandemia (Banco Mundial, 2021).

Aunque no lo aparezca a simple vista, los tres textos que conforman el núcleo base de la literatura revisada se relacionan dialécticamente. Ya que, tanto en la teoría como en las específicas realidades sociales, una educación liberadora adquiere su máxima expresión cuando es capaz de impulsar las diez capacidades centrales que requiere todo ser humano para apuntalar su dignidad y libertades intersecas, mucho más en contexto de emergencia social como el acontecido mundialmente por la pandemia de COVID-19. A dé pesar de estas dramáticas dificultades también se crean las condiciones objetivas y subjetivas que hacen posible la producción de un marco conceptual útil para redefinir las políticas educativas acordes con las nuevas realidades que caracterizan en Ecuador los escenarios postpandémicos

2. Aclaratoria metodológica

Todo indica que conviene revindicar al ensayo como un género discursivo que también tiene cabida en la ciencia, por su versatilidad y por su capacidad para adaptarse a los requerimientos formales de una revista

de alto impacto. En este sentido, el presente trabajo se define en esencia como un ensayo crítico en el que se conjugan en igualdad de condiciones la investigación científica de corte documental con el trabajo reflexivo.

Tal como sostiene Zambrano, el acto de argumentar demanda: "(...) un ejercicio profundo del pensamiento, exige poner en juego una serie de estrategias retóricas premeditadas y planeadas, exige una reflexión larga sobre un tema acerca del cual se dice algo entre novedoso y auténtico, entre verosímil y contundente" (2012: s/p). Para el autor referido es el ensayo el espacio dialógico que mejor sirve a las estrategias retóricas y discursivas ganadas a persuadir y convencer a un auditorio.

Metodológicamente se trata de una investigación documental, analíticas y prospectiva. Documental, porque se empleó la técnica de investigación documental para ordenar, seleccionar, contrastar y categorizar las fuentes documentales que en formato impreso o digital dieron cuenta del tema planteado y fueron útiles para la resolución del objetivo de la investigación. Analítica porque los autores asumieron el ámbito temático de las políticas educativas en la escena global de la postpandemia COVID-19, como una totalidad dialéctica susceptible a ser deconstruida en partes o elementos más pequeños para su mejor interpretación, situación que no debe confundirse con una visión fragmentaria de los fenómenos en estudio. Definitivamente, se trata de una metódica también prospectiva porque se hacen algunas propuestas que pueden ser implementadas en un futuro próximo.

Operativamente la investigación se desarrolló en 3 etapas o momentos particulares y concatenados. Primero, se definió el tema de investigación y su objetivo general con el ánimo de ofrecer algunas luces al debate sobre las políticas educativas en la escena global de la postpandemia COVID-19. Segundo, se agruparon, seleccionaron y leyeron un conjunto de fuentes documentales que, por su valor y contenido, se alinearon al objetivo de la investigación. Tercero, se redactó el artículo con arreglo a la normativa de la revista Cuestiones Políticas.

3. Análisis y discusión de resultados

Cuando se busca describir un marco conceptual útil para redefinir las políticas educativas acordes con las nuevas realidades que caracterizan en Ecuador los escenarios postpandémicos, como objetivo de investigación y/o reflexión, se debe esclarecer que se entiende por marco conceptual para que no se generen dudas o falsas expectativas al respecto. En este orden de ideas, el marco conceptual es simplemente la conjunción lógica de diferentes conceptos o categorías de análisis que, de forma precisa, dotan de sentido y significación a un tema de estudio al tiempo que revelan, al lector, cuáles son las líneas teóricas y metodológicas que fundamenta a un texto en su contexto o lugar de enunciación.

Describir un marco conceptual o categorial significa entonces seleccionar un conjunto particular de conceptos con diferenciada naturaleza, tales como: nociones políticas, jurídicas, éticas o axiológicas, entre otras, que pueden resultar de utilidad para orientar la labor de los hacedores de políticas públicas, en este caso, del sector educativo. En contraste, sino hay claridad conceptual se corre el riesgo de que la política que se define sea excesivamente pragmática y no se convierta a la final en un contenido vanguardista a tono con los desafíos y responsabilidades del fenómeno educativo, en tanto acto creador y liberador de la persona humana.

La constitución vigente del Ecuador (2008) revela de forma nítida el sustrato de la educación que se busca desarrollar en el país, como un derecho fundamental al que debe tener acceso, sin impedimentos ni restricciones, al menos en teoría, todas las personas y las comunidades, por lo tanto, en el artículo 2 de la referida carta magna se señala que:

Son deberes primordiales del Estado:

> Garantizar sin discriminación alguna el efectivo goce de los derechos establecidos en la Constitución y en los instrumentos internacionales, en particular la educación, la salud, la alimentación, la seguridad social y el agua para sus habitantes (Constitución de la república del Ecuador, 2008: 09).

Destaca en el referido artículo que se mencione primero a la educación dentro de los deberes primordiales del estado, ¿Aparenta esto que es la educación su deber primario? Seguidamente en el artículo 26 se explica categóricamente que:

> Art. 26.- La educación es un derecho de las personas a lo largo de su vida y un deber ineludible e inexcusable del Estado. **Constituye un área prioritaria de la política pública y de la inversión estatal, garantía de la igualdad e inclusión social y condición indispensable para el buen vivir**. Las personas, las familias y la sociedad tienen el derecho y la responsabilidad de participar en el proceso educativo.

De conformidad con este concepto constitucional, la educación es un bien público que significa para la vida nacional un área prioritaria en la arquitectura de las políticas públicas y, por ende, de la inversión estatal, porque es un vehículo para el logro de equidad, inclusión social y garantía de buen vivir. Además, el artículo 27 establece que la educción se concentra, en esencia y existencia, en el ser humano en función de impulsar su desarrollo holístico, esto es, integral, en el marco general de lo que significa el respeto a los derechos fundamentales y ha un ecosistema sostenible y en la democracia como estilo de vida. Al menos en la doctrina se trata de configurar una educación axiológicamente:

> (…) participativa, obligatoria, intercultural, democrática, incluyente y diversa, de calidad y calidez; impulsará la equidad de género, la justicia, la solidaridad y la paz; estimulará el sentido crítico, el arte y la cultura física, la iniciativa individual y comunitaria, y el desarrollo de competencias y capacidades para crear y trabajar.

Como es lógico suponer, toda esta retórica jurídica no tiene incidencia concreta en las realidades educativas de los mundos de vida de las personas comunes si no se crean las condiciones materiales de posibilidad para su realización y esto no es un asunto filosófico, sino de políticas públicas y de eficiencia y eficacia por parte de las autoridades responsables del fenómeno educativo, mucho más en sociedades con altos índices de pobreza[7]. En cualquier caso, más que una descripción de los valores y conceptos que configuran el marco conceptual de las políticas públicas en educación, interesa más bien su redefinición de conformidad con el objetivo del trabajo.

En el cuadro que sigue se muestra una lista de conceptos transversales para el desarrollo dialéctico de la educación con el propósito de que se entienda, más allá de toda duda razonable, el proceso y propósito de su re-definición que se realiza con un doble propósito teórico a saber, por un lado, recrear mejores espacios de educación y, por el otro, revitalizar la espíteme educativa al calor de los desafíos que imponen el complejo mundo actual.

Cuadro No. 01: Redefinición de los conceptos axiales de la educación

Concepto político de la educación	Concepto jurídico de la educación	Concepto axiológico de la educación	Bases éticas de la educación	Observaciones
Democracia participativa	Relación educación y derechos humanos	Educación: participativa, obligatoria, intercultural, democrática, incluyente y diversa, de calidad y calidez; impulsará la equidad de género, de justicia, de solidaridad y de paz.	Estimula el sentido crítico, el arte y la cultura física, la iniciativa individual y comunitaria, y el desarrollo de competencias y capacidades para crear y trabajar	

Fuente: elaboración de los autores con base al objetivo de articulo.

7 El en caso de Ecuador: "Según la última publicación del Instituto Nacional de Estadísticas y Censos (INEC), al cierre de 2021, la pobreza alcanzó un valor de 27,7% y la pobreza extrema 10,5%. Se considera a una persona pobre si percibe un ingreso familiar per cápita menor a USD 85,60 mensuales y pobre extremo si recibe menos de USD 48,24" (Criterios digital, 2022: s/p).

En su concepto político tradicional la educación aparece supeditada a la democracia, por razones que a simple vista pueden resultar obvias para un lector sin formación humanística, ya que al ser la democracia el sistema político con rango constitucional en Ecuador, al igual que sucede en buena parta de los países del mundo, queda claro que la educación como aparato ideológico fundamental del estado debe preparar a los ciudadanos en las competencias y capacidades necesarias para vivir en democracia. El problema de esta ecuación radica en que la democracia es un modelo en crisis (Puerta, 2016; Roll, 2018) por circunstancias que no es nuestro propósito debatir en este trabajo, pero que tienen que ver con su legitimidad intrínseca y con su incapacidad en el sur global para gestionar los problemas de pobreza, violencia y exclusión social, entre otros.

En este hilo conductor, tiene más sentido plantear al menos de forma conceptual, una educación meta-política –no confundir con antipolítica– y pluri ideológica que forme a las personas desde la infancia en el conocimiento y apropiación de todas las herramientas de intervención social que proporcionan las diferentes formas de estado y de gobierno contemporáneas, para una vida de libertad, dignidad y justicia a contravía de todas las tendencias autoritarias, mesiánicas y pretorianas que, de forma camuflada, abundan en los imaginarios políticos latinoamericanos y conforman democracias formales de vitrina o pseudodemocracias. De hecho, una educación así muy seguramente puede contribuir en la ardua tarea de crear un nuevo pensamiento político e ideológico que puede producir formas de estado y de gobierno liberadas del locus de control externo de la ficción estatal.

Igualmente, la relación derechos humanos y educación resulta problemática en muchos aspectos que se deben analizar detenidamente para escapar a los consensos del discurso dominante que subyuga la materia en la opinión pública. Mas allá de sus inconmensurables aportes a la humanidad en su conjunto, los derechos humanos son un cuerpo normativo excesivamente logo-céntrico y antropocéntrico como la mayoría de los productos culturales de la modernidad, en consecuencia, urge la necesidad de una nueva estructura jurídica con pretensión de universalidad post-antropocéntrica que no solo reconozca la dignidad de la persona humana, sino que realce también la dignidad de todas las forma de vida superiores que conforman a la madre tierra como un sistema interconectado con personalidad jurídica por derecho propio.

De modo que, la educación, en su esencia misma de principal espacio colectivo de conciencia lucida y pensamiento crítico, debe, por lo menos, tener la capacidad de hacer imaginar a las personas las inconmensurables posibilidades de nuevos o renovados sistema políticos y jurídicos que reduzcan sustancialmente la violencia, la inequidad y las injusticias de todo tipo que afectan aun hoy, en pleno siglo XXI, los diversos proyectos de vida

de los *animales humanos* y de los *no humanos* tal como señala Nussbaum (2012), que se desenvuelven de conformidad con los parámetros de su cultura, en los primeros, y de su entorno y especie en los segundos.

En cuanto a la concepción axiológica de la educación conviene señalar que se debe revisar con detenimiento el catalogo de los valores que tanto en la constitución como en los discursos dominantes le endosan a la educación, para entender en profundidad su alcance y significado profundo, tanto en la teoría, como y principalmente en los entornos reales en los que se despliegan los procesos de enseñanza-aprendizaje. En este sentido, un proceder mayéutico (Socrático) plantearía *a priori* varias preguntas que requieren de una respuesta meditada y en contexto, tales como: ¿Qué implica el desarrollo de una educación para la democracia participativa? ¿Cómo se desarrollan contenidos educativos para el diálogo intercultural? ¿Qué es una educación incluyente y diversa? ¿hasta qué punto se está desarrollando en Ecuador una educación capaz de impulsar equidad de género, justicia, solidaridad y paz?

En futuras investigaciones los autores proporcionaran algunas respuestas validas y con base empírica a estas y otras preguntas similares, de cualquier modo, la educación en valores y con sustrato ético es fundamental para recomponer las relación persona a personas y persona-entorno, toda vez que una ética post-neoliberal en la educación busca des-instrumentalizar a las personas como herramientas de los procesos productivos sin conciencia histórica ni identidad, ya que se trata de proponer para los hacedores de políticas una *ética del cuidado* donde se promueve no solo el afán de lucro, sino también, la empatía de las personas por el sufrimiento de los otros seres con los que se relacionan y su capacidad central para colaborar en la construcción cotidiana de sus espacios de convivencia desde el respeto y la conciencia.

Conclusiones

Sin duda, cuando se describe un marco conceptual útil para redefinir las políticas educativas acordes con las nuevas realidades que caracterizan en Ecuador los escenarios postpandémicos, se debe realizar previamente un diagnóstico científico de las realidades que se busca intervenir, de lo contrario, el trabajo de redefinición conceptual seria únicamente un ejercicio de erudición carente de utilidad social. En este sentido, la pretensión practica de este trabajo se reduce únicamente a aportar algunas ideas para el desarrollo paulatino de una empresa más ambiciosa, como lo es el perfeccionamiento continuo de la educación liberadora.

Tal como lo indican López y Martínez (2022), la pandemia de COVID-19 erosionó los procesos de enseñanza-aprendiza en la región y dejo a mas

de 168 millones de jóvenes con 237 días sin clases en promedio, situación dramática con efectos impredecibles para la sociedad toda. No obstante, esta situación crea las condiciones de posibilidad para mejorar los que haya que mejorar en el ámbito educativo no para regresar a la dimensión educativa precia a la pandemia, cosa que no tiene mucho sentido, sino para reimpulsar la educación y llevarla a un estadio cualitativamente superior.

Si se valida la hipótesis que afirma que la incapacidad de Latinoamérica de construir un ecosistema político y socioeconómico sostenible en el tiempo es el resultado de deficiencias estructurales en la educación o que, en el mejor de los casos, la educación de la región deja mucho que desear si se le compara con los modelos y sistemas educativos del norte global, hipótesis por lo demás reduccionista y debatible, tiene mayor vigencia la iniciativa de redefinir las políticas educativas en Ecuador para acoplarlas a las nuevas realidades de unas sociedad que clama legitimante por mejoras sustanciales en las condiciones de vida de las personas y colectivos mas vulnerables.

En una situación así se visualizan prospectivamente dos escenarios posibles en el futuro próximo: a) La dinámica de deterior de las condiciones de vida de los pueblos del sur se agrava sistemáticamente creando en su decurso focos de conflictividad creciente que vendrían a generalizar la entropía, tal como ha sucedido ya en las décadas pasadas. En un clima así, la educación tendría un papel importante, pero nunca exclusivo en la reproducción de una cultura de paz y de equidad tan necesarias para la gobernabilidad y la gobernanza, de modo que se propone articular una alianza estrategia entre la sociedad civil organizada, la empresa priva y las diversas instancias de gobierno, para fortalecer los espacios de educación existentes y, porque no, crear otros nuevos.

En el escenario b) Ecuador logra resolver sus problemáticas políticas, económicas y sociales mediante el consenso y la concertación, escenario muy poco probable. Sin embargo, en un escenario de estabilidad sostenida y paz social, igualmente la inversión en educación se plantea como urgente ya que sus espacios materiales y simbólicos significan para la mayoría de los jóvenes la oportunidad mas legitima para formarse, alcanzar mejores oportunidades y ascender socialmente, situación que reduce las dinámicas de conflictividad.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 868-882
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Digital Transformation of Public Administration: Sociocultural forms of organization in education, science and innovation

DOI: https://doi.org/10.46398/cuestpol.4073.50

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Abstract

The article identifies and establishes the main problems in the implementation of the digital transformation of public administration in education, science and innovation, in particular, focuses on the lack of conceptual characterization. The study is due to the lack of foundation of the theoretical and methodological approaches to the digital transformation of public administration. The article shows that the digital transformation of public administration is a requirement of the current times, since the new society is in the process of computerization and dissemination of innovation in different areas. In fact, the need to add public administration in the digital transformation by socio-cultural means as the basis of innovative society in education and science has been corroborated. In the course of our research, we used the method of integration of the synthesis of the structure of the image and the analysis of content, research and descriptive method, the characterization

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Recibido el 14/04/2022 Aceptado el 28/05/2022

of educational activities in the framework of digital transformation. By way of conclusion, the results of the study confirm that digital transformation is a requirement of the current times and that it is also an unpostponable process.

Keywords: information society; globalization; integration; digital transformation; socioculturalism.

Transformación Digital de la Administración Pública: Formas socioculturales de organización en educación, ciencia e innovación

Resumen

El artículo identifica y establece los principales problemas en la implementación de la transformación digital de la administración pública en la educación, la ciencia y la innovación, en particular, se enfoca en la falta de caracterización conceptual. El estudio se debe a la falta de fundamentación de los enfoques teóricos y metodológicos de la transformación digital de la administración pública. El artículo muestra que la transformación digital de la administración pública es una exigencia de los tiempos actuales, ya que la nueva sociedad está en proceso de informatización y de difusión de la innovación en diferentes ámbitos. De hecho, se ha corroborado la necesidad de sumar la administración pública en la transformación digital por medios socioculturales como base de la sociedad innovadora en la educación y la ciencia. En el curso de nuestra investigación, se utilizó el método de integración de la síntesis de la estructura de la imagen y el análisis de contenido, la investigación y el método descriptivo, la caracterización de las actividades educativas en el marco de la transformación digital. A modo de conclusión, los resultados del estudio confirman que la transformación digital es una exigencia de los tiempos actuales y que además es un proceso impostergable.

Palabras clave: sociedad de la información; globalización; integración; transformación digital; socioculturalismo.

Introduction

Globalization challenges and socio-economic, political, innovative, and educational transformations in the life of Ukraine, the declaration in modern society of the ideas of multiculturalism, inter-ethnic tolerance actualize

the need for citizens with developed socio-cultural values. The expediency and importance of training competent, competitive specialists with well-established socio-cultural values also predetermine the factors existing in our state, which prevent the upbringing of a developed personality.

Since the XXI century is the period of Generation Z, i.e., the period in which information and communication technologies are rapidly developing, and young people are growing and developing under such conditions, society needs new approaches in the educational and scientific field. In an innovative society, all branches of economic activity have become the latest professions using digital technology. Such professions need quick adaptation and mastering.

Thus, there is a need to introduce new approaches to educational activities. Economic activity is in the process of being transformed into a digital one; accordingly, there is a need to master digital professional competence for society. In other words, the digital transformation of society is taking place under such conditions. This process is accompanied by the coverage of educational activities and learning procedures by online technologies. In order to quickly assimilate society by information and communication technologies to new forms of activity in the field of digital economy, it is necessary to use tools and technologies that form an effective perception of the digital space. Such technologies are sociocultural forms of educational and scientific activity.

The digital transformation of the new post-industrial society is taking place in all spheres of economic activity. Therefore, there is a need to regulate the process of digital transformation, including public administration. In the context of our study, especially theoretical and methodological importance is acquired by the research of Vasil'eva (2016), Keshelava (2017), Yakushenko and Shimanskaja (2017), Yahodzinskyi (2016) and many others. However, research on digital transformations in public administration is lacking in the scientific literature. The purpose of this article is to analyze and investigate the effectiveness of digital transformation of public administration of socio-cultural forms of organization in education, science, and innovation.

1. Methodological foundations of the study

The methodological basis of the study consists in the disclosure and study of approaches to the principles of formation of the main conceptual categories and definitions (Allessie, 2019). In the course of the study, a systematic comprehensive theoretical and methodological approach to the analysis of the essence of digital transformation in public administration is proposed, in particular the definitions of the concepts revealing the content of the study.

The scientific views of representatives of different social sciences are systematized, which allowed to clarify the concept: "digital transformation in public administration"; "socio-cultural forms of educational and scientific activities", innovation - as the main components of the studied difficulty.

It was established that public administration is the most important aspect of the formation of digital transformation (Troshani, 2018). Since the digital transformation covers all spheres of economic activity, it is necessary to determine the economic, political, social factors of public administration.

In the course of the study, we defined the following tasks:

1. To substantiate the main approaches to digital transformation in society on the basis of research by scientists.
2. Determine the components of public administration.
3. To describe innovativeness in the context of the formation of post-industrial society as a manifestation of the requirements of the time.

2. Methods

In order to thoroughly analyze the scientific works used exploratory and descriptive methods in the context of scientific. The method of synthesis of image structure, generalization and classification, methods of formation of socio-cultural values were applied to determine the concepts that illuminate the main content of the study. Also, in order to thoroughly investigate the theoretical foundations on this issue, a content analysis was carried out, on the basis of which the results of the study were determined using the conclusions of scientists on the issue.

3. Analysis of recent studies

Scientific approaches to sociocultural forms of organization of educational and scientific activity as the main requirement of innovative society time are analyzed. Modern scientific discourse intensifies the research of a wide range of domestic scientists on various aspects of axiological issues, in particular, devoted to the disclosure: conceptual ideas of axiological approach; pedagogical and educational values in the format of pedagogical axiology (Shaposhnykova, 2015). Based on the research and conclusions of scientists, it can be argued that the digital transformation covers different spheres of society and requires understanding and mastering the main aspects in the process of educational and scientific activities.

4. Results

The main phenomenon of the study is the idea of the effectiveness of socio-cultural forms of educational and scientific activity as a leading, determined by the historical and cultural process in the context of the implementation of digital transformation in public administration.

Our research work involves analysis and justification of the main approaches to the study of digital transformation in society based on the research of scientists (Shuliakov, 2017). We have identified the need for everyone to use digital technologies, because such a trend increases the ability of people to obtain well-being in society, fair access and use of resources in achieving their life goal.

The components that form the resource provision in the satisfaction of their life needs are the components of public administration. Therefore, we identified the main structural components of public administration, namely the institutions of power, organizations that regulate the social life of people, financial and economic structures, etc.

We also noted that the digitalization of society takes place in a modern globalized society, total use of information and communication technologies in its life. Therefore, we have described innovativeness in the context of the formation of post-industrial society as a manifestation of the requirements of the time (Potapchuk *et al.,* 2020).

The implementation of socio-cultural forms of digital transformation of public administration occurs with the use of information and communication technologies of innovative post-industrial society. Digitalization becomes a global process of a new generation, including in the system of public administration, and this is the basis of the concept for our study.

5. Discussion

The period of modern history is characterized by the development of information technology, their penetration into almost all spheres of social life. This trend forms the latest value orientations of mankind, which is reflected in the definition of approaches to the formation or reform of basic social institutions resulting from the activities and needs of citizens, prompts the reform of the basics of educational activities. There is a need for the formation of computer competence in children in the process of learning activities, as well as in adults (Vasil'eva and Kononenko, 2016). However, the main role in the formation of post-industrial society is played by the representatives of the new generation, who will possess computer skills much better than the representatives of the previous generation.

The difficulty of educating such a "new generation" lies in the lack of professionalism of "teachers", because they were not users of digital technology as widespread as in the period of the twentieth century. Therefore, the educational process of the new generation is a paradigm of person-centered learning, which should include not only children, but also adults. Such an educational paradigm is strategic in the implementation of fundamental specific conditions for the introduction of digital technology in all spheres of human activity.

We investigated the transformation of digital technologies in the context of public administration, analyzing sociocultural forms of organization as the most effective in the process of educational and scientific activities in the context of the innovative requirement of the modern globalized world. In the course of the study, we find that the digital technologies of today form the basis of economic, social, political development of society (Atzori, 2015).

The development of the elements of digital society becomes the main priority because the ability to apply digital technology in the context of the formation of an innovative post-industrial world depends on the holistic progress of humanity and determines the holistic success of various institutions of social development. Such a requirement of the time forms new needs of mankind in the educational process, scientific achievements, social achievements, and also becomes determinative in the context of formation of the value attitude of man to innovative approaches to the knowledge of new categorical concepts.

Education and science are a phenomenon that is an indicator of the civilizational-evolutionary process and at the same time is a criterion for creating new foundations in the conditions of human development separately and society as a whole. The latest trends indicate the continuous progress of man, which has become the basis for the formation of information and communication space of a new generation. On the one hand - innovative digital technologies - know-how, on the other - the result of previous experience of mankind (Yahodzinskyi, 2017). Every new discovery by man is made only by using the experience of previous eras (Rokich, 1976). To enhance the prospective development of a successful society, it is necessary to use prior knowledge and transform it into a digital environment. Such a formula is a requirement of the times, the basis for the development of progress.

Globalization and informatization of the XXI century are characteristic features of the new society with continuous progress and change of innovations in different areas, which requires new approaches to democratization, humanization, and the need to acquire competencies in different spheres of human activity. The phenomenon of human innovative society is an integrative methodological approach regarding the network

distribution of social interaction in the context of educational activities with the use of information and communication technologies.

In order to realize the goals of digital transformation, it is necessary to ensure the possibility for most people to be informationally competent. This perspective can be realized by organizing sociocultural events in the public space (Bremers and Wouter, 2016).

Socioculturalism of a person is his quality, which is formed in a combination of such components as: social relationships, economic indicator of personal well-being of the person, professional image, social role. Accordingly, in the process of educational activities it is advisable to use sociocultural activities that more effectively influence the perception of human innovations.

Thus, an effective form of cognition of the digital world is the use of social networks, which are of interest to a wide range of society (Brown *et al.,* 2017). People communicate online and at the same time improve their PC user skills and information and communication competence at a rapid pace. The use of information technology allows people to interact closely in an online space, forming a virtual world that requires separate approaches in terms of education and science.

People communicate in social networks, express their opinions on various socio-economic and political trends of social development, thus there is a public opinion, which can be tracked in the online space (Allman, 2018) opinions, as well as opportunities for them in expressing their views, and, accordingly, in a certain decentralization in the context of formation of social needs of the new generation. The participants of the online space appear in a new modernized social role - actors in public administration.

So, a new society is formed in the world, which embodies a set of social activities of active characters with the use of digital technology. That is, it is necessary to introduce innovative technologies in order to develop human beings and form the motivation for them to obtain social achievements in order to improve their well-being (Galasso *et al.,* 2016). This reality encourages governments of different states to implement digital technologies in social and economic life by applying digital transformation in public administration, in particular in national legislation, infrastructure development projects and social projects. Therefore, we believe that in the future it is necessary to involve society in social projects.

Digitalization includes all spheres and areas of social development. Each society is shaped by certain traditional evolutionary trends. Therefore, each nation needs its own model of digital society development. The realization of digital transformation depends on ways to implement and implement an effective system of conceptual approaches and educational activities, as well as cultural and civilizational aspects and experiences of the global

community in various spheres (Gertler *et al.,* 2016). Accordingly, it is impossible to choose a universal system of public administration because each state has its own approaches and ideas about the use of digital technology.

The main positions of public administration are the institutions created in the state. Yes, there is an educational center that influences the formation of a society with certain value orientations and competencies. An important institutional feature of society is its power. The state has formed its components of the power structure, which are interconnected with public opinion: are its attribute and at the same time the cause of its formation (Williams and Valayer, 2018).

Public administration in a democratic society, relies on public opinion through the institution of public relations organizations. The main disadvantage of such a system is the unreliability of the perception of public opinion, mainly determined by the analysis of statistics. Such a system is incompetent, because there are shortcomings in the definition of statistics, their interpretation and analysis.

Thus, the problem of public administration is the inaccuracy of human factor analysis in shaping public opinion. Therefore, in order to improve the effective model of public administration it is necessary to introduce digital technologies. This trend is a requirement of the times in the conditions of the formation of an innovative post-industrial society.

An integrated system of indicators and indicators, social and political trends, is necessary to determine the feasibility of the public administration model and to identify trends in the development of the digital transformation of society as a whole, in particular its technical and technological components (Galasso *et al.*, 2016). In addition to the system of indicators and indicators, methods of monitoring, analysis and forecasting of the situation in this area in the short-, medium- and long-term perspective should be developed and officially approved, and the relevant resources for information and analytical support should be allocated, regulations for interaction of information users and requirements for the information itself should be established, i.e. a system of information and analytical support of the process of digital transformation of public administration systems at all levels should be created.

The most effective in assessing the rational approach to the digital transformation of public administration and determining the optimal model, taking into account the level of development of digital technology should be used composite ICT indices (e-indices), built on the basis of sets of ICT indicators, with the specific set of indicators and the methodology of index construction largely depend on the selected priorities.

To effectively implement the digital transformation of public administration, it is necessary to create a unified information space for the public, government institutions, private business, and public organizations. This approach can be ensured by sociocultural forms of organizing educational and scientific activities. First of all, it is necessary to properly apply digital technologies in the cooperation of such institutions in public administration. The educational process in the conditions of formation of innovative society requires a built-up holistic set of ideas about what the public administration system looks (or should look like), its structure and principles of functioning, how it interacts with different subjects, and how it adapts to changes in the external environment (Kay and Goldspink, 2016).

Sociocultural forms of work in education in the digitalization of society involve the creation of various online forms for research and public opinion study. Common technologies are the creation of educational blogs that popularize educational activities and increase the effectiveness of information and communication technologies, contributing to a thorough study of the impact of public administration on the self-development of individuals in society and the possibility of ensuring their well-being.

Effective approaches to organizing sociocultural activities for society to use digital technologies is to create a system of access to information needed by society (Floridi *et al.*, 2018). Yes, specific sociocultural activities can be identified: the introduction of digital education in all spheres of public life; the creation of conditions for public interaction in a digital partnership; the creation of a market economy with its inherent characteristics (competitiveness, free labor, private ownership of the means of production) in an information environment; determining the factor of public influence in the development and popularization of social networks.

Thus, the determining factor in the formation of public administration is the satisfaction of the economic needs of the individual and society as a whole (Allman, 2018). Based on these factors the model of public administration is determined, which should ensure the welfare of the individual in society. The new generation and innovation in social development has led to the definition of the main trend of public administration - the introduction of digital transformation.

A relevant requirement in public administration is the modernization and innovative equipping of public services. Such measures are the creation of electronic services for businesses, citizens (Lappo, 2015). In the context of public administration and the structuring of this system, the concept of public services in the information environment was developed, providing for the development of all electronic services through the Internet, mobile communications, digital television, or service centers.

The creation of electronic services aims not only to provide information services in various areas, but also to attract the public to information technology, and most importantly, to improve the efficiency of government activities in the context of the formation of public administration. The digital transformation of public administration is rapidly embracing all spheres of human activity.

An important area of digital service is the use of Internet banking. Such electronic service is in demand among the population. But electronic banking has certain risks, particularly in the context of security measures (Noonan, 2017). Yes, in the process of performing various transactions, fraudulent actions often occur. This trend should encourage authorities to create appropriate online security measures. The corresponding needs must be addressed in the context of cooperation of all structural components of public authority at all levels, both central government and local government. The introduction of electronic service contributes to a closer cooperation of all levels of government. The existence of the electronic system of public administration reproduces the conditions of close cooperation and mutual control.

The modernization of the public administration system involves the introduction of a digital platform in order to increase the level of cooperation in society between different social elements seeking to meet their needs and create well-being in an innovative post-industrial society. The system of digital governance should reflect not only the implementation of the achievements of previous generations, but also the final revolutionary reform of the new social requirements for the informatization of all spheres of human life and economic activity. This trend involves the renewal and modernization of public administration, as well as social projects (Abualrub and Stensaker, 2018).

The main component of the formation of innovative environment is information and communication technologies that form a dualistic perception of reality (Oswald, 2018). On the one hand, they are a tool for the realization of the goals, and on the other hand - the basis and result of the acquired past experience.

Thus, the digital transformation of public administration is one of the key requirements of the new times in the context of educational and scientific activities, which form a personality capable of self-actualization in the context of sociocultural events (Lappo, 2017). In the future perspective of the study, it is necessary to study in detail the digital transformation of public administration in the context of decentralization, as new institutions of local government are formed, as well as the perspective of the implementation of sociocultural activities in education, as society is at a stage of rapid information development.

Conclusions

Summarizing the above, it should be noted that the problem of digital transformation of public administration has not been sufficiently studied. Researchers combine digital technologies and their impact on the formation of consciousness of a new generation in the new times. Also, researchers have researched that public administration is the basis for the regulation of socio-economic and social needs of society.

In the course of our research, for the first time, a holistic interdisciplinary analysis of the phenomenon of sociocultural events in domestic and foreign works was carried out and the context of their interpretation in philosophy, cultural studies, sociology, psychology and pedagogy was determined; substantiated theoretical and methodological foundations for the formation of socio-cultural events as the basis for the formation of digital transformation in public administration, which is based on the paradigmatic integrity of personality-oriented ideas, semantic paradigms of education and the synthesis of culturological, axiological, socio-cultural, systemic, acmeological, scientific approaches.

The results of the study confirm the features of modern society, which is in the process of post-industrial development and requires the introduction of digitalization in different spheres of social life. A phenomenon of the new times is the introduction of information and communication technologies, which are used in educational activities, as well as in terms of communication between people. Informatization has covered all areas of human activity. Yes, a widespread process of modernity is infodemia, a concept that covers the attention among the masses of the people and can be the cause of the spread of inaccurate information.

We have defined the basic concepts that illustrate the problem of implementing sociocultural activities. We have analyzed the underlying context of digital transformation, defined the concept of innovation and public management. We have proved that digital transformation contributes to the improvement of people's living conditions and increases the opportunities for human self-actualization in society.

In the course of the study, we have defined the content of the concept of "digital transformation of public government", considered either within the categorical series "e-government", "open society", "e-democracy", correlated mainly with the concept of information society, or within the categorical series "e-government", "information management", "service state", correlated with socio-economic relations. This distinction reflects the results of scientific discussion about the impact of informatization processes on the development of society and the state (including social management), which began in humanitarian knowledge in the 80s of the XX century and set the main directions of conceptualization of the term "digital transformation of public administration".

In addition, the use of the terms "digital transformation of public administration" leads to unjustified expectations about replacing or supplementing the traditionally existing categories of "state" and "government" with electronic content (like the term "electronic mail"). If it is possible to emphasize the essential difference in the use of the terms "digital transformation" and "innovation" from the use of these terms in the definitions of "digitalization" of society and "public administration", then this difference should be immediately marked at the beginning of any study of these problems and the lack of unity of views on these categories introduces a certain confusion in the scientific process.

As a result of the discussion, the idea that the development of digital information communication and the integration of computer technology into public administration systems provides only the initial conditions, but not the automatic transformation of these systems in accordance with the ideals of humanism and individual freedom, as a result of which a social-value justification of strategy and practice. their implementation is necessary. The effective use of information technologies implies their assessment from two points of view - social target certainty (acceptability of the goals of their application) and instrumentality (manageability), which is set by the requirements of software development. The dominance of "digital transformation," in which system developers operate with elements that often have no purpose, and humans are seen only as a system for processing data, leads to the levelling of the importance of technology.

The essence of the concept of "sociocultural values" is disclosed as basic life meanings, determined by the history and culture of a certain nation, which are motivators and regulators of social relations and personality behavior and are reproduced in the process of its life; the content-component structure of this phenomenon, each of which, in accordance with the leading types of socio-cultural values, provides an aspect of socio-cultural macro-values (value attitude towards the traditions of other peoples; value attitude towards intercultural communication and interaction; intercultural tolerance), socio-cultural meso values (patriotism, cultural heritage of the Ukrainian people) ; sociocultural microvalues (national identity, professional excellence, self-esteem).

Based on the findings of researchers and, accordingly, our observations, we can argue that an important requirement of the new generation is the total use of digital technologies, which do not form something completely new, but change the established orders of social life, transforming them into a conscious perception of the world.

We have identified the role of information and communication technologies as a tool for shaping digital technology. The transformation of digital technology involves the introduction of sociocultural activities in the context of the educational process as the most effective for the population.

We identified the main priorities and directions in conducting digital transformation in public administration through the use of educational technologies.

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Cuestiones Políticas Vol. 40, N° 73 (2022), 883-900
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Políticas de globalización en la esfera financiera y transición de la banca mexicana

DOI: https://doi.org/10.46398/cuestpol.4073.51

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Resumen

El propósito de este trabajo es analizar las políticas de globalización financiera y la transición de la banca en México, considerándolos como parte de una agenda de acumulación capitalista. La hipótesis planteada es que la transición de la banca no ha contribuido significativamente al crecimiento económico, además de que constituye una transferencia del capital nacional al capital global. El método empleado es de tipo cualitativo y cuantitativo. Los resultados muestran la persistencia en México de los problemas financieros contemporáneos. Se concluye en destacando la urgencia de adecuar el sistema financiero y bancario a las necesidades de los agentes económicos diversos. Por lo demás, Con un número relativamente grande de bancos, enfocándose en una base limitada de clientes, las necesidades financieras de México, tanto públicas como privadas, siguen excediendo sus propios recursos. Los bancos globales deben abrir más canales de inversión y deben mejorar la reputación general de México entre los inversionistas.

Palabras clave: globalización financiera; reprivatización de la banca; regulación; crecimiento económico; políticas de globalización.

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Recibido el 04/04/2022 Aceptado el 12/05/2022

Globalization politics in the financial sphere and transition of Mexican banking

Abstract

The purpose of this paper is to analyze the policies of financial globalization and the transition of banking in Mexico, considering them as part of an agenda of capitalist accumulation. The hypothesis is that the transition of banking has not contributed significantly to economic growth, in addition to constituting a transfer of national capital to global capital. The method used is qualitative and quantitative. The results show the persistence of contemporary financial problems in Mexico. It concludes by highlighting the urgency of adapting the financial and banking system to the needs of various economic agents. Moreover, with a relatively large number of banks, focusing on a limited customer base, Mexico's financial needs, both public and private, continue to exceed its own resources. Global banks must open more investment channels and improve Mexico's overall reputation among investors.

Keywords: financial globalization; reprivatization of banking; regulation; economic growth; globalization policies.

Introducción

Las políticas de globalización plantean una serie de cambios en los aspectos espaciales y temporales que generan modalidades de interacción instantánea donde las distancias ya no son tan relevantes como en el pasado (López-Goyburu, 2013). El análisis de la globalización implica estudiar aspectos diversos entre los que destacan el comercio, el medio ambiente, la justicia, la democracia, los derechos humanos, la pobreza, el cambio tecnológico y científico, las finanzas internacionales, entre otros.

La globalización es el cambio más importante del siglo XX y su influencia se advierte de forma creciente en la escena internacional. La globalización es, asimismo, el resultado de la combinación de aspectos relacionados con el desarrollo científico, la aplicación de la tecnología en la informática, electrónica, telecomunicaciones y demás formas. Las decisiones de los funcionarios públicos y empresarios se enmarcan, inevitablemente, en un entorno con elevada propensión al riesgo. El sistema financiero global no ha disipado dichos riesgos, sino más bien los ha implicado inherentemente.

Este trabajo centra la atención en las políticas de globalización desde una perspectiva financiera y cómo dicho fenómeno ha transformado a las instituciones bancarias, entre ellas la de México. Al igual que los de otras naciones de Occidente, el gobierno mexicano emprendió reformas

estructurales en el marco de la liberalización económica. Las instituciones bancarias en el país ahora se encuentran mayoritariamente en manos del capital global.

En los procesos de liberalización de la economía son fundamentales el comercio internacional, la inversión y el papel del Estado en la regulación. Las políticas de globalización han cambiado la fisionomía de los países, haciéndolos más abiertos y expuestos a riesgos considerables. Además de no reconocer frontera o área límite, su influencia es tan vasta que no hay modo de sustraerse a dicho proceso. En ese contexto, la inversión extranjera en los mercados de dinero, de bonos y acciones, bienes raíces y de negocios, buscan los más altos rendimientos posibles. Esto va dejando su huella, pues penetra y representa más alternativas de elección de inversión y rentabilidad.

De acuerdo con Dicken (2015), la globalización es relevante y sus efectos impactan las actividades de la economía en su conjunto, y de una manera especial en el ámbito financiero. La globalización se significa por el cambio sucesivo en el mapa de la economía global y está organizada en torno a un trípode de estructura macrorregional, cuyos tres pilares son Norteamérica, Europa y el Este de Asia juntos. En el presente se han incorporado elementos de la economía digital y de un creciente número de transacciones propias del comercio electrónico expansivo y demás flujos de información.

En América Latina, las desregulaciones iniciaron con la homologación de los servicios financieros. En México, el antecedente de dicha transición fue la reprivatización de la banca, para lo cual hubo que eliminar las barreras legales que impedían la inversión extranjera en el sector. En ese sentido, la reforma financiera se constituyó en el factor más importante de esta reconfiguración. De acuerdo con Parkin (2014), a partir de entonces se ha registrado una mayor competencia en la región, por lo que es de esperarse que aumente la competencia entre los intermediarios y disminuya los costos al financiamiento.

Siguiendo a Díaz Mondragón (2012), el proceso de globalización financiera abrió el camino a grupos y conglomerados financieros dependientes de un centro común y altamente diversificado, lo cual se ajusta más a necesidades específicas, destacándose: arrendamiento (*leasing*), factoraje financiero y sociedades de capital de riesgo para empresas, pensiones, seguros, gestión de patrimonio y servicios financieros para particulares; banca de negocios e instituciones de inversión colectiva para inversiones de mercados financieros; y, por supuesto, la banca electrónica.

En relación con el impacto de las instituciones bancarias, Clavellina Miller (2013) asevera que el crédito bancario otorgado a las familias y a las empresas es fundamental para acceder a bienes de consumo y de capital, respectivamente. Las instituciones bancarias ahora disponen de más

información respecto a sus clientes actuales y potenciales. De este modo, el otorgamiento del crédito se realiza sobre la base de contar con mayor seguridad que significa tener un número limitado de clientes leales.

De acuerdo con Gómez Rodríguez *et al.,* (2018), el sector bancario de México se ha transformado significativamente en las últimas décadas gracias a factores como la nacionalización de la banca en 1982, la reprivatización del sistema bancario en 1991 y la crisis financiera de 1994. El sistema financiero mexicano ha experimentado una importante consolidación gradual derivado de las políticas de liberalización que dieron lugar a la entrada de México al Acuerdo General sobre Aranceles Aduaneros y Comercio (GATT, por sus siglas en inglés) en 1986, y al Tratado de Libre Comercio de América del Norte (TLCAN) en 1994. Con ello se acentuó el proceso de consolidación de bancos extranjeros, incrementando sus participaciones hasta llegar a dominar.

De acuerdo con Martínez Chapa et al. (2021), la liberalización comercial de México se ha dado en un contexto de fuerzas impulsoras de la globalización, las cuales se expresaron en la adhesión de México al GATT, la firma del TLCAN por parte de los países integrantes de la Comisión Económica para América Latina y el Caribe (Cepal) y, en 2020, la renegociación del Tratado entre México, Estados Unidos y Canadá (T-MEC), además de otros acuerdos comerciales y de colaboración celebrados con países diversos.

Los datos empleados en este trabajo proceden de fuentes diversas como el Banco Mundial (BM) en cuanto al crédito bancario otorgado empresas privadas en México; del Fondo Monetario Internacional (FMI) respecto a datos de estadísticas financieras; del Banco de México (Banxico) con relación a la *Encuesta Trimestral de Evaluación Coyuntural del Mercado Crediticio*; del Centro de Estudios en Finanzas Públicas (CEFP) en relación con la evolución de los pasivos 2000-2021; de Standard & Poors en cuanto al análisis de riesgos de la industria bancaria por país.

El trabajo se justifica relevante en virtud de que la temática en torno a la necesidad de financiamiento es crucial en la perspectiva de la recuperación de la economía mundial. El texto se estructura de la siguiente forma: el primer apartado se refiere a las políticas de globalización y el contexto financiero internacional; el segundo aborda la experiencia de la reprivatización de la banca en México; el tercero tiene que ver con las consideraciones finales.

1. Las políticas de globalización y el contexto financiero internacional

Los Acuerdos de Bretton Woods, celebrados entre el 1 y el 22 de julio de 1944 en Estados Unidos (EU), fueron las resoluciones de la Conferencia Monetaria y Financiera de las Naciones Unidas. A partir de entonces se definieron las reglas para normar las relaciones comerciales y financieras entre las mayores economías de la época. Dicho proceso fue favorable para la creación de instituciones como el BM y el FMI. Entre otras cosas, se acordó emplear el dólar como moneda común en las transacciones del comercio internacional a partir de las operaciones en 1946. También se crearon el Banco Internacional de Reconstrucción y Fomento (BIRF) y el GATT; este último con el propósito de reducir las barreras al comercio mundial.

En este contexto de liberalización, y de acuerdo con Chong y López-de Silanes (2005), en muchos países de la región el Estado vino a monopolizar actividades económicas consideradas estratégicas para la seguridad nacional como la minería, petróleo, transportes y el mismo sistema financiero. El Estado también disponía de enorme influencia en sectores como el acero, maquinaria, agricultura y turismo.

Desde la década de los cincuenta del siglo XX, el rol del Estado en América Latina fue justificado por las teorías del desarrollo proteccionista bajo el argumento de que sólo los países industrializados sabían qué hacer con su comercio exterior, sus recursos e instituciones. De este modo, los subsidios a las exportaciones, tipos de cambio fijados artificialmente y demás subsidios a industrias y a la agricultura daban un trato privilegiado. La citada región experimentó un crecimiento económico relativamente alto entre los sesenta y setenta; no obstante, los ochenta fueron de crisis generalizada.

Según G. Barnes (1993), la privatización bancaria en México fue facilitada por factores como las políticas de estabilización macroeconómica de aquella época; la posición relativamente fuerte de los bancos mexicanos; las expectativas alentadoras del crecimiento y la puesta en marcha del TLCAN. Parte de este contexto era que la economía de México había crecido en los años previos —1989-1991— a 3.8 por ciento en promedio y que la tasa de inflación había bajado de casi 200 por ciento en 1987 a 18 por ciento en 1991.

En este mismo orden de ideas, Trejo Nieto (2017) destaca que México pasó de ser una nación predominantemente agrícola y rural a una que gradualmente fue transformándose en industrial y urbana, de modo que para la década de los cincuenta la economía del país experimentaba las tasas más altas de su historia. Sin embargo, después de un periodo de relativa bonanza, los países de la región fueron incapaces de responder

a situaciones adversas como la baja en los precios del petróleo y diversas materias primas, incrementos en los tipos de interés y el bajo crecimiento del comercio mundial de los ochenta. Ello había conducido a políticas de reducción de subsidios y de elevadas barreras de entrada para determinadas industrias, además de programas de privatización de empresas públicas —paraestatales—, así como a la creación de regulaciones en esta materia.

Iniciada la década de los ochenta, el mundo comenzó a experimentar una serie de reformas estructurales. En este tenor, los gobiernos buscaron captar mayores flujos de capital internacional, para lo que adecuaron sus sistemas legislativos a dichas reformas. Con estas adecuaciones, la comunidad inversionista internacional comenzó a invertir decididamente en instituciones bancarias y otras industrias. El cuadro 1 muestra a las instituciones bancarias de mayor tamaño en el mundo, así como sus activos totales y países de origen. Destacan China, EU, Gran Bretaña, Francia, Japón y aun España como los países que tienen los bancos de mayor tamaño y presencia en el mundo.

Cuadro No.1. Las 20 instituciones bancarias de mayor tamaño en el mundo

	Instituciones bancarias	Activos totales (en millones de euros)	País de origen
1	Industrial and Commercial Bank of China	4 467 917	China
2	China Construction Bank	3 819 267	China
3	Agricultural Bank of China	3 711 243	China
4	Bank of China	3 358 559	China
5	JP Morgan Chase	3 099 706	Estados Unidos (EU)
6	PNP Paribas	2 660 268	Francia
7	Bank of America	2 495 320	EU
8	HSBC	2 485 781	Reino Unido
9	Credit Agricole	2 269 300	Francia
10	Mitsubishi UFJ Financial Group	2 141 400	Japón
11	Citigroup	1 944 400	EU
12	Sumitomo Mitsui Banking Corporation	1 844 362	Japón
13	Mizuho Financial Group	1 715 126	Japón
14	Japan Post Bank	1 667 454	Japón

15	Wells Fargo	1 646 606	EU
16	Barclays	1 604 975	Reino Unido
17	Banco Santander	1 562 879	España
18	Postal Savings Bank of China	1 554 983	China
19	Société Générale	1 502 982	Francia
20	Bank of Communications	1 452 461	China

Fuente: Standard & Poors, 2020.

La experiencia de las reformas estructurales en el sistema financiero internacional aporta importantes lecciones. En el camino, países como México, Argentina, Brasil y Rusia han probado cómo dichas experiencias han tenido implícitos riesgos asociados a la especulación y volatilidad financiera, pues los problemas de liquidez de algún país en particular tienen resonancia en otros, afectando así la estabilidad financiera generalizadamente.

Los niveles de riesgos aún son elevados y ello proviene de los mercados financieros y de la demanda interna en los EU y Europa Occidental, fundamentalmente. La reforma financiera de entonces introdujo algunos riesgos distintos, aunque interrelacionados en las economías en desarrollo (Grabel, 2005: 18-22). A continuación, se destaca uno de ellos:

> El riesgo cambiario. Se refiere a la posibilidad de que la moneda de un país experimente una caída en el valor, lo cual, induce a los inversionistas a vender sus acciones. Este riesgo puede estar presente en cualquier régimen cambiario, siempre que el gobierno asuma la plena convertibilidad de la moneda. Debe resaltarse que una moneda es convertible cuando sus tenedores pueden intercambiarla libremente por cualquier otra moneda, independientemente del objetivo de su conversión o de la identidad del tenedor (si el tipo de cambio es fijo, este compromiso se extiende a garantizar el precio de la moneda).

El comportamiento del sistema financiero impacta de modo diverso en el crecimiento económico (Vázquez Carrillo, 2012). Además, constituye uno de los objetivos del modelo de producción dominante que surgió entre las décadas de 1970 y 1980 en América Latina. Según Levy Orlik (2006), en los últimos 30 años se han experimentado diversas transformaciones institucionales en el sistema financiero mexicano, lo cual implicó situaciones como: 1) transferencias en la propiedad de las instituciones —mixta, privada y externa—; 2) profundización en el mercado de dinero como la aparición de instrumentos financieros no bancarios; 3) desregulación de las

instituciones bancarias y no bancarias; 4) diversificación de instituciones financieras a partir de la aparición de casas de bolsas, bancos de inversión, fondos de pensiones, etcétera; 5) la apertura del sistema financiero al mercado internacional.

A pesar de las reformas implementadas y las instituciones creadas, el mercado financiero actual no necesariamente ha servido como palanca para el crecimiento de la economía en general, dada la aparición de continuas recesiones, además de implicar una fuerte dependencia respecto de los flujos de capital externo, lo que ha generado severas crisis económicas. Por otro lado, la volatilidad no ha desaparecido y sigue impactando adversamente a los sectores más pobres de la sociedad, pues son los que sufren del aumento del desempleo y la falta de ahorros a los cuales recurrir (Martínez Chapa, 2020).

Los factores que han contribuido considerablemente a la globalización de las inversiones tienen que ver con aspectos como la información sobre el comportamiento del mercado financiero, el acceso a la tecnología de punta y la variedad de opciones en la oferta. Ello ha redundado en una disminución gradual de los costos de transacción, además del propósito de alcanzar un mayor público objetivo, como lo es el de los demás países.

Según lo advierte Díaz Mondragón (2002), la banca global es también el resultado del enorme progreso tecnológico en campos como la electrónica, informática, telecomunicaciones y demás, las cuales potencian la capacidad de generar, almacenar, procesar, transmitir y operar información en tiempo real, concretando gran cantidad de operaciones simultáneas transmitidas inmediatamente y de manera interactiva a cualquier lugar del mundo. Cabe señalar que estos grandes conglomerados dependen de un centro financiero estratégico con un aspecto común: una economía desarrollada normalmente estable.

La velocidad y el volumen de las transacciones financieras son rasgos de esta época. Invertir en bienes, adquirir divisas o venderlas con propósitos especulativos se ha convertido en una actividad común en el mundo de las finanzas. Según Reyes y Martin Fiorino (2019), estos movimientos están motivados por la búsqueda de mayores ganancias de las que pudiesen obtener en sus países de origen. Sin embargo, esto último plantea riesgos morales: una minoría obtiene rendimientos extraordinarios al obtener información privilegiada, afectando a terceros.

Los instrumentos financieros se han vuelto cada vez más globales y su poder es de gran magnitud, con capacidad de desestabilizar a las economías nacionales. En ese sentido, los reguladores gubernamentales deben aplicar los mecanismos para salvaguardar el interés público, puesto que el mismo es más vulnerable ahora. Además, las tasas de interés, los presupuestos y demás medidas de política económica de los Estados-nación deben considerar ahora esta compleja realidad.

2. La transición de la banca mexicana

El presente apartado describe la experiencia de la transición de la banca mexicana, justo 10 años después de haberse nacionalizado por el presidente José López Portillo en 1982.

El sistema bancario en México es muy antiguo, aunque no es el propósito de este trabajo abordar la parte histórica. De acuerdo con Díaz Mondragón y Vázquez Carrillo (2020), el sistema bancario tuvo como protagonistas al Banco de Londres y al Banco Nacional Mexicano, fundados en 1864 y 1884, respectivamente. Durante el periodo del gobierno de Porfirio Díaz (1876-1911) hubo una expansión importante de bancos en México con inversiones de capital de nacionales y extranjeros, estrechamente ligados al poder político, y en su mayoría procedentes de Gran Bretaña, Francia, España y EU.

Lejos están los días de los bancos locales y regionales en muchos países. Los pequeños bancos donde los clientes conocían al propietario de la institución han quedado atrás para siempre. Dichas instituciones locales no tendrían forma de operar exitosamente en una economía abierta y compleja como la presente. Ante esta situación, los bancos locales vieron ante sí una enorme disyuntiva: debían ceder paso o ser absorbidos por instituciones de mayor tamaño. Los requerimientos y la dimensión se hicieron mayores ante las complejas operaciones de las grandes corporaciones y gobiernos.

A partir de los ochenta, la política económica de los últimos gobiernos de México es prácticamente la misma que se ha venido aplicando en el mundo. El objetivo de la política monetaria ha sido el de contener la inflación y los tipos de interés, así como pretender la estabilidad financiera, pues ello es condición de la comunidad inversionista. Desde la mitad de la década de los noventa, en buena medida se ha logrado el propósito, aunque el crecimiento económico se ha situado muy por debajo de las necesidades de la población.

Las desregulaciones en el ámbito financiero fueron emprendidas primero en las naciones desarrolladas, donde cobraron impulso en los ochenta; luego se aplicaron en las economías en desarrollo. Dichas desregulaciones han permitido a los intermediarios financieros no bancarios competir con la banca comercial en todos los tipos de préstamos. Según Pérez Ramírez (2013), los grandes bancos en EU y Europa fueron estableciendo sucursales en diversas regiones del mundo; todo ello como resultado de una gran oleada de fusiones y adquisiciones en el sector financiero internacional.

En 1982, el entonces presidente José López Portillo (1976-1982) estatizó la banca y el argumento esgrimido fue que la misma había servido sólo para acrecentar el enorme capital de sus propietarios. Las prácticas especulativas, según dicha versión, repercutieron en una fuerte devaluación del peso mexicano, justo al terminar el mandato. El sexenio

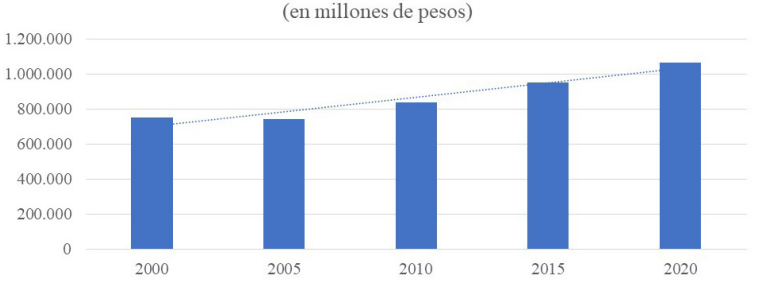
de Miguel de Madrid (1983-1988) se caracterizó por un pobre dinamismo en la economía nacional, así como una elevada inflación y un grave déficit público. El sistema bancario operó prácticamente como una sola entidad gubernamental.

La banca reprivatizada en México nació siendo débil y poco competitiva en el concierto internacional. A pesar de ello, el contexto económico de 1991-1992 era favorable para el crecimiento de este sector. Aunado a la inexperiencia de los nuevos banqueros mexicanos, se instrumentaron una serie de medidas tendientes a regular las actividades financieras a fin de evitar que la incipiente reforma bancaria diera al traste.

El Fondo Bancario de Protección al Ahorro (Fobaproa) se creó en 1990 y en 1994 absorbió la cartera vencida de los bancos con serios problemas de liquidez y de viabilidad. En diciembre de 1994, México experimentó una fuerte devaluación del peso, elevándose considerablemente las tasas de interés, por lo que los deudores de la banca se vieron imposibilitados de cubrir las obligaciones contraídas con la naciente banca reprivatizada. Ante la inminencia de la quiebra del sistema bancario, el gobierno rescató la banca a partir del controvertido Fobaproa. Lo más cuestionable fue advertir que se capitalizara a empresas y bancos mal manejados y así las deudas privadas se convirtieran en deuda pública.

En el programa de rescate bancario se instrumentaron medidas recomendadas por el FMI: 1) compra de la cartera de deuda a través del Fobaproa; 2) aplicación de esquemas de restructuración de deudas; 3) intervención de bancos insolventes; 4) permitir a la vez las reestructuraciones y fusiones posibles entre bancos nacionales y extranjeros. Todo este proceso se implementó teniendo como base las regulaciones más rigurosas que ello presupone.

Gráfica No. 1. Evolución de los pasivos del rescate financiero del Fobaproa



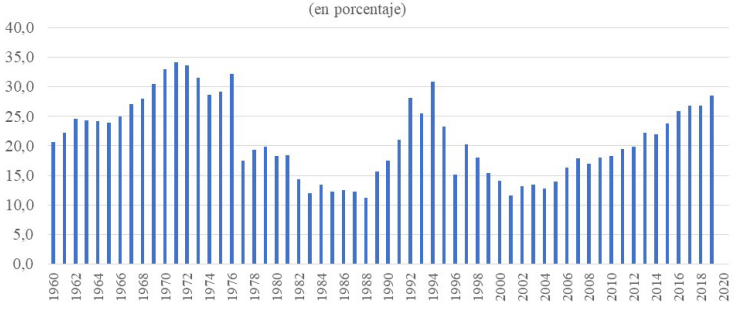
Fuente: Centro de Estudios en Finanzas Públicas. Estadísticas financieras del periodo 2000-2020.

El sistema bancario mexicano ha evolucionado con el paso de los años. En el mismo se advierte un proceso de concentración y extranjerización, pues si en 1994 había 18 bancos, para 2007 eran seis, representando alrededor de 85 por ciento del capital, depósitos y créditos del sistema. Para el año 2020, los grandes ya se encuentran fusionados. Al analizar el comportamiento de la banca mexicana en el periodo 2009-2019, López Ponce (2020) encuentra lo siguiente: el crédito otorgado aumentó 175 por ciento al pasar de 1.97 a 5.41 billones de pesos. La penetración del crédito en la economía pasó de 13 a 29 por ciento en el mismo periodo. El Índice de Morosidad pasó de 3.1 al 2.2 por ciento. De los 51 bancos existentes, 10 concentraban 93 por ciento en 2009, mientras que para 2019 la concentración fue de 89 por ciento.

En lo fundamental, el crédito otorgado por la banca mexicana ha tenido un comportamiento relacionado estrechamente con el desempeño de la economía nacional e internacional. En 2001, México sufrió de nueva cuenta las consecuencias de la recesión de EU. La recuperación fue muy modesta, financiándose menos de lo esperado, en vista de la necesidad de crecimiento económico del país. En el periodo en cuestión se incrementó la tasa de financiamiento total; aunque dicha financiación se halla más orientada al otorgamiento de crédito al consumo, donde los rendimientos económicos comparativamente son mayores que los demás rubros.

Según se observa en la gráfica 2, en las devaluaciones del peso mexicano —1976, 1982, 1987, 1994 y otros deslizamientos más suaves— y las caídas de la bolsa de valores nacional y extranjeras —2000-2001, 2008-2009 y 2019-2020— el crédito se encarece, las tasas de interés se elevan con la consecuente disminución en el crecimiento de la economía, además de otros problemas sociales.

Gráfica No. 2. Crédito bancario otorgado empresas privadas en México



Fuente: Banco Mundial. Estadísticas financieras del periodo 1960-2019.

Por otro lado, el financiamiento otorgado a los gobiernos es fundamental para llevar a cabo los proyectos de inversión y desarrollo. La gráfica 3 muestra un comportamiento de mayor crecimiento de las obligaciones desde 1994. El mismo tiende a crecer más de prisa a partir de 2008. La banca en México sigue el mismo patrón del ciclo económico. El crédito se vino abajo después de la devaluación del peso en 1994. En 1998 experimentó una recuperación.

Gráfica No. 3. Evolución de las obligaciones financieras del gobierno mexicano

Fuente: Banco de México. Estadísticas financieras del periodo 1977-2020

La banca en México no ha logrado insertarse en forma más amplia en la economía en su conjunto a partir de esquemas de inversión y apalancamiento financiero. Ello obedece a que los banqueros requieren tener mejores instrumentos legales respecto a la ejecución de las garantías que les soliciten a sus acreditados cuando hay una falta de pago del crédito. Los bancos son instituciones que conocen bien el ambiente macroeconómico internacional.

La globalización financiera, adicionalmente, no logrado disminuir la incertidumbre y los riesgos debido al entorno complejo y sensible a las variaciones del sistema económico. No son ajenos ni inmunes a crisis como las devaluaciones de las monedas, la misma volatilidad, además de otros problemas. Este tipo de escenarios ameritan que los agentes económicos actúen con cautela a fin de asegurar la rentabilidad de las inversiones. Paralelo a esto último, debe señalarse que se precisa de una regulación eficaz a fin de velar por el interés público.

La reprivatización de la banca no ha significado la panacea a los problemas de liquidez que suelen encarar las naciones emergentes. Esta

experiencia ha derivado en un gigantesco costo de rescate que la sociedad mexicana está pagando. El Instituto de Protección al Ahorro Bancario (IPAB) —antes Fobaproa— constituye una elevada carga que implica que el gobierno deje de atender otras prioridades como la inversión en infraestructura, así como la dotación de recursos suficientes para combatir los problemas económicos más serios.

La economía capitalista, aparentemente mejor librada, ha enfrentado una diversidad de crisis; siendo la mayor de ellas la Gran Depresión de los años treinta. Las crisis han persistido debido a la falta de regulación eficaz o, bien, a políticas laxas y carentes de correctivos inmediatos por parte de las autoridades competentes. Las políticas monetarias y fiscales adoptadas no han interferido la agenda de acumulación del capital trasnacional y el excesivo crédito al consumo.

De acuerdo con el cuadro 2, en el caso de México y en el contexto de la reprivatización del sistema bancario, se advierte cómo los indicadores actuales han logrado el fortalecimiento de las instituciones bancarias —en el caso de los activos netos foráneos— y cierta estabilidad macroeconómica —en el caso de las tasas de interés e inflación—, pero con una reducción en el crecimiento de la economía —en el caso del PIB—. El crédito bancario como proporción del PIB tiende a crecer, lo mismo que lo han hecho los activos netos foráneos. Esta es la tendencia que, en diverso grado, experimentarán el resto de las economías del mundo.

Cuadro No. 2. Indicadores financieros y económicos seleccionados para México (1996-2020)

Periodo	Tasas de interés real en % (a)	CETES a 28 días (b)	crecimiento PIB en % (c)	Tasa de Inflación en % (d)	Crédito bancario como % del PIB (e)	Activos netos foráneos en dólares (f)
1996	7.8	4.2	6.77	31.03	33.8	Nd
2000	5.2	6.4	4.94	9.12	28.0	205.729 billones
2006	1.2	4.0	4.49	3.40	34.0	791.191 billones
2012	0.6	4.3	3.64	8.30	45.6	2097 trillones
2018	2.9	4.4	2.20	4.85	54.4	3376 trillones
2020	3.1	7.1	-8.24	3.63	53.5	3983 trillones

Fuentes: Elaboración propia en base a: (a, b, d) Banco de México (c, e, f) Banco Mundial.
Nd. No disponible.

De acuerdo con el análisis de riesgos de la industria bancaria de México de Standard & Poors (2021), se desprenden las siguientes consideraciones: 1) el acceso relativamente bajo al crédito permite a los bancos crecer a través de prácticas crediticias conservadoras con un enfoque en clientes de ingresos medios y altos y con una capacidad de endeudamiento adecuada; 2) la banca ingresó a la pandemia con balances sanos, rentabilidad sólida, reservas para pérdidas crediticias saludables que cubren los activos productivos; 3) el escaso paquete de estímulo fiscal del gobierno retrasará la recuperación del consumo, la inversión, además de limitar la demanda de crédito; 4) el sector bancario mantiene elevada concentración y tiene barreras elevadas de entrada; 5) las tecnológicas financieras —FinTech— pueden presionar la rentabilidad de las instituciones financieras existentes; 6) la banca se fondea principalmente a través de bases de depósitos bien pulverizadas y leales, es decir, con elevada retención de clientes.

Siguiendo este mismo orden de ideas, de acuerdo con la *Encuesta Trimestral de Evaluación Coyuntural del Mercado Crediticio* que efectúa el Banco de México (2020b), se reporta que 77.1 por ciento de las empresas encuestadas utilizó financiamiento de proveedores; 27 por ciento utilizó crédito de la banca comercial; 19 por ciento, financiamiento de otras empresas del grupo corporativo; 4.2 por ciento, de la banca de desarrollo; cinco por ciento, de la banca extranjera; y 0.5 por ciento por emisión de deuda. Del mismo modo se señala que, al compararse respecto al trimestre anterior, las empresas enfrentaron condiciones menos favorables en cuanto a tasas de interés, montos, plazos ofrecidos, comisiones y otros gastos, refinanciamiento de los créditos, tiempos de resolución del crédito, requerimientos del colateral y demás.

De acuerdo con la Escuela Austriaca, el sistema bancario global padece de una crisis estructural y de ello da cuenta Garrison (1978) en su investigación denominada *La macroeconomía del capital.* Ahí plantea la necesidad de un proceso de formación de capital y de crecimiento económico genuino, contrario al de las emisiones de dinero y de la manipulación de la tasa de interés, pues ello destruye la estructura productiva. El referido autor plantea las siguientes recomendaciones:

En primer término, es indispensable evitar crisis económicas de carácter cíclico, por lo que hay que limitar la expansión artificial del crédito y fomentar el crecimiento del ahorro voluntario y real de la sociedad. Por ello es fundamental garantizar al inversor y ahorrador el derecho de propiedad, lo cual exige al banco que los fondos se custodien y mantengan a disposición 100 por ciento de los depósitos.

En segundo término, considera fundamental propiciar tasas de crecimiento económico sostenido, con lo cual se reducen las tensiones en los costos de transacción laborales. Si la productividad creciera más de prisa que la masa monetaria, se elevaría la capacidad adquisitiva. Ningún

gobierno puede alcanzar la eficacia de su sistema financiero si es incapaz de limitar significativamente la especulación financiera, pues el sistema actual castiga el ahorro y es fraudulento al incrementar arbitrariamente las tasas de interés. Para ello se precisa limitar la expansión artificial del crédito de los bancos centrales y del sistema bancario. Así se reduciría la disponibilidad del crédito o el incremento del tipo de interés; ambas situaciones limitantes del crecimiento real de la economía.

Las experiencias fallidas de las reformas estructurales en algunos países muestran que no basta con seguir al pie de la letra las recomendaciones de políticas económicas de los organismos internacionales. Deben considerarse también los beneficios y las limitantes antes de tomar tales decisiones. El sistema financiero no puede lograr su cometido si no es capaz de reducir los costos asociados a los rescates financieros, elevada inflación, endeudamiento, además de los costos sociales extraordinarios que limitan el bienestar de la sociedad y de la misma capacidad operativa de los gobiernos.

Consideraciones finales

En este trabajo se han abordado las políticas de globalización en la esfera financiera y la experiencia de la reprivatización de la banca en México. Estos procesos no pueden verse de forma aislada, sino más bien de forma integrada, pues atañen a la vida de millones de personas. El capital financiero no tiene un lugar preferido, pues sus movimientos responden a la lógica de las ganancias extraordinarias. Las reformas estructurales, entre ellas la del sistema financiero y bancario, han marcado pauta para que los gobiernos propicien leyes y regulaciones para cumplimentar dicha agenda.

En el ideal, estas políticas de globalización financiera debieran traducirse en mayor acceso a oportunidades de acceso al crédito a costo de capital más competitivo, menor inflación y, en general, a mayores beneficios de salud, educación, empleo y demás satisfactores para el grueso de la población. La globalización también ha implicado que los gobiernos nacionales se vean limitados para actuar con soberanía y al margen de las determinaciones de las instituciones supranacionales. Desde esta óptica, apelar a políticas nacionalistas se ha vuelto molesto para las grandes corporaciones y los organismos financieros internacionales.

Uno de los rasgos del sistema financiero internacional es el empleo de importantes innovaciones. Es evidente que la banca global está más apta para adecuarse a los cambios tecnológicos, económicos y políticos que se suceden en una economía abierta e intensa. Ante ello, la banca tradicional tiene poco margen de participación con éxito. En los hechos, esto ha significado la apertura del camino para que los conglomerados financieros operen con la menor restricción posible.

Así, las políticas económicas, la asignación de presupuestos federales, las desregulaciones financieras, la apertura comercial y demás grandes decisiones públicas se orientan a contener las presiones inflacionarias, aunque ello esté implicando un crecimiento lento con fuerte desempleo en vastas regiones del mundo. Después de todo, en el fondo se trata de satisfacer las exigencias del gran capital financiero internacional. Sin embargo, son más que evidentes las señales de agotamiento del sistema financiero internacional, por lo cual han surgido posturas que advierten de escenarios de mayor volatilidad e incertidumbre de empeñarse en seguir las reglas del juego.

Con un número relativamente grande de bancos, enfocándose en una base limitada de clientes, las necesidades financieras de México, tanto públicas como privadas, siguen excediendo sus propios recursos. Los bancos globales deben abrir más canales de inversión y deben mejorar la reputación general de México entre los inversionistas.

Agravado por la crisis sanitaria del Covid-19, el periodo 2020-2021 revela un entorno recesivo en la mayoría de los países, comprometiéndose así el presente y futuro de los ciudadanos más vulnerables. En ese sentido, se vuelve urgente sentar las bases para un desarrollo económico sostenido que signifique la inversión en la infraestructura social que considere que los riesgos no son ajenos y remotos; por el contrario, son globales. Las instituciones financieras están llamadas a ser parte de la solución de estos desafíos.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 901-918
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Protection of the rights and legitimate interests of the individual in a hybrid war

DOI: https://doi.org/10.46398/cuestpol.4073.52

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Abstract

The objective of the article was to reveal r the main topics related to the definition of «hybrid warfare» and «legal policy of the state in a hybrid war», «legal policy of the state in the field of cybersecurity». The need to finalize legislation on the Internet taking into account international human rights standards was emphasized. Given the categorical uncertainty and unwillingness of Ukraine's current legal framework to resist new threats in a hybrid war, it is advisable to terminologize and standardize the conceptual apparatus in the legal system of cybersecurity, harmonize national legislation with international acts, as well as promoteflexibility in relevant areas of activity. It is alsonecessary to legally regulate the use of the Internet to help increase the liability of providers and site owners for the location of inaccurate and deliberately harmful information, as well as to establish a mechanism to influence unscrupulous subjects of information law in cyberspace. It is concluded that a separate area in criminology should be the protection of information sources and information security issues in a hybrid war.

Keywords: information warfare; crime prevention; cybercrime; individual rights; legal policy.

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Recibido el 18/03/2022 Aceptado el 14/05/2022

Protección de los derechos e intereses legítimos del individuo en una guerra híbrida

Resumen

El objetivo del articulo fue revelar los principales temas relacionados con la definición de «guerra híbrida» y «política jurídica del estado en una guerra híbrida», «política jurídica del estado en el campo de la ciberseguridad». Se hizo hincapié en la necesidad de ultimar la legislación en Internet teniendo en cuenta las normas internacionales de derechos humanos. Dada la categórica incertidumbre y falta de voluntad del actual marco legal de Ucrania para resistir nuevas amenazas en una guerra híbrida, es aconsejable terminologizar y estandarizar el aparato conceptual en el sistema legal de ciberseguridad, armonización de la legislación nacional con actos internacionales, así como impulsar la reflexión en áreas de actividad relevantes. Tambien es necesario regular legalmente el uso de Internet para ayudar a aumentar la responsabilidad de los proveedores y propietarios de sitios por la ubicación de información inexacta y deliberadamente dañina, así como para establecer un mecanismo para influir en sujetos inescrupulosos del derecho de la información en el ciberespacio. Se concluye que un área separada en criminología debería ser la protección de las fuentes de información y los problemas de seguridad de la información en una guerra híbrida.

Palabras clave: guerra de la información; prevención del delito; ciberdelito; derechos individuales; política jurídica.

Introduction

In today's world, the terms «information society», «information impact», «information technology» are increasingly used. These terms are widely used due to the need to exchange information between people and the processes of informatization of society. Currently, the process of information exchange is accelerating, attempts are being made to influence other people through information (Kamneva, 2016).

At the same time, the achievement of strategic goals (military, political, economic) of individual criminal states (their leaders) is achieved through information warfare - the process of suggestive influence on groups of people through specially prepared communication technologies and information materials. Today in everyday and scientific circulation the term «information war» is increasingly used, which in a broad sense is any negative information impact on the enemy, and in a narrow sense - a new one that does not fit into the international legal qualification, type or method of conduct. armed conflicts (Korotkiy and Koval, 2010).

Today, people are vulnerable to a large array of information that is aggressive, discriminatory, destructive, manipulative in nature and is the object of information warfare or even hybrid warfare, covering not only information but also economic, financial, political spheres, encroaching on liberal values, which are a sign of the XXI century, are anthropocentrism and sociocentrism. The purpose of hybrid methods and techniques is to instill in the minds of citizens a negative attitude and distrust of the government, contempt for national heroes, traditions, shrines, creating confrontation on religious grounds. Along with asymmetric conflicts and unconventional wars (situations where open hostilities are not taking place), there is also the notion of «hybrid wars», which are now increasingly used (Reeves and Barnsby, 2013).

The development of the system of protection of individual rights and freedoms, protection of public relations in the state is an integral part of the national policy of developed countries, and the effectiveness of such policy depends on the ability of governments to choose mechanisms for its implementation. A thorough study of this problem in the transformation of society requires a new approach to modern jurisprudence, which would provide a comprehensive study of tactics and strategies of legal policy, principles, goals and functions based on existing developments in lawmaking, value concepts and relevant methods of individual sciences (Rudanetska, 2014). Legal policy should guarantee the achievement of consensus between members of society, public authorities and the public, as well as non-governmental organizations (Ilyashko, 2017).

As practice shows, insufficient attention to the issues of parrying information threats can cause significant damage to the political system of any state up to the destruction of the state itself. The hybrid war against Ukraine requires the state to adequately counter and develop a certain policy to respond to challenges. Ukraine's policy in the context of European integration processes should be aimed at ensuring the rights, freedoms of man and citizen, harmonization of all spheres of state activity with international standards.

The legislation stipulates that one of the directions of the state information policy of the state is information security (On the national security of ukraine: law of ukraine, part 4, article 3; on the concept of the National program of informatization: the law of Ukraine, part 1 On the Concept of the National Informatization Program: Law of Ukraine). Information security is understood as the protection of the individual, society and the state from destructive and other negative influences in the information space (Gapeeva, 2017: 26), an integral part of the political, economic, defense and other components of national security (On the concept of the National informatization program: law of Ukraine, 1998). Information security is understood as the protection of the individual,

society and the state from destructive and other negative influences in the information space (Gapeeva, 2017).

As noted in the Strategy of Foreign Policy of Ukraine, approved by the Decree of the President of Ukraine, there are new challenges in the digital space, including the lack of clear legal regulation in this area, which leads to misuse of digital data to harm both individuals and states and international organizations. Among the means of hybrid warfare that the aggressor state uses against Ukraine and other states in the region are the use of energy as a means of pressure; interference in elections; disinformation and manipulation campaigns; cyberattacks on critical infrastructure, government agencies, financial institutions, etc. («On the strategy of foreign policy of Ukraine»: Decree of the President of Ukraine, 2021).

The state, despite the existence of internal conflict with the intervention of the aggressor country to it, does not deviated from the declared European values (Herasymchuk *et al*., 2021). But, hybrid wars combine different regimes of warfare, including criminal action (Gorbulin, 2017). Therefore, it is worth focusing on the role of crime in hybrid warfare and on ways to combat it both at the general legal level and by organizational means to combat cybercrime.

1. Methodology of the study

The methodological basis of the study is based on the methods of dialectical, formal-logical, historical, structural-functional, institutional analysis, as well as content analysis of legislative and regulatory acts and the method of evaluation of opinions. Using the dialectical method, the author's tasks to define the concept of «hybrid war», «state policy in a hybrid war» and «legal policy of the state in the field of cybersecurity» were solved. The formal-logical method allowed to reveal contradictions in the legislation, features of separate regulatory legal acts, and also helped to draw conclusions and to give offers concerning the further improvement of the legislation and the decision of the set tasks.

The application of the historical method allowed to reflect the historical need to adjust public policy in a hybrid war, to ensure cybersecurity. The structural-functional method allowed to consider the peculiarities of Ukraine's legal policy to protect the rights and legitimate interests of individuals in a hybrid war caused by the aggression of the Russian Federation as a whole system, to explore its structural elements and identify features of investigating crimes in cyberspace. With the help of the formal-legal method the definitions concerning the essence of research categories were substantiated, the conceptual-categorical apparatus was formed.

The comparative legal method was used in the study of domestic and foreign legislation on the legal regulation of protection of rights and legitimate interests in a hybrid war, in particular, in the investigation of certain criminal offenses in the field of cybersecurity in Ukraine. The method of system analysis and synthesis was used to compare the concepts of «hybrid war», «armed aggression», «individual rights», «state policy», «security», «cybersecurity». The institutional method of research is used in the work. At the same time, the methodology of the system analysis in relation to the object of the legal policy of the state to ensure the rights and interests of the person in the information war was made up of system, structural-functional and evolutionary methods. Statistical and sociological methods were used to obtain and analyze empirical data on the subject of research, characteristics of phenomena, analysis of law enforcement and substantiation of conclusions. The most important methodological role in the study was played by the conceptual provisions and the conceptual and categorical apparatus of the theory of state and law, international humanitarian law, constitutional law and criminal procedure.

2. Analysis of recent research

Analyzing the degree of scientific development of research problem, it should be emphasized that in general, the science of international law and the cycle of other legal sciences lacks an understanding of the concept of «hybrid war». Important publications on this topic have been made by such scholars as V. Gorbulin (Gorbulin, 2017), F. Hoffman (Hoffman, 2009), O. Ilyashko (Ilyashko, 2017), J. M**c**Cuen (M**c**Cuen, 2008), L. Veselova (Veselova, 2021), V. Vlasyuk, Y. Karman (Vlasyuk and Karman, 2021), R. Wilkie (Wilkie, 2009) and others.

Recognizing the importance of the contribution of these researchers in the development of these issues, it should be recognized that the problem of protection of the rights and legitimate interests of the individual in a hybrid war in the literature is not given enough attention. There is no comprehensive, systematic research, and most modern scientific work deals only with general issues of criminal law policy or its specific area.

Also, a thorough analysis of the works of scientists gives grounds to state the lack of unity in approaches to the specifics of the investigation of cybercrime related to the policy of information warfare. All the above, as well as insufficient development at the theoretical level of this issue and the presence of organizational and legal gaps in the study area, determines the relevance of the chosen topic and requires legal regulation of certain problematic aspects in a hybrid war on the basis of both legal sciences and modern science. opinions of related sciences.

3. Results and discussion

In jurisprudence, "hybrid warfare" is a fairly new concept, and therefore little studied. It has entered an active discourse in recent years in connection with Russian aggression. Ukraine faced the problem of defending state sovereignty and borders in the conditions of a hybrid war, which has other ways than, for example, the Second World War.

Therefore, it is necessary to rethink the phenomenon of war, its course and consequences, to react quickly, to develop radically new approaches. At the same time, it should be taken into account that in the latest war the use of information and communication technologies, highly qualified human resources, the art of international politics, re-equipment of the economy, etc. have become crucial. Hybrid warfare is a complex and inert process, it is not always controlled, it cannot be stopped "as instructed from above." Unlike the traditional wars of the past, it does not end with the signing of an armistice.

The current war on the territory of Ukraine is called "hybrid", presenting it as a new way of implementing aggressive policies. But almost all its tools (an attempt to consolidate its influence in Ukraine through the support of loyal Ukrainian political circles, the internal political division of Ukrainian society through propaganda, and finally open military intervention, attempts to present aggression as an internal civil conflict) were tried by Russian leaders from the seventeenth to the eighteenth centuries. This scenario was most clearly manifested in the activities of the Bolsheviks against the Ukrainian People's Republic during the Ukrainian Revolution of 1917–1921.

It should be emphasized that armed aggression is only one of the instruments of the Russian Federation's war against Ukraine, the last argument when all other means of subduing Ukrainians have exhausted themselves. Aggression is carried out in several dimensions: military, political, economic, social, humanitarian, information. Elements of hybrid warfare have long been propaganda based on lies, manipulation and substitution of concepts, denial of the very fact of war and the participation of the aggressor state in it; accusing Ukraine of its own crimes, distorting Ukrainian history; trade and economic pressure and energy blockade; terror and intimidation of citizens; cyberattacks and attempts to destabilize critical infrastructure.

Hybrid threats include a range of different regimes of warfare, including standard weapons, irregular tactics and formations, terrorist acts (including violence and coercion) and criminal disorder (The origins of the concept of a hybrid war, 2015). Threats can be more characterized as a hybrid balance of traditional and irregular strategies and tactics, it is decentralized planning and implementation, the participation of non-state actors using both simple and complex technologies (Reeves and Barnsby, 2013).

Some scholars point out that hybrid warfare combines military, quasi-military, diplomatic, informational, economic, and other measures to achieve strategic policy goals (Hoffman, 2009). It is characterized by such methods as bribery, intimidation, crime, kidnapping, looting, violence against civilians, seizure of state institutions, organization and conduct of terrorist acts (Martin van Creveld, 2018).

The American researcher J. McQueen sees in a hybrid war a combination of traditional and asymmetric forms of violence with the simultaneous involvement of the local population in the conflict and misleading the international community, or leveling its influence (McCuen, 2008). According to him, virtually any hybrid war combines traditional forms of violence, cyber warfare, terrorism, organized crime, irregular military formations and private military companies. American analyst R. Wilkie proposed to consider as a hybrid war a conflict in which the state or non-state group uses terrorist violence, irregular military, indiscriminate violence, criminals and mercenaries, in order to destabilize the political and economic status of the opponent (Wilkie, 2009).

Thus, considering the concept of "hybrid war", we can conclude that it means a modern type of war, where the conflict uses a variety of means of attack and defense of states that go beyond conventionally defined options and types of warfare. Scientists are already identifying a list of possible real weapons that can be used by the parties. The term weapon, in this case, includes not only material traditional weapons, but also model-organizational and informational weapons.

At the same time, despite the urgency of understanding hybrid warfare to characterize modern military conflicts, the definition of this term is absent both in the recently adopted Law of Ukraine "On National Security of Ukraine" (Law of Ukraine "On National security of Ukraine", 2018), which is a component of the concept of national security, which limits the scientific development of this phenomenon in the system of views on the nature and character of modern military conflicts, principles and ways to prevent their occurrence.

Thus, we see the need to form a conceptual and terminological apparatus for the legal provision of cybersecurity and its consistency not only with the terminology of current domestic legislation and international acts, but also with adequate content for the hybrid threat of cyber threat.

The law of armed conflict, which is synonymous with international humanitarian law or the law of war, is a significant part of all international law that regulates and controls the actions of the parties to a conflict. It consists of both contractual and customary rules. This right is a fundamental right that is binding on all parties to an armed conflict (Kudors, 2015).

The main purpose, as well as the humanitarian and functional significance of the law of armed conflict, is that this law guarantees protection for war victims, whether civilians, prisoners of war, wounded or sick, who will be determined whether acceptable measures of war have been applied, and no prohibited means were used. This specialized branch of law, which defines both state and individual obligations, limits the impact of war, and establishes clear rules for its conduct, in case of violation of which, international legal sanctions or prosecution of war crimes can be applied (Klimchuk, 2015).

The current state of international peace, under the influence of the constant growth of innovative technologies, development and slowing down of economies of various subjects of international law, strengthening of data transmission devices and other new means, is undermined by the discovery of a new phenomenon of "hybrid war". The problem arises in how one can determine the place of hybrid warfare in international law, especially given the current right to war and the law of war. Awareness of the existence of a new threshold of danger raises the level of defense of the party to which these tools are addressed (Vlasyuk and Karman, 2021).

Today there are a large number of international treaties and customary norms that regulate the issue of war - both its beginning and the rules of its conduct. They are given a significant role, but as it turned out, these rules are not able to regulate legal issues that arise in modern wars. Hybridization of war only exacerbates these already complex problems and may lead to the fact that the law of armed conflict will not matter and will not be able to resolve the legal issues of modern hybrid warfare, assuming that in such a situation there will be no legal control and protection of the parties.

Some scholars rightly point out that if the trend towards the development of the law of armed conflict as something outdated and irrelevant continues, participants in armed conflict, as well as the entire international community, will begin to consider international law as more anachronistic than the legal imperative (Reeves and Barnsby, 2013).

If the authority of law is reduced, traditional legal prohibitions will be violated with impunity, and only certain notions of morality will be able to somehow limit action during war. Opponents of the state and non-state will believe that the observance of such ancient legal norms contains significant shortcomings and can no longer regulate their actions. As a result, the parties to the conflict will ignore the obligations under the law of armed conflict and attribute titles to their actions as self-defense or manipulate the very content of the law of armed conflict through the strategic application of lawfare (asymmetric, hybrid warfare) (Kudors, 2015).

Modern international law does not include the concept of "hybrid war", which in turn leads to the corresponding consequences. The lack of

regulation of this newly discovered phenomenon accelerates the emergence of new means of attack in wars, for which the perpetrators cannot be held responsible due to the lack of norms that bind the parties.

The law of armed conflict was developed by the joint action of the international community, which was able to resolve the most pressing issues. Today, a new challenge has emerged - hybrid warfare. In order to prevent the possibility of undermining efforts to humanize war, the international community must recognize that the question of the effectiveness and practicality of the law of armed conflict must expand as a new "hybrid" type of war develops.

Ignoring this trend makes modern legal efforts ineffective, ineffective means of resolving modern armed conflicts, which continues to undermine confidence in the law of armed conflict. Instead of continuing outdated practices, the international community should push for the addition and incorporation of the concept of hybrid warfare and weapons into the law of armed conflict.

Whether through an international treaty or the formation of a new international custom, the international community must renew the law of armed conflict to resolve various issues, as created by hybrid warfare, while emphasizing that comprehensive humanitarian protection under the law of armed conflict is inviolable. At the same time, the disclosure of the concept of "hybrid war" in the context of international law should be carried out in inseparable connection with the realities of warfare, which go beyond the conventionally established standards and rules (Vlasyuk and Karman, 2021).

The main principles of the legal policy of the state in the temporarily occupied territories in a hybrid war include: the priority of human rights; legality; social conditionality; scientific validity; stability and predictability; legitimacy; morality; justice; publicity; combination of interests of the person and the state; compliance with international standards; objectivity; adequacy; optimality; expediency; systematicity; purposefulness; sequence; resource security; humanistic orientation and democratic nature of the tools.

In our opinion, the legal policy of the state in a hybrid war can be defined as part of public policy, which is a reasonable and consistent activity of public authorities, local governments to ensure an effective mechanism for legal regulation of public relations in the temporarily occupied territories in a hybrid war, is expressed in a set of ideas, measures, tasks, programs, guidelines implemented in the field of law and through law and is based on fundamental legal principles.

Implementation of the Strategy of Ukraine's foreign policy will be carried out in compliance with the following principles: compliance

with international law - compliance with generally accepted norms and principles of international law, fulfillment of Ukraine's international obligations under international treaties and membership in international organizations, compliance with international agreements; human-centeredness - recognition and affirmation of respect for human life and dignity, human rights and freedoms as the highest values; protection, promotion, promotion of rights and legitimate interests of Ukrainian citizens abroad, rights and legitimate interests of foreign Ukrainians in other states ("On the strategy of foreign policy activity of Ukraine" Decree of the President of Ukraine, 2021).

We believe that the content of the Strategy should include issues of cybersecurity in Ukraine in a hybrid war based on minimizing the risks of cyber threats by the aggressor through the implementation of a set of measures for the formation and implementation of public administration in this area to determine vulnerability and stability of society and state. In our opinion, the key measures of this Strategy, namely: raising awareness, ensuring resilience, prevention, crisis response and recovery, increasing cooperation with the European Union and NATO, as well as other foreign and international partner organizations.

One of the main tools of hybrid warfare is cyber attack, which can do as much damage as weapons of mass destruction. Any sophisticated cyber weapon can act as a platform that is first implemented in networks and computers, then performs spy functions, and at the right moment is activated and acts as a weapon that destroys military and civilian facilities and infrastructure. The peculiarity of virtual attacks is that it is very difficult to prove the involvement of a state in them. Thus, cyber warfare and cyber espionage are ideal weapons of hybrid warfare.

The main methods of cyberattack are: vandalism; cyber espionage or information gathering; propaganda; attacks to disrupt computers and local area networks; cyberattacks aimed at destroying the critical infrastructure of cities, industrial centers, disrupting transport, communications and other critical facilities.

Vandalism and propaganda in cyberspace in recent years have become one of the most effective ways of waging information warfare. As the experience of the «color» revolutions of the last decade shows, the Internet and social networks are becoming one of the most important fronts of psychological warfare. Also, the methods of information warfare in cyberspace are the creation of fake accounts, throwing false or biased information, coordinating anti-government speeches, conducting propaganda.

Cyber espionage is a very effective method of gathering classified information. It can be used to obtain a list of hostile agents or informants or to steal the latest developments in military or industrial technology. It

is believed that Chinese hackers are most actively involved in industrial espionage, most often the targets of their attacks are enterprises and research centers in the United States and Western Europe.

In recent years, Ukrainian courts have ruled on the following articles of the Criminal Code of Ukraine: 109 (actions aimed at forcible change or overthrow of the constitutional order or the seizure of state power); 110 (encroachment on the territorial integrity and inviolability of Ukraine); 111 (treason); 114-1 (obstruction of the lawful activities of the Armed Forces and other military formations); 161 (violation of equality of citizens depending on their race, nationality, religious beliefs, disability and other grounds); 258-2 (public appeals to commit a terrorist act); 295 (calls to take actions that threaten public order); 436 (propaganda of war) (Criminal code of Ukraine, 2001).

Most of the verdicts were handed down by the courts in relation to statements that affect the national security of Ukraine in cyberspace and the media. In particular, for encroaching on the territorial integrity and inviolability of Ukraine, actions aimed at forcible change or overthrow of the constitutional order. In 74 % of cases, defendants entered into agreements with the prosecutor, admitting their guilt. More than 80 % of cases resulted in courts releasing convicts from serving a probation period of one to three years (Mirny, 2021). This indicates that the state does not see for society a significant danger in the dissemination of this information, as well as danger from these people.

In some cases, the motivation of sentences in such criminal proceedings is inappropriate, and the assessment of the fact of a criminal offense is transferred to forensic experts who conduct forensic-linguistic, complex examinations and semantic-textual examination of written speech. Judges often cite information that has become the subject of a crime, refer to an expert opinion and impose a sentence, while the international standard is that if a court has to decide whether to restrict access to information, it must analyze it on its own. content and context to make decisions. Moreover, these examinations are conducted by institutions that are subordinate to the executive branch and therefore cannot be considered independent. This undermines the right to an impartial and fair trial.

Some scholars and experts focus on the formal approach of Ukrainian courts to national security. Thus, when passing sentences, courts impose the same penalties regardless of the size of the audience that is affected by illegal content. The verdicts do not reflect how the future fate of illegal information is resolved. In particular, 80 % of criminal proceedings ended on probation. Probation requires the convict to fulfill a number of obligations.

As a result, the court may order the offender to delete illegal information, to replace the conditional term with a real one. In our opinion, this is the protection of the state's interests in the conditions of information warfare. Also, experts of the coalition «For Free Internet» pointed out that the courts may use information from the portal «Peacemaker» as the only source of evidence. That is, the court does not assess such evidence either in terms of its reliability or in terms of belonging and admissibility (Mirny, 2021).

The importance of finalizing Internet legislation should also be pointed out. It is necessary to develop a law taking into account international human rights standards. Risks, Russia's military aggression against Ukraine, including in cyberspace, have demonstrated the importance of separate legal regulation.

The aggression of the Russian Federation in the form of a hybrid war clearly showed the low ability of Ukrainian law enforcement agencies to act systematically and effectively in the face of threats to internal security, revealed a lack of reliable mechanisms for coordination and coordination between them and showed unwillingness to respond to hybrid law enforcement system as a whole and its individual units and officials. In particular, the central offices of law enforcement agencies were unable to respond quickly and influence changes in the operational situation, and their territorial bodies and leaders - to take responsibility for making even perfectly legal decisions.

This was a consequence of the existing problems in ensuring public administration of law enforcement agencies, namely: the lack of a single strategic leadership of law enforcement agencies, which would be carried out in accordance with the general principles of the rule of law and international standards of law enforcement; secrecy from society and lack of effective public control over their activities, as well as lack of responsibility of both managers and ordinary law enforcement officers, their unwillingness to act exclusively in accordance with the law; excessively complex and cumbersome structure of law enforcement agencies with duplication and the presence of uncharacteristic functions; imperfections of current legislation in the field of internal security, lack of clear delineation of anti-terrorist, anti-sabotage and counterintelligence activities of law enforcement agencies and military formations, the presence of an excessive number of bylaws, contradictions, the Constitution and laws of Ukraine; low level of competence of the management staff, their corruption, use of positions not for the purpose of maintenance of public safety, and for the sake of personal enrichment; imperfect system of personnel selection and training, etc.

Therefore, within the main basic tasks of law enforcement agencies such as the protection of the constitutional order, state sovereignty and territorial integrity of the state, the fight against crime, protection of rights, freedoms and legitimate interests of citizens, society and the state as a whole, there

are new important tasks to combat hybrid threats: first, ensuring the internal security of the state by strengthening the effectiveness of the fight against the intervention of the secret services of the aggressor country in the internal affairs of Ukraine, including with espionage, destructive activities of agents of influence in state structures and civil society, all types of hostile intelligence, as well as by combating terrorism, separatism and criminal structures that threaten the internal security of Ukraine and contribute to the destabilization of society; secondly, achieving steadfast positions in the protection of national interests in the information and cyberspace, constant monitoring of the situation, effective and prevention of conflicts in interethnic, interfaith, interregional and other areas of national and social relations, promoting their stabilization; third, the protection of the national interests of the state at the international level through diplomatic, political, economic, energy, judicial and other methods.

In our opinion, an effective step in improving the public administration of law enforcement agencies capable of guaranteeing the security, rights and freedoms of citizens could be the creation of a state body responsible for coordinating strategic management in the country's internal security, counterterrorism, emergency prevention and elimination of their consequences.

The Security Service of Ukraine and the National Police of Ukraine will set up specialized units to investigate crimes committed in the context of armed conflict. Such structural units will be organized as part of the central offices of these entities, as well as their regional and territorial bodies in Donetsk and Luhansk regions. They will work directly with the Department for Supervision of Criminal Proceedings on Crimes Committed in the Armed Conflict of the Office of the Prosecutor General and the relevant departments in the Donetsk and Luhansk Regional Prosecutor's Offices. The need to create a single such system is long overdue, and specialization will improve the quality and efficiency of the investigation. At the same time, the investigation of war crimes, crimes against humanity, acts of aggression require a high level of special knowledge (Police and sbu will create special units for the investigation of crimes during armors).

The realities of the so-called "hybrid war" have posed a number of legislative and law enforcement challenges in the field of criminal law policy of the Ukrainian state, the answers to which have not yet been found. Peacetime legislation should ensure the regulation of legal relations in conditions of military aggression in the presence of an inevitable and immediate threat to the sovereignty and territorial integrity of Ukraine, human rights and freedoms.

One of the elements of evidence in criminal proceedings is the collection of evidence. But the inability of our pre-trial investigation bodies to conduct procedural actions in uncontrolled territories forces us to look for

alternative ways to solve the problem of documenting (proving) criminal proceedings on criminal offenses committed in those territories.

The use of evidence-based evidence in criminal proceedings from international human rights organizations monitoring human rights in areas of armed conflict and journalistic investigations into individual facts is difficult to overestimate. Another way out of this situation is to set up joint international investigation teams to investigate individual crimes. The current criminal procedure legislation provides such opportunities. Yes, Art. 571 of the Criminal Procedure Code of Ukraine stipulates that joint investigative teams may be established to conduct a pre-trial investigation of the circumstances of criminal offenses committed in the territories of several states, or if the interests of these states are violated. The establishment and operation of joint investigation teams is an important measure of international cooperation in criminal proceedings, which consists in the coordinated activities of representatives of the competent authorities of different states to investigate crimes of an international nature (Criminal procedure code of Ukraine, 2012).

Any criminal investigation or trial is a "fight for information". Insufficient information (lack of evidence or their falsity) complicates the process of establishing the fact of the crime, the perpetrators, the motives of the crime and so on. In such circumstances, it is important to obtain evidentiary information about the fact of the crime, the use of forensic and other special knowledge. The task of criminology is to develop and apply tools that allow you to collect, investigate, use evidence.

The task of criminology is to develop and apply tools that allow you to collect, investigate, use evidence. In modern conditions, criminology is designed to develop the latest tools aimed at combating organized and transnational crime, corruption, human trafficking, drug trafficking, terrorist financing and other criminal acts. A separate area in criminology should be the protection of information sources and information security issues. In the context of global threats and changing criminal manifestations, an important role should be given to the use of modern forensic knowledge. Means of criminology must meet information challenges, successfully combat crime in an information (hybrid) war.

In general, it should be noted that the problem of improving public administration of law enforcement in a hybrid war is still insufficiently studied and needs more detailed study and discussion. Ukraine will be able to counter hybrid threats only by radically reforming its own law enforcement system in the direction of strengthening the possibility of both vertical coordination of actions of all law enforcement agencies and horizontal ties between them.

Conclusions

Legal policy of the state in a hybrid war – a type of public policy that is a reasonable and consistent activity of public authorities, local governments to ensure an effective mechanism for legal regulation of public relations in the temporarily occupied territories in a hybrid war, which is expressed in a set of ideas, measures , tasks, programs, guidelines implemented in the field of law and through law and is based on fundamental legal principles.

The information component of national security requires the formation of a secure cyberspace and the systematic implementation of legal instruments of a preventive nature. It is necessary to develop adequate mechanisms of legal regulation, determine the appropriate legal status of the national cybersecurity system in Ukraine, improve the forms and methods of legal regulation in the field of combating hybrid threats.

The formation of the national legal institute of cybersecurity is directly related to the development of international law in this area in the field of information and telecommunications security of society. The legal policy of the state in the field of cybersecurity is a legally regulated activity of cybersecurity entities aimed at ensuring the rights and freedoms of citizens, society and the state in the information space, preventing their violation, identifying cyber threats and restoring violated rights, freedoms and legitimate interests of individuals. carried out by means of international humanitarian law and national legislation with the possibility of applying coercive measures and bringing the perpetrators to justice.

According to the content, the Strategy of Ukraine's foreign policy should include Ukraine's cybersecurity in a hybrid war by minimizing the risks of the aggressor spreading cyber threats by implementing a set of measures to form and implement public administration in this area to determine vulnerability and stability of society and the state. The key measures of this Strategy are, namely: raising awareness, ensuring resilience, prevention, crisis response and recovery, increasing cooperation with the European Union and NATO, as well as other foreign and international partner organizations.

It is important to finalize the legislation on the Internet taking into account international human rights standards. Given the categorical uncertainty and unwillingness of the current legal framework of Ukraine to withstand new threats in a hybrid war, it is necessary to terminologize and standardize the conceptual apparatus in the legal system of cybersecurity, harmonization of terminology of national legislation with international acts. It is also necessary to legally regulate the use of the Internet to help increase the responsibility of providers and site owners for the placement of inaccurate and knowingly harmful information, as well as to establish a mechanism for influencing unscrupulous subjects of information law in cyberspace.

In the modern information society it is necessary to constantly, systematically and timely take effective measures to combat cybercrime in all spheres of public and state life, business and socio-humanitarian environment. Given Ukraine's course to enter the global information space, a national model for cybersecurity of enterprises, institutions and organizations needs to be built; coordination of efforts and interaction of law enforcement agencies, special services, the judiciary, as well as their proper staffing and logistics, exchange of information on the prevention and combating of such criminal offenses.

Given the cross-border nature of cybercrime, law enforcement cooperation in investigating such criminal offenses at the operational level needs to be established; creating and ensuring the functioning of the mechanism for resolving jurisdictional issues in cyberspace. A separate area in criminology should be the protection of information sources and information security issues. An important role should be given to the use of modern forensic knowledge, and the means of forensics should meet the information challenges, successfully combat crime in an information (hybrid) war.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 919-936
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State policy of Ukraine in the field of education

DOI: https://doi.org/10.46398/cuestpol.4073.53

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Abstract

The purpose of the article is to analyze the essence and characteristics of the state policy of Ukraine in the field of education, in order to determine the main ways to optimize this policy in the field of educational processes. The work used a set of methods such as: content analysis, logical and semantic analysis, systematic analysis of the implementation of state policy in the field of education; axiological method and prognosis. It is concluded that, state educational policy is a systematic and deliberate activity of public authorities and public self-government in school The priority of state policy is to ensure civic, patriotic, moral and spiritual education. Among the most concrete results of the research, existing deficiencies have been identified, which are characterized by contradictions. These paradoxes can be avoided by combining regulations. Finally, the existing state policy in the field of education has a comprehensive legal framework, but needs constant updating.

Keywords: public policies; public administration; education; new Ukrainian school; areas of education.

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Recibido el 15/03/2022 Aceptado el 22/05/2022

Política estatal de Ucrania en el campo de la educación

Resumen

El propósito del artículo es analizar la esencia y las características de la política estatal de Ucrania en el campo de la educación, para determinar las principales formas de optimizar esta política en el campo de los procesos educativos. El trabajo utilizó un conjunto de métodos como: análisis de contenido, análisis lógico y semántico, análisis sistemático de la implementación de la política estatal en el campo de la educación; método axiológico y pronóstico. Se concluye que, la política educativa estatal es una actividad sistemática y deliberada de las autoridades públicas y el autogobierno público en la escuela La prioridad de la política estatal es garantizar la educación cívica, patriótica, moral y espiritual. Entre los resultados más concretos de la investigación, se han identificado las deficiencias existentes, que se caracterizan por contradicciones. Estas paradojas pueden evitarse combinando normativas. Finalmente, la política estatal existente en el campo de la educación tiene un marco legal integral, pero necesita una actualización constante.

Palabras clave: políticas públicas; administración pública; educación; nueva escuela ucraniana; áreas de la educación.

Introduction

The purpose of the article is to analyze the state policy of Ukraine in the field of education. Modern features of social development require the definition of the purpose of state activity, the value paradigm of the state existence of man and society, the scientific support of the process of educating students. The low general cultural level of society, the decline of spirituality, the decline of the prestige of universal values, the spread of intolerance, cruelty and immorality in society require the state to implement a number of measures aimed at educating the humane individual and civilized citizen.

As you know, the development of the Ukrainian state puts on an extremely important and urgent task - the education of a true citizen and patriot.

In view of this, the construction of a new democratic humane society, which focuses on high universal values, acquires primarily an educational character. This is especially true of the younger generation, which in the near future will have to uphold and multiply the achievements and accomplishments or correct the mistakes that have been made in the way of establishing democratic values. In this context, it is extremely important not only to declare the orientation of national education to build a democratic,

social and legal state, humane society, but also to build in practice a system of education and upbringing that would profess the principles of humanism, democracy, tolerance, priority of universal values, flexibility and predictability.

1. Objectives

Since gaining independence, Ukraine has paid more and more attention to the upbringing of children, and now we see not only dependence on traditions, but also the influence of socio-economic processes that provoke changes in attitudes and ideas about the new education system.

At present, in our society, there is a significant decline in humanism in human communication, the subordination of social relations to the needs of the market, educational ideals are being lost, people are becoming indifferent to each other, all this makes the problem of education more relevant. The study of this issue determined the purpose of scientific research as the basis for the harmonization of society.

2. Materials and Methods

For the purpose of comprehensive knowledge of a subject of research and the decision of the set tasks the complex of general scientific and special methods is used, namely: methods of the analysis, synthesis and systematization - for research and generalization of legislative and normative documents, pedagogical, psychological and scientific-methodical literature, internet resources, encyclopedias and dictionaries, experience of practitioners, generalization of bibliographic sources and formulation of conclusions; content analysis and logical-semantic terminological analysis - to study and clarify the content of key research concepts, to establish their relationship; systematic analysis of the implementation of state policy in the field of education; axiological method - to substantiate the value of education, determine its functions and main tasks at the present stage; prognostic method - to develop proposals for improving the mechanisms of implementation of state policy in the field of education.

Materials and methods are based on the selection and comprehensive study of pedagogical, psychological and methodological works of researchers. A significant part of scientific sources for study is pedagogical, psychological and methodological literature: monographs, dissertations and abstracts of dissertations, curriculas, textbooks and teaching aids. A separate group in the context of the study consists of materials of periodicals (pedagogical and professional journals, collections of scientific papers, information collections, etc.).

3. Results and discussion

As you know, pedagogy is the science of the essence, patterns, principles and forms of teaching and education. The moral consciousness and moral behavior of children are formed by schools, educational institutions through the content of education, namely through the increase in the volume of socio-political disciplines. As the life of society democratizes, it is not the forcible compulsion of citizens to respect the rule of law that should play an increasingly important role, but lawful behavior due to their upbringing, education, training and development.

In accordance with paragraph 6 of the first part of Article 92 of the Constitution of Ukraine, the principles of regulation of upbringing and education are determined exclusively by the laws of Ukraine. During this time, we trace the creation of various programs, concepts, both on the initiative and by government agencies: the Ministry of Education and Science, the Academy of Pedagogical Sciences and others.

They relate mainly to such areas of education as civic, moral, spiritual, patriotic. The Basic Law on Education stipulates that state policy in the field of education and upbringing is determined by the highest legislature, carried out by state executive branch and local self-government branches on the basis of the concept of education development approved by the authorities and approved by the public (the Constitution of Ukraine).

Thus, the state policy in the field of education in Ukraine is based on:

- Strategic documents for the development of education (doctrines, programs, concepts) (primarily the National Doctrine of Education Development).
- Legislative acts about education (basic Law "About Education", laws of direct action that regulate relations in the subsystems of domestic education - "About preschool education", "About general secondary education", "About extracurricular education", "About vocational education", "About higher education").
- International and interstate treaties ratified by the highest legislative body (documents of the United Nations, the Council of Europe).
- Decrees and orders of the President, resolutions of the Verhovna Rada of Ukraine and the Cabinet of Ministers in the field of education, orders of the specially authorized central executive branch in the field of education, other central executive branches to which educational institutions are subordinated; orders and directives of regional executive branches adopted within their competence.

Law of Ukraine "About Education" - the comprehensive development of man as a person and the highest value of society, its talents, intellectual, creative and physical abilities, the formation of values and competencies necessary for successful self-realization, education of responsible citizens capable of conscious social choice and direction for the benefit of other people and society, enriching on this basis the intellectual, economic, creative, cultural potential of the Ukrainian people, raising the educational level of citizens to ensure the sustainable development of Ukraine and its European choice.

In this Law, the terms are used in the following meaning: bullying - actions (actions or inaction) of participants in the educational process, which consist of psychological, physical, economic, sexual violence, including the use of electronic communications committed against a young or a minor and (or) such a person in relation to other participants in the educational process, as a result of which the mental or physical health of the victim may have been or has been caused; Applicants - pupils, students, cadets, students, trainees, graduate students (adjuncts), other persons who receive education in any type and form of education.

The Basic Law of Ukraine "About Education" lays down the conceptual principles of civic education. Pedagogical and scientific-pedagogical workers are obliged to "affirm respect for the principles of universal morality: truth, justice, devotion, patriotism, humanism, kindness, restraint, diligence, moderation", "to instill in children and youth respect for parents, women and elders." by age, folk customs, national, historical values of Ukraine, its state and social system, to prepare pupils and students for a conscious life in the spirit of mutual understanding, peace, harmony between all peoples, ethnic, national, religious groups...". The law also defines the responsibility of parents for child development. Among other responsibilities, the following are singled out: "parents and persons replacing them are obliged to: respect the dignity of the child, cultivate diligence, a sense of kindness, mercy, respect for the state and native language, family, the elderly, to folk traditions and customs; to cultivate respect for laws, human rights and fundamental freedoms" (the Law of Ukraine "About Education").

The Law of Ukraine "About Complete General Secondary Education" (2020) reveals the educational process as an integral part of the educational process in educational institutions, which is based on universal values, cultural values of the Ukrainian people, values of civil (free democratic) society, rule of law, observance human and civil rights and freedoms, the principles set out in the Law of Ukraine "About Education", and aimed at forming responsible and honest citizens capable of conscious social choice and directing their activities for the benefit of other people and society.

The unity of education, upbringing and development of students is ensured by the joint efforts of all participants in the educational process. The legislation of Ukraine about general secondary education consists of the Constitution of Ukraine, the Law of Ukraine "About Education", this Law, other acts of legislation in the field of education and science and international treaties of Ukraine concluded in accordance with the law.

The system of general secondary education operates to ensure the comprehensive development, education, upbringing, identification of talents, socialization of the individual, capable of living in society and civilized interaction with nature, striving for self-improvement and lifelong learning, ready for conscious life choice and self-realization, responsibility, work and civic activity, caring for family, their country, the environment, directing their activities for the benefit of others and society (the concept of General Secondary Education).

The State Standard of Primary Education (2018) defines the comprehensive development of a child, his talents, abilities, competencies and cross-cutting skills in accordance with age and individual psychophysiological characteristics and needs, value formation, development of independence, creativity and curiosity. The state standard of primary general education is developed in accordance with the purpose of primary school, taking into account the cognitive abilities and needs of primary school students, determines the content of primary general education, which is based on universal values and principles of science, multiculturalism, secular education, systematics, integration, unity on the principles of humanism and morality, democracy, civic consciousness, mutual respect between nations and peoples in the interests of man, family, society, state (the State Standard of Primary Education).

The State Standard of Basic Secondary Education (2020) defines the purpose and principles of the educational process in basic secondary education institutions, gives a general description of the content of education, explains the requirements for compulsory learning outcomes and guidelines for their evaluation. In the state standard, one of the main tasks of general education is: introduction of children into the world of moral and ethical values; formation of moral and ethical ideas and feelings; formation of skills to give a moral and ethical assessment of situations, based on their own experience; education of positive moral and volitional qualities (Concept of the New Ukrainians School).

The state national program "Education" ("Ukraine of the XXI century") aims to form a worldview, legal, moral, political, artistic and aesthetic, economic, environmental culture; acquisition by the young generation of social experience, inheritance of spiritual heritage of the Ukrainian people, achievement of high culture of interethnic relations, formation in youth regardless of nationality of personal traits of citizens of the Ukrainian state,

developed spirituality, physical perfection, moral, artistic, legal, labor, ecological culture (The state national program "Education").

The main purpose of national education at the present stage is the transfer to the younger generation of social experience, richness of spiritual culture of the people, its national mentality, originality of worldview and on this basis the formation of personal traits of a citizen of Ukraine, which include national identity, developed spirituality, moral, artistic and aesthetic, legal, labor, physical, environmental culture, development of individual abilities and talent. The purpose of the Concept of national-patriotic education is to ensure: the process of human education in the unity of intellectual, moral and civic (Convention on the rights of the child).

The national strategy for the development of education in Ukraine until 2021 is to build an effective system of national education based on universal, multicultural, civic values, ensuring physical, moral, spiritual, cultural development of the child, the formation of socially mature creative personality, citizen of Ukraine and the world. preparing young people for a conscious choice of life. The core of the state humanitarian policy on national education should be the provision of civic, patriotic, moral, labor education, the formation of a healthy lifestyle, social activity, responsibility and tolerance (Oleksenko *et al.*, 2018).

National program for the education of children and students in Ukraine (2004) determines the moral and spiritual development of children and students. Their preparation for active, creative, socially significant, full of personal meaning of life is the most important component of the development of society and the state. Modern education must play a leading role in the democratic process, become a means of reviving national culture, stopping moral and spiritual degradation (Kononko, 2008).

In modern regulations, the meaning of many modern terms related to the educational process is substantiated. Thus, education - the process of involving the individual in the assimilation of values produced by mankind, creating favorable conditions for the realization of its natural potential and creative attitude to life, aimed at establishing socially significant norms and rules of personal behavior. A pupil is a subject of the educational process who consciously assimilates moral and spiritual values, on the basis of them nurtures his own personal possessions, makes independent decisions, assumes his responsibility, makes conscious life choices (New technologies of education: collection of sciences).

Educational learning - the organization of the learning process, which provides an organic relationship between vital knowledge, skills and abilities and experience of moral and creative activities of the individual, emotional and value attitude to the world and himself. Spiritual values - works of the human spirit, recorded in the achievements of culture, science, morality,

art. Morality - objectified morality, a special kind of practical activity of the individual, which is motivated by moral ideals, beliefs, principles. Moral and spiritual development is the process of mastering a person's humanistic moral values, which are the core of his spiritual culture (Nechiporenko, 2017; Oleksenko, 2017).

The concept of media education is aimed at protecting public morals and human dignity, resists cruelty and various forms of violence, promotes universal values, including the values of the individual to society and the state, people, nature, art, labor and himself.

Conceptual bases of development of pedagogical education of Ukraine and its integration into the European educational space (2004). The purpose of the development of pedagogical education is to create a system of pedagogical education, which on the basis of national heritage of world importance and established European traditions provides the formation of teachers capable of professional activities on democratic and humanistic principles, to implement educational policy as a priority function of the state, aimed at the development and self-realization of the individual, meeting its educational and spiritual and cultural needs, as well as the need to be competitive in the labor market.

In September 2009, the Ministry of Education and Science of Ukraine developed the Concept of National Education, which defines the main provisions of educational policy, the content of the national idea, which is the basis of national education of youth, principles, goals and objectives of national policy in education. directions. However, it is necessary to develop an effective mechanism for implementing the provisions of regulations relating to the education of youth, which will ensure the effective assimilation of the younger generation of cultural heritage of different peoples, while preserving the Ukrainian national identity (the Concept of raising children and youth in the National Education system).

The concept of the New Ukrainian School (2016) is a radical reform that will stop negative trends, turn the Ukrainian school into a lever of social equality and cohesion, economic development and competitiveness of Ukraine. A powerful state and a competitive economy will be ensured by a community of creative people, responsible citizens, active and enterprising. Such citizen should be prepared by the secondary school of Ukraine.

The central place in the education system belongs to the secondary school. Unlike the university, the school can still balance the imbalance in children's development. The worldview is based on the family and the school. The personality, its civil position and moral qualities are formed at school. Here it is decided whether a person wants and will be able to learn throughout life (the concept of the New Ukrainian School).

The document on some issues of the organization of the educational process in 2021-2022 states that the political and social processes taking place in Ukraine and aimed at establishing the democratic foundations of the state, necessitate appropriate changes in all spheres of the economy, including branch of education, a component of which is education. The principles of state policy in the field of education and the principles of educational activities are: the unity of education, upbringing and development.

Education is organically combined with the process of teaching children, mastering the basics of science, the richness of national and world culture. Further concretization of the conceptual foundations of the role of education in the formation of democratic citizenship of young people was carried out in the National Doctrine of Education Development. In determining the purpose of state policy on education, it is emphasized that its main directions are: "creating conditions for personal development and creative self-realization of every citizen of Ukraine, educating a generation of people able to work and learn effectively throughout life, preserve and enhance national culture and civil society, to develop and strengthen a sovereign, independent, democratic, social state as an integral part of the European and world community".

Considerable attention in the doctrine is paid to the national character of education and national upbringing, the purpose of which is "education of a conscious citizen, patriot, gaining social experience, high culture of interethnic relations, formation of youth needs and ability to live in civil society, spirituality and physical perfection, labor, ecological culture". Civic education together with patriotic education is considered as a component of national education (Boyko,1996).

Based on the concept of school development, a modern school should be the first and main link in the education and upbringing of the younger generation. The implementation of full-fledged effective changes in the activities of the school is impossible without a high level of scientific and methodological support and creative teachers.

The concept of the school is based on the Laws of Ukraine "About Education", "About General Secondary Education", the National Doctrine of Education Development in the 2nd century, the Resolution of the Cabinet of Ministers of Ukraine "About the transition of secondary schools to a new content, structure and 12-year term", other legislative documents governing the activities of educational institutions. The concept of school development determines the main ways of change that occur in the structure, content and forms of organization of educational activities of the institution.

The draft concept of education development for 2015-2025 highlights the systemic reform of education, which should be the subject of public

consensus, the understanding that education is one of the main levers of civilizational progress and economic development. The reform should result in a comprehensive transformation of the education sector. Education must become a system capable of self-regulation - in line with the ever-changing challenges of social development. Education must become an effective lever of the knowledge economy, an innovative environment in which pupils and students acquire the skills and abilities to independently acquire knowledge throughout life and apply this knowledge in practice.

Education should produce individuals capable of accelerating economic growth and cultural development of the country, conscious, socially active citizens, competitive in European and world labor markets. Education should be a real guarantee of ensuring high social standards. The implementation of these common tasks for all education should be carried out in different ways - through a variety of educational institutions, forms and methods of teaching, the introduction of modern management (the Concept of National Education of Student youth).

Based on the given analysis of the documents that form the legal basis of modern state policy in the field of education in Ukraine, we can conclude that Ukraine has formed a sufficient legal framework for the implementation of strategic education in the national education system for democratic citizenship, which includes human rights education, civic education, intercultural education and the study of peace. Education is one of the state functions and is closely connected with the socialization and development of the individual, so the state educational policy is a component not only of educational policy. Consider the place of education in the structure of public policy.

First, the socio-cultural development of modern Ukrainian society is characterized by changes in relations between people, the system of common cultural values, norms and rules of conduct (Dodon, 2008), and education remains an effective means of influencing the development of the individual and society as a whole. Secondly, it is well known that a special place in society has always been occupied by young people as the most mobile, energetic and promising segment of the population (Gutsalova, 2009), and education is an important aspect of youth socialization. Third, education is one of the most important factors in the development of society and its development is one of the priorities of the state.

The educational process organically combines educational and upbringing component. All components of state activities in the field of education must be coordinated, for example, programs of educational activities of higher education institutions are approved by the Ministry of Education and Science of Ukraine, and activities conducted jointly by several ministries or departments are agreed by all participants in public education policy. The state educational policy is implemented according to

a clear hierarchy. Thus, the management decision on a certain aspect of the educational process, adopted by the Ministry of Education and Science of Ukraine, is executed according to the established hierarchy of powers by the relevant structural units (departments).

However, the difference between the educational policy of the state from other types of state political is its conditionality by the vectors of social development. On the one hand, Ukraine's accession to The Bologna Process poses to the state the task of multicultural education of youth, the formation of critical thinking of the individual, tolerance, openness to other cultures. On the other hand, the system of education of the young generation should be based on the national idea, based on the main achievements of the spiritual heritage of the Ukrainian people (Shcherban, 2005; Danilyak, 2014).

The defining feature of the state educational policy is its ideological content, because it is the educational ideology that is the basis for the implementation of the educational function of the state. V. Lola defines state ideology as a system of ideas, ideals, norms and values that reflects the peculiarities of society, on the basis of common interest determines the state goal, acts as an ideological and value basis for the formation of theories and concepts of state building and finds practical implementation in state development programs. (Lola, 2007).

However, we consider inaccurate the definition of the state ideology of human education as a system of methods and measures aimed at the systematic reproduction in new generations of citizens of state and social values, the formation of state consciousness. In our opinion, the system of state methods and measures aimed at educating young people is designed to implement the state educational ideology and implement the state educational goal. Scientific achievements of A. Gutsal, V. Korzhenko, V. Lola, V. Piskun, P. Shcherban and other scientists in the field of political science, philosophy of politics, political history and public administration allow to determine the main components of the ideological content of state educational policy (Gutsal, 2000; Korzhenko, 1998; Lola, 2007; Piskun, 2008; Shcherban, 2005):

- national educational idea as a generalized experience of the Ukrainian people in education and the ideal image of an educated Ukrainian;
- Ukrainian educational system as a system of views, beliefs, ideals, traditions, customs, created over the centuries by the Ukrainian people and designed to form worldviews and values of youth;
- educational ideal as a system of norms and values that are learned during education and become value orientations and motivational basis of the young person;

- educational goal is to form a holistic personality of a citizen - a patriot of Ukraine, which combines intellectual potential, spirituality, life competence and high professionalism, a person with a stable system of values and beliefs that determine the style and way of life.

With the proclamation of Ukraine's independence, recognition of education as a priority area of socio-economic, spiritual and cultural development of society, enshrining at the constitutional level the right of everyone to free development of his personality, education, formation and implementation of state policy in education, the functioning of education for domestic pedagogical science and state-building practice. It so happened that the Ukrainian state inherited a fairly developed Soviet educational infrastructure. According to the Law of the USSR "About Education" of May 23, 1991, it had 1242 vocational, 735 secondary special and 156 higher educational institutions, postgraduate and doctoral studies in 300 scientific specialties, 518 educational institutions and departments of advanced training and retraining. In terms of numbers, the network of higher education institutions in Ukraine corresponded to the level of most developed countries. Ukraine has a task to ensure a high level of education, taking into account modern scientific achievements and advanced methods of teaching disciplines. State policy in the field of education appears as an integral part of the establishment and provision by the state of human rights and freedoms and their guarantees (Belcheva *et al*., 2019).

Among the most important types and kinds of public policy as a multi-vector system that reproduces the dynamic unity and interaction of priority areas of society, public policy in education (state policy in education) appears as an integral part of the establishment and protection of human rights and freedoms. and their guarantees. With the adoption of legislation on education, the Basic Law - the Constitution of Ukraine, approval of strategic documents for the development of education, especially the National Doctrine of Education, it is aimed directly at ensuring human and civil rights to free development of their personality, education (Articles 3, 23, 53 of the Constitution of Ukraine).

In this context, it is extremely important to create conditions for the comprehensive development of man as a person and the highest value of society, the development of its talents, mental and physical abilities, education of high moral qualities, formation of citizens capable of conscious social choice, enrichment of intellectual, creative, cultural potential of the people, providing the national economy with skilled workers, specialists (Law of Ukraine "About Education").

According to the National Doctrine of Education Development, which defines a system of conceptual ideas and views on the strategy and main directions of education development in the first quarter of the XXI century, the goal of state policy on education development is to create conditions

for personal development and creative self-realization, able to work and learn effectively throughout life, to preserve and enhance the values of national culture and civil society, to develop and strengthen a sovereign, independent, democratic, social state as an integral part of the European and world community (Nikitenko et al., 2021).

Achieving this goal of the state policy on the development of education is combined with the implementation of the basic principles of domestic policy in the humanitarian sphere established by the Law of Ukraine "About the Principles of Domestic and Foreign Policy". Among the latter is the creation of appropriate conditions for increasing the educational potential of Ukraine, ensuring equal access of citizens to quality education regardless of place of residence, property status and financial capabilities; improving the education system, providing quality preschool, complete general secondary, vocational, higher education in state and municipal educational institutions, increasing the prestige of the work of pedagogical and scientific-pedagogical workers, support for gifted youth; increasing the role of higher education and science as the basis for the formation of an effective "knowledge economy" in Ukraine; reforming and developing the domestic system of higher education and science, ensuring their integration into the European and world educational and scientific space, introduction of the principles and standards of the Bologna Process in higher educational institutions of Ukraine (The National Doctrine of Education Development).

State policy in the field of education is based on the basic principles of education in Ukraine, which according to the Law of Ukraine "About Education" are: priority of education as a sphere of society, accessibility for every citizen of all forms and types of educational services provided by the state; equality of conditions of each person for full realization of his abilities, talent, comprehensive development; humanism, democracy, priority of universal spiritual values; organic connection with world and national history, culture, traditions; independence of education from political parties, public and religious organizations; scientific, secular nature of education; integration with science and industry; relationship with education in other countries; flexibility and predictability of the education system; unity and continuity of the education system; continuity and diversity of education; combination of public administration and public self-government in education (Sukhomlinska, 1998; Demyanchuk, 2000).

State policy in the field of education is an integral part of national policy, as everything that happens in society, nature, development of human culture, and in one way or another affects the formation and growth of educational policy, the functioning of the education system as a whole (Melnyk, 2015). On behalf of the state, the policy in the field of education in Ukraine is determined by the Verhovna Rada of Ukraine in accordance with the Constitution of Ukraine and implemented by executive bodies and local

governments, including by establishing and ensuring state educational standards. State educational standards are developed separately for each educational and educational-qualification level and approved by the Cabinet of Ministers of Ukraine. They shall be reviewed and re-approved at least once every ten years (Tokovenko, 2001).

In modern Ukrainian pedagogy, the moral education of primary school children is closely related to the national, which is defined in a number of policy documents that provide regulatory and legal support for the continuous educational process in the family and school. In particular, these are: the Concept of education of children and youth in the national education system, the Concept of national education, the National doctrine of education development of Ukraine in the XXI century, the National program of education of children and students in Ukraine and others.

Conclusions

Finally, it should be emphasized that many more aspects of child rearing in Ukraine need further in-depth research. State policy of Ukraine and legislation are aimed at improving education. Emphasis is placed on the implementation of the following areas: national, patriotic, moral, civic. All institutions are working on the development and implementation of new, meaningful projects and programs to improve education. Everything is aimed at personal development. The only goal of all educational institutions is to educate a healthy, socially adapted, comprehensively developed person with high intellectual, creative and spiritual potential.

The state performs an educational function in society, public policy is part of socio-cultural, youth and educational policy. However, the peculiarities and significance of education as an object of public administration allow us to separate the state educational policy into a separate type of political activity of the state. State educational policy is a systematic purposeful activity of public authorities and public self-government in educating the younger generation.

Its characteristic features are coherence, hierarchy, orderliness, competence of the relevant state departments in the field of education and the presence of their powers, which gives the results of their activities the status of official. The directions of further research, in our opinion, should be to reveal the essence of education as an object of public administration, the characteristics of the subjects that carry out such management for the educational process and develop a model of effective formation and implementation of state educational policy in modern Ukraine.

State policy in the field of education is aimed at protecting human rights. The state is accountable to man for his activities. The directions of public policy in the field of education were the principles of humanistic pedagogy, formulated in the laws of Ukraine "About Education", "About General Secondary Education", "About Preschool Education", "About Extracurricular Education", "About Vocational Education", the National Doctrine of Development education, the UN Convention on the Rights of the Child. The methodology of education embedded in them gives priority to the developed personality, its vital and professional self-determination, self-realization, life creation in accordance with national values and in the context of the idea of integration of the Ukrainian state into the European space.

The development and adoption of the National Program for the Education of Children and Student Youth in Ukraine is an important and effective scientific basis for the implementation of public policy in the field of education; it determines the strategy of educating the younger generation in the context of the formation of civil society in independent Ukraine. The program is aimed at implementing the social function of education - ensuring the continuity of spiritual and moral experience of generations, preparing individuals for successful life.

The presence of these problems necessitates the introduction and implementation of a unified policy in the field of moral education in Ukraine. Systematic and coordinated actions of public authorities, local governments and the public in this direction contribute to the unity and consolidation of Ukrainian society. The comprehensive development of man, which is the main purpose of education, includes mental, moral, labor, aesthetic and physical education in their inseparable connection, interdependence and interdependence. Each of these areas has its own content and specific tasks.

Among the educational areas today the most relevant are civic, national, patriotic, moral, labor education as the main components of national-patriotic education, as fundamental, meeting both the urgent requirements and challenges of today, and lay the foundations for the formation of consciousness of present and future generations, which will consider the development of the state as a guarantee of personal development, based on the ideas of humanism, social welfare, democracy, freedom, tolerance, balance, responsibility, healthy lifestyle, readiness for change and fulfillment of the duty to protect the independence and territorial integrity of Ukraine.

The most important questions are the questions of codification of legislation in the field of education, as it involves the processing and consolidation of regulations, the elimination of multiple regulations and to overcome inconsistencies. The realities of today require constant updating of legislation, despite a solid legal framework. Education policy is formed taking into account the commitments made by Ukraine to the international community, the European Union and global trends in education.

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Cuestiones Políticas Vol. 40, N° 73 (2022), 937-954
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Prueba indiciaria en el delito de Hurto con agravantes en la justicia peruana

DOI: https://doi.org/10.46398/cuestpol.4073.54

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Resumen

El objetivo del estudio fue determinar la relación directa entre los datos descritos como indicios, y sentencia condenatoria en una Corte Superior de Perú tipificada en los artículos 185 y 186 numerales 1, 2,3,4,6 y 9. La metodología utilizada es básica y relacional; se trabajó una ficha para lograr la base de datos del delito, junto a los tipos de indicios que han fundamentado la sentencia condenatoria. No ha existido flagrancia delictiva. Lo que caracteriza a la prueba indiciaria, no es el hecho objeto del delito, por el contrario, lo es otro intermedio que, a través del raciocinio del nexo causal y nomotético, permite acreditar lo que se pretende probar en juicio. Son 14 expedientes analizados, con sentencia firme. En los resultados destaca que existe correlación entre privativas de libertad (100%) e indicios. En el análisis de casos hay 41 indicios encontrados de 84 posibles, el cual representa el 48.8%. También hay entre uno a cinco indicios por expediente con una media de tres por caso. Siendo el indicio de oportunidad y del móvil delictivo que se repite en el 72% de ellos. Se concluye destacando que hay relación en términos de causa y efecto entre indicios y sentencia condenatoria.

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Recibido el 14/03/2022 Aceptado el 29/05/2022

Palabras claves: indicios; relación causal; sentencia condenatoria; hurto con agravantes; justicia peruana.

Evidence indicating the crime of aggravated theft in the Peruvian justice

Abstract

The objective of the study waste determines the direct relationship between the data described as indications, and a conviction in a Superior Court of Peru typified in articles 185 and 186 numerals 1, 2,3,4,6 and 9. The methodology used is basic and relational; a file was worked to achieve the database of the crime, along with the types of evidence that have supported the conviction. There has been no criminal flagrante delicto. What characterizes the indicia evidence, is not the fact object of the crime, on the contrary, it is another intermediate that, through the reasoning of the causal and nomothetic nexus, allows to prove what is intended to prove in trial. There are 14 files analyzed, with a final judgment. The results highlight that there is a correlation between deprivation of liberty (100%) and indications. In the analysis of cases there are 41 indications found out of 84 possible, which represents 48.8%. It also has between one to five indications per file with an average of three per case. Being the indication of opportunity and the criminal motive that is repeated in 72% of them. It concludes by highlighting that there is a relationship in terms of cause and effect between evidence and conviction.

Keywords: indications; causal relationship; conviction; aggravated theft; Peruvian justice.

Introducción

Se omite valorar de forma metodológica una prueba indiciaria. ¿Cómo es que se construye una prueba indiciaria?, ¿cómo opera el llamado puente inferencial? este puente inferencial. Esta regla lógica, es aquella que nos va a permitir unir entre un hecho conocido y un hecho que se desconoce y que se pretende probar como si fuese cierto, se llama hecho indiciario y el hecho indicado (García, 2010). Tiene que haber una unión entre aquello que se conoce y aquello que es desconocido mediante un puente inferencial, además de una máxima de la experiencia (Recurso de nulidad 1802-2017-Huánuco, 2017) o un juicio probado, de esa forma es cómo se construye una prueba indiciaria (Recurso de nulidad 2049-2014-Lima, 2014).

La prueba indiciaria tiene tres partes, (Acuerdo plenario 1-2006/ESV-22, 2006), en el fundamento 4º está en primer término, que el hecho base tiene que estar plenamente probado tiene que ser un hecho cierto, el indicio tiene que partir desde un evento que evidentemente pueda ser verificado en la realidad. El indicio no puede ser una sospecha. Cabe hacer esa aclaración terminológica entre un indicio, una sospecha, o una presunción. Dado que el vocablo indicio a veces se confunde con una presunción o quizás con una sospecha. Se sabe que cuando nos referimos a sospecha siempre trae a colación sus niveles. Ello en un estándar probatorio. Y cuando se habla de presunción se puede confundir con la presunción de inocencia.

Entonces un indicio es una base, una plataforma para la investigación criminal ese es el sentido conceptual del término lógico de la palabra indicio y de ello deviene la prueba indiciaria. El hecho, llamado indicio tiene que ser enteramente demostrado por elementos probatorios en inverso sería aprensión, una corazonada. Las máximas de la experiencia tienen que estar sustentadas en datos objetivos y no en subjetividades (Casación 1-2017, 2017)

Asimismo, el acuerdo plenario nos refiere que estos indicios estos hechos tienen que ser plurales no solamente tiene que haber un solo indicio, tienen que ser varios, pero ello no es una prohibición, para que en un caso en concreto exista solamente un indicio siempre y cuando tenga una singularidad que este indicio tenga una fuerza acreditativa suficiente para poder terminar de enlazar ese puente entre el hecho conocido y un hecho desconocido. Los indicios tienen que ser concomitantes, los hechos son de manera paralela temporal precisándonos en un espacio temporal, también geográfico, de lugar, que sea durante el desarrollo de los hechos delictivos, en ese mismo lapso temporal de nada nos va a servir indicios que sean anteriores a la comisión de los hechos delictivos tienen que ser combinada, concordante al factico que se pretende demostrar.

Tienen que ser del entorno, se va tratar de entrelazar indicios que estén alejados al lugar de los hechos delictivos. Una de las características, también, de una prueba indiciaria es que tienen que estar interrelacionados , tienen que ser como un engranaje, si una pieza se sale, deja de funcionar la maquinaria, en ese sentido es una pluralidad de indicios (Recurso de nulidad 409-2018/Pasco, 2018), si son concomitantes pero no se interrelacionan entre ellos pues de nada va servir lo que nos dice el acuerdo plenario

El delito de hurto contenido en el artículo 185 y sus circunstancias agravantes del artículo 186 numerales 1 a 6 del Código Penal, se incrementa y afecta a toda la población del Distrito Judicial de Moquegua. En el informe policial que solicita el Comité Regional de Seguridad Ciudadana - CORESEC Moquegua (CORESEC, 2019) se ha consignado que en el año 2016 se han registrado a nivel de denuncias 622 casos, en el año 2017 se incrementó a 664 y en el año 2018, a 754 casos; representando en estos

últimos tres años 20140 denuncias sobre este delito. De cada 228 personas, una es afectada en su patrimonio y de cada 57 familias un integrante es considerado víctima.

Los resultados de victimización en localidades de más de 20 mil personas. Moquegua tiene una tasa del 15.1%-, con lo cual se puede afirmar que unas 3000 personas han sido víctimas de algún delito. (Instituto Nacional de Estadística e Informática, 2021). El delito de hurto con circunstancias agravantes. Entre enero y Julio del 2019, fue cometido 95 027 veces que representa el 54% de un total de 176 887 de delitos que afectaron el bien jurídico patrimonio. El delito de robo fue denunciado 57 606 veces, la apropiación ilícita 1763, estafas y otras defraudaciones 5 898, (Instituto Nacional de Estadística e Informática, 2021)

En esta oportunidad, se revisarán 14 casos con sentencia condenatoria como unidades de estudio del trabajo de investigación. La prueba de cargo y una mala justificación, en los delitos de hurto con circunstancias agravantes contenidos en el CP. El objeto de estudio (En la noche, con rotura de obstáculos, con desgracia del afectado, en los bienes muebles del viajero, sobre vehículo automotor). La inexistencia de los contraindicios ha originado una inferencia categórica, en 14 Sentencias de primera instancia que han sido confirmadas por Sentencias de Vista, ello no permite a las instancias de mérito pronunciamiento alguno sobre el objeto del debate procesal.

1er caso: Expediente 7-2014 ILO, los acusados son: JLMA, JAHM y JCHM; la agraviada es la empresa JVTSAC. Hechos: Con fecha 25-07-2012, los acusados ingresaron a CETICOS ILO y sustrajeron diversos accesorios (como mandos eléctricos, memoria, consola, caja de fusibles, etc.) de un vehículo, de propiedad de la agraviada, luego de lo cual, se dieron a la fuga. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 inc. 3 y 6 del CP. Sentencia de 1ra instancia: Se les declaró coautores del delito, se les condenó a 04 años de PPL y una reparación de 5 mil soles. Apelación.

El acusado JCHM, alegaba inocencia ya que al momento de los hechos se encontraba en diferente lugar a los hechos (en Tacna), Se le atribuyó ser "campana". Manifestó que, no ingresó a CETICOS, pues no aparece en el libro de visitas, como sí aparecen sus coimputados; tampoco se le ve en los videos, no hay prueba directa ni suficiente (indicio de mala justificación). Postura del MP en instancia de grado: El Fiscal Superior sostuvo que el acusado, si estuvo en CETICOS, existe un acta de visualización y la sindicación de su coimputado; existen indicios plurales y convergentes, solicita se confirme la recurrida. Sentencia de Vista: Se confirmó la sentencia apelada (Indicio de oportunidad, de mala justificación, capacidad delictiva, móvil delictivo).

2do caso: Expediente 25 2014, Acusados EWYA, WYMB y LMCT, Agraviado JAJ Gerente de la empresa Mili Tours SRL. Hechos: Se atribuye a los acusados que el 09-01-2014 al mediodía por inmediaciones del mercado de abastos del distrito de Samegua, divisan el vehículo con placa de rodaje A5J - 964 marca Hyundai, acuerdan que WYMB sería quien debería sustraer la «memoria», EVYA haría de "vigía" mientras que LMCT se quedaría en el vehículo con placa A6F - 383 presto a emprender la fuga. El acusado WYMB es sorprendido por el agraviado, y huyen de la escena del delito. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 numerales 1 y 8, siendo el grado de ejecución tentativa (artículo 16) del Código Penal. Sentencia de 1ra instancia: Se les declara como autores y responsables del delito y se les impone 7 años y medio de PPLE. Apelación: La defensa de EVYA solicitó la revocatoria de la condena, al haberse dado mayor valor en juicio oral a las declaraciones previas prestadas por los coacusados. Postura del MP: El Fiscal Superior, solicitó se confirme la sentencia. Sentencia de Vista: El recurrente no ha sabido justificar su presencia en los hechos ni dar razones de porqué cuando supuestamente escuchó de su coacusado WYMB, la voz de ¡corre, corre!, es que corrió y subió al vehículo, huyendo del lugar sino tenía responsabilidad alguna. Se confirmó la impugnada. (Indicios de oportunidad, capacidad delictiva-fuga, móvil delictivo)

3er caso: Expediente 33-2011. Acusado: MTHM y agraviado MAMC. Hechos: El 12-04-2010, el acusado conjuntamente con otras 2 personas, a bordo de un automóvil fueron al domicilio del agraviado ubicado en la avenida San Antonio de Pampa Sur, Manzana J-1, Lote 41, Asociación EI Trébol» del Centro Poblado San Antonio, lugar del que sustrajeron doscientos kilogramos de cochinilla seca, valorizada en la suma de veinte mil dólares americanos. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 numerales 1,2 y 4 del Código Penal. Sentencia de 1ra instancia: Se declara al acusado como autor y responsable del delito, se le impone 4 años y 6 meses de pena y 39 mil soles de reparación civil. Apelación: El sentenciado, niega su participación en los hechos, debido que el día en que ocurrieron, se encontraba en la Provincia de llo, existe duda acerca de cuántas personas participaron. (Indicio de mala justificación, indicio de móvil delictivo). Postura del Ministerio Público: El Señor Fiscal Solicita se confirme la sentencia condenatoria. Sentencia de vista: Confirman la apelada, basados en el Indicio de modus operandi, mala justificación y móvil delictivo).

4to caso: Expediente: Nro. 38-2014, de ILO. Acusados: HCHL, RRMC; agraviadas NHH y SHA. Hechos: El 01-07-2012 los acusados ingresaron a un canchón ubicado en la parte posterior de los kioscos de las agraviadas, rompieron y retiraron planchas de madera cada puesto (Nº 30 y Nº 32 respectivamente) y pusieron en un maletín víveres y comestibles (como gaseosas, bebidas rehidratantes, fideos, harina, leche, etc.), alistándolos para

llevárselos; ambos fueron capturados por los vecinos. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 numerales 1 y 6. Sentencia de 1ra instancia: Se les declaró como autores y responsables del delito de hurto con circunstancias agravantes imponiéndose 3 años y 06 meses de pena y 500 soles de reparación civil.

Impugnación: RRMC impugna, manifestando que sólo se encontraba durmiendo en el techo, el día anterior bebió, tenía una lata de leche, la maleta no se encontraba a su costado (Indicio de mala justificación). Postura del Ministerio Público: La Fiscal Superior, Los acusados estaban en posesión de los bienes, solicita se confirme la sentencia. Sentencia de vista: No se ha desvirtuado la circunstancia que ha sido intervenido, dormido y junto a la maleta que tenía los productos sustraídos (Indicio de oportunidad y móvil delictivo). Se ha producido una circunstancia atenuante privilegiada como es el grado de ejecución, tentativa. La pena debe ser 03 años y 03 meses.

5to caso: Expediente 121-2012. Acusados: PMCH, GMCH, agraviada FNRG. Hechos: El 05-02-2012, a horas 03:00 los acusados ingresan al domicilio ubicado en Asociación Alto Tiwinza E – 11, de propiedad de doña FNRG, siendo sorprendidos por la vecina de la agraviada. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 numerales 2,3 y 6. Sentencia de 1ra instancia: Los acusados fueron condenados como coautores y se les impuso 01 año de pena suspendida y reparación civil de 126 soles. Sentencia de vista: Se concluyó que el ingreso de los acusados se produjo, justamente para sustraer las calaminas que se encontraban apiladas en el lote de la agraviada (tentativa). (Indicios de oportunidad, mala justificación, de móvil delictivo)

6to caso: Expediente: 200-2013. Acusado ICCH y YRAH como agraviado. Hechos: Se le atribuye ICCH ingresar el día 02-09-2012 a horas de la madrugada, al domicilio del agraviado -quien se encontraba ebrio y dormido, por la puerta abierta, y sustrajo un televisor, un DVD, una cocina de mesa y un balón de gas. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 numerales 1 y 2 del Código Penal. Resolución del Aquo: Se le impuso al acusado 3 años de PPL efectiva. Apelación: El Ministerio Público recurre la sentencia y solicita su revocatoria, imponiéndosele al acusado 4 años y 6 meses de Pena. El agente es proclive a la delincuencia. Resolución del Aquem: Se sostuvo que un factico demostrado es que el acusado fue encontrado durmiendo en su domicilio con los bienes sustraídos, y con las zapatillas que dejaron las huellas que sirvieron para ubicarlo. Se incrementó la pena, al acreditarse la huida del lugar luego de ejecutar el delito. (Indicios de modus operandi y capacidad moral).

7mo caso Expediente Nro. 334-2012. Acusado MACR, agraviados NVF y JMVY. Hechos: El 12-09-2012 aproximadamente a las 2.45 de la mañana, fueron intervenidos el acusado MACR en compañía del adolescente JDRR

(17), por inmediaciones de la intersección formada por la calle Libertad y la avenida Balta de esta ciudad, luego de que rompieron la luna de la puerta posterior derecha del vehículo de placa Z4Q-688, de propiedad de JBCHP conducido por NVF. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 186 inc. 3 y 6 del CP. Sentencia de 1ra instancia: Se condenó a 04 años de PPL y reparación de 200 soles (el menor no fue juzgado). Sentencia de Vista: Se concluyó que la declaración del sereno y el acta elaborada, acreditan que el día de los hechos los bienes sustraídos se encontraron en poder del imputado y su acompañante, y la rotura de una de las lunas del automóvil del agraviado. Se confirmó la condena. (Indicios de oportunidad, modus operandi, móvil delictivo).

8vo caso: Expediente 427-2012. Acusada VPCT, agraviado MRHV. Hechos: El 20-11-2012, luego de sostener relaciones sexuales con el agraviado doña VPCT se retiró del domicilio con la billetera del primero nombrado; esta contenía 200 soles, 01 DNI y la tarjeta multired. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y 186 inc.1 y 2 del CP. Resolución del Aquo: Se impuso a la imputada 4 años de PPL y una reparación de 300 soles. Sentencia de Vista: Confirmaron la recurrida. (Indicios de oportunidad, modus operandi y móvil delictivo).

9no caso: El expediente: 24-2017, teniendo como acusado a NBJA y como agraviada a MLL. Hechos: Que, el día 11-01-2017, el acusado estaba sustrayendo y sacando el autorradio y la consola del vehículo de propiedad de la agraviada, quien, junto a su esposo, dan aviso a la policía, e impiden que el imputado salga del interior del vehículo. Sentencia de 1ra instancia: Lo declara autor del delito, y le impone 06 años de pena efectiva y una reparación de 500 soles. Sentencia de Vista: fue calificado de tentativa, se acreditó que el imputado tiene la calidad de delincuente habitual.

10mo caso: Expediente: 11-2017, Imputado: RGD y Agraviado: Parroquia Santa María de los Ángeles. El Ministerio Público imputa en contra del acusado DRG que el 31-03-2015, ingresó a la Parroquia Santa María de Los Ángeles ubicada en Nuevo Ilo y sustrajo del interior de su oficina administrativa, Una impresora HP negro/plomo serie N° TH82L545PH, Una impresa HP plomo serie N° CN27K6FJCZ, Un escáner HP plomo/azul serie N° CN367S21XX , Tres cargadores de laptop (HP, LENOVO, YHI), Dos cables de entrada USB, dinero en efectivo ascendente a mil soles, Cuatro rollos de cable, Tres cajas de víveres, Una alcancía con dinero.

11vo caso. - Expediente 133-2017, imputados MJDCHR, MJLV, EPLV; agraviados MM, JLVS, MM. EPLV, MJDCHR; Son sentenciados como coautores del delito de Hurto Agravado señalado en el 185°, 186° segundo párrafo inciso 9, concordante con el artículo 186°.1.2.5, el primer párrafo, artículo 16°, del Código Penal respectivamente; y les conden**ó** a ocho años PPL que debe ejecutarse inmediatamente. Hechos: tuvieron lugar

en fecha 07 de julio del 2017 aproximadamente a las 6:30 de la tarde, si bien el testigo no miró al inicio del robo, pensó que era el mecánico y el dueño, pero cuando se guardó algo en la casaca los persigue. La memoria se sustrajo del vehículo, abren el capote, sustraen la memoria y se van caminando y el testigo los persigue; hay "flagrancia delictiva", existen los testimonios de PF, PM y LA, uno de los imputados tira el objeto, y los agarran; no existe confusión de personas, no tenían por qué correrse los imputados Se evidencia el indicio de móvil delictivo en el presente caso, dado que se tiene como órganos de prueba a tres testigos directos. Uno de los sentenciados es reincidente, ya que el mes de abril, uno de ellos egresa de un centro penitenciario, por el delito de hurto agravado. (Indicios de mala justificación, y de móvil delictivo, de modus operandi).

12vo caso: Expediente 2011-629, Imputados: JCF, WPG y VCF; Agraviada: NVG. Hechos: Los imputados JCF, WPG y VCF antes de los hechos domiciliaban en el inmueble signada en la manzana C-0, lote A12, Modulo A sector X de la Ciudad de Majes. El 05 de diciembre del 2011, en horas de la noche los investigados salieron de su domicilio y se dirigieron al de la agraviada NVG ubicado en la "Quebradita", manzana Z lote 01, lugar de donde sustrajeron dos bicicletas marca color azul y un balón de gas, siendo que para ello han cortado los alambres que sujetaban las esteras de la vivienda y es por donde sacaron las especies. La agraviada NVG, al despertarse se percata de la sustracción de los bienes por lo que con su menor hijo siguen los rastros dejados por los imputados llegando hasta el domicilio de estos. Junto a la autoridad, intervienen en el lugar a JJMM quien señalo que los bienes los trajo su conviviente VCF. Calificación jurídica: Delito de hurto agravado, artículo 185. Sentencia N°101-2012 los imputados fueron condenados, imponiéndose 04 años de pena y reparación de 5000 soles. Sentencia de Vista: Confirmaron la sentencia N°104-2012 de fecha 01 de junio de 2012en contra del imputado VCF.

13vo caso. - Expediente: 94-2013- imputado: JEVL, Agraviado, GLR. Hechos: Con fecha 31-12-2012 entre las 19:30 a 20:00 horas la agraviada GLR se dirigió a la feria Los Incas X-001 Pasaje del distrito de José Luis Bustamante Rivero a cancelar el valor de mercadería consistente en arroz, azúcar, leche entre otros, adquiridos del puesto de venta de la denunciada EVL, así como de YYCQ que ascienden a 11 405.90 soles, y que se encontraban cargados en el interior de la camioneta de placa de rodaje PO-9444, para ser trasladados. Se apersonó la denunciada JEVL con el apoyo de 05 personas y procedió dolosamente a sustraer toda la mercadería que se encontraba cargada en el vehículo para ingresarlo a su puesto ubicado en la feria Los Incas X-100, Pasaje 3. Calificación jurídica: Delito de hurto con circunstancias agravantes contenidos en los artículos 185 y como agravante el art 186 numeral 5. Se declaró en primera instancia a JEVL, autora del delito, en agravio a GLRE, se le impuso 03 años de PPLS por el plazo de dos años y reparación civil de mil soles, debiendo además cancelar la suma de 11

405.90 soles. Sentencia de vista: Se confirma en parte la sentencia apelada.

14vo caso: Expediente 675-2014. Acusado: OGHH, Agraviado: SPCC. Hechos: Conforme se aprecia de la Acusación Fiscal, se atribuye al acusado, que, desde el mes de abril del 2012, como encargado del Almacén de Mantenimiento de Campos de Villa Botiflaca – Cuajone de la Empresa Southern Perú Copper Corporation, procedió a sustraer sistemáticamente, bienes del almacén de propiedad de la referida empresa, llevándolos hasta su vivienda, ubicada en el Block AX-001, departamento 4, donde los acopió para disponerlos posteriormente. Los bienes incautados son 87 paquetes. Sentencia de 1ra instancia: Dispone la reserva de fallo condenatorio. Apelación: Se hace mención que se interpone la denuncia de robo sin acreditar la preexistencia de los bienes vulnerando así el debido proceso. Sentencia de Vista: Se confirmó la sentencia apelada.

1. Material y métodos

El tipo de investigación fue básica, transversal, y no experimental (Arias & Covinos, 2021). De nivel relacional. Es Bivariado. En este caso la prueba indiciaria y las sentencias condenatorias. La población está constituida por 14 expedientes de hurto agravado de la judicatura peruana (San Martín, 2017). La muestra (Bernal, 2006) a un error del 1% son 14. Se emplea la técnica de la observación (Arias, 2020) con ficha para el recojo de información. Se procesa la misma con el software Excel con el coeficiente de Pearson.

2. Resultados

La Tabla 1 muestra que en los 14 casos no existe flagrancia y tuvieron sentencia condenatoria. Entonces cada uno de los expedientes tiene un contenido de indicios que ha permitido que el colegiado falle en 14 sentencias condenatorias, pero esta ha sido en base a indicios, como se verá en los análisis que se han realizado.

Como se observa en los expedientes en la Tabla 1 se puede señalar que con una media de 3 indicios se han sentenciado a los imputados. Desde un indicio hasta y máximo de 5 indicio. La moda estadística de indicios está en 3 y 4 indicios. Se debe decir que se llega a la premisa anterior porque ninguno de los casos se apresa al delincuente en flagrancia.

Tabla 1. Tipos de indicios y expedientes de hurto agravado en la CSJM

Expediente (Caso Nª)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total	%
Indicio de Oportunidad	1			1	1		1	1	1	1		1	1	1	10	71.4
Indicio de mala justificación.	1			1	1					1	1	1			6	42.9
Indicio de modus operandi (Informe Acta de reconocimiento)	1		1				1			1	1	1			6	42.9
Indicios de capacidad delictiva (Coimputados reconocen imputado)	1	1							1					1	4	28.6
Indicio de móvil delictivo (Testigos)	1		1	1	1		1	1	1		1		1	1	10	71.4
Indicio de capacidad moral (Reincidencia)						1			1	1		1		1	5	35.7
Total por indicios	5	1	2	3	3	1	3	2	4	4	3	4	2	4	41	
Sentencia condenatoria	1	1	1	1	1	1	1	1	1	1	1	1	1	1		
No hay flagrancia	1	1	1	1	1	1	1	1	1	1	1	1	1	1		

Fuente: Elaboración propia

Tabla 2. Coeficientes de correlación de Pearson

Ítem de indicios	Total, por indicios
Indicios de oportunidad	0.6
Indicios de mala justificación.	0.5
Indicios de modus operandi	0.4
Indicios de capacidad delictiva	0.3
Indicios de capacidad moral	0.3
Indicios de móvil delictivo (Testigos)	0.2

Fuente: Elaboración propia

La Tabla 2 muestra que existe relación directa y moderada entre indicios de oportunidad e indicios totales en 60%, y con Indicios de mala justificación en un 50%. La relación con los otros indicios la relación es baja y muy baja.

Contrastación de hipótesis 1: Hi: Se asocia las resoluciones de condena y los indicios en la CSJ. Decisión: En los 14 expedientes con sentencia condenatoria se encontraron 41 indicios de 84 posibles. Los indicios representan el 48.8%.

Contrastación de hipótesis 2: Hi: Se ha generado asociación directa, entre las sentencias con PPLE y los Indicios de oportunidad en lo delitos de hurto agravado en CSJM. Decisión: Se han presentado 14 expedientes, de ellos (10) presentaron indicios de oportunidad caracterizados por el lugar, por el momento y por la coparticipación. Ello representa el 71.4%.

Contrastación de hipótesis 3: Hi: Se ha generado asociación directa entre las sentencias con PPLE y los Indicios de mala justificación en lo delitos de hurto agravado en CSJM. Decisión: en los 14 expedientes, se han ubicado 6 indicios de mala justificación, que son pretextos, y pésimas argumentaciones, por parte del(os) imputados, representa el 42.9%. La relación existe.

Contrastación de hipótesis 4: Hi: Se ha generado asociación directa entre las sentencias con PPLE y los Indicios de móvil delictivo en lo delitos de hurto agravado en CSJM. Decisión: De todas las sentencias condenatorias que son 14, diez de ellas tienen como declaración de prueba indiciaria a los testigos. Representa el 71.4%.

Contrastación de hipótesis 5: Hi: Se ha generado asociación directa entre las sentencias con PPLE y los Indicios de Modus operandi en lo delitos de hurto agravado en CSJM. Decisión: reincidencia es un factor que contribuye a fortalecer el indicio. Este representa el 42.9% de los casos analizados

3. Discusión

El concepto que desarrollamos es denominada prueba indirecta por muchos doctrinarios (Rosas, 2014) aunque recientemente la corte suprema indica que más que prueba indirecta podría presumirse o en todo caso tiene a veces un valor probatorio tanto como si fuese prueba directa. (Núñez, 2021), refiere en todos los ámbitos del mundo jurídico existen aspiraciones superiores que representan valores jurídicos a ser salvaguardados, de entre los cuales resaltan la justicia, el bien común y la seguridad jurídica. (Zambrano, 2020) refiere que las garantías normativas se relacionan con los principios del proceso penal, especialmente con el principio de legalidad,

La Corte Suprema en la RN 2400-2018-Junin, indica lo siguiente, se omitió hacer una valoración metodológica de la prueba indiciaria, no se valoró en conjunto esta prueba indiciaria sino que el órgano de primera instancia como el de segunda instancia dan una lectura individualizada de cada indicio que se encontró y es claro que si uno realiza un análisis individualizado de un indicio no nos va a llevar a nada a menos que nosotros lo analicemos, lo valoremos, de una manera conjunta y ese servicio, ese es el error que encuentra la corte suprema sobre esa sentencia absolutoria de primera y de segunda instancia.

Un indicio hace referencia a un hecho en concreto y sobre todo esto debe acreditarse por medio de una deducción que nos encamina a conocer un hecho o acontecimiento (Villafuerte, 2021). Para (Taruffo, 2018) un indicio viene a ser una circunstancia que nos permita lograr una deducción que te permita emitir una conclusión, y esta conclusión puede ser verdadera o como falsa de un hecho importante que permita tomar una decisión (Taruffo, 2021). Cabanellas, asume y afirma que indicios son aquellos persistentes admitidas por el magistrado en orden nomotético y por derivación de los hechos (Cabanellas, 2021). Considera (Pisfil, 2014)que un juez llega del uno al otro por medio de una conclusión muy natural (... que la definición de Fernando de Trazegnies es adecuada cuando dice: los indicios requieren del raciocinio adecuado que, por medio de una reconstrucción de un hecho cierto, superando con ciertos indicios más o menos que pueden probar algo y esto dependerá mucho de la recolección de indicios y una formulación correcta de deducciones que se basa en los indicios recolectados.

En el desarrollo de la prueba indiciaria, aporta que la meta es probar el factico constitutivo del delito o la participación del imputado (Vidaurri, 2019), siendo su pretensión desvirtuar la presunción de inocencia, para lograr una sentencia condenatoria por el órgano jurisdiccional y debiendo ser garante de los principios ineludibles de derechos humanos fundamentales. Centellas para contraponer prueba indiciaria y presunción de inocencia concluye en su documento que el indicio exige destreza intelectual al juzgador, puesto que la exigencia es que el indicio debe ser corroborado (Nuevo código procesal penal, 2007) para genera convicción cierta (Centellas, 2018), refiere que la presunción de inocencia tiene que ser desvirtuada por la prueba indiciaria y el argumento, la motivación suficiente, paso a paso el nexo lógico entre indicio y argumento. Castillo (2018) refiere que la prueba indiciaria es contundente en la detección del delito de lavado de activos. La posibilidad de no encontrar prueba directa hace necesario emplear esta metodología. Como siempre es necesario presentar elementos probatorios válidos. Para el caso los indicios de cómo se convierte el dinero, cómo se oculta el proceso, como se genera la trasferencia. La percepción es de 100 abogados. La prueba indiciaria se genera cuando el imputado esconde el umbral ilícito de los activos, de allí que su similitud con el delito de encubrimiento real.

En la STSE de 13 7 1999, indica que para acusar posesión de los bienes se requiere ubicación espacial y ubicación temporal, dado que son dos factores indispensables para sustentar el delito de hurto agravado. La casación 628-2015 Lima, exige motivación en las resoluciones mucho más cuando hay pruebas indiciarias, con juicio de razonabilidad. El Tribunal Constitucional, en el caso Giuliana Llamoja , sentencia en el Expediente 00728-2008-HC/TC, (Tribunal Constitucional, 2008) en su fundamento N° 27 hace énfasis en dar una especial motivación de las resoluciones que se emitan con prueba indiciaria. (Meneses, 2009) y (Cabanellas, 2019) indica la prueba en el derecho penal tiene un significado relacionado a la comprobación de las afirmaciones dentro del proceso judicial. El conocer la tipología de los indicios (San Martín, 2017) indica que nunca se podrán saber el número de indicios que se pueden presentar y obviamente que se está lejos de comprenderlas, en su verdadera magnitud.

En prueba indiciaria como método, que obviamente será demostrada, se emplean los silogismos más exigentes y se recurre a las máximas de la experiencia. (Quiñones, 2014), refiere el delito de hurto agravado y otros delitos contra el patrimonio se explica por los factores socioeconómicos y culturales (indicios de capacidad moral). Sin embargo, cuando realizan el trabajo de campo el factor más importante es el económico. Los encuestados reos en cárcel fueron 32 y ellos, en un 68.8% lo explica el factor económico y en un 18.8% lo explica el factor social y el factor educación lo explica en un 12.5%, con un margen de error de 5%. Quiñones utilizo el cuestionario para encontrar la percepción y se analizaron 14 expedientes.

(Otto, 2015) refiere que hay un incremento de la delincuencia y que al poder judicial no le bastan los indicios en el delito. (Carbajal, 2018), en su propuesta era demostrar que los factores psicosociales, indicios de capacidad delictiva, influyen en la conducta antisocial de los adolescentes. El trabajo se realizó con 120 internos y 60 internas de los centros juveniles del poder judicial. De ellos se vieron aspectos como el nivel educativo, donde del total solo el 1% tenía educación superior y un 12% tenía secundaria completa. Quiere decir que el 87% tenía secundaria incompleta o primaria incompleta y al interior de ella el 2% sin instrucción. La muestra tenía 180 internos, que ya llevaban más de seis meses.

Otto Laureano, refiere con 306 muestras la importancia de la seguridad ciudadana dado que demuestra que la delincuencia se ha incrementado (Curi, 2018) refiere que los magistrados fiscales no usan la prueba indiciaria en su labor de persecutor del delito, por lo general los magistrados esperan que los medios de prueba corroboren hechos para la calificación del delito. En el caso de los 14 expedientes que se analizan por indicios son claros para la calificación del delito y conlleve a una sentencia condenatoria. En la evaluación de 60 expedientes de acusación fiscal (Apaza, 2018) refiere que es poco significativo la utilización de los indicios para la acusación.

Por ello que cuando se hurga en la ficha de evaluación solo en 5 de los 60 casos, se identifica algún indicio. Y lo que se probó también, es que en esos cinco casos evaluados por indicios merecieron demostración del delito y sentencia condenatoria. En el trabajo de Apaza se observa lo valioso que es la cadena de custodia, como base para una adecuada interpretación y análisis de indicios.

Conclusiones

Se demuestra que hay relación entre sentencias condenatorias y prueba indiciaria en los delitos de hurto agravado en CSJ. Son 41 pruebas indiciarias de 84 potenciales. Ello representa el 48.8%. Con una media de tres indicios por expediente. Y siete indicios en promedio por todos los expedientes. Estos van de cuatro a diez indicios de manera transversal por los 14 expedientes. La media porcentual de indicios en los expedientes mostrados es de 49%. las correlaciones demuestran asociación del 20% al 60%.

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Cuestiones Políticas Vol. 40, Nº 73 (2022), 955-964
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Sole companies: analysis and feasibility in Iran and the United States of America

DOI: https://doi.org/10.46398/cuestpol.4073.55

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Abstract

The purpose of the article was to analyze the legislation governing sole proprietorships in Iran. Although the new draft commercial law and the existing laws in European and American companies indicate the possibility of forming a sole proprietorship, it is not possible in Iran to form a sole proprietorship under the existing regulations, especially the existing commercial law. Methodologically in the essay, based on a comparative study on American commercial law and through analytical issues, we point out that, from the analytical (not legal) point of view, the formation of such corporations not only does not face any strong obstacles, but also, it can be beneficial in various ways. We then present the benefits of the Single Corporation and finally discuss the administration and liquidation of these Corporations. Everything allows us to conclude that, the idea of forming a sole corporation is unusual in Iran, but it is also accepted by the state-owned companies. Therefore, the Iranian legislator can develop this idea and apply it to private business enterprises. However, it is noted that permission to run such companies should be considered while ensuring the rights of third parties.

Keywords: sole proprietorship; state-owned enterprise; legal entity; nominal partner; comparative analysis.

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Recibido el 14/03/2022 Aceptado el12/05/2022

Empresas únicas: análisis y viabilidad en Irán y Estados Unidos de América

Resumen

El objetivo del artículo fue analizar la legislación que regula a las empresas únicas en Irán. Si bien el nuevo proyecto de ley comercial y las leyes vigentes en las sociedades europeas y americanas indican la posibilidad de formar una corporación única, no es posible en Irán constituir una firma unipersonal bajo las regulaciones existentes, especialmente la ley comercial vigente. Metodológicamente en el ensayo, a partir de un estudio comparativo sobre el derecho comercial estadounidense y a través de cuestiones analíticas, señalamos que, desde el punto de vista analítico (no legal), la formación de tales corporaciones no solo no enfrenta ningún obstáculo fuerte, sino que también, puede ser beneficioso de varias maneras. Entonces presentamos los beneficios de la Corporación Única y finalmente discutimos la administración y liquidación de estas Corporaciones. Todo permite concluir que, la idea de formar una corporación única es inusual en Irán, pero también es aceptada por las empresas estatales. Por lo tanto, el legislador iraní puede desarrollar esta idea y aplicarla a las empresas comerciales privadas. Sin embargo, se señala que el permiso para dirigir tales empresas debe considerarse asegurando los derechos de terceros.

Palabras clave: corporación única; empresa estatal; entidad jurídica; socio nominal; análisis comparativo.

Introduction

Although forming sole corporations have been legalized in many European and American countries, and its effects have been manifested, the necessity of discussing the sole corporations or any other legal institutions in Iran is subject to society. From the first text in Iranian law on the sole corporation or company, until its entry into the legislative field has been needed for more than seventy years, although some have argued for various reasons that such a requirement is in our current legal-economic system.

But opponents or not, paying attention to lawmakers for obvious reasons has made some legal texts and theories, except a few texts, express the historical evolution of the formation of the sole corporation in the world and the existence of this company by considering the state-owned companies in Iran and so the justification for establishing such a company is not unavailable for researchers.

Therefore, in this article, despite defining a sole corporation, we try to present the ambiguities regarding the establishment of this type of company

(Sole Corporation) in Iranian law and management of the company and its system of responsibility, and the advantages and disadvantages of forming a sole company. The following pages are an attempt to summarize the reasons for the formation of a sole corporation in the US. (Abbas Niazi and Iam Kamarkhani and Mohsen Jalilian, Investigation of the sole corporation in Iranian Law by a Comparative View, Quarterly Journal of Economic Law, 2016: 2)

1. Possibility of forming a sole corporation in the legal and analytical views

Businessmen, who act as individuals, have unlimited liabilities versus third parties, and all property, including commercial and private property, is security for their debt to their creditors. These people cannot divide their property in terms of the unity of property and only partially guarantee their debt and keep any other part of it free from any interference. In such a situation, a community would easily be willing to commerce with businessmen due to his strong backing. Businessmen offset the risk of their activities from their assets while establishing a sole corporation allows individuals to operate without incurring all risks.

By establishing such companies, individuals will be able to trade their assets and impose their inexperience risks on others. In such cases, pessimism and mistrust are prevalent and to evade responsibility is provided. It is clear that the adverse effects of this method firstly affect the economy and commerce, as it increases the risk coefficient of economic activities for individuals who trade in a sole corporation. (Mahmoudi, paper on the possibility of forming Sole Corporation, 2003).

By according the above-mentioned, it may be argued that various provisions of the Commercial Code, such as Articles 190, 183, 162, 141, 116, 94 of 1311, require the cooperation and participation of at least two persons to form a limited, relative and partnership limited liability Company. Articles 107 and 3 of the amending Bill of Trade Act 1347 also required the existence of at least three and five partners respectively for the formation of a Private and Public Joint Stock Company (Private and public Held Co).

On the other hand, asset dissolution and limiting liability to the amount of capital of a company are not limited to the sole corporation. Individuals with the establishment of a public corporation, private equity, and a limited liability company also pursue this goal. Thinkers of today's societies not only disagree with such companies but also strongly support them because of their undeniable role in the society's economy. Therefore, asset dissolution and limited liability cannot be a reason to oppose the sole corporation.

In addition, with the establishment of such companies, the risk coefficient of economic activities for individuals who trade with a sole corporation will not increase significantly. At first, because the phrase (Sole Corporation) after the name of the company indicates company status and level of responsibility of its sole corporation, and persons knowingly know the status of the company enter into a transaction with it, secondly, the credibility of such companies may be more than companies with more partners. (Mahmoudi, 2003).

It is clear that the non-prescription of such companies causes individuals to enter the company to meet the requirement of personal partnerships multiplicity, his contribution constitutes a small percentage of the company's capital (e.g., one or two or five percent). This person may not have had a role in raising capital, and a percentage of the firm's capital has been formally allocated to him, in which case both formulations will cause divisions in the future and should be avoided (Skini, 2011).

2. Registering a company in US

Depending on the type of business in the US, the type of authorities and amount of taxes will vary. Company registration in the US can be done in 4 types and concepts, two of which relate to Sole Corporation as follows. (Earnings Opportunities, 1997).

2.1. Limited Liability Company

A Limited Liability Company in the United States is a Complex company with a commercial nature that allows a person or entity to conduct its business without risking its capital. This is possible by limiting liabilities and definitions of the Articles of Association.

Limited Liability Company is the most appropriate option in the field of international trade in terms of taxation and trade options for non-US applicants who want to continue their business in the United States. Many investors, who want to register a firm in the region, are exempt from taxation; they can achieve this goal by registering a limited liability company (LLC).

The most important benefits of registering a limited liability company in the United States are as follows:

- LCC companies are established easier for non-residents without excessive bureaucracy. In some states, there is no need for initial capital, and it isn't income tax.

3. Monopoly Company (exclusive)

A sole corporation is an entity that a person establishes a business as a sole firm without any cooperation with another person or company, any debts and other responsibilities are undertaken by the principal.

3.1 Advantages and Disadvantages of Registering a Limited Liability Company in the United States and its accordance with Iranian Law

Registering a limited liability company in the US has advantages compared to joint stock companies, which helps applicants for having the best option to achieve their goals. One of the most important advantages of registering a limited liability company in the US is that there is no need for company executives, and then shareholders and directors of a limited liability company or LLC, can hold their board meetings in other countries as well. (Akhavy, a (No Full Name) (1940), non-partner corporation, Justice Ministry of collection law).

Another advantage of registering a limited liability company in the United States is that there is no need for board members to be shareholders, and depending on the circumstances in each state for registration, only one to three persons can register a limited liability company in the United States.

Not paying income tax on corporations in some states is another advantage of registering a corporation in the United States. (Charlesworth & Geoffrey Morse, Law Company, 15th Ed, Sweet & Maxwell, 1997).

Some US states have provided advantages to applicants for registration of a limited liability company, one of the most important of which is the lack of necessity for the initial capital to register a limited liability company in the United States. In this case, applicants for a US company registration can enter the state without the required capital and apply for US company registration.

Ansari, vali-o-Alah, (2013), Administrative contrasts law, Hoghoughdan publication, second edition (In Persian).

In Iran, a civil company's transformation into a trading company has two advantages:

- To create more capital by raising the capital of each partner.
- Security for Partners due to their capital separation from personal property.

Here, a human's creative mind raises a new question: If two or more individuals can separate their capital brought to the company from personal

property, why should not a single person have this ability? The design of this question is the basis of a new invention that we call sole corporation neglect.

A sole corporation allows individuals to transfer unilaterally part of their property to the assumed entity of the sole corporation and to separate their property. Therefore, using this security pattern that exists for business firm partners also creates a single person to accomplish it by resorting to the company. In contrast, the company's registration also has its disadvantages.

The most important of these disadvantages are as follows:

- In a sole corporation, one person is solely responsible for all debts and liabilities.
- The person who registers a sole corporation must pay taxes for employees and employer.

4. History of forming a sole corporation in Iran

Despite of above-mentioned cases, the idea to form a sole corporation is not unusual in our law, and even the legislator has approved the establishment and operation of such corporations. Article 4 of the Act of General Accounting approved on 10/6/1366 permits to establish companies with a single member (government). Also, the Act on Registration of Branches or Agencies of Foreign Companies approved on 21/8/1376, and its Implementing Regulations approved on 1/1/1378 which absolutely permits foreign companies (both single member companies and companies with multiple partners) to operate in Iran. We describe it.

4.1. Article 4 of the Iranian General Accounting Act

Article 4 of the Iranian General Accounting Act approved on 10/6/1366 makes it possible to establish a single-member business (government). It provides: "A state-owned corporation is a specific entity that is established by law as a corporation or has been nationalized or confiscated by law or a competent court and is recognized as a state corporation and more than fifty percent of its capital is owed to the government.

Any business firm created by the investment of state-owned companies is considered a state-owned company as long as more than fifty percent of its shares are owned by state-owned companies. According to the above article, many state-owned companies have been set up, with 100% of their capital being nationalized or confiscated and owned by the state and engaged in business as well as trading companies with only one person (government) as a member. State-owned businesses are therefore public-law entities formed with a single member.

4.2. The Law on Registration of Branches or Agencies of Foreign Companies approved on 21/8/1376 and its Implementing Regulations approved on 11/1/1378.

The single article of the Act provides: "Foreign companies which are recognized as lawful companies in their country, while reciprocal action by the country, and shall to do in such matters as may be determined by the Government of the Islamic Republic of Iran within the framework of laws and regulations. Article 1 of the Implementing Regulations of the Act also provides foreign companies which are recognized as lawful companies in their country, while reciprocal action in their respective countries, can work in Iran in the following areas.

According to the above-mentioned cases, because single-member companies may be legally recognized in the countries where are registered, they may operate in Iran under this law and its implementing regulations.

The formation of a single-member company is accepted in most countries such as England, France, Italy, and Germany. Let us now consider the rules of American law in this case:

According to the Companies Act 1916, the minimum number of partners which is required for the formation of a private limited company is two, but amendments to the commercial law of 1996 also provided the formation of a single member limited liability company.

5. The possibility of forming different companies in single-member companies

By explaining various kinds of companies in commercial law, we answer the question of what kind of companies can be analytically formed as single-member companies.

6. Limited liability Company

According to Article 94 of commercial law, the formation of a limited liability company with a single member is not legally possible; on the other hand, by considering how to operate the limited liability company, it is almost like a privately owned joint-stock company in the United Kingdom and a limited liability company in the United States that is possible with one partner. (Mahmoudi, 2009: 132).

6.1. Cooperative Partnership Co. and Proportional Liability Partnership Company

Analytically, the formation of Cooperative Partnership Co. and Proportional Liability Partnership Company with a single member does not face any obstacles. In case of insufficiency of assets of Cooperative Partnership Co. and proportional Liability Partnership Company to pay all the Company's debts, the single member would be responsible to pay all the Company's debts.

Therefore, these two companies are coming together and finding the same effect. Because in Cooperative Partnership Co. a single member will be responsible to pay all debts due to the Cooperative partnership responsibility, and in the Proportional Liability Partnership Company, a single member will be responsible to pay all debts due to having its 100% shareholding. (Isaa Tafreshi, Analytical Discussion of Business Law, Vol. 1, 2009: 138)

6.2. Managing a sole corporation

If a single partner manages the corporate unit, he will also be its owner alongside all liability, of course, this case is not prohibited according to the new business law bill. There are two ways to manage a sole corporation: 1. the sole proprietor is known as the company's shareholder, he/she elects a director or directors to manage the company, in this case, the shareholder of the company is the same person and the company's affairs are merely delegated to another. 2. The shareholder himself/herself will be the managing director, who will then act as a legal person.

And for this case, the employer-employee relationship is not a debate, and responsibility for all activities will be on the company itself, of course, discussions on the guarantee is an exception. (Abbas Niazi and Ayyaam Kamarkhani and Mohsen Jalilian, Investigation of the sole corporation in Iranian Law with a Comparative View, Quarterly Journal of Economic Law, 2016: 9)

6.3. End of Company's Life in a sole corporation

The end of a company's life has two distinct aspects or stages that can be interpreted as credit and practical aspects. The end-of-life credit aspect is the nature of the company and due to it; the legal personality of the company is lost. This aspect or end of a company's life is referred to as dissolution. The practical aspect of end-of-life is the determination of the company's assets in which the company's assets are converted into cash, its demands are received and debts and liabilities are fulfilled. After the stage, if the surplus exists, it is divided between the partners according to their

rights and interests in law and the articles of association. In this case of the company's end of life, they use a legal word as liquidation.

The dissolution of a sole corporation may also be voluntary or forced. The only difference between these companies and the companies with more partners is that their voluntary dissolution is based on the will of the only sole member.

Conclusion

1. The idea to form a sole corporation is not only unusual in our law, but also accepted by state-owned companies. Therefore, the Iranian legislator can elaborate on this idea and apply it to private business firms. However, it is noted that permission to run such companies should be considered by securing third parties' rights.
2. In Iran, forming a sole corporation is possible only in the public and private limited liability companies, since only in these companies, the company's assets separated from the partners' assets, and in other companies, the partner guarantees the payment of company's debt after liquidation. So only in such companies, a partner can have the necessary risk.
3. A sole corporation due to its unique nature, differs from other companies in its formation, management, and dissolution. So that its formation and dissolution (except for bankruptcy) are accomplished with a will, and unlike other companies, the necessary decisions are made by a single member without observing certain formalities.

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Cuestiones Políticas Vol. 40, Nº 72 (2022), 965-962
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Cuestiones Políticas Vol. 40, N° 72 (2022), 969-964
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CUESTIONES POLÍTICAS

Vol.40 Nº 73

Esta revista fue editada en formato digital y publicada en julio de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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