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CUESTIONES POLÍTICAS

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

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Cuestiones Políticas

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

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Cuestiones Políticas
Vol. 40 Nº 75 (2022)

Contenido

16 **Presentación**

Derecho Público

28 **European Union policy on financing eco-innovations in the transition to a green economy**
Política de la Unión Europea sobre la financiación de innovaciones ecológicas en la transición a una economía verde
Halyna Matviienko, Olha Pylypenko, Anatolii Putintsev, Olena Chumak y Svitlana Gordiichuk

49 **Professionalization of Public Service of Ukraine: Specifics of the Process in the Context of Global Challenges and Modern Social Changes**
Profesionalización del servicio público de Ucrania: detalles del proceso en el contexto de los desafíos globales y los cambios sociales modernos
Nataliia Obushna, Nataliia Korchak, Oksana Evsyukova, Serhii Selivanov y Viktoriia Petrynska

64 **Regulatory policy and institutional transformation of the banking system of Ukraine in the conditions of digitalization**
Política regulatoria y transformación institucional del sistema bancario de Ucrania en las condiciones de digitalización
Denis Shcherbatykh, Ruslan Tseben, Nataliia Valkova, Svitlana Jereleiko y Pavlo Nagorny

79 **International experience of correction and resocialization of convicts sentenced to imprisonment**
Experiencia internacional de corrección y resocialización de condenados a pena privativa de libertad
Kateryna Bobrovnyk, Anton Dolhov, Yurii Svynarenko, Oleh Shkuta y Viktor Konopelskyi

89 **Exercising the right to a fair trial during the Covid-19 pandemic in Ukraine and the European Union**
Ejercicio del derecho a un juicio justo durante la pandemia de covid-19 en Ucrania y la Unión Europea
Liudmyla Golovko, Viktor Ladychenko, Andrew Kudin, Olena Yara y Olena Uliutina

104 **Financial and legal protection of land from being contaminated with hazardous substances as a component of regional environmental policy**
Protección financiera y jurídica de la tierra contra la contaminación con sustancias peligrosas (desechos) como componente de la política ambiental regional
Vitalii Gursky, Liliya Zaykova, Serhiy Miroshnychenko, Anton Borysenko y Yevgen Volko

Cuestiones Políticas
Vol. 40 Nº 75 (2022)

114 **Ways of reforming the criminal and criminal procedural legislation of Ukraine in the context of European integration**
Formas de reformar la legislación penal y procesal penal de ucrania en el contexto de la integración europea
Oleh Kyrychenko, Vadym Nehodchenko, Vadym Davydiuk, Viacheslav Kuzyk y Oleksandr Mishchanynets

124 **Realization of fundamental principles of law in the context of legal society development**
Realización de los principios fundamentales del derecho en el contexto del desarrollo de la sociedad jurídica
Yurii Kyrychenko, Ruslana Maksakova, Viktor Kyrychenko, Natalia Riezanova y Julia Sokolenko

134 **Influence of the state reform of primary education on the professional training of future teachers**
Influencia de la reforma estatal de la educación primaria en la formación profesional de los futuros profesores
Olena Kryvylova, Karina Oleksenko, Natalka Kotelianets, Yulia Kotelianets, Lesya Kindei y Tetiana Kushnirova

145 **Electoral corruption: illegal voter bribery technologies**
Corrupción electoral: tecnologías ilegales de soborno a los votantes
Adrii Vozniuk, Mariia Hryha, Iryna Botnarenko, Tamara Makarenko y Oksana Bryskovska

164 **The role of budgets in strengthening the financial base of local self-governments**
El papel de los presupuestos en el fortalecimiento de la base financiera de los gobiernos autónomos locales
Veronika Khudolei, Oksana Karpenko, Iryna Tarnovska, Iegor Biriukov y Ivan Smyrnov

180 **Analysis of court decisions in cases on provision of in vitro fertilization services in Ukraine and Europe**
Análisis de las decisiones judiciales en casos sobre la prestación de servicios de fertilización in vitro en Ucrania y Europa
Volodymyr Kossak, Alla Herts, Mykola Stefanchuk, Svitlana Senyk y Inna Zaitseva-Kalaur

198 **Use of information and communication technologies in democratic processes**
Uso de las tecnologías de la información y la comunicación en los procesos democráticos
Nina Rohatynska, Oleh Butkov, Olena Butkova, Maryna Burdonosova y Tetiana Sukhorebra

Cuestiones Políticas
Vol. 40 Nº 75 (2022)

221 **Human principles of law as a universal normative framework**
Principios humanos del derecho como marco normativo universal
Anatolii Matviichuk, Viktor Shcherbak, Viktoria Sirko, Hanna Malieieva y Yevhen Leheza

232 **Anti-corruption reform as a component of the sustainable development strategy and its impact on a safe environment**
Reforma de la lucha contra la corrupción como componente de la estrategia de desarrollo sostenible y su impacto en un entorno seguro
Inna Odnolko, Oleksandr Hladii, Oleksandr Bondarchuk, Yevgeny Zhadan y Olena Leonidova

243 **Legal and organizational foundations for delivering e-government**
Fundamentos legales y organizativos para proporcionar un gobierno electrónico
Iryna Khomyshyn, Nataliia Lesko, Olha Skochylias-Pavliv, Halyna Lukianova y Marta Malets

263 **European experience of preventive activities performed by law enforcement agencies: administrative aspect and theoretical-legal aspect**
Experiencia europea de actividades preventivas realizadas por las agencias de aplicación de la ley: aspecto administrativo y aspecto teórico-jurídico
Ivan Ishchenko, Kostiantyn Buhaichuk, Olha Tokarchuk, Kateryna Rudoi y Iryna Tsareva

274 **Information terrorism as a threat to the global security system of the 21st century**
El terrorismo informativo como amenaza para el sistema de seguridad global del siglo XXI
Yuliia Kobets, Mykola Pogrebytskyi, Olena Berezovska-Chmil, Svitlana Kharchenko y Andrey Pravdiuk

285 **Peculiarities of the use of political mediation in the Russian-Ukrainian war: principles of application and problems of solution**
Peculiaridades del uso de la mediación política en la guerra ruso-ucraniana: principios de aplicación y problemas de solución
Daria Likarchuk, Inna Kostyrya, Oleg Koval, Viktoriia Datsenko y Vitaliy Kryvoshein

299 **Public administration reform in the forestry sector**
Reforma de la administración pública en el sector forestal
Olena Gulac, Roman Oleksenko, Yevhen Sobol, Tetiana Milova y Kateryna Troshkina

312 **Peculiarities of the Investigation of Juvenile Drug Trafficking Offences**
Peculiaridades de la Investigación de Delitos de Narcotráfico Juvenil
Ivo Svoboda, Olha Kovalova, Kostyantyn Marysyuk, Nataliia Akhtyrska y Olena Kostiuchenko

Cuestiones Políticas
Vol. 40 Nº 75 (2022)

334 | **Application of the method of computer forensic simulation of crimes in the course of an armed conflict**
Aplicación del método de simulación informática forense de delitos en el curso de un conflicto armado
Andriy Tymchyshyn, Oleh Zvonarov, Olena Mokhonko, Vitalii Postryhan y Olena Popovych

352 | **Protection of property rights under special legal regimes**
Protección de los derechos de propiedad bajo regímenes jurídicos especiales
Nadiia Moskaliuk, Valentyna Myronenko, Lesia Shapoval, Vasyl Gopanchuk y Anzhela Kaliniuk

370 | **The problem of art culture and art school in the concern of the events in Ukraine in early 2022**
El problema de la cultura artística y la escuela de arte en relación con los acontecimientos de Ucrania a principios de 2022
Tetiana Zhytnik, Viktoriia Khvist, Serhii Bilan y Julia Kharchenko

385 | **Project Management in Public Administration: Priority Areas of Application**
Gestión de proyectos en el campo de la administración pública: áreas prioritarias de aplicación
Liliia Makarenko, Tetiana Syvak, Olha Berdanova, Vladyslava Iyzefovych y Olena Rachynska

405 | **Prospects of Transformation of the Institution of Constitutional Justice in the Course of Armed Conflicts**
Perspectivas de Transformación de la Institución de Justicia Constitucional en el Curso de los Conflictos Armados
Viktor Shemchuk, Taras Khmaruk, Olha Stohova, Nataliia Shamruk y Catherine Karmazina

431 | **The Impact of Political Lobbying on the Aggravation of Language Conflicts in the Era of Globalization**
El impacto del cabildeo político en el agravamiento de los conflictos lingüísticos en la era de la globalización
Andrii Ozhohan, Nataliia Stratulat, Pavlo Lysianskyi, Maiia Yurkovska y Olha Zaluzhna

457 | **The role of digital technologies for the canine units involved in the law enforcement in European countries**
El papel de las tecnologías digitales para las unidades caninas implicadas en la aplicación de la ley en los países europeos
Pavel Polián, Petr Polián y Igor Kopotun

483 | **Man of the information society: problems of formation and development**
El hombre de la sociedad de la información: problemas de formación y desarrollo
Yaroslav Haleta, Tetiana Fursykova, Volodymyr Kozlenko, Olena Habelko y Maria Radchenko

Cuestiones Políticas

Vol. 40 Nº 75 (2022)

498 **Factors of Volitional Attributiveness of the Legal Transaction based on International Experience**
Factores de atributividad volitiva del negocio jurídico a partir de la experiencia internacional
Viktor Savchenko, Nataliia Borsuk, Mykhailo Hrabynskyi, Petro Guyvan y Mykola Rudyk

522 **Comparative Analysis of Public Administration Models on the Example of Healthcare Sector**
Análisis comparativo de modelos de administración pública sobre el ejemplo del sector salud
Natalia Uvarova, Oksana Adamchuk, Yevheniia Zhukova, Iryna Nagorna y Maryna Nazarenko

537 **Theoretical and practical aspects of modern politics: challenges and reformatting of the global world**
Aspectos teóricos y prácticos de la política moderna: retos y reformulación del mundo global
Valentyna Voronkova, Olesia Zvezdova, Anastasiia Khmel, Tetiana Lushahina y Liudmyla Lanoviuk

550 **State Regulation of the Higher Education System in the Context of Ensuring the Universities' Autonomy**
Regulación Estatal del Sistema de Educación Superior en el Contexto de Asegurar la Autonomía de las Universidades
Kostiantyn Shaposhnykov, Svitlana Filyppova, Volodymyr Lagodiienko, Vitaliy Goletc, Denys Krylov y Hanna Svinarova

569 **Aspects of implementation of the law enforcement function of the state under the legal regime of martial law in Ukraine**
Aspectos de la implementación de la función de aplicación de la ley del Estado bajo las condiciones del régimen legal de la ley marcial en Ucrania
Oleksii Drozd, Oleksandr Kobzar, Maksym Romanov, Denysenko Hryhorii y Mykola Pohoretskyi

581 **Ukraine's security and Pakistan's security: mechanisms to overcome threats**
La seguridad de Ucrania y la seguridad de Pakistán: mecanismos para superar las amenazas
Iryna Tykhonenko, *Oleksandr Trygub, Tetiana Bohdanova y Oleksandr Shevchuk*

603 **Systems of Advocates' Self-Governance Bodies in European Union Countries**
Sistemas de órganos de autogestión de los abogados en los países de la Unión Europea
Svitlana Kovtun, Ilya Shutak, Solomiya Denys y Yurii Semchuk

Cuestiones Políticas
Vol. 40 Nº 75 (2022)

615 **Peculiarities of ensuring the constitutional right to a fair trial: international and national aspects**
Estándares internacionales para procesos penales en regímenes legales de emergencia
Oleksandr Rogach, Nataliya Shelever, Mykhailo Herevych, Iryna Shulhan y Mariia Muzyka

636 **Repensar la promoción del turismo rural como estrategia en las políticas de comunicación para el cambio social**
Rethinking the promotion of rural tourism as a strategy in communication policies for social change
Brenda Miroslava Carrión-Ramírez, Lizette Ivonne Lazo-Serrano, Carmen Arlene Lazo-Serrano y Melva Isolda Fuentes-Rendón

649 **Legal Instruments for Solving Socio-Economic Problems in Buchanskyi district of Kyiv region: International Experience and Legislation of Ukraine**
Instrumentos legales para resolver problemas socioeconómicos del distrito de Buchansky de la región de Kiev: experiencia y legislación internacional
Volodymyr Ustymenko, Olena Zeldina, Vladyslav Teremetskyi, Nataliia Herasymenko y Olesia Batryn

665 **Políticas municipales en el ordenamiento del transporte urbano de la provincia de San Román**
Municipal policies on urban transportation planning in the province of San Roman
Juan M. Pilco-Churata

681 **El interés superior de los niños, niñas y adolescentes y su derecho a alimentos en Ecuador**
The best interest of children and adolescents and their right to food in Ecuador
Alcida Liliana López Véliz y Jorge Isaac Calle García

694 **SWOT analysis to assess the threat of illegal arms trafficking on the Ukrainian border with the European Union countries in the context of the war**
El análisis FODA para evaluar la amenaza del tráfico ilegal de armas en la frontera de Ucrania con los países de la Unión Europea en el contexto de la guerra
Oleksandr Samoilenko, Viktor Bereziuk, Olena Zabolotna, Artem Chornyi y Oleksandr Adamchuk

717 **Guaranteeing the Exercise of the Right to Medical Care of Prisoners of War in the Context of International Protection**
Garantía del ejercicio del derecho a la atención médica de los prisioneros de guerra en el contexto de la protección internacional
Mykhailo Puzyrov, Yana Krupko, Oleksandr Mytska, Olexii Yermak y Anton Sikun

Cuestiones Políticas
Vol. 40 Nº 75 (2022)

741 **Mayor presupuesto no genera celeridad procesal y plazo razonable en el Tribunal Constitucional, Perú 1999 – 2020**
Increased budget does not generate procedural speed and reasonable time in the Constitutional Court, Peru 1999 -2020
Javier Pedro Flores Arocutipa, Jorge Jinchuña Huallpa, Luís Delfín Bermejo Peralta, Ruth Daysi Cohaila Quispe y Karen Coayla Quispe

769 **Disadvantages of news aggregators in capitalist countries: overview and critique**
Desventajas de los agregadores de noticias en los países capitalistas: panorama general y crítica
Veronika Kysil

781 **The communicative potential of multinational communities to counter destructive ethno-rumors in modern Ukrainian society: a socio-political analysis**
El potencial comunicativo de las comunidades multinacionales para contrarrestar los etno-rumores destructivos en la sociedad ucraniana moderna: un análisis sociopolítico
Lyudmila Afanasieva, Iryna Bukrieieva, Lyudmila Glyns'ka, Natalia Hlebova y Natalia Falko

792 **Modern globalization transformations: methodological approaches**
Transformaciones modernas de la globalización: enfoques metodológicos
Buryk Myroslav, Natalia Horbova, Andriy Krap, Dmytro Pylypenko y Valeriia Novoshytska

808 **Discriminatory manifestations in the context of transhumanism: socio-legal aspect**
Manifestaciones discriminatorias en el contexto del transhumanismo: aspecto socio-jurídico
Tetiana Mikhailina, Iryna Zharovska, Yaryna Bohiv, Olena Kovalchuk y Olena Romtsiv

824 **Determinants of smuggling and ways to combat it**
Determinantes del Contrabando y Formas de Combatirlo
Oleg Reznik, Olha Bondarenko, Maryna Utkina, Lyudmila Telizhenko y Artem Sorokin

844 **Criminal liability for the establishment or spread of criminal influence in post-Soviet countries (literature review 2011-2021)**
La responsabilidad penal por el establecimiento o la propagación de la influencia criminal en los países postsoviéticos (revisión de la literatura 2011-2021)
Igor Paryzkyi, Oleksii Humin, Roman Maksymovych, Oksana Panchak y Volodymyr Kantsir

Cuestiones Políticas
Vol. 40 Nº 75 (2022)

855 **Parliamentary opposition and democratic transformation issues: Central and Eastern Europe in focus**
Oposición parlamentaria y cuestiones de transformación democrática: Europa Central y oriental en el punto de mira
Vitaliy Kovalchuk, Iryna Sofinska, Taras Harasymiv, Ivan Terlyuk y Maiia Pyvovar

868 **The issue of the application to the European Court of Human Rights in the context of the Russian invasion of Ukraine**
La cuestión de la solicitud al Tribunal Europeo de Derechos Humanos en el contexto de la invasión rusa de Ucrania
Nataliia Morska, Mykhailo Prysiazhniuk, Svitlana Luchkovska, Andrii Misiats y Liudmyla Mikhnevych

879 **Transformation of the legal system in a time of war: international, administrative, and criminal aspects**
Transformación del sistema jurídico en tiempos de guerra: aspectos internacionales, administrativos y penales
Svitlana Hretsa, Denys Tykhomyrov, Maryna Olashyn, Oksana Rudanetska y Halyna Bogoniuk

901 **On the issue of choosing optimal ways to overcome crisis phenomena in the field of political communications against the background of large-scale military aggression**
Sobre la cuestión de la elección de las formas óptimas de superar los fenómenos de crisis en el ámbito de la comunicación política en el contexto de una agresión militar a gran escala
Serhii Stavchenko, Olexandr Tokovenko, Hanna Topchii y Vitaly Loginov

915 **Normas para los autores**
919 **Notas sobre arbitraje de artículos**

Cuestiones Políticas Vol. 40, Nº 75 (2022), 16-25
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Reflexiones filosóficas sobre la relación turismo, crecimiento económico y desarrollo sostenible en el siglo XXI

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Resumen

El propósito del editorial fue presentar el Volumen 40, Numero 75 de la edición de diciembre de 2022 de Cuestiones Políticas. Los indicadores macroeconómicos de organismos internacionales como la ONU, el fondo monetario internacional y el Banco mundial, demuestran que el turismo significa una industria estratégica para el desarrollo integral de las naciones con una capacidad formidable para generar fuentes de empleo y desarrollo sostenible, siempre y cuando se realicen las políticas necesarias. En este sentido, el objetivo del trabajo fue reflexionar filosóficamente sobre la relación turismo, crecimiento económico y desarrollo sostenible en el siglo XXI. Para el logro del objetivo planteado se utilizó una combinación del método fenomenológico y hermenéutico, los cuales describen e interpretan la realidad de forma rigurosa, mediante el examen de fuentes documentales en formato digital, como: artículos científicos, notas de prensa e informes de organismo internacionales. Se concluye que el turismo sostenible es definitivamente aquel que combina en igual de condiciones el crecimiento económico con los requerimientos de justicia social, equidad, derechos humanos y equilibrio del ambiente, en sintonía con los objetivos del desarrollo sostenible promovidos por la agenda 2023 de Naciones Unidas y que, además, la filosofía tiene mucho que aportar sobre el tema.

Palabras clave: reflexiones filosóficas; turismo; crecimiento económico; desarrollo sostenible; desarrollo integral en el siglo XXI.

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Philosophical reflections on the relationship between tourism, economic growth and sustainable development in the 21st century

Abstract

The purpose of the editorial was to present Volume 40, Number 75 of the December 2022 edition of Cuestiones Políticas. Macroeconomic indicators from international organizations such as the UN, the International Monetary Fund and the World Bank show that tourism is a strategic industry for the integral development of nations with a formidable capacity to generate sources of employment and sustainable development, as long as the necessary policies are implemented. In this sense, the objective of this work was to reflect philosophically on the relationship between tourism, economic growth and sustainable development in the 21st century. In order to achieve the stated objective, a combination of the phenomenological and hermeneutic method was used, which describe and interpret reality in a rigorous way, through the examination of documentary sources in digital format, such as: scientific articles, press releases and reports of international organizations. It is concluded that sustainable tourism is definitely that which combines in equal conditions economic growth with the requirements of social justice, equity, human rights and environmental balance, in tune with the objectives of sustainable development promoted by the United Nations agenda 2023 and that, in addition, philosophy has much to contribute on the subject.

Keywords: philosophical reflections; tourism; economic growth; sustainable development; integral development in the 21st century.

Editorial

Reflexionar filosóficamente sobre la relación turismo, crecimiento económico y desarrollo sostenible en el siglo XXI implica, necesariamente, la formulación de un conjunto de preguntas mayéuticas, como condición de posibilidad para comprender el ser de esta actividad fundamental, esencialmente vinculada a las nuevas o renovadas estrategias de desarrollo de regiones, personas y comunidades autónomas. Además, también significa el reconocimiento de la filosofía como espacio privilegiado en la búsqueda de la verdad y, es que, como argumenta Llano:

> Ciertamente, la entera filosofía esta íntimamente relacionada con la verdad, ya que su aspiración esencial consiste en alcanzar conocimientos verdaderos acerca de la realidad. Tal es el único compromiso de la filosofía: el compromiso de la

> verdad que se resuelve en un compromiso con la realidad, porque la verdad es la adecuación de la inteligencia del hombre con el ser de las cosas (Llano, 1991: 23).

Simplificando las cosas con fines analíticos, la búsqueda de la verdad se traduce en la adecuación veritativa de nuestro entendimiento a la realidad como espacio material y simbólico en dinamismo constante y, más concretamente, a los fenómenos que constituyen a toda realidad como espacio cognoscible, en lo abstracto y concreto, en lo general y particular, en lo cercano y lejano y en lo tangible y conceptual. En este orden de ideas, las preguntas formuladas entonces son: ¿Es el turismo realmente un motor de progreso para apalancar el desarrollo de naciones enteras? ¿Cuáles son las condiciones necesarias para implementar una política de impulso del sector turismo en una sociedad determinando? ¿En qué consiste la relación turismo, crecimiento económico y desarrollo sostenible en el siglo XXI?

Para responder a estas y otras preguntas similares conviene revisar algunos datos sobre el tema. Según informe del Fondo monetario internacional, en adelante solo FMI, más allá de su significativo potencial económico la industria del turismo ha sido una de las mas afectadas por la pandemia de COVID-19 acaecida desde marzo de 2021, de modo que:

> El turismo continúa siendo uno de los sectores más perjudicados por la pandemia de COVID-19, especialmente en los países de la región de Asia-Pacífico y las Américas. Los gobiernos de estas regiones, y del resto del mundo, han tomado medidas para mitigar el impacto económico sobre hogares y empresas, pero a más largo plazo el sector tendrá que adaptarse a la «nueva normalidad» tras la pandemia (Babii y Nadeem, 2021: s/p).

Sin duda la emergencia sanitaria internacional formada por la pandemia generó efectos negativos en el sector turismo, no obstante, estos efectos son temporales y una vez alcanzada la “nueva normalidad” las dinámicas propias del sector: viajes, comercio, restaurantes, hotelería, casas de cambio de divisas a moneda local, entre otras, se reactivarán paulatinamente, por lo que el 2023, parece ser un año prometedor para este sector. Igualmente, Babbi y Nadeem (2021), sostienen que entre los “aspectos positivos” de la pandemia destaca el hecho que obligó a pensar seriamente a muchos gobiernos de países dependientes del turismo, sobre la necesidad estratégica de diversificar sus economías nacionales ¿Es esto posible en un plazo perentorio de tiempo? Cada caso es particular y requiere de un estudio multidisciplinario detallado para poder aportar una respuesta consistente.

De cualquier modo, hay razones concretas para suponer que si el turismo era una industria internacional rentable antes de la pandemia lo seguirá siendo después de finiquitada la misma y, más allá de las consecuencias ocasionadas por este flagelo (COVID-19) con efectos políticos económicos y sociales que se prolongaran en el mediano y largo plazo. Y es que, incluso, desde el 2021:

> La economía se recuperó con fuerza de la pandemia, a pesar de factores globales que crearon desafíos en términos de inflación. El PIB real aumentó un 12.3% en 2021, en medio de un amplio crecimiento sectorial, incluida una notable recuperación del turismo, con llegadas que superaron los niveles de 2019 desde el otoño pasado", expone la entidad en su informe (FMI, citado por: Diario turístico de la Republica Dominicana, 2022: s/p).

En el caso específico de Europa la respuesta a la interrogante ¿Es el turismo realmente un motor de progreso para apalancar el desarrollo de naciones enteras? Es obvia, de hecho, todo indica que en los próximos años el sector turismo producirá al menos ocho millones de empleos, segundo el informe de Impacto Económico (EIR) del Consejo Mundial de Viajes y Turismo (WTTC), citado por (Hosteltur, 2022), sitio web especializado en turismo. De igual modo, proyecciones financieras realizadas por el referido documento concluyen que el sector turismo *creceré el doble que la economía mundial* en la próxima década y se convertirá además en el motor de la recuperación económica de Europa afectada por la pandemia y por la invasión de la federación rusa a Ucrania.

Ante la segunda pregunta ¿Cuáles son las condiciones necesarias para implementar una política de impulso del sector turismo en una sociedad determinando? No hay respuestas simples, pero en principio se requiere de unas bases políticas y materiales sólidas que hagan del turismo un negocio rentable para la comunidad en su conjunto, lo que incluye una alianza estable y duradera entre los actores políticos y económicos (empresarios) junto a las comunidades organizadas con plena conciencia de lo que el turismo puede representar para su desarrollo. Dentro de las bases materiales mínimas se requiere de la existencia de áreas, lugares y comunidades con valor turístico, bien sea por sus hermosos países naturales, por su historia o por la riqueza de su patrimonio cultural (tangible o intangible) de la mano con una infraestructura hotelera óptima que sirva para albergar cómodamente a los turistas.

En cuanto a las bases políticas se requiere de la existencia de un conjunto de políticas, planes y proyectos a nivel local, regional y nacional que hagan del turismo una actividad rentable y en constante desarrollo. Esta política es fundamental, ya que incluso una sociedad con una base material envidiable para el desarrollo turístico, sin la existencia de una política coherente para el impulso de este sector con *objetivos y metas claras en el tiempo*, terminaría infravalorando o desperdiciando de forma irracional sus recursos y capacidades naturales, humanas y culturales, inmanentes al turismo como posibilidad real de desarrollo y crecimiento económico sostenible en el siglo XXI.

Al decir de Malaespina *et al*., (2021) una política coherente de turismo implica en cada momento el desarrollo de un plan estratégico de turismo sostenible que permita conocer y planificar en cada rincón del país.

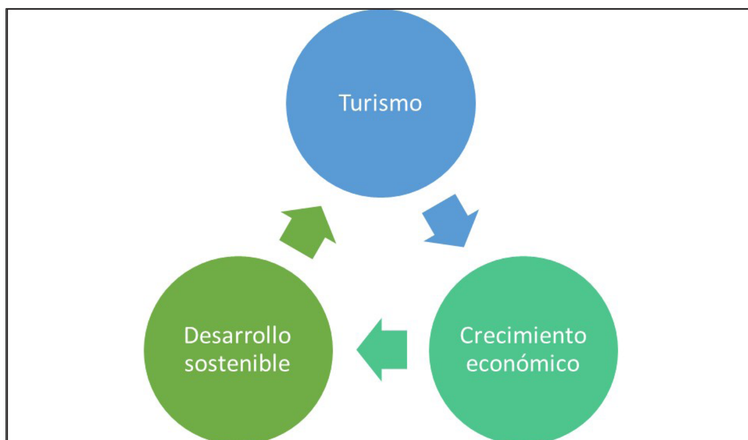
Normalmente los planificadoras y hacedores de políticas construyen un mapa donde se visualizan –claramente– las oportunidades de inversión y, al mismo tiempo, identifican recursos, paisajes, jerarquías, objetivos y prioridades en términos de diseño de políticas públicas, lo que permite también ordenar las inversiones o los planes de financiamiento dirigidos a zonas, comunidades e instituciones interconectadas.

En el mismo orden de ideas, Dymchenko *et al*., (2022), sostienen que toda política de turismo debe venir acompañada, a su vez, de una estrategia de marketing que impacta directamente en los imagineros colectivos de los potenciales turistas:

> (…) la razón de ser del markenting de turismo, en particular, es la compresión profunda de las necesidades, aspiraciones y gustos del cliente. Captado este conocimiento la labor del publicista radica ahora en ofertar productos y servicios competitivos para satisfacer las necesidades objetivas y subjetivas del consumidor y obtener así una rentabilidad económica; en este complejo proceso se crean y combinan un conjunto de técnicas y acciones destinadas a alcanzar los objetivos trazados (Dymchenko *et al*., 2022: 27).

En la realidad concreta el turismo es entonces un fenómeno relacional y su crecimiento como industria desborda sus límites para apalancar el crecimiento económico de un país o región en particular, lo que, llegado el caso, puede significar desarrollo sostenible. No obstante, debemos aclarar que no todas las dinámicas de crecimiento económico significan desarrollo sostenible. Y es que, el desarrollo sostenible: "(…) es aquel que satisface las necesidades actuales sin comprometer la capacidad de las generaciones futuras para satisfacer sus propias necesidades" (Xercavins *et al.,* 2005: 77).

Figura No. 01: Ciclo de turismo sostenible.



Fuente: elaboración propia (2022).

El desarrollo sostenible, sin duda se trata de un renovado paradigma de desarrollo íntimamente vinculado con los objetivos de la Agenda 2023 de Naciones Unidades, que no solo busca impulsar el crecimiento económico como un fin en si mismo, sino que, fundamentalmente, intenta construir un modelo de desarrollo no depredador del medio ambiente, que este en completa sintonía con el goce y disfrute de los derechos humanos y que sirva para superar la pobreza de personas y comunidades por igual, entendiendo que el crecimiento económico ha tenido históricamente contradicciones insoslayables por los tradicionales paradigmas economicistas de planificación central de la economía, economías de mercado o economías mixtas por igual (Oleksenko, 2021).

En este sentido el mismo concepto de desarrollo sostenible trasciende en su esencia la dimensión económica de la vida social y adquiere, en consecuencia, imperativos jurídicos y políticos al platear la necesidad civilizatoria de poner fin a la pobreza, garantizar una vida sana y promover el bienestar social, generalizar el accedo a una educación de calidad e inclusiva, reducir la desigualdad entre los países, promover la participación democrática y la gobernanza o: “Promover sociedades pacíficas e inclusivas para el desarrollo sostenible, facilitar el acceso a la justicia para todos y construir a todos los niveles instituciones eficaces e inclusivas que rindan cuentas” (CEPAL, 2018; 16), entre otros aspectos cruciales para el futuro próximo de la humanidad.

En efecto, el turismo como industria y como actividad intersubjetiva puede ser sostenible si sus actores protagonistas de carácter público (gobierno) o privado (empresarios y sociedad civil), están dispuestos a crear dinámicas tridimensionales en sus mundos de vida, esto es: primero, un turismo que conserve en el tiempo y espacio el equilibrio natural de los ecosistemas que sirven de espacios recreativos para las comunidades de turistas; segundo, se conciba como una industria en sintonía con los objetivos de la agenda 2030 (objetivos de desarrollo sostenible) y que; tercero; cree espacios de convivencia, dignidad y justicia social para la mayoría de las personas y no solo para las elites revestidas de autoridad política o poder económico, en definitiva, se perfile como una industria capaz de alcanzar desarrollo con equidad.

1. Turismo sostenible

El turismo sostenible es aquel en el cual el crecimiento económico que logra se traduce también en desarrollo humano y económico en los espacios naturales y culturales en los que se desarrolla esta actividad recreativa. En palabras de Cardoso (2006), el turismo sostenible es una actividad enmarcada lógicamente en el paradigma de desarrollo sostenible que:

> (...) explica el enlace integral e inevitable entre el sistema natural y el desarrollo. Se refiere a un repetitivo proceso de cambio en el cual la explotación de los recursos naturales, la dirección de la inversión y del progreso científico y tecnológico, junto con el cambio institucional, permita satisfacer las necesidades sociales presentes y futuras (2006: 07).

Además, el turismo sostenible requiere como condición de posibilidad para su realización de tres condiciones transversales, que son según Cardoso (2006):

1. Sostenibilidad económica. De modo que se convierta para sus agentes promotores y protagonistas en un producto o servicio legítimo que se oferta en un mercado global para el desarrollo de las capacidades económicas de las comunidades involucradas y, como una industria capaz de desarrollar otras actividades rentables de forma directa o indirecta, tales como: hotelería, restaurantes, trasporte; nuevas tecnologías o artesanías, entre otras.
2. Sostenibilidad ambiental. La misma dinámica de turismo según la cual cientos o miles de personas visitan al año un entorno o paraje natural, dependiendo el lugar, requiere de una disciplina social normatizada políticamente para su conservación integral, ya que es un espacio que se ha convertido en producto turístico con fines económicos. Cabe destacar que el deterioro de este este entorno no ocurre únicamente por la acción antrópica, sino, además, por la acción de factores naturales catastróficos, pero como su deterioro afecta el equilibrio económico y comercial de las comunidades dedicadas a su explotación demanda de la reinversión y cuidado especial para su sostenibilidad en el tiempo.
3. Sostenibilidad sociocultural. En términos de marketing en turismo no solo es atractivo para el turista los parejes naturales caracterizados por su belleza, sino, además, la identidades culturales y modos de vida de las comunidades que se visitan y de sus personas y tradiciones ancestrales. Se trate del acercamiento dialéctico que se da entre el turista y la realidad sociocultural del entorno que se visita. De modo que, así como se requiere de una política de conservación y sostenibilidad ambiental, también la industria turística demanda de una política de educación para que las comunidades y actores sociales involucrados en este negocio adquieran plena conciencia del valor de sus prácticas, rituales y formas de ser y hacer que los identifican como una comunidad particular en el mundo y desarrollen, en consecuencia, estrategias para su conservación y promoción en el tiempo, lo que además fortalece el sentimiento de identidad nacional y conciencia histórica presente en todo país.

Consideraciones finales

Al abordar filosóficamente los desafíos actuales que se presentan en la industria del turismo, se demuestra que la filosofía es una disciplina con mucho que aportar en la resolución no solo de los problemas filosóficos tradicionales, de carácter: metafísico, ontológico o epistemológico, sino también, de fenómenos económicos y políticos que como el turismo, el crecimiento económico y el desarrollo sostenible, adquieren una importancia inusitada para las personas comunes del mundo actual que siguen buscan a pesar del fracaso de las grandes ideologías, vías legítimamente que les proporcionen una vida de calidad y dignidad más allá de las problemáticas estructurales que afecta multinacionalmente su vida cotidiana.

En este orden de ideas, una fenomenología del turismo le puede proporcional al investigador una descripción detallada y, en buena medida, desprejuiciada de los sentidos y significados que las personas y comunidades protagonistas del mismo asignan a esta actividad en sus relaciones cotidianas. Por su parte, una hermenéutica del turismo es capaz de interpretar dialógicamente estos significados, como si fueren un texto que puede ser leído inteligentemente, para determinar los saberes que sirvan para el perfeccionamiento continuo de las políticas y estrategias que fortalecen a este sector. Incluso, se puede pensar también en la construcción de una epistemología del turismo que reúna en un mismo espacio de saber, los diversos conocimientos que se producen en distintas disciplinas científicas sobre esta importante actividad, de cara a la acción trasformadora de su realidad.

En este sentido, la reflexión filosófica sobre el turismo para entender en contexto la verdad de su ser, sus características primordiales o sus interrelaciones con otras actividades humanas, entre otros aspectos, no es solo un saber para consumo de eruditos en la materia, sino también, un conocimiento práctico que puede, dependiendo de la creatividad y versatilidad de los equipos de investigación en el área, mejoran continuamente las estrategias de negocios y las políticas que regulan esta materia en estrecha sintonía con el paradigma multidimensional de desarrollo sostenible.

El desarrollo sostenible impulsa, como es lógico suponer, un turismo sostenible que combina en igual de condiciones el crecimiento económico con los requerimientos de justicia social, equidad, derechos humanos y equilibrio del ambiente, en sintonía con los objetivos del desarrollo sostenible promovidos por la agenda 2023 de Naciones Unidas, situación que impulsa a los autores de esta reflexiones a responder a la pregunta ¿En qué consiste la relación turismo, crecimiento económico y desarrollo sostenible en el siglo XXI? De forma provisional y sosegada. Se trata, en esencia y existencia, de una relación económica y moral. Económica porque

el turismo es un negocio rentable en cualquier país del mundo donde existan las condiciones suficientes y necesarias para su desarrollo; por su parte, la cuestión moral viene dada por la necesidad histórica de construcción internacional de un nuevo paradigma de desarrollo que trasciendo a lo estrictamente económico y busca el logro de una forma de progreso con equidad y justicia, en el turismo y en cualquier otro negocio rentable de carácter internacional (Oleksenko, 2022).

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European Union policy on financing eco-innovations in the transition to a green economy

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Abstract

The purpose of the article is to identify the systemic interconnections of the main elements of the policy of financing green transformation and eco-innovation in the European Union EU, highlighting the main challenges and further strategic directions of development. EU policy in the field of green economy and innovation has been studied. Identified core economic systems for «green» finance. The policy of stimulation of eco-innovative activity in the EU and primary financing programs are considered. A scheme of the system of sustainable finance and eco-innovation in the EU has been elaborated, and the direct relations between the elements of this system have been clarified. The methodological basis of the article are the fundamental provisions of economic science, the theory of green finance and innovative development. Dialectical, systematic, logical and historical methods of scientific knowledge were used. The conclusions demonstrate the urgent need for a green transformation and the importance of developing a policy for financing eco-innovation activities in the EU.

Keywords: green economy; innovation summary index; eco-innovations; EU green policy; eco-innovation policy infrastructure.

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Política de la Unión Europea sobre la financiación de innovaciones ecológicas en la transición a una economía verde

Resumen

El propósito del artículo es identificar las interconexiones sistémicas de los principales elementos de la política de financiación de la transformación ecológica y la ecoinnovación en la Union Europea UE, destacando los principales desafíos y las direcciones estratégicas de desarrollo adicionales. Se ha estudiado la política de la UE en el campo de la economía verde y la innovación. Sistemas económicos centrales identificados para las finanzas «verdes». Se considera la política de estímulo de la actividad ecoinnovadora en la UE y los programas de financiación primaria. Se ha elaborado un esquema del sistema de finanzas sostenibles y ecoinnovación en la UE, y se han aclarado las relaciones directas entre los elementos de este sistema. La base metodológica del artículo son las disposiciones fundamentales de la ciencia económica, la teoría del financiamiento verde y el desarrollo innovador. Se utilizaron métodos dialécticos, sistemáticos, lógicos e históricos del conocimiento científico. En las conclusiuones se demuestra la necesidad urgente de una transformación verde y la importancia de desarrollar una política para financiar actividades de ecoinnovación en la UE.

Palabras clave: economía verde; índice resumen de innovación; ecoinnovaciones; política ecológica de la UE; infraestructura de la política de ecoinnovación.

Introduction

In the modern world, a radical reassessment of values has taken place, and in the near future, money or GDP will not be a measure of a country’s economic power or prosperity. By adopting the 2030 Agenda, the international community recognised that current consumption and production patterns are unsustainable and that there is a need for a systematic change in consumption and production patterns.

More important for long-term development is the integration of ESG into public policy, the transition to a sustainable business model through sustainable financing, the formation of a green economy, and the development of a knowledge economy. According to the UN Environment Program, eco-innovations actively contribute to separating economic growth from resource consumption and help achieve sustainable development goals. Also, implementing a green economy reduces negative externalities and maximises social value through ESG-related activities, which must consider the needs of all participants (shareholders, consumers, customers) (IFC, 2021).

Climate policy is most developed in the EU, one of the world's first to create regulations and goals to transition to a green economy. The EU implements a permanent collection of environmental data and monitoring indicators and develops relationships and mobility in the institutional sphere at the local, national, and international levels (Oleksenko *et al*., 2021; (Gulac *et al*., 2022a). European institutional and political support includes the development of climate legislation, consolidation of climate neutrality and reduction of CO2 emissions in all types of economic activity, increasing the involvement of citizens, society and businesses to participate in climate measures.

The EU's main ambitious goal is to become the first climate-neutral economic union by 2050 and develop measures to implement the UN's sustainable development goals by including them in all its policies. The EU's ambitious goals contribute to a rapid transformation to a green economy. To achieve this, it is necessary to transform state institutions and the economy and increase funding.

The green finance market has excellent growth potential, as the demand for eco-innovation and financing of global sustainable development will grow, especially in such sectors as energy, construction, infrastructure, water supply. However, compared to the serious environmental problems and energy shortages that Europe already faces, the supply of green finance remains very scarce, and the financial resources invested in green sectors still cannot meet the demand. Between now and 2030, both developed and developing countries must actively develop green finance (Li and Shen, 2022).

One of the important and priority measures is the development of a sustainable financing policy, especially for eco-innovative activities (Trusova *et al*., 2021). The main directions of eco-innovation financing policy are the development of institutional financing mechanisms and the support of the environmental, social and sustainable development (GSS) bond market as effective instruments for financing green projects for both the public and private sectors.

1. Objectives

The purpose of the article is to justify the need to increase financing of the green economy and eco-innovations. Study of the policy of financing eco-innovations in the EU and its components. Determining the main challenges and obstacles of financing the green economy and outlining further promising directions for the development of financing sustainable development and innovative activities in the EU.

2. Materials and methods

The article used analytical articles and studies of world economic organizations: the World Bank, the IMF, United Nations and others. Analytical reviews and studies of economic associations and the European Commission were used. The main research methods were scientific abstraction, logical generalization when determining the need for financing and supporting green transformation and eco-innovation activities; graphical method for visual reflection of trends in financing innovative activities and R&D; analytical method for determining the components of the policy of financing eco-innovation activities and their interrelationships; economic-statistical and comparative - for assessing the state of financing of the green economy in the EU; a visual reflection of the sustainable finance and eco-innovation system in the EU; situational analysis to identify problems of financing eco-innovation activities.

System-structural analysis - for the development of a conceptual model of green economy financing, a theoretical model of network partnership in the formation of alliances and relationships, a structural-logical scheme of the formation of the main elements of the green transformation financing policy; complex empirical and applied analysis - to determine directions, conditions, mechanisms of financial support for green transformation and development of eco-innovations

3. Results and discussion

A new EU growth strategy aimed at a sustainable, prosperous and fair society was launched with the European Green Deal. Which sets out the transformation of the EU into a resource-efficient and competitive economy with no net greenhouse gas emissions in 2050 and where economic growth will not be linked to the use of resources. Europe has set ambitious plans to become the first climate-neutral continent by 2050. Based on the European Green Deal, the «Climate Target Plan 2030» was developed, which increased climate ambitions and commitments to reduce net emissions by at least 55% in a responsible manner by 2030 (The european green deal investment plan and just transition mechanism explained, 2020).

The implementation of such ambitious EU plans means the need to increase the contribution of all sectors and increase funding. To achieve the goals set by the European Green Deal, the European Commission plans to mobilize at least €1 trillion in sustainable investment over the next decade, or 30% of the EU's multiannual budget (2021-2028). The necessity and value of the European Green Deal has only increased in the light of very serious geopolitical events in Europe, which threaten the social and economic well-being of EU citizens.

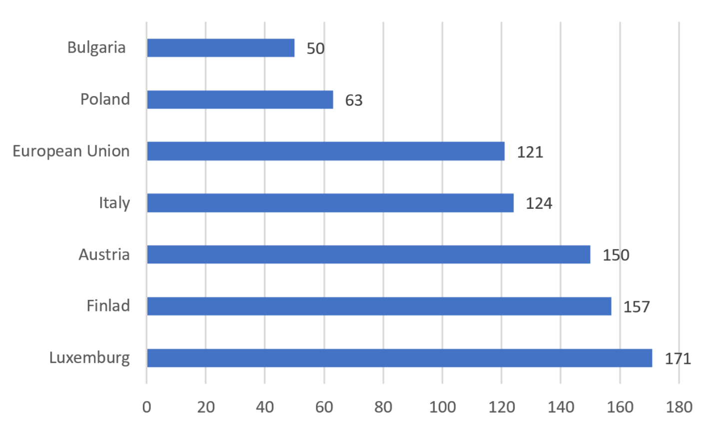
Eco-innovations are becoming one of the main priorities of EU policy in almost all types of economic activity. At the level of the countries and in the EU, it is necessary to evaluate and define the promising social, economic and environmental dimensions of developing the eco-innovation strategy (Gulac *et al.*, 2022b). The new economy that is being formed is not only an economy of knowledge and human capital but also of conscious and responsible behaviour for the consequences that future generations may feel.

The development of the green economy should be carried out in three dimensions: green innovations, sustainable and inclusive development. What determines the development of the main factors (World Bank, 2021):

- investments in human capital;
- preservation of nature and increase of social capital;
- implementation of macroeconomic and structural policy;
- development of institutions for innovative activity and economic transformation;
- capital mobilisation and attraction of private investments to finance eco-innovations (European Commission, 2021a).

Today, innovation policy is one of the main policies of the European Union, as technological progress is one of the main drivers of economic development. As of 2021, the prominent leaders of eco-innovations in Europe are: Luxembourg, Finland, Austria, Denmark, Sweden, Germany, France, Spain and the Netherlands. Average Eco-Innovation indicators include: Italy, Portugal, Slovenia, Czech Republic, Ireland, Belgium, Greece, Estonia and Latvia. The following countries were included in the "Catching up eco-innovations" category: Lithuania, Croatia, Slovakia, Cyprus, Romania, Poland and Bulgaria.

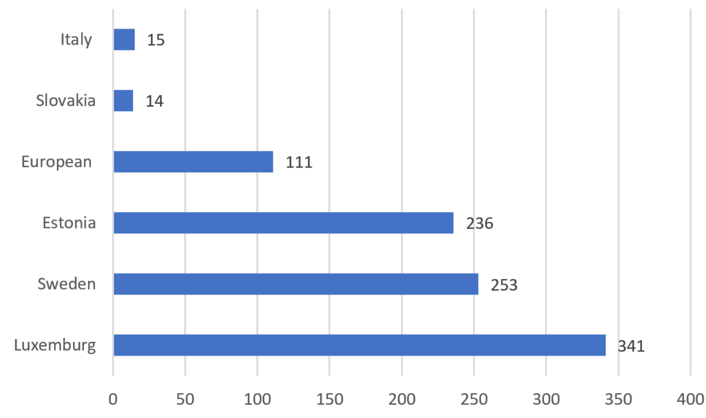
Figure No. 1: Eco-innovation index (2021).



Source: (European Commission, 2022a).

Despite the established policy of sustainable financing, EU countries differ significantly in the amount of financing of eco-innovation activities. Total value of green early stage investment (per capita) is highly differentiated between countries from 14 (Slovakia) to Luxembourg with an indicator of 341 (a 24-fold difference).

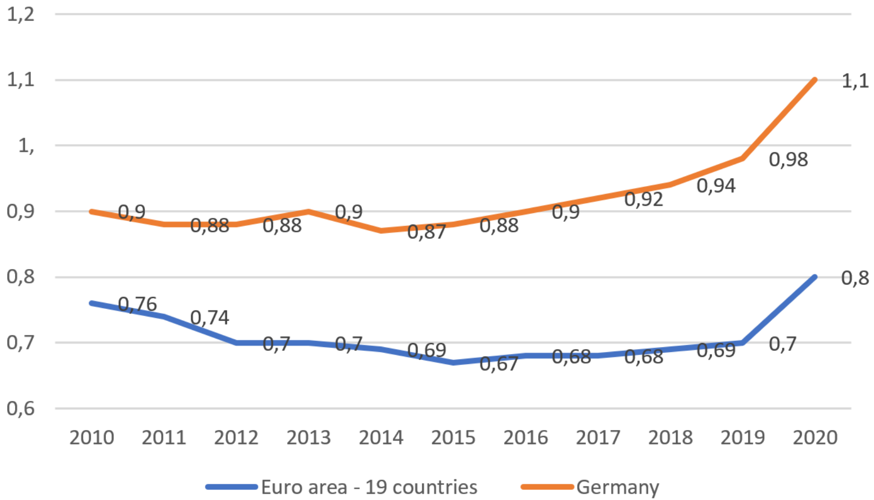
Figure No. 2. Eco-innovation index. Total value of green early-stage investment (per capita)



Source: (European Commission, 2022a).

Total government budget allocations for R&D. The percentage of gross domestic product (GDP) on average across EU countries is 0.8. In general, there is a close direct relationship between a country's economic development and the share of its R&D expenditures.

Figure No. 3. Total government budget allocations for R&D. Percentage of gross domestic product (GDP).



Source: (Eurostat, 2022a).

Total government budget allocations for R&D euro per inhabitant in the EU was 264.9 Euros in 2020 and had a tendency to grow every year, the most developed countries spend about 2 times more on R&D than the EU average (for example, Germany spends 519, 2 euros). Also, increasing the share of the public sector in the R&D financing structure has a positive effect on the efficiency of the R&D sector. Ensuring competitiveness in the R&D sector in the EU is the main goal.

On the one hand, there should be enough funding and support for R&D; on the other hand, it is advisable to ensure effective communication between science and the real sector of the economy, to ensure the effective use of R&D in practice. In the last decade, highly developed countries have significantly increased the share of scientific work in total employment and the number of scientific workers. In the EU, human resources for the development of innovation and cooperation should be strengthened, thus creating even more space for innovation processes (Eurostat, 2022a).

Due to the planned increase in the EU's 2030 greenhouse gas reduction targets, as announced in the European Green Plan, investment needs will continue to grow. There is already a significant increase in the number of eco-technologies. Environment-related technologies accounted for 12% Percentage of all technologies in 2019 (Euro-19), which is 47% more than the level of 2000 (OECD, 2021a).

Achieving the existing climate and energy targets by 2030 requires an additional investment of €260 billion per year. This figure mainly includes investments related to energy, buildings and partially the transport sector. Therefore, it is necessary to maintain the continuity of investment flows in these areas, and especially to ensure the financing of eco-innovation activities.

For the development of sustainable green financing, it is advisable to form a favorable policy, which includes: the policy of regulation of green financing; strategic plans for climate change mitigation and adaptation; green taxonomy; dissemination of ESG best practices; implementation of climate stress testing for enterprises of various sectors and financial institutions; regulation of environmental emissions; development of information disclosure platforms and changes in financial reporting standards; development and implementation of new financial instruments and products for green financing. The main economic systems that need to be financed for climate transformation are: climate-smart agriculture; green buildings and cities; development of renewable energy sources; distributed generation; energy efficiency; water supply and sewage systems; waste management; development of the circular economy; transport infrastructure and mobility (European Commission, 2021a).

The financing of innovative activities has its own specificity due to the high risk of innovation failures and high development costs, which necessitates the development of a policy to stimulate the introduction of eco-innovations, especially in small and medium-sized enterprises. (Oleksenko *et al.,* 2022).

Also, environmental regulation and a developed institutional environment stimulate enterprises to reawaken eco-innovations, formulate and implement environmental protection strategies. It is important to measure the degree of policy implementation to assess the achievement of established strategies and to monitor and control the established goals of the strategies. The main problem of such actions is the correct selection of relevant indicators. An important challenge and a necessary development factor is the motivation of the business sector to invest in environmental innovations.

It is desirable for the international community to encourage politicians to take action to create new legislative frameworks to support investments

in eco-innovation, develop new financial schemes to support the private sector in investing in eco-innovations, and new programs for society to encourage local communities to participate in eco-actions (Jesic *et al.*, 2021).

Achieving the goals of sustainable development is possible only through the implementation of eco-innovations, introducing the best possible conditions for the implementation of innovations. The introduction of the innovation principle means that in the future, when the EU Commission develops new initiatives, it will take into account the impact on innovation. This principle ensures that innovation is supported in all new EU policies and regulations, and the legislative framework will facilitate innovation (European Commission, 2019).

EU Cohesion Policy helps EU countries, regions, local governments and cities make major investments that contribute to the European Green Deal. They must dedicate at least 30% of what they receive from the European Regional Development Fund to these priorities. The European Commission has adopted a series of measures to make the EU's climate, energy, transport and tax policies fit to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels (European Commission, 2021b).

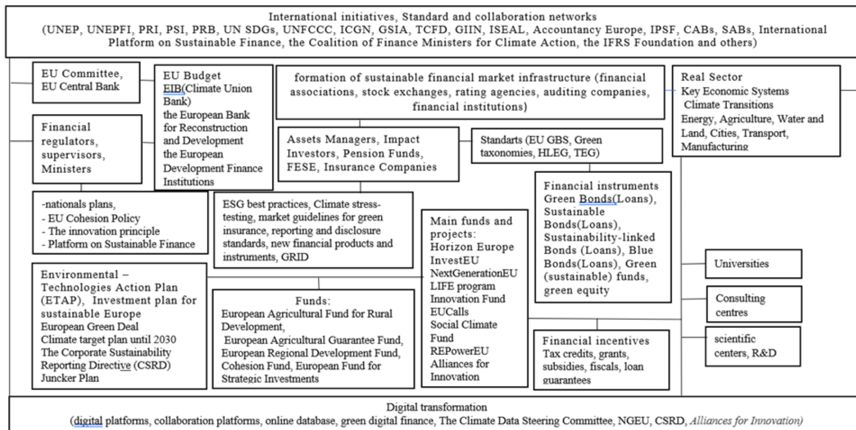
In general, the financial market is of great importance for financing climate resilience. Eco-innovation financing tools are classified into own resources, financial resources of institutions (bank loans, private equity financing, venture capital), can be divided into external and internal financing, state financing, and financing of international organizations. The formation of financial market infrastructure is important for financing eco-innovations: financial regulators at the national and regional level, supervisory bodies, associations, stock exchanges, rating agencies, auditing companies, financial institutions (IFC, 2021).

The main elements and their relationship of the sustainable finance and eco-innovation system in EU are shown in the Figure 4. In more detail, the main parts of the sustainable finance and eco-innovation system in EU are studied later.

The investment plan for a sustainable Europe envisages EU spending aimed at combating climate and environmental policy. In addition, the European Investment Bank intends to increase the share of financing measures for climate protection and environmental sustainability to 50% of the total volume of operations in 2025. Gradually financing the green economy, it will transform into the Climate Union Bank. The long-term EU budget covers seven years from 2021 to 2027 and will invest heavily in climate and environment-related objectives. The EU Commission has offered 25% of the total to promote climate action and environmental spending under several programs (e.g. European Agricultural Fund for

Rural Development, European Agricultural Guarantee Fund, European Regional Development Fund, Cohesion Fund, Horizon Europe and Life Funds) (The European Green Deal Investment Plan And Just Transition Mechanism Explained, 2020).

Figure No. 4. The sustainable finance and eco-innovation system in EU.



Source: own research based on (World Bank, 2021; IFC, 2021)

EU support for eco-innovation has never been greater. The following effective programs with EU funding for green projects have been developed in the EU:

- Social Climate Fund. It is planned that a part of the proceeds from emissions trading for buildings and road transport will go to the Fund. The fund aims to mitigate the impact of the new carbon pricing and will provide funding to member states to support their policies to address social impacts (EUR-Lex, 2021).
- Horizon Europe —with a budget of more than 95.5 billion euros for European research and innovation, it is the largest and most important European funding program for green innovation. In cooperation with other EU programs, Horizon Europe is a key factor in attracting national public and private investments. A new wave of scientific and innovative partnerships is planned as part of Horizon Europe. It is the development of partnerships that will help bring about the huge environmental, social and economic changes required by the European Green Deal.

- InvestEU has plans to attract additional private investments with EU budget guarantees. InvestEU will attract around €279 billion of climate and environment-related private and public investment between 2021 and 2030 (European Union, 2022). The program is based on the Juncker Plan Investment for Europe model. Which combines the European Fund for Strategic Investments and EU financial instruments. It is also planned to create, within the framework of the program, a consulting centre and an easily accessible database that corresponds to the projects of potential investors around the world (European Commission, 2022b).
- The LIFE program is a European funding program dedicated to financing environmental, climate and clean energy goals. The allocated budget for financing EU environmental projects is approximately 5.4 billion euros.
- The Innovation Fund (IF), funded by the EU Emissions Trading System, provides EU funding of up to €10 billion by 2030 for environmental projects contributing to the reduction of greenhouse gases.
- The EUcalls platform was also created to find EU funding for environmental projects. The purpose of the project is to ensure the search process for European tenders for environmental projects, as well as to establish connections with reliable and experienced project partners with whom it is possible to cooperate and form consortia.
- In the plan to recover the EU from the adverse effects of COVID-19 - NextGenerationEU is provided with an additional budget of 750 billion euros to increase investments in important digital and sustainable innovations EU intends to raise 30% of funds within the framework of the NGEU through the issuance of green bonds (EUcalls, 2022a).

An important step was the introduction of the EU taxonomy, which is a classification system that establishes a list of environmentally sustainable types of economic activity. This helps the EU increase sustainable investment and implement the European Green Deal. The EU taxonomy provides companies, investors and policy-makers with relevant definitions by which economic activities can be considered environmentally sustainable.

Thus, it creates security for investors, protects private investors from «green» laundering, helps companies with the transition to green technologies, mitigates market fragmentation and attracts investments. The taxonomy regulation was published on June 22, 2020 and entered into force on July 12, 2020 (European Commission, 2019b).

The banking sector has a significant impact on green finance. It is expedient for banking institutions to develop a strategic green vision, green obligations; implement the organization and culture in accordance with the values of the green economy; to expand the offer of green products; improve climate and ESG risk management mechanisms; develop green digital finance and engage stakeholders.

The policy of green lending has a significant and positive impact on the implementation of environmental innovations by enterprises. Currently, banks provide a wide range of services related to the financing of the green economy: assessment of environmental risks, provision of «green loans», issuance of green bonds, implementation of green ratings, green insurance, environmental stress testing.

One of the most effective financing tools are green bonds, which have been developed specifically to support climate and environmental projects. The green bond market is a dynamic and rapidly growing market. Regulators are also looking at the green bond market as one of the main financing tools for the green economy.

The establishment of «green bond» standards goes in this direction with the aim of making it easier for investors and companies to identify sustainable investments and ensure confidence. The EU Green Bond Standard (EU GBS) is based on the European taxonomy. Europe was the first region to issue the first green bonds in 2007, with the European Investment Bank as the main first bank in this market.

Nowadays, the EIB remains the largest supranational issuer and leads the application of the EU taxonomy and the EU GBS, spreading EU standards around the world. In the developed Climate Bank Roadmap for 2021-2025, the EIB commits to gradually align CABs and Sustainability Awareness Bonds (SABs) with the proposed EU GBS.

Organizations that certify green bonds seek to reassure investors that their certification standards are transparent and based on scientific criteria. Thus, certified bonds tend to be more attractive to a wider range of socially responsible investors. Some regulators are proposing to supplement the sustainability standard by including social and governance factors. The European Central Bank (ECB)on 5 November 2021 proposes to assess and monitor over time the attractiveness of EU GBS compared to market standards.

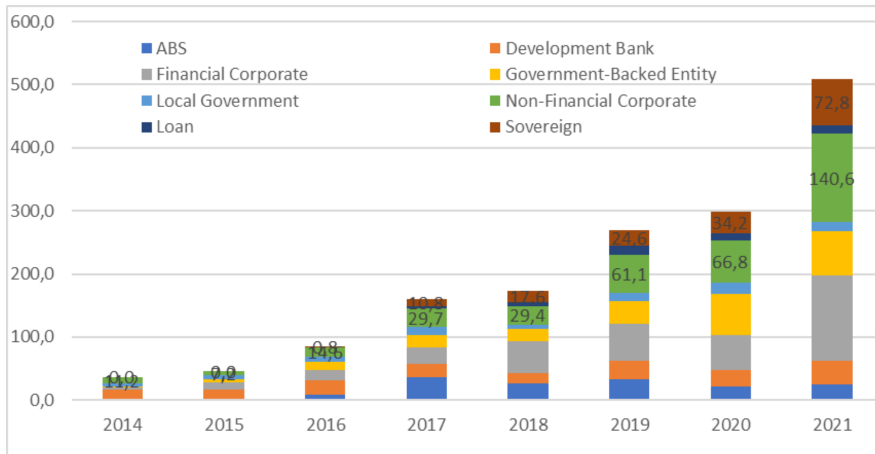
At the same time, it is important to identify problematic points for both investors and issuers when issuing green bonds. For investors, the main challenges are the determination of truly green investments and obtaining complete information. For issuers, this can be additional costs and potential risks.

The main obstacles to the development of green bonds are: 1. the need to reach an agreement on the joint definition of environmental projects and environmental bonds and their assessment methodology; 2. complex procedures for reviewing and evaluating green bonds. 3. the difficulty of financing green projects and their small number. In general, the green bond market also has potential risks that must be leveled at the expense of the right policy: potential possible «green washing»; heterogeneity and lack of transparency; insufficient number of green bonds, demand exceeds supply; the need to increase investment in important projects (Green Finance & Development center, 2022).

Currently, there are the following types of bonds (loans) that are used for sustainable development: green bonds/loans; bonds/loans related to sustainable development; blue bonds/loans; transitional financing; green/sustainable funds; green structured financing; green capital

Climate and sustainable bonds occupy a larger share in the financing structure of the green economy, the volume of which has a steady upward trend. In 2021, annual green bond issuance surpassed the half-trillion mark for the first time, amounting to US$522.7 billion, a 75% increase over 2020 (Climate Bonds Initiative, 2022).

Figure No. 5. Climate Bonds by Insure type



Sourse: (Climate Bonds Initiative, 2022).

Green bonds issued the most in Europe, while the Asia-Pacific region had the largest annual growth (129%). The US is the leader in terms of

emissions, while China is the second largest emitter ($199 billion). Most of the issue is carried out at the expense of Non Financial corporate and Financial corporate (Climate Bonds Initiative, 2022).

With a large-scale green bond issuance program, the EU is demonstrating confidence in the green bond market as an effective source of financing for the green economy. But it is especially important to support the green transformation of small and medium-sized companies. Among professional associations in the EU, there is no consensus on the implementation of standards and their obligation for such enterprises.

The Federation of European Securities Exchanges (FESE) recommends the implementation of special benefits and incentives to facilitate the issuance of EuGB by small and medium-sized enterprises, and emphasizes the importance of having a standard compatible with other taxonomies and international frameworks. Together with the European Banking Federation (EBF), the EU supports the proposal to introduce a voluntary GBS.

Accountancy Europe supports the EU's mandatory GBS and recommends the creation of a centralized European accreditation system for external assessment, building on existing national schemes and processes. The organization also puts forward proposals for reporting on actual environmental impact on a regular basis and proposes the creation of independent third-party assurance on distribution and environmental reporting with the development of standards for sustainable development bonds incorporating environmental, social and governance objectives. "Better Finance" believes there should be a degree of flexibility for companies not included in the taxonomy but who want to raise money for specific, effective environmental projects, and offers transitional tax breaks to encourage market development (European Parliament, 2022).

In the coming years, regulatory requirements for disclosure of information about environmental and climate risks will become more stringent. Central banks have already begun to conduct pilot climate stress tests en masse, and they will undoubtedly become more complex in the future. The market for ESG data is also developing and is expected to grow significantly as regulation grows and becomes more complex in the future.

Consulting firm Opimas has set the value of the ESG data market to exceed $1 billion in 2021 for the first time as demand for ESG data and products continues to grow rapidly. Also, information disclosure is stimulated by such initiatives as: The Corporate Sustainability Reporting Directive (CSRD), a proposal of the US Securities and Exchange Commission (SEC) regarding the disclosure of climate information. This leads to increased sustainability disclosure requirements for investors. ESG disclosure has strong positive relationships with corporate performance, return on assets, and market value components of a company's financial performance (Tolliver *et al.*, 2021).

There is also a global initiative, The Climate Data Steering Committee, which contributes to simplifying access to data, including through the EU's planned European Single Point of Access - a database for sustainable development and financial data. The regulation of ESG rating providers is important, the increase in the amount of data and digital platforms is pushing the use of artificial intelligence for reporting and modelling the development of world events. But the data of the platform should be open and not allow obtaining asymmetric information for market players, stimulate small and medium-sized firms to use this data and implement innovations, reduce barriers to market entry.

According to the NGEU, each country must develop its national investment and reform plans with the mandatory inclusion of the digital transition and environmental initiatives, reduce dependence on fossil fuels, increase energy efficiency and align these plans with the EU taxonomy.

Development of an action plan for sustainable financing is an urgent need. Special attention should be paid to standardization and disclosure of information. To ensure integrity in the market, the High-Level Expert Group on Sustainable Financing (HLEG) was established in 2016. It provided advice on: channeling public and private capital to sustainable investments; determining the role of financial and supervisory bodies in the stability of the financial system in connection with climate risks; development and development of the European Green Policy. Subsequently, the EC convened a Technical Expert Group on Sustainable Finance (TEG).

A digitalization policy in tandem with a flooded policy can have a significant positive synergistic effect. Since it is digitalization that is the main driver of innovative processes and an opportunity to achieve social and environmental sustainability. The implementation of digital solutions can significantly accelerate the transition to a green economy. In addition, it is digitalization that makes innovations more transparent, cross-industry, allows them to be quickly distributed and manage data for the purposes of sustainable development.

There is a positive relationship between public-private partnerships (PPPs) and project finance (PF). PPP and PF approaches are the most important tools for the development of new infrastructure systems and there is a recognized need to develop green resilience infrusructure development carried out on the basis of public-private partnerships. Thus, the introduction of sustainable financing mechanisms will allow to increase eco-innovation projects.

Dialogue and close cooperation between a wide range of stakeholders from the public and private sectors will be critical to achieving the goals of sustainable development. The Platform on Sustainable Finance plays a key role in enabling such collaboration, bringing together the best practices of

the corporate and public sectors in the field of sustainable development, industry, as well as academia, civil society and the financial industry.

IPSF offers a multi-stakeholder forum for dialogue between policymakers responsible for developing regulatory measures for sustainable finance to help investors identify and pursue sustainable investment opportunities that truly contribute to climate and environmental goals (EU Green Bonds, 2022).

Today, the EU is investing more than 1.8 billion euros in 17 large-scale innovative clean technology projects. The Innovation Fund aims to create the right financial incentives for companies and public authorities to invest in the next generation of low-carbon technologies and to give EU companies the first priority to become global technology leaders (European Commission, 2022c).

Developing alliances for innovation is important. The goal of Alliances for Innovation is to develop digital skills that have become a prerequisite for today's labor market. In addition, the twin transitions proposed by the Green Deal require changes in qualifications and curricula to meet the demand for green skills to support sustainable development. To drive innovation, the focus will be on digital skills as they become increasingly important in all occupations across the labor market. In addition, the transition to a circular and greener economy must be supported by changes in qualifications and national education and training programs to meet new professional needs for environmental skills and sustainable development (EUcalls, 2022b).

Conclusion

The transition to a low-carbon economy requires increasing social and political awareness of society regarding the environment. It is important to cooperate with other companies, industries, countries in joint research and development. Innovation today is a very interactive process. Cooperation leads to the expansion of the scope of development projects and increases the company's competence. A strong and reliable system of environmental innovations ensures technological sustainability and the realization of the goals of sustainable development.

It is important to increase the level of knowledge and skills of entrepreneurs regarding eco-innovations with the help of infrastructure, small and medium-sized enterprises need special attention and support (Ruralia institute, 2022). The main trends in the development of the green economy are: 1. gradual abandonment of non-green assets in financial portfolios; 2. increasing the financing of eco-innovations and improving the

mechanisms of adaptation to climate change in all sectors of the economy; 3. reduction of state support for polluting sectors and reorientation towards green energy; 4. financing and supporting ESG information disclosure; 5. harmonization of the taxonomy of green financing with the provision of uninterrupted capital movement (Green Finance & Development center, 2022).

The main challenges for financing eco-innovations in the coming years are: 1. the need to implement new initiatives due to the geopolitical and energy crisis in Europe; 2. improvement of international cooperation between countries for joint developments and financing; 3. development of multilateralism in the spread of eco-innovations and access to digital databases. Sustainable financing helps to achieve sustainable development faster and should become part of financial decision-making at all levels.

The formed green financing policy should support the development of climate-neutral, energy- and resource-efficient and cyclical projects. However, it is necessary to form the infrastructure and develop a policy of financing the transformation to a green economy and eco-innovations (European Commission, 2022d). The role of the state in these processes is only growing and is fundamental because of its ability to mobilize national resources and encourage innovation.

The effective activity of the state should be complemented by the private sector, the financing policy of the green economy should be focused on stimulating investments from the private sector. But it is necessary to ensure the conditions of a stable legal framework and intellectual property rights (World Bank, 2021). It can be noted that the development of eco-innovations is an important factor in the further economic development and one of the drivers of the transition to the knowledge economy.

Eco-innovations generate synergistic effects, solving economic and climate challenges, strengthening connections and establishing a common space between people, countries, economies and the environment. Countries and enterprises realized the need to transition to green resilient infrastructure development based on green innovations. It is this approach that will help make a qualitative leap in development, open new sources of job growth, and increase resilience to shocks.

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Professionalization of Public Service of Ukraine: Specifics of the Process in the Context of Global Challenges and Modern Social Changes

DOI: https://doi.org/10.46398/cuestpol.4075.02

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Abstract

The State is an institution that should be considered as a complex multilevel system, whose managerial effectiveness depends to a large extent on the professional training of its human resources. The purpose of this article is to investigate and reveal the specificities of the process of professionalization of the public service in the context of global challenges and modern social changes. In the study, the essence and understanding of the concept of professionalization was considered, which made it possible to distinguish such approaches as: scientific, normative and legal, professional and educational. The main functions of professionalization of the public service are defined. It is noted that the public service professionalization system has a relationship with the environment, so it maintains the balance and order of its internal

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environment and resists chaos. Professionalization is studied as a process in the conditions of global challenges and modern social changes. It is concluded that, considering the professionalization of public service as a process in the conditions of global challenges and modern social changes, it is necessary to take into account the opinions and positions of professionals to achieve the best results in this field.

Keywords: public service; public administration; professionalization; human resource management; digitalization.

Profesionalización del servicio público de Ucrania: detalles del proceso en el contexto de los desafíos globales y los cambios sociales modernos

Resumen

El Estado es una institución que debe ser considerada como un sistema complejo de múltiples niveles, cuya eficacia de gestión depende en buena medida de la formación profesional d esu recurso humano. El propósito de este artículo es investigar y revelar las especificidades del proceso de profesionalización del servicio público en el contexto de los desafíos globales y los cambios sociales modernos. En el estudio, se consideró la esencia y la comprensión del concepto de profesionalización, lo que permitió distinguir enfoques como: científico, normativo y legal, profesional y educativo. Se definen las principales funciones de profesionalización del servicio público. Se advierte que el sistema de profesionalización del servicio público tiene una relación con el entorno, por lo que mantiene el equilibrio y orden de su entorno interno y resiste el caos. Se estudia la profesionalización como proceso en las condiciones de los desafíos globales y de los cambios sociales modernos. Se concluye que, al considerar la profesionalización del servicio público como un proceso en las condiciones de los desafíos globales y los cambios sociales modernos, es necesario tener en cuenta las opiniones y posiciones de los profesionales para lograr los mejores resultados en este campo.

Palabras clave: servicio público; administración pública; profesionalización; gestión de recursos humanos; digitalización.

Introduction

Each state is an institution that should be considered as a complex multi-level system, the effectiveness of management of which depends on professional training. In order to achieve a high level of efficiency and effectiveness of management activities, it is necessary to rely on deep knowledge and skills, to have modern methodology and management tools, to use innovative tools. In the modern conditions of global challenges and modern social changes, it is necessary to introduce the latest technologies, in particular, digital tools of mass communication. The most important tasks of public service employees include the priority of citizens' rights and freedoms, transparency of public authorities.

An important aspect in this context is the training of personnel, their professionalization aimed at obtaining highly professional, highly qualified employees and effective, sustainable and high-quality functioning of public authorities. Currently, the professionalization of the public service requires modernization, which consists in the ability to implement management functions competently and with a high level of responsibility, to increase the degree of professionalism of public service employees and to promote the activation of innovative and digital processes in the state.

The process of creation and practical implementation of state policy has a significant dependence on the level of efficiency of the public service, on its formation by qualified and knowledgeable employees, who are a strategic resource of a competitive country. In the conditions of global challenges and modern social changes, public service managers need to be able to quickly make management decisions aimed at solving urgent issues and problems in various areas of the population's life, providing them with high-quality and operational services, maintaining a high level of efficiency of the public service system.

The purpose of this article is to research and reveal the specifics of the process of professionalization of the public service in the context of global challenges and modern social changes.

The theoretical and methodological basis of this article is the thorough theories of management, social and social sciences, as well as general scientific and special research methods. During the writing of this study, such scientific methods as analysis and synthesis, induction and deduction, abstraction and generalization were applied to clarify the essence and interpretation of the concept of professionalization, professionalization of public service, and consideration of professionalization as a specific process in the conditions of global challenges and modern social changes , as well as its implementation of its stages.

Also within the scope of this article, the author used a systematic approach to present the professionalization of the public service as an open dissipative system and to characterize it and its components. In addition, a graphic method was used to visually present approaches to understanding the professionalization of public service, presenting it as an open system and as a process in the context of global challenges and modern social changes.

1. Literature Review

Many scientific publications are devoted to various aspects of public administration and public service. The issue of professionalization of the public service is gaining special relevance. The article (Sandu, 2021) uses the idea of professionalization of the state function in order to present the situation of young people who are in the system and want to develop a career in this field. The authors considered the peculiarities of employment in a public position, the obstacles faced by young people. Scholars (Bergsgard and Nødland, 2020) investigate the use of open tenders in public procurement of social services in Norway to determine whether this implies standardization, professionalisation and/or innovation among civil sector providers and whether this differs between social welfare areas.

The practical significance of the article (Bochove and Oldenhof, 2020) lies in the study of the interaction between non-elite subjects of social assistance, who carry out institutional work aimed at the implementation of three strategies: classic professionalization of volunteer coordinators, protoprofessionalization of volunteers, and improved professionalization of social assistance practitioners. In conclusion, it is noted that the potential negative consequences of these professionalization strategies are the emptying of paid social work and the exclusion of vulnerable volunteers. The research paper (Simon, 2017) analyzes the history of the state employment policy and targeted state policy aimed at the professionalization of non-profit organizations.

The scientists (Cornell and Svensson, 2022) explore the spread of meritocratic practices as a potential case of policy transfer through a careful analysis of professionalism in the British civil service. Scholars argue that British reformers were inspired by meritocratic practices in India under British rule. The authors (Hartley and Ahmad, 2021) argue that the practice of professional public service has existed for centuries, and the recognition of the separation between politics and governance has provided a basis for theorizing a politically neutral and professional public service. Scholars examine this trend as a consequence of efforts to professionalize the civil service.

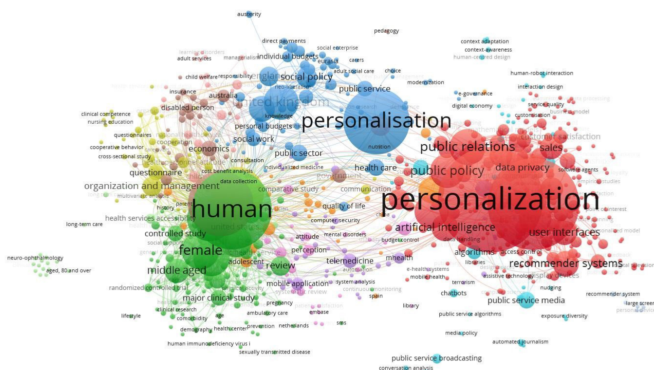
Scholars (Rodriguez-Acosta, 2021) have demonstrated Paraguay's high degree of government centralization and authoritarianism throughout much of the twentieth century. Within the scope of the article, changes in the professionalism of the public service are considered. The scientists' article (Brown, 2021) examines the phenomenon of being called to professional public service in Canada.

The authors tried to highlight the dynamics of the call and the steps that professional public services can take to best mobilize those who respond to it. The authors (Tangsgaard, 2021) prove that these risky situations make the behavior of professionals on the frontline especially important. Research results prove the importance of organizational culture and professionalism of public officials for risk perception and behavior in risky situations.

According to the authors (Szczygielski, 2021), professional services are trusted goods provided by professionals. Scholars demonstrate that partial government support can promote professionalism in service delivery. The authors of the articles (Popelo *et al.*, 2021; Derhaliuk *et al.*, 2021; Nikiforov *et al.*, 2022) considered the functions of state management of regional development in the conditions of digital transformation of the economy, as well as the state policy of transformation of the potential-creating space and conceptual principles of regulation of state policy for the development of public-private partnership.

The analysis of the key areas of scientific publications by authors from all over the world, which are based on the professionalization of public service, is presented in Fig. 1.

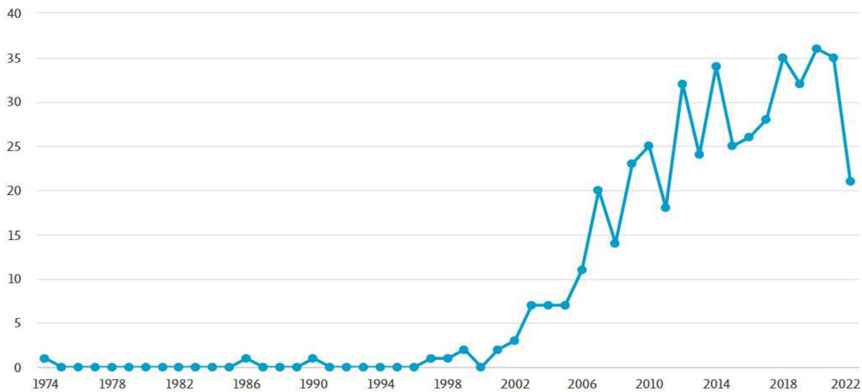
Figure No. 1. Graphic map of keywords in publications, in which titles the word "professionalization and public service" is met



Source: compiled by the author based on the analysis of the Scopus database and using the tools of the VOSviewer program.

An article in the field of professionalization, according to Scopus, was first published in 1974. Considering the dynamics of the number of articles devoted to professionalization, including public service, over the past 10 years, it should be noted that it was as follows: 2022 – 21 articles, 2021 – 35 articles, 2020 – 36 articles, 2019 – 32 articles, 2018 year - 35 articles, 2017 - 28 articles, 2016 - 26 articles, 2015 - 25 articles, 2014 - 34 articles, 2013 - 24 articles (Fig. 2).

Figure No. 2. Dynamics of the number of articles in which titles the word "professionalization and public service" is met.

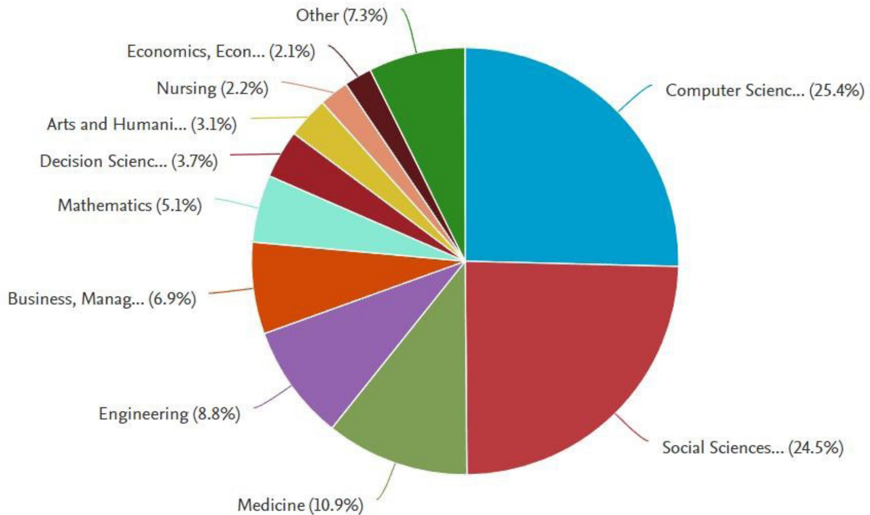


Source: compiled by the author based on the analysis of the Scopus database and using the tools of the VOSviewer program.

Analyzing the activity of scientists, the world centers of scientific research in the field of professionalization and public service, based on the results of the analysis of publications in the Scopus database, are: United Kingdom, United States, Italy, Australia, China, Germany, Greece, Spain, Netherlands, France, Denmark, Canada and other.

If we consider publication activity by fields of knowledge, the following dynamics of the number of articles by the keywords (professionalization) and (public service) should be noted: computer science (194), social sciences (187), medicine (83), engineering (67), business, management and accounting (53), mathematics (39), decision sciences (28), arts and humanities (24), nursing (17), economics, econometrics and finance (16), psychology (11) and other (Fig. 3).

Figure No. 3. Dynamics of the number of articles in which titles the word "professionalization and public service" is met



Source: compiled by the author based on the analysis of the Scopus database and using the tools of the VOSviewer program.

Despite the existing publications, the issue of professionalization of the public service of Ukraine, namely the specifics of the process in the conditions of global challenges and modern social changes, is an extremely relevant area of research and requires further study and analysis.

2. Results

The current state of the economic and social system of our country determines the priority of tasks and functions performed by the state. In this regard, the questions related to the formation of significant management potential of managers who could responsibly and competently implement their functions and duties are quite relevant, that is, in the global context, this concerns work for the benefit of the native country, society and citizens. Professionalization of public service workers is not only a reliable pillar for the sustainable development of public authorities, but also a direction for the effective completion of reforms in terms of decentralization and improvement of the ability to implement effective management.

One of the ways that significantly influence the process of reforms and the implementation of state functions is the formation of a professional staff of public service bodies. In this way, it is necessary to talk about the comprehensive professionalization of the public service, as well as the strengthening of already existing and practically applied managerial approaches to the management of human resources of public service bodies, since the presence of effective managers who are responsible for their decisions at the state level is of great importance. Therefore, the issue of public administration is of significant importance and requires further research in the context of global challenges and modern social changes and the next stage of the decentralization process.

The main goal of professionalization is to increase the quality of public services, establish leading management principles, professionalism, use the latest personnel technologies, and materially and financially support the work of public service employees.

The consequence of professionalization is the possibility of achieving the highest level of efficiency in making managerial decisions and providing public services, taking into account the importance of its implementation at all managerial levels, starting with managers and ending with executors. Therefore, professionalization is based on the combination of a specialist, his professional activity and includes the acquisition of the latest specialized knowledge, skills, etc.

Professionalization should also be considered as a certain process, the result of which is the formation of an employee both objective - possession of the necessary knowledge, skills, competences, qualities, and subjective - motivational aspect, readiness to perform professional duties and functions. Professionalization is a consequence of such a process, a criterion for the effectiveness and success of its implementation, a qualitative difference between an employee who is a connoisseur and a specialist in his field.

Therefore, professionalism should be considered as a qualitative side of the consequence of obtaining knowledge, skills, and experience, which makes it available and potential for everyone to obtain. Based on this, professionalization is the process of emergence, formation and further development of professionalism.

Studying the phenomenon of professionalization, it is necessary to point out that professionalism has a positive effect on the practical implementation of social and public changes, acquiring specificity and contributing to the development of society as a whole, and its components in particular.

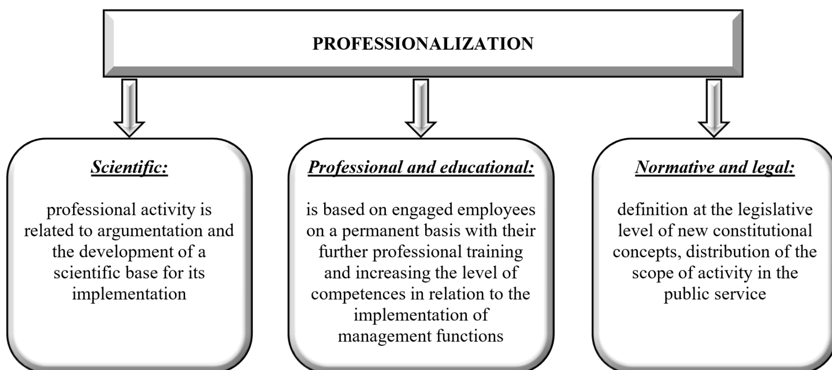
In addition, professionalism can be interpreted as the process of implementing the function of planning in relation to the necessary knowledge, skills, as well as adaptation to the working, professional environment. The professionalization of the public service, which acquires

a certain specificity in the conditions of global challenges and modern social changes, can be considered both in a broad context (the formation and development of the professional self-awareness of the employee; his professional knowledge, skills, abilities, professionalism) and in a narrow sense (the employee's mastery of professional rules , norms, values, gaining experience and skills necessary for effective professional activity, i.e. formation of professional socialization of the employee).

Today, the professionalization of the public service in Ukraine is carried out on the basis of a combination of permanent professional education, such as training and retraining, internships, advanced training, self-training and education, and gaining practical experience directly at the workplace in the performance of professional duties.

Thus, based on the above information, it should be noted that professionalization has a complex nature, and therefore, its study should be carried out from the point of view of different levels (Fig. 4).

Figure. No. 4. Approaches to understanding the professionalization of public service in the context of global challenges and modern social changes



Source: systematized by the authors.

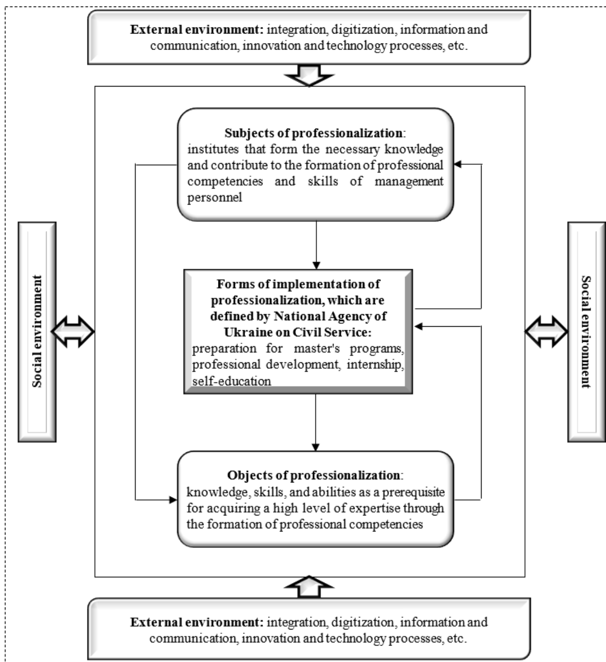
In our opinion, it is necessary to consider professionalization as an open system, and therefore has an active interaction with the environment, global challenges and changes of today (Fig. 5). Currently, the following functions of professionalization can be distinguished:

- adaptation to changes, requirements and challenges of the surrounding environment;

- formation of conditions and use of opportunities to achieve the goal in the process of implementing management functions;
- ensuring the unity and orderliness of the internal environment through the organization of the system of public authorities;
- promoting the values and interests of the public administration system, the development of professional ethics, morality and culture.

The study of professionalization as a system requires the selection of its components and connections between them, as well as with other systems, taking into account their mutual influence. The most effective for studying professionalization as a system will be the application of a systemic approach, which will allow, firstly, to single out and characterize its elements, such as subject, object, etc., secondly, to find out the components of the external environment and outline their influence on the system of professionalization (Fig. 5).

Fig. 5. Professionalization of public service in the conditions of global challenges and modern social changes.



Source: compiled by the authors.

Determining the impact of the surrounding environment, one cannot bypass those global challenges that are becoming extremely relevant today. Thus, digitalization processes have a significant impact on the professionalization of the public service through the acquisition, on the one hand, of new digital skills and abilities among employees, and on the other hand, they provide wider and more operational access to various educational information, educational platforms and programs, which makes it possible to implement e -learning and engaging in self-education.

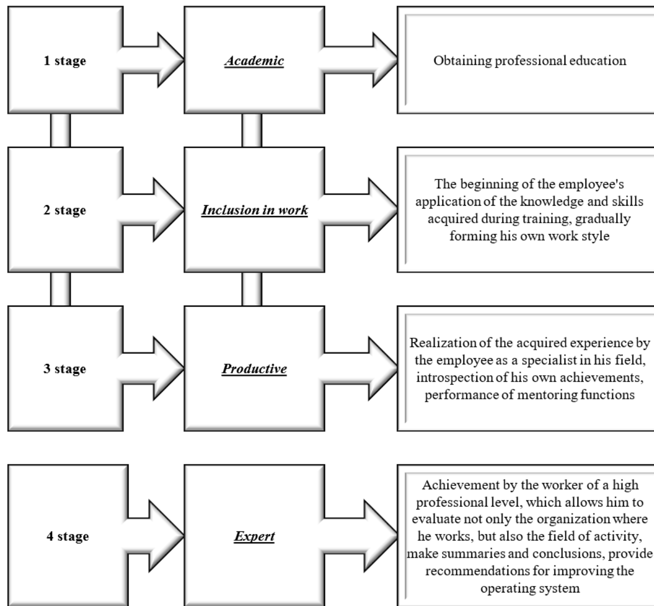
Therefore, the professionalization of an employee as a process should be considered as permanent self-improvement, self-improvement, constant efforts and work on oneself, taking into account the social changes that are taking place. From this position, professionalization is associated with socio-cultural aspects that acquire new meaning, essence, meanings.

There is a combination of external motivation and internal human efforts. Applying a systemic approach to the professionalization system makes it possible to consider it as one that is in constant exchange of information, certain resources, etc. with the socio-cultural environment. Such an exchange enables the specified system to achieve equilibrium, maintain balance and order. The professionalization of the public service is capable of evolution and orderliness, protecting itself from disorder and chaos and the negative influence of the surrounding environment.

The essence of the concept of «professionalism» is to understand it as a high skill, with the help of which you can achieve high results in a certain type of activity. The main characteristics of a professional employee of the public service include rationality based on the scientific base, knowledge and methods of practical activity.

Professionalization can also be presented as a process that takes place over time and a number of its stages can be distinguished (Fig. 6).

Fig. 6. Professionalization as a process in the conditions of global challenges and modern social changes.



Source: systematized by the authors.

In the domestic practice of public service, it is not always found as shown in Fig. 6 sequence of implementation of the indicated stages. A significant number of public service workers, especially those occupying high and political positions, combine the first two stages. In some cases, the first stage is a component of professional development if, as a result of holding an elected position, a person had to rapidly change the type of professional activity.

If we consider the professionalization of civil service as a process in the conditions of global challenges and modern social changes, it is necessary to understand not only its problems from a theoretical and methodological point of view, but also to take into account the experience, knowledge and position of practitioners who are directly engaged in the specified activity, fully immersed in it, and therefore, have their own vision on the mentioned issue and ways of its development.

Conclusion

Professionalization of the public service is an indispensable condition for the effective functioning and development of a competitive country in the world and the formation of trust in society and citizens in public authorities in the conditions of global challenges and modern social changes. The process of professionalization is mobile and dynamic, the result of which is the preparation of employees of public authorities for professional work, based on the application of the necessary knowledge, skills, competencies, and skills.

Thus, the scientific approach to understanding professionalization is dominated by the activity approach, which focuses on the formation of the employee as a professional in his field, an experienced person who perfectly possesses and uses his skills and knowledge during the performance of his professional duties. The dynamism of the professionalization process lies in the fact that it stretches over time and is divided into a number of stages, each of which involves either fixing or changing a certain achieved professional level.

The emergence of professionalism begins with the process of forming an employee as a professional and reflects on the competence and authority of a person, as well as on the effectiveness of his activities, able to share his experience with colleagues and solve non-standard, non-trivial tasks and problems in the work area. The formation of an employee as a professional is a process that is related to his own skills, experience, abilities and interests, as well as stimulation and working conditions. There is a dependence of professionalization on the level of education and experience of the worker, on his personal interest in professional activity, etc. Professionalization of the public service of Ukraine is a priority task in the conditions of global challenges and modern social changes.

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Regulatory policy and institutional transformation of the banking system of Ukraine in the conditions of digitalization

DOI: https://doi.org/10.46398/cuestpol.4075.03

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Abstract

The transformation of the banking system is due to modern global trends and digitalization processes, which contribute to increasing the efficiency of the banking system operation and its competitiveness. The object of this study is the analysis of regulatory policy and justification of the foundations of institutional transformation of the banking sector in the conditions of digitalization. The conducted research made it possible to analyze the regulatory policy and establish the rationale for the institutional transformation of the banking sector in the conditions of digitalization in order to increase the efficiency of its activities and competitiveness, which means: putting the banking system on track to merge with the global financial system; transformation of the functioning of the National Bank of Ukraine in the direction of creating economically adaptable functions and, at the same time, implementing behavioral mechanisms of influence on banking institutions; implementation of methods of preventive rehabilitation of troubled banks; increasing the stabilization of the banking system due to strengthening the role of private banks; expansion of the functions of the Deposit Guarantee

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Fund of individuals, and; implementation of digital technologies in the activities of banking sector entities.

Keywords: regulatory policy; institutional development; institutional transformation; banking institutions; digitalization and information technologies.

Política regulatoria y transformación institucional del sistema bancario de Ucrania en las condiciones de digitalización

Resumen

La transformación del sistema bancario se debe a las modernas tendencias globales y a los procesos de digitalización, que contribuyen a incrementar la eficiencia del funcionamiento del sistema bancario y su competitividad. El objeto de este estudio es el análisis de la política regulatoria y la justificación de los fundamentos de la transformación institucional del sector bancario en las condiciones de la digitalización. La investigación realizada permitió analizar la política regulatoria y establecer los fundamentos de la transformación institucional del sector bancario en las condiciones de la digitalización para incrementar la eficiencia de sus actividades y la competitividad, lo que significa: encaminar el sistema bancario a fusionarse con el sistema financiero mundial; transformación del funcionamiento del Banco Nacional de Ucrania en la dirección de crear funciones económicamente adaptables y, al mismo tiempo, aplicar mecanismos conductuales de influencia en las instituciones bancarias; aplicación de métodos de rehabilitación preventiva de bancos en problemas; aumentar la estabilización del sistema bancario debido al fortalecimiento del papel de los bancos privados; ampliación de las funciones del Fondo de Garantía de Depósitos de particulares, e; implementación de tecnologías digitales en las actividades de las entidades del sector bancario.

Palabras clave: política regulatoria; desarrollo institucional; transformación institucional; instituciones bancarias; digitalización y tecnologías de la información.

Introduction

The development of the banking system directly depends on the functioning of its institutions, which perform appropriate functions, have

certain powers, determine the rules of behavior of the banking sector and determine the institutional structure of the banking system as a whole. And the unconditional influence on the development of the banking system is exerted by state authorities, which determine the direction of its development and transformation. The country's banking system is an integral part of the financial and economic system, its institutional development determines the role and place of the banking sector in the development of the real sector of the economy.

In connection with the influence of the banking system on the real sector of the economy, there is a need to transform the banking sector in the direction of increasing its efficiency and competitiveness, which will have a positive impact on the real sector of the country's economy. This and other factors determine the relevance of scientific research in the context of the institutional transformation of the banking system in the modern conditions of economic development and globalization trends.

The purpose of this study is the analysis of regulatory policy and justification of the foundations of the institutional transformation of the banking sector in the conditions of digitalization in order to increase the efficiency of its activities and competitiveness.

1. Literature Review

The institutional transformation of the banking system of Ukraine is an extremely important and urgent issue. This issue has become especially relevant with the active development of digitalization processes. Let's consider the research of foreign and domestic scientists who devoted their scientific works to the indicated direction of scientific works.

Within the framework of the research of scientists (ByMarcin, 2021), the consequences for the Polish banking institutional system in the context of the financial and economic crisis in the EU were considered. The authors of article (Canh *et al.*, 2021) proposed an empirical study of the influence of institutional quality on the risk of the banking system and credit risk. Researchers have found that better institutional quality helps reduce banking system risks in a highly concentrated banking system.

It was also established that better institutional quality increases the negative impact of the inflow of foreign direct investment both on the risk of the banking system and on credit risk. The paper (Arias *et al.*, 2020) examines how the legal and institutional environment affects the effectiveness of the banking system. Scientists use panel data and control indicators of financial and economic development. As a result of the study, the authors found evidence of several interrelationships related to the efficiency of the banking system.

Scientists (Tresierra and Reyes, 2018) have determined whether the quality of national institutions and banking development determine the term of debt repayment depending on the short-term or long-term horizon. Indicators of the quality of national institutions and banking development were obtained by the authors from World Bank data and included factor analysis for dynamic considerations. The results of the authors' research, obtained by processing the indicated indicators, factor analysis and further evaluation of the dynamic econometric model, show that institutional quality contributes to the repayment of long-term debt, and the development of the banking sector contributes to short-term financial development.

The study of the authors (Fedyshyn *et al.*, 2019; Kosach *et al.*, 2019) reveals the peculiarities of managing the competitiveness of banking services and the role of commission income in the formation of the income of a commercial bank. Scientific work (13) reveals the world experience of introducing modern innovations and information technologies in the functioning of financial institutions.

As a result of the research (Liao, 2017), the efficiency of China's domestic banking system was evaluated. The article focuses on analyzing the powers that China may have in choosing possible measures to ensure the stability and development of its domestic banks in accordance with the principles contained in the General Agreement on Trade in Services of the World Trade Organization. In the study (Castro-Nagatomy *et al.*, 2022), the authors proposed changes that digitization of processes offers to companies and the environment.

In conclusion, the authors conclude that change management and management of the organization and infrastructure of banks are necessary for the transformation of physical processes into digital ones. Within the articles of scientists (Kychko *et al.*, 2021; Arefieva *et al.*, 2021; Derhaliuk *et al.*, 2021) the impact of digitalization on changing forms of employment and the labor market, the system of economic security in the conditions of the transformation of power, as well as the state policy of transformation of the potential-creating space was investigated.

The authors (Mamadiyarov *et al.*, 2021) researched that the coronavirus crisis actualized the need to accelerate the introduction of innovative technologies into the banking and financial system. Scientists are investigating the expansion of sources of non-bank financing, the improvement of financial literacy of the population, as well as the development of more transparent mechanisms of social support for the needy. Scientists are convinced of the importance of transforming banking services in Uzbekistan in the context of the COVID-19 pandemic.

The research (Elisabeth and Hareesh, 2020) states that the digital revolution has significantly changed the business environment, with

most banks recognizing the importance of new technologies to improve productivity and customer satisfaction. The authors assessed the impact of these transformations on the efficiency of financial institutions and their business model.

Within the framework of scientific works (Grosu *et al*., 2021; Zhavoronok *et al*., 2022), the regulatory policy was analyzed and the financial management model was conceptualized in Romanian agriculture. The research (Dubyna *et al*., 2022; Tarasenko *et al*., 2022) is based on the study of the transformation of regional models of household financial behavior, the analysis of household deposit behavior and the peculiarities of its formation in the conditions of the rapid development of the financial services market. The papers of scientists (Lyeonow *et al*., 2022; Savin *et al*., 2021) are devoted to the creation of screen forms for users of the automated information system of financial monitoring of economic development and economic growth.

The study (Castillo-Carmelino *et al*., 2020) found that paper consumption in Peru has increased in recent years due to constant demand from companies. The authors determined that approximately 90% of all financial institutions still maintain a traditional paper-based system, including printing, storing, and requesting physical account opening documentation. Considering the above, in order to reduce the number of physical documents being processed, the authors propose a four-stage digitization model.

The authors of the article (Bratu and Petria, 2018) confirm the relevance of the processes of digitalization of the financial system, especially the banking system in Romania. Scientists are investigating the readiness of future generations of Romania to fully integrate into the process of digitalization of banking, and also analyze the usefulness and advantages of digital banking services.

Despite the significant number of publications on this topic, the study of the institutional transformation of the banking system of Ukraine in the conditions of digitalization remains an urgent issue that requires further research.

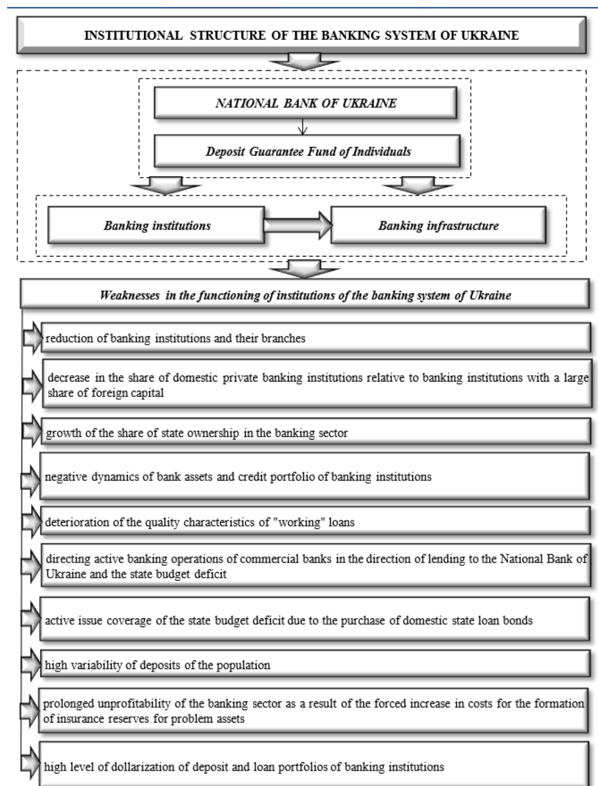
2. Results

The functioning of the banking system of Ukraine is in a state of institutional changes, interaction with the real sector of the economy depends on its transformation.

The institutional structure of the banking system includes not only the direct subjects of banking institutions, but also institutions of influence and

supporting institutions that organize these relations. The main regulatory body of the banking system of Ukraine is the National Bank of Ukraine, as well as the Individual Deposit Guarantee Fund, which closely interacts with the National Bank (Fig. 1).

Figure. No. 1. Institutional structure and shortcomings of the functioning of the banking system of Ukraine.



Source: constructed by the authors of the study.

The Deposit Guarantee Fund of Individuals, in accordance with the policy of the National Bank of Ukraine, works to remove from the market insolvent banking institutions that do not meet the liquidity requirements of banks and have lost their own capital. Also, in addition to banking institutions, the institutional structure of the banking sector is represented by the banking infrastructure, which is represented by institutions that

provide information, technical, technological, methodical, security and personnel support of the banking sector for its effective and trouble-free functioning.

Despite the extensiveness of the banking infrastructure, the main institution of the banking system is the National Bank of Ukraine, which implements the policy and creates the necessary conditions for the functioning of the banking sector.

It should be noted that according to the international index of political and economic stability, the GMT-index, which characterizes the independence of central banks, the National Bank of Ukraine has 11 points out of 16 recommended. Such positions require the transformation of the functioning of the National Bank of Ukraine in the direction of creating economically adaptive functions that are able to respond more quickly to changes in the surrounding environment.

Before the National Bank of Ukraine, there is a need to transform the institutional environment in the direction of applying behavioral mechanisms of influence on banking institutions for the purpose of their development. Gradual changes in the behavior of banking institutions in the market of the banking sector should ensure their stable functioning in accordance with the macroeconomic situation in the country and contribute to the development of the real sector of the economy.

To date, the banking system of Ukraine is extensive and functioning, but it is not without significant shortcomings that need to be leveled. Such negative signs of the functioning of the banking system of Ukraine include:

- The reduction of banking institutions (in the last decades, the reduction occurred twice), which negatively affects the competition of the banking sector and leads to disproportions in the structure of the national banking system. Such disproportions are observed between banks of different sizes depending on their capital and among banks of different forms of ownership.
- A significant reduction in bank branch offices, which worsens the conditions of competition in the banking sector market as it reduces the level of customer accessibility to the banking product, as bank branch offices are the main centers for selling banking services and the so-called profit centers for banking institutions. In Ukraine, there is a directly proportional dependence and negative dynamics regarding the number of banking institutions, as well as structural subdivisions of banks.
- A decrease in the share of domestic private banking institutions in relation to banking institutions with a large share of foreign capital, this carries an additional threat taking into account the share of

foreign capital from the Russian Federation, which is unacceptable given today's military actions by this state on the territory of Ukraine. The tendency to reduce banking institutions is observed at the expense of both large and small banks due to high risks, low-quality loan portfolios, significant amounts of bank lending to related parties, which in aggregate leads to bank bankruptcy.

- An increase in the share of state ownership in the banking sector, caused by forced nationalization and a decrease in the share of private capital in the banking sector of Ukraine. According to statistical data, it can be observed that the key players in the market of banking institutions are banks with foreign capital, which have the largest share in total capital, and banks with state participation, which have the largest share in total assets. At the same time, the experience of European countries proves that the main driver of the development of the real sector of the economy is private banks with foreign capital. However, it should be noted that the growth of state participation in bank capital has a number of advantages, which should include: the implementation of state economic policy and providing an impetus for the development of other areas of economic activity, simplifying the implementation of the stabilization policy of the national bank; increasing public confidence, which leads to increased stability of the banking sector.
- Negative dynamics of bank assets and credit portfolio of banking institutions, which inhibits the development of the real sector of the economy.
- Significant deterioration of the quality characteristics of «working» loans, which increases the riskiness of the banking sector.
- The direction of active banking operations of commercial banks in the direction of lending to the National Bank of Ukraine and the deficit of the state budget, which, in turn, further increases the deficit of credit funds in relation to the real sector of the economy.
- Active emission coverage of the state budget deficit (especially with the start of hostilities on the territory of Ukraine as a result of the aggression of the Russian Federation) due to the purchase of domestic state loan bonds in the portfolio of the National Bank of Ukraine, which negatively affects price dynamics in the country.
- High variability of deposits of the population, which recently illustrates negative trends and hinders the accumulation of bank assets, which demonstrates the low trust of the banking system on the part of the country's population.

- Prolonged unprofitability of the banking sector as a result of the forced increase in costs for the formation of insurance reserves for problem assets. The income structure of the banking sector demonstrates the effectiveness of the country's economic system as a whole, in this case negative trends are reflected.
- A high level of dollarization of deposit and credit portfolios of banking institutions, which increases the riskiness of the functioning of the national banking system.

The listed shortcomings require institutional transformation of the banking system of Ukraine, since the banking system is in a state of crisis and has negative dynamic qualitative and quantitative indicators. The banking system has a significant role in ensuring the economic security of the country and should be aimed at protecting national interests and ensuring the stability of the banking system to ensure the functioning of the real sector of the economy.

Digitization of economic processes directly affects the functioning and development of the banking system. The transformation of the country's banking system is aimed at merging with the global financial system and at the same time is aimed at increasing its own competitiveness. The competitiveness of the national banking system cannot be ensured without the use of modern information technologies.

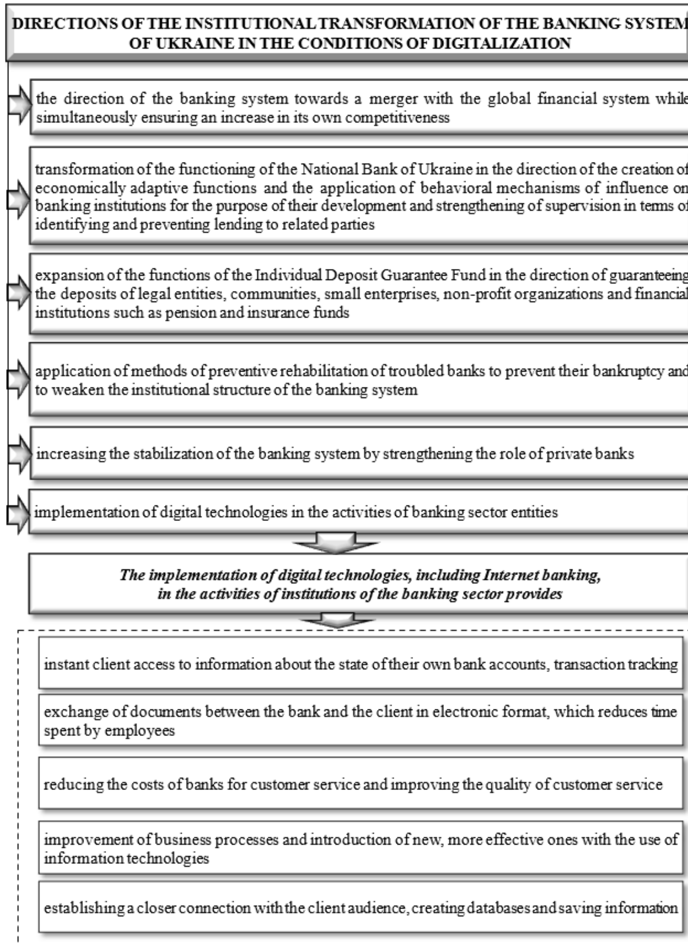
The implementation of digital technologies in the activities of banking sector entities makes it possible to increase their competitiveness thanks to (Fig. 2):

- establishing a closer relationship with the client audience;
- faster training and improvement of staff qualifications;
- creating databases and saving information;
- implementation of various computer and mobile applications for more convenient use of banking services;
- improvement of business processes and implementation of new, more effective ones using the latest information technologies.

Internet banking is one of the modern trends in the implementation of modern information technologies, which provides:

- instant client access to information about the state of their own bank accounts, transaction tracking;
- exchange of documents between the bank and the client in electronic format, which reduces time spent by employees;
- reduction of banks' costs for customer service and improvement of the quality of customer service.

Figure No. 2. Directions of regulatory policy and institutional transformation of the banking system of Ukraine in conditions of digitalization.



Source: developed by the authors.

Institutional transformation requires the reorganization of the functioning of the National Bank of Ukraine due to reforms aimed at increasing its efficiency due to the implementation of world experience in the creation of economically adaptive functions that are able to respond more quickly to changes in the environment through the use of information technologies, as well as the use of methods of preventive recovery of

problem banks to make them impossible bankruptcy and weakening of the institutional structure of the banking system, as well as timely identification and prevention of lending to related parties, which will contribute to the reduction of non-performing loan portfolios.

In the direction of the transformation of the institutional support for the development of the banking system in Ukraine, it is necessary to expand the functions of the Deposit Guarantee Fund of individuals in the direction of guaranteeing the deposits of not only individuals, but also legal entities, as well as the deposits of communities and financial institutions such as pension and insurance funds, and small enterprises and non-profit organizations Expanding the deposit guarantee system to include non-profit organizations, small businesses, pension and insurance funds will contribute to the activation of deposit activities.

Also, the institutional transformation of the banking system of Ukraine should be aimed at increasing the stabilization of the banking system by strengthening the role of private banks. The presence and active activity of banking institutions with private capital contributes to the development of market relations in the banking sector and at the same time corresponds to national interests. The implementation of an active credit policy by private banking institutions contributes to the growth of prices for ordinary capital, which leads to an increase in the value of companies. Also, the process of banking intermediation within the national economy is strengthened by ensuring the necessary flow of money to service other spheres of economic activity.

Elimination of corruption in banking institutions, prevention of abuse, attraction and transfer of financial resources to materially connected and political persons, as a result of which entrepreneurial initiative is reduced, the number of low-quality credit portfolios increases. Such abuses and financial frauds can be hindered by increased supervision in terms of identifying and preventing lending to related parties.

Strengthening of banking institutions due to the introduction of information technologies and digitization of economic processes will contribute to the reduction of operational and information costs in the economy and, above all, in the real sector, which acts as an impetus for investment and innovative development of enterprises.

Conclusion

Thus, the role of banking institutions is constantly growing, the stabilization of the banking system and the mobilization of banking resources depends on the effectiveness of the development of the real sector

of the economy and the synergistic effectiveness of the interaction of human, financial, managerial and material resources. Institutional transformation requires the introduction of stabilizing, adaptive banking institutions to reduce the riskiness of the banking sector, overcome bankruptcies and increase the efficiency of the entire banking system.

The scientific novelty of the study is the substantiation of the foundations of the institutional transformation of the banking sector in the conditions of digitalization to increase the efficiency of its activity and competitiveness, which involves: firstly, the direction of the banking system to merge with the global financial system while simultaneously ensuring an increase in its own competitiveness; secondly, the transformation of the functioning of the National Bank of Ukraine in the direction of the creation of economically adaptive functions and the application of behavioral mechanisms of influence on banking institutions in order to develop them and strengthen supervision in terms of identifying and preventing crediting of related parties.

Thirdly, the application of methods of preventive rehabilitation of problem banks to prevent their bankruptcy and to weaken the institutional structure of the banking system; fourthly, increasing the stabilization of the banking system by strengthening the role of private banks; fifthly, expansion of the functions of the Individual Deposit Guarantee Fund in the direction of guaranteeing the deposits of legal entities, communities, small enterprises, non-profit organizations and financial institutions such as pension and insurance funds; sixthly, the implementation of digital technologies in the activities of banking sector entities, which contributes to the reduction of operational and information costs in the economy, which acts as an impetus for investment and innovative development of the economy.

The issue of the introduction of modern information technologies in the banking sector to increase the efficiency of the functioning of the banking system, ensure economic security and improve the quality of the provision of banking services requires further scientific research, which in aggregate is able to give a synergistic effect to ensure the development of the real sector of the economy in modern conditions of uncertainty and increased risk in a consequence of the escalation of social relations.

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International experience of correction and resocialization of convicts sentenced to imprisonment

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Abstract

The purpose of the research is to reveal international experience in the correction and re-socialization of persons sentenced to deprivation of liberty. *Main content*. This paper analyzes articles of the Criminal-Executive Code of Ukraine, which contain measures of encouragement applied to convicts sentenced to deprivation of liberty (imprisonment) for a certain period of time, and foreign experience of European countries and CIS countries. Measures to encourage convicts should be considered as an important component in the legal regulation of the process of execution and service of punishment; use of such measures encourages law-abiding behavior. *Methodology:* The methodological basis of the research is presented as comparative-legal and systematic analysis, hermeneutic method as well as methods of analysis and synthesis. *Conclusions*. In foreign legislation the system of various types of measures stimulating law-abiding behavior of convicted persons is clearly regulated; this system allows to systematically and consistently change conditions of serving punishment from hard ones to soft ones. This system consists of certain types of incentives; the content

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and essence of such incentives differ depending on whether these measures are one-time or permanent and in relation to a certain category of convicted persons.

Keywords: incentive standards; incentive measures; convicts; resocialization; incarceration.

Experiencia internacional de corrección y resocialización de condenados a pena privativa de libertad

Resumen

El propósito de la investigación fue revelar la experiencia internacional en la resocialización de personas sentenciadas a privación de libertad. Se analiza los artículos del Código Penal-Ejecutivo de Ucrania, que contienen medidas de estímulo aplicadas a los convictos condenados a privación de libertad por un cierto período de tiempo y la experiencia internacional de países europeos y de la Comunidad de Estados Independientes CEI. Las medidas para alentar a los condenados deben considerarse como un componente importante en la regulación legal del proceso de ejecución y servicio del castigo; el uso de tales medidas fomenta el comportamiento respetuoso de la ley. La base metodológica de la investigación se presenta como análisis comparado-jurídico y sistemático, método hermenéutico así como métodos de análisis y síntesis. Se concluye que en la legislación internacional se regula el sistema de diversos tipos de medidas que estimulan el comportamiento respetuoso de la ley de las personas condenadas; este sistema permite cambiar consistentemente las condiciones de cumplimiento del castigo. Este sistema consiste en ciertos tipos de incentivos; el contenido y la esencia de tales incentivos difieren dependiendo de si estas medidas son únicas o permanentes y en relación con determinada categoría de personas condenadas.

Palabras clave: estándares de incentivos; medidas de incentivos; convictos; resocialización; encarcelamiento.

Introduction

Introduction of liberal European values into the everyday life of the Ukrainian society necessitated modernization of criminal-executive legislation. Created ideological principles, economic and political conditions

force the state authorities to search for updated forms of preventive activity taking into account foreign experience. According to the State Criminal Executive Service of Ukraine, the number of incentives applied to convicts is three times smaller than the number of enforcement measures.

In view of individualization of criminal punishment, an important tool in the process of serving this punishment are incentive measures that encourage convicts to correct themselves and stimulate them to observe proper behavior, therefore, such an institution of measures in criminal-executive law needs improvement in accordance with international legal standards.

1. Literature review

Ukraine, as a social and legal state, considers provision and protection of human rights to be its main tasks. In recent years, the system of state power and governance has undergone certain changes, including the criminal-executive sphere of state power. The main task in this sphere is to coordinate content of convicts' rights and freedoms with international standards. Now the main international instrument regulating these issues is the European Prison Rules, which have been developed by the Council of Europe and are being actively implemented in activities of developed European states.

The nature of mass violations of human rights in places of imprisonment is caused by non-observance of personal, civil, socio-economic, cultural rights, which in the theory of criminal enforcement law belong to the general ones, as well as by violations of special rights that arise in convicts in connection with serving their sentence appointed by the court (Bezpalova *et al.*, 2021).

The problem of increasing the effectiveness of incentive influence (in particular by means of applying incentive measures to persons convicted to punishment in the form of imprisonment) is caused by a considerable number of factors of social, theoretical, legislative and practical nature (Buha *et al.*, 2022). In the social sphere, the need to study incentive measures is connected with the fact that such positive incentives are an important means of social adaptation of persons (Kolinko *et al.*, 2021).

The UN Congress on the Prevention of Crime and the Treatment of Prisoners developed and adopted the "Minimum Standard Rules for the Treatment of Offenders", which stipulate that each institution must have a system of benefits and develop different methods of treatment for different categories of offenders in order to encourage them to behave well, develop a sense of responsibility in them, instill in them an interest in re-education and seek their cooperation in this sphere (Trubnikov, 2008).

When recognizing significant contribution made to the sphere of criminal law through conceptual research on the disclosure of international experience in corrections and resocialization of convicts sentenced to imprisonment, it is worth noting that such research has not been conducted in recent years; and this determines topicality of this research topic.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of the international experience of correction and resocialization of convicts sentenced to imprisonment was determined.

By using the system-structural method, investigated were constituent elements of methodological approaches to understanding the international experience of correction and resocialization of convicts sentenced to imprisonment. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding international experience of correction and resocialization of convicts sentenced to imprisonment.

3. Results and discussion

According to part 1 of Article 130 the Criminal Executive Code of Ukraine, the following incentive measures may be applied to persons deprived of liberty (imprisoned) for a certain period of time, if they fulfill duties laid on them and observe the rules of conduct established by this Code and the rules of internal order of the colony, observe of the rules of labor order and the requirements of labor safety: appreciation; early removal of previously imposed penalty; awarding a certificate of commendation; awarding of the honorary title “best in behavior”, “active participant in amateur activities”, etc.; payment of a monetary award; awarding a gift; transfer to improved conditions of detention.

Granting permission to travel outside the colony for the purpose of visiting relatives for up to seven days to convicts who are held in the social rehabilitation wards of correctional colonies of minimum security with general conditions of detention and medium security; provision of

additional short-term or long-term dating; permission to spend additional money for purchase of food and basic necessities in the amount of up to fifty percent of the minimum wage; increasing the duration of a walk for convicts who are kept in areas of enhanced control of colonies and cell-type premises of correctional colonies of the maximum security level, up to two hours (Law of Ukraine, 2003).

It is clear that each state has its own socio-economic and political differences, but the problematic issues of correcting convicts with the help of incentive measures are topical for any of them. Therefore, research of the legislation of foreign countries on this issue and implementation of certain provisions in the criminal-executive legislation and practice of execution and serving punishment in the form of imprisonment is one of the directions of improvement of the criminal-executive system of Ukraine.

If we consider incentive measures containing similar norms, we should refer to the normative legal acts of post-Soviet countries. Considering the incentive measures provided for convicts sentenced to imprisonment, we should note that they have a certain similar list of measures provided for in the Criminal Executive Code of the Republic of Belarus and the Criminal Executive Code of the Russian Federation, but each list contains certain differences.

According to Article 110 the Criminal Executive Code of the Republic of Belarus contains a similar list of incentives for persons sentenced to imprisonment, but there are certain features:

- There is no such incentive as awarding a certificate of commendation or awarding a gift.
- Duration of walk may be increased only by 1 hour; there are certain incentives that are not provided for in the Criminal Executive Code of Ukraine (in particular, incentives in the form of permission to spend weekends, state holidays and public holidays declared by the president of the Republic of Belarus as non-work days outside the correctional colony-settlement may be applied to convicts serving their sentences in correctional colonies-settlements as well as short-term visits to close relatives lasting up to five days without taking into account the time required for travel there and back; transfer of convicts from cell-type premises to ordinary living quarters) (Law of Belarus, 2000).

The Criminal Executive Code of the Russian Federation in Article 113 has the following features: there is no an incentive as awarding of a certificate of commendation and awarding of the honorary title “best in behavior”, “active participant in amateur activities”, etc.; there are some other incentives provided: convicts serving their sentences in penal colonies settlements may receive an incentive measure in the form of permission to

spend weekends and holidays outside the colony settlement; convicts may be given a recommendation to replace the unserved part of their sentence with a milder type of punishment after actually serving the part of the sentence specified in the law; permission to additionally spend money in the amount of up to one thousand five hundred rubles to purchase food and basic necessities (Leheza *et al.*, 2021).

The incentives provided in these countries are almost similar to domestic norms, however, their norms are designed not as encouraging ones (incentives), but faster as empowering or permissive ones. However, the two mentioned Codes contain provisions that resolve the issue of incentive measures applied to persons sentenced to life imprisonment, in contrast to the Criminal Executive Code of Ukraine

Since the legal status of persons sentenced to life imprisonment and imprisonment for a certain period of time in the Republic of Belarus and the Russian Federation is regulated by the same provisions of the law, all incentive measures provided for persons deprived of liberty for a certain period of time shall be applied to life prisoners as well, with the exception of norms, when the law provides for a direct prohibition regarding impossibility of applying a certain type of incentives (Ilina, 2010).

When considering incentive measures, which contain special provisions, we note that an interesting means of influencing a minor is the three-stage system of incentives for convicts developed by the employees of the Heinsberg prison (Germany).

Thus, the first level (initial stage of serving the sentence) is characterized by the fact that a convicted person shall have only a wall-mounted radio receiver in his detention cell. If this convict behaves adequately, that is he does not violate the conditions of detention, studies at school, then he is transferred to the second step. This second step is characterized by the fact a convict shall have the right to have a TV set in his detention cell (at his own expense).

And finally, the third degree provides that a teenager shall have the right to receive a music center and a computer in addition to a TV. If a convict violates the detention regime, he shall be immediately transferred to a lower level, losing the right to have the listed items in his detention cell. The system has a computer variant (program): prison employees only record behavior of convicts, enter the data into the computer, which immediately determines at what stage this or that teenager should stay (Leheza *et al.*, 2022).

In Germany, important incentive and rehabilitation measures for the execution of sentences for convicts consist in mitigation of punishment in accordance with Article 11 of the Law on Execution of Sentences of Imprisonment, which includes performing work outside the executive

institution under supervision and without supervision, leaving the executive institution for a certain time with accompaniment and without accompaniment of an employee of the institution, as well as granting a leave from places of imprisonment in accordance with Article 13 and Part 3, 4 of Article 15 (Law of the Federal Republic of Germany, 1871).

According to § 11 of the Law on Execution of Sentences of Imprisonment, important rehabilitation measures during execution of punishment is granting to convicts the right to work outside the penal institution under supervision and without supervision. This type of employment of convicts has certain positive consequences: personal awareness of the social significance of work performed; possibility of training and professional training outside the institution. Work outside the penitentiary institution is provided only to convicts who have demonstrated their readiness to achieve the goal of serving their sentence (Leheza *et al*., 2018).

In accordance with Article 137 of the Criminal Executive Code of Poland, such incentives as permission for a meeting with a loved person or a trusted person outside the penitentiary institution for a period not exceeding 30 hours, and permission to leave the penitentiary institution without supervision for a period not exceeding 14 days may be used if the behavior of the respective convict while serving the sentence was such that there is no doubt that being outside the institution this convict will comply with the law and order. It is worth noting that one of the reasons for applying one of the above-mentioned types of incentives consists in the presence of half of the sentence served (Leheza *et al*., 2022).

Besides the general incentive measures (number of parcels, visits, depending on the person convicted and phase) the Criminal Executive Code of France provides for application of the following incentive measures to convicts serving their sentence in juvenile correctional facilities (in case of their excellent behavior, conscientious attitude to work and study, active participation in the work of amateur organizations):

1) granting the right to attend cultural, educational and sports events outside the correctional facility accompanied by employees of this facility;

2) provision of the right to leave the juvenile correctional facility accompanied by parents, persons who replace parents, or other close relatives (in the case of minors); 3) early transition from strict conditions of punishment to ordinary conditions, etc., (Leheza *et al*., 2020).

All these measures can stimulate good behavior of convicts at a high level. The first two measures have a special influence on minors, who generally show interest in cultural, educational and sports events, as well as in visiting other places of entertainment outside their juvenile correctional

facility. The third incentive measure includes exemption from one of the most severe disciplinary penalties.

If convicts are granted the right to attend cultural, educational and sports events outside their juvenile correctional facility accompanied by employees of this facility and the right to leave the facility accompanied by parents, persons who replace parents, or other close relatives, they are provided with civilian clothes.

The duration of going outside the juvenile correctional facility shall be set by the head of the respective facility and cannot exceed 8 hours (Malynyn, 2010). As we can see, the French legislation provides additional incentive measures which promote the re-socialization of persons and their development as individuals, which in its turn compensates for the unembodied psychological aspects in adolescence.

Having analyzed a large array of acts, we can add that the criminal legislation of most European countries provides for the possibility and replacement of an uncompleted part of the punishment, and early release on parole. And in our opinion, the list of incentive measures contained in Article 130 of the Criminal Executive Code of Ukraine should be much larger in order a convicted persons could receive a certain incentive for each positive moment in his/her behavior, and in finally, after proving his/her correction, he/she could be early released on parole (Leheza *et al*., 2022).

Conclusions

Thus, measures to encourage convicts should be considered as an important component in the legal regulation of the process of execution and service of punishment aimed at stimulating them to law-abiding behavior. Presence of a considerable number of incentive measures contained in the Criminal Executive Code of Ukraine makes it possible to differentiate and individualize them according to certain groups of convicts and types of punishment.

However, the question arises as to the possibility of implementing certain types of incentives, for example, as “granting permission to leave the colony for the purpose of visiting relatives for up to seven days...”, whether the employees of the penal institutions will apply such an incentive, because when releasing a convicted person outside the borders of the penal institution, the employee must be sure that nothing will happen to the convict and he/she will return, since all responsibility for this or that situation lies with the administration.

In foreign legislation the system of various types of measures stimulating law-abiding behavior of convicted persons is clearly regulated; this system

allows to systematically and consistently change conditions of serving punishment from hard ones to soft ones. This system consists of various types of incentives, the content and essence of such incentives differ depending on whether these measures are one-time or permanent (they ease the legal status of convicted persons for a fairly long time)

In general, the system of stimulating the lawful behavior of an imprisoned convicted person should be quite extensive and provide for various types of moral and material stimulation, various opportunities to renew ties with relatives and the society, which will ultimately contribute to the achievement of the goal of punishment within a more optimal period of time. The process of introducing types of incentives into real life and the possibility of adopting certain foreign experience into national legislation deserve a special attention.

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Exercising the right to a fair trial during the Covid-19 pandemic in Ukraine and the European Union

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Abstract

The purpose of the scientific research is to explore the problem of exercising the right to a fair trial during the COVID-19 pandemic and suggest solutions. To achieve this purpose, general and special scientific research methods were used, in particular system-functional method, dialectical and statistical methods, method of hermeneutics. The right to a fair trial cannot be limited, as the main function of the state is to ensure the protection of the rights and freedoms of citizens. According to the legislation of most countries, the principle of the rule of law is recognized, an important component of which is the right to apply to the court, as provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR) as the right to a fair trial. Courts exist to meet human needs and to promote the preservation of social values. The judicial system must be efficient, simple and accessible to the average citizen. However, in connection with the coronavirus pandemic, the judicial system has faced the issue of how to simultaneously ensure the rights of citizens to judicial protection and protect the population from acute infectious diseases.

Keywords: the right to a fair trial; protection of human rights; enforcement of the right to a fair trial; elements of fair trial; criminal proceedings.

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Ejercicio del derecho a un juicio justo durante la pandemia de covid-19 en Ucrania y la Unión Europea

Resumen

El propósito de la investigación fue explorar el problema del ejercicio del derecho a un juicio justo durante la pandemia de COVID-19. Para lograr este propósito se utilizaron métodos de investigación científica generales: en particular el método sistema-funcional, métodos dialécticos y estadísticos y el método de la hermenéutica. El derecho a un juicio justo no puede ser limitado, ya que la función principal del Estado es garantizar la protección de los derechos y libertades de los ciudadanos. De acuerdo con la legislación de la mayoría de los países, se reconoce el principio del Estado de derecho, cuyo componente es el derecho a recurrir a los tribunales, tal como prevé el artículo 6 del Convenio para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950 (CEDH), como derecho a un juicio justo. Los tribunales existen para satisfacer las necesidades humanas y promover la preservación de los valores sociales. Se concluye que el sistema judicial debe ser eficiente, sencillo y accesible al ciudadano medio. Sin embargo, en relación con la pandemia del coronavirus, el sistema judicial se ha enfrentado al problema de cómo garantizar simultáneamente los derechos de los ciudadanos a la protección judicial y proteger de esta enfermedad.

Palabras clave: derecho a un juicio justo; protección de los derechos humanos; aplicación del derecho a un juicio justo; elementos de un juicio justo; proceso penal.

Introduction

The COVID-19 pandemic has caused the need for changes in the practice of exercising the right to a fair trial. The courts faced a difficult task: to ensure the protection of human rights, including the realization of the right to a fair trial, but at the same time to ensure the protection of life and health of both citizens and employees of the judicial system. For the successful implementation of this task, changes to the legislation are necessary, which would ensure transparency and clarity in the administration of justice, as well as optimal coordination of the interests of all parties. Countries approached this task in different ways. Considering that this topic is new, it is useful to compare the approaches to solving this issue that have been applied in different countries.

During the quarantine in the EU member states, a number of changes were made to the legislation in order to protect the health of the population, but at the same time to ensure the right of citizens to a fair trial. It is useful to

consider a positive experience that has proven itself in practice (Oleksenko *et al.*, 2021).

Insufficient coverage in domestic and foreign literature on the theory and practice of realization of the right to a fair trial during the COVID-19 pandemic, insufficient consideration and incomplete analysis of its implementation mechanisms, lack of comparative analysis of legislation in this sphere in different states, as well as the urgency of solving the the problem of realization of the right to a fair trial in Ukraine during the war determined the choice of of the theme of this article.

The right to a fair trial is one of the main preconditions for ensuring the rule of law. Therefore, the realization of this right must be ensured under any circumstances (Villasmil, 2021)

1. Objectives

The purpose of this scientific article is to determine and justify main features of the realization of the right to a fair trial in Ukraine and the EU during the COVID-19 Pandemic.

2. Materials and methods

During the writing of the scientific work, both general and special scientific research methods were used. Using the system-functional method, the analysis of the constituent elements of the right to a fair trial as well as the criteria for reasonable time in civil cases was carried out. The dialectical method was used to clarify the prospects for further development of e-justice.

The method of hermeneutics was used to analyze the current legislation of the EU member states and Ukraine, aimed at supporting the exercise of the right to a fair trial. The statistical method was used to obtain an empirical basis, which has become one of the main sources of information on the success of legal regulation of realization of the right to a fair trial in individual states.

3. Results and discussion

The right to a fair trial is one of the main preconditions for ensuring the rule of law. The right to a fair trial is addressed in Article 6 of the ECHR, which has become the basis for the creation of a number of international legal treaties in the field of human rights, as well as a model for drafting legislation of individual countries.

In the above-mentioned article, when settling the right to a fair trial, attention is focused on the following constituent elements: fair hearing; public consideration; reasonable time; independence and impartiality of the court; public proclamation of a court decision with an indication of exceptions to this general rule, when such factors as the interests of morality, public order, national security have place; declaration of the presumption of innocence; the right to be informed in native language about the nature and causes of the accusation; providing opportunities and time to prepare for the defense; dispositive Ness in choosing the method of defense (personally or with the help of a defender).

In criminal cases, the emphasis is on the following components of the right to a fair trial: the provision of free legal aid in the case of an objective impossibility to pay for the services of a lawyer; equal rights, responsibilities, defense of witnesses; providing the accused with free assistance of an interpreter in case of misunderstanding of the language used in court, or inability to speak the language (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

The general right to a fair and public trial before a competent, independent and impartial tribunal is also provided for in the International Covenant on Civil and Political Rights (article 14). Everyone accused of a criminal offense has the right to be presumed innocent until proved guilty according to law (United Nations, 1966).

Access to court also provides for the right to appeal independently, if the person believes that his/her rights and interests are violated, and national law should not create obstacles to individual appeal, with the motivation that this right belongs to the competent authority or other entity (Ladychenko and Golovko, 2018). The reasonableness of the length of the proceedings is extremely important and conditioned by the public interest, as well as the independence and fairness of the trial and the predictability of court decisions. Cases should not be considered for too long. At the same time, in appropriate circumstances, the consideration should not be too rapid if it affects the right to a fair trial.

Trial time management should be adapted to the needs of each individual case, paying special attention to the needs of the parties. Normative time limits established by law or other normative legal act should be used with caution, taking into account possible differences between cases.

If the time limit is set at the legislative level, its observance and compliance should be a subject to constant monitoring and evaluation. If the law also establishes that certain types of court cases have priority or are considered urgently, such a general rule is subject to reasonable interpretation, taking into account the purposes for which priority was granted or the urgent nature of the case.

Time limits set by the court (for example, the time limit for remedying deficiencies in the statement of claim or appeal) must comply with the principle of reasonableness. In determining the duration of these terms (at its own discretion), the court must take into account the principles of dispositive Ness and adversarial, time limits established by law when determining the timing of specific proceedings based on the complexity of the case, the number of participants, possible difficulties in requesting and examining evidence.

In particular, a period that is objectively necessary for the performance of procedural actions, adoption of procedural decisions and consideration and resolution of the case in order to ensure timely (without undue delay) judicial protection is considered reasonable.

Taking into account the case law of the European Court of Human Rights, the criteria for reasonable time in civil cases are: legal and factual complexity of the case; the conduct of the applicant, as well as other persons involved in the case, other participants in the process; actions of public authorities (primarily the court); the nature of the proceedings and their significance for the applicant (Case of Fedina v Ukraine of September, 2010; Case of Matica v Romania of November, 2006, etc).

In assessing the legal and factual complexity of the case, one should take into account, in particular, the existence of circumstances that make it difficult to consider the case; number of co-plaintiffs, co-defendants and other participants in the process; the need for examinations and their complexity; the need to interrogate a significant number of witnesses; participation in the case of a foreign element and the need to clarify and apply the rules of foreign law.

At the same time, the courts should proceed from the fact that such a circumstance as the consideration of a civil case by courts of various instances cannot in itself indicate its complexity.

When assessing the manner in which the investigator, prosecutor and court exercise their powers, the consistency and timeliness of procedural actions should be taken into account; the presence of periods of inactivity, the causes of which must be clarified in each case; timeliness of notification of a person about suspicion; the validity of the postponement and suspension of criminal proceedings; the timeliness of the appointment of criminal proceedings; holding court hearings at the appointed time; observance of terms of sending of copies of procedural decisions to participants of court proceedings; the completeness of the judge's control over the performance by court employees of their official duties, including the notification of participants in criminal proceedings about the time and place of the court hearing; completeness and timeliness of taking measures by the investigator, prosecutor, court (judge) to ensure criminal proceedings

and other measures aimed at preventing unfair conduct of participants in criminal proceedings; the nature and effectiveness of actions aimed at accelerating criminal proceedings, etc.

In connection with the coronavirus pandemic on March 11, 2020, the Cabinet of Ministers of Ukraine by its Resolution № 211 "On Preventing the Spread of COVID-19 Coronavirus in Ukraine" established quarantine. For this period a special operating regime was introduced in the courts of Ukraine.

On March 16, 2020, the Council of Judges of Ukraine, in letter № 9-rs-186/20, provided recommendations to establish a special working regime for the courts for the period from March 16, 2020 to April 3, 2020, in particular:

- To explain to citizens the possibility of postponing the consideration of cases in connection with quarantine measures and the possibility of considering cases in the mode of videoconference.
- To terminate all activities not related to the procedural activities of the court and ensuring the activities of the judiciary (round tables, seminars, open days, etc.).
- To terminate the personal reception of citizens by the court management.
- To restrict the admission to court hearings of persons who are not participants in court hearings.
- To restrict the admission to court hearings and court premises of persons with signs of respiratory diseases: pale face, red eyes, cough.
- To familiarize the participants in the trial with the materials of the court case, if there is such a technical possibility, to carry it out remotely, by sending scanned copies of the materials of the case to the email address specified in the application, to accept applications for familiarization via remote communication means.
- To reduce the number of court hearings scheduled for consideration during the working day.
- If possible, to carry out the consideration of cases without the participation of the parties, in the manner of written proceedings.
- Judges and employees of the court apparatus, at the slightest sign of illness, take measures for self-isolation, report their health status to the appropriate health care institution and the court management by telephone, e-mail (Letter of the Council of Judges of Ukraine, 2020).

When determining the peculiarities of the work of the court for the period of quarantine measures, one should take into account the specialization of the court, the jurisdiction and the corresponding categories of cases.

On March 26, 2020, the High Council of Justice adopted a Decision "On access to justice in the context of the pandemic of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2". According to the decision, during the quarantine cases should be considered online. The High Council of Justice appealed to the President of Ukraine and the Parliament of Ukraine with a proposal to amend the procedural codes that would ensure the right of individuals to access to justice under quarantine, introduced in order to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus on the territory of Ukraine.

It also appealed to the State Judicial Administration of Ukraine and the Judicial Protection Service for the urgent development of amendments to the Regulation on the temporary procedure for ensuring the protection of courts, bodies and institutions of the justice system, as well as maintaining public order in them, which provide for the specifics of admitting persons to court and acceleration of work on the Unified Judicial Information and Telecommunication System in part, ensuring the participation of persons in court hearings remotely (Decision of the High Council of Justice of Ukraine, 2020).

In order to ensure proper access to justice for participants, on March 30, 2020, the Parliament of Ukraine adopted Law №540-IX "On Amendments to Certain Legislative Acts Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-2019)". The above law provides for the possibility of holding court sessions in administrative, civil and economic cases using video conferencing. The Law contains a number of changes to procedural law, namely:

- during the quarantine established by the Cabinet of Ministers for the prevention of the spread of coronavirus disease (COVID-19), the procedural terms are extended for the period of quarantine. That is, the Law provided for the automatic extension of all general and special terms of limitations established by civil, commercial, family and labor legislation. In this case, the term set by the court in its decision may not be less than the quarantine period associated with the prevention of the spread of coronavirus disease;
- during the quarantine, the parties to the case may participate in the court hearing by videoconference outside the court premises using their own technical means. Confirmation of the identity of the party to the case is carried out by applying an electronic signature. Concerning the extension of court hearings, in our opinion, the lack

of a provision on the impossibility of postponing certain types of cases (for example, in cases of establishing the place of residence of a child) is a disadvantage.

The procedure of holding court hearings is regulated in more detail by the Order of the State Judicial Administration №169 "On approval of the Procedure for working with technical means of videoconferencing during court hearings in administrative, civil and commercial proceedings with the parties outside the court" of April, 8, 2020. Participants in the trial shall take part in the court session by videoconference outside the court premises, provided that the court has the appropriate technical capability, which the court indicates in the decision, in the manner prescribed by procedural law.

Information about the conduct of procedural actions in the mode of videoconference is posted on the official web portal of the judicial authority of Ukraine. The responsibilities for the implementation of organizational measures related to the operation of the videoconferencing system in court are assigned to the chief of staff of the relevant court. The party to the case, who submitted the relevant application bears the risks of technical impossibility to participate in the mode of videoconference outside the courtroom, interruption of communication, etc.

Participants wishing to attend the court hearing by videoconference must: have an electronic digital signature and personal technical means (computer, video camera, etc.); register at the system on the official web portal of the judiciary of Ukraine at www.court.gov.ua; not later than five days before the court hearing to submit a standard application for participation in such a court hearing. Participants are identified by showing on the camera a page with a photo of a passport or other identity document (Order of the State Judicial Administration, 2020). The entire course of the trial is recorded by technical means, copies of which are stored in the case file on DVD.

As we can see, legislator established two conditions for the implementation of the videoconferencing regime - the use of its own technical means and electronic digital signature. The issue of protection of personal data of participants in court proceedings remains open, as there is no software in Ukraine that would allow for safe remote hearing of cases in court. It should be noted that scientists (Dubchak, 2019; Funta, 2021; Gulac, 2019; Klimek, 2017; Krasnova, 2019; Ladychenko *et al.*, 2019; Vasiuk, 2020; Yara, 2021) pay attention to the need to ensure the protection of personal data.

On April 23, 2020, the Order of the State Judicial Administration № 196 adopted a new procedure for the work with technical means of videoconferencing. In fact, the mechanism of access and holding a court hearing by videoconference is similar to the procedure provided by the Order № 169. The key innovations of the new order include:

- The possibility of holding court hearings by videoconference with the help of software on the participants' choice. These can be Zoom, Skype, EasyCon, etc.
- Demonstration on the camera of a page with a photo of a passport or other identity document is not mandatory and can be carried out only if necessary.
- The course and results of procedural actions carried out in the mode of videoconference are recorded by the court with the help of any digital media.

Order of the State Judicial Administration of Ukraine of July 17, 2020 № 314 On Amendments to the Order of the State Judicial Administration of Ukraine designated the State Enterprise "Center for Judicial Services" as a controller of personal data, which can be used to identify an individual who participates in a court hearing by videoconference.

With regard to the consideration of criminal cases during the quarantine, criminal proceedings in courts of all instances are open (Ladychenko *et al.*, 2021). Court may decide to restrict access of persons who are not participants in the trial to a court hearing during the quarantine established by the government in accordance with the Law of Ukraine "On Protection of the Population from Infectious Diseases", if participation in the trial will endanger life or personal health. I. Tautly pays attention to what exactly the legislator understands by the term "threat to life and health of the person".

According to the scientist, judges do not and should not have such special medical skills as "establishing a real threat". The judge may decide to conduct criminal proceedings in a closed court session only in the following cases: if the accused is a minor; in case of consideration of a crime against sexual freedom and sexual integrity of a person; if there is a need to prevent the disclosure of information about personal and family life or circumstances that degrade person's dignity; if the conduct of proceedings in open court may lead to the disclosure of secret information protected by law; if there is a need to ensure the safety of persons involved in criminal proceedings (Tatulych, 2020).

During the quarantine in the EU member states, a number of changes were made to the legislation in order to protect the health of the population, but at the same time to ensure the right of citizens to a fair trial. It is useful to consider a positive experience that has proven itself in practice.

In Bulgaria, although during the quarantine, the procedural terms of consideration of cases in court were continued, while restrictions were imposed on the extension of procedural terms in certain types of cases, both in criminal proceedings (for example, seizure, parole), civil, economic (permission for the withdrawal of children's deposits), and administrative

cases (appealing against orders for the immediate implementation of administrative acts). Also, submission of all documents was possible in electronic form (Law of Ukraine, 2020).

Restrictions on the extension of procedural time limits in some cases were also established in Austria (2020), for example, in cases on imminent threat to security or personal liberty, payment deadlines (Law of Ukraine, 2020).

In Denmark, during quarantine, judges worked from home. The courts had considerable discretion while making decision which cases were critical, the term for consideration of which cannot be extended. Consideration of other cases was postponed (Nybroe, 2020; Ladychenko *et al.*, 2020). Given the fact that no changes were made to the procedural legislation, the courts themselves decided on the organization of work, taking into account the situation. Family disputes were considered without the participation of the parties.

In Estonia, procedural time limits were extended by courts depending on the specific case. As no changes were made to the legislation on this issue, the decisions were made by judges at their own discretion. Urgent cases were considered using electronic means of communication. According to the Estonian Civil Procedure Code, in exceptional and urgent cases concerning children, court may issue preliminary orders without hearing the parties in court. Judges often used this provision during quarantine. Legal disputes involving children often require immediate resolution. Therefore, this experience of Estonia is useful and worthy of adoption.

The Ministry of Justice in accordance with the amendment to § 3 par. 1 letter a) of Act № 62/2020 Coll. on certain emergency measures in connection with the spread of the dangerous contagious human disease COVID-19 and in the judiciary prepared a Decree on the conduct of hearings, main hearings and public meetings in times of emergency and state of emergency. The Decree stipulated in what matters hearings and sessions may take place.

These include custody cases, decisions of pre-trial judges, conditional release from prison, decisions on imposing protective treatment, changing the method of protective treatment, extension of protective treatment, dismissing and termination of protective treatment. Hearings, main hearings and public hearings may also be held in cases concerning minors, adoption, legal capacity, admissibility of detention in a medical facility or, for example, in asylum matters, detention and administrative deportation and civil and non - civil proceedings, if the parties to the dispute or the parties to the proceedings have agreed to a hearing in their absence. In addition to the matters mentioned above, a hearing, a main hearing and a public hearing may be held in the event of an emergency or state of emergency, even if the matter cannot be postponed.

Conclusions

Restrictions related to the COVID-19 pandemic have affected access to justice and the guarantee of a public trial in most countries. Some courts barred observers and journalists from accessing the premises during quarantine restrictions. In some countries, there have been obstacles to ensuring equal access to justice through digital technologies.

In Ukraine during the COVID-19 pandemic, the practice of conducting court hearings by videoconference is being actively introduced. In order to legally regulate such court hearings, a number of legal acts were adopted. However, unfortunately today the application of such a mechanism has faced the following problems.

At the moment in Ukraine electronic court is only being developed. The normative legal act on the Unified Judicial Information and Telecommunication System has not yet been adopted. The issue of protection of personal data of participants in court proceedings is still not regulated, because there is no software in Ukraine that would allow for safe remote hearing of cases in court. There is a lack of proper technical facilities in many courts.

It should also be noted the unequal opportunities of the parties to the dispute in protecting their rights, since in some regions of Ukraine access to the Internet is weak or even absent and not all Ukrainian citizens have the appropriate technical means.

Electronic court is the best solution, which provides an opportunity to consider cases within the time limits set by law and receive all the necessary documents from citizens to guarantee the protection of their rights. In any case, the right of citizens to a fair trial cannot be limited, as the main function of the state is to ensure the protection of the rights and freedoms of citizens.

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Financial and legal protection of land from being contaminated with hazardous substances as a component of regional environmental policy

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Abstract

The purpose of the research is financial and legal protection of land from being contaminated with hazardous substances (wastes) as a component of regional environmental policy. Main content. It is known that land contamination by industrial enterprises, through irrational use of agrochemicals and chemical plant protection agents lead to the accumulation of toxins, including heavy metals, pesticides, oil products, radionuclides. Therefore, one of the important factors of improving the legal protection of land, including protection from being contaminated with hazardous substances in Ukraine, consists in taking into account positive experience of those post-Soviet states that have a practical orientation in terms of legislation and achievements in law enforcement activities related to land protection. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. The institution of legal land ownership in the post-Soviet Baltic states (Estonia, Lithuania, Latvia) and Georgia has been disclosed in detail. Justifiably, contamination is dangerous not only for life and health, but also for land resources in general.

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Keywords: soil contamination; legal protection of soil; hazardous substances; environmental law; regional policy.

Protección financiera y jurídica de la tierra contra la contaminación con sustancias peligrosas (desechos) como componente de la política ambiental regional

Resumen

El propósito de la investigación es la protección financiera y legal de la tierra contra la contaminación con sustancias peligrosas (desechos) como un componente de la política ambiental regional. Se sabe que la contaminación de la tierra por empresas industriales, a través del uso irracional de agroquímicos y agentes fitosanitarios químicos conduce a la acumulación de toxinas, incluidos metales pesados, pesticidas, productos derivados del petróleo y radionúclidos, entre otros. Por lo tanto, uno de los factores importantes para mejorar la protección legal de la tierra, incluida la protección contra la contaminación con sustancias peligrosas en Ucrania, consiste en tener en cuenta la experiencia positiva de los estados postsoviéticos que tienen una orientación práctica en términos de legislación y logros en las actividades de aplicación de la ley relacionadas con la protección de la tierra. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se concluye que la contaminación es peligrosa no solo para la vida y la salud, sino también para los recursos de la tierra en general.

Palabras clave: contaminación del suelo; protección jurídica del suelo; sustancias peligrosas; derecho ambiental; política regional.

Introduction

As defined by the outstanding Ukrainian scientist and academician Shemshuchenko, by the very nature the problem of protecting the natural environment from being contaminated and organization of rational nature management constitutes a global problem, as far as this problem affects interests of all countries of the world (Shemshuchenko, 1985). Thus, in the era of scientific and technological progress, contradictions in the sphere of new prospects for the use and exploitation of the environment are becoming increasingly large-scale, thereby creating a threat of contamination, human

poisoning of the environment, including land resources within the existing structure of the state (Lisitsyn, 1978).

In this regard, environmental protection is an area where interests of a large majority of countries coincide. The idea of environmental protection is realized when the legislator does not act on behalf of material, historical and other values, but acts thanks to the preservation and restoration of natural resources with the aim of creating ideal conditions in the surrounding natural environment.

1. Literature review

Modern ecological problems of Ukraine are largely caused by the fact that during the Soviet period of its development the territory was one of the most technogenically loaded. While occupying only 3% of the territory of the former Soviet Union Ukraine formed about 23% of the total gross domestic product, which in general led to significant regional changes in landscapes, surface runoff and significant deterioration in the quality of basic resources necessary for human life. The negative environmental situation in the country was also promoted by such factors as irrational use of natural resources, development of environmentally dangerous industries, weak financing of environmental protection measures (Zabelshensky, 1979).

So, land contamination by industrial enterprises, through irrational use of agrochemicals and chemical plant protection agents lead to the accumulation of toxins, including heavy metals, pesticides, oil products, radionuclides. Soils around large industrial enterprises and transport arteries (where technogenic gaps are often formed) are the most heavily polluted (Kazanchuk, 2015). Such contamination is the most acute and urgent ecological problem, since most enterprises are located in densely populated cities and settlements; about sixty percent of the total population lives permanently in such areas.

In this regard, one of the most important factors which would contribute to the procedure of improving the legal protection of land (including protection from being contaminated with hazardous substances in Ukraine) consists in taking into account positive experience of those post-Soviet states that have a practical orientation in terms of legislation and achievements in law enforcement activities related to land protection.

That is why it is necessary to study and generalize the wide experience of establishing and developing legal norms in the sphere of land protection, including contamination with dangerous substances, because this problem is not subjected to administrative-territorial borders and goes beyond the borders of one country.

For example, when taking into account geographical and cultural factors Ukraine and the post-Soviet states of the Baltic region belong to two different groups: Eastern European States and Baltic States. At the same time, for many centuries, there has been a close relationship between them based on the commonality of historical, cultural, economic and geographical factors. The specifics of regulation of land and soil protection in the modern legislation of the former USSR states is conditioned by the necessity to solve the problem of land protection from contamination or related problems arising in the following cases:

1. Soil depletion, which is gaining alarming proportions;
2. the consequences of the nuclear accident at the Chernobyl nuclear power plant. Therefore, the depletion of soils and land contamination, as well as the necessity of their rehabilitation as a basis for development of legislation on protection of this natural resource, influenced the formation of environmental law in Estonia, Lithuania, Latvia, as well as in other countries that emerged after the collapse of the USSR.

2. Materials and methods

The research is based on works of foreign and Ukrainian researchers on methodological approaches of understanding financial and legal protection of lands from being contaminated with hazardous substances (wastes) as a component of regional environmental policy.

The gnoseological method helped to determine the essence of methodological approaches of understanding financial and legal protection of lands from being contaminated with hazardous substances (wastes) as a component of regional ecological policy. Due to logical-semantic method the concept of financial and legal protection of lands from being contaminated with dangerous ecological substances (wastes) as a component of regional policy was developed.

The system-structural method was used to study components of methodological approaches of understanding financial and legal protection of lands from being contaminated with hazardous substances (wastes) as a component of regional environmental policy. The structural-logical method is applied to determine the main directions of optimization of methodological approaches to understanding financial and legal protection of land from being contaminated with hazardous substances (wastes) as a component of regional environmental policy.

3. Results and discussion

So, the Constitution of the Republic of Estonia in Article 28 enshrines the right to health care, and an environment safe for life and health is the main basis for guaranteeing this fundamental right (Law of Estonia, 1992). Part of 3 Article 40 of the above-mentioned normative legal act has stipulated that enterprises, organizations and institutions that develop mineral deposits in an open or underground manner shall carry out geological exploration, constructions and other works on agricultural lands or forest lands allocated to them for temporary use.

They are obliged to bring such land plots into a state suitable for use in agriculture, forestry or fishing at their own expense, and during the performance of the specified works on other lands they shall bring them into a state suitable for their intended use (Law of Estonia, 1992). Bringing land plots to a suitable condition is carried out during development of mineral deposits by open method or underground method, geological exploration, construction and other works, and if it is impossible this procedure should be performed not later than within a year after completion of such operations and works.

Another important rule regarding prevention of land contamination is established in part 4 of Article 40 of the Land Code of Estonia. It states that enterprises, organizations and institutions carrying out industrial or other construction works, developing deposits of minerals in an open way, as well as carrying out other works related to violation of the soil cover shall be obliged to remove and store the fertile soil layer for its use for land recultivation as well as for increasing fertility of low-productive areas (Law of Estonia, 1992).

Comparison of constitutional laws of the former republics of the Soviet Union is also interesting. Thus, let us compare the current Constitution of the Republic of Lithuania with the Land Code of the Soviet Socialist Republic of Lithuania. So, in part 1 of Article 54 of the Constitution of the Republic of Lithuania it is stipulated that the state shall take care of protection of the environment, animal and plant world, certain natural objects and territories of special value, and shall supervise purposes of their respectful use, as well as restoration and application of natural resources (Law of Lithuania, 1992).

It is noteworthy that the Constitution of Lithuania contains a separate norm dedicated to the problems of land protection from contamination. Part 2 of Article 54 the Constitution of the Republic of Lithuania stipulates that it is prohibited by law to deplete and pollute land and its subsoil, water resources and air, as well as to cause a negative impact on the surrounding natural environment resulting in impoverishing of the animal and plant world (Law of Lithuania, 1992).

The Government of the Republic of Lithuania adopted a resolution "Rehabilitation of damaged land and conservation of fertile layer of soil" dated August 14, 1995 (Law of Lithuania, 1995) and aimed at strengthening legal positions on protection of land from hazardous waste contamination. On the basis of this resolution land owners and land users, as well as other natural and legal persons carrying out works related to land contamination shall be obliged to keep the removed fertile layer of soil and use it for the purpose of improving unproductive agricultural lands.

At the same time, natural and legal persons, using useful minerals, as well as those performing other works shall be obliged to recultivate disturbed areas into agricultural lands, and if it is impossible - into water bodies.

It is necessary to pay attention to the fact that according to the mentioned resolution of the Government of Lithuania this requirement does not always apply, due to the following reasons: 1) an area with a disturbed land on it (soil cover) is allowed to be used for another purpose without recultivation of this land in accordance with the established procedure; 2) areas of disturbed land are subject to development according to the respective plans or must be used for the construction of roads, equipment of sites, placement of other constructions (Law of Lithuania, 1995).

As we can see from the above, in the legislation of Ukraine and Lithuania there is quite a lot in common concerning implementation of legal protection of land from being contaminated with hazardous substances, and land as a natural resource is the subject of regulation in various branches of legislation.

The majority of legal norms fall directly on land legislation and legislation on nature protection. Thus, Lithuania, never separating the general regulation of land and soil protection (as Georgia did) approached in more detail the development of the procedure for recultivation of contaminated land as one of the main points of soil restoration and protection (Leheza *et al.*, 2020).

In order to improve the current legislation of Ukraine, it is advisable to take into account the positive experience of neighboring countries on the example of Georgia. Georgia's economy suffered greatly as a result of the collapse of the Soviet Union, and armed conflicts that took place after gaining independence in 1991 caused further deterioration of the social and economic situation in the country.

Thus, the Constitution of Georgia (adopted on 15 October, 2010 and put into effect on 01 January, 201) establishes in part 3 of Article 37 that everyone has the right to live in a healthy environment, and the state, taking into account interests of the present generation and all future generations shall provide protection of the environment and rational use of natural

resources, sustainable development of the country in order to ensure an environment that is safe for human health in accordance with the ecological and economic interests of the society (part. 4 of the Constitution of Georgia) (Law of Georgia, 1995).

Despite the fact that the Georgian Constitution has settled the issue of environmental protection in the most modern way, the problem causing a negative impact on the state of land resources consists in the absence of a framework law, which would clearly define categories of land, their legal status, procedures for transfer of ownership to land, principles of land use and legal status of documentation in the sphere of rational use and protection of lands. In the long term, the absence of a Land Code may lead to increased problems in creating conditions for rational land use (Leheza *et al.*, 2022).

The greatest concern is caused by problems associated with collection and treatment of household wastes and industrial wastewater. The energy crisis that has occurred after the collapse of the Soviet Union, alongside with a significant increase in electricity tariffs due to insufficient financing of the industry, has negatively affected the state of almost all wastewater treatment facilities in the country: In Tbilisi and Rustavi (two of the three major cities of Georgia) only 74% of total amount of wastewater is cleaned, and in Kutaisi (the third largest of these cities) treatment of wastewater is not carried out, because all installations for cleaning of wastewater are in unsatisfactory condition.

And, as a result, most of the wastewater treatment plants have been decommissioned, and wastewater is discharged untreated into open water bodies. The only settlement in Georgia where wastewater treatment is carried out is the city of Khashuri (Law of Georgia, 1994). As you can see, the protection of land from contamination for the Republic of Georgia is a state problem, since the correct and rational use of all types of soil available in the republic, including saline, swampy, saline, acidic and waterlogged ones, is the main reserve for dynamic development of agriculture and economy in general.

The Law of Georgia "On Protection of soils" adopted on 12 May1994 (Law of Georgia, 1994) defines the following in its Article 2: 1) provision of a complete soil layer, preservation and improvement of land fertility; 2) definition of both duties and responsibilities of land users and the state in the sphere of land protection from contamination and creation of environmentally friendly products; 3) prevention of negative consequences of the use of means aimed at increasing soil fertility but endangering lands and soils themselves; 4) establishment of maximum permissible norms and standards concerning concentrations of dangerous substances in soils.

In contrast to Georgian land legislation, the current land legislation of Abkhazia provides for existence of a single, codified land law - the Land Code of the Republic of Abkhazia. Article 91 of the current Land Code of the Republic of Abkhazia (Leheza *et al*., 2022) has established that landowners and land users (including tenants) shall be obliged to protect lands from water and wind erosion, mudslides, flooding, waterlogging, contamination with production wastes, chemical and radioactive substances.

And in Article 92 of the Land Code, it is determined that land protection from being contaminated with hazardous substances shall be carried out by landowners, including tenants, in accordance with the norms and requirements established by the aforementioned Code and the legislation on nature protection.

In connection with the above, we would like to remind that in part 2 of Article 2 of Art. 93 of this Code it is stipulated that commissioning of objects and the use of technologies not provided with measures aimed at protection of lands from degradation or violation shall be prohibited. Provisions of the Land Code of Abkhazia should be taken into account in the development of the land legislation of Ukraine as an important novel.

The same applies to part 3 of Article 3 of Art. 93 of the above-mentioned legal act; according to this part placement of objects that negatively affect the state of land is allowed to be carried out only in agreement with landowners, land users, land management service, nature protection authorities and other interested authorities (Leheza *et al*., 2022).

Conclusions

It is substantiated that in Ukraine implementation of measures aimed at protection of lands from being contaminated with hazardous wastes, as well as the level of preservation of land from being contaminated with hazardous substances requires improvement of the management system of these lands, taking into account the experience of foreign countries in matters of land use and land protection. Of course, land contaminated with hazardous substances can be used in the economy of Ukraine, which will undoubtedly affect the investment climate in the region and the country as a whole.

It is notable that regardless of the economic development in the post-Soviet Baltic countries, in Georgia sufficient attention is paid to land-and-legal protection of the environment. The land codes of these states contain sections devoted to land protection, in other cases social relations in this sphere are regulated only through separate land legal norms. At the same time, practice of land protection in each country reflects the national

experience of law-making as well as principles of international documents that regulate environmental protection.

When carrying out a comparative analysis of the legislation of the post-Soviet Baltic countries on protection of land from being contaminated with hazardous substances with similar land legal norms of the Land Code of Ukraine (LC of Ukraine), we should note that during the Soviet Union period the Baltic countries already had significant advantages over other Soviet republics in the sphere of financial economic provision of environmental protection, primarily in the form of investments in their highly developed economy, as one of the most effective in the state; and the fact that these countries are already members of the European community is important for our dissertation research.

In our opinion, adoption of a single codified act in the sphere of land legislation is necessary at the legislative level, because its absence has a negative impact on the use and protection of lands, including their protection from being contaminated with hazardous substances.

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Ways of reforming the criminal and criminal procedural legislation of Ukraine in the context of European integration

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Abstract

The purpose of the research is to highlight problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration. Main content. The article analyzes the current criminal procedural legislation of Ukraine and that of European Union countries. Methodology: The methodological basis of the research is the dialectical method of scientific knowledge, through the application of this method considered were legal, functional, organizational and procedural aspects of methodological approaches to understanding of problematic issues and ways of reforming criminal procedural legislation of Ukraine in the context of European integration were considered. Conclusions. Shortcomings of the Criminal Procedure Code of Ukraine have been highlighted. Prospects of their reforming were outlined and changes to the current legislation in the context of European integration were proposed.

Keywords: judicial procedure; criminal procedural law; criminal procedure; European integration; legislative reforms.

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Formas de reformar la legislación penal y procesal penal de Ucrania en el contexto de la integración europea

Resumen

El propósito de la investigación es resaltar cuestiones problemáticas y formas de reformar la legislación procesal penal de Ucrania en el contexto de la integración europea. Contenido principal. El artículo analiza la legislación procesal penal vigente en Ucrania y en los países de la Unión Europea. Metodología: La base metodológica de la investigación es el método dialéctico del conocimiento científico, a través de la aplicación de este método se consideraron los aspectos: legales, funcionales, organizativos y procesales de los enfoques metodológicos para la comprensión de cuestiones problemáticas y formas de reformar la legislación procesal penal de Ucrania en se consideró el contexto de la integración europea. Conclusiones. Se han destacado las deficiencias del Código de Procedimiento Penal de Ucrania. Se esbozaron las perspectivas de su reforma y se propusieron cambios a la legislación vigente en el contexto de la integración europea.

Palabras clave: procedimiento judicial; legislación procesal penal; proceso penal; integración europea; reformas legislativas.

Introduction

Today Ukraine is on the way to fundamental changes in the process of European integration. However, rapprochement with countries of the European Union creates the need to harmonize Ukrainian legislation with the legislation of the member states of the European Union, to implement in practice effective protection of rights and interests of an individual and the society in general with the aim of establishing a confident position of Ukraine on the global stage as a democratic and legal state.

Judicial practice throughout the world forms an impression of the level of democracy of state power in a country and forms the level of public trust in it. That is why quality of the criminal process and adopted court decisions are of exceptional importance. Every person in Ukraine has the right to legal, fair, impartial justice, appeal against illegal actions or inaction of state authorities.

In Article 3 of the Constitution of Ukraine the Legislator declares the status of Ukraine as a social state, where a person, his/her life, health, honor, dignity, inviolability and security are the highest social value, and therefore state authorities must provide an effective mechanism for protection of violated and (or) unrecognized rights and legitimate interests of a person.

Criminal offenses constitute a significant public danger (The Law of Ukraine, 1996). It is the norms of criminal procedural legislation that are of particular importance in the process of realization of a person's right to legal, fair, impartial, objective and transparent justice. The European integration vector of Ukraine's development necessitates harmonization of Ukrainian criminal procedural legislation with the legislation of the European Union.

The purpose of the article is to highlight problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration.

1. Literature review

During the Soviet period the closest approach to this topic was represented in the fundamental work by Aleksieeva devoted to issues of the effectiveness of the criminal procedural law (Aleksieeva, 1979). Among modern works, the collective monograph "Theoretical foundations of ensuring quality of criminal legislation and law enforcement activities in the sphere of fighting crime in Ukraine" should be highlighted (Zelenetskyi, 2011).

Despite the lack of complex developments, in almost all works of modern processualists devoted to the study of aspects of criminal proceedings, the corresponding normative basis of their regulation is also analyzed and, therefore, certain issues concerning quality of criminal procedural legislation are investigated.

In the research plan, defining the concept of quality of criminal procedural legislation is a necessary primary theoretical task on the way to the development of a scientific concept of quality standards of criminal procedural legislation with the prospect of its practical implementation. The author of the article sets a goal to formulate basic theoretical tasks.

However, despite the deep research of the above-mentioned scientists, today there is a problem of reforming the norms of the current criminal procedural legislation of Ukraine in the context of European integration processes through the positive experience of countries included to the European Union.

In the research plan, defining the concept of quality of criminal procedural legislation is a necessary primary theoretical task on the way to the development of a scientific concept of quality standards of criminal procedural legislation (CPL) with the prospect of its practical implementation. The author of the article sets the goal to formulate main theoretical provisions related to the definition of the category "quality

of criminal procedural legislation", and these provisions will be the methodological basis for further scientific research and formulation of quality standards of modern criminal procedural legislation in the light of the updated national legal doctrine taking into account European standards regarding perception of the fundamental requirement of supremacy of law.

High quality of criminal-procedural legislation is a fundamental condition for effective implementation of the purpose of criminal proceedings. Only a high-quality criminal procedural law is able to organize activities in criminal cases in a way that its system could be simple, understandable for all subjects of the proceedings, and to ensure that those of them who apply the law could do this quickly and at a high level.

Loboiko notes that ensuring the effectiveness of criminal procedural activity is one of the elements of the functional purpose of quality of the criminal procedural law (Loboiko, 2017).

According to Yanovska, the right to appeal the decisions of a judge, an investigating judge, the investigator, the prosecutor is one of the most important guarantees of protection of rights and legitimate interests of a person (Yanovska, 2013). *The urgency of the above topics lies in the need to form an effective mechanism for protection of rights, freedoms and interests of a person in the criminal process by means of reforming standards of the criminal procedural legislation in force.*

2. Materials and methods

The research is based on work of foreign and Ukrainian researchers on methodological approaches to understanding of problematic issues and ways of reforming the criminal-procedural legislation of Ukraine in the context of European integration.

Using the gnoseological method, the essence of methodological approaches to understanding problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration was clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of the concepts of problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration.

By means of using the system-structural method, components of methodological approaches to understanding problematic issues and ways of reforming the criminal-procedural legislation of Ukraine in the context of European integration were studied. The structural-logical method was used to define main problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration.

3. Results and discussion

Today Ukraine is going through a difficult road of European integration, which makes it necessary to study a number of acts of international legislation in order to adapt Ukrainian legislation to the legislation of the European Union. If we examine the criminal and criminal procedural law of the European Union (hereinafter – the EU), we should note that there is no single normative act that would regulate criminal and criminal procedural relations of the EU member states. Scientists note the inhomogeneity of the EU criminal law and divide it into the following categories:

1. EU administrative and criminal law (the rules which contain the basic EU bans and certain procedural rules which, due to formal and political reasons, refer to administrative and legal rules).
2. Norms of EU law, which determine the specifics of criminal law and criminal process, which requires EU member states to take certain measures in a certain way.
3. Criminal procedural law of the European Union, which contains certain standards of performing criminal procedural activity as well as peculiarities of international cooperation, extradition, etc.
4. Draft norms of the unified criminal law (Pashkovskyi, 2017).

In spite of this, countries of the European Union have experience of effective criminal proceedings, which can serve Ukraine in the process of reforming the norms of its criminal procedural legislation in force.

Despite the democratization of the norms of the Criminal Procedural Code of Ukraine (hereinafter referred to as the CPC of Ukraine), practice shows that there are significant shortcomings in the process of implementing norms of criminal procedural legislation (Law of Ukraine, 2013). Article 214 of the CPC of Ukraine provides for the procedure of filing and registration of a criminal offense statement.

The legislator determined that a criminal offense statement must be submitted by an investigator or prosecutor no later than 24 hours to the Unified Register of Pretrial Investigations. However, such a norm does not exclude the problem of late filing of information about a criminal offense, as investigators and prosecutors have a habit of "sorting" such statements, which leads to a violation of a person's right to timely response of state authorities to a committed criminal offense.

Also, Article 284 of the CPC of Ukraine provides that one of the grounds for termination of criminal proceedings is the verdict on such criminal proceedings. In the previous Criminal Procedure Code of Ukraine (Law of Ukraine, 2013) the legislator envisaged that refusal to initiate a criminal

case or terminate a criminal case in the absence of elements essential to the offense (corpus delicti) made it impossible to initiate a similar criminal case.

At present, the procedure provided for by the current CPC of Ukraine causes the problem of initiation of criminal proceedings based on one and the same fact. At the same time, it is sufficient only to submit a statement to the Register of Pretrial Investigations. This practice shows that even if criminal proceedings are terminated, conduct of repeated investigative actions in full is not excluded.

Scientists note that in the current Criminal Procedural Code of Ukraine one of the novelties consists in increase of court control over the observance of the rights, freedoms and interests of citizens. This control involves the use by the investigating judge of measures to ensure criminal proceedings. Statistical data show that the most common petitions for ensuring rights, freedoms and interests of citizens are presented as petitions for temporary access to things and documents. Such petitions are usually filed by persons acting for and on behalf of the accused person.

Access is granted only on the basis of the decision of the investigating judge. Today, in our opinion, the legislator's legal gap consists in the lack of an exhaustive list of documents that must be attached to an above-mentioned petition. This problem causes a large number of court decisions on refusal to grant access to specified things and documents. Sometimes judges themselves are careless about the issue of attaching necessary documents to the respective petition, which could be of great importance during consideration of the criminal proceedings.

There is also no clear mechanism for proving the need to withdraw documents and/or things in connection with the threat of their destruction. Therefore, we believe that there is a need to define the norm in the Criminal Procedural Code of Ukraine concerning the procedure and grounds for withdrawal of things and documents (Leheza, 2022).

In our opinion, one of the shortcomings of the CPC of Ukraine is the possibility to protect the rights, freedoms and interests of an individual exclusively by lawyers. Experience of foreign countries (in particular that of Germany) provides the possibility to perform the above function not only by a lawyer, but also by other specialists in the sphere of law (Kyrychenko *et al.*, 2021). According to paragraph 138 of the CPC of the Federal Republic of Germany, law teachers in German higher education institutions also have the right to protect rights, freedoms and interests of individuals. In our opinion, this practice makes sense in the criminal procedural legislation of Ukraine, because teachers in the sphere of jurisprudence constantly improve their scientific level in the process of teaching and can effectively protect rights and interests of individuals in court (Holovnenkov, 2012).

Lawyers note shortcomings of Articles 220-221 of the CPC Code of Ukraine. According to Article 220 the CPC of Ukraine specified is the procedure for consideration of petitions for the performance of any procedural actions. Petitions filed by the defense party, the victim and his/her representative or legal representative, representative of the legal entity in respect of which the proceedings are being conducted, must be considered within a period of not more than three days from the moment of submission and the above-mentioned request must be satisfied if there are relevant grounds.

Results of consideration of the respective petition are informed to the person this petition was filed by. If there are grounds provided for by the current legislation, a reasoned resolution is issued, a copy of this resolution is delivered to the person the petition was filed by, and in the event that delivery is impossible for objective reasons, it should be sent to this person. Article 221 of the Criminal Procedure Code of Ukraine, the legislator envisaged the procedure for familiarization with materials of the pre-trial investigation before its completion.

The investigator and/or the prosecutor is obliged, at the petition of the defense party, the victim, the representative of the legal entity in respect of which the proceedings are being conducted, to provide them with the materials of the pre-trial investigation for review, except for materials on application of security measures to persons participating in the respective criminal proceedings, as well as except for materials which when provided for familiarization at the respective stage of the criminal proceedings may harm the pre-trial investigation.

Refusal to provide for familiarization of a generally available document, the original of which is in the materials of the pre-trial investigation, is not allowed. When reviewing materials of the respective pre-trial investigation, the person this pre-trial investigation is conducted by has the right to make necessary extracts and copies. Lawyers emphasize the legislative gap regarding lack of time limits for notifying a person of the results of consideration of his/her petition (Tymoshyn, 2016).

Article 303 the CPC of Ukraine considerably narrows the number of persons who have the right to appeal the decisions, actions or inaction of the investigator or prosecutor during the pre-trial investigation, as well as grounds for such an appeal (Law of Ukraine, 2013). In particular, there is no rule that would regulate the possibility to appeal against failure to with reasonable investigation deadlines, as well as the procedure of filing complaints by persons who do not have the status of suspects or victims (Leheza *et al.*, 2022).

Reconciliation agreements are also of scientific interest. Lawyer Kyrylo Nominas analyzes expansion of opportunities for conclusion

of reconciliation agreements. He notes that such broad opportunities contribute to spread of corruption offenses and, subsequently, to failure to fulfill tasks of criminal proceedings. At the same time, he emphasizes that despite these circumstances, if a court carefully examines materials of criminal proceedings such situations can be avoided (Leheza *et al*., 2020).

When analyzing the criminal procedure in France, one can single out two main features that distinguish it from the Anglo-Saxon legal system and are subject to criticism by experts from Great Britain and the United States of America. In France, judges are entitled with considerable powers (Kyrychenko *et al*., 2021). The first feature of the French criminal procedure consists in the institution of preliminary examination of accused persons, which is conducted by the respective presiding judge. The judge examines sufficiency of the evidence to issue a guilty verdict. However, if the judge has doubts about the decision on criminal proceedings, he has the right to conduct the investigation himself, to visit the place of crime (Leheza *et al*., 2022).

In our opinion, this practice is also reasonable for Ukraine. The issue of appropriateness and admissibility of evidence is also important. Articles 87-89 the CPC of Ukraine has established the grounds and the procedure of declaring evidence to be inadmissible. However, judicial practice shows a large number of criminal proceedings against public persons, which the court has been forced to terminate because of the lack of evidence, because of inadmissibility or inappropriateness of evidence.

We believe that the legislative regulation of the evidence-gathering process in the UK is a positive experience for Ukraine. According to the UK's criminal procedure legislation, every private individual, including lawyers, has the right to conduct his/her own investigation and has the right to collect evidence, and this evidence will be taken into account by the court if the court considers it appropriate, even if it was collected from the criminal procedural form and would be recognized as inadmissible in Ukraine (Berladyn, 2012).

Conclusions

So, on the basis of the above, it can be concluded that the Criminal Procedure Code of Ukraine was created in the spirit of democratic values, but some of its norms need to be reformed in order to improve the mechanism of protection of rights, freedoms and legitimate interests of individuals. Today Ukraine is on the way to fundamental changes in the process of European integration.

However, rapprochement with countries of the European Union creates the need to harmonize Ukrainian legislation with the legislation of the member states of the European Union, to implement in practice effective protection of rights and interests of an individual and the society in general with the aim of establishing a confident position of Ukraine on the global stage as a democratic and legal state. Judicial practice throughout the world forms an impression of the level of democracy of state power in a country and forms the level of public trust in it.

That is why quality of the criminal process and adopted court decisions are of exceptional importance. Every person in Ukraine has the right to legal, fair, impartial justice, appeal against illegal actions or inaction of state authorities.

Practical experience of France, the Federal Republic of Germany and Great Britain is relevant.

Prospects for further research are as follows:

1. Studying experience of individual foreign countries in the context of improving criminal procedure norms;
2. Analyzing possibilities to harmonize the Ukrainian criminal procedural legislation with the norms of the law of the European Union;
3. Developing an effective mechanism of mutual relations between criminal procedure entities.

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Realization of fundamental principles of law in the context of legal society development

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Abstract

The purpose of the research is to reveal the relationship between legal progress and the fundamental principles of law in the context of their implementation at different levels of the legal system. The importance of justice, freedom, equality and humanity as an instrument of legal progress is shown. It is proved that the fundamental principles of law act as the limits of the development of the legal system, and these limits ensure the legal and political progress of mankind. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. In the conclusions the authors state that legal progress depends on the extent to which the fundamental principles of law are presented and implemented in the actual legal order. The fundamental principles of law converge with each other. Thus, it can be said that it is precisely the interaction and synergy of principles that strengthens legal progress in a given society.

Keywords: legal progress; fundamental principles of law; justice and equality; freedom; legal humanism.

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Realización de los principios fundamentales del derecho en el contexto del desarrollo de la sociedad jurídica

Resumen

El propósito de la investigación es revelar la relación entre el progreso legal y los principios fundamentales del derecho en el contexto de su implementación en los diferentes niveles del sistema legal. Se muestra la importancia de la justicia, la libertad, la igualdad y la humanidad como instrumento de progreso jurídico. Está probado que los principios fundamentales del derecho actúan como los límites del desarrollo del ordenamiento jurídico, y estos límites aseguran el progreso jurídico y político de la humanidad. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. En las conclusiones los autores afirman que el progreso jurídico depende de la medida en que los principios fundamentales del derecho sean presentados e implementados en el ordenamiento jurídico real. Los principios fundamentales del derecho confluyen entre sí. De modo que se puede decir que es precisamente la interacción y la sinergia de principios lo que fortalece el progreso legal en una sociedad determinada.

Palabras clave: progreso jurídico; principios fundamentales del derecho; justicia e igualdad; libertad; humanismo jurídico.

Introduction

Modern society's search for a basis for development is undoubtedly faced with the question of what norms and rules should be, meaning norms and rules intended to determine the shape of the society in the future. Finding an answer concerning direction of the the legal system development is also a significant problem.

From time-to-time societies go through crises. However, it remains essential whether this or that society has managed to cope with certain economic, technical or social problem (set of problems) the respective crisis was caused by. In this context it is important to determine the place of law in overcoming the respective crisis. That is why research of legal progress in the context of researching fundamental principles of law acquires special importance.

After all, not only these principles themselves determine what the law will be like and the prospects for its development. In our opinion, another statement is also fair, and namely: legal progress achievements in the relevant legal system (or in a certain part of it) ensure the maximum possible implementation of fundamental principles of law

1. Literature review

Research of the legal system and its separate components is one of the key directions of modern general theoretical jurisprudence. The search for tools that would help to improve the legal system or means of learning about the legal system arouses a lively scientific interest. In this regard, the category of "legal progress" is one of the subjects of scientific knowledge. After all, this category can act both as a tool for improving the legal system and as a means of learning about legal reality (Buha *et al*., 2022).

Note, for example, that S. Pohrebniak refers to the following fundamental principles of law: justice, equality, freedom, humanism and the rule of law as a derivative from them (Pohrebniak, 2008). It is on this choice of fundamental principles of law that we will focus on.

Within the framework our investigation, attention should be also paid to the point of view of A. Karas, who precisely emphasizes interrelation between legal progress and the original principles of law. Thus, when analyzing legal progress, he notes the need to "accurately assess its starting positions", while regarding the goals of legal progress, he emphasizes that they "may only include generally recognized standards" in the form of a system of legal values, "which develops and absorbs achievements of the world legal culture" (Karas, 2011: 87).

Despite the fact that he pays the main attention to the legal values as the aims of development of the legal system, we believe that this position, in turn, confirms interrelation of legal progress with the principles of law (initial principles) (Bezpalova *et al*., 2021).

Thus, the purpose of this article is to study relationship between legal progress and fundamental principles of law.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; the conceptual apparatus was deepened and the essence of concepts of universal human principles of law as a universal normative framework was defined thanks to the logic-semantic method. Constituent elements of methodological approaches to understanding universal human principles of law as a universal normative framework were investigated by means of using the system-structural method.

The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding universal human principles of law as a universal normative framework.

3. Results and discussion

Pogrebnyak defines fundamental principles of law as “the system of the most general and stable requirements enshrined in the law, which are a concentrated expression of the most important essence and values inherent in this system of law and which determine its nature and directions of further development” (Pohrebniak, 2008: 58).

The phrase “determine its nature and directions of development” is the most important for our research. It is obvious that, according to Pogrebnyak, it is comprehension of fundamental principles of law and completeness of their implementation that peculiarities of the legal system progress depend on.

In order to understand interrelation between legal progress and fundamental principles of law, it is worth noting that formation and development of the legal system (as well as formation and development of legal progress) are connected both with the formation of basic principles of the legal system and approval of these principles, as well as with establishment of limits of the state’s arbitrariness, strengthening of person’s legal guarantees and reinforcement of anthropologization of law, which was manifested by placing human interests in the center of the legal map with the help of the principle of humanism.

In this regard, the rule of law is a key issue with its idea of limiting arbitrariness and the problem of human dignity as a criterion for activity of the state (Boiarov *et al*, 2021).

Thus, fundamental principles of law are not only the limits of the legal system, but also the goal and a guideline for legal system development. Or, in other words, they set the vector (direction) of legal progress (Kyrychenko *et al.,* 2021). How does this happen?

Understanding of legal progress in the context of fundamental principles of law is impossible without mentioning the views of the well-known philosopher and legist, J. Viko. Within the framework of his concept of the historical cycle, J. Vico shows how within the limits of the proposed by him the natural law stages there is a gradual improvement of the quality of law for that.

He assesses natural law from the point of view of the criterion of mind. For J. Vico, the first stage is related to people's ideas that society depends on the divine will, the second stage is related to the rule of force due to human inability to "obey mind", and the third stage is related to the law formulated by "developed human mind", which is expressed through justice and equality (Vyko, 1994).

At the same time, it is the level of legal freedom of persons who possessed civil rights that also allows us to distinguish different stages of formation of a person's legal status:

1. the one where all but a few were rightless;
2. the one where civil right belonged to certain groups of the population, while others were practically rightless;
3. the one where "due to equality of the nature of the mind (the true human nature) all are equalized under the laws" because everyone was born free in free people's states (Kyrychenko *et al.*, 2021).

In this case the progress of legal status is closely related with the maximized realization of such fundamental principles as freedom and humanism through the provision of legal protection to all categories of population.

Finally, he considers humanism as a criterion for development of judicial activity - from judicial ordeals through a court that puts above all observance of the legal procedure, even to the detriment of the case, to a court based on "the laws of mercy in everything that is required by universally equal utility of reasons".

Let's consider legal progress from the perspective of justice.

Regardless of whether we focus on substantive, procedural, or formal justice, when recognizing justice as a fundamental principle of law, we must ensure that it is achieved. Moreover, justice acts as a criterion of legal law, provides an opportunity to critically evaluate the quality of law and the procedure for its adoption (Radbruch, 2004).

Assessment of the quality of law in terms of fairness gives an opportunity to rethink and modify the law in such a way that this requirement is met. The principle of justice is even more important at the ideological

level of the legal system. It is so due to the fact that it is with the help of legal consciousness and legal ideology that we evaluate conformity of jurisprudentially significant actions with the requirements of justice. And, as it has already been mentioned, the understanding of justice within the legal system is developing alongside with it. Thus, the "principle of talion", or ordeal, as a means of ensuring justice is replaced by new, more complex mechanisms of ensuring justice.

At the same time, it is worth noting that violation of the principle of justice by the state (as well as, to varying degrees, other fundamental principles, such as freedom or equality) leads to revolutions, uprisings, riots and other social cataclysms, interrupting the evolutionary path of the society development. This, in turn, has the effect of simplifying the legal system, its degradation or, in other words, legal regress.

As for law enforcement, implementation of justice in specific legal relationships remains one of the most difficult issues of the modern jurisprudence, given that the concept of justice for each party in a relevant legal case largely depends on the legal position it occupies and requirements of this party. It is the judge who has the duty to find a solution that is as close as possible to ensuring the principle of justice.

Thus, legal progress of the legal system at the level of law enforcement depends on the ability of the judicial system to implement justice as accurately as possible in as many cases as possible. In this situation, "due" is given to a person by an irrelevant to this person public entity specifically designated for this purpose, providing for the establishment of justice as a basis for improvement of the legal system (Leheza *et al.*, 2018).

When considering the principle of freedom in the context of legal progress, it is obviously worth noting that according to P. Feierabend, only freedom is a principle that does not hinder scientific progress (Feierabend, 1986). Freedom is not only the basis for the growth of civilization. But freedom also, to a certain extent, coincides with the law, in particular when the law appears in the form of rules thanks to which people are freed."

In this context, legal progress is determined by the extent to which human arbitrariness towards others is replaced by limitation of arbitrary encroachment upon another person's freedom. It is in this trend of the legal system that dependence of legal progress on the degree of freedom in the society reaches its maximum (Leheza *et al.*, 2021).

The principle of equality, on the one hand, acts as a basis for formal equality of all before the law and the court, and on the other hand it is a mechanism of protection against discrimination.

Nersiants noted that the idea of law unfolds through embodiment of the progressive evolution of the content, scope, scale and measure of formal

(legal) equality, when this principle is considered as a general principle of law. He noted that different stages of the historical development of the law are characterized by their individual content of formal (legal) equality, in other words its content evolves (Nersiants, 2002).

Thus, we observe the situation when the society is in the process of granting equal rights to an increasing number of people. If in the early stages of historical development, a state was based on distinguishing one person or a group of persons and granting them special rights in contrast to other members of the society, then the formation of a democratic state essentially requires equalization of fellow citizens in their rights and duties.

At the same time, the society can provide appropriate means of support to those who need such support (so-called "positive measures") to eliminate some injustice. The role of equality for legal progress is of particular importance (Leheza *et al*., 2020). In history there were attempts to ensure equality of results, which was opposed to formal equality (the USSR, North Korea). However, this approach does not sufficiently take into account that people are different. As a result, the law as a means of ensuring an equal scale is destroyed, and the legal system regresses.

Presence of a legal means of ensuring formal equality is replaced by authorization of relevant officials to ensure equality of results through the mechanism of redistribution of material goods. In practice, over time, this leads to emergence of privileged groups of population that receive these results contrary to the principle of equality of results (Leheza *et al*., 2022).

Humanism as a fundamental principle of law is revealed, in particular, through the concept of human dignity. For humanism, a human act as the highest value, although negative features of this human are also taken into account. Humanism, as a social movement, has set the task of guaranteeing a better life of a person through his/her development. Despite the fact that humanism acts as a "profound and constantly acting factor of pan-European civilization", its significance began to be fully revealed only after World War II, when the need to protect human dignity was enshrined in international legal documents, and later in national constitutions and laws (Leheza *et al.,* 2022).

Development of humanism involves both respect for a person in himself/herself and respect for a person in another person. It is introduction of the concept of human rights that has become an effective mechanism that has made it possible to transform humanism from the "main trend in the history of the mankind" into a phenomenon of legal reality, of course never canceling the first point. The principle of humanism, embodied in specific legal norms, ensures progress of the legal system, as it is itself aimed at improving both a person and the human society in the direction of respect for human dignity (Leheza *et al*., 2022).

Conclusions

Therefore, legal progress, determining the direction of the legal system development, directly depends on the degree (or extent) of presentation of fundamental principles of law and their embodiment at all levels of the legal system: Ideological level, normative level and functional level.

This approach allows us to consider fundamental principles of law as limits that are set for changes in the legal system, taking into account that compliance with these limits ensures legal progress, and their violation results in regress of the legal system.

It is obvious that further research of fundamental principles of law as factors affecting dynamics of the legal system will make it possible to more deeply understand the essence and content of the legal system as well as to predict desired and undesirable consequences of its development.

Fundamental principles of law flow into each other. We can say that it is namely interaction and synergy of principles listed above that strengthens legal progress.

As for the principle of the supremacy of law, as a derivative from fundamental principles of law, its relationship with legal progress requires a separate study.

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Influence of the state reform of primary education on the professional training of future teachers

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Abstract

The purpose of the study was the analysis of the implementation of the reform of primary education as a structural model of the formation of the preparation of the future elementary school, for the design of the educational environment. The research methodology used included the analysis of legislative documentation to determine the requirements for the professional activity of an elementary school teacher. The procedure and features of actions for the development of a structural-functional model, of the formation of the readiness of future elementary school teachers to design an educational environment include: analysis of objects; choice of the form of the model; theoretical, methodical, spatio-temporal, material-technical, legal substantiation; the choice of a factor of formation of the system; establishment of connections and dependencies of the main components. The content of the developed main blocks of the model: meta - purpose and task; methodological - approaches and principles; content-procedure - updated content of the discipline content of the vocational and practical training cycle, forms of organization of the educational process, methods, means of training and diagnostics; organizational and pedagogical conditions; stages: adaptation,

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intensification and identification. It is concluded that the developed model reflects the actual educational process of achieving the expected results.

Keywords: state reform; educational model; primary education; future teachers; professional teachers.

Influencia de la reforma estatal de la educación primaria en la formación profesional de los futuros profesores

Resumen

El propósito del estudio fue el análisis de la implementación de la reforma de la educación primaria como modelo estructural de la formación de la preparación de la futura escuela primaria, para el diseño del entorno educativo. La metodología de investigación empleada incluye el análisis de la documentación legislativa para determinar los requisitos para la actividad profesional de un maestro de escuela primaria. El procedimiento y las características de las acciones para el desarrollo de un modelo estructural-funcional, de la formación de la disposición de los futuros maestros de escuela primaria para diseñar un entorno educativo incluyen: análisis de objetos; elección de la forma del modelo; sustento teórico, metódico, espacio-temporal, material-técnico, legal; la elección de un factor de formación del sistema; establecimiento de conexiones y dependencias de los componentes principales. El contenido de los principales bloques desarrollados del modelo: meta - propósito y tarea; metodológico – enfoques y principios; contenido-procedimiento– actualizado del contenido de la disciplina del ciclo de formación profesional y práctica, formas de organización del proceso educativo, métodos, medios de formación y diagnóstico; condiciones organizativas y pedagógicas; etapas: adaptación, intensificación e identificación. Se concluye que el modelo desarrollado refleja el proceso educativo real de consecución de los resultados esperados.

Palabras clave: reforma estatal; modelo educativo; educación primaria; futuros profesores; profesional docente.

Introduction

The key reform of the Ministry of Education and Science of Ukraine is the New Ukrainian School, the main goal of which is to teach an innovator and a citizen who knows how to make responsible decisions and respects human rights.

The main principles of the reform of school education and the approximate schedule of its implementation are outlined in the Concept of the New Ukrainian School (On the approval of the State Policy Implementation Concept in General Secondary Education Reform «New Ukrainian School» for the period until 2029, 2016). Reforming began with the adoption of a new law «On Education» (On Education, 2017) and approval of the State Standard of Primary Education (On Approval of the State Standard of Primary Education, 2018).

The new Standard for Primary Education suggests that teachers should work with other approaches, such as student-centeredness and partnership pedagogy. Instead of memorizing facts and concepts, students will acquire competences based on the European Parliament and the European Council recommendations on the development of key competences for lifelong learning (Key competences for lifelong learning, 2006).

Common to all competencies are the so-called cross-cutting skills, among which, in particular, the ability to make decisions and solve problems. Thus, thanks to the implementation of integrated and project-based learning, students study phenomena from the point of various scientific view and learn to solve real problems with the help of knowledge from various disciplines.

In addition, the primary education reform is about the educational environment. A change in the educational environment is a change, first of all, in the attitude towards the child: respect, attention to him and the desire to find the best way for his effective learning.

The creation of an educational environment primarily depends on the teacher. Therefore, one of the main principles of the New Ukrainian School is a motivated teacher. In order to teach in a new way, the teacher must get freedom of action - choose educational materials, improvise and experiment. This freedom is provided by the new law «On Education». The Ministry of Education and Science offers standard curricula, but any teacher or author group can supplement them or create their own. The teacher is now limited only by the State Standard.

This document outlines the outcomes: what students should know and be able to do when they have completed a particular stage of learning. Instead, how to reach these results, the teacher will determine himself (Official website of the Ministry of Education and Science of Ukraine, https://mon.gov.ua/ua/tag/nova-ukrainska-shkola).

Therefore, the preparation of primary school teachers for the educational environmental design has become relevant in the context of the state reform implementationof primary education.

1. Objectives

The purpose of the article is to highlight the creating a structuring-functional modeling formation process of the future primary school teachers' readiness to design an educational environment.

In accordance with the goal, the following research tasks are defined: to consider the essence of modeling as a means of scientific knowledge and to highlight the peculiarities of creating a pedagogical model; to characterize the starting points for the development of a structuring-functional formation model of future primary school teachers' readiness to design an educational environment; reveal the content of the main developed model blocks.

2. Materials and methods

The research methodology includes the analysis of legislative and regulatory documents to determine the requirements for the professional activity of primary school teachers; analysis of psychological and pedagogical literature to establish the essence of modeling as a means of scientific knowledge and to distinguish the creative features of a pedagogical model; modeling to characterize the developing formation process a structuring-functional model the of future primary school teachers' readiness to design an educational environment.

3. Results and discussion

In the scientific literature, the concept of «model» is defined as: a scheme, image or description of any phenomenon or processes in nature, society; analysis of a certain fragment or social reality (Honcharenko, 1997).

As a means of scientific knowledge, the model performs three main functions: the descriptive function of the model, which consists in the systematization of empirical data, the accuracy, adequacy and completeness of the description is a prerequisite for the performance of any functions; explanatory function - consists in revealing the connections between facts, dependencies established in the process of description and already known laws, theories, hypotheses; predictive function – aimed at predicting new, previously unknown properties and relationships in the modeled object (Kabak, 2013).

Therefore, the formation model of future primary school teachers' readiness to design an educational environment should reflect the real educational process of achieving the expected results - properties, characteristics and connections essential for the performance of professionally oriented actions.

Pedagogical modeling is the study of pedagogical objects and phenomena with the help of modeling conceptual, procedural, structural-content and conceptual characteristics and individual aspects of the educational process within the defined socio-cultural space at the general educational, vocationally oriented or other levels (Lodatko, 2010).

The starting points for the development of a structuring-functional model for the formation of future primary school teachers' readiness to design an educational environment are as follows:

1. The idea of forming future primary school teachers' readiness to design an educational environment is to create conditions for the activation of external and internal driving forces that encourage activity and provide it with direction aimed at achieving the expected results; ensuring understanding of defined projective tasks, acquiring knowledge of ways to solve them and means of achieving the goal; systematic implementation of pedagogical reflection of one's own actions.

The purpose of the structuring-functional model is to improve the professional training of future primary school teachers through the formation of readiness for designing an educational environment (a stable state of disposition towards the successful creation of real conditions for the intellectual, social, and moral development of students of primary education, which is based on the mobilization of potential opportunities (motivational, operational -activity, cognitive, emotional-volitional) and experience, with the aim of obtaining the expected result and further personal development in changing conditions).

2. The structuring-functional model is oriented to use in institutions of higher education implementing educational activities at the first level of higher education in specialty 013 Elementary education.
3. The structuring-functional model is based on the recognition of a person as the highest value of society and provides for the creation of the necessary conditions for the participants of the educational process to realize their abilities and talents; confirmation of participants in the educational process of the ability to think freely and self-organize in modern conditions.
4. Development object is professional training of future primary school teachers.
5. The process of forming future primary school teachers' readiness to design an educational environment is modeled.
6. The structuring-functional model is evaluated based on the results of the future primary school teachers' formation readiness to design an educational environment.

The procedure and characteristics of actions for the development of a structuring-functional model of the formation of future primary school teachers' readiness to design an educational environment.

1. An analysis of the development objects - professional training of future primary school teachers.

The professional training of future primary school teachers was analyzed in terms of its essence and current state. For this, it was found:

- trends in primary education development;
- the professional field of activity of primary school teachers and the difficulties that arise in its implementation;
- resource capabilities of the professional and practical cycle disciplines, training, the implementation of which can contribute to the formation of future primary school teachers components' readiness to design an educational environment (motivational, cognitive, operational-activity, emotional-volitional);
- methodological approaches, principles, methods that will allow to form a fundamentally new content of future primary school teachers' readiness to design an educational environment;
- organizational and pedagogical conditions for improving future primary school teachers' readiness to design an educational environment;
- methodical provision of formation of readiness of future primary school teachers to design the educational environment.

2. The modeling development choice form for the formation of future primary school teachers' readiness to design an educational environment.

The development form was chosen to be a structuring-functional formation model of the future primary school teachers' readiness to design an educational environment, which includes general theoretical ideas about this process, its goals, approaches, principles, content, methods, forms, means, conditions for achieving goals, and expected results.

3. Theoretical support for the development of structure-functional formation model for future primary school teachers' readiness to design educational environment.

Searched for information:

- about the professional training experience of primary school teachers in higher education institutions of Ukraine and abroad;

- about the experience of developing similar models by other scientists;
- about theoretical and empirical studies of the influence of pedagogical systems and processes on a person (the peculiarities of the psychological and pedagogical influence on potential opportunities are analyzed, such as: motivational, intellectual, operational-active, emotional-volitional).

4. Methodological support of the forming future primary school teachers' process readiness to design an educational environment.

This stage includes the creation of formation tools: preparation of schemes, sample documents, etc.:

- a system of project activity tasks was developed;
- methodical recommendations were developed for the use of the system tasks for project activity with the professional and practical training cycle discipline resources;
- the structure of future primary school teachers' readiness to design an educational environment was developed;
- the building blocks of structuring-functional formation model in the future primary school teachers' readiness for the educational environment design is developed;
- a tool for monitoring and diagnosing academic and personal achievements of future primary school teachers was developed.

5. Spatio-temporal formation provision readiness of future primary school teachers for designing the educational environment.

An experimental base and temporary support have been prepared:

- institutions of higher education in Ukraine;
- the schedule of the selected institutions for educational process of higher education is taken into account;
- the laboriousness of the selected forming future primary school teachers' forms and methods of readiness for the educational environment design, the need for a certain amount of time for the transmission and content assimilation are taken into account.

6. Material and technical support for the formation of future primary school teachers' readiness to design an educational environment:

- selected technical means of education (within distance learning);
- selected information sources (scientific psychological and pedagogical literature, Internet resources, etc.);

- handout material was prepared for conducting classes in the disciplines of the professional and practical training cycle;
- a mock-up of the portfolio of future primary school teachers was prepared for noting academic and personal achievements in mastering the readiness to design an educational environment.

7. Legal support for the development of a structural and functional model for the formation of future primary school teachers' readiness to design an educational environment.

Regulatory and legal principles are taken into account when organizing the activities of students and teachers in the educational process (laws «On education», «On higher education» and others).

8. The choice of a system-forming factor for the development of a structuring-functional formation model of future primary school teachers' readiness to design an educational environment.

A dynamic strategy was chosen, which takes into account the potential capabilities of future primary school teachers as system-forming components. The logic of thinking in this strategy is that it is necessary to proceed from the objectively determined capabilities of participants, systems, processes and move further to the definition of goals, principles, content, methods, means and forms.

9. Establishing the connections and dependencies of process components forming future primary school teachers' readiness to design an educational environment.
10. Compilation of a document on the formation of future primary school teachers' readiness to design an educational environment.

A calendar plan for the development of a model for the formation of future primary school teachers' readiness for designing an educational environment has been drawn up; a pedagogical experiment program has been drawn up.

11. Preliminary examination of the students' and teachers' behavior in proposed educational process, forecasting results in the expected manifestation form of an individual qualities.
12. Expert formation evaluation the of future primary school teachers' readiness to design an educational environment. At this stage, the created form was checked by competent specialists, as well as potential consumers: higher education institutions in Ukraine.
13. Adjusting the formation of future primary school teachers' readiness to design an educational environment. At this stage, the model was adjusted taking into account the experimentation and expert evaluation results.

14. Adopting a decision to use a structuring-functional model of forming future primary school teachers' readiness to design an educational environment. It is the final modeling development process action, after which its implementation in practice began.

The structuring-functional formation model the of future primary school teachers' readiness to design an educational environment consists of target, methodological, content-procedural and diagnostic blocks.

The content of the structuring-functional model target block contains the goal of forming future primary school teachers' readiness to design an educational environment. According to the goal, the tasks are defined, which include: 1) stimulation of the cognitive need to master projective activity; interest in the process of creating an educational environment; the desire to update and enrich knowledge on the developmental problems of primary education based on the ideas of the New Ukrainian School Concept; 2) development of integrative thinking properties that meet the projective activity requirements; understanding the peculiarities of the educational primary education students environment and the process of its design; 3) formation of skills to create an educational environment taking into account the variability of primary education and resource provision of the educational process; 4) awareness of one's own emotional and volitional capabilities; force mobilization during design activities; responsibility for making professional decisions regarding the creation of an educational environment for students of primary education (Oleksenko *et al.*, 2021).

The methodological block reflects the approaches and principles of forming future primary school teachers' readiness to design an educational environment: conceptual (systemic, synergistic, competence) and specific (task and creative).

The content-procedural block contains three stages of the forming process of future primary school teachers' readiness to design an educational environment (initial - adaptation, main - intensification, final - identification), which are implemented by updating the content of the disciplines of the cycle of professional and practical training («Introduction to the specialty» - 1st year, «Didactics» - 2nd year, «Pedagogical technologies in primary education» - 3rd year, «Distance learning technologies» - 3rd year, Production practice in primary school - 4th year), as well as the application of a number of organization forms of the educational process (theoretical training: problem lecture; practically oriented training: practical, seminar classes, industrial practice; independent training: independent and individual work), methods (training and project training) and means (visual: handouts; technical: computer, multimedia presentation diagnostics and control: different level tasks of project activity, tests, report and from practice).

In addition, the fullness of the practically-oriented content of the professional and practical training cycle disciplines due to the developed system of project activity tasks is indicated.

The formation quality of future primary school teachers' readiness to design an educational environment depends on the implementation of organizational and pedagogical conditions, which we associate with: ensuring positive motivation in mastering projective activities; updating the practically-oriented component of the disciplines of the cycle of professional and practical training; the orientation of forms of organization of the educational process and teaching methods to understanding defined projective tasks, acquiring knowledge of ways to solve them and means of achieving the goal; involvement in pedagogical reflection.

The diagnostic block of the model determines the future primary school teachers' level of readiness to design an educational environment according to personal, content-processual and evaluation-regulatory criteria, which applies to each component (motivational, cognitive, operational-activity, emotional-volitional) of this readiness.

The implementation of the structuring-functional formation model of future primary school teachers' readiness to design the educational environment was carried out in three stages: initial (adaptation), main (intensification) and final (identification).

The adaptation (1st course) stage is aimed at adapting future primary school teachers to the conditions and content of the professional and educational process, to a new social role, establishing relationships with each other and with teachers.

The intensification stage (II-III course) is aimed at strengthening, strengthening, bringing to a stable state the formation of the components of readiness for designing an educational environment.

The stage of identification (IV course) is focused on the systematization of acquired abilities for projective activity.

Conclusions

Therefore, the State Reform of Primary Education in the context of the New Ukrainian School has an impact on the professional training of future teachers, which requires the modeling of the latest conceptual, procedural, structural-content and conceptual characteristics and individual aspects of the educational process.

The procedure for developing a structuring-functional model of forming future primary school teachers' readiness to design an educational environment is based on the analysis of the object; choosing the modeling

shape; theoretical, methodical, space-time, material and technical, legal support; selection of the system-forming factor; establishing connections and dependencies of the main components. As a result, the developed model reflects the real educational process of achieving the expected results - a teacher who is able to act according to new approaches to the design of the educational environment. Further research in this direction is connected with the implementation of the developed model.

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Electoral corruption: illegal voter bribery technologies

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Abstract

Based on the methodology of documentary review of scientific sources, materials of public organizations, law enforcement and judicial practice of investigating cases of voter bribery, the most widespread technologies of electoral corruption in Ukraine and other countries were revealed and investigated in the article. Peculiarities of direct and indirect voter bribery have been discovered. The most widespread forms (technologies) of election-related bribery have been identified: “carousel”, “bargaining”, “conditioning”, “bus”, “dumping”, “election network technology”. It has been established that the most insecure technology that poses a serious threat to the smooth conduct of elections is the creation of “election networks”, which can significantly influence and undermine the credibility of the will of citizens. It is concluded that the characteristics of such a criminal network are: massive character involving a wide range of participants with different roles; significant territorial distribution; realization of criminal intent through clearly planned step-by-step activities within a temporary criminal group. Based on the results of the research, it has been established that in Ukraine the “carousel” technology has been widely used.

Keywords: electoral corruption; electoral technologies; voter bribery; criminal offense; criminal investigation.

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Corrupción electoral: tecnologías ilegales de soborno a los votantes

Resumen

Con base en la metodología de revisión documental de fuentes científicas, materiales de organizaciones públicas, aplicación de la ley y práctica judicial de investigar casos de soborno de votantes, se revelaron e investigaron --en el artículo-- las tecnologías más extendidas de corrupción electoral en Ucrania y otros países. Se han descubierto peculiaridades del soborno directo e indirecto de votantes. Se han identificado las formas (tecnologías) más extendidas de soborno relacionadas con las elecciones: "carrusel", "negociación", "condicionamiento", "bus", "dumping", "tecnología de redes electorales". Se ha establecido que la tecnología más insegura y que representa una seria amenaza para el buen desarrollo de las elecciones es la de creación de "redes electorales", que pueden influir significativamente y socavar la credibilidad de la voluntad de los ciudadanos. Se concluye que las características de dicha red criminal son: carácter masivo que involucra una amplia gama de participantes con diferentes roles; importante distribución territorial; realización de la intención delictiva mediante actividades paso a paso claramente planificadas dentro de un grupo delictivo temporal. Sobre la base de los resultados de la investigación, se ha establecido que en Ucrania la tecnología de "carrusel" se ha utilizado ampliamente.

Palabras clave: corrupción electoral; tecnologías electorales; soborno de votantes; ofensa criminal; investigación crimina.

Introduction

Democracy is the main value of the international community, supporting democracy, humanity promotes human rights, development, peace and security. Democracy promotes good governance, monitors elections, supports civil society to strengthen democratic institutions and accountability, ensures self-determination in decolonized countries, and security (Kalynovskyi *et al.*, 2022).

Constant transformation processes in a state-organized society stipulate the need to adapt activities in the field of organizing and holding elections to government bodies to changing conditions. One of the key directions of such adaptation is the transformation of the system-structural approach and the improvement of the functional-purposeful organization of such activities (Keshikova and Demeshko, 2021).

The use of corrupt election technologies (the so-called "electoral corruption") completely nullifies principles of direct popular government

and provides an opportunity for the corrupt elite, as well as criminal and semi-criminal structures, to directly influence formation of representative bodies of state power, and for the dishonest politicians – to dispose of significant public resources. Corruption in election process is a rather dangerous phenomenon, since as a result of corrupt relations realistic political competition is revealed, corruption of future representatives of the legislative and executive authorities is laid, the level of trust decreases the process of power formation through elections, thus ultimately creating a real threat to the national security of any given state. Electoral corruption, the institutional mechanism of which lies in the abuse of various kinds of administrative resource of public authorities of different levels, serves as a starting point for political corruption in general.

Elections are often "overshadowed" by various types of violations, including distortion of the results of popular will. According to the information of the database of political institutions (DPI), which contains statistical data on some 181 countries, facts of fraud, falsification and even intimidation of voters have been recorded in about 20 percent of the last elections to the executive power bodies (Asunka *et al.*, 2013). Therefore, study and improvement of mechanisms for countering criminal attempts to disrupt the election process are extremely urgent and important task not only in Ukraine, but also around the world.

Manifestations of electoral corruption can be divided into three groups: a) limiting the voter's ability to express his preferences by implementing his voting rights; b) manipulation of election results during or after elections without any direct intervention with voters; c) cooperation with voters in the organization and implementation of illegal actions during the election process.

According to Yuriy Orlov, the forms of manifestations of electoral corruption are: a) bribing voters; b) bribery of election commission members for the purpose of falsifying election documents; c) corruption agreement regarding obtaining a suitable (so-called transit) place in electoral list of the party (political bloc) (Orlov, 2016). This list is further extended by V. Sokurenko by referring to violation of the procedure for financing political parties (Article 159-1 of the Criminal Code of Ukraine) (Sokurenko, 2017).

Corruption in our state can be compared to the ongoing war in Ukraine (Vozniuk, *et al.*, 2021). The negative consequences of corruption have been repeatedly discussed in the context of negative consequences of corruption (Carson and Prado, 2016; Mykhailov, 2020). Corrupt technologies and practices not only impede economic and social development, they also prevent democracies from normal functioning. Citizens in corrupt democracies can find it unnecessary or unable to establish credible relations with their representatives.

As a result, citizens can distance themselves from the political system, believing that it is better to stay at home on Election Day (Stockemer *et al.*, 2013). The influence of political corruption makes respondents refrain from voting more often. On the other hand, democracy itself reduces corruption (Kolstad and Wiig, 2016) and democratic elections play a decisive role in stamping out corruption (Vries and Solaz, 2017). Democratic elections are called to prevent corrupt politicians from getting into office. In practice, however, corrupt politicians are often elected to state seats in elections. Moreover, one of the reasons for this is bribery of election officials.

According to M. Ivanov and Y. Davidenko, the reasons for bribery of election officials are deeply rooted in the history of elections in Ukraine. The modern socio-economic and political instability in Ukraine, according to scientists, contributes to the fact that citizens do not object to donations, free concerts, receiving certain amount of money during election campaigns, thus selling their votes to one or another candidate, assuming that in such way they receive at least some benefit from him (Ivanov and Davidenko, 2019).

Until recently, countering such criminal offenses has been a significant problem in Ukraine, and were also found to be deficiencies in the legislative regulation of the consolidation of criminal liability for such offences. Thus, prior to the amendments to Article 160 of the Criminal Code of Ukraine ("Bribery of a voter, referendum participant, member of the electoral commission or the referendum committee"), sanctions of part. 1 of the Article did not entail deprivation of liberty, so investigators could not prosecute a person under Article 208 of the Criminal Procedure Code of Ukraine, which significantly complicated documentation of such proceedings.

Moreover, according to the previous wording of Art. 160 of the Criminal Code of Ukraine, the act of bribing a voter by means of a proposal, or by giving an unlawful warning (part 2) was considered a crime of medium gravity, which substantially limited investigator's procedural possibilities in the part of conducting secret investigative actions. For comparison: in Australia, for instance, electoral bribery is the most serious political offense: according to Articles 326 and 362 (1) of the Electoral Act (Commonwealth Electoral Act) of 1918, even one candidate's request (proposal) to bribe a voter nullifies his or her election (Orr, 2005).

With the adoption of the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine to improve the election legislation" № 805-IX of 16.07.2020 (Law of Ukraine, 2020), the situation in this aspect has changed. At the same time, the lack of sufficient experience of investigators in the investigation of such criminal offenses in the conditions of frequent updating of the legislative framework and the lack of proper methodical support for such investigations, taking into account the latest changes, is evident. The low effectiveness of the investigation of voter bribery is also

evidenced by the data of official statistics. Thus, it is worth pointing out at the extremely low rate of criminal prosecutions: 2016 – 0%, 2017 – 2%, 2018 – 40%, 2019 –3,1%, 2020 – 11,6% (Report, 2020).

Difficulties of investigating criminal offenses are in some ways caused by complicated technologies of voter bribery, which include several stages, take into account modern possibilities of opposing investigations, particularly in the form of the prosecution of such crimes, as well as the psychology of interactions between the giver of bribe and the person who is actually bribed.

1. Theoretical Framework

The article employs a set of research methods, namely: terminological, system-structural, formal-legal and statistical (grouping, deduction, analysis of quantitative indicators). The empirical basis of the article is constituted by the generalized materials of investigative and judicial practice; systematized statistical information about the dynamics of criminal offenses related to electoral bribery, as well as the results of work of law enforcement agencies; analytical materials and informational reports of the Ministry of Internal Affairs, National Police, Office of the Prosecutor General, Committee of Voters of Ukraine, the "Opora" civic network. Theoretical foundation of the article is based on scientific works, provisions of the Criminal (2001), the Criminal Procedure (2012) and the Electoral (2019) Codes of Ukraine and the provisions of the Laws of Ukraine "On the Elections of People's Deputies of Ukraine" (2011), "On Local Elections" (2015), "On Elections of the President of Ukraine" (1999) and others.

The system-structural method has been used to describe stages of implementation of the electors by creating an «electoral network» and the peculiarities of creating an "electoral batch" of the "electoral pyramid".

Statistical methods have been used to summarize results of sociological research, study of criminal proceedings materials, law enforcement and judicial practice.

The formal-legal method has allowed authors to analyze the legal essence of the provisions of regulatory legal acts, which regulate organization of the electoral process in Ukraine and establish liability grounds for election violations.

Of course, comparative legal method has been actively employed in this article as well. It helped to get a better image of illegal electoral behavior both in Ukraine and some other jurisdictions. We have previously pointed out the importance of using comparative method in legal research (Movchan *et al.*, 2022).

2. Analysis of recent research

Works of such scientists as Hryhorova (2021), Kubareva (2020), and others are devoted to the study of certain aspects of the investigated issues. Besides, researchers of the National Academy of Internal Affairs (O. Taran, O. Kubareva, A. Vozniuk, M. Hryha, Ya. Diakin and others) over the course of four years have been researching problematic aspects of the investigation of bribery of a voter, voter-participant of the referendum, as a result of which the relevant methodological recommendations have been prepared (Taran *et al.*, 2020).

Without diminishing the role of scientific contribution of the abovementioned scientists, it is necessary to acknowledge that a lot of problematic issues related to the investigation and prevention of crimes provided for by Art. 160 of the Criminal Code of Ukraine, continue to occur. Now, after the introduction of amendments to this norm, as well as taking into account the emergence of new methods of implementation of election bribery, studying specifics of the implementation of illegal election technologies is of essential importance for the implementation of a quick, complete and effective investigation of these crimes and preventing them.

The purpose of this article is to investigate the most common modern technologies of voter bribery in order to improve methods of investigating criminal offenses associated with manifestations of electoral corruption.

3. Results and Discussion

Various classifications of bribery in the electoral process have been formed in academic science, but the most widely spread one is based on the familiarity with the subject of corrupt relations. According to such classification the following types can be named: bribery of electors; bribery of candidates and authorized representatives or trusted individuals; bribery of members of election commissions; bribery of witnesses; bribery of mass media representatives.

Bribery of the electorate consists of giving the elector a wrongful win for any actions related to the indirect exercise by the voter of his/her election right (Kushnaryov, 2018). Bribery of an elector is defined by the Black's Law Dictionary as a crime committed by the one who gives or promises to give, or offers money or anything of value to bribe an elector for the purpose of corruption, to encourage others to vote in a certain way or to refrain from voting or to pay the voter for voting in any way by refraining from voting.

Bribery of voters was criminalized through changes to the Criminal Code of Ukraine, introduced in 2014. Despite this, the Committee of Voters

of Ukraine has recorded multiple facts, when a vote was purchased for as low as UAH 50 (in the "poorest" districts) up to more than UAH 1,000, or cash certificates, grocery sets, the opportunity to use certain services (for example, free public transport, medicines, etc.), concluding with voters of extralegal "social agreements". Bribery of voters can be not only personal, but also corporate in nature (for example, provision of goods, services, equipment for social institutions, organizations).

Voter bribery is a serious problem in ensuring a fair ground during election process. This issue has caused concern among relevant stakeholder parties in many countries, including Bulgaria, Lithuania, Montenegro, Romania, San Marino, Serbia, and Slovakia (2011). Credible reports on bribery of voters on election day have been registered in Armenia, Bulgaria, Kyrgyzstan, Latvia (2010), Lithuania, Moldova (2011), Romania (2012), Serbia, Slovakia and Ukraine (2012) (Binder *et al.*, 2013), USA (Levitt, 2007).

As for Ukraine, the report by international observer's states that during local elections in 2015, reports were recorded with accusations of bribery of voters, and there were also cases when candidates handed out grocery kits to low-income voters directly or through charities organizations (International Election Observation Mission, 2005).

Analysis of the situation regarding the realization by the electors of their right during the electoral processes of national and local elections in Ukraine has revealed that the freedom of making a decision by voters is constantly subjected to an unlawful influence. The main problem is the bribery of the voters, which is often the main factor, which influences election results.

At the legislative level, two ways of bribing voters have been defined: direct and indirect. Thus, Decree of the Central Election Commission No. 376 of February 22, 2019 "On the Role of implementation of the provisions of part six of Article 64 of the Law of Ukraine "On the Election of the President of Ukraine" (currently, this Decree became null and void on June 25, 2020) by direct bribery of electors is defined as a proposal, promise or giving to a voter or a participant of referendum participant for committing or not committing any actions related to the indirect exercise by the voter of his/her election right or right to participate in the referendum (refusal to participate in voting, voting at the electoral booth (referendum) more than once, voting for an individual candidate in the elections, candidates of a political party, local organization of a political party, or withdrawal from such voting, transfer of the election ballot to another person).

Indirect bribery is defined in the mentioned Resolution as the performance of the electoral campaign by means of providing illegal benefit or free of charge goods (except for the goods which contain visual representations of the name, symbols, flags of a political party, the cost

of which does not exceed the size established by law), works, services, enterprises, institutions, organizations (Resolution of the Central Election Commission, 2019).

Currently, according to part 14, Art. 74 of the Law of Ukraine "On the Election of People's Deputies of Ukraine" the entities that may be granted an unlawful benefit in the specified manner include voters, in addition to enterprises, institutions and organizations: "granting voters, institutions: giving electioneers, institutions, organizations free or on a voluntary basis, of goods, services, works, valuable partners, credits, lottery tickets, other material valuables, which is accompanied by requests or offers to vote for or not to vote for a certain party or candidate or by mentioning the name of the party or the name of the candidate is indirect bribery of the voters"(Law of Ukraine, 2011).

We suggest reviewing the most common ways of implementing direct and indirect bribery of election officials.

The experience of election districts in recent years, as well as the analysis of judicial and investigative practice, testifies to the mass character of direct vote buying with a purpose of benefiting a certain candidate for the election. Here the general mechanism often includes two stages.

On the first stage, there is a search for potential voters, who can be given monetary reward or other "material reward" for committing any actions connected with their indirect exercise of their voting rights. Such actions may include, in particular: falsified will of a voter at the time of voting or refusal to participate therein; voting at the polling station more than once; handing over one's ballot paper to another person; election commission member's refusal to participate in its work; withdrawing one's candidacy for the relevant elected position, etc.

It is noteworthy that in some cases those who intend to "buy" votes are looking for an active member of society who is aware of the residents of a certain locality and has credibility in a certain social environment. Such person is promoted among the socially disadvantaged groups of the population, who, due to their precarious material status, are willing to accept the suggestion to improve their income status – among the student environment, elderly people (pensioners), persons on parental leave, residents of rural areas, etc. Such intermediary person will directly offer, promise and reward voters for voting in favor of the desired candidate (of a political party) (Kubareva, 2020).

In other cases such search is made indirectly, when a promise of material incentives for the relevant actions of the voter are provided by: a) virtual pre-election trade on the Internet through social networks Viber, WhatsApp, Instagram, etc.; b) the use of anonymous phone calls with an offer receiving an illegal benefit in exchange for voting for one of the

candidates for the elected office; c) distribution of leaflets with the promise of an undue benefit (for example, to write off debts for communal services in case of voting for one of candidates, etc.) (Taran *et al.*, 2020).

In order to bribe voters, as well as to "sell" citizens' votes offenders actively use Internet, where dozens of messages appear with approximately the following content: "How to sell your vote in the upcoming elections?", "For how much you can sell your vote in the elections?", "Is it possible to officially sell your vote on elections?" etc. At the same time, in some foreign countries (Germany, Denmark, Canada) selling one's vote constitutes a criminal offense.

Sometimes violators conclude "agreements" with the voter, whose vote they intend to buy with indicating passport data and signatures of voters or, even, are selected receipts on the obligation to vote for a particular candidate in the elections (candidates from a political party, local organization of a political party). Simultaneously with signing such "document" voter receives a so-called "social card" with a certain amount on his account, which can be obtained after a certain period of time after election results have been posted.

It can also be a plastic card for receiving discounts on purchases of goods in a certain store – again after the elections. As a rule, specified cards are provided to the voter not directly from the respective candidate, but instead created by "charitable foundations" specifically for this purpose. For example, during 2015 local elections the "social card" of Charitable Foundation "Nash Krai" was used for the purpose of bribery in Luhansk region (Antipov and Topchiy, 2017).

Foreign authors also critically refer to the conclusion of agreements with voters in order to buy their votes (Levitt, 2007).

At the next stage, illegal benefit for the "correct" vote is directly transferred. Having switched to one of the above-mentioned ways to change their will at the elections, perpetrators, as a general rule, transfer the money step by step:

1. on the eve of voting (1-2 days before or on the day of the election) they give a part of material reward;
2. after the will is fulfilled and the proof of the vote for the required candidate's favor, they give the rest of the money. At the same time, verification of "correctness" of the election is carried out differently. Sometimes it is necessary to put against the name of a particular candidate a specific mark, which is distinguished from all the others. In practice, there are cases when voters are obliged to throw their ballots to specially designated ballot box, which is monitored by an individual person, who puts specific marks on the list of bribed

persons compiled in advance (Verdict of the Ostroh District Court of Rivne Region, 2016).

However, in 74.6% of the criminal cases that we have reviewed, in order to confirm the fact of voting with a purpose of obtaining an illegal benefit, the mechanism of photographing the ballot paper after direct voting in the booth at the polling station has been used. As a rule, for the purpose of identification, the voter had to take, along with the ballot, a photo of his/her passport or any other document identifying a person. After that, the photo must be sent via a mobile social media app (Viber, WhatsApp, Telegram, Messenger, etc.).

Such actions directly violate the secrecy of the vote. Thus, according to Article 7 of the Law of Ukraine "On Local Elections", photographing, video fixating by any means the results of the voters' will in the voting booth, as well as demonstration of the results of voluntariness in the voting room by the voter are explicitly prohibited (Law of Ukraine, 2015).

However, the mere fact of photographing does not entail the person may be held liable for violation of the voting confidentiality [Article 159 of the Criminal Code of Ukraine] a person can be prosecuted only in case of proof of intentional disclosure of the content of the declaration of will (Research, 2019).

Academic literature describes various technologies of bribery of electors. B. Vishnevskiy identifies several basic ways of corrupting the election officials. The first one is "conditioning" –virtuous activity of a prospective candidate before the start of the election. The other is the "agreement", when candidates formally conclude factual agreements providing for the work (services) to be performed by the election candidates, while the payments are made in reality. The third technology – "carousel", also called "clean ticket", "turntable" or "helicopter", is quite widespread.

The mechanism of this method is the following: the voter is asked to take a clean ballot out of the polling station for a fee. This ballot is filled in by the "purchasers" and is offered to another voter for casting his/her vote. After that, the latter presents his blank ballot to the "buyer" and receives a reward. The fourth technology, called a "bus", consists of a mass drive of the voters to the polling stations and handing out the following rewards. And the last one, the "dumping", is the provision of free services on behalf of the name of the candidate or an organization that supports it, the sale of goods at reduced prices or for free (Vishnevsky, 2018).

Implementation of voter bribery through an extensive network usually includes the following steps:

1. Compilation of voter lists with their personal data, as well as information about their political favorites. Such activities are carried

out in different ways: survey (questionnaire) under the guise of sociological research, collection signatures for relevant social projects, etc.; involvement of knowledgeable electoral subject's process (members of election commissions, observers) or representatives of local authorities (at such as heads of village councils).

It should be noted that such uncontrolled collection of passport data creates practical possibilities for illegal influence on the will of the electorate by means of bribery (Hryhorova, 2019).

2. Recruitment of agents for the purpose of selecting trustworthy persons to form a "bribery network". Agitators, as a rule, are people "from the local community", which are characterized by three features: a great freedom to disarrange their own time; a search for various kinds of making additional income; communicability (Dirty election technologies, 2019). So called "recruitment" of agents is carried out, mainly among employees of the budgetary sphere, by announcing it 3-4 months prior to elections.

Representatives of the candidate hold meetings of the employees of the budgetary sphere, as a rule, in public places, where they carry out advocacy and public debate. Such meetings are occasionally accompanied by the distribution of informational materials in the form of newspapers, leaflets, calendars, stationery, and displays of photographs, demonstration of films about the achievements of the candidate in question.

3. Providing authorized persons with the lists of voters who have already indicated to vote for the desired candidate. The list is determined by the election headquarters of an individual election candidate (candidates of a political party, local organization political party).
4. Visiting places of residence (houses, apartments) where potential voters are invited to vote in the election for an individual candidate (candidates of a political party), the election law does not contain any provisions on the right to vote for a candidate (or candidates of a political party). It is explained to them that they will receive material compensation for their services. In addition, on the day of election they offer to take a photo of their ballot with a "checkmark" next to a particular name. All this is accompanied by distribution of campaign products of the appropriate political force and by inclusion of data to the lists.
5. Payment of money to trusted persons who carried out agitation for the benefit of an individual candidate for a particular candidate in the elections (candidates of a political party, local political party organizations), who, in turn, one week before the elections begin to deliver money to each household (according to the lists). At the same time there are cases of transferring money by the agents to

individuals who will vote from the place of residence (Kubareva, 2020).

Classic schemes of organizing voter bribery by forming "nets" can be supplemented with various elements and stand out with certain features. Indeed, during organization of election campaign in the past Presidential elections one of the candidates has organized mass bribery scheme using personal ID cards with QR code.

It should be added that activities of recruiters (agitators) are distinguished by variability and versatility. Indeed, after receiving illegal funds from the organizers intended for the voters, they try to make this procedure cheaper (for example, by buying expired products, alcohol of dubious quality and offering them wholesale to voters). Sometimes recruiters' resort to various types of falsification, by fabricating photo reports in particular (Devitskiy and Zhmurov, 2017).

We would like to emphasize that campaigning itself is not a criminal offense. At the same time, according to part 6 of Art. 57 of the Election Code of Ukraine (Electoral Code of Ukraine, 2019) and part 6 of Art. 64 of Law of Ukraine "On the Election of the President of Ukraine" (Law of Ukraine, 2019), it is prohibited to conduct pre-election campaigning accompanied by giving voters money or free of charge or on preferential terms for goods, services, works, securities, loans, lotteries. Such pre-election campaigning or giving money to voters, also providing goods, services, works, securities, loans, lotteries, whether free of charge or on preferential terms, accompanied by appeals or offers to vote or not to vote for a certain candidate or mentioning his name, is considered bribery of voters, thus making it a criminal offense.

In this aspect, we note that voters with a low level of financial well-being become quite profitable for majority candidates. Having renovated kindergartens and schools or roads, they easily win the electorate. Thus, the level of material wealth is closely related to the scale of voter bribery. During the parliamentary election campaign of 2012, voter bribery has become massive, in large due to the charitable funds. Pro-government political forces used budget funds for territories where candidates from the government were nominated (Polishchuk, 2018).

The next "grey" technology, which was widely used in previous election campaigns in Ukraine and contained elements of voter bribery is the so-called "carousel". The essence of the technology is quite simple: one of the bribed voters takes his blank ballot out of the polling station and gives it to the senior scheme member. Next, a corresponding mark is placed on this ballot for the "necessary" candidate. The ballot is given to the next participant of the "merry-go-round" scheme (Polishchuk, 2015; Horodok *et al.*, 2016).

Not only election tickets, but also certificates for the right to participate in elections can be bought. Such certificate is issued to the electorate if he or she for personal reasons cannot exercise their election right in that locality (election office) where he/she was included into the list of electors. Analysis of criminal prosecutions indicates that such certificates are often purchased from the voters for the purpose of their further use for voting by nominees.

There are also cases of bribery involving the use of corrupted personal ID cards which, among other things, provide the possibility of voting for a certain candidate repeatedly and/or at several electoral offices.

Without obtaining a transparent certificate, it is possible to change one's place of participation in elections by changing the registration of the place of residence, which, as numerous examples demonstrate, has been also actively used by election officials during machinations to bribe voters (Hryhorova, 2021).

It is worth mentioning that in some cases voters were not informed in general about the fact that registration of their place of residence has changed (Verdict, 2016), and in some cases even their personal presence at the site of crime was unnecessary (Verdict, 2015). Here we would like to draw attention to the extremely low level of legal culture and the imprudence of voters who have completely irresponsibly handed over their passports to outsiders without realizing all the possible consequences of such actions.

In some places, the act of bribing voters to vote at polling stations in other constituencies through fictitious registration was massive in scale, distinguished by extreme audacity and has significantly influenced results of the elections.

Considering scientific and technological progress and social development, criminal vote-buying technologies are currently not standing still, but are being actively improved over time with the use of social networks (Facebook, Instagram, etc.), means of mobile communication, contracts for campaigning and other services, thus disguising de facto "vote sales".

It should be noted that in future parliamentary and presidential elections, except traditional food rations and entertainment, experts expect new one's forms of bribery to surface. According to forecasts of the all-Ukrainian public organization "Committee of Voters of Ukraine", among the "trends" of the next election campaign will be financial assistance to military servicemen and their families (donation of apartments, cars, furniture, household appliances, medical assistance – funds for operations and prosthetics), material assistance to immigrants from occupied territories (Bribery, 2021).

Researchers also point at the direct relationship between falsification of voting results and voter turnout during elections. Expression of the voter's will today have a sufficiently low index of participation in the elections, which indicates legal nihilism of the population, its low electoral activity. However, even in developed democratic countries there are legal norms that impose liability for non-appearance of voters at elections, for example, in Austria, Belgium, Bulgaria, Brazil, Greece, Egypt, Luxembourg, Turkey, Pakistan and other countries (Punishment, 2018).

As a rule, the transfer of undue benefits to voters is carried out in two stages: before voting and after it, provided that the voter has been bribed in a specific manner.

Conclusion

One of the forms of electoral corruption during the electoral process is bribery of voters, which means forcing the will of the active subject (candidate) over the passive one, satisfying his needs of a property or non-property nature and determining behavior of the latter. This is one of the most widespread and most harmless forms of corruption. Unconscious consent of citizens for the purpose of the unknowing acquiescence of citizens for the purpose of obtaining material benefits, without considering the consequences, is negatively reflected both in the development of society and the state as a whole.

The most widespread method of committing voters' bribery and the one causing a serious threat of spoiling real results of the voting is recognized to be creation of "electoral nets". Serving as a form of indirect bribery of voters, this technology was implemented by using the scheme of marginal marketing in the organization of election campaign by setting up a large-scale buying of votes. Specific features of such malignant network are: its mass character with involvement of a wide circle of participants with various roles; significant territorial expansion; implementation of the malicious intent through clearly planned step-by-step activities within the limits of a temporary criminal group.

The study of the peculiarities of the organization of "electoral nets" is of great importance for the development of an effective methodological approach to the investigation of malpractices related to electoral bribery. The implementation of such proceedings in practice is accompanied by a whole series of complications related, in addition to the latent nature of these crimes, to the difficulties of their documentation, including the need to use special knowledge related to both organization of the election process and the need to investigate digital traces, which often represent evidence base.

The main task of the administrative activity of our state at the current stage of development can be defined as ensuring and maintaining public trust in the election results (both on the part of the participants of the election process and on the part of the international community), through the mechanisms of their active involvement in the election process at all stages of its implementation. Therefore, further scientific research on the mentioned topic seems promising, taking into account the fact that voter bribery technologies are constantly changing and improving and, accordingly, investigation of illegal activities related to their implementation has to be transformed, while meeting new challenges.

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The role of budgets in strengthening the financial base of local self-governments

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Abstract

The purpose of this study was to justify the role of local budgets in strengthening the financial base of local self-government in modern conditions of social development, oriented to the processes of democratization and decentralization of political power. The research methodology used was an integral approach, which allowed investigating the role of local budgets in strengthening the financial base of local self-government from an economic, organizational and legal point of view. A comprehensive approach allows to systematically address the definition of the role of local budgets and to highlight their specific characteristics. It is concluded that, scientifically identifying the various aspects of the functioning of local budgets allowed to distinguish their essence from the point of view of combining organizational, economic and legal approaches to, at the same time, consider them as a multifunctional system of financial, economic, legal and social relations, which provides for the possibility of redistribution of income due to the creation and use of monetary funds of the authorities of local authorities, to meet the public needs of the population and sustainable development of the territories.

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Keywords: local budget; public finance; local self-government; territorial community; fiscal policies.

El papel de los presupuestos en el fortalecimiento de la base financiera de los gobiernos autónomos locales

Resumen

El propósito de este estudio fue justificar el papel de los presupuestos locales en el fortalecimiento de la base financiera del autogobierno local en las condiciones modernas de desarrollo social, orientadas a los procesos de democratización y descentralización del poder político. La metodología de investigación empelada fue un enfoque integral, que permitió investigar el papel de los presupuestos locales en el fortalecimiento de la base financiera del autogobierno local desde un punto de vista económico, organizativo y legal. Un enfoque integral permite abordar sistemáticamente la definición del papel de los presupuestos locales y resaltar sus características específicas. Se concluye que, identificar científicamente los diversos aspectos del funcionamiento de los presupuestos locales permitió distinguir su esencia desde el punto de vista de la combinación enfoques organizativos, económicos y jurídicos para, al mismo tiempo, considerarlos como un sistema multifuncional de relaciones financieras, económicas, jurídicas y sociales, que prevé la posibilidad de redistribución de ingresos debido a la creación y uso de fondos monetarios de las autoridades de los entes locales, para satisfacer las necesidades públicas de la población y el desarrollo sostenible de los territorios.

Palabras clave: presupuesto local; finanzas públicas; autogobierno local; comunidad territorial; políticas fiscales.

Introduction

The trends of global development demonstrate the actualization of directing the efforts of states to the development of regions. This is confirmed by the processes of decentralization in European and other countries of the world. It is the principles of democracy and decentralization of power that are relevant issues for social development.

In turn, aspects of decentralization and democratization determine theoretical and methodological research and their practical implementation in the area of the role of local budgets in the development of territorial

communities and their importance in strengthening the financial base of local self-government. Strengthening the financial base of local self-government depends on many factors, first of all, on inter-budgetary relations established at the country level and the degree of decentralization.

Another important aspect is the creation of conditions and motivational foundations for the most effective use of all potential opportunities for socio-economic development of territorial communities and regions in the direction of ensuring their self-sufficiency and increasing competitiveness. The above and other actualize research in the direction of substantiating the role of local modern conditions of democratization and decentralization of power.

The purpose of this study is to justify the role of local budgets in strengthening the financial base of local self-government in modern conditions of social development aimed at the processes of democratization and decentralization of power.

1. Literature Review

Scientists from different countries of the world devoted their research to issues of local budgets. These issues become especially relevant in the context of strengthening the financial base of local self-government. Scientists (Bronić *et al.*, 2022) have set themselves the goal of finding out whether budget transparency allows better control of public finances, especially in the pre-election period.

The article (Čjková *et al.,* 2022) proposes the concept of performance-oriented budgeting at the level of local self-government with an emphasis on its importance for strategic management at the level of local self-government. Based on the results of the research, the authors explored the advantages of implementing this concept, the relevant paths and obstacles, as well as important recommendations for improving its use.

Within the framework of the research (Derhaliuk *et al.,* 2021; Popelo *et al.,* 2022; Grosu *et al.,* 2021), the state policy of transformation of the potential-generating space in the context of intensification of regional development was investigated, the possibilities of transformation of regional models of financial behavior of households were analyzed, and the conceptualization of the model of financial management in Romanian agriculture was presented.

The authors of the article (Aisyiyah *et al.*, 2022) conducted a qualitative and secondary analysis of data on the local budget and fiscal capacity at the subnational level in Indonesia.

According to the scientists, this will make it possible to understand the consequences and the response of the provincial government in the conditions of a decentralized economy during the pandemic. Within the framework of the study (Oprea *et al*., 2022), the authors indicated the role played by local finances in regional development, taking Romania as an example. The recommendations of scientists are aimed at local fiscal policy in order to optimize the structure of local budget indicators.

Of practical importance is the paper (Park and Park, 2022) of determining the influence of citizens in the budget on the difference between the original and final versions of local government budgets. The authors concluded that citizens are reluctant to change their income due to the lack of flexibility in the distribution of the tax burden.

Researchers Stryzhak *et al.,* (2022) analyze the role of local budgets in financing health care in communities and introduce a discussion on the possibility of expanding the powers of local self-government bodies in the field of health care. The authors of articles (Dubyna *et al*., 2021; Arefieva *et al*., 2021; Garafonova *et al.,* 2021) study the global experience of introducing modern innovative and information technologies in the functioning of financial institutions, the peculiarities of the functioning of the economic security system in the conditions of transformation of power, and also analyze the functions of state management of regional development in the conditions of digital transformation of the economy.

Scientists (Dai *et al*., 2022) have analyzed optimal interregional redistribution and local budget rules. The article examines whether a contributing redistributive region should face fewer borrowing constraints than a recipient region. The authors of the article (McQuestin *et al.,* 2022) are convinced that budgeting is a valuable anticipatory tool capable of supporting technically efficient production, managing financial vulnerability and increasing financial stability. As a conclusion, the sources of budget inaccuracy and the implications for technical efficiency are explored using a six-year cohort of Australian local government data.

The author of the research paper (Helge, 2021) is convinced that fiscal decentralization requires an increase in local revenues and responsibility for costs in order to improve the efficiency of public service provision. As a result of the research, it was concluded that caution should be exercised when initiating decentralization reforms in the context of local capture. Of practical importance are studies (Zhavoronok *et al.,* 2022; Nikiforov *et al.,* 2022; Abramova *et al.,* 2021; Grigoraș-Ichim *et al.,* 2018), which are devoted to the regulatory policy of the conceptual foundations of the development of public-private partnership, the functioning of the VAT administration ecosystem in electronic commerce, and the formation of the perception and vision of business entities from the border zone Romania - Ukraine - Moldova regarding interim financial reporting.

The study (Lysiak *et al.*, 2021) proved that a systematic assessment of the financial sustainability of local budgets is important for the timely identification of budget imbalances and the identification of their causes. According to the authors, this will contribute to the adoption of reasonable management decisions of a current and strategic nature regarding the development of territories, the provision of high-quality local communal services and an increase in the level of well-being of the population. It has been established that the main component of the budgetary capacity is the tax component, it is the basis of the formation of local budgets of the territorial community.

The article (Tulchynska *et al.,* 2021) examines the fiscal stimulation of spatial development, namely the case studies of EU conflicts. The authors (Patytska *et al.,* 2021) proposed a methodology for diagnosing the budgetary capacity of territorial communities based on income, aimed at a comprehensive quantitative and qualitative assessment of the state, strengths and weaknesses of the economy of the administrative-territorial unit and determining the place and role in it.

Despite existing publications, the study of the role of local budgets in strengthening the financial base of local self-government is an extremely relevant and important issue that requires further study and analysis.

2. Results

World practice proves the ever-increasing role of local budgets, this is due to the fact that at the level of regions and territorial communities, the city government is more aware of the needs of public services of the local population, local self-government bodies can more quickly and effectively solve urgent needs. This reduces the burden on state authorities, and reduces the costs of maintaining the public sector.

However, in order to solve issues related to socio-economic and ecological development, local self-governments need the powers and financial resources assigned to them. Decentralization of power contributes to the improvement of the efficiency of local finances. Simultaneously with the growing importance of local self-government, the role of local budgets is growing.

Local budgets can be considered from an economic, legal and organizational point of view, but they are all interconnected and do not contradict each other. From the point of view of the economic approach, the local budget is a system of economic relations.

The approach of organizations allows the local budget to be considered as a certain fund, a toolkit for the formation, distribution and use of financial

resources, which makes it possible to perform the functional duties of local self-government bodies. The legal approach of the local budget considers a certain legal act, a financial plan, and a breakdown of local finances.

The duality of the concept of the local budget makes it possible to distinguish its essence from the point of view of combining organizational, economic and legal approaches and to consider it as a multifunctional system of financial, economic, legal, social relations, which provides for the possibility of income redistribution thanks to the creation and use of monetary funds of local authorities to meet the public needs of the population and sustainable development of territories.

The local budget reflects a large number of aspects, such as:

- the level of democracy and the level of centralization and decentralization of the state system;
- the functional saturation of local self-government and the level of distribution of powers between different branches of power structures;
- financial, political, economic, legal, organizational relationships between subjects of economic relations;
- level of satisfaction of social needs;
- opportunities to ensure sustainable development, etc.

The local budget plays an important role in the development of local self-government, the population of territorial communities, the socio-economic and ecological development of certain territories, regions and the state as a whole, as it includes an economic, organizational and legal entity. Local budgets carry a functional load, while the local budget has a certain material meaning, as it is characterized by a set of financial resources that are formed, distributed and used in the process of social relations arising in relation to local finances.

Also, local budgets are endowed with a legal status, since there is a legally established procedure for their establishment, discussion, and approval, which serves as a basis for determining them in the financial plan of a specific territory.

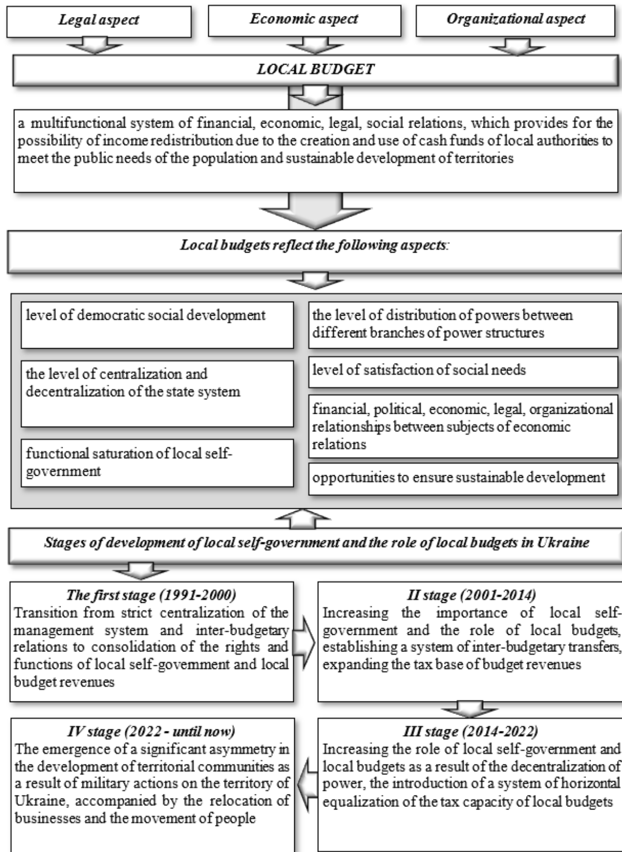

Figure No. 01. The essence of local budgets and their relationship with the development of self-government

Source: systematized by the authors.

During the military conflict in Ukraine, the role of local budgets in local self-government and economic development of territorial communities and regions is growing. In general, changes in the role of local self-government in the short term also changed the role of local budgets. Thus, with the acquisition of independence in Ukraine, the importance of local self-government and the role of local budgets changed. Several stages of this process can be distinguished:

Firstly, from independence in 1991 to 2000, there was an initial transition from a rigid centralized management system and inter-budgetary relations

to consolidation of the rights and functions of local self-government with a variable fiscal and financial system in the direction of consolidation of the rights of local self-government bodies to part of fiscal revenues to local budgets, rules for the formation of financial relationships between budgets of different levels. In this period, the main attention was not paid to local budgets as such, but to the construction of new financial and fiscal relations in an independent country;

Secondly, from 2001 to 2014, the next stage can be singled out, which was aimed at increasing the importance of local self-government and the role of local budgets. The most significant in this period was the consolidation and establishment of a system of inter-budgetary transfers, planning and forecasting of budgets for the medium-term perspective, expansion of the tax base of budget revenues at all levels, including local budgets, which was enshrined in the unified Budget Code, and the transfer of budgets to treasury services, which became the basis for the beginning of the next stage;

Thirdly, the period from 2014 to 2022 became the most significant stage in the development of local self-government and increasing the role of local budgets. In connection with the adopted course for European integration as a result of administrative and territorial reformation in the direction of decentralization of power and transfer of some functions to the local level. The decentralization of power and their delegation to the local level was accompanied by financial decentralization with the expansion of the financial capabilities of local self-government and the strengthening of its self-sufficiency.

The main aspect in this direction was the introduction of a new system of horizontal equalization of the fiscal capacity of inter-budgetary relations, which was enshrined in the budget resolution and contributed to increasing the motivation of local self-government regarding the receipt of tax revenues to local budgets at the expense of the economic development of economic entities of these territories.

Fourthly, from 2022 to this time, in connection with the beginning of aggression on the territory of Ukraine by the Russian Federation, there was an urgent need to review the role of local self-government in connection with the inability of certain territories to support themselves financially as a result of military actions on their territories, which led to the relocation from their territory of businesses that were the main donors of tax revenues to local budgets and the displacement of a significant number of people from their territories, as well as significant losses of infrastructural, social, industrial and other facilities on the territory of such communities and regions.

This development of local self-government and the growth of its importance in the socio-economic development of the country lead to an

increase in the role of local budgets, taking into account the European integration vector of Ukraine's development and compliance with the principles of democracy and decentralization of the country's management mechanism as a whole. A significant push for institutional changes in the direction of decentralization of power was caused by changes in state finances in the direction of increasing the financial self-sufficiency of local budgets.

Among the main features of local budgets in relation to others, the following should be highlighted (Figure. No. 02):

- the fixed status of the local budget, which is approved by the decision of representatives of local self-government bodies for the relevant financial period, that is, the local budget does not acquire the force of law from a legal point of view;
- the sphere of influence of the local budget extends exclusively to a specific territory in relation to individuals and legal entities located and legally registered on it, outside of which this act has no legal force;
- according to the functional direction, the local budget has a social focus and ensures the improvement of the level and quality of life of the population;
- local self-government bodies have the right to independently form the local budget, which depends only on the terms of approval of the consolidated budget of the country, as well as to independently establish sources of income in accordance with the legally established limits and established spending powers;
- local self-government bodies have the right to determine the rates of local taxes, fees and payments in the specified territory by their own legally established decisions;
- the existence of the principle of horizontal inter-budgetary alignment and close relations with the budgets of other levels, which makes it possible, in case of the inability of the local budget to cover the expenses of performing the assigned functions, to achieve balancing thanks to subsidies and subventions from the consolidated state budget;
- for the local budgets of the city of Kyiv and cities of regional importance, granting the right to attract loans from international organizations, which is especially relevant during the period of military conflict on the territory of Ukraine, subject to the provision of local guarantees;
- giving local self-government bodies the right to choose an institution for servicing local budget funds.

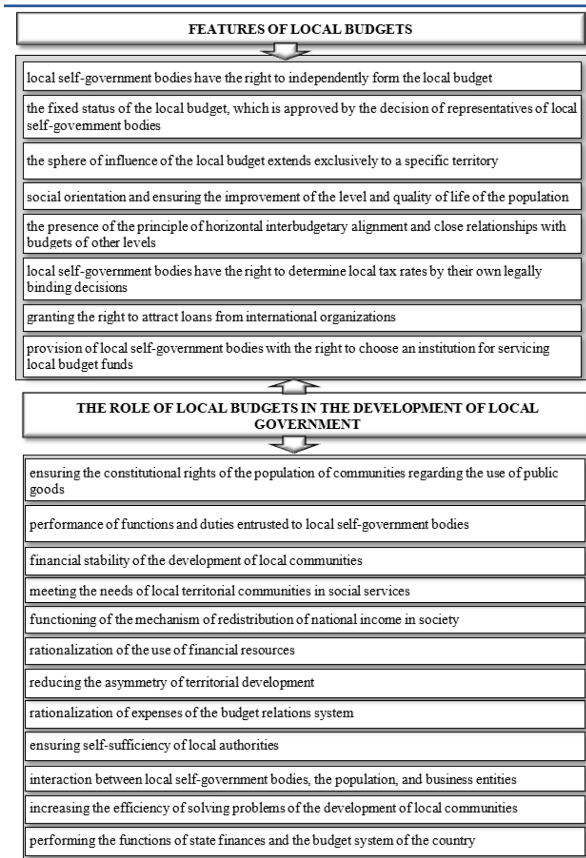

Figure No. 02. Peculiarities of local budgets and their role in ensuring local self-government. Source: systematized by the authors

Local budgets play a unique, specific role as the financial base of local self-government, as they provide:

- constitutional rights of the population of communities regarding the use of public goods and provision of social development;
- performance of functions and duties entrusted to local self-government bodies in accordance with the principles of decentralization of power and democratic social development;

- financial stability of the development of local communities due to the process of redistribution of financial resources among members of society;
- meeting the needs of local territorial communities in social services in the field of education, health care, sports, culture, security and social protection;
- activation of socio-economic and ecological development of territories in accordance with strategic plans for their development;
- functioning of the national income redistribution mechanism in society;
- reducing the asymmetry of territorial development due to the possibility of local solutions to economic development problems and stimulation of business entities, which makes it possible to ensure the revenue part of local budgets and increase the social orientation of expenditures;
- self-sufficiency of local authorities due to the creation of a financial base and the ability to regulate local taxes and fees;
- rationalization of expenses of the system of budgetary relations and redistribution of financial funds, including thanks to horizontal equalization;
- activation of stimulation of provision of strategic development of territories;
- rationalization of the use of financial resources in the direction of increasing the efficiency of the use of financial resources;
- the most effective solution to the problems of the development of local communities with the optimal response time to the problems that arise;
- a determining role in the social, economic, cultural, ecological development of local communities;
- interaction between local self-government bodies, population, business entities in the process of formation and use of local finances;
- performing the functions of state finances and the budget system of the country as a whole as their subsystem.
- At the same time, there are limiting factors regarding the determining role of local budgets in the development of local self-government, such factors should include the following:

- asymmetry of socio-economic and ecological development of territorial communities and regions, which is provoked by various factors such as natural and geographical location, availability of natural resources, development of productive forces, branching of industrial and social infrastructure, etc.;
- differentiation in local budget revenues, which is associated with the asymmetry of the economic development of territories, which, in turn, leads to significant differences in expenditures and requires horizontal equalization of the solvency of local budgets;
- unsatisfactory level of medium-term planning and forecasting of local budgets in terms of expenditures and means of covering them, which leads to the threat of underfunding of local projects;
- imperfection of the decentralization mechanism and insufficient provision of functional obligations of local authorities, which leads to a shortage of financial resources and failure to fulfill delegated powers at the local level;
- the imperfection of inter-budgetary relations, which leads to a decrease in the motivation of local self-government regarding the development and provision of self-sufficiency of local budgets;
- inefficiency in the use and utilization of the existing potential of the territories and the identification of latent opportunities, which leads to a lack of receipt of revenues to local budgets;
- imperfection in ensuring the financial independence of local budgets, which leads to a decrease in the motivation of local self-government to increase financial self-sufficiency;
- the absence of an effective mechanism for the protection of local budgets from crises and risks of economic development, which reduces the investment capacity of local budgets, generates inefficiency of spending and reduces the self-sufficiency and efficiency of the development of territories.

In general, an important determinant of determining the role of local budgets is the system of social relations existing in the country, the institutional foundations of the functioning of the financial system, political orientation, the development of public institutions, the degree of decentralization of governmental powers, the democracy of society, etc.

Conclusion

Thus, it can be noted that local budgets ensure the democratic development of public relations as a result of decentralization processes and contribute to the satisfaction of public requests. Expenditures of local budgets ensure the performance of the functions and powers entrusted to local self-government bodies and are aimed at the socio-economic and ecological development of the territories.

The scientific novelty of the study is the determination of the role of local budgets in strengthening the financial base of local self-government in modern conditions of social development aimed at the processes of democratization and decentralization of power, which is justified by: firstly, a comprehensive approach to the essence of local budgets, combining their economic, organizational and legal direction; secondly, by changing the importance of local self-government and the development of inter-budgetary relations, taking into account the implemented reforms; thirdly, by implementing the principles of decentralization of power relations and their democratization.

Issues related to increasing the self-sufficiency of local budgets and ensuring the functional powers of local self-government in modern conditions of macroeconomic instability, including those caused by military actions on the territory of Ukraine by the Russian Federation, require further scientific research.

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Analysis of court decisions in cases on provision of in vitro fertilization services in Ukraine and Europe

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Abstract

The main reason for the rapid development and promotion of reproductive technologies is the desire to have children of people who, for certain reasons, create such an opportunity. When writing the article, such methods were used as: historical, analysis, synthesis, systemic, functional, special-legal. It is argued that two types of reproductive technologies are of particular importance for medical law: in vitro fertilization and surrogacy. It is argued that such reproductive technologies as in vitro fertilization are an auxiliary introduction of donor material (sperm or egg) into all forms of a woman. It is also noted that not all researchers today support and consider optimal the formulations established in the main legislative acts of Ukraine on health care, regarding the right of every woman capable of fertilizing and implanting an embryo. The conclusions emphasize the importance of providing legislative guarantees for the possibility of introducing certain reproductive technologies for people who need such interventions for medical reasons. It is proposed to classify the principles of donation of reproductive cells such as sperm, oocytes and embryos. For this purpose, court rulings in cases involving the provision of in vitro fertilization services were also analyzed.

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Keywords: reproductive technologies; surrogacy; donor; recipient; court rulings.

Análisis de las decisiones judiciales en casos sobre la prestación de servicios de fertilización *in vitro* en Ucrania y Europa

Resumen

La razón principal del rápido desarrollo y promoción de las tecnologías reproductivas es el deseo de tener hijos de personas que, por ciertas razones, crean tal oportunidad. Al escribir el artículo, se utilizaron métodos tales como: histórico, análisis, síntesis, sistémico, funcional, especial-legal. Se argumenta que dos tipos de tecnologías reproductivas son de particular importancia para el derecho médico: la fertilización *in vitro* y la maternidad subrogada. Se fundamenta que tales tecnologías reproductivas como la fertilización *in vitro* son una introducción auxiliar de material donante (esperma u óvulo) en todas las formas de una mujer. Se indica además que no todos los investigadores hoy apoyan y consideran óptimas las formulaciones establecidas en los principales actos legislativos de Ucrania sobre el cuidado de la salud, con respecto al derecho de toda mujer capaz de fertilizar e implantar un embrión. En las conclusiones se enfatiza en la importancia de brindar garantías legislativas para la posibilidad de introducir ciertas tecnologías reproductivas para personas que necesitan tales intervenciones por razones médicas. Se propone clasificar los principios de donación de células reproductivas como espermatozoides, ovocitos y embriones. Para ello, también se analizó sentencias judiciales en casos de prestación de servicios de fecundación *in vitro*.

Palabras clave: tecnologías reproductivas; gestación subrogada; donante; persona receptora; sentencias judiciales.

Introduction

Medical science and practice have made significant progress over the last decade. New technologies used in medical practice directly affect health care and human life, which is the highest social value in the state in accordance with the Art. 3 of the Constitution of Ukraine (Teremetskyi *et al.*, 2019). Reproductive technologies, which have been recently developing particularly rapidly is a good example. The main incentive for such a rapid development and spread of this type of technology is the desire of people to have children deprived of such an opportunity for some reasons.

Reproductive function with the use of medical technologies is a trend characterized by striking roots and continuous development in society (Tarasevych *et al.*, 2022). Unfortunately, not everyone can enjoy being a parent, since about 20% of couples in Ukraine suffer from infertility. There's no question, they have to fight for the opportunity to become parents. Modern medicine can significantly increase the likelihood of pregnancy (Kushnirenko, 2018). For such category of individuals, reproductive technologies can be a lifeline that can make them feel what it is like to be a mother or father.

Legal precedents of extracorporal fertilization services are illustrative in this respect. Analysis of the precedents shows the court's consistent adherence to the essential purpose of any proceedings in court, as well as of civil Justice Department in general, namely the protection of rights, freedoms, and legal interests of individuals, legal entities, and the state through a fair, impartial, and timely consideration and resolution of a court case.

Therefore, judicial agencies are an important subject for ensuring the realization of medical rights by citizens, since, pre-trial settlement of medical disputes (appeal to state authorities or local self-government agencies, self-defense) as practice shows, is less effective than judicial protection (Teremetskyi and Muliar, 2020).

1. Methodology of the study

The following methods were used in this scientific article: logical analysis, inductive, comparative-legal, logical, systemic-structural analysis, special-legal.

The method of logical analysis was used in the study of court decisions in cases regarding the provision of in vitro fertilization services in Ukraine. The inductive method made it possible to obtain the necessary knowledge, going from individual to general. With the help of the comparative legal method, an analysis of the legislation of Ukraine and foreign countries, which regulates the conclusion and execution of contracts on the provision of in vitro fertilization services, was carried out, which allows to identify gaps in the civil legislation of Ukraine, to resolve the issue of using foreign experience.

The method of system-structural analysis served to clarify the place of contracts for the provision of in vitro fertilization services in the general contractual classification and allowed to identify problematic aspects of the practice of application based on the study of case law materials in the form of court decisions. The application of a special legal method made it

possible to investigate the interpretation of the content of contracts on the provision of in vitro fertilization services using legal terminology.

The theoretical basis of the study was the work of domestic and foreign civilian scientists, specialists in the field of medical law.

The use of the above-mentioned methods in a complex was aimed at the most objective and accurate study of the specified problem. The research of the given problem was carried out through the prism of the combination of contractual freedom with normative regulation, which contributes to a more complete and adequate regulation of certain relations that are formed in the process of concluding contracts on the provision of in vitro fertilization services. In the process of research, theoretical approaches and practical conclusions were used, which were embodied in the works of domestic and foreign scientists.

2. Results and Discussion

2.1. Legal principles, study of doctrinal teachings and study of foreign experience regarding the conclusion of contracts for in vitro fertilization services

An invention is the result of a person's intellectual activity in any field of technology, in particular in medicine, which has novelty, inventiveness and industrial applicability. Types of inventions in medical practice are methods of human treatment; devices for human treatment and diagnosis; medicinal products; strains of microorganisms used for disease diagnosis or human treatment; biotechnological inventions (Teremetskyi *et al.*, 2019).

Reproductive technologies are methods of infertility therapy in which some or all of the stages of conception and early fetation take place outside the body. Order No. 787 of the Ministry of Health of Ukraine On Approval of the Procedure for the Application of Assisted Reproductive Technologies in Ukraine dated September 9, 2013 (hereinafter referred to as Order No. 787 of the Ministry of Health of Ukraine) (Order No. 787, 2013) defines the concept of "assisted reproductive technologies" as a treatment of infertility in which reproductive cell manipulation, some or all stages of reproductive cell preparation, fertilization and fetation processes are carried out in vitro before being transferred to the patient's uterus.

As has rightly been pointed out by R. A. Maidanyk:

> Reproductive technologies are modern high-tech methods of treatment of infertility, in which some or all stages of conception and early fetation are carried out outside the body, in particular, ovum fertilization in vitro, implantation of embryos, and carrying of pregnancy if these processes can't happen biologically (Maidanyk, 2013: 5-6).

Ukraine is one of the countries in which assisted reproductive technologies are permitted at the legislative level. Thus, Art. 290 of the Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine) guarantees the human right to donate reproductive cells (hereinafter referred to as DRC); in particular, a provision of Part 7 of Art. 281 of the CC of Ukraine entrenches the right to have DRC, stating, "Adult women or men have the right, based on medical necessity, to undergo treatment programs of assisted reproductive technologies in accordance with the procedure and conditions established by the law" (Civil Code of Ukraine, 2003).

Fundamentals of the Law of Ukraine on Health Care define in Art. 48 that at request of able-bodied women, methods of assisted insemination and embryo implantation may be applied (Fundamentals of the Law of Ukraine on Health Car, 1992). The conditions for the lawfulness of implementation of these methods of medical intervention according to the law are as follows:

- The subject of exercise of the right is an able-bodied adult woman.
- Written consent of the spouses.
- Donor confidentiality.
- Medical confidentiality.

Today, there are numerous types of DRC in the world used to treat infertility. The effectiveness of extracorporal fertilization (the proportion of patients who became pregnant on the first try) averages 45%; the figures differ significantly in different countries. For example, in Ukraine, it is 35%; in Poland – 55%; in Germany – 38%; in Israel – 46% (Medical tourism: how to choose a clinic abroad, 2013).

Analyzing the content of Order No. 787 of the MOH of Ukraine, we can conclude that the following varieties of assisted reproductive technologies are used in Ukraine:

1. In vitro fertilization. It is a method of infertility treatment in which ovum fertilization is carried out outside the woman's body. It is also called extracorporal fertilization or assisted insemination.
2. Intrauterine insemination. It is a form of infertility treatment and can be carried out by injection of prepared sperm cells into the uterine cavity during ovulation.
3. Donation of gametal cells or embryos. It is a procedure in which donors donate, based on a written and voluntary consent, their gametal cells – gametes (semen, oocytes) or embryos for otherwise use in the treatment of infertility.
4. Surrogacy. It is one of the types of infertility treatment.

5. Transfer of gametes, zygotes, or embryos to the fallopian tube (GIFT, ZIFT, and EIFT), etc. (Holovashchuk, 2012).

At the same time, the legislation of some countries places restrictions on certain types of reproductive technologies. For instance, Italian legislation on assisted reproductive technology is rather conservative. Italian Law No 40 On the Rules of Assisted Reproductive Technologies dated February 19, 2004, not only forbids utterly surrogacy but also substantially restricts other reproductive technologies. This Law prohibits reproductive programs involving a third party, i.e., surrogacy and donation (Dzhochka, 2007).

Instead, in 2016 the British Human Fertilisation and Embryology Authority (HFEA) approved giving birth to children by one man and two women, which, in their opinion, will prevent the birth of children with incurable hereditary diseases (BBC, 2016). In germany, austria, and switzerland, egg donation is prohibited; in turkey, one cannot choose the gender of the unborn child, while in cyprus, one can (Medical tourism: how to choose a clinic abroad, 2013).

2.2. Analysis of legislative provisions and court practice in the form of court decisions regarding the conclusion of contracts for extracorporeal involvement services

Two varieties of reproductive technologies are of particular importance to medical law: extracorporal fertilization and surrogacy. Such reproductive technology as in vitro fertilization is the assisted injection of donor material (semen or oocyte) into the genital tracts of a woman.

Not all researchers nowadays support and consider optimal the formulation, presented in the fundamentals of the legislation of Ukraine on health care, of the right of every able-bodied woman to assisted insemination and embryo implantation. It is important to provide legal guarantees for the possibility of implementing certain reproductive technologies for people who actually require such interventions on medical grounds.

The analysis of Order No. 787 of the MOH of Ukraine makes it possible to determine the following grounds for the validity of application of these reproductive methods:

1. Assisted insemination is carried out exclusively in accredited health care institutions according to the methods approved by the MOH of Ukraine.
2. Written consent of the spouses.
3. Use of sperm of both the husband and the donor. Donor semen is only used cryopreserved and not earlier than 3 months after the donor’s blood has been sampled and re-examined for AIDS.

4. Sperm donors can be healthy men aged 20–40 years who meet clearly defined requirements, in particular: 1) have undergone a full examination; 2) have fertile sperm; 3) are not vehicles of HIV infection and hepatitis B virus; 4) had no urological, venereal, andrological, and hereditary diseases. In this respect, it should be noted that in practice, there are cases where assisted insemination is carried out without prior examination of the donor, which is a violation of both medical and legal requirements.

For example, Solomianskyi District Court of Kyiv considered Case No. *760/12830/13* involving a claim by PERSON_1 against Nadiya Clinic of Reproductive Medicine Limited Liability Company, third party PERSON_2, for termination of the contract and recovery of funds. The plaintiff gave as a reason for the claim that on April 2, 2012, spouses PERSON_2 and PERSON_1 and Nadiya Clinic of Reproductive Medicine LLC entered into Contract No 12314 for in vitro fertilization (IVF) and transfer of the embryo(s) into the uterine cavity (UC). He paid the defendant a total amount of UAH 25,400, which is confirmed by the receipts available.

The defendant was aware that such treatment was possible only in the absence of contraindications to the patient's DRC if diagnostic findings were available. The patient was not sent for such diagnostic examination. Contraindications, which were later found in his state of health, namely hepatitis B, made it impossible to fulfil the contract. He considers that the defendant's negligence led to early entering into the impugned contract, but his offer to terminate the challenged contract and to refund was not accepted.

The court found that Section 2 of the Instructions on the Procedure for Application of Assisted Reproductive Technologies, approved by Order No. *771 of the Ministry of Health of Ukraine dated December 23, 2008, determined* the scope of examination for persons undergoing DRC treatment. Clause 2 of the Section provides that the scope of examination of a man is mandatory and consists of blood test for syphilis, HIV, hepatitis B and C; spermogram.

In such circumstances, the court considers that the requirement of a compulsory examination of a man, in particular, for hepatitis B before treatment, is statutory. In violation of requirements of the Instruction, Nadiya Clinic of Reproductive Medicine LLC did not carry out such mandatory actions. In connection with this court decision dated October 4, 2013, claims for termination of Contract No 12314 dated April 2, 2012, entered into by and between Nadiya Clinic of Reproductive Medicine Limited Liability Company and PERSON_1, PERSON_2 for in vitro fertilization (IVF) and transfer of the embryo(s) into the uterine cavity (UC) were satisfied (Case No 760/12830/13).

5. Consent to be a sperm donor is confirmed by a letter of voluntary consent to sperm donation.
6. Taking into account indications (of the wife, husband, spouses) for application of methods of assisted insemination and implantation of the embryo(s) and contraindications to application of these methods to the recipient.

Principles of donation of such reproductive cells as sperm, oocytes, and embryos are:

1. Medical confidentiality, namely:

1.1. Donor confidentiality.

1.2. Confidentiality of information regarding the fertilization procedure itself. It should be noted that Order No. 787 of the MOH of Ukraine provides for the procedure of coding and marking of semen in order to ensure the confidentiality of both the donor and recipients but states that the established code is entered into the individual donor card and the outpatient's card of the recipient. Then the question is, how to ensure the principle of preservation of medical confidentiality, guaranteed by the standard setter, in this context, as it is not difficult to establish the identity of the codes in the above cards.

2. Awareness, i.e., the husband and wife are entitled to information, including medical information, on the findings of the donor's medico genetic examination, his looks, nationality (if donor sperm is used for fertilization), etc.
3. Donor and recipient voluntary involvement:

3.1. Volunteer men are involved in donation.

3.2. Assisted insemination is carried out at the request of a woman.

4. Selection of semen for fertilization, namely:

4.1. The married couple's wishes regarding the nationality of the donor and the main features of his appearance are taken into account.

4.2. The compatibility of the donor with the recipient by blood type, rhesus factor, and main features of the body type of the donor are taken into account (Stetsenko, 2008).

One of important aspects in the legal regulation of the issue under study is the determination of the age limit for persons who may be subjected to DRC. Currently, the use of assisted reproductive technologies in Ukraine is allowed for persons who have reached the age of 18 years, but no upper age limit has been established beyond which DRC is not applied. Such a necessity is, first of all, aimed to protect the interests of the unborn child,

since it would be difficult for prospective parents at a sufficiently mature age to take good care of the child.

A factor of reduction of their social activity should also be taken into account. For example, in the Republic of Belarus, extracorporal fertilization and assisted insemination do not apply to a patient who has reached 50 years of age. We believe that a 49-year age limit for women has to be also established in Ukraine. Because according to medical data, a woman's child-bearing (fertile) age can last up to the said age.

An important issue in the legal regulation of DRC is the requirement for prospective parents to be married when undergoing the DRC program. In Ukraine, there is no actual prohibition for a single woman to use DRC, in particular, the assisted insemination method. In the Republic of Poland, the **Law on Assisted Insemination (In Vitro)** was adopted in 2015, according to which this procedure was allowed to couples whose marriage was registered and to people who were not in registered relations but could provide evidence that they were living together in a civil marriage. Instead, in the Republic of Belarus, only women who are married are allowed to use DRC.

The surrogacy situation is much more complicated, because in most cases, clinics refuse to carry out a surrogacy program and recommend that women marry. In our view, such a refusal is a violation of the woman's right to motherhood and the rights of the patient. If the woman has medical indications for a surrogacy program, she may benefit from it regardless of her marital status (Holovashchuk, 2012). Medical indications for the use of assisted reproductive technologies are defined in Order No. 771 of the MOH of Ukraine dated December 23, 2008.

Article 123 of the Family Code of Ukraine (hereinafter referred to as the FC of Ukraine) provides for the procedure for determining the origin of the child from the father, mother at assisted insemination and embryo implantation. Thus, according to Part 2 of Art. 123 of the FC of Ukraine, in case of implantation into the body of another female of an embryo conceived by spouses, the spouses are considered to be the parents of the child. If an embryo conceived by a married man and another woman was implanted in the body of his wife, the child is considered to have originated from the spouses (Family Code of Ukraine, 2002). Challenging maternity is not allowed in this case.

A person recorded as the father of the child is not entitled to challenge paternity if, at the time of registration as the child's father, he knew that he was not the father.

For example, Kyiv District Court of Odessa considered court case No. 520/12514/18 involving a claim by PERSON_1 against PERSON_2, non-party intervener Prymorskyi District Civil Registrar's Office in Odessa

of the Main Territorial Department of Justice in Odessa Region, for deletion of information on being the father from the child's birth record.

The plaintiff requested the deletion of information about him being the father from record No. 858 dated 12.09.2008, on the birth of child PERSON_3, referring to the fact that he generally denied being the birthfather of the child, the parties had never been married, all he wanted to do was to help PERSON_2 get pregnant and have a baby, therefore, he underwent tests at the REMEDI Clinic twice and travelled with the defendant to the Institute of Reproductive Medicine in Kyiv twice; after the child was born, the defendant asked him to get recorded as the father in the birth certificate of the child, and he agreed to do that so that the defendant did not have the status of a single mother; however, it was arranged only to donate them biological material for in vitro fertilization /IVF/ of the defendant.

During the consideration of the case, the court found out that the child had been born with the help of assisted reproductive technologies, and the parties did not deny the fact, namely on 26.11.2007, the defendant underwent the in vitro fertilization /IVF/ procedure, as confirmed by the medical documents of the Institute of Reproductive Medicine PJSC. The medical documents attached contain a referral from the REMEDI Center for Reproductive Medicine dated November 24, 2007, to PERSON_2 for an IVF procedure at the Institute of Reproductive Medicine PJSC, and other documents that really indicate the surname of PERSON_1, his year of birth, and his blood and ejaculate test data. The plaintiff confirmed in court that he visited the REMEDI Center for Reproductive Medicine twice and went to Kyiv together with the defendant to the Institute of Reproductive Medicine PJSC twice to help the defendant get pregnant for the purpose of giving birth to a child.

Having examined the case files, the court found that pursuant to Part 1 of Art. 126 of the Family Code of Ukraine, the origin of the child from the father had to be determined upon the application of a woman and a man who were not a married couple. Such an application may be submitted to the public registrar both before and after the birth of the child. The explanations provided at the court hearing and the arguments of the claim suggest that the plaintiff has agreed to be recorded as the father in the birth certificate of the child.

According to the child's birth certificate and full extract from the State Civil Register on the birth record dated 18.08.2008, PERSON_1 is indicated as the child's father. The ground for the record of information about the father is a joint paternity acknowledgment statement of the parents dated 12.09.2008. State registration of birth was carried out in accordance with Art. 126 of the Family Code of Ukraine.

The record was signed by the parents. In addition, the court examined a copy of the full extract from the State Civil Register on the birth record of PERSON_3, issued by Suvorovskyi District Civil Registrar's Office in Odessa of the Main Territorial Department of Justice in Odessa Region under No. 00020953118, which suggests that the request was made by demand of plaintiff PERSON_1 on 11.09.2018. It is evident from the extract that the state registration of birth was made in accordance with Art. 126 of the FC of Ukraine – upon the joint paternity acknowledgment statement of the parents dated 12.09.2008.

Considering all the circumstances of the case, the court decision dated April 9, 2019, dismissed the claim by PERSON_1 against PERSON_2 for deletion of information on being the father from the child's birth record (Case No. 520/12514/18).

Also, a person who has consented to the assisted insemination of his wife has no right to challenge the paternity.

For example, the court decision of Simferopolskyi District Court of the Autonomous Republic of Crimea dated April 23, 2012, dismissed the claim in Case No. 2-2567/11 on the establishment of the fact of the absence of relationship, deletion of the record about the plaintiff being the father, obligation to amend the Birth Registry and to provide a new birth certificate with the child's surname changed. The plaintiff stated that he did not know anything about the fact that the defendant had become pregnant with the help of assisted insemination. He did not give any consent to it and did not sign anything. The court, having considered all the evidence adduced in the case, concluded that the plaintiff had not provided proper evidence to support the claim.

The court is critical about the argument that the signature has been made by a person other than the defendant insofar as the plaintiff's representative provided to the court certificates and spermograms, which, as the plaintiff's representative explained, testified to the plaintiff's inability to have a biological child of his own, which refutes once again his argument that he initially thought he was the birthfather of that child and was unaware that the defendant had applied for assisted reproductive technologies (Case No. 2-2567/11).

In this case, there is no doubt as to the origin of the child from the persons recorded as the child's parents, although, the child's biological data, including genetic origin, will be different. This suggests an adverse legal effect that may arise in the future, when marriage is concluded, because we can boil it down to such a concourse of circumstances when the future spouses will have a common biological origin. Art. 39 of the FC of Ukraine stipulates that a marriage registered between the persons who are direct line ascending relatives as well as between siblings is invalid. The record

is cancelled upon application of the interested person (Kostin and Bondar, 2009).

It is worth noting that there are currently no uniform requirements regarding the structure and content of the contract for assisted insemination and embryo implantation. A contract for services of extracorporal fertilization is an arrangement under which one party – a doctor (or a medical institution) undertakes to provide the corresponding medical service at the request of the other party (a patient) using assisted reproductive technologies, during which the oocytes are fertilized with sperm outside the body, and the patient undertakes to pay for it an amount of money agreed upon by the parties.

We believe that this contract must consist of the following parts:

1. *Mandatory part.*

The mandatory part must specify the following:

– definition of the subject of the contract;

– rights, obligations, and liability of both parties to the contract;

– grounds for cancellation and termination of the contract;

– terms of medical service provision;

– characteristics of the medical service.

2. *The conciliatory part* of the contract for services of extracorporal fertilization is the patient's written consent for the specific procedure. Or it could be an application from the patient for a particular type of procedure. This part of the contract must contain the most important information about the future procedure, its possible complications, consequences, and the possibility of a negative result.

3. *The information part* of the contract for services of extracorporal fertilization. The information part must provide true and complete information on the methods of assisted reproduction in an understandable and acceptable form for the patient. It must be indicated what the medical procedure is about, what stages it includes, what its possible complications are, and which factors determine the desired effect.

4. *The financial part* of the contract for services of extracorporal fertilization. The financial part contains information about the cost of the procedures and payment terms. It is worth noting that all medical consultations and infertility examinations before starting the treatment cycle are separate medical services and are not included in the cost. In this context, it is interesting that, for example, in Germany,

three free attempts of in vitro fertilization are offered to citizens of the country, while in Poland, Belgium, and the Netherlands, one free attempt is offered. Unfortunately, Ukraine does not offer its citizens free in vitro fertilization procedure today.

It should be noted that the legislation of Ukraine does not explicitly regulate the requirements for the form of the contract for services of extracorporal fertilization. In our opinion, the general provisions of civil law should be followed in this case. Thus, according to clause 2 of Part 1 of Art. 208 of the CC of Ukraine, transactions between an individual and a legal entity must be concluded in writing, except for the transactions stipulated by the CC of Ukraine.

Pursuant to Part 4 of Art. 209 of the CC of Ukraine, at the request of an individual or legal entity, any transaction to which they are parties may be notarized. Note that the systematic analysis of provisions of the CC of Ukraine, the FC of Ukraine, other acts of civil law governing the emergence, modification, and termination of relations concerning the carrying of a pregnancy by means of reproductive technologies, including the Procedure for Application of Assisted Reproductive Technologies, approved by Order No 771 of the Ministry of Health of Ukraine dated 23.12.2008, suggests that the law does not provide for mandatory notarization of the contract.

Thus, based on the aforementioned legal provisions, it is mandatory to enter into a contract for services of extracorporal fertilization in writing, which, in turn, is a criterion for performing the assisted insemination procedure. In addition, the contract for services of extracorporal fertilization must be executed in duplicate. Only in this case one can monitor the proper performance of the medical service provided.

In this context, the following case law example is illustrative. The Shevchenkivskyi District Court of Kyiv considered court case No. 2610/22368/2012 involving a claim by PERSON_1 against the Institute of Genetics of Reproduction Limited Liability Company and Italian citizens PERSON_3 and PERSON_4 for invalidation of a joint contract for assisted reproductive technologies (ART) using a surrogacy method, entered into by and between PERSON_3 and PERSON_4, a married couple of Italian citizens, as well as surrogate mother PERSON_1 and the Institute of Genetics of Reproduction Limited Liability Company healthcare establishment on 20.11.2009.

In support of the claim, the plaintiff referred to the fact that a joint contract for assisted reproductive technologies (ART) using the surrogacy method was entered into in writing at the Institute of Genetics of Reproduction LLC by and between PERSON_3 and PERSON_4, a married couple of Italian citizens, as well as surrogate mother PERSON_1 and the Institute of Genetics of Reproduction LLC healthcare establishment.

However, the contracting parents did not fulfil the terms and conditions of the contract, did not submit to the registrar the notarized consent of the surrogate mother for registration of the Italian citizens as parents of the children and did not register as parents of the children delivered by PERSON_1. The parties failed to specify in the contract the date of its signing and failed to notarize it, which is believed by the plaintiff to be the ground for its invalidation.

It was found at the court session that PERSON_1 gave birth to twins (two boys) in Barskyi Maternity Hospital No 1 of Vinnytsia Region. However, after the birth of the children, PERSON_1 did not give a notarized consent to registration of the plaintiffs as parents of the children, did not give the children to Italian citizens PERSON_4 and PERSON_3, the contracting parents; instead, she applied to the Vital Statistics Department of Barskyi District Justice Department of Vinnytsia Region and, withholding the information that the children had been born as a result of the surrogacy program, applied for registration of her as the mother and her husband, PERSON_9, as the father of the newborns.

It was also found out that the decision of the Barskyi District Court of Vinnytsia Region dated 13.03.2012, established that PERSON_1 and her husband PERSON_9 did not deny and acknowledged the fact of voluntary participation of PERSON_1 in the surrogacy program, did not deny and acknowledged the fact of consent of PERSON_1 to the transfer of embryos into her body, recognized the fact of embryo transfer and the voluntariness of such transfer, recognized that there was only one procedure of extracorporal fertilization that took place on 27.04.2010, which excludes other cases of probable IVF in relation to PERSON_1 from customers other that Italian citizens PERSON_3 and PERSON_4 in the same or different period of time; PERSON_9 acknowledged that his wife PERSON_1 had participated in the surrogacy program to help the plaintiffs, the Italian citizens, have their own children.

In addition, as was established by the decision of the Barskyi District Court of Vinnytsia Region in Case No 2-1316/2011 dated March 13, 2012, PERSON_1 provided written consent for embryo transfer after entering into the Joint Contract, namely on 27.04.2010, which further certifies the subsequent fulfilment by PERSON_1 of her obligations to the citizens of Italy.

Taking into account the circumstances of the case and the evaluation of the evidence provided by the parties, the court concluded that the disputed transaction was concluded on 20.11.2009 and subsequently executed, since the plaintiff carried and gave birth to the children precisely in order to fulfil her obligation to Italian citizens PERSON_3 and PERSON_4. The court takes into consideration that in clause 7.1 of the disputed contract, the parties stipulated that the contract shall enter into force on the day of its

signing. The plaintiff's party has not provided any evidence to support the statement of any claim by PERSON_1 for notarization of the transaction since November 20, 2009.

Thus, assessing the appropriateness, admissibility, and credibility of each evidence individually, as well as the sufficiency and reciprocal relationship in their totality, and considering that the circumstances relied upon by the plaintiff had not been confirmed at the court session, the court concluded that the claim was not subject to satisfaction (case No. 2610/22368/2012).

Thus, there are many controversial issues related to the use of reproductive technologies in science, in medical and judicial practice. Therefore, the problem of the ethics of inventions in medical practice is a separate area of research in medical law and medical deontology (Teremetskyi *et al*., 2019).

Conclusions

Summarizing all the above, we believe that the problems of legal regulation of assisted insemination in Ukraine which are unresolved today are:

- obtaining information about the donor who provided material for assisted insemination;
- rights, obligations, and liability of donors and recipients;
- rights of children born as a result of assisted insemination to information relating to their birthfather;
- age criteria for all participants in the assisted insemination procedure;
- requirements for the form and content of the contract for services of extracorporal fertilization.

Taking into account the above, we can conclude that today, there is a need in Ukraine for proper legal regulation of assisted reproductive technologies. The current legislation does not regulate a number of important aspects, and therefore, there is a need to adopt the law, which will be aimed at identifying the legal and organizational foundations of application of assisted reproductive technologies and ensuring the rights of individuals that the technologies are applied to.

We consider it necessary to support the opinions of those scholars Teremetskyi and Podzirov (2022), who note that attention should be paid to the following issues in the context of the intensification of the development of domestic medical tourism:

1) to improve the state of the organization and activity of subjects in the field of medical tourism;
2) to normatively improve the registration and permit procedures in this area in order to improve the further effective development of the entire medical sector.

These are perspective directions for further scientific research.

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Use of information and communication technologies in democratic processes

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Abstract

The article reveals the essence of information and communication technologies, gives scientific positions on the definition of the mentioned concept and examines the place of information and communication technologies in modern democratic processes. It was determined that modern information and communication technologies are the basis for the functioning of e-government and e-voting and other forms of e-democracy. The influence of information and communication technologies on the effectiveness of state policy is revealed, attention is focused on the importance of effective cooperation between authorities and civil society thanks to state-of-the-art electronic resources and the Internet. In addition, the possibilities of direct participation of citizens in the management of state and non-state structures are identified. In the conclusions, the factors that hinder (make impossible) the implementation of information and communication technologies in the sphere of public administration or make it impossible at all are pointed out, on the basis of which the prospects of realizing the potential for modernization in a modern democratic society based on the principles of openness and feedback are analyzed.

Keywords: information and communication technologies; e-democracy; e-government; e-government; public administration; environmental impact assessment.

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Uso de las tecnologías de la información y la comunicación en los procesos democráticos

Resumen

El artículo revela la esencia de las tecnologías de la información y la comunicación, da posiciones científicas sobre la definición del mencionado concepto y examina el lugar de las tecnologías de la información y la comunicación en los procesos democráticos modernos. Se determinó que las modernas tecnologías de la información y la comunicación son la base del funcionamiento del gobierno electrónico y del voto electrónico y otras formas de democracia electrónica. Se revela la influencia de las tecnologías de la información y la comunicación en la efectividad de la política estatal, se centra la atención en la importancia de la cooperación efectiva entre autoridades y sociedad civil gracias a los recursos electrónicos de última generación e Internet. Además, se determinan las posibilidades de participación directa de los ciudadanos en la gestión de las estructuras estatales y no estatales. En las conclsuiones, se señalan los factores que dificultan (hacen imposible) la implementación de las tecnologías de la información y la comunicación en el ámbito de la administración pública o, que la imposibilitan en absoluto, sobre cuya base se analizan las perspectivas de materializar el potencial de modernización en una sociedad democrática moderna basada en los principios de apertura y retroalimentación.

Palabras clave: tecnologías de la información y la comunicación; democracia electrónica; gobierno electrónico; administración pública; evaluación de impacto ambiental.

Introduction

Ukraine's transition to an information society requires the introduction of the latest information technologies in all spheres of life. An increasing role in the activities of government bodies is given to transparency, openness and accountability, which are achieved much faster and more efficiently thanks to information and communication technologies, the use of which is aimed at: maintaining communication between the authorities and citizens; ensuring openness by informing citizens about government activities; transferring the provision of administrative services online; ensuring the participation of citizens in the electoral process, community life and decision-making processes through the means of «electronic democracy».

The dynamics of life require the use of digital technologies in all spheres of human existence, in particular in the activities of state and local self-government bodies, to implement such projects as «electronic state», «state in a smartphone», «digitalization of society», «electronic public administration», «digitization of administrative services», etc. Without digitization and the tools of direct democracy in modern conditions, it is impossible to do without knowledge about real, not imaginary needs and requests, thoughts and feelings of the population, as well as the collective, solidarity mind of the people, which is obliged to express its elected representatives (Kalynovskyi *et al.,* 2022: 223).

In Ukraine, the development of e-democracy and e-governance is defined as one of the priority tasks of the State Policy Strategy for Promoting the Development of Civil Society in the Context of Optimizing Mechanisms of Public Dialogue and Institutions of Direct Democracy (Presidential Decree, No. 212/2012). At the same time, in the constitutional and legal field of Ukraine there are no fundamental obstacles to the comprehensive development and application of electronic mechanisms of democracy, and the existing regulatory framework creates the necessary basic conditions for the formation of a national system of e-democracy (Burdonosova, 2021).

Thanks to the digitalization of public administration and administrative services, accompanied by a competent and consistent policy and regulatory legal support, citizens can receive more and more services online and in specialized service centers, and local self-government bodies will have more and more tools for introducing e-government and connecting electronic services for business and citizens. Therefore, the systematization of knowledge about digital opportunities in modern democratic processes and the development of generalized recommendations will contribute to a wider and more effective use of information and communication technologies in the functioning of the state and its components. At the same time, it is important to study foreign experience in building models of e-democracy in order to use it in practice.

1. Methodology of the study

The methodological basis of a scientific article from the point of view of constitutional law should be the methodology of constitutional law, which in the doctrine is considered «as a teaching about the system of methods, principles, special means and methods of studying general regularities, the emergence, development, functioning and provision of constitutional-legal relations, constitutional-legal phenomena and institutes» (Skrypnyuk, 2013: 109).

Methodological approaches that determine the general research paradigm are as follows.

The synergistic approach of using which consists in elucidating non-linear processes, that is, in contrast to classical constitutional processes and phenomena, we should study e-democracy as a dynamic phenomenon taking into account its synergism.

A comprehensive research approach involves the analysis of the research subject within the framework of a combination of different scientific schools, concepts and methods and is implemented through the vision of the object from the most diverse positions, which consists in combining knowledge of the methods of various sciences, the need for the synthesis of multifaceted knowledge, its integration.

In particular, the Concept of the development of e-government in Ukraine defines that «the main tasks for ensuring the development of e-government in the basic sectors of Ukraine are the introduction of information and telecommunication systems to support management decision-making and the automation of administrative processes (in particular, with the use of promising geo-information technologies, the Internet of Things, technologies processing of large volumes of data (Big Data) and Blockchain), including: in the field of health care; in the field of education and science, in the field of social protection, in the field of financial and budgetary policy, in the field of protection of human rights and freedoms, in the field of transport and infrastructure, in the electoral field» (Concept of development of electronic governance in Ukraine, 2017).

The analysis of information and communication technologies requires a comprehensive approach with the aim of developing uniform standards, principles and general provisions of legal regulation, identifying systemic errors in the functioning of such technologies in the democratic processes of states.

The use of the humanistic method is mandatory in the formation of legal concepts in a democratic state, in which a person is the main legal value of society, and the protection of his rights and freedoms is the main activity of the state and its entire public apparatus. The use of the post-humanist approach is due to a much wider need than the study of the system of information and communication technologies in the democratic processes of the state - this is a global problem of the information society.

Posthumanism proves the irreversibility of the process: nowadays, both the state, society, and man are practically deprived of a choice regarding the use or non-use of digital technologies. This is a certain transformation without alternative, which has already taken root in the constitutional and legal reality.

A three-level structure of research methods of the use of information and communication technologies in modern democratic processes is distinguished - philosophical, general scientific and special scientific.

The dialectic of the research determines the need for a broad analysis of the phenomenon through its legal and legal genesis, provides an opportunity to reflect the modern features of the use of information and communication technologies in state policy and communication with civil society, to establish prospects for improvement, development and the necessary informational, technical and state-legal transformation electronic governance and the entire legal field of informatization of society.

The hermeneutic method made it possible to propose improvements to the conceptually categorical apparatus and carry out an analysis for the proper reflection of legal norms in the means used with the use of information and communication technologies.

Using the method of transcendental analysis, it was possible to establish the legal demand for certain forms of e-democracy, as a result of which a conclusion was drawn about the need for its normative and legal regulation.

The most popular general scientific methods are analysis and synthesis, which contributed to the study of electronic electoral law, social networks in legal and political life, and the electronic petition form. The synthesis makes it possible to combine the individual properties of information and communication technologies and to determine the main features that are characteristic for the proper development of electronic democracy. Induction is used to represent the features of using information and communication technologies.

Deduction makes it possible to position constitutional law as a single general legal structure that generally defines the dominant properties, principles, and standards that are key to the sectoral and institutional use of forms of electronic democracy in certain areas.

Special legal research methods make up the third level of its methodology. In particular, the potential of the method of constitutional comparativistics made it possible to highlight positive aspects and avoid mistakes made by other states when implementing models of the new management system. The method of legal forecasting is used to determine the prospects for the further development of the constitutional law of Ukraine in modern conditions, the modernization of constitutionalism, and the identification of directions for the introduction of information and communication technologies in modern democratic ones.

2. Analysis of recent research

The theoretical foundations of the concept of the use of information and communication technologies and their effectiveness in the structure of the information and communication space in the system of state authorities are actively considered by leading scientists from various industries, spheres and sciences (Dorodeyko, 2011; Dubov, 2010; Emelyanenko, 2008; Loboyko and Nakhod, 2017; Makhnachova, 2018; Moon, 2002; Shpak, 2012; Skrypnyuk, 2013).

At the same time, the analysis of scientific literature proves that a significant number of scientific works reveal either purely theoretical aspects, are somewhat outdated, or point to the shortcomings of the introduction of electronic democracy.

From the above, it can be seen that the study of the mentioned issues is in the early stages, so many issues related to the creation and development of information and communication technologies and their introduction have not been fully studied. This determined the choice of the topic of the scientific article, its purpose, object and subject.

The purpose of this study is to analyze scientific approaches and practical cases of the implementation of information and communication technologies in modern democratic processes and to develop recommendations for the transition of state authorities and local self-government bodies of Ukraine to digital services, taking into account the best global experience.

3. Results and discussion

3.1. Information and communication technologies as a component of modern democracy

Information and communication technologies are the most important component of development in the modern world and a valuable basis of the information society. In developed countries, the use and implementation of information and communication technologies is based on an optimally arranged regulatory base and international standards that form a stable and predictable legal field with clearly formulated, transparent, non-discriminatory and technologically neutral laws.

By information technologies, scientists understand a set of modern electronic technological tools and software, as well as organizational forms and methods of their application in information work, which is aimed at the effective use of information resources (Shpak, 2012). Information and communication technologies and the Internet are a real opportunity for

every citizen not only to influence the decision-making process, but also to directly participate in it.

However, not everyone is able to take on such responsibility. Thus, society, despite the fact that it is enriched in the field of information, is limited in the field of knowledge, which leads to an impulsive «button democracy», when decisions are made by inexperienced experts and ignorant people.

New information and communication technologies have a number of advantages compared to traditional information technologies: transferring information exchange to a paperless level, speeding up the preparation of documents, improving the quality of registration, automation of most functions in information and communication processes in order to solve complex problems of society's life.

Using the advantages of information and communication technologies, state authorities have the opportunity to create qualitatively new ways of interaction between themselves and citizens, thus increasing the efficiency of management as a whole, to provide state services to the population and businesses via the Internet, to increase access to state information, to establish the transparency of adopted solutions through constant dialogue with the public.

We consider it unquestionable that the active introduction of information technologies into the system of socio-political relations significantly expands the opportunities of citizens regarding their participation in solving common issues, creates conditions for the formation of a qualitatively new level of activity of citizens who use modern electronic technologies not only for personal purposes, but also for the purpose of socio-political participation at all levels of public administration (Burdonosova, 2021).

Therefore, the main purpose of using information and communication technologies in state administration is to increase the efficiency of its mechanisms based on the creation of a general information and technology infrastructure, which includes state information systems, resources and means that ensure their functioning, interaction between themselves, the population and organizations within the framework of providing public services.

State policy in the field of the use of modern information and communication technologies is designed to ensure the coordination of the activities of state authorities on the creation of state information systems and increase the efficiency of budget expenditures in the specified area.

From a scientific and methodological point of view, electronic democracy is a unique legal phenomenon - sui generis, which can be studied with the help of a complex interdisciplinary toolkit - the theory of constitutional legal

relations, general legal hermeneutics, systems theory, cybernetic analysis, political engineering, etc. (Center for Modernization Decisions, n/y).

The complex, hybrid nature of this legal phenomenon requires an integrated scientific approach to mastering the specifics of the emergence and implementation of the constitutional rights of citizens arising from the use of information technologies in the political and legal reality.

Electronic democracy should be understood as the use of new information technologies for the protection and development of basic democratic values and, above all, for the participation of citizens in the process of decision-making by authorities, that is, with the aim of involving citizens in the political process.

The essence of e-democracy is that, thanks to an established system of electronic communications, all citizens of the country are involved in the process of government decision-making, and the process itself turns into a two-way dialogue between the government and citizens, where each side has complete trust in the other, the exchange of information between them is based on principles of accessibility and transparency.

Electronic democracy as a component of the social institution of democracy in the conditions of the modern information society contributes to the realization of its functions: the function of reproduction at a new level of social relations between the authorities and citizens; integrative function (reduction of the social distance between the authorities and citizens, consolidation and coordination of resources, efforts and actions of state authorities, citizens and businesses) (On Approval Of The Concept Of The Development Of Electronic Democracy In Ukraine And The Plan Of Measures For Its Implementation, 2017); regulatory function, which is expressed in providing citizens with resources and powers to participate in politics, overcoming «information inequality», bringing to justice for offenses committed in the field of using electronic democracy tools (Tomkova and Hutkii, 2017: 10).

It is characterized by two-way usefulness for the subjects of the political and constitutional process. For citizens, it consists in the possibility of real participation in the activities of public authorities, and for subjects of power relations - in the possibility of obtaining real public opinion (Kalynovskyi *et al.,* 2022).

In the Strategy for the Development of the Information Society in Ukraine, electronic democracy (e-democracy) is defined as «a form of social relations in which citizens and organizations are involved in state formation and state administration, as well as in local self-government through the widespread use of information and communication technologies» (On Approval Of The Information Society Development Strategy In Ukraine, 2013).

Today, technology allows the use of such new tools of e-democracy as e-mail, Internet conferences, e-consultations, video conferences, e-feedback, discussion forums on websites, e-polls, etc. The specified tools of e-democracy, both traditional and new under certain conditions, help to involve in the decision-making process the maximum number of people who can be directly affected by these decisions.

At the same time, the concepts of «e-democracy» and «e-government» should not be equated, since the latter acts as a tool of e-democracy. Among scientists, three aspects of electronic democracy are indicated: technological - electronic voting, the election procedure becomes simpler, faster and cheaper due to the use of information technologies; democratic - electronic participation, involvement of citizens in the process of making political decisions through online and offline tools - forums, polls, legislative initiatives, etc.; this dimension is the main one for electronic democracy; political - e-politics and e-campaigns, use of information technologies by political leaders to reduce the distance with citizens, to inform them more fully; e-politics has great potential for increasing the level of citizen participation in politics, however, since such tools are mainly used only during the election campaign, this is a significant limitation (Emelyanenko, 2008).

In general, it should be noted that e-democracy in comparison with e-governance in states with developed democracy is a relatively unformed concept, the meaning of which is not yet fully defined and which requires additional study and implementation.

At the same time, it is not necessary to overestimate the importance and role of modern telecommunication means in democratic processes, since information and communication technologies are not necessarily a tool of democracy. Moreover, as the government gains new opportunities to control society thanks to technology, it does not necessarily become more open itself.

It cannot be claimed that the unified government databases created in many countries of the world with a huge amount of confidential and personal information about each specific person will be used only to improve the quality of public services. In the conditions of authoritarian regimes, the creation of centralized databases about each person is dangerous for the inviolability of private life and civil liberties.

Not only the development of science and technology, but also democracy depends on the skillful integrated application of information and communication technologies, since one of the necessary prerequisites for sustainable democratic development is a transparent and open government, which is the key to the implementation of effective policies and is capable of ensuring proper public control, ensuring human rights and strengthening citizens' trust in the authorities.

3.2. General trends in the use of information and communication technologies in democratic processes

The use of information and communication technologies in democratic processes has a number of advantages. In particular, developed democracies have long understood that information and communication technologies can potentially improve the quality of government and empower citizens.

And by reorganizing administrative processes, improving the provision of public services and encouraging citizens to cooperate and participate in decision-making processes, as well as by digitizing administrative procedures and providing citizens and businesses with information and public services via the Internet, e-government makes government not only more efficient and effective , but also more transparent and open.

In addition, in order to receive the economic dividends of information and communication technologies and with the aim of transforming the public sector, many countries are actively implementing information and communication technologies both at the level of internal processes (the so-called «back office») and directly in the sphere of providing services to the population («front office»). That is why today more and more democratic countries offer citizens more and more administrative services online (OECD, 2003).

The evolution of e-government took place in several stages (Moon, 2002). At the early stage of online e-government, the interaction of the authorities with the population or business resembled one-way communication - most often through a website. Such e-government was limited and functioned exclusively as an electronic «brochure» that provided public information to citizens, civil servants and businesses. Subsequently, the authorities received tools for interaction and communication with citizens and other actors and began to provide citizens and businesses with various online services and services (e-taxes, e-procurement, e-licensing, etc.).

At the last stage, the vertical and horizontal integration of related online services and databases takes place, which is important both for optimizing the use of resources and for improving the experience of using services, not only by citizens and businesses, but also by the authorities themselves.

Information and communication technologies and related telecommunications and other digital networks are considered the main driving force of building an information society and economy and are increasingly recognized as a new factor for improving the existing principles of government activity (ICT for Local Government). For those countries that managed to build more or less stable democracies, in particular the member states of the European Union, the main advantage of e-government systems based on technologies is the formation of a full-fledged open information

society by providing a number of online public services, in obtaining visible economic gains, in strengthening the role of representative democracy, as well as, most importantly, in a fundamental change in the operating principles and model of government bodies.

In fact, e-governance is a tool of the information society in the form of principles, strategies, systems and tools for the exercise of power, which create an opportunity for the use of information and communication technologies in the interaction of key members of society (the state, citizens and business) with the aim of strengthening democracy and ensuring sustainable development.

Information and communication technologies can contribute to the achievement of more effective indicators in such key areas as: health care, security, education and the social sphere. After all, government and public bodies exist precisely to produce results, and information and communication technologies are an essential enabler in all key policy areas. Using the Internet to maximize results in these areas is a challenge for many countries.

Proper use of information and communication technologies can contribute to economic and social development, especially in the field of empowering representatives of state authorities and local self-government bodies, ensuring the connection of various components with each other, as well as the provision of timely, effective, transparent and understandable services (ICT for Local Government: handbook, 2007).

Thanks to the decentralization of competences, local self-government bodies receive more responsibility for their communities. All this requires significant efforts, and the use of modern information and communication technologies can and should help local authorities work more efficiently and provide better services to citizens. By improving information flows and encouraging active citizen participation, e-government is increasingly perceived as a valuable tool for building trust between government and citizens.

These goals may include trade-offs between efficiency and effectiveness, efficiency and openness, accountability and customer focus. If so, then you should set priorities correctly. But it should not be assumed by default that such trade-offs are inevitable. In a number of Scandinavian countries, for example, special ombudsman offices have been established to deal with citizen complaints about privacy and public trust (OECD, 2003). This, in turn, contributes to both protection and more effective use of personal data.

E-governance helps to improve the efficiency of government, and information and communication technologies are a necessary element for implementing reforms in the way public administration works. Improvements in internal operating systems (such as: financial systems,

procurement and payment infrastructure, internal communications and information exchange systems) and software processes can contribute to the operational efficiency of the government and improve its performance of its functions.

In the context of the investigated issues, special attention should be paid to the features of digitization of civil society institutes, public councils of evaluation of the activities of executive authorities (public examination of the activities of executive authorities), prospects for the introduction of information and communication technologies in the field of environmental protection.

In this direction, it is also important to create convenient tools for dialogue between the state and citizens and businesses, so that management decisions can be quickly adapted to the requirements of the time, not based on subjective data, but generated with the help of modern technologies and IT products.

According to Article 5 of the Law of Ukraine «On Information», access to information is ensured by: systematic and prompt publication of information: in official printed publications; on official websites on the Internet (Law Of Ukraine, 1992). In particular, the public examination of the activities of the executive authorities is a component of the mechanism of democratic state management, which provides for the assessment by institutions of civil society and public councils of the activities of the executive authorities, the effectiveness of decision-making and implementation by such authorities, and the preparation of proposals for solving socially significant problems for their consideration by executive authorities in their work (Decree of the Cabinet of Ministers of Ukraine, No. 976, 2008).

Public public discussion on issues related to the socio-economic development of the state, the implementation and protection of the rights and freedoms of citizens, the satisfaction of their political, economic, social, cultural and other interests, among other things, involves the organization and conduct of: Internet conferences, electronic consultations.

The government website «Civil Society and Government» and official websites of executive authorities are used to conduct public public discussion through electronic consultations with the public. The results of consultations with the public are taken into account by the executive authority when making a final decision or in its further work (Decree of the Cabinet of Ministers of Ukraine No. 996, 2010).

The task of ensuring economic growth in the conditions of the war against Ukraine poses a difficult task for the legislator - to create such a system of environmental impact assessment that, while fulfilling all the tasks of this procedure, would have as little negative impact on the economic development of Ukraine as possible. Recently, several attempts have been

made to reform the environmental impact assessment system (Tretyak, 2015).

In particular, the authors of the Draft Law of Ukraine «On Environmental Impact Assessment» No. 2009a (Draft Law of Ukraine No. 2009a, 2015), aiming to create a proper legal regulation of the environmental impact assessment procedure, among other things, proposed introducing a provision on a unified register of environmental impact assessment environment, the information included in which is open and accessible via the Internet.

Subsequently, such initiatives of the state found their continuation both in legislative initiatives and in practical actions of the government in the direction of digitalization of certain legal relations in this area. Thus, certain provisions of the Law of Ukraine «On Environmental Impact Assessment» adopted in 2017 contain certain provisions that indicate certain steps taken by the state in the direction of simplification, the use of information technology opportunities in communication with individuals and legal entities. In particular, in accordance with Art. 4 of this law, the authorized central body maintains the Unified Register of Environmental Impact Assessment, the information entered in which is open, and free access to it is provided via the Internet.

Such a register is created using software that ensures its compatibility and electronic information interaction in real time with other electronic information systems and networks that constitute the information resource of the state, including the urban cadastre and its constituent part - the Unified State Electronic System in the field of construction (On environmental impact assessment, Law of Ukraine, 2017).

Also, Article 5 of the mentioned law provides for the obligation of the business entity to inform the authorized territorial body about the intention to carry out the planned activity and to assess its impact on the environment by submitting a notification about the planned activity using electronic communications (including the electronic cabinet of the Unified Register for Impact Assessment on the environment, another electronic office or information system, the users of which are the authorized territorial body and business entity).

Notification of the planned activity, which is subject to an environmental impact assessment, in relation to objects that, according to the class of consequences (responsibility), belong to objects with medium and significant consequences, is sent exclusively in electronic form through the electronic cabinet of the user of the Unified State Electronic System in the field of construction or other state information system integrated with this electronic cabinet, the users of which are the business entity and the authorized territorial body. Article 5 of this Law.

In accordance with Article 7 of the law, public discussion of the planned activity after the submission of the environmental impact assessment report is conducted in the form of public hearings and in the form of written comments and suggestions (including in electronic form) (On environmental impact assessment, Law of Ukraine, 2017).

As of today, in Ukraine, the Ministry of Environment together with the Ministry of Digital Transformation are working on digital transformation under the following projects: state supervision in the field of environmental protection (e-Control); environmental monitoring (e-Environment); biological and landscape diversity (e-BLD); forestry (e-Forest); water management (e-Water); fisheries (e-Fishing); rational use of subsoil (e-Subsoil use); waste management (e-Waste); atmospheric air protection (e-Air); strategic environmental assessment (e-SEA); environmental impact assessment (e-EIA); handling of pesticides and agrochemicals (e-Pesticides) (12 projects in the field of environmental protection were included in the country's digital transformation plan, 2021).

In addition, in 2021, testing of the Unified Environmental Platform began in Ukraine, which in the future will allow citizens and entrepreneurs to receive all the necessary services in the industry online in a simplified manner, practically without the intervention of officials (Zavalnyuk, 2021).

Based on the results presented in the subsection, we can conclude that the biggest challenge in building an information society is not only the creation and implementation of information technologies and the availability of the necessary infrastructure. It is extremely important to put the organizational, regulatory and fiscal architecture of the government in order in order to support the development of e-government. The infrastructure should not be adjusted or built for services, which is often inefficient and requires significant expenditure of money, but services should be imposed on the existing infrastructure.

3.3. Prospects for the development of electronic democracy in Ukraine

Development of the information society is one of the important tasks of Ukraine on the way to the European community. In particular, the Government of Ukraine adopted the Ordinance «On the Approval of the Information Society Development Strategy in Ukraine», which provided for the main directions of e-democracy, namely: improvement of the regulatory framework, use of the latest technologies, formation of a culture of communication, creation of the «Electronic Parliament», implementation of new projects, etc. (On Approval Of The Information Society Development Strategy In Ukraine, 2013).

The main document that defines the directions for the development of e-democracy in Ukraine is the Concept of the Development of e-Governance in Ukraine, which defines the most common tools of e-democracy at the national and local levels - e-consultations, e-petitions, e-appeals, public budgets.

In addition, the following resources have been identified for the publication of open data sets using electronic platforms, for example: «Civil Society and Government», «Smart City» or «Unified System of Local Petitions» (On Approval Of The Concept Of The Development Of Electronic Democracy In Ukraine And The Plan Of Measures For Its Implementation. Law of Ukraine, 2017).

Different cities of Ukraine are actively implementing the most diverse tools of e-democracy: e-appeals, e-petitions, e-discussions, e-procurements, e-budgets, e-public budgets (participation). The choice of a model of e-democracy in cities depends directly on local self-government bodies and active citizens (Loboyko and Nakhod, 2017). The tool of electronic parliament, electronic justice, electronic consultations, electronic petitions, public participation budgets (ProZorro public procurement control system) is actively working in the country (Makhnachova, 2018; e-Democracy: for the first time in Ukraine, 2008).

However, it must be stated that the tools of real influence of the population on the formation and implementation of decisions of the government apparatus with the help of information and communication technologies still have prospects for development. First of all, it is about the introduction and legislative consolidation of the possibilities of holding electronic elections, referenda and voting.

We will conduct an overview of successful foreign practices of implementing such tools of electronic democracy as electronic governance and electronic voting in order to determine the possibility of their implementation in Ukraine.

The reformatting of public administration in an electronic format is currently attracting considerable interest throughout the world. Many countries are developing e-government and moving public services online.

According to the features of application, the following are distinguished: – the American model of e-government (USA and Canada), which provides for: simplifying and reducing the cost of society's contacts with authorities; establishment of direct communication with state structures; – the European model (Western, Central, Eastern Europe), the characteristic features of which are functioning in the conditions of operation of supranational structures: the European Parliament, the European Commission, the European Court; – the Asian model is being implemented, based on the peculiarities of management in the countries

of the East (except South Korea) – strict hierarchy and compliance with corporate rules of communicative behavior with simultaneous wide access of the population to information resources in all spheres of life.

In the procedural approach to fixing changes in the life of society, the legislative system of the USA went further than all others. it was this state that became one of the first in the development of electronic government systems. In 1997, the American administration initiated the «Improving government activity through new technologies».

In 2000, the FirstGov project was launched, which united more than 20,000 sites of government bodies of various levels, and in 2002 a single e-government site was created, which allowed US citizens to communicate on the Internet with representatives of both the federal government and with local government bodies on state and city levels (Dubov, 2010).

The analysis of the American and European approaches to the introduction of information and communication technologies in the activities of the state and the development of the concept of electronic government allowed O. Yemelianenko to draw a conclusion: if the American approach is based on economic criteria, the European approach is based on social, as well as the level of human capital development (Emelyanenko, 2008).

We note that the European approach to the implementation of e-governance attaches great importance to the political potential of electronic democracy, which considers it a possible solution to problems associated with the withdrawal of citizens from politics and the degradation of democratic procedures.

In the USA, the states of Western Europe the idea of electronic governance and its implementation is inextricably linked with the general state of public administration in the country, which corresponds to the traditions of political participation, the role of bureaucracy and elites in society, the state of legal institutions, and the mentality of society. In general, it can be argued that the electronic state creates new opportunities for the development of democracy.

In Europe, one of the leaders of e-government is Great Britain, where the «E-citizen, e-business, e-government» program has been implemented since 2000 as part of the «Strategic structure for serving society in the information age» project.

The program provides for the development and use of all electronic types of public services - they can be provided via the Internet, mobile communications, digital television, service centers, etc. Citizens can receive certificates and documents on the Internet, submit complaints and applications, fill out tax returns, and receive responses to their requests online (Dubov, 2010).

The government program for the creation of e-democracy in Estonia envisages the following main areas: 1) creation of a national digitized library, introduction of online car registration, formation of a specialized portal of the national labor agency, expansion of the portal of the tender agency, provision of pension insurance services; 2) acceleration of online processing of citizens' requests by government institutions, certification of information technology protection according to the European standard; 3) introduction of a system of electronic citizen IDs, implementation of a cryptographic model for the protection of communications between citizens, businesses and administrative management bodies; 4) development of a protected Internet space for the functioning of the electronic government system, increasing the trust of citizens in information technologies of online communication (ICT for Local Government: handbook, 2007).

An important component of e-government in Western countries is electronic voting, the obvious advantages of which are the possibility of programming voting instructions and the electronic ballot itself, which is displayed on the computer screen in different languages; convenience and minimum time spent; saving the budget for the organization and conduct of elections; quick collection, transfer and processing of information reduce the likelihood of falsification; finally, a convenient method is created to provide will expression for persons with limited physical capabilities.

The disadvantages of electronic voting include: the problem of ensuring the anonymity of voting (and even with multi-level access to the voting server and the use of dynamic addressing); difficulties in establishing the authenticity of the voter's identity during registration - the so-called authentication and the related problem of the reliability of «keys» for accessing the voting server.

Thus, it can be a prerequisite for recognizing the legitimacy of elections, which in modern democracies is usually based on the obligation of secret voting, and distrust in the ability of computer technologies to resist various types of external interference in systems, in particular, hacker attacks and attempts to falsify results.

The essential advantages of electronic voting systems include the facilitation of access to the voting procedure for persons with disabilities and the promptness of obtaining its results. However, it should be emphasized that remote Internet voting causes problems with voter identification and the need to protect the secrecy of voting.

This led to the postponement of electronic voting implementation programs in such developed countries as Spain, Italy, and Germany. At the same time, such practices are widely used in Norway (Public Initiative) (Reinsalu, 2010); Great Britain («Big Society») (Dorodeyko, 2011); of New Zealand (E-Parliament Portal with the possibility of submission of public e-petitions) (Recommendation CM/REC, 2009).

As evidenced by advanced foreign experience, regulatory and legal regulation cannot be effective without comprehensive state support and systemic guarantees. The Venice Commission in its reports determines that electronic voting does not violate political human rights and can take place provided that the general constitutional requirements of democracy are observed (Verfassungsgerichtshof, Decision, 2011).

Recommendation 17 indicates the need to «make changes to the legislation that would allow the Central Election Commission to implement pilot projects and test new voting technologies both in a secure environment and during real elections; the government should ensure adequate funding for such activities. The introduction of new technologies into the election process should be preceded by extensive consultations and information campaigns, as well as independent technical and economic justifications» (Recommendations from the results of the national conference: «presidential and parliamentary elections of 2019 in Ukraine», 2020).

The possibility of electronic voting in Ukraine currently needs development and improvement from the point of view of regulatory legal support and organizational and technical capabilities. The organization of electronic elections requires the development of special software and technical support, which will guarantee protection against hacker attacks and the reliability of identification of citizens in order to prevent the interference of interested parties in the course of voting.

The development and introduction of electronic voting can become the most important tool of e-democracy, which will help ensure the accuracy and transparency of elections, free access to information about the course of voting, as well as free participation of citizens in the life of the state.

It is worth summarizing that systemic obstacles to the spread of e-democracy in Ukraine include: waging war on the territory of the country; the uncertainty of state policy regarding the prospects for implementing the use of information and communication technologies; imperfection of legal support in the field of electronic democracy; insufficient level of involvement of civil society subjects in the processes of improving state policy in the field of electronic democracy, as well as in the implementation of its individual tools; insufficient level of information infrastructure development; insufficient level of knowledge and skills of civil servants and officials regarding the possibilities of using information and communication technologies in management processes; weak awareness and low literacy of citizens regarding the content and features of using various electronic democracy tools, methods and auxiliary means of their application.

We believe that a necessary step for the activation of electronic democracy in most democratic countries should be to increase the technical and electronic literacy of citizens; support of the specified sphere

by state bodies; dissemination of new additional platforms (archives and information digests, online libraries, web rooms for expert discussions, etc.). Such changes should be accompanied not only by legislative initiatives in the field of e-democracy development, but also by the development of a reliable system for protecting the e-government mechanism from external influences, technical errors, cyber attacks, etc.

Conclusions

Information and communication technologies are the most important component of the development of the modern world and the valuable basis of the information society. In developed countries, the use and implementation of information and communication technologies is based on an optimally arranged regulatory base and international standards that form a stable and flexible legal framework with clearly formulated, transparent, non-discriminatory and technologically neutral laws.

Information and communication technologies can potentially improve the quality of government and empower citizens, and by reorganizing administrative processes, improving the provision of public services and encouraging citizens to cooperate and participate in decision-making processes, as well as by transferring administrative procedures to an electronic format and providing the population and business of public information and public services via the Internet, e-government makes government not only more efficient and effective, but also more transparent and open.

Electronic democracy, which is an alternative to traditionally recognized ways and practices of exercising citizens' rights, is a form of citizens' realization of their political and civil rights through the use of information and communication technologies. In the world's leading déjà vu, the idea of electronic democracy and its implementation are inextricably linked with the general state of public administration in the country, which corresponds to the traditions of political participation, the role of bureaucracy and elites in society, the state of legal institutions, and the mentality of society.

Information and communication technologies contribute to citizens' ability to influence decision-making and directly participate in this process, in particular, in the implementation of electronic voting.

In Ukraine, along with other democratic state entities, the implementation and modernization of information and communication technologies in the daily life of society continues with the aim of achieving the conceptual goal of promoting the expansion of opportunities for the realization of citizens' rights. Necessary measures aimed at activating e-democracy in Ukraine are:

increasing the technical and digital awareness of citizens; thorough state support for e-democracy and its individual tools (e-governance, e-voting, etc.); active implementation of innovative platforms. Such nationwide activity should be ensured by appropriate legislative initiatives and the development of a reliable system of protection of electronic democracy tools against external influences, cyber attacks, technical miscalculations, etc.

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Human principles of law as a universal normative framework

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Abstract

The object of the research was the disclosure of universal human principles of law as a universal normative framework. It has been investigated that the term "principle" is used in several meanings: 1) in the main framework of the original ideas that are characterized by universality, of general meaning and higher imperative, and reflect the essential provisions of theory, doctrine, science, system of domestic and international law for a political, state or public organization; 2) in the inner conviction of a person, which determines his attitude to reality, ideas and social activities. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. By way of conclusion, it has been investigated that universal human principles of law are based on such diverse rights (principles of their concentrated development) as: humanism, all of which are used on the grounds of the dignity of the person and his fundamental rights and freedoms.

Keywords: universal human principles of law; humanism; principle of democracy; principle of justice; principle of equality.

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Principios humanos del derecho como marco normativo universal

Resumen

El objeto de la investigación fue la divulgación de los principios humanos universales del derecho como marco normativo universal. Se ha investigado que el término "principio" se usa en varios significados: 1) en el marco principal de las ideas originales que se caracterizan por la universalidad, de significado general y de imperativo superior, y reflejan las disposiciones esenciales de la teoría, la doctrina, la ciencia, el sistema de derecho interno e internacional para una organización política, estatal o pública; 2) en la convicción interior de una persona, que determina su actitud ante la realidad, las ideas y actividades sociales. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. A modo de conclusión se ha investigado que principios los humanos universales del derecho se basan en derechos tan diversos (principios de su desarrollo concentrado) como: el humanismo, todo cual se utiliza en razón de la dignidad de la persona y de sus derechos y libertades fundamentales.

Palabras clave: principios humanos universales del derecho; humanismo; principio de democracia; principio de justicia; principio de igualdad.

Introduction

Universal principles form a circle of multifaceted issues, which are difficult to be covered by a single approach or definition of law, and they are decisive in the legal science and practice. On the one hand, (as far as they belong to fundamental principles) they contain broad principles of law reflecting spiritual, historical, social, political, cultural and other peculiarities of the society which are transformed and modified in a concentrated form. On the other hand, generally recognized social values are introduced into life, implemented and applied in legal activity through the principles of law.

In addition, the principles of law are the object of scientific research not only for representatives of the general theory and philosophy of law, sectoral sciences, but also for representatives of the international law. Therefore, our research on the principles of law will be based on an attempt to combine scientific achievements of representatives of different scientific schools and branches of law through the prism of axiological approach to the problem, as well as new needs and challenges to their practical application.

In general, Ukrainian jurists have formed a sufficient methodological basis, which helps to understand the outlined problems of the proposed research.

1. Literature review

Universal principles are formed in the course of productive interaction of human society against the background of the emerging civilizational identity of peoples and they represent one of the best achievements of the mankind. Recognized as universal principles and enshrined in international legal documents, these principles become binding for all states (for example, the principles enshrined in the Charter of the United Nations dated June 26, 1945, in the Final Act of the Conference on Security and Cooperation in Europe dated 01 August, 1975, The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations dated 24 October, 1970, etc.).

Emphasizing the practical importance of principles of law, R.Z. Livshits wrote that they permeate the process of implementing the law, and therefore, they serve as vectors of law enforcement activity both in the case of applying laws and in the case of filling gaps in legal regulation.

Principles of law concentrate the result of the development of law, they embody the inextricable connection of the past, present and future (Lyvshyts, 1994). At the same time, the progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one. They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions.

Development of the theory of principles of law is reflected in works of the outstanding Soviet scientist Prof. S.S. Alekseyev. In his opinion, universal human principles of law are guiding ideas characterizing the content of law, its essence and purpose in the society. On the one hand, they express regularities of law, and on the other hand, they are the most general norms that act in the entire field of legal regulation and apply to all subjects.

These norms are either directly formulated in legislation or derived from the general content of laws (Alekseev, 2005). In addition, universal human principles of law determine ways to improve legal norms, serving as guiding ideas for legislators. They are a connecting link between the

basic patterns of development and functioning of the society and the legal system. Thanks to availability of principles, the legal system is adapted to the most important interests and needs of humans and the society and becomes compatible with them.

One of the first scientists who addressed the issue concerning the principles of law in the 1950s was the head of the Department of History and Theory of State and Law at Ivan Franko Lviv State University, prof. P.O. Nedbailo (Nedbailo, 1971). According to the scientist, the universal human principles of law are the most abstract concepts that express the essence of the state and the law in their basis and are the starting element of the structure of the general theory of state and law (Nedbailo, 1971). The problem of universal human principles of law is especially exacerbated when overcoming gaps in legal regulation, in particular through application and specification of general (universal) principles of law.

In addition, scientists consider universal human principles of law as a separate type of legal guarantees concerning correct application of legal norms and exercising subjective rights of citizens; they ensure legality of actions performed by subjects of law, strengthen legality and law enforcement, increase validity and expediency in implementation of norms, contribute to fair assessment of actions within the formal requirements of legal norms. P.O. Nedbailo emphasized that increasing effectiveness of this type of legal guarantees requires strengthened scientific research of universal human principles of law from the point of view that the principles of law are characterized by normalization (Nedbailo, 1971).

Professor A.M. Kolodiy believes that the category “principles of law” should be used in all cases when it comes to starting ideas and provisions that belong to jurisprudence. Therefore, principles of law are the starting ideas of its existence which express the most important regularities and foundations of this type of state and law, and are of the same order as the essence of law, and constitute its main features, are notable for universality, higher imperativeness and general significance, correspond to the objective need to build and strengthen a certain social structure (Kolodii, 1998).

The scientist notes that the main principles, which have not yet been reflected and established in law, cannot be counted among legal principles (principles of law). They are social patterns that require legal mediation, they are ideas, scientific conclusions but they are not principles of law (Kolodii, 1999). In our opinion, it is principles of law that reflect values recognized in the society, regulate social relations through hierarchical unity, and create a system of requirements for the proper and possible behavior of people.

2. Materials and methods.

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; the conceptual apparatus was deepened and the essence of concepts of universal human principles of law as a universal normative framework was defined thanks to the logic-semantic method.

Constituent elements of methodological approaches to understanding universal human principles of law as a universal normative framework were investigated by means of using the system-structural method. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding universal human principles of law as a universal normative framework.

3. Results and discussion

The greatest value of the supremacy of law consists exactly in its "incomparable universality" thanks to which it "should be perceived not simply as a universal principle of law, but as an integral one", as a "mega principle" (Holovatyi, 2011).

Universal human principles of law have the highest (maximum possible) degree of abstraction which makes them suitable for any system of law. In addition, they act as a flexible tool for legal regulation of a wide range of possible situations that are resolved by legal means between any legal subjects.

Universal human principles of law are the basis for formation of principles of international law as well as principles of law of regional communities and principles of intrastate (national) law, therefore these principles act as a connecting link between the national legal systems of various states, as well as between national and international law; they can serve as a tool for convergence of international and national law, universalization of legal regulation on a global scale. They serve as guidelines for reforming national legal systems in countries that wish to enter the European legal space, including in Ukraine.

The existing degree of abstractness of these principles determines their concretization in accordance with regional or national legal traditions, features of the legal system and the sphere of regulated relations. According

to its art.38 the Statute of the International Court of Justice operates under the category of general principles of law recognized by civilized nations, which are typical only for states with a democratic and humanistic orientation.

At the same time, it can be quite difficult to find out what principles are meant: principles of law recognized by all nations, by most states, by a group of states with a democratic regime, or any other principles.

At the same time, the progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one. They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions (Leheza *et al.*, 2022).

The principle of humanism is one of the most important value characteristics of a civilized society. It is this principle that is the criterion for the progressiveness of social institutions and recognizes the good of humans, their right to freedom, happiness, and expression of their abilities. Ideas of humanism have a universal (civilizational) nature, and manifestation of the principle of humanism in law means establishing relationship between personality, the state and the society in legal forms (Leheza *et al.*, 2021).

The principle of humanism is recognition of the value of the human personality, inalienability of its rights and freedoms, respect for its dignity, protection against arbitrary interference in the sphere of personal life. The principle of humanism in law finds its embodiment in a number of normative regulations of various sectoral affiliations (Lebedev, 1990).

The principle of the supremacy of law is one of the leading elements of the general framework of the constitutional system of any modern democratic, legal state. In the sphere of law, the principle of the supremacy of law finds its embodiment in the idea of justice, equality, freedom and humanism. In addition, it forms the appropriate legal system and determines the conditions that make it possible to turn this idea into reality.

According to the well-known researcher of this topic B. Tamanaha (Tamanaha, 2007), within this legal system it is “an exclusive and legitimizing political ideal”, which is gradually spreading for the entire world today, and is designed to qualitatively change both the fundamental framework and the practical component of the system of legal regulation of social relations in the direction of universally recognized humanitarian values and criteria of social efficiency (Leheza *et al.,* 2022).

According to O.V. Petrishina, today the principle of the supremacy of law is being considered in two aspects: first, in a broad sense - as a principle of legal organization of state power in the society, so to speak, in the sense of "the supremacy of law over the state"; secondly, in a narrow sense, namely in the context of the ratio of homogeneous legal categories - law and legislation in the system of regulation of social relations, their role and place in ensuring law and order, i.e. in the sense of "supremacy of law over legislation" (Petryshyn, 2010). Art. 8 of the Constitution of Ukraine, which enshrines the recognition and operation of the principle of the supremacy of law and clarifies its content accordingly, is focused on exactly this approach (Law of Ukraine, 1996).

A special approach to understanding the principle of the supremacy of law makes it possible to consider the issue of the rule of law in social relations as well as more general problems of state power organization as relatively independent problems, to focus the attention of legal scholars on the actual legal component of both the first and second issues, in particular the role of judicial bodies as the final arbiter of legal issues, primarily regarding the protection of rights and freedoms of humans and citizens (Petryshyn, 2010).

According to one of the creators of the doctrine of the supremacy of law, Daisy, this principle is based on the recognition and unconditional acceptance of the highest value of human personality, human inalienable rights and freedoms which are "the basis and not the result of country law", but the rules underlying of the constitutional code are "not a source, but a consequence of rights of individuals" (Daisy, 2008).

The principle of democracy is manifested in the fact that law and legislation express the will of the people, the will of everyone and anyone. Manifestation of the principle of democracy occurs through the forms of people's rule: direct and representative democracy, therefore, it manifests itself in law by enshrining in norms the legal position of a person, the order of people's participation in formation of state authorities, in implementation of their legal policy, in creation and improvement of legislation; in addition, the principle of democracy combines and interconnects two aspects: the national one and the international legal one (Leheza *et al.,* 2018).

The principle of equality is expressed in the equality of the legal position of all before the law, as well as in existence of equal civil rights and duties, equal protection in court regardless of nationality, gender, religious affiliation, origin, place of residence, official status and other circumstances (Leheza *et al.,* 2021). Formation of objective connections and relations G. Hehel justified the formal, legal equality of people: people are equal precisely as free individuals, equal in their right to private property, but not in the amount of property ownership. And the scientist considers the demand for equality in distribution of property to be an unreasonable point of view (Hehel, 2000).

Tarakhonych notes that the principles of law reflect the level of development of various spheres of social relations, namely economic, political, ideological, social, etc.; they reproduce the essence and social nature of law, regularities of its development and functioning; the relationship with other social regulators is characteristic of principles of law (Tarakhonych, 2014).

When considering the principle of justice, it seems appropriate to cite the position of the famous British lawyer Lord Dennis Lloyd, who distinguishes formal justice which is embodied in the principle of the same approach to the same cases and provides for availability of three conditions for existence of norms that prescribe necessary behavior in specific conditions; their general nature, i.e., application to everybody and to anybody or to certain categories of persons, and not selectively; impartiality (that is, their application without any discrimination, coercion or, on the contrary, concessions) and “real” justice, which implies, in addition to the three specified, formal attributes.

The value of such an approach lies not only in the fact that it makes it possible to make the principles underlying the legal system quite open, but also in the fact that it can make them mandatory legal norms which when violated lead to prosecution according to the legislation (Leheza *et al.,* 2020).

The principle of freedom as an opportunity to choose an option of behavior is an absolute good and it can be limited only by the need to ensure freedom of other persons which is achieved by establishing a certain degree of freedom of a separate individual. The activities of state bodies and officials should be aimed at creating conditions for the realization and protection of human freedom (Leheza *et al.,* 2022).

Conclusions

Therefore, universal human principles of law are its universal normative framework which is recorded in positive law and developed by humanity as a global macro-civilizational system, objectively determined by the needs and level of development of human civilization and which embodies its best achievements in the legal sphere, determines the essence and direction of legal regulation and is applicable in any legal system.

The progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one.

They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning

of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions.

Universal human principles of law indicate the level of humanity development and should act as a universal criterion for formation of national legal systems. They are enshrined in documents and partially in the domestic legislation of individual states. From the point of view of the legal nature, universal human civilizational principles of law are principles of positive law, which should be distinguished from legal principles as a broader concept covering basic, defining legal ideas. At the same time, legal principles are the first principles of legal consciousness or doctrine, while the principles of law are general, normative, mandatory principles, and their implementation is guaranteed by the state.

Therefore, it is worth noting that the concepts of “universal human principles of law” and “universal human legal principles” are also not identical, since among universal human principles you can single out both principles of law and principles of legal consciousness, doctrines (legal principles) that are not fixed in the positive law. It should be added that, by their nature, universal human principles of law (just the same as any other principles) are normative principles that determine the essence and direction of legal regulation.

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Anti-corruption reform as a component of the sustainable development strategy and its impact on a safe environment

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Abstract

The purpose of the research is anti-corruption reform as a component of the Sustainable Development Strategy and its impact on a safe environment: administrative, legal and criminological reflection. Main content. It is known, that the national security strategy of Ukraine identifies corruption among the current and forecasted threats, which prevents the Ukrainian economy from being depressed, makes its sustainable and dynamic growth impossible, and, as a result, fuels the criminal environment. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. Approbation of the developed plan for the post-war recovery of Ukraine (section «Environmental safety» should take place in such priority areas as: reforming state management in the field of environmental protection; climate policy: prevention and adaptation to climate change; environmental safety and effective waste management; balanced use of natural resources in conditions of increased demand and limited opportunities; preservation of natural ecosystems and biological

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diversity; restoration and development of nature conservation areas and objects.

Keywords: goals of sustainable development; anti-corruption policy; national environmental security; regional policy; administrative and legal regulation.

Reforma de la lucha contra la corrupción como componente de la estrategia de desarrollo sostenible y su impacto en un entorno seguro

Resumen

El objeto de la investigación es la reforma anticorrupción como componente de la Estrategia de Desarrollo Sostenible y su impacto en un entorno seguro: reflexión administrativa, legal y criminológica. Se sabe que la estrategia de seguridad nacional de Ucrania identifica la corrupción entre las amenazas actuales y previstas, lo que evita que la economía ucraniana se deprima, imposibilita su crecimiento sostenible y dinámico y, como resultado, alimenta el entorno criminal. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico así como métodos de análisis y síntesis. Todo permite concluir que la aprobación del plan desarrollado para la recuperación de la posguerra de Ucrania (sección «Seguridad ambiental» debe tener lugar en áreas prioritarias como: reforma de la gestión estatal en el campo de la protección ambiental; política climática: prevención y adaptación al cambio climático; seguridad ambiental y gestión eficaz de residuos; uso equilibrado de los recursos naturales en condiciones de mayor demanda y oportunidades limitadas; preservación de los ecosistemas naturales y la diversidad biológica; restauración y desarrollo de áreas y objetos de conservación de la naturaleza.

Palabras clave: objetivos de desarrollo sostenible; política anticorrupción; seguridad ambiental nacional; política regional; regulación administrativa y legal.

Introduction

The history of the formation of the idea of ustainable development is directly related to the meeting of the UN General Assembly in New York,

held in September 2015, where the resolution document «Transforming our world: an agenda in the field of sustainable development until 2030» was adopted, where it was established such goals and objectives of the development of modern states.

The mentioned Resolution of the UN General Assembly substantiated that the development of the modern state should be the following directions of socio-economic, spiritual-cultural, humanitarian, ecological reformation. The goals of sustainable development of the modern world and individual states can be classified into:

1. Humanitarian, which include - the need to overcome the manifestations of poverty, fight against the spread of hunger, take measures to ensure food security, promote the quality and safety of food products, rationalize agricultural activities; social protection and provision of a person regardless of his age and state of health; access to justice; implementation of the principles of social partnership and dialogue as the basis of public administration and social development.
2. Socio-cultural, covered by the need to take measures to provide access to quality education and create opportunities for a person's professional development throughout his life; ensuring the principles of gender equality as a priority for the development of modern society, granting equal rights to men and women, boys and girls; overcoming manifestations of discrimination based on property.
3. Environmental - ensuring access to quality water resources and compliance with sanitary and hygienic requirements; creation of conditions for the availability of energy resources; greening of production and its development on the basis of a «closed circle»; ensuring the livelihood and «sustainability» of settlements; taking measures to overcome the manifestations of climate change and their negative consequences; use of sea and ocean resources based on rational approaches; combating desertification and taking other measures aimed at overcoming the manifestations of land degradation and restoring biodiversity.
4. Socio-economic - creation of an effective labor market at the global and national levels; rationalization of consumption.

1. Literature review

Establishing the essence of the category «national ecological security» requires taking into account the results of scientific works of representatives,

as general theoretical sciences, as well as representatives of special branch studies, and others (Pushkina *et al*., 2021). However, the establishment of the essence of the category «national environmental security» is fragmentary in nature, and requires the generalization of existing practices in order to achieve their compliance with European standards (Leheza, 2016).

Within the framework of Ukrainian legal science, there is no single approach to establishing the essence of «environmental safety». Establishing an author's approach to defining the essence of the category «national ecological security» is possible by summarizing existing theoretical and legal studies (Surilova and Leheza, 2019).

Establishing the essence of the category of «national environmental security» has a certain history of formation and development of normative and legal regulation. The first attempts to introduce the category of «national ecological security» into the national legal space were made in 1995-1998, when the conceptual approaches to establishing the structure and content of the mechanism for ensuring national security requirements as a whole and its structural elements were normatively consolidated (Sabirov, 2010).

Understanding the constituent elements of the mechanism for ensuring the requirements of national environmental security requires the use of such a conceptual approach, which consists in combining in a complex interdependent system the implementation of measures to prevent environmental emergencies, prevent and eliminate the negative consequences of environmental offenses and crimes against the environment, which allows to guarantee the appropriate level of effectiveness of implementation state and regional policy on the implementation of the subjective environmental rights of a private person (Kolpakov *et al*., 2020).

2. Materials and methods

The study is based on the works of foreign and Ukrainian scientists regarding methodological approaches to understanding anti-corruption reform as a component of the Sustainable Development Strategy and its impact on a safe environment: administrative-legal and criminological reflection

The ontological method of scientific knowledge made it possible to determine the essence of methodological approaches to understanding the category of national environmental security as a component of the Sustainable Development Strategy and the implementation of regional environmental policy. Thanks to the logical-semantic method, the conceptual principles of the implementation of the anti-corruption reform as a component of the Sustainable Development Strategy and its impact on a safe environment were developed.

The use of the system-structural research method made it possible to determine the normative principles of anti-corruption reform as a component of the Sustainable Development Strategy and its impact on a safe environment. With the help of the structural-logical method, the main directions of optimization of methodological approaches to understanding the effectiveness of anti-corruption reform as a component of the Sustainable Development Strategy and its impact on a safe environment are substantiated.

3. Results and discussion

The national security strategy of Ukraine identifies corruption among the current and forecasted threats, which prevents the Ukrainian economy from being depressed, makes its sustainable and dynamic growth impossible, and, as a result, fuels the criminal environment.

Decree of the President of Ukraine dated February 16, 2022 No. 56/2022 «On the decision of the National Security and Defense Council of Ukraine dated December 30, 2021 «On the Strategy for State Security» determined that the main tasks of state policy in the field of state security include the intensification of the struggle with terrorism and organized crime, countering the destruction of the state apparatus and local self-government in connection with the spread of systemic corruption in state bodies (Law of Ukraine, 2022).

The introduction at the national level of the need to observe and implement the goals and objectives of sustainable development determined the expediency of developing a certain system of monitoring the effectiveness of the exercise of powers for their implementation by administrative bodies. In accordance with the Decree of the Cabinet of Ministers of Ukraine of August 21, 2019 No. 686-r «Issues of data collection for monitoring the implementation of sustainable development goals» (Law of Ukraine, 2019) a list of indicators of the effectiveness of the implementation of state and regional policies is established. In fact, such indicators are criteria for the effectiveness of socio-economic development, which allows us to identify the directions of regulatory and organizational regulation of social relations.

Such indicators of ensuring the requirements of the national environmental security of Ukraine in particular and achieving the goals of sustainable development in general in accordance with the Decree of the Cabinet of Ministers of Ukraine dated August 21, 2019 No. 686-r include:

- ensuring the creation of sustainable food production systems that contribute to the preservation of ecosystems and gradually improve land and soil quality, primarily through the use of innovative technologies (food production index Food Production Index);

- ensuring the availability of quality services for the supply of safe drinking water, construction and reconstruction of centralized drinking water supply systems using the latest technologies and equipment (indicator of safety and quality of drinking water according to microbiological indicators;
- indicator of safety and quality of drinking water according to radiation indicators);
- reducing the volume of untreated wastewater discharges, primarily with the use of innovative water treatment technologies, at the state and individual levels (indicators of the volume of discharges of polluted (polluted without treatment and insufficiently treated) wastewater into water bodies;
- the share of discharges of polluted (polluted without treatment and insufficiently treated) wastewater into water bodies in the total volume of discharges, etc.);
- increasing the efficiency of water use (GDP water capacity indicators);
- expansion of infrastructure and modernization of networks to ensure reliable and stable energy supply based on the introduction of innovative technologies (indicator of technological costs of electrical energy in distribution networks);
- ensuring diversification of the supply of primary energy resources; increasing the share of energy from renewable sources in the national energy balance, in particular due to the introduction of additional capacities of facilities producing energy from renewable sources (setting the share of energy produced from renewable sources in the total final energy consumption);
- reduction of the negative impact of pollutants, including on the environment of cities, in particular through the use of innovative technologies (volume of pollutant emissions into the atmosphere by stationary sources of emissions);
- ensuring the development and implementation of local development strategies aimed at economic growth, job creation, development of tourism, recreation, local culture and production of local products;
- decrease in the resource intensity of the economy;
- reducing the volume of waste generation and increasing the volume of its processing and reuse based on innovative technologies and productions (the volume of generated waste of all types of economic activity per unit of GDP;

- the share of incinerated and recycled waste in the total volume of generated waste);
- limitation of greenhouse gas emissions in the economy;
- reduction of pollution of the marine environment; ensuring sustainable use and protection of marine and coastal ecosystems, increasing their sustainability and restoration based on innovative technologies;
- promotion of sustainable forest management (indicator of forested territory of the country);
- restoration of degraded lands and soils using innovative technologies.

In order to improve the relevant work at the national, regional and local levels based on the Budgeting Methodology of the Sustainable Development Goals in Ukraine (Budgeting the Sustainable Development Goals), a special procedure was developed for tracking state budget expenditures for their implementation.

From the beginning of 2018 until June 2022, there was no main strategic document in the field of combating corruption in Ukraine, which was one of the reasons for the extremely low effective activity of anti-corruption bodies and the application of prevention measures.

During the period of martial law, authorized units (authorized persons) that are not involved in the implementation of measures for state defense, civil protection, public safety and order, protection of the rights, freedoms and legitimate interests of citizens, continue to organize and carry out measures for the prevention and detection of corruption provided for by the Law taking into account the regime of work organization in the institution (in particular, remote work, idle time) and the features established by the Law of Ukraine «On the Legal Regime of Martial Law».

The order of the Cabinet of Ministers of Ukraine dated October 5, 2016 No. 803-r approved measures to prevent corruption in ministries and other central bodies of executive power. Thus, for the Ministry of the Environment (today the Ministry of Environmental Protection and Natural Resources of Ukraine) the following areas of activity have been defined with the aim of creating a single unified electronic system of access to environmental information about permits, licenses, statistical reports, inspection materials, monitoring in the field of environmental protection for state bodies, business entities (review of documents: obtaining permits, licenses, results of environmental control studies) and the public (Leheza *et al.,* 2022).

In addition, with the aim of reforming the system of state control and supervision in the field of environmental protection, the creation of

a single integrated body of environmental protection supervision and the elimination of duplication of functions of state supervision in the specified area are foreseen; competitive selection of all employees; creation of conditions to prevent corruption in the field of state environmental protection supervision.

To ensure the transparency and efficiency of the work of the Ministry of Environmental Protection and Natural Resources of Ukraine and other central executive bodies, which are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Environmental Protection and Natural Resources, unified management standards have been introduced, shortening the time period for obtaining information in all areas of activity, reducing permitting and reporting burden on business entities.

In accordance with the Basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030, approved by the Law of Ukraine dated February 28, 2019 No. 2697-VIII, Section II defines the purpose, principles, principles and tools of the state environmental policy. This section also includes:

> Complex monitoring of the state of the environment and supervision (control) in the field of environmental protection, rational use, reproduction and protection of natural resources - will ensure the transition to a system of crime prevention and monitoring of the state of the environment, reducing pressure on the business environment , broad involvement of the public in environmental control through the construction of an effective system of supervision of compliance with environmental legislation, taking into account the best practices of organizing the functioning of similar institutions in the member countries of the European Union (Leheza *et al.,* 2020: 130).

The identified problems of ensuring the safety of the natural environment are in contradiction with the requirements of the current legislation, in particular, on issues of corruption prevention. Thus, according to the Law of Ukraine «On the principles of the state anti-corruption policy for 2021-2025» among the priority areas of corruption prevention in point 3.2.

The state regulation of the economy in the expected strategic results defines the implementation of the information and analytical system of natural resources management, which provides open access to current information about natural resources, includes the functionality of providing electronic services, electronic reporting, traceability, environmental monitoring and inspection, as well as an open software interface for creation of analytical and visual (geo-informational) software based on the data of the information and analytical system (without the right to change them).

However, it is not appropriate to conclude that the implementation of the state anti-corruption policy is completely ineffective. Thus, among the measures taken to ensure the effectiveness of overcoming corruption in the field of environmental protection as a component of Ukraine's national security, it is necessary to highlight a number of organizational and legal measures.

Thus, at the meeting of the International Working Group on Security Guarantees for Ukraine, in less than two months, a high-quality comprehensive project of recommendations containing a number of guarantees was created: military, economic, political, sanctions, which, as a result, subject to their agreement with the President of Ukraine, will have a positive effectiveness in overcoming manifestations of corruption in the field of environmental protection.

Conclusions

Considering the above, it can be noted that the presence of environmental problems in Ukraine requires an immediate response, and this, in turn, will create a security system for the whole of Europe. Thus, the Analytical Note outlines the problematic field of the existing system of state control and supervision in the field of environmental protection and the problems of implementing the Concept of reforming the system of state supervision (control) in the field of environmental protection, which will make it possible to determine external and internal factors that contribute to corruption in the implementation authorities of state control in the field of environmental protection.

In turn, the understanding of the issues is the basis for determining the fundamental anti-corruption safeguards that must be reflected in the activities of the environmental control and supervision body, the creation of which is provided for by this Concept, and the external (legislative, other normative legal acts) and internal (organizational and management processes) conditions , aimed at ensuring the exercise of powers by a powerful entity) environment under which corruption risks can be minimized.

Recommendations are provided regarding the mechanisms for minimizing corruption risks, which should be implemented during the reform of environmental control bodies. Purpose: to identify the current key problems that allow an official of the State Environmental Inspection to commit acts that may lead to the commission of a corruption offense or an offense related to corruption by an official of the State Environmental Inspection while performing the functions of state control and environmental supervision, to propose recommendations for their

consideration in the implementation reforms of the state control system in the field of environment.

In order to ensure national environmental security in Ukraine, especially in the presence of a nuclear threat from the Zaporizhzhya NPP, temporarily occupied by Russian invaders, it is expedient to take measures to approve the recovery plan of Ukraine during the period of martial law and overcoming the military aggression of the Russian Federation. Approbation of the developed plan for the post-war recovery of Ukraine (section «Environmental safety» should take place in such priority areas as: reforming state management in the field of environmental protection; climate policy: prevention and adaptation to climate change; environmental safety and effective waste management; balanced use of natural resources in conditions of increased demand and limited opportunities; preservation of natural ecosystems and biological diversity; restoration and development of nature conservation areas and objects.

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Legal and organizational foundations for delivering e-government

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Abstract

The aim of the research was to analyze the legal and organizational foundations of e-government. The introduction of e-government in Ukraine is regulated by a large number of normative legal acts in the field of information society development. The analysis of information sources-legal norms by using general scientific and special scientific methods led to the conclusion that the provisions of administrative legislation also belong to the information legislation. It was concluded that the legal framework for the implementation of e-government should not only be harmonized with generally recognized international standards, but also, developed and adopted in the context of the Sustainable Development Goals until 2030. Based on the assessment and comparison of the main trends in the development of digital economy, simplification, decentralization, deregulation, institutional capacity development and communication support are attributed to the main achievements and digital capabilities of Ukraine in the direction of e-government. Definitely, the need to improve e-governance mechanisms in the sphere of telecommunication networks at the state level is emphasized.

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Keywords: informatization; electronic governance; regulatory documents; administrative legislation; strategy.

Fundamentos legales y organizativos para proporcionar un gobierno electrónico

Resumen

El objetivo de la investigación fue analizar los fundamentos legales y organizativos del gobierno electrónico. La introducción del gobierno electrónico en Ucrania está regulada por una gran cantidad de actos legales normativos en el campo del desarrollo de la sociedad de la información. El análisis de las fuentes de información-normas legales mediante el uso de métodos científicos generales y científicos especiales llevó a la conclusión de que las disposiciones de la legislación administrativa también pertenecen a la legislación de información. Se concluyó que el marco legal para la implementación del gobierno electrónico no solo debe armonizarse con los estándares internacionales generalmente reconocidos, sino también, desarrollarse y adoptarse en el contexto de los Objetivos de Desarrollo Sostenible hasta 2030. Sobre la base de la evaluación y comparación de las principales tendencias en el desarrollo de la economía digital, la simplificación, la descentralización, la desregulación, el desarrollo de la capacidad institucional y el apoyo a la comunicación se atribuyen a los principales logros y capacidades digitales de Ucrania en la dirección del gobierno electrónico. Definitivamente, se enfatiza en la necesidad de mejorar los mecanismos de gobernanza electrónica en el ámbito de las redes de telecomunicaciones a nivel estatal.

Palabras clave: informatización; gobierno electrónico; documentos normativos; legislación administrativa; estrategias.

Introduction

In the conditions of the modern information society, the use of the means of the so-called «electronic democracy» (e-democracy), which is characterized by the wide use of information and communication technologies for the implementation of democratic procedures and the involvement of the public in the process of forming state policy, has become widely used. Prospects for expanding the range of application possibilities and, accordingly, increasing the accessibility of direct democracy procedures through the use of information technologies are primarily determined

by: the need to create conditions for systematic public involvement in public administration and solving all urgent problems; the need to direct public initiatives into the sphere of constructive interaction with the state; requirements for ensuring openness and transparency in the activities of the administrative apparatus.

In addition, the awareness of one's own involvement in state-building processes will certainly contribute to the development of active citizenship as one of the main conditions for the formation of an effective civil society (Kalynovskyi *et al.*, 2022; Dmytrenko, 2018; Babych, 2019; Semenchenko and Konoval, 2012; Baranov, 2017).

More and more countries in the world are implementing the tools of electronic democracy to form a new policy, the basis of which is the relationship between citizens and the government, based on transparency and full trust of the two parties to each other. World leaders in the development of e-democracy were able to reach its level when all tools represent a single effective communication system that strengthens and promotes the most effective two-way dialogue between the government and society (Kalynovskyi *et al.*, 2022). Studying the experience of normative and legal regulation of the development of e-democracy in the world's leading countries will contribute to its application in Ukraine, taking into account national specificities.

Although in Ukraine, the development of e-democracy and e-governance is defined as one of the priority tasks of the Strategy of State Policy to Promote the Development of Civil Society in the Context of Optimizing the Mechanisms of Public Dialogue and Institutions of Direct Democracy (Decree of the President of Ukraine № 5 /2012), it should be emphasized that it is not easy in itself the process of building democracy, in particular electronic democracy, is complicated by the conditions of the war on the territory of Ukraine.

1. Methodology of the study

To solve the tasks set in the scientific article, a complex of general scientific and special methods was used: theoretical generalization, semantic, comparison, analysis and synthesis to clarify and improve the conceptual and categorical apparatus of electronic governance, in particular to define the concepts of «electronic governance», «electronic application «Diya»; system analysis to reveal the regulatory and legal regulation of the implementation of e-government at the national and local level; comparative analysis and extrapolation to determine the advantages and problems of the development of e-government in Ukraine compared to relevant foreign practices; expert evaluations to determine the current state of e-government

in Ukraine; logical generalization for the development of conclusions and recommendations regarding the improvement of e-governance in Ukraine in accordance with modern global trends.

The normative basis and information base of the scientific article are the legislation of Ukraine on the development of the information society and e-government, the resolutions and orders of the Cabinet of Ministers of Ukraine and the decrees of the President of Ukraine on the development of the information society, the introduction of e-government, the use of modern information and communication technologies by state authorities, the legislation of foreign countries in the field of e-government regulation, legal acts of local state authorities and local self-government bodies, web pages and portals that provide access to e-government technologies.

2. Analysis of recent research

A large number of scientific works are devoted to the fundamental foundations, theoretical, practical and methodological aspects of the development of e-government in public management and administration, which repeatedly emphasized the presence of such systemic barriers to the development of e-democracy in Ukraine: uncertainty of public policy in the specified area; imperfection of the regulatory system; low level of involvement of civil society subjects in the processes of public policy implementation in the field of electronic democracy; insufficient level of information infrastructure development, uneven penetration of access to the Internet and to informational computer technologies; low level of awareness in society about the content and features of using various tools of electronic democracy, as well as methods and auxiliary means of their application; lack of motivational levers, level of knowledge and skills of civil servants, officials of local self-government regarding the development of electronic democracy (Kalynovskyi *et al.*, 2022).

Despite the considerable amount of theoretical and practical research in the field of e-governance and state mechanisms for its implementation, the expediency of a comprehensive study of the issues of further development of state mechanisms for the implementation and provision of e-governance in the conditions of digital transformations does not lose its relevance. Among the complex of main problems, the problem of improving the normative and legal regulation of social relations during the use of information technologies is extremely important.

The purpose of the article is to analyze the specifics of normative legal regulation of social relations in the field of electronic governance and to evaluate the modern achievements of Ukraine in its implementation and development.

The achievement of the set goal is subordinated to the solution of the following tasks: to analyze the regulatory and legal framework on the implementation of electronic governance in the bodies of executive power; to outline the main goals and directions of implementation of e-government; to determine the current state and trends in the development of e-government in Ukraine.

3. Results and discussion

3.1. Normative legal regulation of public relations in the field of electronic governance

One of the prerequisites for the effective implementation of e-government in any country is regulatory and legal support. Currently, Ukraine has developed a lot of various normative legal acts that influence and determine the development of e-government. Among the most influential of the latter, the following should be noted: the Sustainable Development Strategy «Ukraine - 2020» (Decree of the President of Ukraine № 5/2015, 2015), the Government's Medium-Term Priority Action Plan until 2020 (Decree of the Cabinet of Ministers of Ukraine№ 275-r, 2017), the Strategy for Reforming the State Administration of Ukraine for 2016-2020 (Decree of the Cabinet of Ministers of Ukraine № 227-r, 2015), Concept for the Development of Electronic Government in Ukraine (Decree of the Cabinet of Ministers of Ukraine № 649-r, 2017), Concept of the development of the system of electronic services in Ukraine (Decree of the Cabinet of Ministers of Ukraine № 918-r, 2016), Concept of the development of the digital economy and society of Ukraine for 2018-2020 (Decree of the Cabinet of Ministers of Ukraine № 67, 2018).

In particular, the Sustainable Development Strategy «Ukraine-2020» states that one of the priority reforms is the reform of «state administration, the result of which should be the creation of an effective, transparent, open and flexible structure of state administration with the use of the latest information and communication technologies (e-government) to ensure the development and implementation of a comprehensive state policy aimed at social sustainable development and adequate response to internal and external challenges» (Decree of the President of Ukraine № 5/2015, 2015).

Among the main laws of Ukraine that directly affect and determine the development of electronic governance, the following should be especially noted: «On information» (Law of Ukraine № 2657-XII, 1992), «On the National Informatization Program» (Law of Ukraine № 74/98-VR, 1998), «On access to public information» (Law of Ukraine № 2939-VI, 2011),

«On the protection of personal data» (Law of Ukraine № 2297-VI, 2022) , «On electronic digital signature» (Law of Ukraine № 852-IV, 2013), «On administrative services» (Law of Ukraine № 5203-VI, 2012), «On electronic documents and electronic document management» (Law of Ukraine № 851-IV, 2003) etc.

The decisions and orders of the Cabinet of Ministers of Ukraine had a decisive influence on the introduction of electronic governance, in particular: «On approval of the Strategy for the development of the information society in Ukraine» (Resolution of the Cabinet of Ministers of Ukraine № 208, 2003), «On approval of the procedure for the use of electronic digital signatures by state bodies authorities, local self-government bodies, state-owned enterprises, institutions and organizations» (Resolution of the Cabinet of Ministers of Ukraine № 1452, 2004), «On approval of the standard procedure for electronic document management in executive authorities» (Resolution of the Cabinet of Ministers of Ukraine № 1453, 2004) etc.

For more than twenty years, regulatory and legal support for the development of the information society in Ukraine and its important component of electronic governance has been developed. Among all the variety of adopted legal acts, the following main areas of regulation of the implementation of electronic government can be distinguished: conceptual and strategic principles; electronic document flow and electronic digital signature; electronic services; participation of citizens in making management decisions; protection of information and personal data; functioning and content of web resources and web pages.

Let's analyze in historical retrospect the main normative legal acts that had the greatest impact on the development of e-government at the national and local levels. First of all, it should be noted the resolution of the Cabinet of Ministers of Ukraine «On the procedure for publishing on the Internet information about the activities of executive authorities» (Decree of the Cabinet of Ministers of Ukraine № 3, 2002), which provided for posting and periodic updating by ministries, other central and local by the executive authorities of departmental information on their own websites and the creation of a single government web portal, the composition and requirements for the information to be made public are determined.

The next step was the Decree of the Cabinet of Ministers of Ukraine «On measures to create an electronic information system «Electronic Government»» dated 24.02.2003 (Decree of the Cabinet of Ministers of Ukraine № 208, 2003), one of the priority tasks of which was to provide citizens and information and other services to legal entities through the use of the electronic information system e-Government, which was supposed to ensure informational interaction of executive power bodies with each other, with citizens and legal entities on the basis of modern information technologies.

The main mechanism for implementing the task was to become a single web portal of executive authorities, which should facilitate the integration of websites, electronic information systems and resources of executive authorities and the provision of information and other services using the Internet.

The Law of Ukraine «On the Basic Principles of Information Society Development in Ukraine for 2007-2015» (Law of Ukraine № 537-V, 2007) aimed to implement mechanisms for providing information services by state authorities and local self-government bodies to legal entities and individuals using the Internet; determination of the status and list of mandatory electronic services that must be provided by state authorities and local self-government bodies to legal entities and individuals, ensuring the implementation of the principle of a single access point (single window).

This law already clearly defined the problem of electronic interaction between state authorities and local self-government bodies and natural and legal entities.

Subsequently, in 2010, by order of the Cabinet of Ministers of Ukraine, the «Concept for the development of e-government in Ukraine» was developed and approved, in which the definition of e-government was legally established for the first time as «a form of public administration organization that contributes to increasing the efficiency, openness and transparency of the activities of public authorities» and local self-government bodies using information and telecommunication technologies to form a new type of state focused on meeting the needs of citizens» (Decree of the Cabinet of Ministers of Ukraine № 2250-r, 2010).

The introduction of e-governance provided for the creation of qualitatively new forms of organization of the activities of state authorities and local self-government bodies, their interaction with citizens and economic entities by providing access to state information resources, the ability to receive electronic administrative services, to contact state authorities and local self-government bodies using the Internet.

The main tasks of the development of e-governance in Ukraine, which should directly contribute to the improvement of the state administration system, are defined as: ensuring the protection of citizens' rights to access to state information; involvement of citizens in the management of state affairs; improvement of state management technology; improving the quality of management decisions; overcoming «information inequality», in particular, by creating special centers (points) for the provision of information services, population service centers (call centers), web portals for the provision of services; organization of provision of services to citizens and business entities in electronic form using the Internet and other means, primarily on the basis of the «single window» principle; providing citizens

with the opportunity to learn throughout their lives; depersonalization of the provision of administrative services in order to reduce the level of corruption in state bodies; organization of informational interaction of state authorities and local self-government bodies on the basis of electronic document circulation with the use of electronic digital signature; ensuring the transfer and long-term storage of electronic documents in state archives, museums, libraries, maintaining them in an updated state and providing access to them (Decree of the Cabinet of Ministers of Ukraine № 2250-r, 2010).

The Concept should have had a huge impact on the development of e-governance at the state and local level because throughout the entire period of implementation, attention should also be focused on the implementation of e-governance at the level of state authorities and local self-government bodies (Decree of the Cabinet of Ministers of Ukraine № 2250-r, 2010).

However, the goal set in the concept was also not achieved, and the tasks defined in the «Plan of measures for the implementation of the concept of e-government development in Ukraine» (Order of the Cabinet of Ministers of Ukraine № 1014, 2011), the implementation of which was supposed to be completed in 2014-2015, were not fulfilled.

In particular, there were no an interactive system for assessing Ukraine's electronic readiness has been created, as well as a regulatory settlement of the issue of creating a unified information and telecommunications infrastructure of state authorities and local self-government bodies has not been provided; typical organizational and technical solutions in the field of e-government were not implemented in the activities of state authorities and local self-government bodies.

The reasons for the failure to fulfill the assigned tasks or the delay in solving them were analyzed in the Strategy for the Development of the Information Society in Ukraine (Decree of the Cabinet of Ministers of Ukraine № 386-r, 2013). Among the obstacles to the effective introduction of e-governance, the following were noted: low level of computer literacy of civil servants and local self-government officials; attention was focused on the fact that local self-government bodies, compared to central bodies of executive power, have a significantly lower level of information technology support for administrative and management processes; in addition, digital inequality in the use of information and communication technologies persisted.

In the context of the implementation of e-government in Ukraine, the normative legal acts that determine the basic principles of the functioning of electronic document circulation and the use of electronic documents deserve attention. First of all, it should be noted the laws of Ukraine «On electronic documents and electronic document management» (Law of Ukraine 851-

IV, 2003) and «On electronic digital signature» (Law of Ukraine № 852-IV, 2003), which the use of electronic documents is regulated, the legal status of electronic digital signatures and relations arising from the use of electronic digital signatures are determined.

One of the main legal documents for the development of e-government is the «Standard procedure for electronic document circulation in executive bodies» (Decree of the Cabinet of Ministers of Ukraine № 1453, 2004), which established general rules for documenting management activities in executive bodies in in electronic form and regulated the performance of actions with electronic documents from the moment of their creation or receipt until they are sent or transferred to the archive of the executive authority.

«Standard instructions for record keeping in central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, local executive bodies» (Decree of the Cabinet of Ministers of Ukraine № 1242, 2011) established general provisions on the functioning of structural subdivisions for record keeping in central and local bodies of executive power, requirements for documenting management information and organization of work with documents, including their preparation, registration, accounting and monitoring of execution.

Although the specified legal act was of a recommendatory nature for local self-government bodies, it should be recognized that it became a kind of basis for the development of real electronic interaction of state authorities in Ukraine.

It is also necessary to note the importance of pilot projects for the introduction of electronic governance technologies in state and local self-government bodies, which were aimed at ensuring organizational-legal, scientific-technical and financial-economic conditions for the development of the information society and were implemented in individual regions.

Thus, it can be argued that most of the problems of the implementation of e-government at the national and local levels were due to imperfect regulatory and legal support. In the «Concept for the Development of Electronic Government in Ukraine» approved in 2017, such problems were identified as: the lack of formation and imperfection of the regulatory and legal framework regulating the field of electronic government development; insufficient level of readiness of civil servants and employees of local self-government bodies, individuals and legal entities for the introduction and use of electronic governance tools; as well as digital inequality in the use of information and communication technologies between authorities (Decree of the Cabinet of Ministers of Ukraine **№** 649-r, 2017).

The main tasks for ensuring the development of electronic governance in the main branches of Ukraine included: introduction of information

and telecommunication systems to support management decision-making and automation of administrative processes, including in the field of regional development and reform of local self-government and territorial organization of power: introduction of urban cadastre; strengthening the capacity of local communities to implement new powers by introducing exemplary information and analytical systems (Decree of the Cabinet of Ministers of Ukraine № 649-r, 2017).

In the approved «Concept for the development of e-democracy in Ukraine» until 2020 and the plan of measures for its implementation (Decree of the Cabinet of Ministers of Ukraine № 797-p, 2017), in particular, it was envisaged to increase the level of application of e-democracy tools at the local level, in including by expanding the use of the participation budget tool, implementing the electronic consultation tool.

At the same time, apart from the public budget and general provisions on establishing interaction and trust, the concept did not emphasize the features and importance of the development of e-democracy at the local level.

This can be explained by the fact that normative legal acts adopted at the level of the Cabinet of Ministers of Ukraine and responsible central bodies of executive power are not mandatory for implementation by local self-government bodies and united territorial communities and are of a recommendatory nature for them (Dmytrenko, 2018).

Thus, with the adoption of these normative legal acts, the obligation for all bodies of executive power and self-government to comply with standard instructions on record keeping and documentation and regulations for the organization of electronic interaction has already been clearly defined. They have a positive impact on the implementation of e-government at the national and local levels.

On 05/03/2022, the Verkhovna Rada approved the Law on improving the efficiency of organizing the work of suppliers of electronic communication networks and/or services under martial law. This Law will ensure the stable functioning of the electronic communication network of the state in the conditions of martial law and will prevent the interference of enemy forces in its functioning. The Verkhovna Rada also has a draft Resolution on the approval of the tasks of the National Informatization Program for 2022-2024, submitted by the Cabinet of Ministers of Ukraine.

The result of the adoption of the Resolution will be the approval of the tasks of the NPI and the implementation of informatization in state authorities, in particular, digital development, development of e-government, information society, digital innovations and technologies in state institutions (Verkhovna Rada of Ukraine. Official web portal of the Parliament of Ukraine).

In Ukraine, in general, an appropriate legislative and regulatory framework for e-governance issues has been created, but it is not without such shortcomings as: non-systematic, declarative, incomplete, vague, insufficient mutual coherence of documents and compliance with international norms.

The problem of the quality of the preparation of normative legal acts at the state level remains relevant: in some places, the acts are developed without conducting a thorough analysis of the problem, which requires legal regulation and taking into account the risks of their introduction, public discussion, conducting high-quality socio-economic and legal expertise, taking into account the need for their interaction with other acts, etc. These factors lead to the fact that Ukraine lags behind many leading countries in the pace of e-government development.

The lack of a comprehensive legal mechanism for the implementation of e-governance implementation, imperfect law enforcement practices, and legal nihilism of citizens and businesses is still a problem (Semenchenko and Konoval, 2012).

The Government's long-term priorities are determined by the Program of Activities of the Cabinet of Ministers of Ukraine, which is a framework document and the content of which is revealed through: strategies – for long-term planning; concepts - for short-term planning of individual actions or determining the direction of work in a narrow field; programs - for the implementation of projects financed from the state budget.

In our opinion, the problem of the slow implementation of e-government in Ukraine is the lack of an appropriate strategy for the development of e-government and a plan of measures for its implementation. No concept can replace strategy as a long-term, strategic planning document. When implementing e-governance, which affects absolutely all spheres of life, there must be a comprehensive picture and a clear vision for the long term.

In our opinion, it is necessary to adopt a basic document that would outline the strategic guidelines for the development and implementation of e-government until 2030, and the development of the Strategy for the Development of e-Government and, accordingly, the action plan should take place in the context of sustainable development goals adapted by Ukraine and have in order to achieve specific goals and indicators.

In the future, in accordance with the approved e-Governance Strategy until 2030, appropriate state programs for the development of e-Government with specific tasks, performers, indicators of task performance and amounts of funding for a specific period should be adopted. As the experience of foreign countries has shown, only a strong political will, aimed at achieving clear objectives, enshrined in relevant strategies, programs, laws on the development and implementation of e-government, with appropriate

amounts of financial resources, can positively influence the development of e-government in Ukraine.

It is also important to introduce long-term planning focused on the development of defense and security capabilities aimed at restoring the territorial integrity and sovereignty of Ukraine. Effective reform of the defense industry and the defense procurement system depends on the creation of an independent government body to ensure the effective functioning of Ukrainian manufacturers of any form of ownership and from NATO countries, in particular due to transparent access to the defense market and state defense orders (Babych, 2019).

In general, it should be noted that the legislation of Ukraine, which is directly related to the introduction and use of electronic government technologies, despite its chaotic and fragmented nature, creates legal grounds for the wide use of IT technologies, electronic document management and electronic interaction of state authorities in public administration.

At the same time, the need for further development of regulatory and legal regulations for coordination of efforts to effectively implement e-government at the state, regional and local levels, solving compatibility problems, as well as establishing cooperation between executive and local self-government bodies, citizens and businesses regarding the development of various tools and technologies has not disappeared. electronic government.

3.2. Practical implementation of e-governance achievements in Ukraine

In our opinion, the active creation of various electronic platforms and services in Ukraine can be considered a practical embodiment of the concept of a service-oriented state. The creation of the «Diya» portal can serve as such an example. «Action» is an abbreviation that reflects the interaction of «State and I».

The main goal is to create a digital, transparent and understandable state in which a person is at the center. «Diya» is an application in which all the necessary documents are in one place, in a personal smartphone. «Diya» is a single portal where you can get all services online: quickly, conveniently and humanely (Government services online, n/y).

The countermeasure against the external aggressor especially made the need to speed up the implementation of the strategy of maximum digitization of management and economic processes and the involvement of electronic services, expansion of the «Action» functionality.

The war forced millions of Ukrainians to immediately evacuate to safer regions of the country or abroad. However, not everyone was able to take

the necessary paper documents with them, and digital IDs in «Dia» were not always opened, because since the beginning of hostilities, all state registers were unlocked for security reasons.

In order to ensure quick confirmation of a person and his citizenship, the Ministry of Digitization of Ukraine has developed «E Document» (Resolution of the Cabinet of Ministers of Ukraine № 248, 2022) - a temporary digital certificate in the mobile application «Diya», valid without additional documents. It is recognized by state authorities, the National Police, and the military at checkpoints.

Other electronic documents generated in the Diya mobile application can also be used to identify a person in case of loss or destruction of documents. Action Centers have the technical ability to check citizens' digital documents and use sharing - obtaining their copies. Therefore, during the period of martial law, customers of services at Diya Centers can present digital documents.

Realizing that any funds significantly help or save someone's life, the Cabinet of Ministers of Ukraine on March 2, 2022 removed restrictions on the list of goods and services that can be paid for with the Yes Support card. On March 4, 2022, the Government developed a mechanism for providing one-time assistance in the amount of UAH 6,500 within the framework of the «There is Support» program at the request of the recipient (Decision of the Cabinet of Ministers of Ukraine № 199, 2022).

Assistance was provided to insured persons who work under the terms of an employment contract (contract), a gig contract, a certain civil law contract, on other grounds provided for by law, and to natural persons - entrepreneurs.

The Ministry of Digital Transformation of Ukraine has launched a new state service in the Diya mobile application - to register internally displaced persons. The Ministry of Digital Transformation developed the service together with the Ministry of Social Policy of Ukraine and with the support of the United Nations Development Program in Ukraine and the Government of Sweden. Currently, this service is valid for those who are in Ukraine and did not previously have a corresponding status.

Also, the Ministry of Social Policy, together with the Ministry of Digital Transformation and the UN Development Program in Ukraine, with the financial support of the Government of Sweden, developed the «Yes Help» platform, which helps every victim of military aggression. Maidanchyk combined the capabilities, resources and strengths of the state, business, public organizations, charitable foundations and volunteers in providing humanitarian aid to war victims, internally displaced persons and people from vulnerable categories. Appropriate work is being done to attract benefactors and volunteers to work with aid applications.

The «There is Help» site contains structured information and instructions on how to find or provide help online or offline. At the moment, the site has two main sections: monetary assistance from the state and providing or receiving volunteer assistance.

The platform is convenient in that it allows you to quickly select those requests for assistance that need to be fulfilled right now, with the ability to focus efforts on a specific region or a specific product.

During the military operations on the territory of Ukraine, the «VzayemoDiya» e-democracy platform temporarily changed its functionality - volunteer communications specialists quickly created a platform for quick and easy information search during the war. The relevant sections are constantly replenished, and the resources are carefully checked by a team of specialists.

Many Ukrainians were forced to leave the country and move to safer cities abroad. In order to support Ukrainians in Poland, a new thematic page was launched on the «Diya.Business» portal - «Help to Ukrainian citizens in Poland», which contains information on: employment and vacancies; information assistance hotline; useful vocations; advice on starting a business in Poland, even if you do not have Polish citizenship; answers to frequently asked questions: from documents confirming the legality of stay to the validity periods of residence permits.

The section was created with the support of the Department of Trade in Strategic Goods and Technical Security of the Ministry of Economic Development and Technology of the Republic of Poland (TOP 10 electronic services to help Ukrainians during the war). A special section with information was also developed for those who were forced to leave for Great Britain, and by browsing the site you can find relevant information on obtaining a visa, social benefits, job vacancies, and running a business.

Ukrainian enterprises located in the zone of active hostilities can receive assistance in transferring their facilities to the West of Ukraine. For this purpose, a program for the relocation of Ukrainian productions has been launched, which provides free state support for the relocation of enterprises from the war zone. In just one month, 216 enterprises were evacuated from the combat zone, most of which have already resumed work at a new location (a single digital interaction platform was launched in Ukraine to help with business relocation).

Also, from April 2022, the Parliament of Ukraine adopted in the first reading draft law № 7198 (Draft Law № 7198, 2022) on compensation for real property damaged or destroyed during the war.

The «Damaged property» service in the «Diya» application allows you to report destroyed and destroyed immovable property as a result of

hostilities, acts of terrorism, sabotage caused by the military aggression of the Russian Federation. In addition, in the «Diya» application, you can transfer donations to the aid fund of the Armed Forces of Ukraine «Return Alive».

A reliable alternative air alert notification tool is vital for people at war - the Air Alert app for prompt response to the start and end of alerts. The application receives information about both air strikes and street battles or artillery shelling from responsible operators in the regional administrations of Ukraine. Coordination of alarms is provided by the State Emergency Service.

In addition, in March 2022, the Ukrainian online television service «Diya.TV» appeared in the «Diya» application, which was launched to prevent the occupiers from completely blocking Ukrainian television.

Thus, the modernization of public administration is carried out at an active pace precisely in the direction of the development of the service activities of the state, which aims to provide online services to the subjects of the appeal in the coming years. The development of this direction strengthens the influence of external negative factors, which are, for example, the influence of military actions on the territory of Ukraine, the COVID-19 pandemic, which caused the active use of remote work (both in employment and in the field of applications).

The need for the development of online services will objectively demand from state authorities, local self-government bodies, budgetary and communal institutions not only to modernize the material and technical base for the fulfillment of their own and delegated powers, but also to actively implement infrastructure projects aimed at improving the communication infrastructure (laying of Internet networks, operation of servers, hosting companies, increasing the level of data security, etc.).

Rapid response to the needs and current requests of the population in the conditions of martial law has become an indicator of the effectiveness of cooperation between the authorities and citizens: the authorities promptly respond to today's challenges, safely, quickly, efficiently and transparently creating services and online services for citizens.

Conclusions

The analysis of regulatory legal acts regulating relevant social relations showed the existence of a multi-level model of legal support for the implementation of electronic governance, which combines legal norms of different legal force, which have found their external consolidation in acts of informational and administrative legislation, and also illustrates

the mutual influence and interaction of these industries rights in today's conditions.

Based on the assessment and comparison of the main trends in the development of the country's digital economy to solve the problems of the development of the information society, simplification, decentralization, deregulation, the development of institutional capacity and communication support should be attributed to the key achievements and digital opportunities of Ukraine in the direction of e-government.

Electronic governance mechanisms in the field of telecommunication networks (development of broadband subscriber access and telecommunication network systems; modernization and optimization of telecommunication infrastructure elements), e-commerce infrastructure and online interaction of business entities (electronic interaction system, e-commerce, road development map), digital skills and electronic document circulation (modernization of infrastructure equipment; digital educational resources, unified criteria for evaluating the quality of electronic documents, delimiting access to information by various means of protection) to create an effective public administration system using digital technologies.

In the conditions of the war on the territory of Ukraine, the formation of strategic goals for ensuring cyber security has become important, in particular, the formation of an effective model of relations in the field of cyber security, strengthening the capacity to combat cybercrime and international terrorism, the development of international cooperation, unification of approaches, methods and means of ensuring cyber security with established EU practices and NATO.

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European experience of preventive activities performed by law enforcement agencies: administrative aspect and theoretical-legal aspect

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Abstract

The aim of the research was to reveal the peculiarities of preventive activities carried out by law enforcement agencies in the countries of the European Union. Attention is paid to the known methods of preventive work carried out by the police of different countries, which make it possible to prevent crimes and arrest criminals when they are still preparing to commit a crime. In this regard, models of preventive activities used in continental European countries are described. The methodological basis of the research is presented in comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. In the conclusions attention is paid to the peculiarities of prevention applied by individual members of the European Union, in particular, the policy of prevention by the Polish police, in terms of recidivism of persons who have already committed crimes. This policy is developed by borrowing from the European experience, because in some countries the emphasis is on extending the powers of police officers, in others - on maximum interaction with the society involved to help implement some police functions.

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Experiencia europea de actividades preventivas realizadas por las agencias de aplicación de la ley: aspecto administrativo y aspecto teórico-jurídico

Resumen

El objetivo de la investigación fue revelar las peculiaridades de las actividades preventivas realizadas por las fuerzas del orden en los países de la Unión Europea. Se presta atención a los métodos conocidos de trabajo preventivo realizados por la policía de distintos países, que permiten prevenir delitos y detener a los delincuentes cuando todavía se están preparando para cometer un delito. En este sentido, se describen modelos de actividades preventivas que se utilizan en los países de Europa continental. La base metodológica de la investigación se presenta en el análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. En las conclusiones se presta atención a las peculiaridades de la prevención aplicada por miembros individuales de la Unión Europea, en particular, la política de prevención por parte de la policía polaca, en cuanto a la reincidencia de personas que ya han cometido delitos. Esta política se desarrolla tomando prestada la experiencia europea, porque en algunos países se hace hincapié en ampliar los poderes de los agentes de policía, en otros, en la máxima interacción con la sociedad involucrada para ayudar a implementar algunas funciones policiales.

Palabras clave: actividad preventiva; policía nacional; Unión Europea; fuerza de seguridad; aspectos teórico-jurídicos.

Introduction

The general situation of the legal order and the provision of public order affects the socio-economic development of the country. The guarantee of ensuring public safety and order should be implemented in the form of preventive activities performed by the police officers, whose main tasks are to ensure personal safety of people in the society, protect their rights and freedoms and property, expose persons guilty of illegal acts, and bring them to justice provided for by the law , as well as the application of forms and methods of crime prevention in order to eliminate factors and minimize the impact of conditions that contribute to their commission.

Increasing the level of protection of public order and ensuring public safety should be based on the principles of the supremacy of law, the work of police officers only for the purpose of protecting rights and freedoms of individuals, interests of citizens and the country, the unity of all law enforcement agencies of the state, active interaction with the population, provision of social and legal assistance to the society, etc. Thus, taking into account the above principles, it should be noted that the strategic direction of the reform of the National Police is to move away from the repressive model of activity in the law enforcement sphere and establish close cooperation with institutions of the civil society in implementation of preventive activities to correct illegal behavior of some citizens and eliminate factors that determine offenses.

That is why preventive activity of the National Police of Ukraine should take the first place in its activity. In view of these circumstances, it is necessary to get acquainted with the experience of a number of European countries on preventive measures used by the police authorities and to determine the possibilities of using this experience in Ukraine.

The purpose of the research is to develop a possibility of using the experience of the EU countries in the sphere of preventive activities in Ukraine.

1. Literature review

Preventive activities of the National Police are constantly in the field of view of both domestic and foreign researchers, which confirms their special relevance. V. Sulatskyi made an attempt to determine the essence of preventive activities and to outline their importance in activities performed by the National Police of Ukraine (Sulatskyi, 2021). I. Volokitenko studied normative principles of activities performed by units of the National Police carrying out preventive activities (Volokitenko, 2020). Bezpalova and other authors analyzed the main tasks and methods of activities performed by units of the National Police carrying out preventive activities (Bezpalova *et al.*, 2021).

Y. Lakiichuk devoted her research to analysis of the normative-legal component of the National Police of Ukraine in the sphere of prevention (Lakiichuk, 2019). Shubina (2020) defined the essence of preventive measures carried out by the National Police. The author also gives her own, author's definition of the "preventive measures" category. T. Kolinko and other authors comprehensively researched police activities, in particular, peculiarities of the National Police's implementation of preventive measures (Kolinko *et al.,* 2019). K. Shkarupa conducted a comprehensive study on peculiarities of preventive activities performed by the National Police of Ukraine (Shkarupa, 2019).

2. Materials and methods.

The following research methods were used in the process of performing the set tasks: with the help of the formal-logical method, the main concepts were studied and the analysis of normative legal acts in the sphere of prevention was carried out; the system-structural method was used to identify and analyze types of preventive activities; foreign experience in the sphere of preventive activity, which deserves attention, was analyzed using the comparative legal method; with the help of a formal legal method, appropriate proposals were prepared for the use of foreign experience of preventive activities in Ukraine.

3. Results and discussion

The fundamental principle in the successful activities of the National Police is represented as preventive activities, that is, work aimed at prevention of legal violations, because in any case it is easier to prevent than to remedy consequences of negative unlawful acts. Effective implementation of a relevant activity is positively reflected on the dynamics of the criminogenic situation in the state, and thus on the state of national security.

The concept of preventive activity of law-enforcement bodies is not interpreted unequivocally, which raises certain questions and requires additional scientific attention, just as the problem of interrelated functioning of administrative-legal mechanism and preventive activity of the National Police of Ukraine.

The Law of Ukraine “On the National Police” uses two similar concepts - “prophylaxis” and “prevention” (Law of Ukraine, 2015). Thus, among functions of police the Provision on the National Police mentions preventive and prophylactic activities aimed at preventing commission of offenses.

Solving the tasks of preventive activities facing the units of the National Police involves implementation of principles based on the recognition of universal human values, respect for rights and freedoms of an individual, setting them as a priority in relations with the state. According to the definition presented in the Academic Dictionary of the Ukrainian language the term “preventive” means “to prevent something, to avert something”, but the term “activity” means “to apply work to something”. Thus, preventive activity is a special type of activity performed by police officers, who in their work prevent commission of offenses in the sphere of public order and/or avert them.

As N. Didyk emphasizes that the meaning of the word prevention is warning, prevention of criminal offenses. In law, preventive measures are prophylactic and other measures aimed at preventing (averting) criminal offenses and other types of offenses. Legal science distinguishes such types of prevention as general prevention - aversion of the commission of offenses by other persons (this is prevention of commission of criminal offenses by citizens prone to committing illegal acts); private prevention, which means prevention (prophylaxis) of committing new criminal offenses by persons who have already committed any offense (Didyk, 2016).

Scientists interpret the concept of preventive activity in different ways. For example, some domestic researchers (Bezpalova *et al.,* 2021) believe that:

> Preventive activity is an action or a set of actions that limit certain rights and freedoms of a person, the use of which is not always connected with unlawful behavior of specific persons, that are applied according to the law to ensure fulfillment of powers imposed on the police with respect to the observance of the legal requirements (Bezpalova *et al*., 2021: 44).

Having analyzed various approaches to the definition of preventive activity, we agree with the interpretation offered by V. Sulatskyi, who understands preventive activity of the National Police of Ukraine as any act of a voluntary or forced nature or a set of such actions, provided by the current legislation of Ukraine, committed by authorized police officers before the beginning of an offense and directed at its prevention (Sulatskyi, 2021).

Speaking about the range of duties of the police, we claim that it includes not only fighting against crime, but also the exercising other powers in the sphere of social services for the population. The latter are, in fact, preventive in nature, since their main goal is to prevent possible violations of the law and provide assistance (for example, in the event of family conflicts, during natural disasters, fires, and in other emergency situations).

Taking into account transformational processes closely related to European integration taking place in Ukraine, it is necessary to investigate their orientation, essence, conditions, components and factors in relation to world processes including primarily European processes. Much attention should be paid to familiarization with achievements of world scientific idea, as well as to study and implementation of the best foreign experience and to its reasonable combination with domestic developments and traditions.

Currently, in the countries of the European Union, we can observe three models of internal security organization: a centralized or continental model, in which the Ministry of Internal Affairs plays a dominant role; it has a directive style of management and a rigid vertical subordination of lower links to central bodies; a decentralized model, the characteristic

feature of which is that it does not have one common national unit, instead there is a multifaceted nature of police forces at the national, regional and local levels, the levers of police force management are mainly concentrated in hands of regional state authorities and local self-governing authorities , where municipal authorities have a significant role in police management; and a combined (semi-centralized) model which is characterized by the following features: it is characterized by a nationwide body (ministry) that assumes responsibility for the purpose of ensuring internal security, coordinating activities of various police services; the co-existence of 57 state police services at the national (federal) level and the regional level (level of separate states, lands), as well as state and municipal police, with the priority of state police development.

The centralized model of the preventive activity system is used by a number of continental European countries and that is why it is called the continental model. This model of the internal security system functions in two types. The first type includes states that ensure their internal security only through the forces of their civilian police: Sweden, Denmark, Norway, Ireland, and Finland. They are characterized by a low level of crime, absence of serious political and social conflicts, so they do not need special political formations of the armed forces.

The countries of the second (main) type of the centralized model include states with constant use of special police formations - gendarmerie: France, Spain, Italy, Portugal, Belgium, Holland and Luxembourg. These countries are characterized not only by strict centralization of preventive activities of their law-enforcement bodies, but also by the traditional use of their national police and gendarmerie.

Until now, the EU states have borne the main responsibility for the issue of crime prevention. With the entry into force of the Lisbon Treaty of the EU, it has now become possible to take measures to promote and support the actions of the EU states in this area (Buha *et al.*, 2022).

The EU focuses on facilitating the exchange of experience and best practices to reduce the impact of factors that cause crime and its recurrence and promote violations of human rights violations, as well as to prevent corruption and criminal encroachment in the economic sector and the society. In addition, the EU has begun to systematically implement its flagship initiatives, effective prevention measures, ranging from anti-drug policy to cybercrime, human trafficking and child pornography (Leheza *et al.*, 2022).

Since 2001, the European Crime Prevention Network has offered a pan-European platform for the exchange of best practices, research and information on various aspects of local crime prevention. In view of the fact that this network covers all types of preventive activity of law enforcement

bodies, the platform pays special attention to prevention, violations of the law by minors, violations of public order and drug crimes. The web site contains a well-developed database of national strategic orientations and projects carried out in various areas of offense, such as burglary, commercial crime, bullying in educational institutions and various categories of organized crime.

The Swedish police use the concept of prevention, based on the focus of "advice" measures on prevention of certain categories of offenses. In a simple form, its official online resource offers the following advice: 1) tips for tourists; 2) tips for travelers on a day off; 3) advice to visitors; 4) rules of behavior on a construction site; 5) internal security (protection against burglary and penetration); 6) general security of premises and employees; 7) protection of lightning discharge systems; 8) transport protection; 9) credit card data protection; 10) production protection; 11) protection of finances; 12) protection of offices; 13) store protection; 14) protection in the sphere of state registration and conclusion of agreements (Leheza *et al.*, 2021).

It was also determined that the police will be able to work much more effectively if it is not reactive, but proactive: instead of responding exclusively to challenges, it will try to prevent violations and establish partnerships with the population. It was established that full-fledged communication helps to beforehand detect deterioration of the criminogenic situation in a certain region, to stop a large part of deviant behavior at the very beginning, and also to more effectively collect evidence and testimony, if the offense was anyway committed.

Italian specialists in the sphere of crime prevention distinguish the following approaches to crime prevention depending on what exactly they see as determinants of crimes: structural approach that connects implementation of effective crime prevention with implementation of significant socio-economic transformations in the society; psychological approach that recognizes the crucial preventive importance of influencing the person of a potential offender, as well as persons who have already committed an offense (in order to prevent repeated commission); situational approach, in which the decisive role is assigned to the influence of social and physical factors of the external environment, which in their totality create an unfavorable situation for criminal manifestations.

Law enforcement officers focus on prevention measures in the form of general prevention (structural approach) and theory, which justify the need for special preventive measures (psychological and situational approaches). The most effective programs are based on the multifactor approach; they are applied from the period of early childhood. They are aimed not so much at an individual (aggressive behavior, stress, coping skills), but at unfavorable characteristics of the respective immediate family environment and social environment (Leheza *et al.*, 2020).

In turn, Polish law enforcement officers emphasize special preventive measures. The special prevention covers three levels:

- The primary level, aimed at eliminating environmental factors that contribute to performing offenses.
- The secondary level, which aims to prevent the criminalization of potential offenders, and which is related to the impact on vulnerable persons, in particular minors from the “risk group”.
- The tertiary level, aimed at preventing recidivism on the part of persons who have already committed a crime (Buha *et al.*, 2022).

The Polish police’s prevention of recidivism on the part of persons who have already committed offenses is quite progressive. Prevention of recidivism is associated with the use of police, judicial and penitentiary measures aimed at timely identification of persons who have committed offenses, bringing them to justice, as well as applying effective means to them while they serve their sentence.

Criminal law measures of influence play an important role in the prevention of repeated commission of crimes. In order to prevent repeated commission of crimes, measures of enhanced control over the behavior of persons who have been released from punishment, as well as individual rehabilitation programs (Leheza *et al.,* 2022) are also actively used.

The most programs are comprehensive; they cover educational, observational and corrective measures of influence on socially unacceptable, in particular criminal, behavior of a person.

Germany focused its work on situational prevention. The essence of this method consists in organization of state support for propaganda campaigns on crime prevention, consideration of projects in the sphere of urban planning and buildings to create an environment free from crime, as well as in focusing efforts on identifying and preventing opportunities for committing crimes by young people, and in recent years - in putting pressure on business and industry circles in order to make changes in practice, if they can affect the increase in the level of crime. Currently, in France, the Netherlands and some other countries of the European Union, this form of prevention is a part of the official crime prevention policy (Leheza *et al.,* 2021).

The abovementioned programs are aimed at preventing crimes in the society by means of involving the public in this activity, finding new opportunities for self-realization for people from “risk groups”. These programs are exclusively preventive, so they provide the expected results only if all the subjects of prevention are actively involved (Leheza *et al.,* 2018).

The principles of public safety and order protection, which are formed by the state, are a rather complex process aimed at updating and improving domestic legislation and implementing foreign experience in the sphere of organization of means, tools and methods of activities used and performed by the National Police. The modern model of a democratic, social and legal state requires new conceptual approaches to solving problems of implementing the law enforcement function. Therefore, it is extremely important to summarize the experience of the European Union countries in the management of national law enforcement units (Leheza *et al.,* 2022).

Unlike European countries, in Ukraine there is an urgent need for the timely elimination of criminogenic factors in the external environment, as well as for creation of anti-criminogenic conditions, in the presence of which an offender is going to abandon his/her intention to commit an offense; these are namely conditions that will make it more difficult to commit an offense, make criminal actions riskier and limit benefits (Didyk, 2016).

Conclusions

The study of peculiarities of preventive activities in a number of countries of the European Union allows us to assert that there is no single approach to implementation of these activities in these countries. That is why it is not quite correct to borrow one or another type of preventive activity from one of the European Union countries, arguing for it by borrowing European experience, because in some countries the emphasis is made on expanding powers of police officers and in some others - on maximum interaction with the society by means of involving it in helping to implement some police functions, and in the third group of countries, in fact, neither a general concept nor prevention as one of the forms of police activity has been formulated.

In this regard, experience of a single country cannot be taken as a basis for implementation within national realities.

At the same time, we should not refuse to borrow European experience of carrying out preventive activities. In particular, it will be useful for the national preventive system to introduce rehabilitation programs for persons who have served their sentences, taking into account the fact that most programs are complex, they provide for educational, observational and corrective measures to influence socially unacceptable, in particular criminal, behavior of a person.

Therefore, we focus on the implementation of the experience of the European Union countries in the sphere of social crime prevention measures that actively involve the public. Crime in the EU is perceived as a social

problem, in the solution of which the whole society should participate. Among the tasks facing social prevention, priority should be given to the following ones: improving social conditions of life; strengthening the role of social institutions; expanding opportunities for education, decent employment and recreation.

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Information terrorism as a threat to the global security system of the 21st century

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Abstract

The purpose of the research is information terrorism as a threat to the global security system of the 21st century. The problem of combating information terrorism requires the analysis of the structure of terrorism itself as a phenomenon that has come a long way of evolution from lone suicide bombers, to huge terrorist organizations that commit destructive acts and cause the death of a large number of people, also using the dissemination of information to intimidate a significant number of people. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. It is concluded that, one of the main threats to information security is presented by computer terrorism as a form of destructive influence aimed at manipulating or intimidating the population or causing harm to the society, the state or individuals with the use of information technologies and with the purpose of forcing the authorities, an international organization, a natural or legal person (group of persons) to commit a certain action (or refrain from committing it).

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El terrorismo informativo como amenaza para el sistema de seguridad global del siglo XXI

Resumen

El propósito de la investigación es el terrorismo de información como una amenaza para el sistema de seguridad global del siglo XXI. El problema de combatir el terrorismo de la información requiere el análisis de la estructura del terrorismo en sí mismo como un fenómeno que ha recorrido un largo camino de evolución desde terroristas suicidas solitarios, hasta enormes organizaciones terroristas que cometen actos destructivos y provocan la muerte de un gran número de personas, usando también la divulgación de información para intimidar a un número significativo de personas. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se concluye que, una de las principales amenazas a la seguridad de la información la presenta el terrorismo informático como una forma de influencia destructiva dirigida a manipular o intimidar a la población o causar daño a la sociedad, al Estado o a los individuos con el uso de las tecnologías de la información y con el propósito de obligar a las autoridades, una organización internacional, una persona física o jurídica (grupo de personas) para cometer una determinada acción (o abstenerse de cometerla).

Palabras clave: terrorismo; sistema de seguridad global; tecnologías de la información; terrorismo de la información; actividad política.

Introduction

The rapid development of information technologies, the scale of applying global telecommunication networks and the process of building an information society have caused new threats in the information sphere; and one of such threats consists in the use of emerging opportunities for terrorist activities that harm vital interests of individuals, the society and the state. In such conditions, the level of information terrorism threat in the information space is growing rapidly.

No doubt that today the Internet has made it difficult to protect information resources. Terrorist groups and individual terrorists all over the world use its features and advantages, trying to influence both the internal and foreign policies of states, using various information technologies to achieve their criminal goals. In the legal literature, it is indicated that availability of information technologies significantly increases risks of information terrorism, and the development of the information infrastructure of the society contributes to creation of additional risks of information terrorism, which in the modern conditions of globalization and internationalization acquires extremely destructive significance.

The problem of combating information terrorism requires analysis of various crisis phenomena and the structure of terrorism itself as a phenomenon that has gone a long way of evolution from lone suicide bombers to huge terrorist organizations committing acts of terrorism and entailing death of a large number of people and to the use of information for intimidating significant numbers of people. Therefore, research of the phenomenon of information terrorism in the context of information security is an important issue of the national security. Information terrorism gives rise to new phenomena that are researched by modern scientists (Filinovych, 2021).

1. Literature review

Despite numerous publications devoted to various aspects of the information terrorism phenomenon, this problem has not yet received proper scientific understanding among scientists and specialists. There is no unity of approaches to understanding this phenomenon. There is still no unified interpretation in the doctrine of information law. Some domestic authors make quite successful attempts to investigate the issue of legal provision of information security (Kuniev, 2021).

If we analyze foreign sources, we can conclude that there are several points of view regarding the problem.

One of them boils down to the fact that "information terrorism" is a sphere of negative influence on individuals, the society and the state with the help of all types of information with the aim of weakening or overthrowing the constitutional order, and that it is a form of negative influence through the use of information and communication technologies (Hlotyna, 2014).

Information terrorism is often viewed exclusively within the intellectual sphere, as one of the most promising types of terrorism that operates in the intellectual sphere and gives rise to a new type of cyberspace-related violence that can be directed against anyone, and its success is ensured not by brute force, but by neurons.

According to another point of view, information terrorism consists in intimidation of the society through the use of high technologies for the purpose of achieving political, religious or ideological goals, as well as in actions leading to disconnection, disabling of critical infrastructure objects or destruction of information (Tafoya, 2011). Such actions may include the use of information technology to organize and execute attacks against telecommunications networks, information systems and communication infrastructure.

A significant contribution to the research of information terrorism as a means of introducing information war was made by foreign scientists. Works by J. Baudrillard, W. Laqueur (1996) A. Toffler (Tafoya, 2011), B. Hofmann, A. Schmidt and others should be pointed out. Analysis of scientific literature shows that most foreign researchers share the point of view that information terrorism is a variety of terrorist activities related to achievements in the sphere of information technologies.

At the same time, there are differences of views among scientists regarding forms and types of information terrorism. There is also a lack of a comprehensive approach to determining the place of information terrorism in the system of threats to the state's national security.

2. Materials and methods

The research is based on the work of foreign and Ukrainian researchers on methodological approaches of understanding principles of law in the contexts of modern globalization transformations.

With the help of the gnoseological method, the essence of methodological approaches to understanding information terrorism as a threat to the global security system was clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, and the essence of the concepts of information terrorism as a threat to the global security system was determined. Components of methodological approaches of understanding and information terrorism as a threat to the global security system were investigated by means using the system-structural method.

The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding information terrorism as a threat to the global security system.

3. Results and discussion

Ukrainian researchers and experts also recognize seriousness of danger caused by information terrorism.

So, V.O. Korshunov proposes to understand information terrorism as a new type of terrorist activity focused on the use of various forms and methods of temporary or irreversible disabling the information infrastructure of the state or its separate elements, as well as on the illegal use of the information structure to create conditions that entail grave consequences for various aspects of the life of individuals, the society and the state (Korshunov, 2008).

Law enforcement bodies are obliged to counter threats of information terrorism within their competence. According to K.S. Herasimenko, the main threats in the sphere of information terrorism are mainly created by foreign states, international terrorist organizations and other criminal groups and organizations that take advantage of underdevelopment and weakness of the relevant state structures. Therefore, it is not by chance that there is an opinion that modern information terrorism is characterized as a set of information wars and special operations related to national or transnational criminal structures and special services of foreign states (Herasymenko, 2009).

The Ukrainian legislation does not contain a definition of information terrorism. The Law of Ukraine "On Combating Terrorism" contains the concept of "technological terrorism", which does not coincide with the definition of "information terrorism", and the Law of Ukraine "On the Basic Principles of Ensuring Cyber Security of Ukraine" contains a definition of "cyber terrorism", which can be recognized as only one of the varieties of information terrorism, which is discussed below.

Note that the definition of information terrorism is not included in international legal acts such as the Council of Europe Convention on the Prevention of Terrorism (2005), the Convention on Cybercrime (2001).

Generalization of information received from various scientific sources gives grounds to conclude that information terrorism is a doctrinal concept of information security theory which should be understood as follows:

1. a socially dangerous act that is a manifestation of terrorism;
2. a form of destructive informational and psychological influence on individuals, society and the state;
3. dangerous acts of informational influence on social groups of persons, state authorities and management authorities, related to the dissemination of information containing threats of persecution, massacre, murder, as well as distortion of objective information which causes emergence of crisis situations in the state, instilling fear and tension in the society;
4. a certain violent propagandistic influence on a person's psyche, which does not give him/her an opportunity to critically evaluate the information received;

5. a new type of terrorist activity focused on the use of various forms and methods of temporary or irreversible disabling the information infrastructure of the state or its separate elements, as well as on illegal use of the information structure to create conditions that entail serious consequences for various aspects of life of individuals, society and the state (Korshunov, 2008);
6. a number of information wars and information special operations related to national or transnational criminal structures and special services of foreign countries (Herasymenko, 2009);
7. fusion of physical violence with criminal use of information systems, as well as intentional abuse of digital information systems, networks or their components with the aim of facilitating implementation of terrorist operations or actions (Post, 2000);
8. an ideologically based practice of influence aimed at intimidation of the population for decision-making or action (inaction) performed by a government body, a local self-government body, an international organization, a social group, a legal entity or a natural person within the information space related to the use of information, information technologies and/or information resources.

Traditionally, depending on the orientation, two types of information terrorism can be conventionally distinguished: 1) "psychological" one (propaganda of terrorism, creating an atmosphere of fear and panic in society, etc.); 2) "technical" one (control or blocking of mass information transmission channels, disruption of information infrastructure facilities, etc.).

Depending on the criminal goal and the use of tools (means) to achieve it, information terrorism can also be divided into two types: media terrorism and cyberterrorism.

Media terrorism presupposes abuse of information systems, networks, and their components for carrying out terrorist activities (propaganda and dissemination of the terrorism ideology, promotion of terrorist acts). The means of media terrorism include print mass media, broadcast and cable mass media networks, the Internet, e-mail, spam, etc. (Bank, 2016).

Cyber terrorism is a deliberate, politically motivated attack on the objects of the information space; it causes a danger to life and/or health of people or occurrence of other serious consequences, if such actions were carried out with the aim of violating state or public security, intimidating population, provoking a military conflict or a threat of committing such actions. Politically motivated attacks that cause serious damage, such as severe economic hardship or long-term power and water outages, can also be characterized as cyberterrorism.

The Law of Ukraine "On the Basic Principles of Cybersecurity of Ukraine" defines cyberterrorism as terrorist activity carried out in cyberspace or with its use (Art. 1). Cyberterrorism is a serious socio-political threat to humanity, compared even to nuclear, bacteriological and chemical weapons, and the extent of this threat due to its novelty is not yet fully understood (Bank, 2016). Certain cyber security experts predict that "new terrorists" will direct their efforts to master information weapons with destructive power many times greater than that of biological and chemical weapons (Laqueur, 1996).

World experience shows the indisputable vulnerability of any state, especially since cyber terrorism has no state borders; a cyberterrorist is able to equally threaten information systems located almost anywhere on the globe by using special software designed for unauthorized penetration into computer networks and organizing a remote cyber-attack on the victim's information resources.

The main form of cyberterrorism is information attack by criminal groups or individuals on computer information, computer systems, data transmission equipment, other components of information infrastructure. The consequence of such an attack is penetration into the information and telecommunications network or communication infrastructure, interception of control, suppression of means of network information exchange and implementation of other destructive actions.

Forms and manifestations of information terrorism should be taken into account when determining the status of threats caused by information terrorism but unfortunately not listed in the current legislation of Ukraine (Leheza *et al.*, 2022).

In order to determine such threats, first of all, the essence of the "threat" concept should be clarified. The concept of "threat" should be understood as phenomena and factors that negatively affect or may affect a certain object or pose a danger of violating interests of certain subjects (Tykhonova, 2015).

In accordance with clause 6 Art. 1 of the Law of Ukraine "On the National Security of Ukraine", threats to the national security of Ukraine should be understood as phenomena, trends and factors that make it impossible or difficult or may make impossible or difficult to implement national interests and preserve national values of Ukraine. Literature sources represent various approaches to identification of threats to national security depending on the object of influence.

In particular, one of threats to the national security of a state is called "cyber-threat" as an objective existing possibility of committing cybercrimes resulting in negative consequences for the vital interests of the state in both real and virtual environments (Shelomentsev, 2010). In our opinion, threats in the information sphere should be considered as factors that harm

information security of the state. In the draft Concept of the Information Security of Ukraine, threats of an informational nature are defined as existing or potentially possible phenomena and factors that pose a danger to vital interests of individuals and citizens, the society and the state in the information sphere.

Major threats to national security in the information sphere include the following: creation, distribution of information for the purpose of supporting, accompanying or intensifying terrorist activities (subpar. "d" par. 3 Art. 8); manifestations of cybercrime, cyberterrorism (subpar. "b" par. 4 Art. 8).

According to the National Security Strategy of Ukraine the main task of cyber security system development is to guarantee cyber stability and cyber security of the national information infrastructure, in particular in the conditions of digital transformation (par. 52), and priority tasks of law enforcement, special, intelligence and other state bodies include active and effective countermeasures against intelligence and subversive activities, prevention of terrorism, special information operations and cyber-attacks. The Strategy mentions spread of international terrorism in cyberspace as a threat to the national security of Ukraine (Leheza *et al.*, 2022).

The information security doctrine does not mention the threat of information terrorism. Among the current threats to information security only special information operations, information expansion, and information dominance are mentioned, although their content of only partially reproduces the concept of information terrorism (Leheza *et al.*, 2020).

Obviously, threats of information terrorism should be reflected in the Information Security Strategy of Ukraine, which is provided for by the National Security Strategy of Ukraine (par. 66). This Strategy will determine principles of ensuring information security of Ukraine, countering threats to national security in the information sphere, protecting rights of individuals to information and protecting personal data.

Its purpose is to ensure information security of Ukraine aimed at protecting vital interests of citizens, the society and the state in countering internal and external threats, ensuring protection of the state sovereignty and territorial integrity of Ukraine. Opposition to disinformation, manipulative information, information operations and attacks, including those aimed at committing terrorist acts are defined as a strategic goal № 1 of this Strategy (Leheza *et al.*, 2022).

In order to successfully address these threats, a number of key areas should be identified:

- unification and harmonization of national legislation and international acts;

- carrying out scientific developments in the sphere of creating modern technologies for detection and prevention of criminal and terrorist influences on information resources;
- creation of specialized subdivisions in the sphere of fighting computer crimes and computer terrorism;
- improvement of international organizational and legal cooperation on countering computer crime and computer terrorism;
- improvement of multilevel system of personnel training in the sphere of information security (Havrysh, 2009).

Conclusions

In our opinion, one of the main threats to information security in the Information Security Strategy of Ukraine is presented by information terrorism as a form of destructive influence aimed at manipulation or intimidation of population or causing harm to the society, the state or individuals with the use of information technologies for the purpose of forcing the state authorities, an international organization, a legal or physical person (group of persons) to commit a certain action (or refrain from committing it).

Tasks, main principles and directions for improving the state-wide system of combating terrorism in view of modern terrorist threats to the national security of Ukraine and the forecast of their development are determined by the Concept of Combating Terrorism in Ukraine; directions of implementation of this Concept include: identification and analysis of causes and conditions that lead to spread of terrorism; improvement of the legal and organizational framework for combating terrorism; improvement of existing methods as well as development and implementation of new methods for combating terrorism; optimization of ways and methods for protection of life and security, rights and freedoms of people and citizens, protection of interests of the society and the state against terrorist attacks; improvement of informational, scientific, personnel and material-technical support of subjects fighting against terrorism. Information space and its components are identified as objects of possible terrorist attacks.

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Peculiarities of the use of political mediation in the Russian-Ukrainian war: principles of application and problems of solution

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Abstract

The aim of the article was to investigate the principles of the implementation of diplomatic policy and the problems of the Russian-Ukrainian war settlement by applying the method of mediation. The work is based on the use of both special methods of political research and general scientific methods (analysis, synthesis, induction, deduction). With the help of a prognostic method, an attempt was made to characterize the short-term results of the introduction of political mediation in the ongoing Russian-Ukrainian war. The results showed that mediation is a special negotiation technology for resolving political conflicts. The key tasks of mediation in political conflict resolution are neutralization of negative consequences of the confrontation, search for dissonance between the parties and development of a strategy for further actions, etc. It is concluded that, at this stage of the war, political mediation to resolve the problems is possible only due to the military failures of the Russian side and the Ukrainian collaborators supported by it.

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Peculiaridades del uso de la mediación política en la guerra ruso-ucraniana: principios de aplicación y problemas de solución

Resumen

El objetivo del artículo fue investigar los principios de la aplicación de la política diplomática y los problemas de la resolución de la guerra ruso-ucraniana mediante la aplicación del método de la mediación. El trabajo se basa en el uso tanto de métodos especiales de investigación política como de métodos científicos generales (análisis, síntesis, inducción, deducción). Con la ayuda de un método de pronóstico, se intentó caracterizar los resultados a corto plazo de la introducción de los medios políticos en la guerra ruso-ucraniana en curso. Los resultados mostraron que la mediación es una tecnología especial de negociación para resolver conflictos políticos. Las tareas clave de la mediación en la resolución de conflictos políticos son la neutralización de las consecuencias negativas de la confrontación, la búsqueda de disonancias entre las partes y el desarrollo de una estrategia para acciones futuras, etc. Se concluye que, en esta fase de la guerra, la mediación política para resolver los problemas sólo es posible debido a los fracasos militares de la parte rusa y de los colaboradores ucranianos apoyados por ella.

Palabras clave: guerra ruso-ucraniana; mediación política; resolución de conflictos; geopolítica; teoría política aplicada.

Introduction

The information society poses new challenges related to the rapid dissemination and assimilation of various information. In some places, it is not possible to absorb such a massive amount of information. This opens ways for different uses of information. The Russian-Ukrainian hybrid significantly updated this problem and demonstrated that information can be an effective weapon capable of paralyzing the will of society. At the same time, in modern conditions, the regulation of war may be possible through the prism of the mediation process.

Note that mediation in its modern form emerged in the United States in the mid-twentieth century, at which time the American legal system was oriented to ensuring that political disputes were predominantly resolved voluntarily. At the same time, although the mentioned phenomenon has been known for a long time, it has not been studied in detail based on political science. Studies of the term "mediation" in political publications are markedly different and mostly reflect only one side of a broad mediation (Kyselova, 2017).

This only makes our research more relevant. Additional relevance results from the fact that the study of this phenomenon began relatively recently, while at the same time the media (including using the possibility of the Internet) are finding more and more new ways to mediate.

1. Materials and methods

This study is built on the use of both general scientific and special political research methods. The article is formed based on the use of general logical research methods. In particular, analysis, synthesis, induction, and deduction are used in the work. The method of analysis implies dividing the subject of research into two parts to study them in depth.

In particular, our study is divided into the following issues: characterization of the term mediation, the study of the development of the Russian-Ukrainian war, analysis of the peculiarities of the use of the phenomenon of mediation in this war, etc. At the same time, with the help of synthesis, there is a holistic study of the previously highlighted parts. As a result of using the axiomatic method of research, it was possible to move from general scientific statements to specific practical conclusions. This method was used in the study of the development of mediation in Ukraine from 2014 to the present.

At the same time, with the help of the predictive method, an attempt was made to characterize the approximate results of the introduction of political mediation in the Russian-Ukrainian war, which is ongoing. It should be noted that these predictions are not used definitively, since it is difficult to collect authentic information about the subsequent stages of the spread of this war. Based on the method of modeling it was possible to present a set of "ideal" circumstances in which a political solution to end the Russian-Ukrainian war using mediation is possible. The study is also built on the use of special political research methods.

The structural-functional method of research is based on the analysis of society as a system of integrated parts seeking stability based on the choice of a particular system of values. Consequently, the state of functioning of

political mediation, as well as trends in its development can be investigated through the analysis of values. In this case, we note that from the position of the structural-functional method the system of values contributes to the stability of society, then from the position of conflictology – this system leads to the formation of effective mechanisms for resolving various conflicts.

Other interdisciplinary methods, in particular, retrospective, synchronous, comparative methods of research, which serve as auxiliary methods for the study of the problem of using political mediation in the Russian-Ukrainian war, were also used in the work.

2. Literature Review

The study is based on an analysis of current political literature. In particular, Park (2019) has characterized the functions of mediation in addressing major political challenges. The study examines how the use of news media can be used as a mediative tool. Piumatti *et al*, (2017) investigated the impact of the phenomenon of mediation on political interest. The problem of mediation has also been studied by Ukrainian scholars. For example, Kyselova (2017) investigated the phenomenon of mediation in Ukraine. Her work analyzes the key challenges for the institutionalization of this process in Ukraine before and after 2014.

The researcher concludes that the low demand for mediation (as well as its slow development) in Ukraine is caused by social and legal factors such as general political instability and corrupt courts. Kyselova (2017) notes that a lack of resources, political uncertainty, and inadequate judicial interest have allowed the grassroots mediation community time to independently consolidate and learn mediation lessons from other jurisdictions. At the same time, although the current Russian-Ukrainian war in eastern Ukraine has exacerbated political instability, it has still drawn international attention to the phenomenon of mediation in Ukraine (Kyselova, 2017).

In addition, the study is based on the use of modern professional literature on the Russian-Ukrainian war. For example, Kuzio (2021) analyzed the development of the Russian-Ukrainian war based on the analysis of contemporary political discourse in Ukraine. The work of Bînă and Dragomir (2020) is important for this study. These scholars have characterized directly the development of the Russian-Ukrainian information war, considered the peculiarities of its dissemination, and the main directions of its likely promotion.

At the same time, they also characterized the key propaganda mechanisms used by Russian mass media (Bînă and Dragomir, 2020). For this gender, theoretical works that have investigated the peculiarities of hybrid warfare

are also important. Note that the information component is an important part of hybrid wars. Manolea (2021) explained the term hybrid warfare and characterized the main aspects of modern Russian-Ukrainian warfare.

Consequently, the problem of the Russian-Ukrainian war is popular among modern scholars. However, the problem of the mediative component of this war and the definition of its prognostic development based on the use of mediation technology remains understudied.

3. Results

3.1. The Russian-Ukrainian war: a brief excursus to the problem

The Russian-Ukrainian war, which began in 2014, is the use of armed force by Russia against the territorial integrity and independence of Ukraine. It began with the Russian invasion of Crimea (February – March 2014). Later, the aggressor country occupied the peninsula. The next phase of the war began with Russia's invasion of Eastern Ukraine (April 2014). Its characteristic feature was the creation of terrorist Luhansk and Donetsk "people's" republics. The situation in February 2014 confirmed that Russia's strategies had some success (Johnson, 2022).

In particular, Ukrainian society and government after the 2014 Euromaidan and the escape of President Yanukovych was somewhat scattered and disorganized. Due to this situation, military force, and information propaganda of the "Russian world", the Russians managed to quickly seize the Crimean Peninsula. Through a fictitious referendum, the annexation of the territory was formalized (Ghilès, 2022).

It should be noted that due to the coordinated actions of the Ukrainian military, society, and government, they were still able to stop Russian troops in the Donbas region. Although such powerful cities as Donetsk and Luhansk were occupied, many settlements in these regions remained under Ukrainian control (Johnson, 2022). For Ukraine, the reaction of other countries to Russia's actions was significant: international sanctions were introduced against the aggressor country.

The ceasefire between the parties established in 2015 lasted until February 2022. After February 24, 2022, Russia began an active offensive on Ukrainian territories, using terrorist methods of warfare, the destruction of residential buildings, and the killing of civilians by the Russian military (Martz, 2022). All these actions are prohibited by international law. However, as practice shows, Russia does not pay attention to the adopted international legal conventions and resolutions (Ishchuk, 2022). While in 2021, 7% of Ukrainian territories were under Russian occupation, as

of 2022, the occupied area increased by 2.9 times. Thus, Crimea, parts of Donetsk, Luhansk, Kherson, Kharkiv, and Zaporizhzhia regions became occupied. It should be noted that in March 2022, the Ukrainian military liberated Kyiv, Sumy, Chernihiv, and Zhytomyr regions.

4. Mediation: Toward a Theoretical Rationale

Mediation is a special negotiation technique for resolving political conflict. It does not take place within the framework of regulation, basically, it acts as a set of special techniques, skills, and abilities. Modern researchers note that it emerged in the U.S. in the 20s-30s of the twentieth century (Park, 2019). Later in the 1960s, the modern concept of mediation was formed in the United States. Note that those times were marked by active protests against the Vietnam War and the movement for human rights and freedoms.

Yes, the ideas of these phenomena influenced the fact that all sorts of alternatives to the typical legal systems began to be introduced. In particular, the Community Relations Service (CRS), established in 1969 under the U.S. Department of Justice, has been notable. This institution helped to resolve conflicts of various kinds: national, racist conflicts through mediation and various negotiations. At the same time, in European countries, in particular, in France, Germany, Great Britain, the theory of mediation began to be introduced only in the late 1980s (Kobetska and Romanko, 2017).

Consequently, given the above-mentioned facts, we note that the resolution of contemporary political conflicts contains some characteristic processes:

1. Acknowledgement by the parties to the conflict (or purely by the mediator) that there is political discord, conflict, or war.
2. Mutual agreement to regulate the situation and finding effective ways to do so
3. Finding out the causes of the war and identifying a possible mediator
4. The possibility of third-party intervention (in particular, international organizations such as the EU, OSCE, or UN, etc.).

At the same time, based on the conflict logical theory the structural content of war includes the subjects of the collision (the parties) and the subject of the collision - what the contradiction between the parties is based on. At the same time, the development of such a situation usually includes three stages:

1. Latent (hidden) - preparation for war.

2. The stage of open confrontation started by one subject with methods of using violence against the other side.

3. The stage of regulation of the situation, realized during the period of interruption of interaction or the period of full understanding and perception of this clash. Note that the resolution of political conflicts consists of several periods in which the subjects of the precondition of the confrontation must recognize that there is a conflict between them and agree to resolve the situation (Morris, 2017). For this purpose, it is possible to involve a third party for the purpose of mediation.

The main objectives of political conflict mediation are: 1. Neutralizing the negative consequences of the confrontation. 2. Search for dissonance between the parties. 3. Developing a strategy for future action. It is a project that the parties to the political conflict should accept as the main basis. 4. Preparing the parties to accept responsibility for future decisions in the political arena. 5. Formation of a favorable model for the future resolution of this clash. Obviously, political mediation acts as a multi-level technology for resolving political conflicts. At the same time, it takes place at several levels: regional, national and international.

Consequently, mediation as a political practice is aimed at resolving disputes, conflicts, disputes based on communicative and dialogic tools. We believe that it should be introduced permanently at the regional level, taking into account the goal of stabilizing a certain political situation. However, we believe that mediation is effective when: 1. when the parties to the conflict have found a common vision of the solution to the problem; however, external control by international organizations is needed. 2. when the parties have a different understanding of political and legal norms. 3. Mediation has a result when it is used to solve latent ethnic, political conflicts (Park, 2019).

It should be noted that in the history of mediation, cases of successful mediation are quite frequent. Moreover, mediation was used without much emphasis on methodology, i.e., mediation in negotiations was considered quite practical (Piumatti *et al*., 2017). For example, the principles of mediation and peacemaking have been used since the Crusades (Mereniuk and Parshyn, 2021). At the same time, it is known that in the twelfth century the Republic of Venice mediated the conflict between the Holy Roman Emperor Frederick Barbarossa and Pope Alexander III.

Venice not only provided its neutral territory for negotiations, guaranteeing immunity to the delegations of its adversaries but also had a hand in the formation of the agreed text of the peace treaty. In fact, the role of mediators was repeatedly mentioned in the official document. Another example of the use of mediation as a method of dispute resolution at the international level was the creation of the Hanseatic League.

In particular, individual Hanseatic structures (e.g., the "Steel Court" in London) were kind of mediators in resolving trade disputes between English and German merchants. Lübeck, as the presiding city of the Hanseatic League, had the goal of deepening diplomatic efforts towards ending conflicts and disputes between members of the trade organization. His powers, however, were never recognized. In more recent history, the 1978 Camp David Peace Accords between Israel and Egypt, mediated by the United States, should be mentioned. Note that the Egyptian leader, A. Sadat, took the initiative himself at the time to conclude a peace treaty with official Tel Aviv. No other Arab country joined in this move.

5. Mediation in the Russian-Ukrainian War: Problems of Settlement

The Russian-Ukrainian confrontation is difficult to resolve using the method of political mediation. In particular, the situation is complicated by the presence of so-called "gray zones" - the unrecognized Donetsk and Luhansk People's Republics, which formally emphasize their independence but are in fact controlled by the Russian Federation (Materniak, 2020). As of today, even the legal definition of the "gray zone" has not been definitively established, so it is problematic to use it legally.

Studies on the creation of a more detailed concept are still underway, although Ukrainian and Russian legal thought is on the margins of this process, the main stages of the development of terminology take place in European and American political science. Scientific interest in this issue is connected with the fact that the wording "gray zone" constantly appears in the strategic assessments of the intelligence services of the United States of America.

It should be noted that the "gray zone" is more conceptual than a geographical concept.

That is, modern experts in international relations and military affairs use the term "gray zone" primarily when describing the situation during the manifestations of hybrid warfare or other conflicts, inherently close to this type of confrontation (Mbah, 2022). Together with the "gray zone," the following concepts are often used: "active measures," "new generation war," "political war," etc. The term "gray zone" itself is based on a special understanding of gray. The essence of this phenomenon is that the actions of one state are recognized in the conflict as "white", and its opponents - as "black".

It is also conventionally possible to designate territories in which their power is strong. At the same time, those areas that are outside the control of

both forces or are partially controlled with varying success by both enemy sides at once, are recognized as "gray".

As defined by American military experts, a "gray zone" refers to a territory for which the political and military situation is inherently ambiguous, that is, these lands are neither theaters of military operations nor entirely peaceful territory.

The concept of "gray zone" was introduced to the masses of political analysts and experts by the leaders of the US special operations forces in Congress during the report. Symptomatically, it referred to the new challenges to the world community posed by the aggressive and controversial actions of the Islamic State and the Russian Federation. The speech noted that the capabilities of American military power and diplomacy must be strengthened to meet today's challenges.

Specifically, the speech focused on the ability to adequately manage conflicts outside of the established peace-or-war matrix. According to U.S. military analysts, the "gray zone" is characterized by intense political, economic, informational, and military competition. It is very fierce but has not yet escalated into overt military clashes. Conflicts of this kind create additional problems in solving them because the legal framework of international relations does not allow bringing to justice the real perpetrators of potential military actions (Manolea, 2021).

The Russian trace in the creation of collaborative "governments" in Donetsk and Luhansk is evident, but the resolution of this situation through mediation is unlikely. It is obvious that the Russian side will press the Donetsk and Lugansk card to the end, trying to resolve the conflict by force. It is also noticeable that the main goals of the Russian so-called "special military operations" have not yet been achieved. Consequently, expectations of a peaceful dialogue should be rejected for the moment.

At the same time, this does not mean that attempts at negotiations involving third parties must be abandoned altogether. Mediation during the Russo-Ukrainian war had certain promising directions. In particular, quite a few representatives of European politicians visited Kyiv. Some of them (e.g., French President Emmanuel Macron) were also actively negotiating with Russian President Putin. Although the effectiveness of such a dialogue remains problematic, attempts to reach an agreement, attempts to resolve certain issues (even regarding the withdrawal of Ukrainian troops from Azovstal in Mariupol) are worthy of respect.

Obviously, such attempts will continue, but not always with positive results. Political mediation has also had some success regarding the establishment of prisoner exchanges. Although such information to date is mostly classified, it can be assumed that the exchange of some Azovstal defenders for Russian prisoners of war also took place with the mediation of a third party.

We should also note that the opening of humanitarian corridors and care for Ukrainians deported to Russia is also the responsibility of international organizations, in particular the Red Cross. Although there are many questions and criticisms of the work of this structure among Ukrainians (for example, regarding the opening of an office in Rostov-on-Don, Russia), it is still necessary to recognize that sometimes political compromises have to be made to work with authoritarian regimes. Helping Ukrainians in Russia is also an example of the implementation of mediation principles in the Russian-Ukrainian war.

6. Discussion

The lack of effectiveness of political dialogue in the conditions of an open military clash or a genuine political conflict, the replacement of productive discussion by quasi-talks and shows lead to the unresolved basic issues and deepening of the already existing crisis, the unfolding of its political, social, economic consequences.

The development of the crisis of diplomatic relations first of all results in the stopping of functioning of institutes of international law or their ineffective work, and also in the breaking of established ties, in the destruction of norms and rules of political life, in the deepening of instability in the East of Europe.

Note that mediation and harmonization are related ways of influencing the international political environment, which are also combined at the level of politics and art. It has been repeatedly pointed out that politics and art are used together in communicating socially significant information. As far back as A. Pecked in his reflections on the art of negotiation, written in the 18th century, noted the peculiarities of diplomatic negotiations.

He believed that society should be taught the negotiation process as an alternative to military action. This was to foster a culture of political negotiation and communication in general.

The art of mediation is not only the skill of diplomatic negotiation or dialogue at the international level.

It is also a process of processing the terms of certain discursive practices between the parties to a military confrontation, whereby the interstate confrontation is successfully resolved, the final agreement to end the conflict is not imposed by either side of the war or by third countries but is the result of voluntary equal discussion and the development of a common strategy of action. Above all, the effectiveness of mediation is especially tangible when both sides of the confrontation generally understand and popularize this mode of political communication.

For the contemporary Russo-Ukrainian war, the question of the balance of political interests and forces, as well as the possibility of establishing political negotiations, is extremely acute. It must anticipate mutual guarantees and implementation of the agreements reached by the two sides of the military conflict.

Harmonization of international diplomatic relations, first of all, can be achieved by using modern ways of settling political conflicts and organizing political dialogue. First of all, dialogue and mediation in the course of political communication (if professionally used and widely practiced) can lead to a certain consensus. This consensus, against the background of a renewed interstate dialogue, is the guarantee that a constructive version of conflict resolution and the resolution of contradictions is quite probable.

Effective mediation will make it possible to reach long-term agreements, which for the parties to the conflict will be important elements of long-term neighborhood existence. Respect and willingness to fulfill the terms of such an agreement are based on the fact that the interests of both countries, their sovereign will be taken into account and respected by their opponents and third countries.

In practice, the use of political mediation in the Russian-Ukrainian war of June 2022 has a slim chance of success. We are talking about the language of ultimatums, especially on the part of the Russian federation. The negotiation process, which began in the spring on the Ukrainian-Belarusian border. And later continued in Turkey, did not bring concrete solutions. All of the agreements reached led only to the resolution of urgent issues.

In particular, on the exchange of prisoners and the expression of proposals by the Ukrainian side. The Russian delegation continued to insist on vague “deukrainization” and “denazification”. Then the negotiations officially ceased even at this level. As a result, above all, of military setbacks in the north, Russian diplomacy in March announced the end of a “special military operation” near Kyiv, Sumy, and Chernihiv. In early July, the withdrawal of Russian troops from Snake Island was also announced as a “goodwill gesture”.

According to the calculations of independent experts, only open sources report about the loss of ships and equipment worth about 1 billion dollars. In this case, it is estimated that the Russian losses of ships and equipment are about $1 billion.

At this stage of the war, political mediation on the settlement of problems is possible only as a result of the military failures of the Russian side and the Ukrainian collaborators supported by it. So, it is impossible to establish a dialogue between the two sides based on mutual understanding. The experience of World War II may be applied when fighting will continue

until the final victory of either side, and it is the winners who will dictate the terms of the peace treaty.

Possible searches for a political mediator also look weak.

Russia obviously will not agree to mediation by the United States, Britain, or the European Union. The Ukrainian side will not agree to other mediators. Turkey's attempts to take on the role of the main negotiator with both sides have so far not yielded any noticeable results. So, on these grounds, the political dialogue will not yet take place.

Conclusions

Thus, mediation in its modern forms as a method of conflict resolution appeared in the United States in the mid-twentieth century. The American system of international law during this period turned to a method of conflict resolution which would consist of voluntary discussion and decision-making. Note that the resolution of military conflicts with the help of a mediator in negotiations was used at least in the Middle Ages.

At the same time, it is only since the twentieth century that this method began to be actively developed as an important one for diplomacy and political science. Acknowledgement by the parties to the conflict (or purely by the mediator) that there is political discord, conflict, or war. The use of mediation requires an understanding by the parties that there is a conflict between them, a mutual agreement to regulate it, the establishment of the causes of war and the identification of a likely mediator, and the possibility of third-party intervention (e.g., the UN).

The article confirms that, unfortunately, it is almost impossible to implement such a scenario to end the Russia-Ukraine war. Effective mediation would allow long-term agreements to be reached. However, the negotiation process, which began in the spring on the Ukrainian-Belarusian border and later continued in Turkey, did not bring concrete solutions. As a result, above all, of military failures in the northern direction, Russian diplomacy in March announced the completion of a "special military operation" near Kyiv, Sumy, and Chernihiv.

In early July, the withdrawal of Russian troops from Snake Island was also announced as a "goodwill gesture". Serpentine. At this stage of the war, political mediation to resolve problems is possible only as a result of military failures on the Russian side and the Ukrainian collaborators it supports. Additionally, the situation is exacerbated by "gray zones" - unrecognized pro-Russian governments in Donetsk and Luhansk. The regulation of such issues has been little researched so far, but it is in eastern Ukraine that the bloodiest battles take place.

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Public administration reform in the forestry sector

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Abstract

The purpose of the research was to determine and substantiate the content of public administration in the forestry sector of Ukraine on the basis of sustainable development with a balance of social, economic and environmental interests of the state in the study area. To achieve this goal, general scientific and special scientific methods of cognition were used, in particular, dialectical, logical-formal, analysis and synthesis, structural-systemic, legal-comparative, legal-formal and prognostic. Everything allows to conclude that, it is expedient to develop and adopt the Forestry Strategy of Ukraine, with a separate section on the definition of tools for improving fire safety in forests, based on the principles of the European Union Forestry Strategy, in particular: sustainable and multifunctional forest management, balanced use of various forest resources and services, ensuring the protection of forests; resource efficiency, optimizing the contribution of forests and forestry sector to rural development, economic growth and job creation; global responsibility for forests, promotion of sustainable (responsible) production and consumption of forest products.

Keywords: policy reform; sustainable development; public administration; forestry; forestry studies.

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Reforma de la administración pública en el sector forestal

Resumen

El propósito de la investigación fue determinar y fundamentar el contenido de la administración pública en el sector forestal de Ucrania sobre la base del desarrollo sostenible con un equilibrio de los intereses sociales, económicos y ambientales del Estado en el área de estudio. Para lograr este objetivo, se utilizaron métodos de cognició,n científicos generales y científicos especiales, en particular, dialéctico, lógico-formal, análisis y síntesis, estructural-sistémico, legal-comparativo, legal-formal y de pronóstico. Todo permite concluir que, es conveniente desarrollar y adoptar la Estrategia Forestal de Ucrania, con una sección separada sobre la definición de herramientas para mejorar la seguridad contra incendios en los bosques, basada en los principios de la Estrategia Forestal de la Unión Europea, en particular: gestión forestal sostenible y multifuncional, uso equilibrado de diversos recursos y servicios forestales, asegurando la protección de los bosques; la eficiencia de los recursos, optimizando la contribución de los bosques y el sector forestal al desarrollo rural, el crecimiento económico y la creación de empleo; responsabilidad mundial por los bosques, promoción de la producción y el consumo sostenibles (responsables) de productos forestales.

Palabras clave: reforma política; desarrollo sostenible; administración pública; bosques; estudios forestales.

Introduction

Ukraine is on the threshold of significant, essential challenges, in which each of us is a direct participant. However, in our opinion, the biggest challenge in the situation of brutal military actions, significant economic decline, the breakdown of old state structures and the formation of a new essential platform for the establishment of state and self-governing institutions is the need to observe, first of all, legal and ideological norms before the international community.

Because the very existence of our state currently depends to a large extent on how, to what extent and in what manner public institutions will respond to the threats and challenges of a global scale that have been haunting our country recently (Gulac, 2020). The negative interaction of the environment and human activity has a global character, so it cannot be resolved within the borders of one country (Mazii, 2012).

The economic growth of each state inevitably leads to an increase in the use of natural resources and wastes of consumption, and increases the anthropogenic load on the environment. (Kolokolchykova *et al.*, 2021) Our environment is constantly changing. However, as our environment changes, so does the need to become increasingly aware of the problems that surround it.

The processes of globalization and social transformation have increased the priority of environmental protection, the desire to achieve ecological balance and ensure the sustainable development of the country (Kurylo *et al.*, 2020).

The main principles (strategy) of the state environmental policy of Ukraine for the period until 2030, approved by the Law of Ukraine dated 28.02.2019, among the existing problems of the current state of the environment in Ukraine, note that the processes of globalization and social transformations have increased the priority of environmental protection, and therefore, Ukraine needs to take urgent measures.

In particular, attention is focused on the fact that for a long time the economic development of the state was accompanied by unbalanced exploitation of natural resources, low priority of environmental protection issues, which made it impossible to achieve balanced (sustainable) development (On the Basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030: Law of Ukraine, 2019).

Forests of Ukraine are an extremely important natural resource, the value of which is due to important characteristics that make it possible to use them as an important ecological, economic and social component, etc., which, however, requires a long time to renew. However, it is not possible to achieve efficiency in the management of forest resources only through changes to the forest legislation. Because, as correctly stated: "... the effect of norms establishing ideal behavior models from the point of view of legal regulation is often leveled by their ineffective implementation" (Khludeneva, 2011: 12).

Difficulties of reforming public management in the field of forest relations on the territory of our state in modern conditions, the inability of previous organizational formations in this field to effectively implement tasks related to ensuring fire safety, the limitation of financial and material resources of the state require a thorough restructuring of such relations, the search for effective ways of their further development (Gulac, 2020).

The imperfection of the financial and economic mechanism for the development of the forest industry; multi-departmental forest management system; lack of an economic mechanism for stimulating the use of environmentally friendly technologies; imperfect level of fire protection in the forest fund; a significant amount of illegal logging; imperfect

redistribution of forest fund lands; growth of man-made load on forest ecosystems; legal nihilism and a relatively low level of legal responsibility for forest violations are the existing problems that generally characterize the most significant shortcomings in the field of forest use and require optimization.

Thus, the main content should be the development of an effective mechanism aimed at achieving a harmonious balance between the social, economic and ecological interests of the state in the studied industry. (Oleksenko *et al.*, 2021) Ensuring such a balance can only be guaranteed by the state, as an institution as a whole, through the effective distribution of relevant powers between the entire system of state and non-state bodies.

1. Objectives

The purpose of this work is to define and substantiate the content of public management in the forest industry of Ukraine on the basis of sustainable development, while maintaining the balance of social, economic and ecological interests of the state in the researched industry.

2. Materials and methods

To achieve the purpose, general scientific and special scientific methods of cognition were used, in particular dialectical, formal-logical, analysis and synthesis, systemic-structural, comparative-legal, formal-legal, prognostic. The application of the dialectical method made it possible to investigate the directions of the formation of an effective state instrument aimed at achieving a harmonious balance between the social, economic and ecological interests of the state in the forest sector of Ukraine.

Taking into account the scientific theory of “person’s place in the safety of life”, the author’s vision of a multi-component system of such an instrument with an emphasis on its environmentalization is presented.

The theoretical and methodological basis of the study was the previous work of the co-authors regarding: Cooperation of Ukraine and the European Union in the Ecological Sector (Gulac, 2019[a]), New Approaches to Providing of Environmental Management in Ukraine on the Way to Euro Integration (Gulac, 2019[b]), analysis Ensuring Sustainable Development of Local Self Government (Ladychenko, 2021), Formation of Ukraine’s Climate Policy in the Context of European Integration (Golovko, 2021), Sustainable Approaches to Waste Management (Kutsevych, 2020), Legal Regulation of Waste Management in Ukraine on the Way to European Integration (Kidalov, 2020), Problems and Prospects of Implementation of European

Environmental Policy in Ukraine (Ladychenko, 2017), State environmental policy on the issue of legal regulation of fire safety in the forests of Ukraine (Gulac, 2022).

3. Results and discussion

The role of the state in ensuring sustainable preservation and protection of national forests is not only in the creation of high-quality normative legal acts and, most importantly, their implementation. The state, as the main driving force of social and economic development, at the same time acts as a guarantor of ensuring social and ecological balance in the field of bioresources and nature management as a whole, which is realized by the creation and effective functioning of relevant state institutions, infrastructure development, initiating the accumulation of certain material funds, additional investments, etc.

Given the need to increase the level of preservation and protection of forests, the Concept of the National Environmental Policy of Ukraine for the period until 2020 notes that the rational use and reproduction of forest resources requires the creation of a full-fledged forest monitoring system as a complex of continuous monitoring, assessment and forecasting of their condition.

Within the framework of the system of state monitoring of the natural environment of Ukraine, forest monitoring should become a means of management in the field of forest resources by optimizing the system of forest use and preventing critical environmental phenomena and processes (Concept of the National Environmental Policy of Ukraine for the period until 2020: Order of the Cabinet of Ministers of Ukraine, 2007).

A significant role in the reform and development of domestic forestry is necessary. Decree of the Cabinet of Ministers of Ukraine “On approval of the Concept of reform and development of forestry” dated April 18, 2006 No. 208. The approval of the Concept is due to significant problems in the field of forest use, the main ones of which are indicated above and, to note unfortunately, to a sufficient extent, they remain unsolved even now.

At the same time, it should be noted that despite the fact that this Concept was adopted more than ten years ago, the development of social relations in the state as a whole and in the field of forest relations in particular is very rapid and requires a fairly quick response to the corresponding changes, which must be expressed first of all by regulatory tools, preferably of the highest level.

In addition, this Concept is currently valid, since all other attempts (projects) to develop and adopt concepts for reforming the sphere of

forest relations have not been implemented. In particular, on the official website of the Cabinet of Ministers of Ukraine, the Concept of reforming the forestry and hunting industry of Ukraine, discussed on April 27, 2015 at the meeting of the Coordination Council of the State Forestry Agency of Ukraine (created by the order of the State Forestry Agency dated March 30, 2015 No. 112) is presented.

In addition, it should be noted that in recent years, the problem of forestry management in Ukraine, the development of proposals for its solution, has been the subject of numerous studies and projects carried out with the support, in particular, of the FLEG program (Law enforcement and management in the forest sector of the countries of the Eastern region), the project of the Food and Agricultural Organization of the United Nations (FAO) "Consolidation of forest policy in Ukraine", other international organizations.

An extremely important step in the context of improving the effectiveness of fire safety in the forests of Ukraine is that the aforementioned concept defines the need to develop and adopt the "Strategy for the balanced development of the forestry and hunting industry of Ukraine". It would, in terms of forestry, provide, among others:

> Ways to eliminate the departmental dispersion of forests in Ukraine, strengthening the responsibility of forest users, regardless of departmental affiliation, for non-fulfillment of the requirements of forest and hunting legislation, increasing the responsibility and legal support of forest protection activities and the effectiveness of state control in the field of forestry, primarily by the State Environmental Inspection and its divisions" (Concept of reforming the forestry and hunting industry of Ukraine, 2015: 63).

In general, we support the theses proposed within the framework of the developed Concept, since they have already been formed based on the best world experience, taking into account numerous shortcomings in the field of forest relations in general and modern challenges posed to the state by the forestry industry and all concerned public institutions.

And although, as repeatedly noted within the scope of this study, we do not support the presence of the term "forestry and hunting" in the title of the corresponding strategy, we nevertheless note the main, from our point of view, thesis - regarding the need to "clarify the delimitation of the powers of authorities, in particular executive power and local self-government bodies, control bodies, rights and obligations of business entities, introduction of more effective coordination mechanisms, coordination of their activities in the interests of integrated use of natural resources, in particular on the basis of public-private partnership".

This general thesis is actually important from the point of view of building an effective system and delimiting the functions of public bodies in the field of forest relations, which is increasingly emphasized by scientists and specialists. The system of authorized bodies in the field of forest relations is quite extensive, and each of them has a certain number of control powers, which are quite often duplicated and at the same time create the possibility of a corruption component, since the same officials in the field of forest relations implement and control the same range of issues.

In addition, the system of ensuring balanced nature use in the field of forest resources of Ukraine directly depends on the "introduction of more effective mechanisms of coordination and coordination of activities" of the authorized state bodies among themselves and taking into account the forces and means of voluntary self-governing organizations.

Thus, the Decree of the President of Ukraine "On additional measures for the development of forestry, rational nature management and conservation of nature reserve fund objects" dated 21.11.2017 No. 381 determined the need to take a whole set of measures for the development of forestry, increasing ecological and economic potential forests, as well as the preservation, protection and reproduction of forest plantations, in particular, "ensuring the preservation of the professional potential and material and technical base of the state forest protection in relation to the implementation of fire-fighting measures, fire extinguishing".

Thus, we must state that over the past few years there has been the development of a complex system of projects of strategic normative legal acts regarding the formation of ways of further development of the forestry industry.

They partially reflect the need to improve the processes of ensuring fire safety in the forests of Ukraine, however, did not receive the normative consolidation, The complex nature of these projects is due to the level of approaches to the regulation of social relations in the forestry industry and represents a complete system: "Concept - Strategy - Program".

In particular, these are currently: 1) The concept of reforming the forestry and hunting *industry of Ukraine*, discussed on April 27, 2015 at the meeting of the Coordination Council at the State Forestry Agency of Ukraine; 2) Strategy for the balanced development of the forestry and hunting industry of Ukraine, the adoption of which is determined by the said Concept; 3) Strategy of sustainable development and institutional reform of forestry of Ukraine for the period until 2022, which we propose to call "Strategy of sustainable development of forest resources of Ukraine"; 4) The "Forests of Ukraine - 2030" program, the approval of which is provided by the Decree of the President of Ukraine "On additional measures for the development of forestry, rational nature management and conservation of objects of the nature reserve" dated November 21, 2017 No. 381.

At the same time, the provisions of the Strategy for Sustainable Development and Institutional Reform of Forestry of Ukraine for the period up to 2022 have not been accepted by scientists, specialists, or the general public.

Thus, without a clear, balanced and consolidated strategy, it is difficult to imagine the development vector of the forest industry and the corresponding priorities. Supporting the position of experts, we note that it is extremely important to implement the fundamental positions: adoption of the concept of development of the forestry industry; appointment of a relevant minister and head of the State Forestry Agency; creation of a state forest fund; preservation of the state structure of forestry management.

However, the absence of approved strategic documents on the development of the forest sector makes it impossible to form a forecasted state policy, and therefore creates an irregularity of the organizational and legal structure of management in the field of forest relations in general and reduces the environmentalization of the forest industry as a whole. At the same time, the forest sector is currently of great strategic importance for the state, which is connected, in particular, with the increase in the negative impact of global warming, recreational load and man-made pollution on forests (Gulac, 2020).

The introduction of any significant changes in the issues of public administration in the field of forest relations as a whole should take into account the main priority of the forest industry - the preservation and protection of the forest fund. Therefore, the implementation of the state function of ensuring fire safety in forests, which currently has a certain institutional stability. And with long-term institutional changes in the field of forest relations, there can be a significant time imbalance from the management position, which is inherent in many other spheres of social relations (What can the "forest reserve" Decree of the President lead to? The rule of law to protect the environment, n/d).

In addition, the subordination of the State Forestry Agency to the Ministry of Agrarian Policy, and not to the Ministry of Nature, in our opinion, creates a number of inconsistencies and contradictions in the formation of strategic positions for the development of relations in the forest industry.

However, in accordance with the Resolution of the CMU of October 20, 2019, the Dezhlis Agency came under the "jurisdiction" of the Minister of Energy and Environmental Protection of Ukraine (On making changes to the scheme of directing and coordinating the activities of central executive bodies by the Cabinet of Ministers of Ukraine through the relevant members of the Cabinet of Ministers of Ukraine: Resolution of the Cabinet of Ministers of Ukraine, 2019).

The implementation of public administration in the field of forest relations should also be based on international standards, taking into account the essential European integration vector of development chosen by the Ukrainian people. We must state that, in contrast to the state of Ukraine, the somewhat fragmented European community managed to adopt a consolidated forest strategy.

Therefore, the principles of the development of the EU forest sector should be the basis for the formation of the standards of the corresponding national forest strategy, the structural component of which we see the Strategy for improving fire safety in forests (New Forest strategy of the European Union, n/d; Gulac, 2013).

The new strategy envisages stricter regulation of the actions of EU member states in the part related to forest management, and more active involvement of them in joint actions regarding the development of the forest sector. Therefore, the main theses of the Forest EU are that: 1) the forest is a key resource for improving the quality of life and creating new jobs in rural areas; 2) European states should join forces in protecting ecosystems and ensuring environmental security (Forest strategy).

The strategy emphasizes that forests are important not only for the development of rural areas, but also for the stabilization of the environment, in particular the mitigation of the consequences of climate change, and the preservation of biodiversity. In this regard, it is necessary to implement a comprehensive approach to forest management.

The task of creating a pan-European forestry information system and the unification of forest information stands out, which in fact makes possible a comprehensive approach to management in any field. In Ukraine, unfortunately, we talk more about the need to solve the relevant problems than we implement certain real steps.

New social challenges associated with global climate change, the emergence of new technologies for the use of renewable forest resources, the growing need to preserve biodiversity and the use of forest resources, first of all, from the point of view of realizing their social and ecological functions, call for a new and deeply responsible to approach the issue of rational use and forest protection, anticipating the need to create and implement a real and effective national forest strategy based on the principles and methods of the already created EU Forest Strategy.

In addition, the document clearly states that the provisions of the EU Forest Strategy should be taken into account in the National Forest Policies and plans for the development of forests and forest sectors of the EU countries, where Ukraine, based on the legally established course, seeks to get to (New Forest Strategy of the European Union, n/d).

It is seen that the real will of the authorities to follow the policy of gradual implementation of the legal standards of the European community existence in general, and the sphere of its forest relations in particular, to the system of the fundamental principles of the activity of our state, the real implementation, first of all, of the principles of implementing such standards into the work of domestic organizations, starting from the highest executive level, the consistent implementation of the anti-corruption policy in the system of public administration bodies will nevertheless lead to a significant improvement in the sustainable development of the forest sector as a natural wealth of our state.

The effectiveness of the regulation of fire safety in forests directly depends on the quality of the regulatory provision of relations in the forest industry, which, in turn, is formed through the definition of the appropriate state strategy. Currently, we consider it expedient to highlight in the General Strategy of sustainable development in the field of forest relations a section on the definition of tools aimed at increasing the level of fire safety in forests.

At the same time, we emphasize the need to develop, adopt and implement such a Strategy, because the effectiveness of ensuring fire safety in forests directly depends on the effectiveness and sustainability of management in the forest industry as a whole. And the fact that the need for systemic changes in the management of the forest industry is urgent is beyond anyone's doubt.

Conclusions

Thus, we see the need for the development and adoption of the Forest Strategy of Ukraine, with a section on defining tools aimed at increasing the level of fire safety in forests, based on the principles of the Forest Strategy of the European Union, in particular: sustainable and multi-purpose management of forests, balanced use of various resources and forest services, ensuring forest protection; resource efficiency, optimizing the contribution of forests and the forest sector to the development of rural areas, economic growth and job creation; global responsibility for the forest, stimulation of sustainable (responsible) production and consumption of forest products.

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Peculiarities of the Investigation of Juvenile Drug Trafficking Offences

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Abstract

The objective of this study was to determine the mandatory requirements for the investigation of drug-related crimes imposed by the age category of the accused. The study involved the following methods: information analysis, systemic approach, descriptive analysis, pragmatic approach and prognosis. It was concluded that tactical techniques, stages, investigative situations in the investigation of juvenile drug-related crimes are used in the same cases and in the same order as in relation to other categories of crimes. It is indicated that the following mandatory requirements to be met during the investigation of juvenile drug-related crimes: 1) establishment of all necessary circumstances of the case of this category; 2) ensuring mandatory participation of an expert in forensic psychology at all stages of the investigation; 3) ensuring mandatory participation at all stages of the investigation of parents or other legal representatives of the minor, representatives of the Children's Service and juvenile police; 4) ensuring psychological and informational safety of the minor; 5) ensuring the most humane and tolerant attitude towards juvenile offenders.

Keywords: special knowledge; drug-related offenses; investigative mechanism; investigative situations; accused suspect.

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Peculiaridades de la Investigación de Delitos de Narcotráfico Juvenil

Resumen

El objetivo de este estudio fue determinar los requisitos obligatorios para la investigación de delitos relacionados con drogas impuestos por la categoría de edad del imputado. El estudio involucró los siguientes métodos: análisis de información, enfoque sistémico, análisis descriptivo, enfoque pragmático y pronóstico. Se concluyó que las técnicas tácticas, etapas, situaciones investigativas en la indagación de delitos juveniles relacionados con drogas se utilizan en los mismos casos y en el mismo orden que en relación con otras categorías de delitos. Se indica que los siguientes requisitos obligatorios que deben cumplirse durante la investigación de delitos juveniles relacionados con drogas: 1) establecimiento de todas las circunstancias necesarias del caso de esta categoría; 2) garantizar la participación obligatoria de un experto en psicología forense en todas las etapas de la investigación; 3) asegurar la participación obligatoria en todas las etapas de la investigación de los padres u otros representantes legales del menor, representantes del Servicio de Niños y la policía juvenil; 4) garantizar la seguridad psicológica e informativa del menor; 5) asegurar la actitud más humana y tolerante hacia los menores infractores.

Palabras clave: conocimiento especial; delitos relacionados con drogas; mecanismo de investigación; situaciones de investigación; sospechoso acusado.

Introduction

During the 20th century, drug addiction became one of the biggest global problems in the world, which currently affects every country without exception. Drug trafficking offences (these include production, transportation, sale, distribution, use, etc.) are no less widespread and extremely dangerous.

In addition to the fact that these offences affect the health of the population as a whole and individuals in particular, these offences are also a determinant for the commission of other types of crimes (crimes against property, against human honour and dignity, sexual freedom and inviolability, etc.). For example, it was established that there is a direct relationship between the use of psychoactive substances and criminal behaviour (Sharma *et al*., 2016); between drug use and sexual crimes (Wen *et al*., 2022), and also the impact of drug crimes, in particular drug use, on recidivism in general is studied (Papp *et al*., 2016).

It is noted that the process of criminal prosecution for crimes related to illegal drug trafficking or use is extremely complex, which is primarily related to the interrogation of the accused (Vladova-Nedkova, 2018), detection and proof in cases on criminal offenses of this type (Matic Boskovic, 2020).

The investigation of drug-related crimes involving a juvenile suspect or accused raise additional difficulties related to the search for the types of punishments alternative to imprisonment in cases of minor drug-related crimes (Lilley, 2016), as well as the ineffectiveness of the application of juvenile system of methods and tactics of pre-trial investigation with adult accused (Loeffler and Grunwald, 2015). Besides, the criminal justice system of specialized courts for drug-related crimes committed by juveniles has also failed to justify itself and is ineffective (Caulkins and Reuter, 2017).

This determines a fairly large number of studies in this field, in particular, related to the search for new, more effective and universal measures to combat drug-related crime among juveniles (Charlier, 2015), including through the judicial system (Mustafa *et al.*, 2020).

1. Literature Review

The problem of holding juveniles criminally liable for committing drug trafficking offences is connected with many factors. This is why a large number of modern research in this area deals with the activities of judges in drug-related crimes against juvenile offenders in order to create new programmes, in particular, treatment as part of the punishment and during the investigative process (Stein *et al.*, 2015). The low efficiency of specialized courts in cases involving crimes related to drug trafficking and use is noted (Sullivan *et al.*, 2016), and attention is drawn to the imperfection of the judicial system in relation to drug offenders, including juvenile accused (Rhode, 2019).

Special attention is paid to racial disproportionality in the investigation and punishment of juvenile offenders who have committed drug crimes (Lyons *et al.*, 2013). Some researchers focused on the racial and ethnic bias toward juvenile drug offenders (Leiber *et al.*, 2017) and the effect of race on arrest in drug trafficking cases (Ojmarrh, 2020).

It is especially relevant to study the issues of holding children criminally liable for drug-related crimes in the event that their guilt in committing drug trafficking offences not related to their use is not proven (Taqwim *et al.*, 2021). It is also noted that the insufficient evidence base and inappropriate assessment of the accused (Blair *et al.*, 2015), as well as the inadequacy of the judicial investigation mechanism in cases of juvenile drug-related offences (Long and Sullivan, 2017) are one of the problems during the pre-

trial and judicial investigation of juvenile delinquency related to illegal trafficking and use of drugs.

The mechanism of application of certain tactics and methods is also still insufficiently developed. The computer equipment and software products in the investigation of drug-related crimes, in particular with juvenile accused (Zelena, 2020) is poorly studied. Finding evidence and obtaining testimony in the detection and investigation of juvenile drug-related crime (Zharmagambetova *et al*., 2019) are inadequately explored.

The individual techniques in the investigation of drug crimes (for example, hair analysis in drug use crimes (Sasaki *et al*., 2021) and the stages of investigation of drug-related crimes in general (Pyrih and Chernetska, 2017) are also poorly studied).

All the foregoing may indicate, on the one hand, the imperfection of the national drug legislation (Bachmaier Winter and Demleitner, 2018) and the insufficient effectiveness of expanding criminal sanctions while simultaneously reducing procedural protection (Jensen and Gerber, 1996). In this regard, attention is focused on the need to develop promising tools in the forensic investigation of juvenile drug-related crimes with the use of nanotechnology to detect the involvement of the accused in drug use (Zharmagambetova *et al*., 2019).

At the same time, the need for informational and psychological security in all spheres of a juvenile's life is emphasized from the point of view of how to make the actual investigation of cases concerning a juvenile drug offender safe (Salakhova *et al*., 2019). The observance of the constitutional right to a defence attorney during judicial proceedings in drug-related cases for juvenile accused (Kirschenheiter, 2017), as well as the exclusive role of a lawyer in the investigation of juvenile drug-related crimes (Meneses-Reyes, 2018) are also emphasized.

But, despite a fairly large number of studies on the investigation of juvenile drug-related crimes, a number of issues related to the clear development of mandatory requirements for the investigation procedure of this category of criminal offences regarding the use of certain tactics and methods, as well as the effectiveness and consequences of their application in relation to juvenile accused remain unresolved (Loeffler and Grunwald, 2015).

2. Aim

In view of the relevance of the issue under research, as well as the unresolved issues related to the investigation of juvenile drug-related crimes, the aim of this study will be to determine the mandatory requirements

imposed by the age category of the accused. The aim involved the following research objectives:

- determine the features of the stages of the investigation of juvenile drug-related crimes;
- establish typical investigative situations;
- analyse typical investigative actions and special methods.

3. Methodology and Methods

This study was carried out in a clear sequence, following the stages of studying the issue, based on the logic of the presentation of the material for achieving the aim set in the article and fulfilling the defined research objectives. The stages were the following:

- determining the topic and outlining the scope of the research;
- search and selection of literature and references;
- selection and study of statistical data;
- analysis of the material presented in the selected literature and evaluation of the results of these studies;
- identification of unresolved issues related to the peculiarities of the mechanism of investigation of juvenile crimes related to the trafficking and use of drugs;
- determining the aim of the article;
- drawing conclusions and providing practical recommendations for resolving the issues selected for research;
- outlining the prospects for further research in the specified area.
- This study was based on statistics on juveniles who were convicted of drug offences in selected countries, as well as statistics on drug use by juveniles in European countries (30 countries). The provisions of international and national regulatory legal acts, which determine the procedure for investigating juvenile drug trafficking offences, were studied in detail.
- The regulatory framework of the study consisted of the provisions of the following international legal acts:
- the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 09 December 1975;

- United Nations Standard Minimum Rules for the Administration of Juvenile ("The Beijing Rules") of 29 November 1985;
- Basic Principles for the Treatment of Prisoners of 14 December 1990;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 09 December 1988;
- the Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950;
- the European Prison Rules of 11 January 2006;
- Convention on the Rights of the Child of 20 November 1989;
- Disability Rights Convention of 13 December 2006.
- The following methods were used in this study to achieve its aim:
- the *information analysis* was used to analyse information sources and draw conclusions on the specifics of methods and tactics in the investigation of juvenile drug -related crimes, as well as opening prospects for further research in this area;
- *the system approach* was used to analyse the conclusions regarding the ineffectiveness of the existing mechanism of investigation of crimes in the sphere of drug trafficking, as well as proposals and recommendations for its improvement;
- *the anamnestic method* was used to collect data on the number of juvenile drug-related crimes;
- *the descriptive analysis* was used to survey the references for studying the peculiarities of the investigation of juvenile drug trafficking offences;
- *the pragmatic approach* to data collection and analysis was used to determine the main requirements for the investigation of juvenile crimes, in particular drug-related crimes;
- *the forecasting method* was used to develop proposals and recommendations for the improvement and universalization of the mechanism of investigation of juvenile drug trafficking and use offences.

4. Results

The juvenile delinquency rates in the world are quite high. In particular, according to official statistics, about 2.08 million (8.33%) teenagers aged 12-17 use drugs every month in the USA; about 5,000 Americans between 15 and 24 die each year from a drug overdose (National Center for Drug Abuse Statistics, 2020). In 2018/2019, 1,872 juveniles aged 15-17 were convicted of drug offences in England and Wales (Statista, 2021). In Ukraine, 74 juveniles were convicted of drug crimes in 2016, and 94 juveniles — in 2017 (Slutska, 2018).

This is an extremely negative trend, since juveniles who commit drug trafficking offences are, so to speak, the main source for replenishing the number of adult drug offenders. The drug use is characterized by the highest quantitative indicators among drug-related crimes. Their number varies depending on the country, but their share among the illegal use of different types of drugs is still quite large (see Table 1 for the example of 30 European countries (Mounteney *et al.*, 2015).

Table 1: Share of juveniles (15-16 years old) who use different types of drugs (%).

Country	Cocaine	Amphetamine	Ecstasy	Cannabis
Belgium	2	2	2	21
Bulgaria	4	5	4	22
Czech Republic	1	2	3	42
Denmark	2	2	1	18
Germany	3	4	2	19
Estonia	2	3	3	24
Ireland	3	2	2	18
Greece	1	2	2	8
Spain	3	2	2	28
France	4	4	3	39
Croatia	2	1	2	18
Italy	1	1	1	16
Cyprus	4	4	3	7
Latvia	4	4	4	24
Lithuania	2	3	2	20
Luxembourg	-	-	-	-

Hungary	2	6	4	19
Malta	4	3	3	10
Netherlands	2	1	4	27
Austria	-	-	-	14
Poland	3	4	2	23
Portugal	4	3	3	16
Romania	2	2	2	7
Slovenia	3	2	2	23
Slovakia	1	1	-	16
Finland	1	-	2	12
Sweden	1	-	1	5
Great Britain	2	1	2	22
Turkey	-	2	2	4
Norway	1	1	1	5

Source: This table is the author's development based on the available statistics.

Holding the guilty persons criminally liable with the appointment of an appropriate punishment is one of the main directions of combating the spread of drug-related crimes among juveniles. The problems arise in the process of holding juveniles criminally liable for drug trafficking offences. The reason is that the process of investigating drug-related crimes is associated with certain complications, which relate primarily to the identification and investigation of the factual background of the case, obtaining evidence, and the need to involve forensic experts.

This is especially true for the investigation of crimes related to the illegal drug circulation, in which the suspects (accused) are juveniles — in these cases, additional mandatory procedural actions appear, which require the use of special procedural methods and tactics in carrying out investigative actions during the investigation of these crimes.

It is obvious that the investigation of any crime as a whole consists of separate investigative actions, which represent a certain activity of investigators carried out in accordance with the criminal procedural law. The investigative action itself is a measure provided for and clearly regulated by the criminal procedural legislation.

It is carried out with the purpose of gathering evidence through a searching and discovery method by a specially authorized official who carries out criminal proceedings in a specific case, which is combined with

the possibility of applying procedural coercion enshrined at the legislative level (Kolomiiets, 2019). There are seven typical investigative actions in the investigation of juvenile drug-related crimes (see Figure 1).

Investigative actions are used in relevant situations when investigating juvenile drug-related crimes, and are the main method of obtaining and collecting evidence in the case. Therefore, they are the main means of establishing the truth in criminal proceedings regarding drug circulation involving a juvenile accused. These situations vary in complexity and the need to apply a particular investigative tactic (see Figure 2).

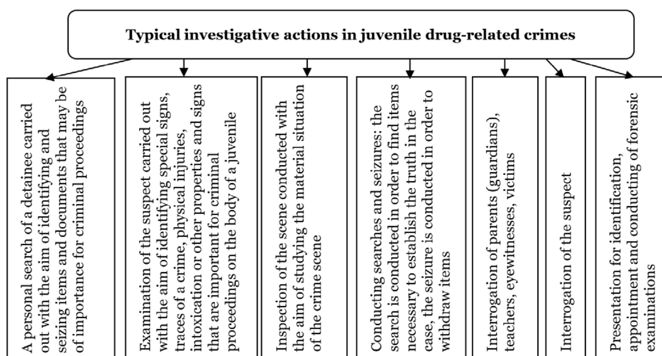

Figure 1: Typical investigative actions in juvenile drug-related crimes

Source: This figure is the author's development based on the literature survey

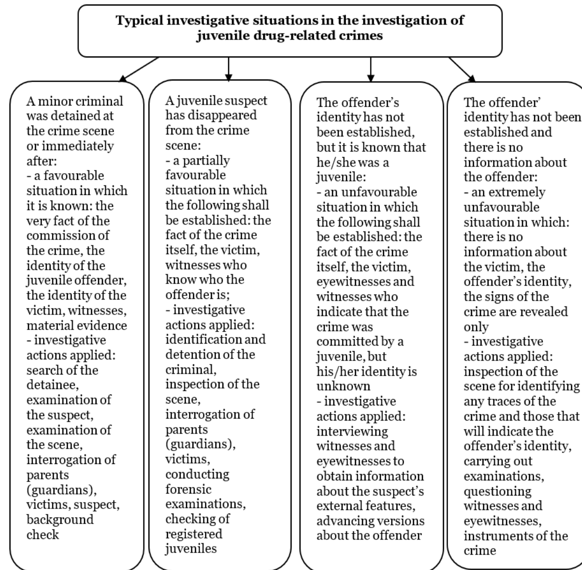

Figure 2: Typical investigative situations in the investigation of juvenile drug-related crimes

Source: This figure is the author's development based on the literature survey.

Investigative actions, although typical for almost all types of crimes, have their specifics depending on the type of crime being investigated. In particular, with regard to juvenile drug trafficking offences, their investigation requires the use of a number of special knowledges that contribute to establishing the truth in the case, as well as obtaining and researching real, reliable evidence.

Special knowledge is a set of theoretical and practical knowledge, abilities and skills in the relevant field of science, acquired as a result of professional training and professional experience, used in the process of investigating crimes, as well as their prevention and counteraction (Colodras and Sylenok, 2021). Special knowledge is used in clearly defined procedural forms (see Figure 3).

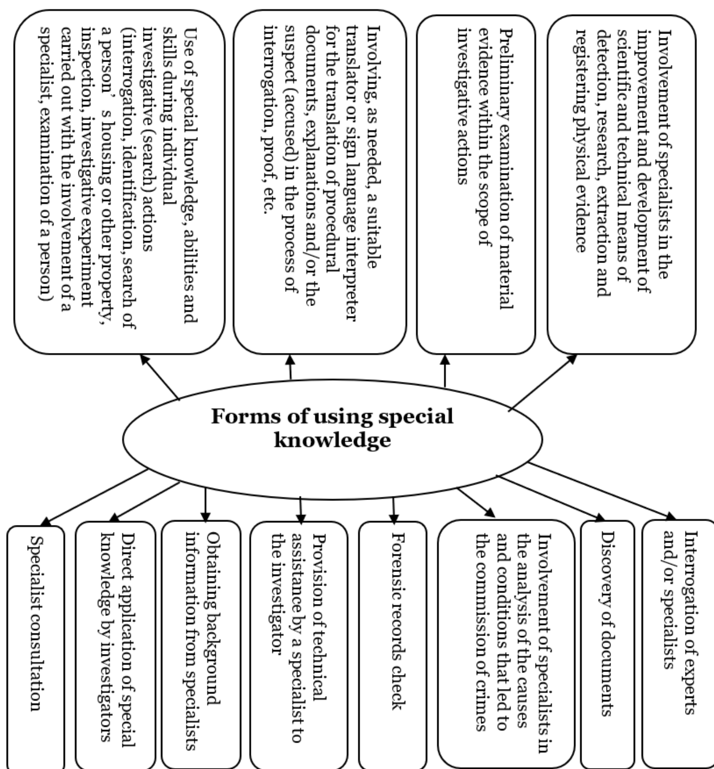

Figure 3: Forms of using special knowledge in the investigation of juvenile drug-related crimes

Source: This figure is the author's development based on the literature survey.

The main forms are the involvement of forensic experts to provide opinions during criminal proceedings under their competence, and the consultation of an expert (specialist) who has the necessary knowledge, skills and abilities in pre-trial and judicial investigation. At the specified stages of the investigation, these experts perform various tasks provided for by the procedural legislation (see Figure 4), which is carried out as part of various types of examinations in the investigation of juvenile drug trafficking offences (see Figure 5).

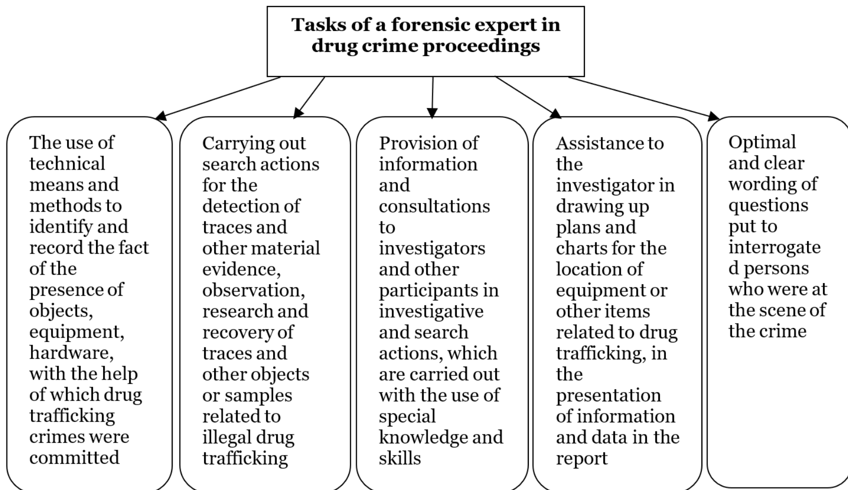

Figure 4: Tasks of a forensic expert in criminal proceedings for juvenile drug-related crimes.

Source: This figure is the author's development based on the literature survey.

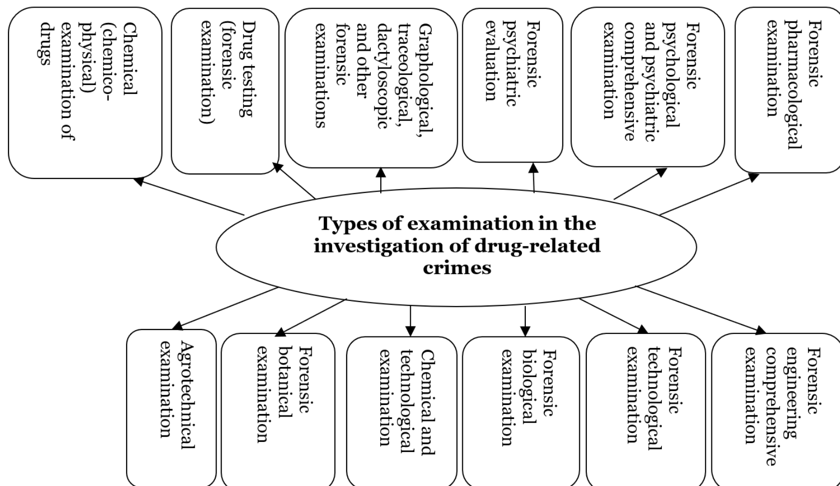

Figure 5: Types of examination in the pre-trial investigation of drug crimes

Source: This figure is the author's development based on the literature survey.

In general, the investigation of juvenile drug trafficking offences is carried out in the same manner as in other categories of cases. However, special rules must be followed at all stages of the investigation of juvenile drug-

related crimes. There are certain requirements for the proceedings in this category of cases provided for by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). The vast majority of the provisions of this document relate to the detention of juveniles in places of confinement, but this document also states that the investigation in the studied category of cases should be carried out only by those investigators who have the appropriate competence and special knowledge in the field of developmental (adolescent) psychology.

Part I, Article 3(1) of the Convention on the Rights of the Child states that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

The initial stage of the investigation of juvenile drug trafficking offences shall involve the establishment of standard data and information (the fact of crime; the guilt of the accused person, the form and type of guilt, the motive and purpose of the crime; the type of damage and procedural costs in criminal proceedings; circumstances that affect the severity of the committed act and punishment, characterize the person of the accused, affect the course and closure of criminal proceedings, etc.). But the following circumstances must also be established:

- complex and comprehensive information about the juvenile accused (age — date of birth, level of intellectual and psychological development, health condition, presence/absence of mental illness or disorder or mental retardation, character and temperament, socialization level, ability to communicate with peers, proneness to conflict and other social individual traits);
- intellectual and volitional features characterizing the juvenile's attitude to the illegal act committed by him/her, the level of awareness of the nature of the act and attitude to its consequences;
- social and living conditions (living conditions of the juvenile, family relations, settled/disadvantaged family, participation of parents in the juvenile's life), as well as the level and quality of upbringing of the juvenile by parents or persons who replace them;
- information on whether a drug-related crime was committed by a juvenile alone (possible presence of accomplices, presence of an instigator, coercion to commit the crime). This information must be true, complete and comprehensive.

The matter is also about the fact that parents or other legal representatives of the juvenile, as well as representatives of the Children Service and the Juvenile Criminal Police are mandatory participants in criminal proceedings

involving a juvenile accused (suspect). It is also necessary at all stages of the investigation of such crimes to involve a forensic psychological expert, who finds out the following main points during the investigation:

- the juvenile's general psychological development level;
- the juvenile's emotional sphere and range of interests;
- the juvenile's logical and intellectual abilities and his/her ability to navigate in various life situations;
- the influence of age characteristics on the activities of juveniles and their psychological processes;
- correspondence of the indications with the junior's developmental age and intellectual development;
- presence/absence of influence on the juvenile in his/her testimony;
- the junior's ability to objectively perceive and evaluate circumstances that are important in the proceedings, as well as specific events;
- presence/absence of developmental delay;
- whether the juvenile could be fully aware of his/her actions and control them;
- correspondence of the development of a junior with his/her age.

In general, the participation of an expert psychologist in criminal proceedings in the juvenile drug trafficking cases should be reduced to the following:

- establishing contact and interaction with the juvenile in order to obtain information about the commission of a crime, to find out what was committed and for what reasons;
- provision of emotional and psychological protection of a juvenile accused who is in an unusually difficult life situation for him/her.

There are certain requirements for the interrogation in criminal proceedings as an investigative action. Interrogation of juveniles also has its own characteristics:

- the question must be formulated in a form that is understandable for the juvenile;
- the environment during the interrogation should be calm, rude provocative behaviour of the juvenile shall be stopped;
- the duration of the interrogation should be such that the juvenile does not get tired and adequately answers the questions;

- personal contact must be established with the juvenile by studying his/her hobbies and interests.

There are also certain differences regarding the application of preventive measures in proceedings in juvenile drug-related crimes. It is about the fact that, along with other preventive measures, juveniles are transferred for the supervision of parents, guardians or custodians, and those juveniles who are brought up in a children's institution — for the supervision of the administration of that institution.

It is worth adding that ensuring the informational and psychological safety of a juvenile shall be one of the requirements for the investigation of juvenile drug-related crimes. Security in any field is a state of protection of the vital interests of a person, society and the state from any internal or external threats. Regarding the informational and psychological security of a juvenile accused in criminal proceedings, it is manifested in the following:

- the state of preservation of the juvenile's psyche during the investigation of the crime;
- preserving the psychological integrity of the juvenile;
- normal psychological interaction of the juvenile accused with the environment, and a stable psychological condition;
- preservation of the juvenile's ability to eliminate threats and prevent their occurrence in interaction with the environment;
- maintaining an environment free from manifestations of psychological violence in interaction with a juvenile, which will contribute to meeting the needs for personal and confidential communication in the investigation process.

Therefore, such conditions must be created in the process of investigating juvenile drug-related crime that will ensure the possibility of meeting juvenile's psycho-intellectual and informational needs, depending on individual characteristics, goals and age socialization; the use of technologies that will correspond to the physiological, psychological, intellectual and social characteristics and patterns of development of a juvenile.

So, the mechanism of investigation of juvenile drug trafficking offences should include not only certain tactical actions of the investigation, but also compliance with certain requirements set forth by the provisions of international and national regulatory legal acts, as well as those that are not yet provided for at the legislative level, but should be enshrined.

5. Discussion

There is no doubt about the need to develop new and improve existing mechanisms for investigating juvenile offences related to drug trafficking and use. First of all, there is a need to develop new methods and tactics for investigating this type of crime, which is associated with the use of the latest technologies, both from the perspective of their use for obtaining evidence and processing it (Lad *et al*., 2016), and from the perspective of their study as an evidence base for obtaining reliable information about the commission of drug-related crimes (Zelena, 2020).

The proposal to direct the educational environment for the purpose of resocialization and prevention of drug-related crime among juveniles to create informational and psychological security of the suspected (accused) juvenile who is being investigated (Salakhova *et al*., 2019) is worth mentioning. Such an approach will enable the development of a juvenile's personality as a mentally and morally healthy individual, while ensuring counteraction to the spread of drug-related crime among juveniles.

As regards the observance of the fundamental rights and freedoms of a child who is an accused during the investigation of crimes related to the trafficking and use of drugs, the position on the legislative enshrinement of the inadmissibility of biased treatment of such persons on racial, national or religious grounds (Leiber *et al*., 2017) is worth supporting.

A biased attitude violates the juvenile's right to equality before the law, a fair and impartial trial, encroaches on the juvenile's honour and dignity. On the other hand, these discredits law enforcement agencies investigating drug-related crimes, and the judicial system in general.

At the same time, it is difficult to fully agree with the view regarding the ineffectiveness of punishing juveniles accused of drug-related crimes, and regarding a higher effectiveness of the rehabilitation of a person in the cases of illegal use of drugs, rather than holding a person criminally liable and applying legal sanctions (Taqwim *et al*., 2021). Likewise, a means of reducing the number of drug-related crimes and drug users in society cannot be as effective, if arrest or other types of restriction (deprivation) of freedom are not used (Charlier, 2015; García *et al*., 2021).

Despite the fact that criminal prosecution is the most severe measure of influence on the offender, failure to apply it in legitimate cases can create an illusion of impunity among offenders. This, in turn, will contribute to an increase in the number of crimes. So, the proposition on complete decriminalization of certain types of drug trafficking offences is also debatable (Glenn, 2009). But the expansion of sanctions along with the reduction of procedural protection (Jensen and Gerber, 1996) and the artificial reduction of the role of the defence attorney during the

investigation of juvenile drug-related crimes (Kirschenheiter, 2017) is also unacceptable.

There are also doubts about the truth of the conclusions regarding the lack of connection between crimes related to drug trafficking and use and recidivism (Papp *et al.*, 2016) and other types of criminal behaviour (Sharma *et al.*, 2016). It has already been pointed out that drug-related crimes are closely related to other types of crimes, in particular property crimes, which are usually committed repeatedly, as they provide an opportunity to illegally obtain funds for the use of drugs. Quite a large number of sexual crimes are committed against the background of illegal use of drugs or substances (Wen *et al.*, 2022; Shcherbina *et al.*, 2022).

At the same time, we fully agree with the proposal regarding the need to develop new tactics in the investigation of juvenile drug-related crimes (Vladova-Nedkova, 2018). This will contribute to the comprehensive detection, search and proof of drug trafficking offences, which is accompanied by certain difficulties, while simultaneously ensuring the protection of the fundamental rights and freedoms of suspects (accused) (Matic Boskovic, 2020). But it should be noted that the mechanism of investigation of drug trafficking offences is imperfect not only because of insufficient testimony or difficulties in obtaining the evidence (Zharmagambetova *et al.*, 2019). It is also related to the need to take into account the peculiarities in the investigation of this type of juvenile crimes at the stages of the investigation and when applying certain methods.

Conclusions

The conducted research leads to the conclusion that the tactical methods, stages, investigative situations of the investigation of juvenile drug trafficking offences are applied in the same cases and in the same order as in relation to other categories of crimes. The main tactical actions in criminal proceedings for juvenile drug trafficking offences are:

- personal search of the detainee, examination of the suspect, examination of the scene, searches and seizures, interrogations of parents (guardians), teachers, eyewitnesses, victims, interrogation of the suspect, presentation for identification, appointment and conducting of forensic examinations.

Based on the research results, it was determined that the following mandatory requirements must be observed during the investigation of this type of juvenile crime:

1) establish all the necessary circumstances (comprehensive and comprehensive physiological-social and psychological-psychological

information about the juvenile accused; intellectual and volitional characteristics; social and living conditions; the level and quality of upbringing of a juvenile by parents or persons who replace them; information on whether a drug-related crime was committed by a juvenile);

2) ensuring the mandatory participation of a forensic psychological expert at all stages of the investigation of juvenile drug-related crimes, with the main tasks of establishing contact and interaction with a juvenile and ensuring the emotional and psychological protection of the juvenile accused; 3) ensuring the mandatory participation of the parents or other legal representatives of the juvenile, as well as representatives of the Children's Service and the Juvenile Criminal Police at all stages of the investigation of these crimes;

4) ensuring informational and psychological security of a juvenile;

5) ensuring the most humane and tolerant treatment of the juvenile accused at all stages of the investigation;

6) inadmissibility of torture, mental or physical violence, humiliation and other types of encroachments on the honour and dignity of the juvenile accused.

This study is not comprehensive and does not resolve all the issues associated with special tactical actions and methods of investigation of juvenile drug-related crimes. The proposition to ensure the informational and psychological security of a juvenile accused in criminal proceedings opens up prospects for further research in this area. This will contribute to the improvement of both the legislative framework and the practical implementation of its provisions on ensuring the normal mental development of juveniles and their socialization/resocialization.

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Application of the method of computer forensic simulation of crimes in the course of an armed conflict

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Abstract

The objective of the study was to determine the characteristics and perspectives of the use of computer simulation as a method for investigating crimes committed in the course of an armed conflict. In addition, the study involved a system approach, descriptive analysis, systematic sampling, doctrinal approach and prognostic methods. The author chooses the technological direction of application of the simulation (prospective or retrospective) and simulates the characteristics of the event, the identity of the offender, the victim of the crime and the sequence of the investigation process. In the course of hostilities, computer simulation can be performed by representatives of national and international law enforcement agencies, depending on the type of crime. Computer simulation in the course of armed conflict requires standardization of procedures and improvement of the substantive and instrumental components of the application of this method. It is concluded that this model has different perspectives for its development, which include: standardization of procedures with due regard to the specifics of the crime committed and the offender; details of information sources;

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technological direction of simulation; possible types of models; and, the need/appropriateness of involving international coordination assistance.

Keywords: law enforcement; armed conflict; crime investigation; criminal justice; forensic methods.

Aplicación del método de simulación informática forense de delitos en el curso de un conflicto armado

Resumen

El objetivo del estudio fue determinar las características y perspectivas del uso de la simulación por computadora como método para investigar los delitos cometidos en el curso de un conflicto armado. Además, el estudio involucró un enfoque de sistema, análisis descriptivo, muestreo sistemático, enfoque doctrinal y métodos de pronóstico. El autorizado elige la dirección tecnológica de aplicación de la simulación (prospectiva o retrospectiva) y simula las características del hecho, la identidad del delincuente, la víctima del delito y la secuencia del proceso de investigación. En el curso de las hostilidades, la simulación por computadora puede ser realizada por representantes de las fuerzas del orden nacionales e internacionales, según el tipo de delito. La simulación por computadora en el curso de un conflicto armado requiere de la estandarización de los procedimientos y la mejora de los componentes sustantivos e instrumentales de la aplicación de este método. Se concluye que este modelo tiene diferentes perspectivas para su desarrollo, que incluyen: la estandarización de los procedimientos teniendo debidamente en cuenta las especificidades del delito cometido y del delincuente; detalles de las fuentes de información; dirección tecnológica de simulación; posibles tipos de modelos; y, la necesidad/adecuación de involucrar la asistencia de coordinación internacional.

Palabras clave: aplicación de la ley; conflicto armado; investigación de delitos; justicia penal; métodos forenses.

Introduction

The fight against crime is extremely necessary for the stability and development of society. Law enforcement agencies try to exert effective influence on criminals and their groups with due regard to the specifics of criminal activity (Tyagi and Sharma, 2018). This is why innovative methods of detection and investigation of crimes reflect the use of currently available

technologies in criminal actions.

The use of the latest technologies (Caldwell *et al.*, 2020) by criminals led to the reorientation of law enforcement officers to the collection of mostly digital evidence (Freeman, 2018). In general, cybernetic methods (Pryakhin, 2022), in particular data mining, their processing with the help of artificial intelligence (Shah *et al.*, 2021), have become an important part of crime detection (McClendon and Meghanathan, 2015).

Forensic innovations have provided a better understanding of the dynamics of criminal activity, identification of criminal behaviour patterns (Tyagi and Sharma, 2018). This, in turn, provided an opportunity to simulate and predict the development of criminal situations (Blahuta and Movchan, 2020), to visualize various aspects of the committed crime through models. Virtual reality becomes a component of forensic methods that increase the quality of proceedings and trials (Ahir *et al.*, 2020). Therefore, it became possible to obtain evidence that is accepted in courts through general methods of investigation of all types of crimes by means of digital forensics (Rani, 2018).

However, armed conflicts are an obvious challenge to law enforcement and judicial systems. Armed aggression always results in massive violations of human rights. The governments of states, the territory of which is covered by hostilities, are objectively unable to effectively fulfil their obligations to protect citizens from criminal encroachments, including the payment of compensation to victims.

The crime rate is increasing rapidly in the course of hostilities, accompanied by an increased number of the most serious crimes in its structure, the number of law enforcement officers involved in the investigation process is being significantly reduced, so it is impossible to ensure the proper safety of participants in criminal proceedings. The efforts of international justice also do not guarantee a quick and effective trial of cases on conflict-related crimes and bringing the perpetrators to justice (Farrell Rosenberg and Nassar, 2022).

The specifics of hostilities necessitate the use of the newest methods of digital forensics by law enforcement agencies, which enable generating a set of evidence acceptable to the court quickly, qualitatively, safely with the involvement of a small number of people. Computer simulation takes a prominent place among such methods. At the same time, the analysis of the significance and effectiveness of computer simulation of crimes in the course of hostilities faces a number of conceptual legal, organizational and procedural problems.

As for the legal aspect, genocide, crimes against humanity and war crimes are considered the most serious acts as the object of application of the latest forensic methods. The international community considers that

the prevention, investigation and prosecution of such crimes play a central role in the fight against impunity (Interpol, 2015). War crimes committed with the use of the latest weapons leave digital traces.

This becomes the basis for new sources and types of data, and fundamentally changes the investigation of such crimes (Freeman, 2021). However, little attention is paid to the fact that other violent and acquisitive crimes are committed in the course of military operations, which also require effective investigation.

Besides, the specifics of the justice system are important because the generated set of evidence must be accepted by the court. It can be both a national and an international court for crimes committed during the hostilities. However, international criminal justice is different from national one, as the international justice does not appeal to harsh sanctions. This is a humanitarian form of justice, where the victim occupies a central place (Lohne, 2020).

The state plays the main role in the investigation and prosecution of international crimes remains with the state. It has the duty and right to exercise criminal jurisdiction when crimes are committed on its territory or by its citizens (Mayans-Hermida and Hola, 2020). The International Criminal Court only supplements national efforts (International Criminal Court & The Office of the Prosecutor, 2014).

This is why the national law enforcement and judicial systems carry the main burden of detection, investigation and trial of criminal cases about crimes during the hostilities. However, quite often the International Criminal Court does not accept the evidence collected by "external" (national) investigators (Braga da Silva, 2020).

This results in the organizational problems of using computer simulation of crimes in the course of hostilities. Not all states that face such acts have specially trained law enforcement officers. This raises the issue of conducting training of investigators. Ideally, every investigator in the field will be able to conduct expert research by connecting a laptop to databases (Du *et al.*, 2017). However, this is possible only with proper strategic cooperation and ensuring the exchange of experience with international specialists (Interpol, 2015).

The practical skills of processing information and forming databases are an important procedural component of computer simulation of crimes. During the hostilities, a significant information array can be obtained with the help of social networks. These platforms are obviously valuable for collecting and storing the testimonies of victims and witnesses of crimes, although they are limited in showing certain events and their evaluations (Goldschmidt-Gjerløw and Remkes, 2019).

Even in a normal situation, social networks are actively analysed to detect and investigate criminal activity (Nizamani *et al.*, 2019). This becomes especially important in the military conflict zones (Freeman, 2018). Among other things, this will enable working out algorithms for cooperation with civil society in order to integrate the results of the application of the latest forensic methods into procedural activities (Zweig *et al.*, 2018). For example, the Office of the Prosecutor of the International Criminal Court recognizes the important role that civil society plays in the fight against sexual crimes and crimes against children.

The Office supports and strengthens cooperation with those civil institutions that have experience in documenting such crimes and working with victims (International Criminal Court & The Office of the Prosecutor, 2014).

Although the area of intersection of technology, human rights and criminal prosecution is relatively new, it will cover a wide range of criminal cases in the near future (Freeman, 2018). Therefore, the use of digital forensics methods in general and computer simulation of crimes in particular will be increasingly expanding, especially in the course of armed conflicts.

1. Aim

In view of the foregoing, the aim of this study is to consider the specifics of the use of computer simulation of crimes in the course of hostilities with the determination of problematic aspects to achieve the goals of justice. The aim involved the following research objectives: clarify the legal, organizational and procedural aspects of applying the method of computer simulation of crimes in the course of hostilities; determine prospects for the introduction of standards governing the use of this method in crime investigation.

2. Methodology and methods

The sources which textually and contextually cover the issue of computer simulation of crimes as a method of digital forensics were selected in order to achieve the goals and tasks set in the article. Their analysis resulted in formulation of the main legal, organizational and procedural aspects of the subject under research.

The article also involved a generalization of the practice of international judicial bodies and law enforcement agencies regarding the standards for determining the signs of international crimes committed during hostilities,

and regarding the results of the use of computer simulation of crimes in the context of requirements for the presentation of evidence in national and international courts.

This enabled determining the main prospects for improving the effectiveness of the use of computer simulation of crimes in the course of hostilities.

The aim of this study was achieved through the following methods: *the system approach* was used to study computer simulation of crimes as a logical sequence of actions of authorized persons for the generation of evidence in criminal proceedings for cases on crimes in the course of hostilities; *descriptive analysis* was used to identify and study the specifics of computer simulation as a method of digital forensics; systematic sampling and doctrinal approach enabled identifying and describing the features of crimes for which computer simulation is used in the course of hostilities; *forecasting* was used to determine the prospects for improving the effectiveness of computer simulation of crimes.

3. Results

The application of the computer simulation of crimes in the course of hostilities is a problem with many components. These reasons are the following: a) the heterogeneity of crimes that can be committed during hostilities, and the characteristics of criminals; b) characteristics of persons whose authority may include simulation; c) specifics that determine the organizational and procedural aspects of the application of this forensic method.

With regard to crimes committed during hostilities, they represent a heterogeneous set of dangerous acts. These actions are different in terms of danger and subjects. However, they can be combined into one group based on the situation — the crimes committed during the hostilities. Such crimes can include: a) international crimes with their inherent features determined by the International Criminal Court (genocide, crimes against humanity and war crimes (International Criminal Court, 2013), sexual violence occupies a special place in this list (UN; DPKO/DFS Specialised Training Materials, 2017); b) military crimes against the procedure of military service provided for by national legislation (for example, disobeying an order, desertion); c) crimes against national security (for example, treason); d) general crimes that are not directly related to the conflict, but the hostilities facilitate the commission of these crimes and hiding of criminals from law enforcement authorities (for example, murder, robbery, fraud) (see Figure 1).

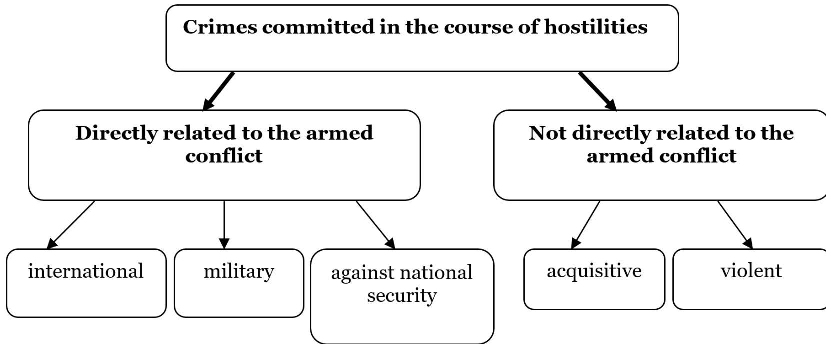

Figure 1: A set of crimes committed in the course of military operations.

The specifics of the perpetrators are an important characteristic of crimes in the course of military operations, which affects the specifics of the use of computer simulation. For example, perpetrators of international crimes include both direct perpetrators and military commanders. A military commander can be prosecuted for crimes committed by forces under his effective control and command.

Even if the commander did not give the criminal order, he will be responsible for the inability or the failure to exercise effective control (UN; DPKO/DFS Specialised Training Materials, 2017). Besides, crimes can be committed individually or in groups characterized by varying degrees of cohesion (see Figures 2a, 2b).

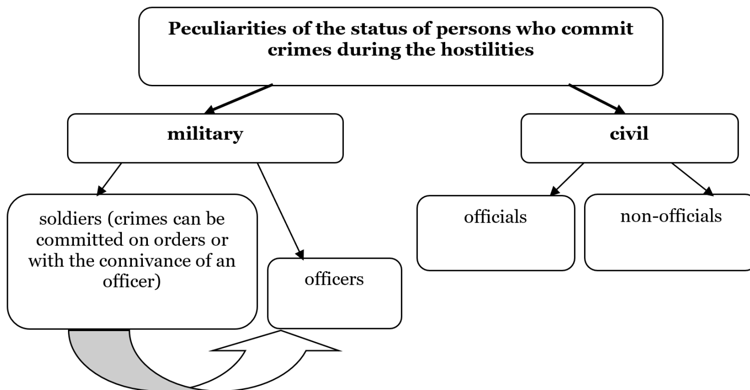

Figure 2a: The specifics of the status of persons who commit crimes during hostilities

The crimes of soldiers entail the responsibility of officers.

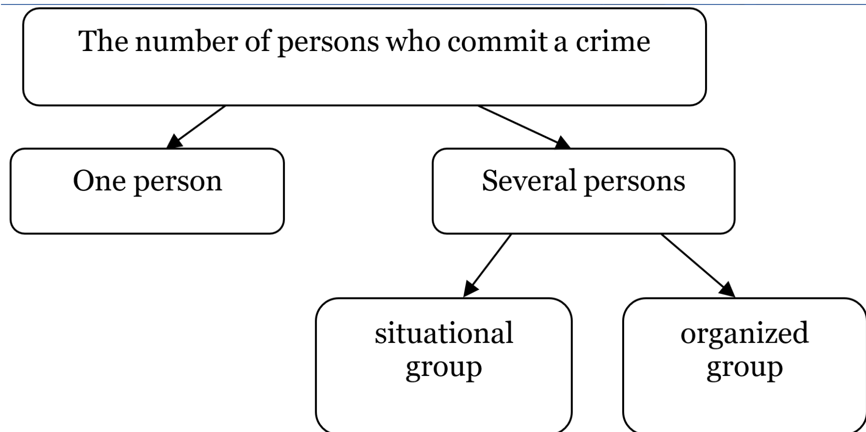

Figure 2b: Quantitative composition of perpetrators who commit crimes during the hostilities.

The data for drawing conclusions about the specifics of the crime committed during military operations are obtained from various sources. Features of the combat situation determine the main aspects that should be taken into account: a) the most effective collection of information that can be used for computer simulation in hard-to-reach areas; b) objectivity of the data obtained; c) safety of persons participating in the proceedings; d) availability of information for all persons concerned (Freeman, 2018).

Messages in mass media and social networks become very widespread sources of information during the hostilities (Sarkin, 2021). In particular, social networks are a huge archive of digitized images. Having an image of a person of interest to the officers of the criminal investigation department, it is possible to establish his/her location, connections, or at least the direction for further search (Blahuta and Movchan, 2020). The results of processing of the information obtained determine the choice of the technological direction of applying the computer simulation as a component of the investigation of the act by the authorized person - prospective or retrospective (see Figure 3).

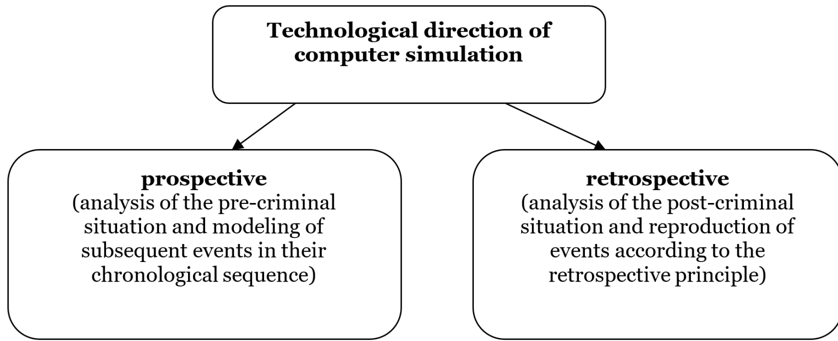

Figure 3: Technological direction of applying computer simulation (Pryakhin, 2022).

The peculiarities of the committed crime, the specifics of the available information and the choice of technological direction allow the authorized person to determine most appropriate computer models. Studying practical experience allows us to single out the four most widespread types of models that can be components of the investigation of crimes during hostilities. They help to reproduce: a) the event of the crime; b) the criminal's identity; c) the victim's identity; d) certain regularities of the investigation (see Figure 4).

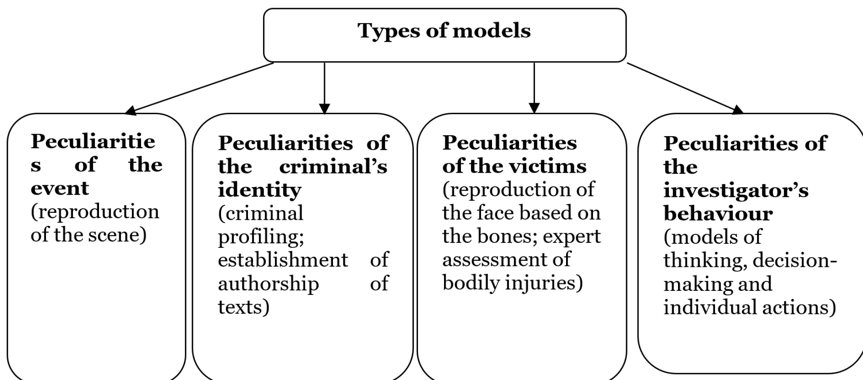

Figure 4: Types of models as a result of computer simulation of crimes in the course of hostilities (Benz et al., 2022; Blahuta and Movchan, 2020; Gupta et al., 2015; Horsman and Sunde, 2022; Jha et al., 2019; Longhi, 2021).

The specifics of the use of computer simulation of crimes in the course of hostilities determines that only authorized persons - experts in the field of criminal justice - can apply this forensic method. At the same time, the peculiarities of the crimes, in connection with which this simulation is used, determine the principle of complementarity of efforts of international and national law enforcement agencies and judicial bodies (Mayans-Hermida and Hola, 2020).

However, the main way to achieve the goals of justice for crimes committed in the course of hostilities is through national legal systems (Farrell Rosenberg and Nassar, 2022). Their activities regarding serious international crimes are coordinated and supported by Interpol (Interpol, 2015). This is why the subject competence of authorized persons can be presented as follows (see Figure 5):

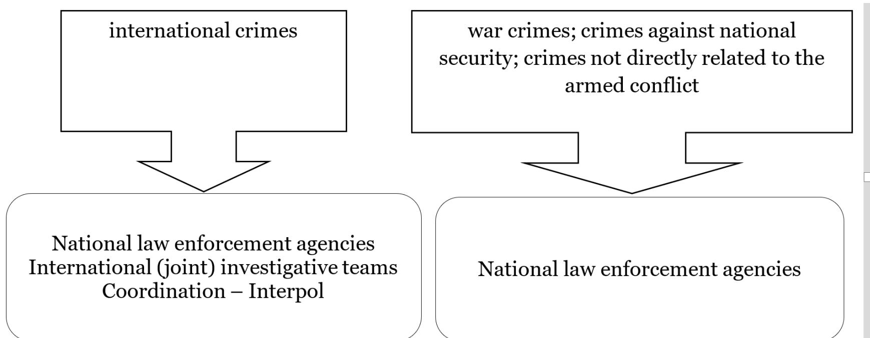

Figure 5: Subject competence of persons authorized to apply computer simulation of crimes committed in the course of hostilities

The development of methods and tools of digital criminology enables determining the main prospects for improving computer simulation of crimes in the course of hostilities: a) meaningful innovations that are related to the formulation of new tasks (Pavliuk, 2019; Wang *et al*., 2019); b) instrumental innovations in terms of technical and technological support for computer simulation of crimes (D'alessandra and Sutherland, 2021; Gunha *et al*., 2022; Shah *et al*., 2021) (see Figure 6).

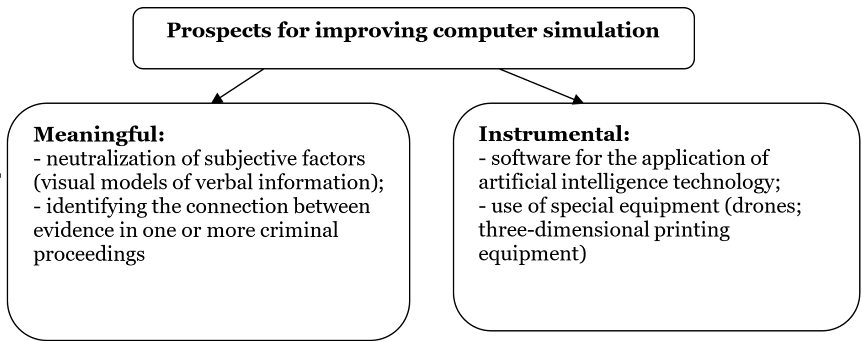

Figure 6: Prospects for improving computer simulation of crimes in the course of hostilities.

In view of the foregoing, it is considered appropriate to talk about the reasonability of developing standard computer simulation procedures that can be applied in most investigations of crimes committed in the course of hostilities. These procedures should be based on the following aspects: peculiarities of the committed crime and the criminal (criminals); the specifics of data obtained from available sources of information; technological direction of simulation; the types of models to be applied; the necessity/appropriateness of involving international coordination assistance. This will enable standardizing the results of computer simulations for the needs of national and international justice.

4. Discussion

Research on the application of computer simulation of crimes in the course of hostilities is still lacking. In general, this problem is a component of the theoretical applied discourse regarding the latest technologies in detecting and investigating crimes. The digital forensics is currently not only about the process of investigating computer crimes.

It provides methods of identification, storage, collection, verification, analysis, documentation and provision of digital evidence in all categories of criminal proceedings (Rani, 2018). As experts rightly note, this raises the practical importance of technologies that: a) speed up data collection; b) reduce storage volumes; c) provide timely review and analysis of information; d) management of knowledge and archives (Du *et al.*, 2017).

In general, it is emphasized that computer simulation of crimes is quite widely used in countries with developed law enforcement systems.

Ukraine is no exception (Avdieieva and Bululukov, 2019; Bilous, 2021). The following models are mainly paid attention: a) crime scene reproduction with the help of 3D visualization among other techniques (Wang *et al*., 2019); b) forensic medical examination of victims based on 3D models (Benz *et al*., 2022); c) facial reconstruction (forensic facial approximation) (Gupta *et al*., 2015); d) criminal profiling (Jha *et al*., 2019).

One should support the position of the appropriateness of using simulation with regard to crimes committed in the course of hostilities, because the creation of models is used mainly in those cases when the study of the object, phenomenon or process in the original is impossible for one reason or another. The authors correctly point out that the specifics of modern warfare led to the growth of the intellectual component in armament. In case of crimes related to armed conflict, this allows the use of new types of data that can be interpreted in criminal proceedings as evidence (Freeman, 2021).

In order to eliminate impunity, it is extremely important that states strive to effectively investigate and prosecute serious international crimes (International Criminal Court & The Office of the Prosecutor, 2014). However, it seems controversial to reduce crimes committed in the course of hostilities mainly to international acts (for example, genocide, war crimes, sexual violence and torture (UN; DPKO/DFS Specialised Training Materials, 2017), against children (International Criminal Court & The Office of the Prosecutor, 2014). "Ordinary" crimes that are not related to the conflict, but are committed in the course of hostilities (robbery, murder, etc.) also pose a significant danger to victims and society. Their investigation also faces the challenges of a combat environment and requires the use of the latest forensic technologies.

The availability of simulations based on such technologies as social networks, cloud computing, mobile technologies, information resizing, encryption, and varieties of virus programmes for law enforcement officers is ambiguously evaluated, because they make the investigation quite complicated and burdensome (Thakar *et al*., 2021; Rudyk *et al*., 2022).

In this regard, one should agree that constant technological innovations guide the efforts of investigators, prosecutors, lawyers and judges to adapt procedures for operations with digital evidence (Freeman, 2018).

In particular, the experience of the Joint Investigative Group investigating the MH-17 crash can be considered a positive example. In its conclusions, the Joint Investigative Group refers to a significant amount and different types of digital evidence, including data from open sources. This made it possible to create models of significant aspects of the event (Freeman, 2018).

The procedural dimension of the use of computer simulation of crimes committed in the course of hostilities is also considered problematic. The relevance of the issue of compliance with the fair trial standards is rightly emphasized. This primarily concerns international courts (Zarmsky, 2021). It is suggested that the prosecution should provide the defence with maximum access to the evidence base at the early stages of the proceedings in order to ensure the fairness of the trial (Freeman, 2018). However, this is not always possible because of the specifics of crimes related to the armed conflict.

The results of this study indicate that the statement on the need for common standards of proof and algorithms for collecting and securing digital evidence should be shared. Proposals for improving data analysis algorithms through visualization of information content (Thakar *et al*., 2021) (for example, using a computer model to visualize the testimony of the interrogated) seem promising (Pavliuk, 2019; Rudyk *et al*., 2022).

However, the position that all lawyers should become experts in how to collect, store and use digital evidence may be a bit of an exaggeration. This primarily concerns the use of data from social networks and other digital communications in conflict zones (Freeman, 2018). As concerns international crimes, a point of view should be shared regarding the appropriateness of uniting the efforts of national law enforcement agencies (Interpol, 2015) and creating a legal framework for optimizing the use of national investigations at the International Criminal Court (Braga da Silva, 2020). In general, these considerations can form the basis of the legal, organizational and procedural aspects of the use of computer simulation of crimes committed in the course of hostilities.

Conclusions

The conducted research provides the ground for drawing a number of conclusions regarding the legal significance, organizational and procedural features of computer simulation of crimes committed in the course of hostilities as a forensic method.

It was established that the mentioned crimes represent a set of various actions united by the situation — they were committed in the course of hostilities. Computer simulation of these crimes is used depending on the specifics of the act, status and number of persons who commit it. It is shown that the authorized person chooses the technological direction of applying the computer simulation method — prospective or retrospective — as a component of the investigation of the act based on the results of information processing.

This makes it possible to determine the most appropriate type(s) of models in a particular criminal proceeding. It was established that representatives of national and international law enforcement agencies are among the persons authorized to use computer simulation depending on the specifics of the crime. The further use of computer simulation of crimes committed in the course of hostilities involves meaningful and instrumental development of this activity.

It is proposed to develop standard simulation procedures to standardize the results of computer simulation and their use as evidence in national and international courts. They are determined by the following aspects: specifics of the committed crime and the criminal(s); the specifics of data obtained from available sources of information; technological direction of simulation; the types of models to be applied; the necessity/appropriateness of involving international coordination assistance.

This study opens up the prospects of working out the standards of forensic support for the detection and investigation of crimes committed in the course of hostilities with the further use of the evidence base in national and international courts. A separate promising direction is the organization of training practicing lawyers for the implementation and use of the latest technologies in criminal proceedings and court proceedings.

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Protection of property rights under special legal regimes

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Abstract

In the scientific article, based on the analysis of scientific sources, the provisions of the current legislation and the practice of its application, with the help of general scientific and special methods of knowledge, the essence of property rights is revealed, and their characterization is carried out. It has been proven that the conceptual principles and provisions of the legislation, which should be relied upon when solving issues related to property rights, along with the norms of private and public law, are also contained in the provisions of international humanitarian law, which regulates the relevant legal relations in conditions of war. Attention is focused on the fact that in the event of a military conflict, the state is obliged to introduce appropriate legal mechanisms for compensation of the value of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction. It was concluded that it is necessary to develop and introduce a comprehensive law that will take into account all aspects of legal relations regarding ownership, use and disposal of property by individuals and legal entities.

Keywords: protection of rights; private property; real estate; territorial relations; special legal regimes.

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Protección de los derechos de propiedad bajo regímenes jurídicos especiales

Resumen

En el artículo científico, con base en el análisis de las fuentes científicas, las disposiciones de la legislación vigente y la práctica de su aplicación, con la ayuda de métodos científicos generales y especiales de conocimiento, se revela la esencia de los derechos de propiedad y se caracteriza su llevado a cabo. Se ha comprobado que los principios conceptuales y las disposiciones de la legislación, en las que se debe confiar para resolver cuestiones relacionadas con los derechos de propiedad, junto con las normas de derecho público y privado, también están contenidas en las disposiciones del derecho internacional humanitario, que regula las relaciones jurídicas pertinentes en condiciones de guerra. Se centra la atención en el hecho de que, en caso de conflicto militar, el Estado está obligado a introducir mecanismos legales apropiados para la compensación del valor de la propiedad, la vivienda, la tierra, en caso de que no se garantice la posibilidad de regresar a ella o se destruya. Se concluyó que es necesario desarrollar una ley integral que tenga en cuenta todos los aspectos de las relaciones jurídicas en cuanto a la propiedad, uso y disposición de bienes por parte de personas físicas y jurídicas.

Palabras clave: protección de derechos; propiedad privada; bienes inmuebles; relaciones territoriales; regímenes jurídicos especiales.

Introduction

In today's conditions in Ukraine, the constitutional provision defined in Art. 3 that the establishment and provision of human rights and freedoms is the main duty of the state (Constitution of Ukraine, 1996).

The practical value of any individual right is the transformation of the possibilities defined in the legal norms into reality. Property law is one of the most important institutions for any legal system, legal regulation of property relations determines the content and direction of legal regulation of social relations as a whole. Such regulation is largely determined by the properties and social importance of the property itself.

Important and relevant for Ukraine in today's conditions is the issue of the protection of rights in the field of land legal relations, thanks to which it is possible to observe the real level of effectiveness of land legal norms and legislative guarantees for the protection of the subjective rights and legitimate interests of land owners and land users, since any legal relations constitute mechanism of action of legal norms.

The emergence of disputed land legal relations is primarily related to the violation of the subject's legal rights by other persons. Therefore, persons who have had their rights violated have all the legal grounds and opportunities to protect them in the manner provided for by the current legislation of Ukraine (OPENING OF THE LAND MARKET: WHAT ARE THE GUARANTEES OF THE PROTECTION OF LAND RIGHTS?).

Among the threats to the realization of property rights in Ukraine in the conditions of the war period should be attributed: looting; high risks due to distribution of weapons to civilians, damage to property owners; using the situation for illegal actions regarding the re-registration of property; failure to fulfill the terms of the contract due to force majeure and much more.

All of these circumstances encourage not only scientific research, but also the development of real mechanisms for solving these and other issues related to the realization of property rights by individuals and legal entities.

1. Methodology of the study

In the process of analyzing the problems included in the subject of the scientific article, in accordance with the purpose and tasks of the research, taking into account its object and subject, general scientific and special methods of scientific knowledge were used. The most important general scientific method is the dialectical method of cognition, which made it possible to trace the peculiarities of normative legal regulation of property right relations in Ukraine and the practice of its implementation.

Using the method of systemic structural analysis, individual ways of protecting property rights were studied as a component of the general system of ways of protecting property rights, structural and substantive features of protective property rights were analyzed. Comparatively, the legal method was used to investigate different approaches to the characterization and classification of ways to protect property rights from infringement. The logico-legal method made it possible to identify the shortcomings of the current legislation and its drafts and justify the need to improve its prescriptions.

The results of the dogmatic (formally logical) analysis were used in highlighting the content load of concepts and terms used by the legislator in normative acts, as well as in the formulation of conclusions and proposals taking into account the requirements for the consistency, reasonableness and consistency of judgments within the framework of general theoretical and civil law constructions using conceptual apparatus of relevant branches of science.

2. Analysis of recent research

Within the framework of civil science, the issues of the realization of the right to property were highlighted in the works of many modern works (Dzera *et al*., 2004; Zadorozhny, 1996; Shevchenko, 1996; Baranov *et al*., 2020; Girlington *et al*., 2011), a thorough analysis of which makes it possible to find out and assess the state of the researched problem, to outline and investigate the issues that have arisen at the current stage of reforming the theory of civil law, to propose ways to solve them.

At the same time, the study of the latest literature gives reason to conclude that there is an insufficient number of studies on the content and limits of the implementation of property rights under martial law, and the existing scientific works are either devoted to a wider range of problems, or highlight other aspects of property relations.

In addition, part of the works, the subject of which were the issues of property rights, to some extent lost their relevance due to changes in the legislation. Thus, the issue of the realization of property rights in the conditions of emergency legal regimes, on the example of Ukraine, is undoubtedly of scientific and practical interest.

The purpose of the article is to determine the content and modern normative and legal mechanisms for the regulation of the protection of property rights in the conditions of martial law in Ukraine.

3. Results and discussion

3.1. The content of the right of ownership and the limits of its implementation

Regardless of the form of government and the dominant political ideology, the Constitution of every democratic state contains provisions that to some extent recognize the fundamental principles of the exercise of the right to property in general and such a form as the right to private property, as well as their protection. In the Constitution of Ukraine, the issue of property is devoted to art. Art. 13, 14, 41, 85, 92, 116, 142 and 143 (Constitution Of Ukraine, 1996). Civil legislation should comprehensively regulate relations of all forms of ownership.

There is an opinion among scientists that the content of the right of ownership is completely exhausted by the powers of the owner to possess, use and dispose of the property. In particular, Y.M. Shevchenko draws attention to the fact that "the disclosure of the content of the right of ownership does not end with the determination of the powers that belong to the owner. It does not constitute the essence of property rights" (Shevchenko, 1996: 18).

The essence of the right of ownership, according to the correct opinion of the scientist, lies in the state of appropriation, the attitude of a person to a thing as his own. Only then the powers of possession, use and disposal acquire a socially significant expression, reveal what position the owner occupies among other persons in relation to the thing. Only the owner of the thing can transfer such powers to another person without losing the attachment to the property (Shevchenko, 1996). These points are decisive for identifying the legal and, therefore, the social nature of property rights in every society.

Thus, the right of ownership should be understood as a system of legal norms that regulate relations regarding the possession, use and disposal of the property of its owner.

It is logical to assume that if Ukraine is on the path to creating the conditions necessary for the next formation of a modern model of a market-type economy, then understanding the modern content of private property law and trends in its evolution becomes an auxiliary element in reforming the property system as a whole. Of course, private property can be considered as a material, property object appropriated (by law and in fact) by an individual (not society, not the state).

If such appropriation, ownership extends to the objects of one's own work, to a share of income from collective production, then private property becomes synonymous with the property of a citizen, an individual. In this case, its origin and functioning are natural and socially just. Therefore, private property by its nature is such that it cannot belong to everyone, it is also individualized depending on the person to whom the object of law belongs. Private property has been opposed to public, primarily state, property since ancient times. Despite all its shortcomings, it plays one of the key roles in human progress.

At the current stage of the development of legal relations, the situation is changing quite quickly, the concept of ownership is changing, developing, and today the scope of the institution of private property law in Ukraine is approaching the standards used in the market economy of the most developed countries.

In general, in civil law science, it is customary to distinguish the right of ownership in an objective and subjective sense (Dzera *et al.*, 2004). So, in an objective sense, the right of private property of citizens is a set of legal norms that establish and protect the ownership of property for consumer and financial and production purposes by citizens and ensure that the owners-citizens exercise the right to own, use and dispose of this property at their discretion, to use it for any purpose, unless otherwise provided by law.

The right of private property in the subjective sense is the right provided and guaranteed by law of the owner-citizen to possess, use and dispose of the property belonging to him at his discretion and for any purpose, unless otherwise provided by law (Dzera *et al*., 2004).

Systemic transformational processes in Ukraine, caused in particular by the state of war in Ukraine, make it necessary to fundamentally reform the legislative framework and adapt it to today's conditions.

If the Law of Ukraine «On Property» defined ownership as «law-regulated social relations regarding the ownership, use, and disposal of property» (On Property, Law of Ukraine, 1991), and this definition was more than once subjected to fair criticism for the efforts of the authors of the Law to give a universal interpretation of the concept of ownership in an objective and subjective sense, the current Civil Code of Ukraine operates on the principles of the primacy of private law and human rights, so that the right of ownership is defined as «the most complete right that a person has to property» (Civil Code Of Ukraine, 2003).

The content of the right of private property includes the rights to own, use and dispose of one's property. It should be noted that according to Art. 319 of the Civil Code of Ukraine "the owner has the right to take any actions regarding his property that do not contradict the law." There is every reason to consider this interpretation of the right of private property successful under the given conditions and at the given stage of development of the Ukrainian legal system (Civil Code Of Ukraine, 2003).

Therefore, the content of the right of private property consists of the following powers: possession, use and disposal of a thing (property) by the owner. These powers are universal, as they cover all the actions that the owner has the right to perform in relation to the property belonging to him, that is, they characterize the statics of the right of ownership, and not its dynamics.

The transformational processes in the economy of Ukraine, the redistribution of property, which continues, spreading and gradually covering more and more significant objects, drawing into its orbit an ever-growing circle of subjects, require a clear regulation of legal relations of property, a clear regulatory definition of concepts and categories that can be attributed to the institution of private property rights.

Sharing in general the opinion of H. Zadorozhny that at the moment the legal regime of property in its various forms and types is not sufficiently regulated by national legislation (Zadorozhny, 1996, p. 106), we can state that at present the categorical conceptual apparatus and scientific toolkit for fully ensuring the regulation of property rights relations.

The powers of possession, use and disposal defined by the Civil Code of Ukraine only legally establish the right of the owner to perform certain actions, and therefore they should be distinguished from the specific actions by means of which they are realized.

Taking this into account, the difference between the content of the subjective right and its implementation lies primarily in the fact that the first includes only the possible behavior of the authorized person, while the implementation of the right is the content of real, concrete actions related to the transformation of this possibility into reality.

Part three of Art. 319 of the Civil Code guarantees all owners equal conditions for the realization of their rights, which is one of the manifestations of the principle of equality of all subjects of property rights before the law (Civil Code of Ukraine, 2003). It is the duty of the state to provide all subjects with equal conditions for the realization of the right to property, which consists in the fact that no subject can be granted benefits, preferences or create more favorable conditions compared to others.

An important criterion for delineating the boundaries of the right of ownership is the obligation, formulated briefly - ownership obliges (Part 4 of Article 319 of the Civil Code of Ukraine) (Civil Code of Ukraine, 2003). The essence of this principle is that the realization of a separate private interest in order to prevent an arbitrary and unproductive attitude of the owner to the property belonging to him must be subordinated to the general public good, and all forms of ownership must be oriented, including, to the satisfaction of public needs.

Therefore, the right of ownership combines for the owner the pleasant benefit of owning property with an aggravating obligation - careful treatment of property, payment of taxes, fees, other mandatory payments that ensure the development of the state and society.

Part five of Art. 319 of the Civil Code prohibits the owner from using the right of ownership to the detriment of the rights, freedoms and dignity of citizens, public interests, worsening the ecological situation and natural qualities of the land. Therefore, the observance of the rights and legally protected interests of other persons - citizens, legal entities and the state - is the next criterion for determining the limits of subjective property rights, which corresponds to Part 2 of Art. 13 of the Civil Code of Ukraine (Civil Code of Ukraine, 2003).

The presence of the specified provision is dictated by the social interdependence of subjective rights, therefore the process of realizing property opportunities should take place taking into account the fact that other persons are the bearers of similar or similar rights, and therefore, when using the property, the owner should not cause material or moral harm to others, their rights, freedoms, dignity, life and health.

The fundamental basis of the need to apply legal restrictions is the general norms of international law - Part 2 of Art. 29 of the 1948 UN General Declaration Of Human Rights (General Declaration Of Human Rights, 1948), Art. 4 of the UN "International Covenant on Economic, Social and Cultural Rights" of 1966 (International Covenant On Economic, Social And Cultural Rights, 1966), "Convention for the Protection of Human Rights and Fundamental Freedoms" of 1950 (Convention On The Protection Of Human Rights And Fundamental Freedoms Human Liberty, 1950), according to which the state can impose only such restrictions on rights as are determined by law, and only insofar as this is compatible with their nature, solely for the purpose of promoting the general welfare in a democratic society.

In order to comply with the obligations accepted before the international community, the prescriptions of the above documents were implemented into the domestic legislation - Art. 64 of the Constitution of Ukraine allows restriction of basic rights and freedoms only in cases regulated by it, for example, in conditions of war or emergency (Constitution of Ukraine, 1994).

From the extended interpretation of the general principles of limitation of the right (Articles 13 and 41 of the Constitution of Ukraine, Part 7 of Article 319, Part 1 and Part 2 of Article 321 of the Civil Code of Ukraine) (Constitution of Ukraine, 1994; Civil Code of Ukraine, 2003) it follows that their foundation is based on the principle of combining private and public interests, with the latter clearly taking precedence.

The basis of the rights-limiting mechanism is the need to ensure national security, maintain public order, protect health, morals of the population, and protect the rights and legitimate interests of society. However, the public interest is not considered better than a private one, therefore, economically effective protection mechanisms have been introduced to protect the rights of the owner when using his property for public benefit. They are applied in the case of expropriation of a plot of land, a house, things of special cultural and historical value, or any other property for a socially useful purpose.

3.2. Procedural procedure for forced alienation and confiscation of property under martial law in Ukraine

Article 41 of the Constitution of Ukraine defines that «no one can be unlawfully deprived of the right to property. The right to private property is inviolable. Forced expropriation of objects of private property rights may be applied only as an exception for reasons of public necessity, on the basis and in the manner established by law, and on the condition of prior and full reimbursement of their value. Forced expropriation of such objects with subsequent full compensation of their value is allowed only in the conditions of war or emergency» (Constitution Of Ukraine, 1994).

As a general rule, ownership is exercised freely, but under certain conditions, the owner's activities may be limited or terminated, or he may be obliged to allow other persons to use his property, but only in the cases and in the manner established by law.

In particular, according to the Law of Ukraine «On the Legal Regime of Martial Law», martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for the provision of appropriate to state authorities, military command, military administrations and local self-government bodies, the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, threat-induced, restriction of constitutional rights and human and citizen freedoms and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions (On The Legal Regime Of Martial State, Law of Ukraine, 2015).

During martial law, the Ukrainian legislation provides for the possibility of: 1) forced alienation of property with preliminary full compensation of its value or with subsequent full compensation of its value; 2) confiscation of property without reimbursement of its value.

At the same time, it is worth distinguishing between the concepts of alienation and seizure of property. Thus, according to the Law of Ukraine «On Transfer, Forced Expropriation or Expropriation of Property in the Conditions of the Legal Regime of War or State of Emergency»: forced expropriation of property is the deprivation of the owner of the right of ownership of individually determined property that is in private or communal ownership and which is transferred to property of the state for use under the conditions of the legal regime of war or state of emergency, subject to the previous or subsequent full reimbursement of its value; confiscation of property – deprivation of state enterprises, state economic associations of the right of economic management or operational management of individually determined state property with the aim of transferring it for the needs of the state under the conditions of the legal regime of war or state of emergency (On The Transfer, Forced Alienation Or Seizure Of Property In The Conditions Of The Legal Regime Of Martial Or State Of Emergency, 2012).

Also, it should be noted that forced alienation or confiscation of property in connection with the introduction and implementation of measures of the legal regime of martial law is carried out by the decision of the military command, agreed, respectively, with the Council of Ministers of the Autonomous Republic of Crimea, regional, district, Kyiv or Sevastopol city state administration or by the executive body of the relevant local

council (On The Transfer, Forced Alienation Or Seizure Of Property In The Conditions Of The Legal Regime Of Martial Or State Of Emergency, 2012).

Compensation for forcibly expropriated property in the conditions of the legal regime of martial law is carried out: by the military command or the body that made the decision on such expropriation, at the expense of the state budget before the signing of the act by preliminary full reimbursement of its cost; during five subsequent budget periods, the legal regime of emergency - during one subsequent budget period after the cancellation of the legal regime of martial law or state of emergency at the expense of the state budget, with subsequent full reimbursement of its cost.

Part 2 of Art. 353 of the Civil Code of Ukraine establishes that in conditions of war or a state of emergency, property can be forcibly expropriated from the owner with subsequent full compensation of its value, and in the event of the return of the property to a person, the right to ownership of this property is restored, and at the same time, he undertakes to return the sum of money or a thing received by it in connection with the requisition, less a reasonable fee for the use of this property (Civil Code Of Ukraine, 2003).

3.3. Normative legal regulation of property rights in Ukraine under martial law

The military aggression of the Russian Federation against Ukraine, which began on February 24, 2022, opened a new angle of civil and legal problems faced by the state of Ukraine in general and each individual citizen. The reasons for the introduction of martial law are related to the violation of individual rights, including the restriction of property rights (destruction of property, damage, depreciation, unavailability of property for use, having to bear additional expenses for emigration, including internal, for housing rent etc).

This, in turn, leads to the emergence of new civil legal relations, because property suffers, individuals or legal entities cannot meet their obligations, etc. The provisions of the Central Committee of Ukraine provide that the rights and freedoms of a person are an integral part of his existence, and therefore require appropriate protection in case of encroachment on them.

The conceptual principles and provisions of the legislation, which should be relied upon when solving the above-mentioned issues, are contained not only in the norms of private, but also of public law, and in some places also in the norms of humanitarian law, since in the period of war, humanitarian law applies alongside «peaceful» law (as norms special and general).

It should be noted that the Civil Code of Ukraine does not contain the specifics of restitution under martial law, which may raise questions about this method of protection. Draft Law No. 5177 (Draft Law No. 5177,

2022) does not resolve this issue. In particular, it is indisputable that the implementation of this law will require spending from the state budget of Ukraine.

In our opinion, the complex of these costs should include not only funds intended for compensation to owners whose property rights have been violated, but also funds for maintaining commissions, registers, property valuations, etc. From the above, we can see the imperfection of the provisions relating to restitution as a result of armed aggression.

At present, the prospects for restoring the violated rights of owners who suffered losses from military operations look rather bleak. There is a situation when the methods of protection in peaceful life, vindication and negative lawsuits, etc. have given way to other problems that are more relevant now and need to be discussed (Zheltukhin, 2002).

We believe that in the context of the subject of the impact on private property rights of circumstances related to martial law, in order to study the specifics of the protection of this right, attention should be paid to such aspects as: types of violations of property rights observed during the period of military operations; the grounds for protecting the right of ownership and liability in case of its violation; methods of protection and analysis of draft laws; conditions of liability, the amount of compensation and the procedure for determining it; sources of compensation; requisition of property; recognition of the fact of a person's death (many issues depend on this, including property rights, inheritance rights, etc.).

No less debatable is the issue of compensation for damage to owners in the post-war period, when calculating the amount of which damage to the life and health of natural persons in connection with destruction, damage, loss by other means, in particular, kidnapping, looting, forced displacement within the borders of Ukraine, should be taken into account or abroad.

Along with the above-mentioned direct losses, it should also be noted the moral damage caused to individuals by the various consequences of armed aggression, as well as the indirect losses of business entities caused by the war, for lost profits. These are other losses from downtime, a significant drop in the value of surviving, but significantly depreciated property assets (Zheltukhin, 2022).

In this case, the answer is obvious, because it is the aggressor state that must bear all the negative consequences of the war it started, including compensation for property and non-property losses to individuals and legal entities. Actually, this is the official position of the authorities. In particular, Part 4 of Art. 2 of the Law of Ukraine «On Peculiarities of State Policy and Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories of Donetsk and Luhansk Oblasts» imposes responsibility for material or non-material damage caused as a result of military aggression against the Russian Federation.

The provisions of the latest legislative acts should be formulated in the same vein, in particular the Law of Ukraine «On the Organization of Labor Relations in the Conditions of Martial Law», the Law of Ukraine «On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Property Rights of the Russian Federation and its Residents», the Civil Code of Ukraine, etc.

It should be noted that there are many significant gaps in the draft law on compensation for damage and destruction of certain categories of real estate objects as a result of hostilities, acts of terrorism, and sabotage caused by the military aggression of the Russian Federation (Draft Law No. 7198, 2022). The said draft law is aimed exclusively at the settlement of issues related to the compensation of the value of destroyed or damaged property, which is too narrowly interpreted by the draft. The document does not refer to damages as such. That is, the terms used in the draft law refer to «compensation».

Considering all the norms of the draft law as a whole, it can be considered only as part of a certain mechanism of compensation for damage caused by the destruction or damage of property as a result of the armed aggression of the Russian Federation. The document has neither the direct establishment of the guilty person, nor the direct establishment of any composition of the offense, the determination of a specific guilty person, nor any connection with the judicial mechanism of protection.

The negative points of the draft law include the fact that it deals exclusively with immovable property, priority is given to compensation for lost or destroyed real estate of the housing stock. Also in Art. 2 of the draft law states that only natural persons are directly entitled to receive compensation. On the other hand, neither legal entities nor natural persons – entrepreneurs are mentioned as recipients of compensation.

At the same time, in separate articles of the document, the executive bodies of village, settlement, and city councils, which are the customers of financing the construction of new facilities instead of those that were destroyed, are still recognized as recipients of compensation.

We also consider the provision of this draft law to be quite specific, which refers to the termination of ownership of destroyed or damaged property. In particular, it is noted that the state registration of the relevant fact of termination of ownership of the real estate object will be carried out only after receiving compensation.

At the same time, no terms have been defined when exactly this will happen after the termination, and why is it tied to compensation, if in this situation the fact of destruction of property is already clearly stated as the basis? In addition, if the procedure of the termination of the right of ownership will be made after receiving compensation, the deadline for applying to the state registrar and other facts are equally unclear.

The shortcomings of the draft law should also include: avoidance of such a method of protecting property rights as restitution; the absence of any provision regarding compensation that can be settled under insurance contracts; limitation of the limitation period of three years is not justified by anything.

The above shows that the specified draft law requires a significant and comprehensive revision of the mechanisms for securing and restoring the violated ownership right to destroyed or damaged property.

We also consider it important for the realization of the right of ownership in Ukraine to regulate the issue of termination/restoration of the right of ownership, its dispute under the legislation of the aggressor state, in the territory where there was property of private individuals who de facto are not considered owners, but are legally considered to be them. There are also problems related to corruption risks, for example, transferring the issue of property rights protection to commissions as certain administrative entities, the creation of which in wartime conditions seems dangerous.

Legal mechanisms for the protection of lost, destroyed, destroyed property, including property located in uncontrolled territory, are the subject of discussions in scientific circles.

In recent years, land reform based on the principles of openness, deregulation and competition has been actively implemented in Ukraine. However, the wartime makes adjustments to all spheres of the country's life, and, therefore, the regulation of land relations also shifts to «wartime rails» (Hruba, 2022).

It should be noted that land ownership is a complex and multifaceted phenomenon, which is interpreted in both broad and narrow terms. In a broad interpretation, the right to own land involves a set of legal norms that establish the ownership of land to certain physical and legal entities, the state, determine the scope and content of the rights of land owners, as well as the methods and limits of the realization of such rights (Shemshuchenko, 1996); in the second, it is the right to own, use and manage land plots (Part 1 of Article 78 of the Land Code of Ukraine) (Land Code Of Ukraine, 2001).

All lands located within the territory of Ukraine constitute a single land fund of the country. Chapter VII (Land Code of Ukraine, 2001) is devoted to substantive management in the field of land use and protection in the Civil Code of Ukraine. Management of land resources (land fund) is also an important aspect of land relations, which determines the system of political, socio-economic, legal and administrative measures aimed at organizing the use of land.

The rules for regulating land relations in peacetime, when the procedures for granting land plots last for months, in the conditions of martial law prove their inability and unadaptability to new realities.

Solving many tasks of the functioning of the economy of Ukraine during the war period, ensuring man-made security, protecting the internally displaced population, etc. directly depend on the speed of making administrative decisions regarding the formation and provision of land plots for the appropriate purpose, carrying out land management and registration of land rights (Explanatory note to draft law No. 7289, n/d).

The issue of eliminating the negative consequences of hostilities for the transport infrastructure also requires an immediate solution. About 85% of Ukraine's foreign trade in peacetime passed through seaports, the activities of which were blocked at the beginning of the war, and the infrastructure of which is at risk of damage due to the attacks of the aggressor. Thus, there is an urgent need for the urgent development of new logistics routes that will allow meeting the transport needs of producers of agricultural products, metallurgical enterprises, enterprises of the fuel and energy sector and other sectors of the economy.

This requires, among other things, the ultimate simplification of procedures for granting land plots and permitting procedures in construction for the placement of new river ports (terminals), railway logistics centers (production and transshipment complexes) (Explanatory note to the draft law No. 7289, n/d).

During the period of martial law introduced in Ukraine, the legislation regulating land relations underwent repeated changes. The legislator has already managed to loosen certain restrictions introduced at the beginning of the martial law, and for certain legal relations caused or changed by the war - provided for new regulation.

In particular, the possibility of indemnifying the owners/users of land plots caused by the war is determined by the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation" No. 326 dated 20.03.2022 (Resolution of the cabinet of ministers of ukraine No. 326, 2022).

The procedure provides for the possibility of determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation. In particular, the Order establishes the main indicators for assessing losses of the land fund, namely: actual costs for the reclamation of lands that were disturbed as a result of hostilities, construction, arrangement and maintenance of engineering and technical and fortification structures, fences, border signs, border crossings, communications for arrangement of the state border; damages caused to the owners and others.

Regional and Kyiv city state administrations (during the period of martial law – military administrations) will be responsible for determining damage and losses, which will be carried out on the basis of the methodology. The

relevant methodology must be approved by order of the Ministry of Agrarian Policy, in agreement with the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, within six months from the date of entry into force of the Order (Resolution of the Cabinet of Ministers of Ukraine No. 326, 2022).

In general, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Peculiarities of Regulating Land Relations in Martial Law" (Project Law No. 7289, 2022). This draft law is designed in a special way to liberalize land relations, to adapt them to wartime conditions, and its purpose is to establish special rules for the ownership and use of land that will provide for the most urgent needs in wartime conditions. According to the authors, the draft law will contribute to speeding up management decision-making and solve a number of important issues for farmers, metallurgists, etc.

As we can see, the legislator systematically approached the settlement of land relations under martial law, foreseeing both many simplifications to ensure the functioning of the agrarian sector of the economy and the accelerated restoration of Ukraine's infrastructure, as well as significant restrictions. Such restrictions serve the purpose of minimizing the number of abuses, the probability of which, in the absence of proper control, is greater in the conditions of martial law.

Summing up, we note that the number of adopted laws is not capable of regulating all the issues outlined by us in the scientific article, but one law is needed that will take into account all aspects of legal relations regarding property rights and determine an effective legal mechanism for regulating such relations.

It should be emphasized that the practice of the European Court of Human Rights contains many decisions according to which even if a certain state does not control part of its territories, it is not released from fulfilling its obligations under the Convention and its protocols. The right of a victim of an armed conflict to compensation for destroyed or damaged property stems from the protection of property rights.

That is, the private aspect means that the compensatory principle is involved, which means that not a part should be restored, but everything that was lost by a person. In the event of a military conflict, the state is obliged to implement appropriate legal mechanisms for compensation of the value of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction.

Conclusions

The following conclusions can be drawn on the basis of the conducted research.

The content of the right of private property consists of the following universal powers - possession, use and disposal of a thing (property) by the owner, which cover all actions that the owner has the right to perform in relation to the property belonging to him, that is, they characterize the statics of the right of ownership, and not its dynamics.

The basis of the rights-restrictive mechanism of ownership, use and disposal of a thing (property) is the need to ensure national security, maintain public order, health protection, morals of the population, protection of the rights and legitimate interests of society. At the same time, the public interest is not considered a priority over individual private interest, therefore, to protect the rights of the owner, economically effective protection mechanisms must be introduced when using his property for public benefit.

The conceptual principles and provisions of the legislation, which should be relied upon when solving issues related to property rights, are contained not only in the norms of private and public law, but also in the prescriptions of international humanitarian law, which regulates the relevant legal relations in conditions of war.

In the conditions of the extraordinary legal regime, generated by military actions on the territory of Ukraine, it is necessary to develop and introduce one comprehensive law that will take into account all aspects of legal relations regarding the ownership, use and disposal of property by individuals and legal entities, in particular, will determine effective legal mechanisms for compensation of the cost of property, housing , land, in case of failure to ensure the possibility of returning to it or its destruction.

The right of a person affected by an armed conflict to compensation for destroyed or damaged property stems from the protection of property rights, that is, the application of the compensatory principle, according to which all that was lost by the person must be restored, not a part. In the event of a military conflict, the state is obliged to implement appropriate legal mechanisms for compensation of the value of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction.

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The problem of art culture and art school in the concern of the events in Ukraine in early 2022

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Abstract

The research was aimed at the analysis of conceptual works of the 20th century on aesthetic education as a component of personal culture and values of mankind in general, together with the examination of the results of the methodological system in art education; with special emphasis, on the influence of this educational and political system on the events in Ukraine in 2022. Also, the methodological systems, conceptual works and arrangements of art education of the XX and XXI centuries are discussed, and the modern vectors of art education development are analyzed. It is concluded that, at the level of development of Ukrainian education, there is an urgent need for balanced decisions regarding changes in modern education. In particular, it is urgent to rethink the cultural values of the Ukrainian people in their relation to the world culture in general, at a comprehensive methodological level, forming aesthetic values and national consciousness, understanding the value of cultural diversity. Changes in all spheres of life in the 21st century are a natural necessity for the development of society. Finally, the political preconditions that have been developing cannot be ignored.

Keywords: educational policies; art school; aesthetic education; artistic culture; values.

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El problema de la cultura artística y la escuela de arte en relación con los acontecimientos de Ucrania a principios de 2022

Resumen

La investigación tuvo como finalidad el análisis de obras conceptuales del siglo XX sobre la educación estética, como componente de la cultura personal y de los valores de la humanidad en general, junto al examen de los resultados del sistema metodológico en la educación artística; con especial énfasis, en la influencia de este sistema educativo y político en los eventos en Ucrania en 2022. También, se discute los sistemas metodológicos, los trabajos conceptuales y las disposiciones de la educación artística de los siglos XX y XXI, y se analiza los vectores modernos del desarrollo de la educación artística. Se concluye que, en el plano del desarrollo de la educación ucraniana, existe una necesidad urgente de decisiones equilibradas con respecto a los cambios en la educación moderna. En particular, urge repensar los valores culturales del pueblo ucraniano en su relación con la cultura mundial en general, a un nivel metodológico completo, formando valores estéticos y conciencia nacional, comprendiendo el valor de la diversidad cultural. Los cambios en todos los ámbitos de la vida en el siglo XXI son una necesidad natural para el desarrollo de la sociedad. Finalmente, no se pueden ignorar las condiciones políticas previas que se han ido gestando.

Palabras clave: políticas educativas; escuela de arte; educación estética; cultura artística; valores.

Introduction

The problem of cultural identity, rethinking of cultural values, return to the spiritual and aesthetic heritage of the Ukrainian people and world culture is currently one of the key vectors of the development of the Ukrainian nation. There are clear contradictions in the study related to the rapid development of Ukrainian education, art school in particular, the impact of European countries' development on guidelines in all spheres of life and the constant suggestion of the neighboring state to think about these very guidelines. It goes without saying that politics, culture, and art are interrelated, influence and reflect each other.

The events of early 2022 in the world became a blatant confirmation of the following fact: the Ukrainian nation with its traditions, culture, and its unique identity exists. Moreover, Ukrainian nation is able to declare all these values, but further conscious development of younger generation's cultural values through the acquaintance with various kinds of art, especially national ones in particular, requires special attention.

This idea was stated in the Modern Art School Concept and approved by the order of the Ministry of Culture of Ukraine in 2017. It states the following:

Since ancient times, the people of Ukraine, as a nation of gifted people, have created its own unique cultural environment with traditions and features which are characteristic for the European state society. Art education occupies a prominent place in the process of the formation and development of the national cultural environment (The Modern Art School Concept, 2017: n/d).

This path will allow Ukraine to develop as the European state that exists and develops rapidly due to its roots, spiritual and cultural heritage.

The aim of the research paper is a theoretical analysis of the main provisions of the Modern Art School Concept and, most importantly, the analysis of the proposed model of modern art school for the nearest period of time, taking into account the events in Ukraine in early 2022. This analysis has to be done in a line with the main mission of the Modern Art School Concept which is as follows «modern art school should become an environment for the development of free creative personality, guarantee the right to develop talents and revive the national consciousness of the artist and society as a whole».

The following research objectives are identified: to analyze and theoretically research the main provisions of the Modern Art School Concept in order to put it into practice, taking into account the aim of the research. After analyzing each of sections of the concept, it is important to identify the following issues. Analysing each of divisions, to define the specific of the methodological system in artistic education during the last century and to trace her influence on an event in Ukraine in 2022.

1. Literature Review

Conceptual research works on aesthetic and moral education as a component of personal culture and values of mankind (Zyazyun, 2006); research works on art pedagogy and its impact on the cultural development of the individual (Otych, 2011; Padalka, 2009; Rudnytska, 2001); research works on the formation of individual's value orientations by means of art (Nikitenko *et al.*, 2021; Ganudelova., 2018; Voronkova *et al.*, 2022) ARE FUNDAMENTAL FOR THIS RESEARCH PAPER. THE RESEARCH QUESTION ARISES IN THE CONTEXT OF THE EVENTS IN UKRAINE IN EARLY 2022.

It requires rethinking of the national and cultural values of the Ukrainian people and common human values in general, return to spiritual, moral

and aesthetic heritage of Ukraine, review of the content of education, art school in particular.

2. Materials and methods

The methods of research are the analysis of the methodological system of art education and conceptual works of the 20-21st century, the analysis of modern vectors of the development of art education; generalization of the main provisions, correlation of the main provisions of the document with others, coordination of the new system of art education with the traditional one, comments and conclusions regarding the mutual influence of the political system of the country and the system of art education, forecasting the obtained and possible consequences for education.

3. Results

In the annotation of the Modern Art School Concept (Order of the Ministry of Culture of Ukraine, No. 1433, 2017) it is emphasized that art education has occupied and is occupying an important place in the process of formation and development of national cultural environment. In the document it is stated that «the Ukrainian art school, which is based on the freedom of creativity, developed most actively during the national liberation struggle and the short periods of the country's independence.

The rise of the free spirit of the Ukrainian artists' creativity was disrupted by the Soviet era, when art and art education became a part of the ideology of the new state, which led to the loss of national consciousness of the artists and the authenticity of the Ukrainian art». Thus, the significance of the impact of art education on the aesthetic, cultural, national development of the individual is not in doubt.

According to the document, a sociological survey, conducted by the Ministry of Culture of Ukraine, found out the following issues: a lot of parents primarily want to «bring up a harmonious, aesthetically developed personality of the child, his or her artistic abilities». The development of practical artistic skills and the acquisition of knowledge by children of primary art education necessary for further work in this field are of secondary importance for parents.

On the other hand, representatives of art schools believe that the main aim of art schools is the formation of performing skills and initial professional artistic competencies. It is also mentioned that the topics and learning materials for study should be chosen by the teacher. In this regard, the following quote is important:

> Only from an early age a child, who is an educated, artistically developed and talented person in specially created conditions, can conquer the peaks of art, and finally fulfill his or her own artistic mission – to develop art, bring its light to people» (Ganudelova, 2018: 16).

Both groups of recipients agree that children have to learn different art forms at the same time.

Thus, parents, who are the customers of services in the field of art, are focused on: on the one hand, receiving entertainment and leisure services when the child aesthetically and creatively develops, without any educational purpose, another group of parents want their child to receive his or her primary art education with a focus on the demand of the labor market. On the other hand, the teaching staff of art school tend to implement the educational objectives of art education, and, importantly, seek the trust of parents as for the educational trajectory of their activities in relation to the student group. There is a quote from the concept:

> In practice, there is an invisible conflict between what the school offers and what consumers of art and educational services expect from it. This is due to the lack of a clear understanding of the aims and desired outcomes of primary art education. Therefore, the modern art school needs an answer to the question of why it exists. And this answer must be clear and acceptable to the society, community, staff and student» (The Modern Art School Concept, 2017).

This issue is relevant not only to Ukraine:

> In connection with the update of the principles of education, it is necessary to introduce new teaching methods. The achievement of the main aims and relevance of the conscious educational trajectory change the content, form and methods of educational work and the main trajectories of educational activities (Nyandra *et al.*, 2018: 373).

The conclusion is unanimous: there is a need for changes in the educational and artistic environment that can meet the needs of both groups.

In order to understand the action plan of art schools in the near future, we will dwell on the main provisions of the Modern Art School Concept, taking into account the events in Ukraine in early 2022. It makes us analyze the possibility of putting the Concept's mission in life, and most importantly, determining its relevance.

Thus, the modern art school is an institution where a person has the opportunity to develop his or her artistic abilities, acquire initial professional competences, including performing ones, aesthetic experience

and value orientations through active artistic activity. The modern art school is an environment for creative development of the individual, the basis for training a professional artist and the center of cultural and artistic life of the community (The Modern Art School Concept, 2017).

We analyzed the mission of the modern art school. Thus, the Modern Art School Concept gives us different but clearly formulated aims that can not only exist by themselves but they exist separately, their joint simultaneous implementation is almost impossible. Because each of the objectives is an objective of a different syllabus, which has different content, aim, objectives, outcomes, principles and approaches, as well as the methodology of their implementation.

For example, «an institution where a person has the opportunity to develop artistic abilities, acquire initial professional competencies, including performing ones, is the basis of training a professional artist» and on the other hand – «the environment of personality's creative development and a center of cultural and artistic life of the community». Each separate objective of the mission unanimously meets the needs of one or another group mentioned at the beginning of the article (parents – customers of art education services, teaching staff – those who meet the needs of the society).

These mission tasks may even intersect in approaches, programs of implementation, objectives of implementation and methods of influence. But the ultimate aim of these separate tasks is different.

How does the Ministry of Culture and Information Policy see the implementation of one of the mission's points, namely, the interaction of a modern art school with the state and society?

According to the provisions of the Concept, the modern art school works closely with all national, regional and local institutions: state, community, students and parents. The main provisions of the section are as follows:

- Primary art education is a means to develop the creative potential of Ukrainian society as an environment for art education and is a value and national and cultural heritage of the state.
- State supports and promotes the activities of the art schools by creating appropriate conditions in primary art education (introduction of legislative mechanisms, funding from local and state budgets, promotion of the academic and financial autonomy).
- Services of the primary art school are available for the community members regardless of age and special educational needs and are supported by local and self-government authorities. It is done by creating art schools/branches, their funding and logistics in accordance with the needs of the organization of the institution's

educational process. Local authorities and self-government bodies, at the expense of local budgets, in accordance with the Law, compensate the cost of training of persons from among the privileged categories; promote the implementation of strategic plans for the development of institutions and implement programs for their development, financially support and motivate gifted children, creative and effective teachers.

- Modern art school is a part of the community, which is involved in the organization of its cultural life and works in the system of extracurricular education and adult education. Primary art education, in its turn, is a "basic cultural service for citizens" (The Modern Art School Concept, 2017) who have the opportunity to acquire competencies in accordance with their artistic and educational needs without any age restrictions.
- Modern art school is an environment of inclusive art education of primary level.
- Modern art school is an effective entity in the market of educational services, which meets the needs of citizens in a quality art product and motivates citizens to consume these educational services by demonstrating their own creative achievements; it has its own strategic development plan and "effective board of trustees" that promotes the interests of the institution and its development (within the powers defined by the law).
- Modern art school is a partner for the student and student's parents and focuses on the aesthetic needs of each person, introducing individual educational trajectories and various educational programs; each of the students has the right to choose the syllabus offered by the institution. Parents are active participants in the school life. Parents are the main instrument, which affects the formation and development of the child, the attitude of the parents to children helps to recognize the importance of family relationships more clearly (Eser and Yazgin, 2021).
- Art school creates all necessary conditions for creative self-expression of each student of the institution of primary art education by providing opportunities for public demonstration of their artistic performance and cooperates with parents of students on "acquisition of relevant artistic and educational competencies, creating conditions for their creative development and self-expression" (The Modern Art School Concept, 2017).

Summarizing the analyzed data on the implementation of the Modern Art School Concept, we can see a lack of clear understanding of the conceptual, meaningful aims of primary art education in general. This aim

is an aesthetic education and development of children's artistic abilities in various art forms, preparation for further artistic profession. The concept offers a flexible and variable matrix of content and organization of primary art education, where the state, community, children and parents are active participants in the educational process of the institution, influencing the creation, organization, change and control of the educational process.

And, among these participants, who closely cooperate and interact with each other, and, most importantly, ensure the quality of the educational process, there is no important target group – teachers (educators) of art schools. The question arises: what is the place and what is the function of a teacher in the strategic plan of the development of modern art education? It is interesting that they (academic staff of a modern art school) will be discussed in the fourth and last paragraph – "staffing for the quality of art schools" (The Modern Art School Concept, 2017).

Let us dwell further on the second point of the section of the Concept's mission – "Directions and content of primary art education in the modern art school" (The Modern Art School Concept, 2017).

It is important to emphasize significant changes in the content and structure of art schools in general, namely: firstly, the implementation of the inclusive primary art education for citizens with special educational needs, and secondly, a new structure of the elementary and basic sublevels (general artistic and educational competences: general artistic education; primary specialized art education: art and aesthetic education, primary art education).

Depending on the levels and acquisition of competencies, it is offered to move from development of general artistic, performing competencies to art-educational ones, in order to "continue art education at the next educational level and acquire an artistic profession" (The Modern Art School Concept, 2017).

As for the content and standards of primary art education, there are no significant changes. The content is based on the combination of experience, traditions and educational innovations (modern models, forms and means of learning); development of academic, authentic folk and modern orientation of the content of primary art education, which is based on the use of the art works of Ukrainian and world art classics, authentic folk and modern art in the repertoire, techniques and styles (The Modern Art School Concept, 2017).

Educational activities are carried out according to the individual educational programs or syllabuses. The teacher chooses the syllabus individually, given that the program should provide the content of primary art education and the acquisition of competencies in the relevant fields. Syllabuses of primary specialized art education (and/or primary vocational

art education) are standards of primary art education that contain a list of competencies, educational components and learning outcomes that meet the objectives of education in the field (The Modern Art School Concept, 2017).

One of the innovations of effective changes in the modern art school is its autonomy. What does it mean? According to the Concept and the Law, the art school has academic, personnel and financial autonomy. The institution has the right and authority (pedagogical council) to independently decide on its activities. Autonomy in this context includes several active participants and is implemented as follows:

- academic autonomy of the school is an opportunity to independently develop or choose syllabuses;
- teacher's academic autonomy is a choice or design of their own methodology, teaching methods (curricula);
- personnel autonomy of the school is a solution of personnel issues and selection of teachers, introduction of school's own systems of material and moral incentives for teachers, which will contribute to their professional development and the development of the institution as a whole. Substantial changes are that the institution has the opportunity to independently form staffing and introduce positions of specialists who will ensure the development of the institution, taking into account the needs of the population (psychologist, project manager, lawyer, information technology specialist, etc.);
- financial autonomy of the school means that it has its own accounting, uses «statutory instruments to attract and use funds for their statutory activities; it has the right to set the amount of tuition fees; expands the types of paid educational and other services in accordance with its statute, attracts alternative sources of funding, through project activities as well» (a quote from the concept document). The idea of establishing public organizations to support and assist in the implementation of institution syllabuses is also supported. Local authorities and self-government bodies, their executive bodies may not interfere in the autonomous powers of art schools.

The last section of the model of modern art school deals with ensuring the quality of primary art education. This section contains two subsections: staffing and monitoring the quality of art education. Let's dwell on each of the subsections in more detail, because they provide an opportunity to understand ways to ensure the implementation of the model of modern art education. After all, the mission of the model is purely educational.

The opportunities and responsibilities of an art school teacher, who is a key player in providing artistic competencies (including the development and implementation of effective, reliable and valid criteria for assessing these competencies), give an understanding of the possibility of realizing the model itself.

According to the document, an art school teacher is a highly professional, creative teacher who has the appropriate education (professional higher art education or higher art education in the relevant field). The art school teacher uses informal approaches to their work, orients the pedagogical activities for meeting the artistic and educational needs of primary school students.

The teacher is responsible for the identification and development of children's creative abilities, love for art, acquisition of artistic and educational competencies and achievement of learning outcomes through an individual approach to the organization of classes and the use of advanced teaching methods (The Modern Art School Concept, 2017).

The art school creates all the necessary conditions for teachers who are active subjects of personal professional development, encourages methodological and creative activities that improve the quality of the educational process of the institution.

We can see that the teachers of the art school have the opportunity to choose the direction of their own professional development, depending on their own preferences, request for the necessary information for the implementation of the syllabus being taught. Topics and modes of interaction are chosen by the academic staff, it significantly affects their internal professional motivation, material capacities and time limits.

The art school teachers are responsible for the results of their pedagogical activity and are guided by the objective criteria that take into account various aspects of pedagogical, creative, methodological and organizational activities. All aspects are aimed at the quality implementation of curricula of the institution and the educational process in general.

There are following criteria for evaluating the art school teacher's work: the identification of the level of students' acquisition of relevant competencies (achievement of certain learning outcomes); degree of students' interest and their satisfaction with the educational and creative process at school; dynamics of the development of students' creative abilities in accordance with their abilities; disclosure of their personal creative potential; psychological climate in the relationship between students and teachers; level of satisfaction of the students' needs for creative self-realization and self-expression (a quote from the document).

The head of a modern art school is a team leader who is a highly professional, creative, active, responsible person, who is constantly learning and improving his or her management skills, influences positive psychological climate of the school staff in order to ensure the effective functioning of the institution.

All stakeholders of the art school (head, teachers, board of trustees, public organizations) work for the common aim of the institution and the implementation of its statutory objectives, including «formation of a positive image of the school in the community, region, state, and abroad».

This section of the model of the modern art school development forces us to return to the first section of the document, which deals with the active subjects of the educational process and the activities of the institution. As it is mentioned at the beginning of this research paper, the Concept of Modern Art School states that the art school cooperates with parents and other representatives of primary art students in terms of acquiring relevant artistic and educational competencies, creating conditions for students' creative development and self-expression and is a partner of the primary art school students in their quest to acquire relevant competencies and meet their aesthetic needs through the introduction of curricula and individual educational trajectories.

In the list of "co-partners" (except the state, local and self-government authorities, community, art school as an institution, art students and their parents (representatives of students) there are no teachers who, according to the document, are responsible for the implementation of the criteria for knowledge assessment and ensuring quality education.

Thus, we return to the main question: how to enable the realization of the quality of education and achieve a sufficient level of art school students' competencies, if any of these subjects of art schools can influence the entire content of the educational process? It means to actively participate, comment on, implement changes and influence pedagogical, organizational, managerial conditions, methods and forms of functioning of the institution, without having professional education and being guided by «their own subjective goals and feelings».

Of course, the individual educational trajectory in the educational process is the reality of today (implementation of inclusive art education, i.e., content and environment of inclusive art education), which should be taken into account by art school teachers. But, given that the teacher of the art school is a key component of the educational process (when choosing syllabuses, implementing their content, ensuring the quality of education) it will be appropriate to trust their professionalism and focus on the job duties of the institution.

Parents of art school students are partners for teachers, who, in their turn, bring up children as aesthetically developed people, develop their artistic abilities, form initial professional competencies, including performance ones, aesthetic experience and values through their active artistic activity in the process of democratic and trustful relations with parents.

4. Discussion

Despite the fact that the democratic society of our country is developing in the direction of decentralization, providing more and more opportunities for freedom of expression for different groups of the population, it is necessary to clearly understand the importance of art education.

Being focused on innovative technologies, opportunities and needs of the children and their parents, art education should strive for a deep, conceptual idea of its functioning – artistic and aesthetic development of personality, formation of artistic and cultural values, development of moral, aesthetic and spiritual worldview, preservation and transmission of cultural heritage through knowledge and individual artistic activity. This is possible only with the preservation of the traditional conceptual idea of art education. There is an accurate quote:

> The main aim of an art educational program is to develop basic communication skills, including memory and representation, familiarize children with craft performance and modeling, develop visual knowledge, creative style, imagination, and aesthetic awareness, as well as teachers' understanding of how to teach the craft. The subject is reality and art, which includes related artistic activities and aesthetics (Mun, 2008: 60).

It goes without saying that the organizational and managerial system of art education, standards of activity, management functions at all levels, approaches to the provision of educational services need to be reformed. It is also important to update the content of art education, strategic planning of the institution, staffing, including professional and internal qualities of teachers, improve the quality of the system of evaluating the teacher's performance, as well as the quality of students' knowledge and criteria for its assessment.

The problem of identifying the optimal relationship between traditions and innovations in the art school is an urgent one when it comes to the improvement of art education. Art education is characterized by stability and certain conservatism, because it preserves and transmits cultural heritage. At the same time, the development of modernized innovations in the education system, beyond which it is impossible to imagine the progressive development of art pedagogy is a necessary aspect of the research (Padalka, 2009: 43).

In particular, a fundamental issue is to introduce the reforms in art education through the preservation and transfer of basic traditions of Ukrainian art education, national culture and values. Moreover, they should be reflected in the list of disciplines and the number of academic hours allocated for their study (Ganudelova, 2018).

Conclusions

As for the modern system of art education, it is so «democratic» that there is a lack of clear understanding of the conceptual, substantive goals of the existence of primary art education in general. A flexible and variable matrix of the content and organization of primary art education is proposed, where the state, community, children and parents are active participants in the educational process of the institution, who influence the creation, organization, changes and control of the educational process.

An important target group - teaching staff (teachers) of art schools is absent in this interaction. They are discussed in the section on «ensuring the quality of education». Among the innovations of effective changes of the modern art school is its academic, personnel and financial autonomy. Significant changes in the very content and structure in general regarding the development of art schools, namely: inclusive primary art education and elementary and basic sub-levels.

The content is based on a combination of experience, traditions and educational innovations. We believe that increased attention requires further conscious education of cultural values in the younger generation, through familiarity with works of various types of art, national ones in particular. This idea is specified in the Concept of Modern Art Education and approved by the order of the Ministry of Culture of Ukraine in 2017. The specified path will allow Ukraine to develop as a rapidly developing European state thanks to its roots, spiritual and cultural heritage.

There are significant conceptual changes in the educational sphere of the state, in particular art, caused by global changes in all spheres of life. Despite the fact that change is a natural necessity for the development of the society, it is necessary to carefully and pragmatically interpret the preconditions, clearly understand and predict their possible outcomes.

Moreover, if we ignore the preconditions that have ripened in the recent decades and the war in Ukraine now it will lead to drastic, ill-considered, unreasonable actions and their results will affect future generations, cultures, and human development in general. In this regard, we believe that the introduction of a model for the development of modern art school is a social necessity of life, which cannot be ignored as least for a long period of time.

But the implementation of changes requires a balanced, conscious, thorough theoretical and methodological confirmation of the vector of these changes, which will affect the rethinking of cultural values of the Ukrainian people and world culture in general.

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Project Management in Public Administration: Priority Areas of Application

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Abstract

The objective of the article was to identify the priority areas of application of project management in the public sphere. General and special scientific methods have been used in the article, such as: analytical, synergistic, systemic, statistical, generalization and prognostic analysis. The authors have suggested dividing the priority areas of project management approach in the field of public administration into three blocks: pre-war (peaceful), military and post-war periods of development of Ukraine. It has been concluded that the priority areas of application of project management methods and tools in public management for peaceful development of the state are: the sphere of regional development and development of united territorial communities; the sphere of cultural development and information technology; the sphere of education and science. It has been shown that the perspective areas of the use of project management technologies in public administration for the development of Ukraine in the war and post-war periods will be

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the following: reconstruction of destroyed and damaged infrastructure, reconstruction of certain settlements, renewal and transformation of the state economy and support of the army, among others.

Keywords: project management; public management; investment projects; social projects; scientific projects.

Gestión de proyectos en el campo de la administración pública: áreas prioritarias de aplicación

Resumen

El objetivo del artículo fue identificar las áreas prioritarias de aplicación de la gestión de proyectos en la esfera pública. En el artículo se han utilizado métodos científicos generales y especiales como: análisis analítico, sinérgico, sistémico, estadístico, generalización y pronóstico. Los autores han sugerido dividir las áreas prioritarias del enfoque de gestión de proyectos en el campo de la administración pública en tres bloques: períodos de desarrollo de Ucrania antes de la guerra (pacíficos), militares y de posguerra. Se ha concluido que las áreas prioritarias de aplicación de los métodos y herramientas de gestión de proyectos en la gestión pública para el desarrollo pacífico del Estado son: el ámbito del desarrollo regional y el desarrollo de las comunidades territoriales unidas; la esfera del desarrollo cultural y la tecnología de la información; el ámbito de la educación y la ciencia. Se ha demostrado que las áreas de perspectiva del uso de tecnologías de gestión de proyectos en la administración pública para el desarrollo de Ucrania en los períodos de guerra y posguerra serán las siguientes: reconstrucción de infraestructura destruida y dañada, reconstrucción de ciertos asentamientos, renovación y transformación de la economía estatal y apoyo al ejército, entre otras.

Palabras clave: gestión de proyectos; administración pública; proyectos de inversión; proyectos sociales; proyectos de investigación.

Introduction

On the agenda of the public sector of Ukraine there is an important issue of increasing the efficiency of public administration and increasing the level of competitiveness of the state, taking into account the conditions of European integration and the rebuilding of the state after the war. For this

purpose the Cabinet of Ministers of Ukraine accepted the Strategy of the Ukrainian Government Reform for 2022-2025 (Resolution of the Cabinet of Ministers of Ukraine No. 831-p, 2021), which noted the necessity of creating a professional, effective, efficient and accountable system of bodies of public authority.

Reforming of the public sphere in Ukraine is being carried out with taking into account the requirements of the Program of support for the improvement of administration and management, in particular the principles and criteria for assessing public administration, international standards and requirements, etc.

Despite the fact that the reforming of public administration in Ukraine began in 2016, the problem of low efficiency of planning the activities of public authorities, in particular in ensuring the orientation towards the result, is still relevant. In connection with this, the stated strategy is focused on the need to develop and implement programs to improve the qualification of civil servants in the field of project management and strategic planning and management to ensure professional development and performance management.

It should be noted that in Ukraine there is organizational and legal support for project activities in public administration. In particular, project offices have been established at the level of the central bodies of executive power. Thus, under the Cabinet of Ministers of Ukraine the Office of Reforms was established as a permanent advisory and consultative body (Resolution of the Cabinet of Ministers of Ukraine No. 768, 2016) the ministries also have similar structural divisions as collegial advisory and consultative bodies established for the purpose of quick and effective implementation of reforms (Order of the Ministry of Finance of Ukraine No. 478, 2016) in profile spheres.

Functioning of some state funds and certain responsibilities of public authorities, which on a competitive basis finance projects in the field of regional development, culture, tourism, science and education, and also on the issues of improving the activities of united territorial communities, as well as actualization of practical use of project management toolkits in the field of public administration of Ukraine.

Namely state institutions have the monopoly right for implementation of innovative methods of management that can be borrowed from the private sector and adapted to the public sphere with the aim of increasing the efficiency of state institutions activity. Projects that are financed from the state budget have a number of specific characteristics.

In particular, the use of state resources and peculiarities of ensuring the procedure of accountability for their use, which requires additional competencies in the subjects of project initiative. Methods of project

management can significantly improve the efficiency and quality of infrastructural, social, investment and innovation projects, which are financed by the state. The state, represented by the relevant institutions and funds, by means of tenders for financing of projects for the relevant areas in this way determines their priority in a certain period of time, depending on their strategic goals and perspectives of development.

That is why the determination of priority spheres of project management application in the public sphere and implementation of its methods in the sphere of public management is the main purpose of this article.

1. Methodology of the study

The scientific article is based on the use of a number of general and special scientific methods. Thus, by means of the analytical method the peculiarities of using the project approach in the sphere of public management were established, to characterize it and identify its advantages. The synergetic approach combined the results of research in the legal, economic spheres and in the sphere of public administration and management.

With the help of statistical analysis method the most priority spheres of using the project approach in public administration were identified. The systemic method was used to explain the project approach in the sphere of public administration as a phenomenon of systemic order, because public administration is a holistic, dynamic system that combines state management, analytics of state programs and policies, the interaction of government, business and citizens. Methods of generalization and forecasting were used to identify the most priority areas of public administration, where project management toolkits should be used to ensure the development of the state.

2. Analysis of recent research

The ideology of project management is mostly associated with the private sector, in particular, this branch of knowledge has been used in the management of organizations in order to obtain the best results from the implementation of the projects and to improve the management of the organizations. The public sector uses methods of project management rather recently, but already the results of their use stimulate the use of project management in many spheres of public management.

A number of scientific sources on the use of project management toolkits in the sphere of public administration proves that these issues are relevant not only for Ukraine but also for many developing countries. In particular,

the world science has investigated a number of issues on implementation of project management in the sphere of public management, in particular:

- formation of project teams that implement projects for state support has been investigated (Meirelles *et al.*, 2019);
- organizational interaction of structural divisions of the authorities in the process of implementation of national projects and reforms (Kartov, 2021);
- application of project-based approach at the level of local self-government in the conditions of decentralization, including tools of public-private partnership (Sorychta-Wojsczyk *et al.*, 2020);
- innovative spheres of application of project approach in public administration for the development of virtual community of the municipalities and ministries through virtual space (Kapogiannis *et al*, 2022);
- use of project management tools in the management activities of public authorities, non-profit organizations and educational institutions (Hedvicakova, 2013; Bartosikova *et al.,* 2013);
- automation of the work process in public management based on the project approach using Waterfall and Agile technologies (Aleinikova *et al.*, 2020);
- using of information systems and technologies for management of infrastructural projects in the public sphere on the basis of the concept of "digitalera governance" (Mamatova *et al.*, 2021);
- justification of project approach in the public sphere in the context of increasing the investment and financial capacity of public authorities (Povna, 2017, Bezpalova *et al.*, 2021);
- methods of analyzing the efficiency of investment projects in the public sphere (Lipkan *et al.*, 2018) etc.

The results of the conducted analytical review of the source base point to the obvious necessity of applying the methodology of project management in the sphere of public management and widening the range of its application. Particularly it is about local government, education and science, and information management.

It is also worth mentioning that most of the scientific publications on these issues are related to the states that are developing, mostly post-socialist states. This indicates that the classical models of public administration require modernization and transition to more innovative mechanisms, technologies and tools of use and flexible approaches.

3. Results and Discussion

3.1.Project Approach in the sphere of regional and local development

In Ukraine, state support is provided for the implementation of social, infrastructural and cultural projects. There is a number of state funds that competitively finance investment projects and programs of regional and local authorities. In particular, the State Fund for Regional Development (SFRD) of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine (https://dfrr.minregion.gov.ua/Projects-list), which is created as part of the general fund of the state budget.

The Fund's activity is focused on granting funds for development of regions, creation of industrial, innovation parks and infrastructural projects that meet the main priorities and criteria of the state strategy for regional development (Resolution of the Cabinet of Ministers of Ukraine No. 695, 2020).

These directions must be reflected in the relevant local and regional development strategies and programs. It should be noted that beginning in 2015, within the framework of implementation of the decentralization reform in Ukraine, the support of projects of united territorial communities and their cooperation, i.e. joint projects of several territorial communities was considered an important priority. Projects and programs that have been designated for implementation at the expense of SFRD funds must also be co-financed at the expense of the relevant local budgets at the level of 10%.

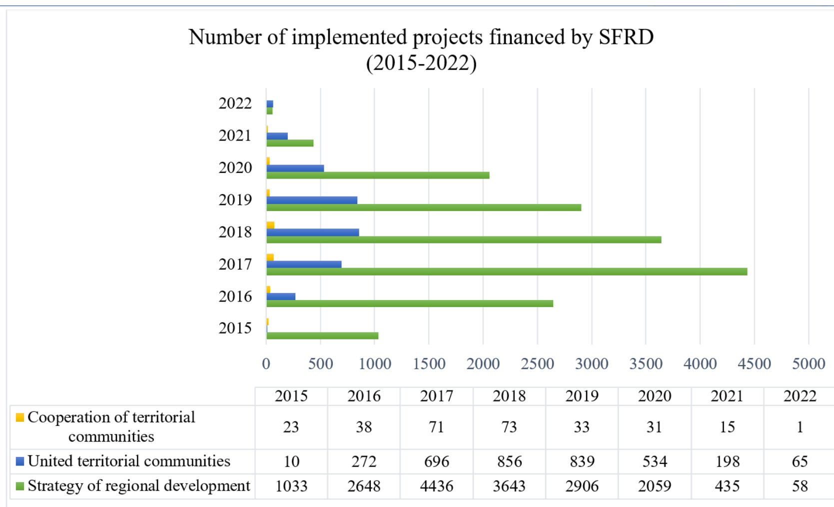
The order of preparation, evaluation and selection of investment projects and programs to be implemented at the expense of SFRD funds is strictly regulated by the Ministry of Community Development and Territories of Ukraine (Order of the Ministry of Development of Communities and Territories of Ukraine No. 150, 2021) according to the Budget Code of Ukraine (Budget Code of Ukraine No. 2456-VI, 2010) and laws «On Innovative Activity»(Law of Ukraine No. 40-IV, 2002), «On Science Parks» (Law of Ukraine No. 1563-VI, 2009), «On the principles of state regional policy» (Law of Ukraine No. 156-VIII, 2015) etc.

The selection of the project proposals submitted for the tender, apart from their compliance with the priority areas, is carried on the following criteria:

- availability of approved project documentation (for construction projects of the new objects);

- the implementation schedule should be a period of up to 3 years;
- co-financing in the amount of 10% from local budgets and other sources of funding;
- the ability of entities to independently retain and / or provide further financing of created objects (project products).
- According to SFRD data for the period from 2015 to 2022, 21,092 projects were implemented with state support in all regions of Ukraine. The priority areas for state co-financing of social, infrastructural and other projects are as follows:
- projects implemented in accordance with the Regional Development Strategy;
- projects of voluntary joint territorial communities;
- territorial community cooperation projects.

Figure 1 shows the number of projects on these areas, which were funded from the state budget, namely from the State Fund for Regional Development, in the period from 2015 to 2022.



	2015	2016	2017	2018	2019	2020	2021	2022
Cooperation of territorial communities	23	38	71	73	33	31	15	1
United territorial communities	10	272	696	856	839	534	198	65
Strategy of regional development	1033	2648	4436	3643	2906	2059	435	58

Fig. 1. Priority areas of implementation of SFRD projects in 2015-2022.

The data shown in Fig. 1 shows that most of the funds from the SFRD were spent to support the projects that meet the priorities of the Regional Development Strategy, as well as regional and local programs. Projects of

united territorial communities, for the support and development of which such a dimension was established within the framework of the SFRD co-financing, have the highest indicator in the period 2017-2019. This indicates an active phase of implementation of the decentralization reform in Ukraine and its state support.

The lowest indicator is for projects that were initiated within the framework of cooperation between territorial communities, i.e., joint projects and programs of several communities or UTC. This is the indicator that may testify to the lack of competence of the employees of the relevant authorities and the lack of experience in implementing joint actions in such projects.

Thus, we can summarize that the above-mentioned priority areas of implementation of projects in Ukraine at the expense of funds of the State Fund for Regional Development are evidence of their importance for the state, that is they are of strategic importance not only for the development of regions and territorial communities but also for the implementation of a number of reforms and state strategies in Ukraine.

3.2 A project approach in the sphere of cultural development and information policy

The priorities for the state in the development of culture, art and tourism were determined by the establishment of the Ukrainian Cultural Foundation (UCF) in 2017, coordinated by the Ministry of Culture and Information Policy of Ukraine. The main goal of this fund - promoting the implementation of state policy in the sphere of culture and art, the development of modern trends of cultural and artistic activity, the production of competitive Ukrainian cultural products.

According to the reports on the activities of the UCF in 2018-2021 (Ministry of Culture and Information Policy of Ukraine, 2018; 2019; 2020; 2021) was established that the priority for state financial support are the following sectors: cultural heritage, visual arts, audiovisual arts, design and fashion, performative and stage arts, literature and publishing industry, cultural and creative industries. From 2020 one more field was added: audiovisual art.

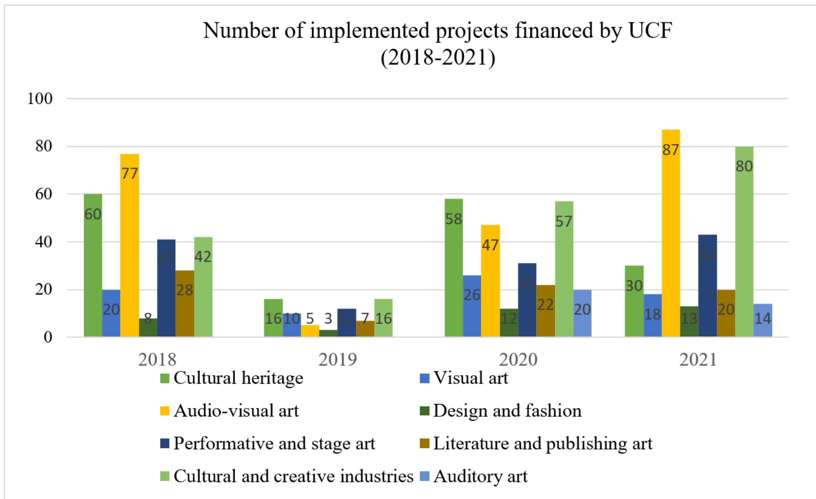


Fig. 2. Priority areas of implementation of UCF projects in 2018-2021.

As can be seen from the above diagram (Fig. 2), the most priority areas of UCF funding are: cultural heritage, audiovisual arts and cultural and creative industries. The priority of these areas is characterized by both a significant increase in project proposals of the subjects of project initiative for participation in the competition, and the state support, which is manifested in increased funding of projects for these areas.

In 2022 the UCF has announced new priority areas - grant programs, the implementation of which will be funded by the fund. In particular, the question is about the following: cultural capitals of Ukraine, culture plus, culture without barriers, audiovisual art, innovative cultural product, cultural heritage, grant events, culture (regions) research, education, residencies, scholarships.

Apart from the above-mentioned sectors, for which the selection of projects within the framework of the UCF competition was carried out, some of them were financed within the framework of development programs. According to the UCF (Ukrainian Cultural Foundation, 2021), the competition for grants is conducted for about 10 individual programs. Figure 3 shows the number of projects implemented in the framework of individual competitive programs in 2020-2021.

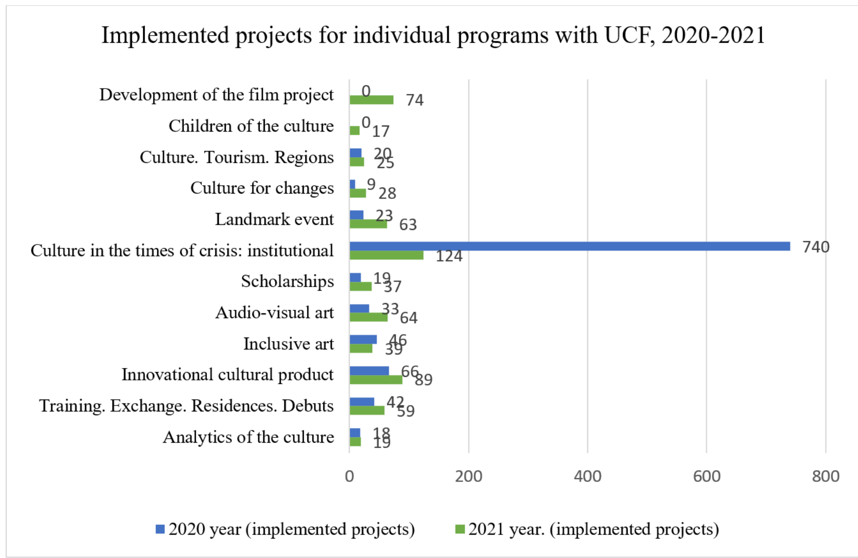


Fig. 3. Priorities of UCF financing according to the competition programs, 2020-2021.

According to this diagram`s data, the most priority areas in the sphere of culture and tourism for state financial support were projects under the programs "Culture in Times of Crises: Institutional Support", "Innovative Cultural Product" and from 2021 "Development of Film Production."

The program "Culture in Times of Crises: Institutional Support" has the largest number of projects that have been financially and financially supported by the UCF. Overall, the program has contributed to the stable development of cultural and creative industries during the pandemic and is aimed at enhancing the competitiveness of small and medium-sized businesses in the cultural sector.

The main purposes of this program are: supporting the organizational capacity of cultural institutions of all forms of ownership affected by the quarantine restrictions; contributing to the increase of jobs in the creative industries and ensuring the reduction of the number of employees; stabilization of the work of cultural and cognitive (domestic tourism entities through compensation for losses due to quarantine restrictions); support the film industry during the pandemic.

Therefore, the state support was primarily focused on the development of those aspects of the sphere of culture that have become the most

significant as a result of COVID-2019, thereby underlining their importance for Ukraine in the conditions of resistance to information interventions and the real need for high-quality innovative cultural product.

3.3 A project approach in the scientific sphere and the public management and administration knowledge sectors

Describing the application of the project approach in the field of education and science of Ukraine in general, it should be noted that the Ministry of Education and Science of Ukraine since 2016 has been supporting scientific projects of young scientists. Through a competitive selection process support is given to young scientists, research groups working on solving problems relevant for the state.

In particular, he matters concerns the allocation of funds from the general fund of the state budget for the management of scientific projects, which is carried out in the course of the competitive selection of project proposals of higher educational institutions of Ukraine. Over six years of the existance of competition, 411 projects were supported (Ministry of Education and Science of Ukraine, 2020). Fig. 4 shows the number of implemented scientific projects for the period from 2016 to 2021.

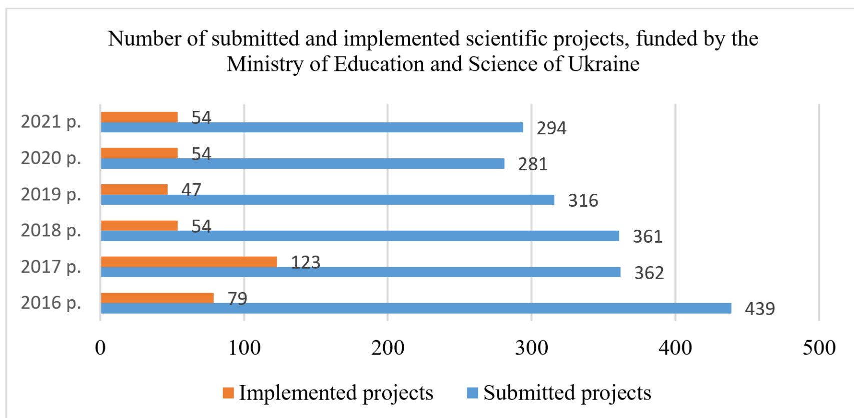


Fig. 4. The number of submitted and implemented scientific projects, funded by the Ministry of Education and Science of Ukraine in 2016-2021.

However, as can be seen from fig. 4, the number of scientific projects that have been funded by the state over the past 4 years has significantly decreased, indicating the lack of support, as the number of applications for participation in the competition remains at almost the same level. Thus, we can state that the use of the project approach in the sphere of science and

education requires substantial attention from the state. It is about financial support for the development of scientific projects and their implementation, as well as promoting the development of educational and professional and scientific programs for the training of highly qualified professionals in the field of project management in the public sphere.

The need to raise the level of competence of domestic scientists in the field of project management is also illustrated by the dynamics of obtaining financial and technical support and grant assistance from the EU, which is currently one of the most powerful tools for ensuring the development of the state's potential. This is the case of educational and scientific projects of international technical assistance within the «Horizon 2020» and «Erasmus+» programs.

"Erasmus+» has been implemented in Ukraine since 2005 after joining the Bologna Process and consists of three main directions: support of reforms, cooperation for the development of innovations and exchange of successful practices, and individual mobility. Throughout the years of partnership Ukrainian representatives participated in 5,521 projects and programs. Fig. 5 shows the number of these projects and programs in three directions.

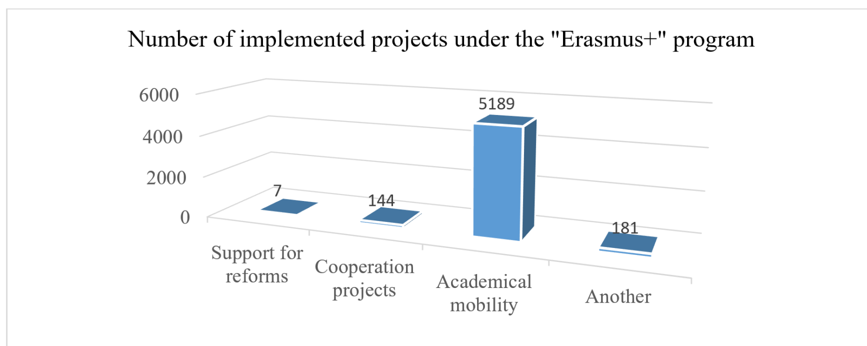


Fig. 5. The number of implemented projects under the «Erasmus+» program in 2014-2020.

As can be seen from fig. 5, the largest number of scientific projects was implemented in Ukraine in the framework of "Academic mobility" in the following areas: youth mobility - 3306 projects; youth academic mobility - 1717 projects; volunteer projects - 153; magisterial programs - 13 (Erasmus National + Office in Ukraine).

The smallest number is generated in the field of «volunteer projects» that was implemented only in 2018, as well as the «Erasmus Moodus»

Magisterial Programs. Within the framework of the "Support of reforms" only 7 projects were implemented in Ukraine to receive the right to use expert support and information, but without direct funding from the European Union.

In general, the «Erasmus+» program is aimed exclusively at developing the potential of future research, as opposed to the (Horizon, 2020) program, which provides funding for the implementation of projects, as well as their commercialization (Structure Horizon, 2020). As the largest EU Framework Program (Horizon, 2020) is aimed at financing two types of activities: scientific research and innovations. Within the framework of the mentioned program 184 projects (CORDIS EU, Horizon (2020) country profile for Ukraine) were financed and implemented in Ukraine (Fig. 6).

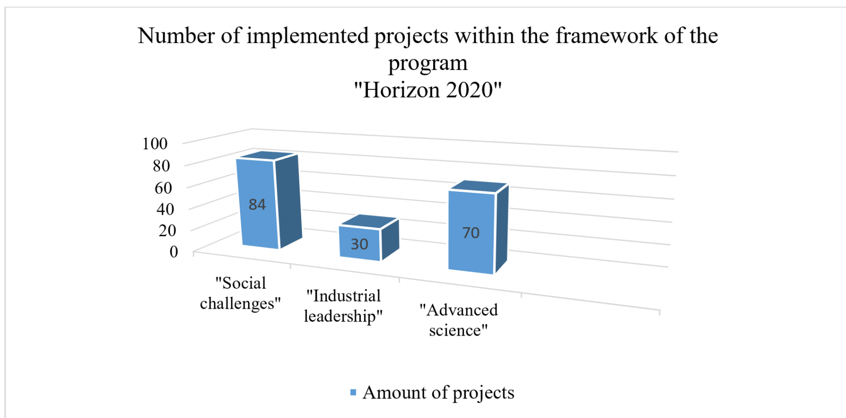


Figure 6. Number of implemented projects within the framework of the program (Horizon, 2020), as in 2020.

Totally, 296 participants from Ukraine (scientists and organizations) took part in the (Horizon, 2020) program over the years and received funding of $40.53 million. In general, preference was given to projects specializing in precision, chemical, medical and technological research. The Ministry of Education and Science of Ukraine must approve the Regulation on the use of the funds for the possible participation of Ukrainian researchers in contests of this program, without which further funding of the projects is impossible.

Overall, describing the activities of the «Erasmus+» and (Horizon, 2020) programs in Ukraine over the past few years, it should be noted that they have helped to increase the number of contacts between Ukrainian and European educational institutions and research institutions in Ukraine.

The participation of Ukrainian educational and scientific institutions contributes to both the strengthening of their institutional capacity and the development of the sphere of education and science in Ukraine as a whole. The implementation of such projects has provided the possibilities for improving not only the scientific but also the investment potential of Ukraine, which is important for the social and economic development of the state.

The perspective for the development of Ukrainian scientists and increasing numbers of research projects in international grant programs over the next 5 years is for Ukraine to participate in the «Horizon Europe» program, which has been transformed from «Horizon 2020» to cover the period 2021-2027 (Zamora, 2021). The «Horizon Europe» program for this period is predicted to provide funding of approximately €95.5 billion in the areas of science and education, 30% more than in the previous period, and provide the opportunity to increase the number of science projects from Ukraine (Horizon, 2020) country profile for Ukraine.

However, as we can see from the presented above analysis of the number of scientific projects that receive funding and within the framework of the European Union programs and were implemented, this potential is not fully realized. That is why the necessity of using the project approach for increasing the quality and efficiency of education in Ukraine is growing.

The need to use a project-based approach in the field of knowledge of public management and administration as a separate field for the training of public servants should be emphasized separately. In particular, the point is about three key areas in this sphere, which, in general, are aimed at enhancing the culture of project management:

- managerial activity of institutions of higher education that train professionals in the specialty 281 "Public Management and Administration". This approach makes it necessary for educational institutions to constantly update the content of the work in order to use additional knowledge and tools to meet the needs of public authorities and public servants themselves, including in the field of project management;
    - Scientific activity of higher education institutions for training public servants.
    - Such an approach will enable to ensure the development of innovation and will contribute to increasing the potential of fundamental and applied scientific research in the sphere of public administration and management, as well as the development of research infrastructure of educational and scientific institutions of Ukraine. In particular, the matter concerns the development and implementation of scientific

projects in the sphere of public administration that can be represented in the form of educational and scientific qualification works (diploma, dissertation).

- Educational activity of institutions of higher education. This approach will help to ensure: training of highly qualified professionals for direct professional project activities in the field of public management and administration for the development and implementation of projects, including at the expense of state funds and international grants; training of public servants for active project offices of public administration reforms; preparation by a public servant of a qualification work in the form of a separate scientific project in the field of public administration and administration.

In our opinion, the educational and scientific sphere of the project approach is the integrative one, that is, the one that can influence other aspects of public management and administration in Ukraine. These and other areas of modernization of training of public servants were taken into account during the development of the standard of higher education for the specialty 281 «Public administration and administration» for the second (master's) level of higher education (Order of the Ministry of Education and Science of Ukraine No. 1001, 2020), one of the general competencies of the graduate is the ability to develop and manage projects (ZK03), and one of the specialized competencies is the ability to develop and implement innovative projects at various levels of public management and administration (SK12). However, these norms of the Standard must be implemented in all educational-professional and educational-scientific programs of institutions of higher education, which carry out training for the specified specialty.

The demand for project management specialists in the sphere of public administration and management is especially urgent in the conditions of military and political instability, active warfare on the territory of Ukraine, as well as its post-war recovery.

At the moment, a number of international and state funds have started and are operating, the purpose of which is to provide financial assistance to Ukraine, in particular on the issues of renovation of property and destroyed infrastructure, renovation and transformation of the economy, support for the army, etc. Accordingly, it is possible to receive funds from the mentioned ones, technical and grant support from international organizations and programs only by submitting project proposals, this will allow to provide targeted funding, as well as facilitate monitoring and control of their use.

Conclusion

Priority spheres of application of project approach in the sphere of public administration and administration can be nominally divided into two blocks: pre-war (peaceful) period of Ukraine's development and military, war periods. Active military actions in Ukraine, which led to the destruction of social and critical infrastructure, significantly changed the strategic priorities of the state and contributed to the appearance of new challenges for the state authorities.

Thus, in the pre-war period, the priority areas of state development that required project management were those dictated by the reforms launched in Ukraine, in particular the decentralization reform. In this regard, state support and financing of investment projects and programs from the SFRD was provided to support the implementation of the Strategy for Regional Development of Ukraine, joint projects of the common territorial communities, etc.

The priority of the project approach in the sphere of culture and tourism was determined by the creation of the UCF, the activity of which was mainly focused on the institutional support of culture, the main focus of its activities was on the institutional support of culture, art and tourism under the conditions of the pandemic and Ukraine's participation in the information war with the Russian Federation, which required an increase in the number of information, cultural and art projects.

The current period of Ukraine's development dictates new priority directions of using the project approach in the sphere of public management and administration, in particular, the following: rebuilding of the destroyed and damaged infrastructure, entire settlements, renewal and transformation of the economy of the state, support of the army, etc. These areas will require new competencies in both public servants and other subjects of project initiative, especially in project management. That is why the development of scientific projects and application of project approach to education and science in the field of knowledge of public management and administration is particularly relevant.

Active use of the project approach in education and science as an integrative sphere will give the opportunity to effectively use the potential of international technical assistance, that is to get additional funding for the implementation of projects and programs in priority areas of public administration, and grantors – to monitor and control the financing of such projects, which is particularly relevant in the current conditions of Ukraine's tourism and development.

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Prospects of Transformation of the Institution of Constitutional Justice in the Course of Armed Conflicts

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Abstract

The objective of the article was to consider the current state and prospects of the transformation of the institution of constitutional justice in the course of armed conflicts. Observational and comparative methods were the main methodological tools. The research showed that constitutional courts must apply a specific method of judicial constitutional control during armed conflicts. Most of the complaints and appeals of the population to the constitutional courts seek clarifications on the constitutionality of the rules on social guarantees of the military, the rights of refugees. Constitutional interpretation of legislative provisions of the Republic of Azerbaijan, consideration of complaints of constitutional courts of Germany and Ukraine are examples of countries' reactions to armed conflicts. The conclusions confirm the need to transform the institution of constitutional justice, which becomes the main defender of the constitutional system and its principles during armed conflicts. In this vein, it is urged to increase the rate of scientific capital in the judiciary to improve the process of reform of the Constitutional Court in these difficult conditions experienced by Ukraine.

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Perspectivas de Transformación de la Institución de Justicia Constitucional en el Curso de los Conflictos Armados

Resumen

El objetivo del artículo fue considerar el estado actual y las perspectivas de la transformación de la institución de justicia constitucional en el curso de los conflictos armados. Los métodos de observación y comparación fueron las principales herramientas metodológicas. La investigación mostró que los tribunales constitucionales deben aplicar un método específico de control constitucional judicial durante los conflictos armados. La mayoría de las denuncias y recursos de la población ante los tribunales constitucionales buscan aclaraciones sobre la constitucionalidad de las normas sobre garantías sociales de los militares, los derechos de los refugiados. La interpretación constitucional de las disposiciones legislativas de la República de Azerbaiyán, la consideración de las quejas de los tribunales constitucionales de Alemania y Ucrania son ejemplos de las reacciones de los países a los conflictos armados. En las conclusiones se confirma la necesidad de transformar la institución de la justicia constitucional, que se convierte en la principal defensora del sistema constitucional y sus principios durante los conflictos armados. En este orden de ideas, se insta a aumentar la tasa de capital científico en el poder judicial para mejorar el proceso de reforma de la Corte Constitucional en estas difíciles condiciones que vive Ucrania.

Palabras clave: demanda constitucional; comisión de Venecia; ley marcial; protección social; provocaciones militares.

Introduction

After World War II, the demand for constitutional courts as a tool for protecting the rights and interests of society in individual states increased along with the revival of constitutional principles. The denial of integrity and national sovereignty by fascism prompted political forces to constitutionally implement mechanisms that would guarantee that the past would not repeat (Gutmann and Voigt, 2021).

The entire structure of constitutional law has arisen over the last decades mainly from the interaction of politics and judiciary. A third tier has been gradually added to this constitutional structure in recent years. It entrusted such institutions as agencies and commissions with technical and specialized tasks. They obtained advisory and control functions in constitutionally sensitive areas, such as the regulation of democratic standards, basic rights protection and the guarantee of legality (Repetto, 2022).

The mechanism of constitutional protection began to involve strongly interconnected and interacting elements that formed the system. The latter began to serve the interests of protecting the Basic Law and was aimed at preventing and eliminating relevant violations. The institution of constitutional protection became the key to the mechanism of constitutional protection (Petriv, 2020). Being judicial in nature, it became a neutral apolitical adviser who made decisions in accordance with the basic principles enshrined in the Constitution. Constitutional justice took the position of a traditional element of institutional design (Rabinovych, 2021).

The content of constitutional protection began to comprise both legal and political activities. This institution took a position independent from other bodies of the political machinery, and began to perform its own functions and tasks for the effective functioning of this mechanism.

The constitution of most states contains both strict and formal procedural norms, as well as principles that enshrine certain rights of citizens. Unlike norms, these principles cannot be applied literally, but must be interpreted. They have the same hierarchical rank, are tangent to each other, and have the same legal sphere (Konca, 2021).

In this sense, the term "constitutional court" means a body that makes decisions in a defined area. It is separate from the judiciary and has the final and exclusive right to interpret the Constitution, as well as the constitutional validity of laws and state actions (Kłopocka-Jasińska, 2022). Constitutional courts are often considered to be the ultimate guarantee of the protection of democratic governance and the culture of human rights that underlies liberal political communities (Castillo-Ortiz, 2020).

In the current conditions, the constitutional courts of many countries have adopted a system of constitutional complaints in various models, along with appeals and submissions. This system is the main part of the Constitutional Court, one of its important jurisdictions (Chakim, 2019). Any person who believes that his or her rights have been violated by the any action or failure to act of public authorities may file a complaint.

According to international law, armed conflicts are defined as organized violence between states and/or non-state parties. It causes human deaths and is a serious global problem being consistently wide-spread (Jolof *et al.*,

2022). People living in areas of armed conflict suffer from a wide range of violent acts and human rights violations.

These include forced displacement, gunfights, shelling, and torture. In addition to the severe impact, it has at the individual level, political violence also has far-reaching consequences for communities and the functioning of government. This includes the destruction and control of public spaces, as well as the impairment of social systems such as health services. Periods of armed conflicts can affect all vectors of social life in the state, in particular the exercise of the rights of individuals and legal entities, as well as non-residents (Abdiyeva, 2020).

The martial law introduced by the government temporarily limits the human and citizen's constitutional rights and freedoms. The security of the state during martial law takes precedence over some constitutional rights and freedoms of citizens (Hirsch Ballin *et al*., 2020). However, access to justice in this context should remain an integral element of a modern democratic state that relies on the rule of law (Prytyka *et al*., 2022).

Constitutional courts during armed conflicts act as mediators that determine proper boundaries of regulatory acts adopted in wartime in democratic states. Relevant legal initiatives in wartime should be limited in the exercise of the powers by the rule of law and respect for human rights (Averyanova, 2019).

In view of the foregoing, the aim of the article was to consider the transformation of the institution of constitutional justice in the course of armed conflicts. The aim involved the fulfilment of the following research objectives:

1. summarize the main current approaches and components of constitutional protection using the example of the European centralized model of constitutional review;
2. identify the prospects for the transformation of the institution of constitutional justice in the course of armed conflicts on the example of a number of countries using a centralized model of constitutional review.

1. Literature review

The choice of the research topic correlates with the modern vectors of the theorists' research in different states. The work of Prytyka *et al*. (2022) was the main tool and background for the study. The research was focused on analysing the consequences of armed aggression against the state, the introduction of an appropriate legal regime in such areas as the exercise

of property rights, the administration of justice, the execution of court decisions and labour relations.

The work emphasized that the martial law regime involves the restriction of certain constitutional rights and freedoms of individuals and the introduction of new judicial mechanisms. The work of Petriv (2020) also had an impact on the author's position on the subject under research.

The author conducted a comprehensive analysis of the functioning of the state mechanism for the protection of human and citizen rights at the current stage of the development of the constitutional court. The focus was made on the approaches to understanding the mechanism of protection of human and citizen rights with the help of the Constitutional Court of Ukraine, and analysis of current legislation on this issue.

The works of Repetto (2022) on the evolution of the Venice Commission, various functions assigned to it, and relations with other institutional entities were taken into account during the research. The study of the methodological contribution that its activities can make to the creation of the European constitutional heritage occupies a special place in the work.

In turn, the article by Kobalia (2018) examines the main features of centralized and decentralized constitutional review in the context of the modern constitution and state power. Particular attention should be paid to the findings outlined in the article by Konca (2021) on the introduction of a monopoly on constitutional interpretation, which was considered as an institution that harmoniously corresponds to the semantic system arising from modern constitutions.

The article by Rabinovych (2021) on the causes of the long-term crisis of social legitimacy of the Constitutional Court of Ukraine is also worth special attention. The author proves the need to improve the institutional mechanism for electing constitutional judges in case of such crisis. The studies by Botelho (2021), Bumke and Vokuhle (2019) used in the article emphasize the role of constitutional justice in the transition from authoritarian regimes to democratic systems, consider the positive example of the German constitution, the German Federal Constitutional Court (BVerfG), and its case law.

The study of Chakim (2019), who emphasized that the constitutional complaint is the main part of the constitutional court, was used when shaping the author's position. The author made a detailed comparative analysis of the application of the constitutional complaint mechanism in three European countries and four members of the Association of Asian Constitutional Courts & Equivalent Institutions (AACC). Averyanova (2019) analysed the types of conflicts that can arise both within countries and between different states.

The author outlined such relevant vectors as objectivity, subjectivity, implementation in practice and indicated the need to develop a strategy of national self-preservation in complex and uncertain conditions of international security.

The active study of the issues selected for the research in this article confirms that the transformation of the institution of constitutional justice in the course of armed conflicts requires special attention, and states the lack of research in this field. Therefore, it is urgent to carry out a study according to new research criteria.

2. Methods

The conducted research is multi-vector and is in line with the current realities. The research design was built in view of geopolitical world transformations and the escalation of armed conflicts (Figure 1).

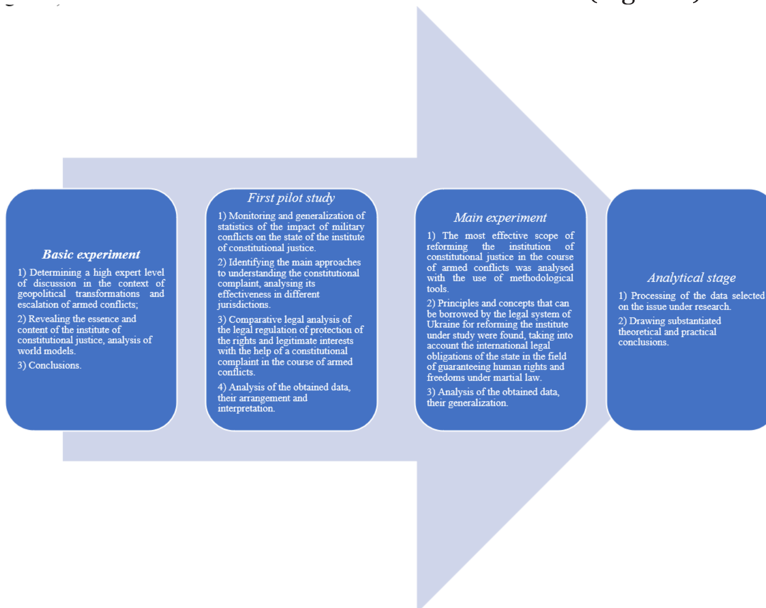

Figure 1: Research design. Source: authors.

The study of the constitutional and legal mechanism of guaranteeing human rights in the course of armed conflicts involved modern methods of cognition identified and developed by philosophy, history, sociology, state theory and law, legal sciences and supported by legal adaptive practice.

The methodological framework of the article consisted of a system of general philosophical, scientific and special methods. In view the specifics of the issue being studied and the research objectives, a set of methods was used, the approbation of which made it possible to obtain substantiated results.

The methods of observation and comparison were the main practical tools. The observation method made it possible to draw analogies of the implementation of the right to submit a constitutional complaint in different states. This method also enabled to focus on the most promising reformation vectors of transformations of the studied institute and the Constitutional Courts of the selected countries. The method of comparison was used to carry out a comparative analysis of legal regulation and law enforcement practice in the field of constitutional justice in Germany, Austria, Spain, Azerbaijan, and Ukraine.

In aggregate, the mentioned methodological tools contributed to drawing well-founded conclusions and making proposals for the improvement of the institution of constitutional justice in Ukraine in the context of Russia's military aggression.

The historical method played a significant role in studying the evolution of the establishment of the institution of constitutional justice as such, its gradual transformations and effectiveness at each stage. The abstraction method was applied to study the characteristic features, functions, principles and structure of the legal mechanism of constitutional protection.

The sociological method was used in the study of development trends of the studied institute, as well as in establishing and revealing the factors of its development. The semantic method was applied to reveal the meaning of such terms as "constitutional complaint", "constitutional and legal mechanism", "ensuring the rights of citizens", etc., their scientific and practical significance, the possibility of transforming the terminological framework in constitutional law.

Modelling and forecasting methods were used to find the optimal model of organization and functioning of the legal mechanism of constitutional justice, as well as to determine its shortcomings that should be eliminated to ensure a practical result and the expected effect.

The critical method, which is based on the previous methods, helped to analyse the system of factors and trends affecting the development of the studied institute, to identify positive and negative ones among them, as well as to form a conceptual perspective of further measures to increase the effectiveness of its functioning in the context of armed conflicts.

In general, the research was conducted on the basis of a combination of ontological, epistemological and axiological analysis of the constitutional

and legal mechanism of guaranteeing constitutional rights in the course of armed conflicts.

3. Results

European countries adopted a centralized model of constitutional control. It is based on Hans Kelsen's concept of a constitutional court — a body specially created to exercise the power to invalidate laws that contradict the constitution. In this case, only one institution in the country, which is the constitutional court, can declare the law unconstitutional. There are significant differences among the "Kelsenian" constitutional courts in the European Union related to the competence granted to such courts. The scope of authority can be very large.

The Federal Constitutional Court of Germany can be an example here, as it is a role model for similar institutions established in other countries. Powers can also be quite narrow, as in the case of the Constitutional Council of France.

The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's consultative body on constitutional matters. The role of the Venice Commission is to provide legal advice to its member states. It provides assistance in bringing legal and institutional structures in line with European standards and international experience in the field of democracy, human rights and the rule of law.

The Venice Commission developed a Rule of Law Checklist, which included five benchmarks (Council of Europe, 2016). The legality if the first criterion, which means the supremacy of the law and the commitment of the public authorities to comply with it. Public authorities must respect both national and international law, and they shall implement and enforce it.

The second criterion is legal certainty, which is characterized by the simplicity of legislation, court decisions, the predictability of the law, the principle of non-retroactive application of law, compliance with the principle of res judicata. The third and fourth benchmarks are the prevention of abuse of power, the principle of equality before the law and non-discrimination.

The fifth criterion is access to justice: the judiciary must be independent and impartial, and all citizens must have the right to a fair trial. The Checklist also includes a recommendation for states that exercise constitutional justice and for state authorities to adopt legislation in accordance with the decision of the Constitutional Court. It is also obligatory to implement the decision of the Constitutional Court when it rules that the legislation violates the Constitution.

The Constitutional Courts of the European Union are part of a European and global association of courts intended to ensure the rule of law and guarantee human rights. This network includes constitutional courts of other countries and such European courts as the European Court of Human Rights (ECHR) and the European Court of Justice.

Cooperation was institutionalized within the framework of the Conference of European Constitutional Courts and the World Conference on Constitutional Justice. The latter is the result of the unification of linguistic or regional groups. It includes the Conference of European Constitutional Courts, the Association of Asian Constitutional Courts (AACC), the Ibero-American Conference on Constitutional Justice.

The aim is to strengthen the cooperation of members by organizing regular congresses, participation in regional conferences, seminars, exchange of experience and case law.

The experience of constitutional justice bodies gives grounds to state that constitutional control can be carried out in different forms through different procedures at the request of different entities. Constitutional judges are usually reputable lawyers, often appointed by the national parliament, in some cases — by the executive bodies or judiciary.

This reflects the dual — judicial and political — nature of the courts. The decentralized model of constitutional review is characterized by a specific form of control — by ordinary courts in the course of judicial review. The judiciary has the right to suspend the application of certain legal norms if they contradict constitutional rights. A special case of constitutional review is an abstract review of laws, which is a typical form of a centralized model of constitutional justice.

In this model, the constitutional review includes material and procedural components. The constitutional review can be divided into ex-ante (preventive) and ex-post (repressive) in temporal terms. The preventive review checks the compatibility of laws before publishing.

Ex-ante review can usually be initiated at the request of a narrow group of government bodies (for example, the President, the Cabinet of Ministers, the Speaker of the Parliamentary Chamber or a group of parliamentarians).

The review is exercised in the course of a complex law-making process. The Constitutional Court is effectively involved in this process, which has the opportunity to express its opinion on the constitutionality of the law being created.

Repressive review is more often exercised ex post, when a particular act begins to create legal consequences. The essential scope of ex-post review is much wider and goes beyond the basic legislation. A fairly large group of entities can initiate consideration of disputed issues in the Constitutional Court after the entry of a particular regulatory document into force.

These may be opposition parliamentarians, representatives of the executive and judicial authorities, officials of local self-government bodies, the general prosecutor, the ombudsman, state auditors, trade unions and religious associations. In turn, the list of objects of constitutional review is quite variable (Figure 2).

So, constitutional courts have both judicial and political influence. When the Constitutional Court recognizes a particular act unconstitutional, it is able to invalidate the act, thus removing it from the legal system. Sometimes the court expresses its position on how to interpret a regulatory provision in order to leave it in the constitutional field. In this case, a constitutionally acceptable interpretation shall be adopted.

A very important activity of the Constitutional Court is related to the complaint filed by the applicant. A constitutional complaint enables persons whose rights and freedoms have been violated to apply for protection directly to the Constitutional Court. Such violations are usually caused by the action of a public authority (or its failure to act). A constitutional complaint is both a special and an auxiliary measure. For example, the Constitutional Court of Austria (Verfassungsgerichtshoft) is entitled to consider complaints about laws, decrees, international treaties and administrative actions. But it is not entitled to consider a constitutional complaint against the actions of the judiciary (Verfassungsgerichtshofgesetz, 1953).

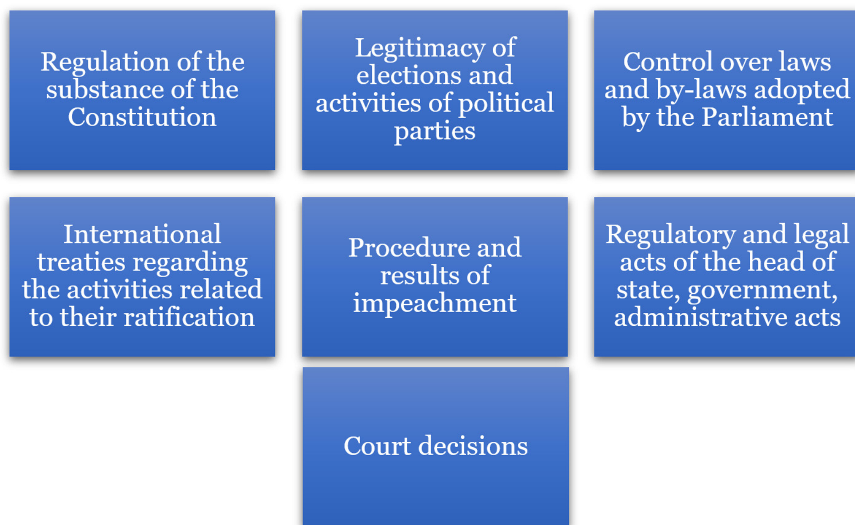

Figure 2: List of objects of constitutional review (grouped by the author).

A constitutional complaint in Germany is considered a model for other European countries. The Federal Constitutional Court of Germany (Bundesverfassungsgericht) in entitled to consider constitutional complaints related to the actions of public authorities. This includes complaints about the constitutionality of a law, an administrative act and even a court decision (Bundesverfassungsgerichtsgesetz, 1951).

The Constitutional Court of Spain (Tribunal Constitucional de España) also has the power to consider constitutional complaints known as recurso de amparo (individual appeals for protection). They seek constitutional protection of fundamental rights from parliamentary, governmental and administrative decisions, as well as judicial decisions (Legislación Consolidada, 1979). A variety of systems for submitting constitutional complaints, especially in Austria, Germany and Spain, evidence the effectiveness of the protection of fundamental rights.

In Asia, the Association of Asian Constitutional Courts (AACC) and similar institutions provides an opportunity for AACC members to regularly exchange ideas and share experiences in constitutional justice.

The AACC members have adopted different models of a system of constitutional justice. For example, Azerbaijan has the authority to consider constitutional complaints. Article 34(1) of the Law on the Constitutional Court of Azerbaijan (Law of the Republic of Azerbaijan, 2003) reads that a complaint with the Constitutional Court may be filed by any person who claims that his or her fundamental rights have been violated by a regulatory legal act of the legislative and executive authorities or an act of a municipality and the court.

The Constitutional Court can consider individual complaints against court decisions in the following cases: if the court failed to apply a regulatory legal act that should have been applied; if the court applied a regulatory legal act that should not have been applied; and if the court failed to properly interpret the regulatory legal act.

It should be noted that the proceedings in Austria, Germany, Spain and Azerbaijan have certain differences in terms of the time limit for filing a complaint to the Constitutional Court. The vector variability of constitutional complaints of the studied states is shown in Table 1.

Table 1. Variable indicators of filing constitutional complaints in Austria, Germany, Spain and Azerbaijan (summarized by the author).

	Object of a constitutional complaint	The subject of a constitutional complaint	Temporal limitations
Austria	complaints against laws, decrees, international treaties and administrative actions	any person who claims that he or she has been directly harmed by a violation of his or her rights	a complaint against an administrative decision shall be filed within six weeks upon its delivery
Germany	complaints regarding constitutionality of the law, administrative act and court decision	any person who claims that one of his or her fundamental rights has been violated by the government	a complaint against judicial and administrative decisions shall be filed within one month
Spain	complaint against decisions of the parliament, government and administrative decisions, court decisions	any individual or legal person, as well as the Public Defender and the Prosecutor's Office — in case of violation of rights or inconsistency of the law	deadlines for filing a complaint: 30 days (*amparo* against court decisions), 20 days (appeals against state or administrative decisions)
Azerbaijan	complaint against a regulatory legal act of the legislative and executive authorities, an act of the municipality and the court	any person who claims that his/her rights have been violated	a complaint shall be filed within six months from the date of entry into force of the decision of the court of last resort, entry into force of the regulatory legal act/ or in case of violation of the applicant's right to appeal to the court - within 3 months from the date of violation of rights

The period of armed conflicts is characterized by discrepancies in the understanding of the constitutionality of adopted legal acts. They may be related to the information uncertainty. There are discrepancies in the possible legal consequences of wartime-specific adopted regulations. There are also discrepancies about the proper limits of constitutional exceptions relating to, for example, the competence of military jurisdiction, treatment-related issues in times of armed conflict.

There may be typical discrepancies over the appropriate way to balance conflicting principles, such as discipline, with the duty to protect human rights when the law violates them. In this case, constitutional review embodies the perspective through which relevant courts seek to find long-term solutions that go beyond the current military conflict. The Constitutional Courts use objective and acceptable constitutional principles in their decisions to resolve the issues.

A constitutional complaint regarding the deportation of a Romanian citizen is pending before the Federal Constitutional Court of Germany (Bundesverfassungsgericht, 2022). The decision of the Administrative Court of Halle dated 18 May 2022 provides for the possibility of adequate (further) treatment of the applicant's mental illness in Romania even without taking into account the current situation in Romania after the start of the war in Ukraine.

The court makes its decision despite the medically proven re-traumatization that will almost certainly occur in the event of deportation. As a result, the Federal Constitutional Court of Germany ruled that the Federal Office for Migration and Refugees is prohibited from deporting the applicant to Romania before making a decision on the constitutional complaint.

It was noted that any inconvenience associated with the applicant's stay in the federal territory, which is extended for a particular period, has less impact. The need to carefully determine the impact of the displacement of refugees caused by the war in Ukraine on the reception and treatment of other groups of refugees in the host countries was also pointed out.

The states consider the system of social protection of servicemen as a component in the structure of social protection of the population. Moreover, states take into account the peculiarities determined by the specifics of the work of servicemen, the ultimate goal of which is a special kind of service — ensuring security.

In the current context of frequent occurrence of armed conflicts, the state focus on strengthening social protection of servicemen. This requires a qualitatively new attitude to the problem of implementing the guarantees established for servicemen by law, the need to improve their social status. For example, the Constitutional Court of Azerbaijan considers court appeals and carries out constitutional interpretation of the necessary legal provisions of the relevant laws. Some provisions of the laws of the Republic of Azerbaijan "On Pensions of Servicemen" and "On Occupational Pensions" were interpreted from the perspective of their application over time (Constitutional Court of the Republic of Azerbaijan, 2014).

The clarification concerned servicemen who received the right to a lifetime pension for long service on preferential terms. Some provisions of

the Law of the Republic of Azerbaijan "On the Status of Servicemen" and the Regulation "On Military Service" were clarified (Constitutional Court of the Republic of Azerbaijan, 2014).

The clarification was made on the right to receive, determining the amount and procedures for payment of compensation for unused regular leave by servicemen transferred to the reserve and discharged. Some provisions of the Law of the Republic of Azerbaijan "On Compulsory State Personal Insurance for Servicemen" were also clarified (Constitutional Court of the Republic of Azerbaijan, 2014).

The clarification concerned the increase of the amount of one-time insurance for servicemen and the obligation to pay the insurance amount provided in the legislation for servicemen, dead, missing, and wounded before the Law "On the Armed Forces of the Republic of Azerbaijan" dated 20 May 1997 came into force. In addition to the social protection of servicemen, special attention was paid to the interpretation of acquiring the status of servicemen. Some provisions of Article 333 of the Criminal Code of the Republic of Azerbaijan were clarified (Constitutional Court of the Republic of Azerbaijan, 2001).

The clarification related to the absence of the composition of a crime as a result of unauthorized absence from the republican muster point or evasion of military service after passing a medical examination. It also concerned issues of the constitutionality of holding persons who have the status of servicemen for voluntarily leaving a military unit or place of service criminally liable.

The appeal of the constitutional court in the form of a statement can also be an example of the activity of this court in the course of armed conflicts. In October 2020, the Constitutional Court of the Republic of Azerbaijan addressed a statement to all the Constitutional Courts of the world within the framework of the World Conference on Constitutional Justice, the Conference of European Constitutional Courts, as well as the Association of Asian Constitutional Courts and equivalent institutions (Constitutional Court of the Republic of Azerbaijan, 2020).

The statement emphasized that Armenia's military provocations against Azerbaijan have become regular. The statement also referred to the occupation of the Nagorno-Karabakh region and seven neighbouring regions of Azerbaijan by the Armenian army. It was noted that many towns and villages were completely destroyed, and the local population underwent ethnic cleansing as a result of this occupation. There were 613 peaceful Azerbaijanis killed, including 63 children, 106 women, and 70 old people.

Besides, 1,275 people were taken hostage, the fate of 150 of them, including 68 women and 26 children, is unknown. It was brought to the notice of the constitutional courts that the decisions and resolutions adopted

by the UN, the Council of Europe, the OSCE, the European Union and other international organizations openly confirmed that Nagorno-Karabakh is an integral part of Azerbaijan. In 1993, the UN Security Council adopted four resolutions (882, 853, 874, 884) on the immediate Armenian troop pull-out from the occupied territories of Azerbaijan.

The Constitutional Court noted that Armenia has not executed these resolutions. It was also emphasized that the Strasbourg Court stated in the Decision of the European Court of Human Rights dated 16 June 2015 in the case of "Chiragiv *et al.* v. Armenia" that the processes in Nagorno-Karabakh were carried out under the control of Armenia.

The situation described above can become a direct example for the law enforcement practice on the territory of Ukraine. This is a constitutional, social and democratic state, which aims to unite with the European and international community. The Constitutional Court of Ukraine relies in its actions on European standards established by European institutions. The Court regularly refers to the Report of the Venice Commission on the Rule of Law (Council of Europe, 2011) and builds its reasoning upon the instruments included in the Rule of Law Checklist (Council of Europe, 2016).

The Constitutional Court of Ukraine also regularly addresses the Venice Commission regarding advisory opinions of amicus curiae. It is impossible to implement this direction without measures related to the development of an effective mechanism for the protection of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996).

The political and legal reforms carried out in the state were reflected in the functioning of the institution of constitutional justice. In Ukraine, this role is assigned to the Constitutional Court of Ukraine as the only representative of constitutional jurisdiction in the state (Verkhovna Rada of Ukraine, 2017).

The procedure for electing the Constitutional Court of Ukraine, its composition, term of office, principles and legal framework of activity are determined. The Court can be appealed in the form of a constitutional submission, a constitutional appeal from state bodies, such as, for example, the President of Ukraine, the required number of people's deputies. Citizens of Ukraine, foreigners, stateless persons, and legal entities can file a constitutional complaint.

It should be noted that the institution of constitutional complaint appeared in Ukraine after the 2016 judicial reform. In 2021, the Constitutional Court of Ukraine adopted 609 acts, including 10 decisions on submissions and complaints, issued 165 resolutions on refusal to open constitutional proceedings in a case and 6 resolutions on closing constitutional proceedings (Constitutional Court of Ukraine, 2022).

In June 2022, Ukraine became a candidate for EU membership, having proved the European opportunities for Ukraine. From 1996 to June 2022, the Venice Commission prepared 96 opinions for Ukraine regarding the state of the reform process (Constitutional Court of Ukraine, 2022). In this context, special emphasis is placed on achieving complete independence of the judicial system, which is especially relevant in the period of reconstruction and restoration of Ukraine after the end of the military conflict. In December 2020 and March 2021, the Venice Commission also presented opinions related to the Constitutional Court reform.

The need to adopt legislative acts on the selection of judges of the Constitutional Court in accordance with the recommendations of the Venice Commission occupied a special place. The relevant legislation should be adopted by the end of 2022.

The Constitutional Court of Ukraine determined the rule of law to be a mechanism for exercising control over the use of state power and protecting people from the arbitrariness of the authorities (Constitutional Court of Ukraine, 2019). In the wartime, constitutional justice directs maximum efforts to understand the specifics of the implementation of constitutional provisions, in particular, on the protection of human rights and the activities of the state and judicial authorities during the wartime.

Making amendments to the Law of Ukraine "On Social and Legal Protection of Military Men and Members of Their Families" (Verkhovna Rada of Ukraine, 2022) on granting and paying one-time monetary support is an example of the effective work of the Constitutional Court of Ukraine. Decision of the Constitutional Court No. 1-p(II)/2022 (Constitutional Court of Ukraine, 2022) in the case on the constitutional complaint of Polishchuk was the reason for the preparation of this draft law.

In Decision No. 12-r/2018 dated 18 December 2018, the Constitutional Court of Ukraine provided that citizens of Ukraine who defend the Motherland perform constitutionally significant functions. The court emphasized that the Armed Forces of Ukraine and other military formations play the main role in the defence of Ukraine during the armed aggression of the Russian Federation, therefore the social protection of servicemen should be improved.

Therefore, limitation of the payment of a one-time cash benefit in a larger amount if a higher group of disability (or a higher percentage of the loss of working capacity) is established to two years only is unjustified. In this way, fair social guarantees were established for servicemen, conscripts and reservists, who have the right to one-time cash benefit.

The war with the Russian Federation required the creation of the National Council for the Recovery of Ukraine from the War. The development of the constitutional justice occupies a special place in the Draft Plan for the

Recovery of Ukraine developed by this Council (National Council for the Recovery of Ukraine from the War, 2022). The fundamental problem of reforming the institution of constitutional justice during the martial law in Ukraine is the low level of regulation and the lack of real practice of the Constitutional Court (National Council for the Recovery of Ukraine from the War, 2022).

The Draft Plan also mentions problems in the procedure for appointing, dismissing and bringing to disciplinary liability judges of the Constitutional Court of Ukraine. There are problems with monitoring the compliance with anti-corruption legislation, constitutional proceedings and the legal organization of the Constitutional Court's activities. These problems, including the fight against non-compliance with professional ethics standards and tolerance of corruption, were also reflected in the Strategy for the Development of the Judiciary and Constitutional Justice for 2021-2023 (President of Ukraine, 2021).

The priority goals and deadlines for their achievement set on the basis of the problems outlined in the Draft Plan for the Recovery of Ukraine (National Council for the Recovery of Ukraine from the War, 2022) were determined and agreed upon (Figure 3).

In Ukraine, preparations for the development of legal initiatives are being made in order to implement the corresponding plan. Their purpose is to improve the work of the Constitutional Court during the war and in the post-war period. Special attention was paid to regulating the communication policy, improving the presentation of information about the activities of the Constitutional Court on its official website.

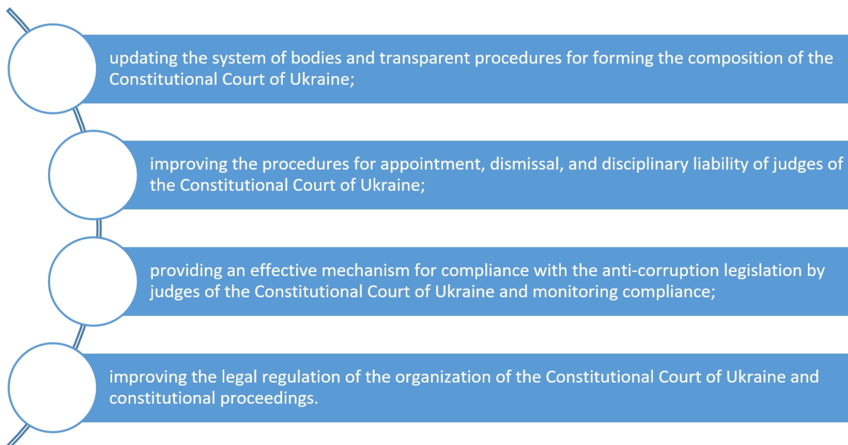

Figure 3: Priority goals of the development of the constitutional justice in Ukraine in the course of armed conflict. Source: authors.

4. Discussion

It can be stated that the protection of the Constitution is a special legal and political activity with its special purpose and content. The creation of constitutional courts after World War II was determined by the inability of the legislature to protect people's rights. It was characterized by the lack of effective constitutional justice systems and distrust of ordinary courts, which were too deferential to the former authoritarian regime (Botelho, 2021). Constitutional justice has become the territory of the merging of power lines of the political and legal space, being the territory of the battle for the significance of the Basic Law.

In this case, the constitutionality of public authority acts became the subject of consideration, while the logic of political appropriateness began to conflict with the logic of finding a fair balance of interests (Rabinovych, 2021).

It was proved that the Constitutional Court is usually considered as a special body. It has the powers of constitutional supervision or the powers to invalidate legislative acts of the parliament and other acts of public authorities, which are recognized to be contrary to the constitution. So, the Constitutional Court has become the main defender of the constitutional system and its principles in most democracies (Baraník, 2018).

It can be stated that the explicit (usually written) manifestation of the will of political power, which secures an exclusive constitutional space for the court, determined the formation of the institution of centralized control. The centralized model of constitutional review is the best mechanism of action from the perspective of modern constitutions, as well as the systemic and meaningful implementation of the protection of fundamental human rights (Kobalia, 2018). It is appropriate to consider constitutional courts as judicial-type bodies that have a monopoly on the evaluation of the constitutionality of legislation in the political system (Castillo-Ortiz, 2020).

The confirmation that the transfer of a constitutional problem to the Constitutional Court depends on the activity and qualification of the subjects initiating the process is unconditional. The implementation of the decision of the Constitutional Court on unconstitutionality also requires cooperation between the court and other bodies responsible for the adoption and application of the law (Kłopocka-Jasińska, 2022).

It is stated that the protection and observance of human rights is the basis of any constitutional system, which usually includes restrictions imposed to ensure the reasonable exercise of these rights by all members of society. The extent to which Constitutional Courts can support the exercise of constitutional rights by overturning laws that impose excessive restrictions on such rights, among other things, becomes extremely important in times of armed conflicts (Dinokopila and Kgoboge, 2021).

There is no doubt that the constitutional review exercised by the Constitutional Courts is the standard for the implementation of the right to a fair trial (Bumke and Vokuhle, 2019). A fairly new view of the substance and content of the method of judicial constitutional review is being formed in the course of armed conflicts, especially in the field of control over the enforcement of acts of public authorities during the martial law (Verkhovna Rada of Ukraine, 2022).

The principle of proportionality, which is fundamental in determining the limits of human rights, is undoubtedly one of the components of the criterion "respect for human rights". This which must be taken into account when limiting rights during armed conflicts. This basic principle is manifested in a proportional and reasonable relationship between the goal of limiting particular human rights and the means that the state uses to limit it (Slinko *et al*., 2022).

The aim of the Constitutional Courts during armed conflicts is to prevent unlawful legislative norms that directly contradict the Constitution. Amendments to the Law of Ukraine "On Social and Legal Protection of Military Men and Members of Their Families" are positive. They finalize the previous provisions of the articles and provide the possibility of implementing additional guarantees of social protection for servicemen, conscripts and reservists (Panfilova, 2022).

In this regard, the effective interconnection of all branches of government both for the purpose of effective support of servicemen and for the implementation of the planned defence tactics of the state is relevant in the context of the protection of territorial integrity and sovereignty (Verkhovna Rada of Ukraine, 2022).

It can be concluded that it is necessary to introduce a transparent procedure for the competitive selection of all candidates for the position of judge of the Constitutional Court of Ukraine in order to improve the process of reforming the Constitutional Court of Ukraine, especially in the course of an armed conflict. Moreover, professionalism in constitutional law and solid moral reputation should be the basis of verification (Rabinovych, 2021).

According to the researcher, it is necessary to increase the share of science capital in the composition of the Court through the application of relevant professional quotas. It is very important to involve reputable international experts in the tender commission in the course of armed conflicts.

Conclusions

The constitutional review means that the Constitutional Courts can invalidate unconstitutional legal provisions or overturn other

unconstitutional acts of public authorities. Compared to general legal activities, the aim of constitutional review is to protect the sovereignty of the people, the political system of the nation, the legal foundations of the state, and the inviolable values of society. It provides preventive and retrospective judicial review of disputed norms in the centralized model of constitutional review, when the Constitutional Court is separated from the ordinary ones.

The armed conflicts and forced migration make both the military and the civilian population face serious challenges related to changed living conditions. As a result, people incur serious adverse health consequences. The result is more careful attention to the constitutional clarification of social protection norms. Clarifications are also needed regarding the understanding of the status of a serviceman, certain requirements during military service.

Damage to the population is one of the most important results of armed conflicts. Persons who died or were seriously injured directly as a result of hostilities can be considered as losses. The latter also include the affected population, whose constitutional rights were violated by imposed legislative restrictions, or by the inconsistency of the legal provisions, which were in force during the period of martial law, with the constitution. In these difficult conditions, the Constitutional Courts shall protect the constitution, fundamental rights, while arbitrating between levels and bodies of government.

Along with such forms of appeal to the Constitutional Court as a constitutional submission and a constitutional appeal, a constitutional complaint becomes more important in the course of armed conflicts. This is one of the legal mechanisms that strengthens the guarantees of protection of human rights against any actions of the state and all branches of government that violate their rights. Constitutional courts in many countries have adopted a system of constitutional complaints in various models.

The interpretation of the legislative provisions of the Republic of Azerbaijan regarding the constitutional rights of servicemen and the consideration of complaints by the constitutional courts of Germany and Ukraine during the armed conflict regarding social guarantees and health protection are examples of countries that are impacted by armed conflicts directly or indirectly during and after the armed conflict.

The armed aggression of the Russian Federation against Ukraine aggravated a number of unresolved issues in the field of constitutional justice. The lack of regulation and practical experience regarding the functioning of the Constitutional Court of Ukraine under martial law was distinctive for the Constitutional Court of Ukraine during the armed conflict.

This situation requires the urgent reform of the institution of constitutional justice. Improving the process of reforming the Constitutional Court in these difficult conditions requires the increased share of science capital in the composition of the court through the application of appropriate professional quotas.

The fulfilment of the tasks that Ukraine sets before the Constitutional Court will enable an urgent response to the public demand for justice and will improve the work of the Constitutional Court. The vector of the author's further research will be the activities of the reformed institution of constitutional justice in Ukraine.

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The Impact of Political Lobbying on the Aggravation of Language Conflicts in the Era of Globalization

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Abstract

The language problem has always been serious in Ukraine and often turned into an armed confrontation. This problem is becoming particularly acute in view of the invasion of Ukraine by the Russian Federation, one of the stated reasons for the «linguistic inequality». The aim of the article is to determine the impact of unregulated political lobbying by individuals or groups on the aggravation of language conflicts in Ukraine and compare it with other countries. The research involved the following methods: analysis and synthesis, statistical analysis, graphical methods, establishment of cause-effect relations and cluster analysis. The novelty of the research is the study of the impact of political lobbying on the development of language conflicts in the region by means of cluster analysis. The study established the relationship between legislative regulation of lobbying, language conflicts and corruption rates in the country. In the conclusions, the analysis shows that the availability of the institution of lobbying corresponds to lower rates of corruption and the virtual absence of language conflicts. The obtained results can be used by the government to improve Ukrainian legislation.

Keywords: political lobbying; impact of lobbying; linguistic conflicts; armed conflicts; globalization and corruption.

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El impacto del cabildeo político en el agravamiento de los conflictos lingüísticos en la era de la globalización

Resumen

El problema del idioma siempre ha sido grave en Ucrania y, a menudo, se convirtió en una confrontación armada. Este problema se está volviendo particularmente agudo en vista de la invasión de Ucrania por parte de la Federación Rusa, una de las razones declaradas por la “desigualdad lingüística”. El objetivo del artículo es determinar el impacto del cabildeo político no regulado de individuos o grupos en el agravamiento de los conflictos lingüísticos en Ucrania y compararlo con otros países. La investigación involucró los siguientes métodos: análisis y síntesis, análisis estadístico, métodos gráficos, establecimiento de relaciones causa-efecto y análisis de conglomerados. La novedad de la investigación es el estudio del impacto del cabildeo político en el desarrollo de los conflictos lingüísticos en la región mediante análisis de conglomerados. El estudio estableció la relación entre la regulación legislativa del cabildeo, los conflictos lingüísticos y los índices de corrupción en el país. En las conclusiones, el análisis demuestra que la disponibilidad de la institución de cabildeo corresponde a menores tasas de corrupción y la práctica ausencia de conflictos de lenguaje. Los resultados obtenidos pueden ser utilizados por el gobierno para mejorar la legislación de Ucrania.

Palabras clave: cabildeo político; impacto del cabildeo; conflictos lingüísticos; conflictos armados; globalización y corrupción.

Introduction

National, racial, cultural differences between representatives of different peoples have always complicated communication between people around the world. The beginning of the third millennium is marked by the aggravation of inter-ethnic conflicts, which is confirmed by the actualization of this topic in the researches (Hasan, 2020; Albulescu, 2021; Singh, 2021; Ciuriak, 2022; Peterson, 2022; Ahmadi *et al.*, 2022; Mahdipour *et al.*, 2022). The language issue plays not the last role in many conflicts, which is connected, among other things, with the acceleration of globalization processes.

Such conflicts are related to the unequal rights of speakers of different languages, which determines the status of a particular language in the country. The main problem is that language conflicts often turn into an armed confrontation of a global nature, affecting the entire world

community. Therefore, studying the peculiarities and finding ways to resolve language conflicts is an urgent issue and a relevant subject of many researches (Rodriguez *et al*., 2019; Sazzad, 2021; Kádár *et al*., 2019).

The aggravation of language conflicts is often associated with lobbying for a particular party, political figure, different unions or groups of individuals. They resort to the use of language differences to exert influence on citizens in their effort to realize their interests. The goal can be the support of the majority in a particular region, receiving more votes in elections, an advantage over competitors, etc. However, legislatively regulated lobbying as a legal institution rather brings benefits to society. Lobbying can refer both to the realization of the political goals of individual unions and to the realization of public interests (Rubeš, 2021; Li *et al*., 2019; Waxman, 2012).

Ukrainian and foreign researchers conducted many studies on the lobbying institution in different countries and the development of language conflicts. However, there are almost no works that would consider the relation of these two issues. This is why establishing the influence of political lobbying on language conflicts is a new and understudied topic that requires further research.

The aim of the research is to study the influence of political lobbying on the aggravation of language conflicts in Ukraine and in other countries. The aim involved the fulfilment of the following research objectives:

- outline the main historical factors influencing the current ratio of speakers of different languages on the territory of Ukraine;
- describe statistics on the linguistic characteristics of the population living in the territory of Ukraine;
- survey the legislative acts of Ukraine related to the language status;
- identify the impact of language conflicts on the political and social life of Ukrainians;
- identify problems related to the lobbying institution and its legislative regulation in Ukraine;
- compare and establish the relationship between the manifestations of language conflicts and the lobbying of individuals, parties, political figures, groups of persons;
- describe language conflicts in other countries;
- establish the relationship between language conflicts in the countries and their lobbying-related legislative framework.

1. Literature review

Many researchers were engaged in studying the problems of lobbying and language conflicts. However, the literature survey enables establishing that almost none of them connected these problems in one study. Researchers mostly focus on certain aspects of lobbying or directly on language conflicts. Therefore, the impact of political lobbying on language conflicts is uncertain in the academic literature.

Separate aspects of lobbying were dealt with by Godny (2019) and Krupnyk (2021). The researchers substantiated the need for legislative regulation of lobbying in Ukraine in their work. A parallel with corruption is also drawn: Godny (2019) actually equates modern Ukrainian lobbying with corruption. Krupnyk (2021) notes that the legislative enshrinement of lobbying must be preceded by increasing citizens' trust in the government, in particular, the reduced corruption.

Language conflicts are an urgent problem in the works of Ukrainian researchers because of their frequent aggravations. Panasenko (2018) carries out a comprehensive study of the probability of the manifestation of language conflicts in individual countries.

The researcher divides the countries into three groups: the first is characterized by the existing language conflicts (Ukraine is also included in it). Language conflicts are probable in the countries of the second group. There are almost no conflicts in the third group. The Panasenko's (2018) findings are used in the article when assessing countries for the existing language conflicts in order to further conduct a cluster analysis.

Makarets (2022) also focuses on language conflicts, in particular on language narratives in the Russian-Ukrainian conflict. The researcher describes the term "narrative" as a modern myth, a means of imposing a certain opinion on society. In this regard, Makarets (2022) also mentions lobbying as one of the tools that the Russian Federation uses to influence the politics in Ukraine. Therefore, the said study is ideologically close to this article, but it mentions lobbyism in passing only. The researcher does not establish clear causal relationships between political lobbying and language conflicts.

Kotsur (2018) examines the language issue, russification of the population, and ethnopolitical events in Ukraine in the early 2000's. The researcher notes that these events depended "on the political preferences of the ruling elites on both sides of the border." Judging by this statement, Kotsur (2018) considers lobbying of a particular side of the conflict as one of the causes of language problems. However, the researcher does not use the actual term "lobbyism (lobbying)", dealing with the study of the ethnic composition of the population of the regions of Ukraine and the historical background of conflicts.

Some researchers of lobbying focus on both political and social aspects that reflect national interests. For example, Meng and Rode (2019), Brulle (2018), Fisher and Nasrin (2021), Vesa *et al.* (2020) considered climate policy lobbying in their works. Counts *et al.* (2021) covered aspects of health care lobbying in the USA. In many studies, the USA is considered as an example of successful implementation of legislative regulation of lobbying. Some researchers, in particular, Samoilenko (2020), provide a number of areas of implementation of the US lobbying-related experience in Ukraine.

Literature review enables identifying a "white spot" in research, which is associated with the lack of determination of the impact of lobbying on language conflicts. Therefore, this research is relevant and reveals new directions of academic studies.

2. Methods and materials

The research design is based on the objectives set to achieve the aim of the study. The set objectives were divided into three groups, which represent the research stages (Figure 1).

Figure 1. Research stages with the distribution of relevant objectives. Source: authors.

The first stage of the research involved outlining the key historical features of the formation of the modern ratio of speakers of the Ukrainian and Russian languages in Ukraine. It is noted that the Ukrainian language is a completely independent language, not "derived" from Russian. On the contrary, it is older than the latter. It was established that the majority of Ukrainians (more than 80% in 2022) consider Ukrainian to be the only state language. At the same time, it was also emphasized that language

conflicts continue to arise. The invasion of the Russian Federation into Ukraine, "justified", among other things, by linguistic aspects, is the latest and most tragic conflicts for a long period of time.

The second stage of the research provides a comprehensive description of the problems associated with the lobbying institution in Ukraine. It was established that there is no separate law on lobbying in Ukraine, but there have been numerous attempts to adopt it. However, those attempts remained draft laws only. It is assumed that the legal regulation of lobbying is hindered by a significant corruption rate in the country. The position of Ukraine in the ranking of countries according to the Corruption Perception Index (122nd place out of 180) and the dynamics of this indicator are presented.

An example of a situation where unregulated lobbying of the political interests of a particular party and/or person led to revolutions is provided. The matter is about the Orange Revolution and the Revolution of Dignity. Both were connected with the undemocratic victory (the former) or the tenure of the president of V. F. Yanukovych (the latter). His political activity is connected with the lobbying of interests that went against national interests and led to tragic consequences.

The third section involved a cluster analysis of a sample of countries according to the indicators of the legislative regulation of lobbying, the existing language conflicts and the corruption rate. The studied countries were divided into two groups: the first is characterized by the absence of legislative regulation of lobbying, the existing language conflicts and high corruption rates. The second group of countries had legislative regulation of lobbying, almost no language conflicts and low corruption rates. The relationship between the three indicators defined in the analysis was proved in this way.

The sample of countries was formed based on the availability of data in the academic literature regarding the legislative regulation of lobbying and language conflicts in the countries. Information on the corruption rates in countries is taken from Transparency International for 2021. Cluster analysis was performed in the STATISTICA software package using the k-means clustering for 24 observations (countries). The analysis identified three indicators: the legislative regulation of lobbying, the existing language conflicts in the country, and the corruption rate. The indicators were rated from 1 to 3, where 1 is the highest ranking, 2 is medium, and 3 is the lowest.

The following scientific methods were used in the study:

- analysis and synthesis in the study of the historical background of language conflicts and the legislative framework;
- statistical analysis for the interpretation of survey results and the claims' structure;

- graphical methods for representing research results;
- establishing cause-and-effect relationships to determine the impact of political lobbying on the aggravation of language conflicts;
- cluster analysis to determine the relationship between the studied concepts and the division of countries into groups.

3. Results

3.1. Historical background, current state and legislative framework of language conflicts in Ukraine

The language issue has long been one of the most acute in Ukraine. The ethnic composition of the population of Eastern Ukraine and Russian propaganda played their role in the language process. This resulted in a significant proportion of the Russian-speaking population of the respective regions. However, Ukraine's gaining of independence and the corresponding language legislation contributed to the spread and strengthening of the Ukrainian language. Every educated person in the Eastern regions knows and can freely use the Ukrainian language, but does not always do that in everyday life.

There is a significant pool of evidence that the language of ancient Rus is closer to the Ukrainian language. This means that the Ukrainian language is older than Russian, therefore the myth that it comes from Russian can be refuted. The reason for the communication of part of the population in Russian is, for the most part, its prevalence in the region and family specifics only. The majority of the population, in particular, in the Eastern regions, recognize Ukrainian as the only state language, as evidenced by population surveys (Figure 2).

Figure 2. The results of a survey of Ukrainians regarding the status of the Ukrainian language (created by the author according to Ratinggroup.ua. 2022. The sixth national poll: The language issue in Ukraine))

Figure 2 shows that during 2014 to 2021, the majority of Ukrainians believed that Ukrainian should be the only state language. In certain periods, a significant proportion of Ukrainian residents were disposed to define Russian as the official language in certain regions along with the state Ukrainian language. However, the situation changed dramatically in 2022 after the Russian Federation invaded Ukraine. More than 80% of Ukrainians define Ukrainian as the only state language. A considerable proportion of the mostly young population of the country switched to communication in Ukrainian only.

The functioning of the Ukrainian language as a state language is guaranteed by the relevant Law of Ukraine (Verkhovna rada of Ukraine, 2022). Article 1(1) of the said Law stipulates that the Ukrainian language shall be the only State (official) language in Ukraine. In 2022, amendments were made to the relevant Law regarding of all Internet resources. If such resources represent business entities registered in Ukraine, they must have a Ukrainian-language version. The awareness and responsibility of

Ukrainians regarding the current legislation is confirmed by their reaction to violations of this Law. In the first 10 days upon new requirements entered into force, the secretariat received a record number of the Law violations reports — 502 (Huivan, 2022). Figure 3 shows the structure of these appeals by subject.

So, it can be concluded that the absolute majority of Ukrainians consider Ukrainian as the only state language and respect the requirements of language legislation. However, conflicts about language continue to arise: both interpersonal and those related to the violation of legal provisions. The Russian invasion of the territory of Ukraine, one of the reasons for which is also the language issue, is the most tragic result of such conflicts.

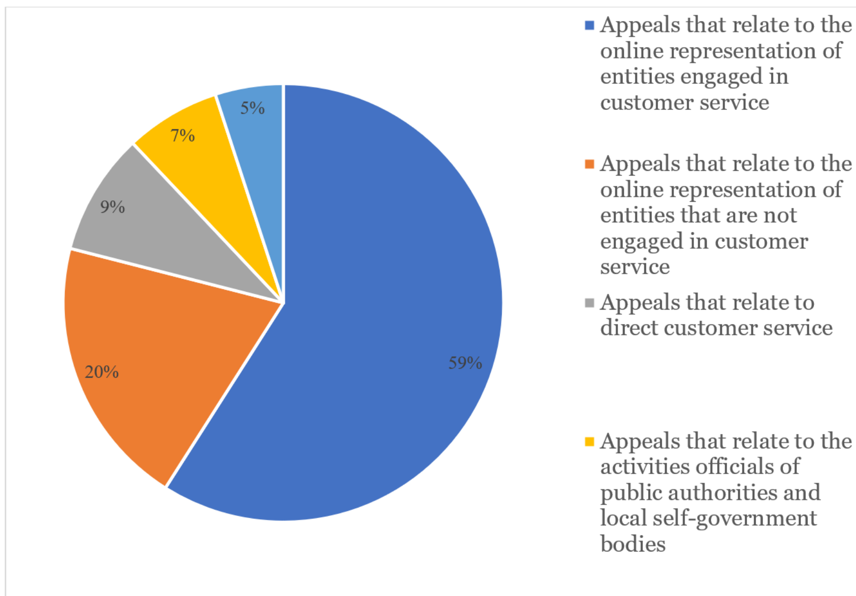

Figure 3. The structure of appeals from Ukrainians about violations of language legislation in the first 10 days upon the introduction of new requirements (created by the author according to (Huivan, 2022))

3.2. Problems of legislative regulation of lobbying in Ukraine and its impact on language conflicts

In the modern world, lobbying is an integral social institution in many democratic states. It enables individuals and groups of individuals to

defend and promote their interests, thereby influencing state policy. The main advantage of the legislative provision of lobbying is the possibility of including various social interests in the political process. So, the state policy making is balanced and takes into account a wide range of social needs.

There is no law on lobbying in Ukraine, so it has no legal framework in the country. But lobbying does exist in Ukraine, and is characterized by excessive politicization, lack of strategies, unprofessionalism and "uncivilized" forms. The government made a number of attempts to pass the Law on Lobbying in Ukraine, but all proposals remained in draft status. The latest attempt concerned the Draft Law "On Lobbying" No. 3059-1 dated 28 February 2020 (Verkhovna Rada of Ukraine, 2020). However, regulating the existing situation still remains a subject of active political discussions.

Therefore, the situation with lobbying in Ukraine is not regulated by legislation, which gives grounds to equate modern lobbying in Ukraine with corruption. This state of affairs needs to be changed, because lobbying itself can help reduce corruption in the country. Legislatively regulated lobbying creates more transparent conditions for promoting the interests of certain individuals or groups.

There is, however, an opinion that it is first necessary to reduce corruption in order to ensure the effectiveness of the lobbying institution. There is an obvious contradiction: lobbying contributes to the reduction of corruption, but it is necessary to first reduce the manifestations of corruption for its implementation. The "closed circle" can be broken through a balanced state policy, the adoption of effective anti-corruption legislation and constructive decisions regarding the establishment of the lobbying institution in Ukraine.

The issue of corruption in Ukraine remains one of the most urgent. Calculations carried out by Transparency International indicate a worsening corruption situation in Ukraine in 2021 (Table 1).

Table 1. The position of Ukraine and its closest neighbours in the list according to the Corruption Perception Index

Corruption Perception Index	Changing of the position in the list	Country	Place
33	=	Nepal	117
33	↓	Philippines	117
33	=	Zambia	117
32	↓	Eswatini	122
32	↓	Ukraine	122

31	↑	Gabon	124
31	=	Mexico	124
31	↓	Niger	124
31	↑	Papua New Guinea	124

Figure 4 shows the dynamics of the specified index for Ukraine for 2012 to 2021. Source: authors.

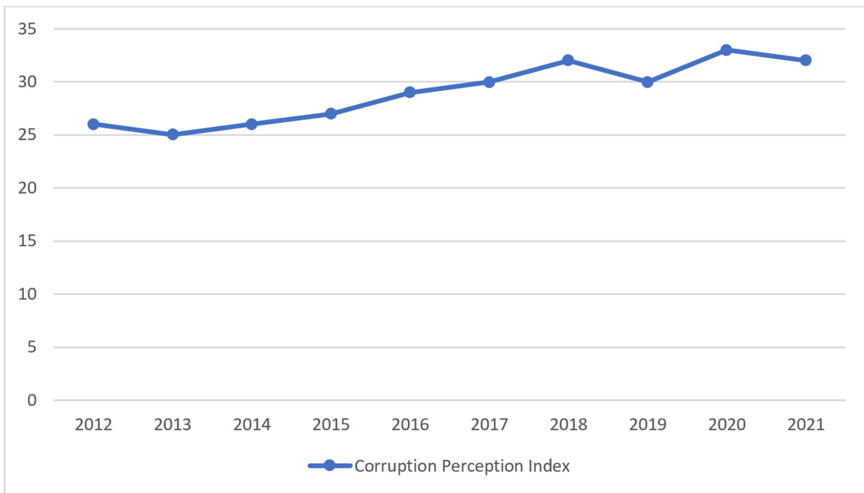

Figure 4. Dynamics of the Corruption Perception Index in Ukraine (created by the author based on Transparency International (2021).

The analysis of Table 1 and Figure 3 confirms that the situation in Ukraine regarding corruption is complex and continues to deteriorate. This is why the improvement of anti-corruption legislation plays a decisive role in the establishment of the lobbying institution in Ukraine.

Legislative provision of lobbying helps not only to reduce corruption, but also to balance the interests of different unions. It was mentioned that the language issue is acute in Ukraine, and its solution also depends on the realization of the interests of certain groups of people. On the one hand, the absolute majority of Ukrainians define Ukrainian as the state language, as was established. On the other hand, certain political parties or actors practice using language contradictions to achieve their goals.

This contradiction could be resolved through the introduction of legislative regulation of lobbying. It will enable the representatives of the

people to speak on behalf of the citizens of Ukraine and defend the national language interests. But in the form in which lobbying exists in Ukraine only enables using language as a tool to achieve the goals of individuals or groups. Moreover, those interests may run counter to national interests.

The 2004 elections are an example of a situation where a particular party and/or individual used language as a tool to achieve their goals. The pro-Russian candidate V. F. Yanukovych tried to win the favour of the Eastern regions by raising the status of the Russian language on the territory of Ukraine. Yanukovych won according to preliminary results, which was followed by a series of protests called the Orange Revolution.

A repeat second round of elections was held, in which V. A. Yushchenko won. In 2010, Yanukovych ran for office once again and won the next presidential elections of Ukraine. His rule ended with another revolution — the Revolution of Dignity, as a result of which the President was removed from office. One of the main reasons for the Revolution of Dignity was abuse by the current authorities and the shooting of protesters.

This situation is an example of how protectionism on the part of another state and unregulated lobbying led to tragic consequences and the establishment of a criminal system. This proves the direct impact of lobbying on the aggravation of language conflicts in the country and determines the actualization of the issue of its legislative regulation.

3.3. Language conflicts in different countries and their relationship with legislative regulation of lobbying

In view of the foregoing, it is interesting to draw a parallel between the existence of legislative regulation of lobbying and language conflicts in different countries. It is appropriate to conduct a cluster analysis for individual countries for this purpose. The purpose of the analysis is to determine the relationship between the legislative regulation of lobbying and the existing language conflicts in individual countries. It is proposed to supplement this analysis with data on the corruption rates in the studied countries.

Table 2 shows the raw data for the cluster analysis. The first column contains data on the existence of legislative regulation of lobbying. The data are presented in the form of estimates, where 1 – there is legislative regulation of lobbying in the country; 2 – there are laws that regulate certain aspects of lobbying; 3 – there is no appropriate legal regulation. The second column contains estimates regarding the existing language conflicts, where 1 – language conflicts are actually absent; 2 - language conflicts are possible; 3 – existing language conflicts.

The third column shows the places of countries in the Transparency International ranking by the corruption rates. The countries for which there are official data on the legislative regulation of lobbying and language conflicts were selected for analysis.

It is worth noting that it becomes obvious that language conflicts are more characteristic of countries with a lack of legal regulation of lobbying and high corruption rates already at the first stage of the analysis.

Table 3 shows the correspondence between the selected indicators and their estimates. Regarding the ranking by the corruption rate, the countries were conventionally divided into three groups. The highest score – 1 – is assigned to representatives of the group with the lowest corruption rate. These countries are ranked in the Transparency International ranking from 1 to 60. A score of 2 is assigned to countries ranked from 61 to 120, 3 — from 121 to 180.

Table 2. Raw data for cluster analysis.

Country	The existence of legislative regulation of lobbying	The existence of language conflicts	Rank according to the Corruption Perception Index
USA	1	1	27
Canada	1	2	13
Japan	1	1	18
Austria	2	1	13
France	2	1	22
Netherlands	2	1	8
Italy	3	1	42
Sweden	1	1	4
Poland	1	1	42
Kazakhstan	3	2	102
Ukraine	3	3	122
Germany	2	1	10
Belgium	1	3	18
Estonia	3	3	13
Ireland	1	3	13
Moldova	3	3	105
Russian Federation	3	3	136

India	3	2	85
Brazil	1	1	96
Finland	1	1	1
Israel	1	1	36
Latvia	3	2	36
Czech Republic	1	1	49
Switzerland	1	1	7

Source: prepared by the author based on Panasenko (2018), **Krupnyk (2021),** Moshenets (2019), Yarovoi (2017), Transparency International (2021) and Moser (2020).

Table 3. Correspondence between indicators and their estimates

State of legislative regulation of lobbying	Score	The existence of language conflicts	Score	Ranking by the corruption rate	Score
The legislative regulation of lobbying exists	1	Language conflicts exist	3	1-60	1
There are laws regulating only certain aspects of lobbying	2	Language conflicts are possible	2	61-120	2
There is no appropriate legal regulation, but active discussions are ongoing or draft legislative acts are being discussed or the lobbying institution does not attract enough attention of political figures and citizens	3	There are almost no language conflicts	1	121-180	3

Source: authors.

Figure 5 contains the cluster analysis input data entered into the STATISTICA software environment. As the Figure shows, the “best” scores (1) are marked in green. Such scores correspond to the existence of legislative regulation of lobbying, the absence of language conflicts and a low corruption rate. Average scores (2) are marked in yellow, low (3) — in pink.

Country	The existence of legislative regulation of lobbying	Presence of language conflicts	Rank according to the level of the Corruption Perception Index
USA	1	1	1
Canada	1	2	1
Japan	1	1	1
Austria	2	1	1
France	2	1	1
Netherlands	2	1	1
Italy	3	1	1
Sweden	1	1	1
Poland	1	1	1
Kazakhstan	3	2	2
Ukraine	3	3	3
Germany	2	1	1
Belgium	1	3	1
Estonia	3	3	1
Ireland	1	3	1
Moldova	3	3	2
Russian Federation	3	3	3
India	3	2	2
Brazil	1	1	2
Finland	1	1	1
Israel	1	1	1
Latvia	3	2	1
Czech Republic	1	1	1
Switzerland	1	1	1

Figure 5. Initial data for cluster analysis

The results of the cluster analysis are shown in Figures 6-12.

	Cluster No. 1	Cluster No. 2
The existence of legislative regulation of lobbying	3,000000	1,352941
Presence of language conflicts	2,571429	1,294118
Rank according to the level of the corruption perception index	2,000000	1,058824

Figure 6. Means for the clusters.

Cluster	Euclidean distances between clusters (to Table 1). The distance under the diagonal. Squares are spaced above the diagonal.	
	No. 1	No. 2
No. 1	0,000000	1,74338
No. 2	1,320371	0,000000

Figure 7. Euclidean distances between clusters

	Analysis of variance (to Table 1)					
	Between SS	cc	Inside SS	cc	F	Significant p
The existence of legislative regulation of lobbying	13,45098	1	5,88235	22	50,30666	0,000000
Presence of language conflicts	8,089636	1	9,243697	22	19,253330	0,000234
Rank according to the level of the corruption perception index	4,392157	1	4,94118	22	19,55556	0,000215

Figure 8. Analysis of variance.

	Description of statistics for cluster 1. The cluster contains 7 observations		
	Average	Standard deviation	Variance
The existence of legislative regulation of lobbying	3,000000	0,000000	0,000000
Presence of language conflicts	2,571429	0,534523	0,285714
Rank according to the level of the corruption perception index	2,000000	0,816497	0,666667

Figure 9. Descriptive statistics for Cluster 1.

	Description of statistics for cluster 2. The cluster contains 17 observations		
	Average	Standard deviation	Variance
The existence of legislative regulation of lobbying	1,352941	0,606339	0,367647
Presence of language conflicts	1,294118	0,685994	0,470588
Rank according to the level of the corruption perception index	1,058824	0,242536	0,058824

Figure 10. Descriptive statistics for Cluster 2.

	Distances to the cluster center
Kazakhstan	0,329915
Ukraine	0,628138
Estonia	0,628138
Moldova	0,247436
Russian Federation	0,628138
India	0,329915
Latvia	0,664964

Figure 11. Cluster 1 members.

	Distances to the cluster center
USA	0,267415
Canada	0,456909
Japan	0,267415
Austria	0,411765
France	0,411765
Netherlands	0,411765
Italy	0,966569
Sweden	0,267415
Poland	0,267415
Germany	0,411765
Belgium	1,006324
Ireland	1,006324
Brazil	0,604672
Finland	0,267415
Israel	0,267415
Czech Republic	0,267415
Switzerland	0,267415

Figure 12. Cluster 2 members.

The analysis of Figures 6-12 shows that, according to the graph of means, the division into 2 clusters was optimal in this case. Cluster 1 (Figure 6), which includes Ukraine, is characterized by:

- lack of legislative regulation of lobbying (average score 3);
- high degree of language conflicts (2.57);
- the medium corruption rate (2), which varies between countries.
- Cluster 2 is mostly characterized by:
- the existence of legislative regulation of lobbying (1.35);
- small manifestations of language conflicts (1.29);
- low corruption rate (1.06).

Figure 7 shows the Euclidean distances between clusters, and Figure 8 represents the results of the analysis of variance. The smaller the intra-group variance and the larger the inter-group variance, the more qualitative the clustering. The F and p parameters show that the results are significant. Descriptive characteristics by clusters are additionally shown in Figures 9 and 10. Figures 11 and 12 represent the countries that fall into each of the clusters.

The results of the analysis confirm the assumptions about the relationship between the lack of legal regulation of lobbying, high corruption rates and language conflicts in the region. This determines the need to improve anti-corruption legislation and legislative support for lobbying in Ukraine.

Regarding the latter, it is possible to use the lobbying institution in the USA as an example for building the lobbying process in Ukraine. It is one of the most developed in the world, which is in line with the high value of democracy in the United States. Figure 13 shows US lobbying spending for 1998 to 2021.

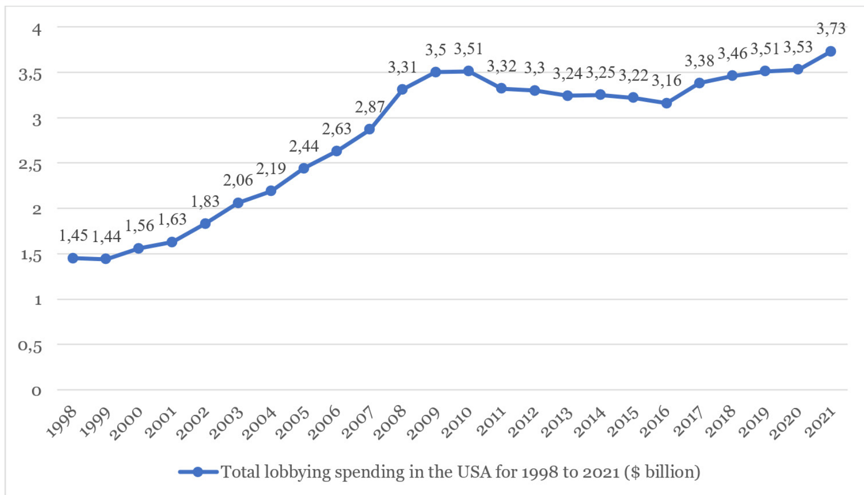

Figure 13. Lobbying spending in the USA for 1998 to 2021 ($ billion) (prepared by the author based on Statista (2021).

Figure 13 shows the rapid growth of lobbying spending from 1998 to 2009. However, the period of 2009 to 2021 is characterized by a certain stabilization of lobbying spending at approximately $ 3.2-3.7 billion. Figure 14 shows US lobbying spending by industry.

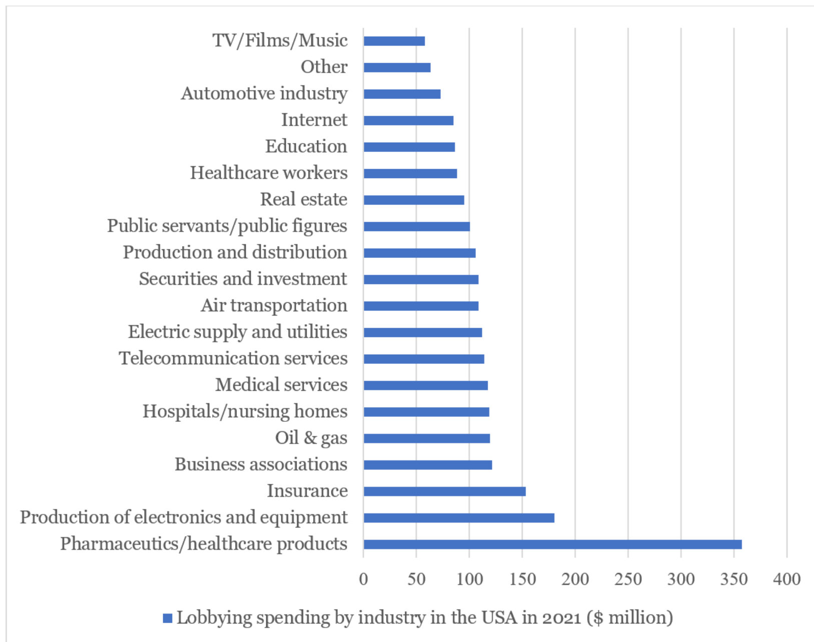

Figure 14. Lobbying spending in the USA in 2021 by industry (prepared by the author based on Statista (2021).

The pharmaceutical and healthcare products industries are characterized by the largest expenditures on lobbying. The production of electronics and equipment ranks second, and insurance ranks third. The developed lobbying institution in the USA corresponds to a fairly low corruption rate (27th place out of 180 according to Transparency International, 2021) and a high level of ensuring the democratic rights of citizens.

4. Discussion

The article discussed the background and current state of language conflicts in Ukraine in detail. It was determined that the absolute majority of Ukrainians consider Ukrainian the only state language, but linguistic conflicts continue to arise. Neighbouring states, as well as lobbying for individual persons or parties, play a significant role in this process.

The interests of the latter may differ from national ones, and language in these cases is used as a tool to achieve their own goals. In many respects, the

problem of unregulated lobbying implies the lack of the Law on Lobbying in Ukraine. The study proved that the lobbying institution exists in many modern democratic states.

Such states are characterized by lower corruption rates and almost no language conflicts. The article substantiates that the improvement of anti-corruption legislation and further approval of the legal status of lobbying can contribute to solving the language problem for the better.

It was noted in the study that lobbying helps individuals or groups to advocate and advance their interests by influencing public policy. Godny (2019) provides a similar definition, noting that political lobbying is a system and practice of realizing such interests. The researcher includes speeches and hearings, personal meetings, other interactions, as well as shaping citizens' opinions, etc. as methods of lobbying along with the development of draft laws. According to him, lobbying actually equals to corruption in its current state, without legal support. Krupnyk (2021) also considered the problem of corruption in the context of the introduction of the lobbying institution. So, the assumption made in the article regarding the importance of solving the corruption problem is confirmed in the works of researchers.

Panasenko (2018) leaves out the lobbying issue, detailing the history of language conflicts in different countries in the context of globalization. The researcher notes that the settlement of language conflicts is a national issue and, accordingly, should be settled at the state level. While agreeing with this opinion, it is appropriate to note that state regulation is important, but the resolution of language conflicts depends on citizens in many respects. This is why shaping public opinion, as well as increasing the role of national identity are also important. Lobbying for national interests, among other things, is important for those purposes, but this issue is not covered in Panasenko's (2018) research.

Makarets (2022) and Kotsur (2018) also studied language conflicts. The researchers identify the destabilizing influence of the Russian Federation as the main cause of language conflicts in Ukraine. The goal of the Russian Federation is to slow down Ukraine's movement towards the European Union. It was noted in this research that the Russian Federation uses dishonest lobbying methods to realize its interests on the territory of Ukraine. Kotsur's (2018) research does not focus on lobbying, but Makarets (2022) defines lobbying as one of the methods of Russian interference in Ukrainian politics.

In general, speaking about the study of the influence of lobbying on language conflicts, it should be noted that these concepts are almost not connected with each other in the works of researchers. This creates certain limitations for research, while forming a new direction for further research.

Therefore, the study of the relationship between the legally approved lobbying, language conflicts and the corruption rate conducted in the article has high academic significance and brings novelty to science.

Many researchers dealt with the problems of lobbying and language conflicts. It was mentioned that the impact of lobbying on language conflicts has been poorly studied, but researchers reveal its impact on other aspects of social life in detail. In the current understanding of a democratic society, lobbying is not a means of achieving personal goals, enriching individuals, or realizing the interests of individual businesses, etc.

It can contribute to a real improvement in the quality of life of people, individual sectors of the economy and the country as a whole. For example, Meng and Rode (2019) examine the spending and other aspects of climate policy lobbying. Brulle (2018), Fisher and Nasrin (2021), Vesa *et al.* (2020) also study the impact of lobbying on climate policy. Counts *et al.* (2021) presented aspects of health care lobbying in the USA. This research also found that the United States have the highest healthcare lobbying spending.

This article provides a proposal regarding the use of US lobbying experience in Ukraine. In this regard, Samoilenko (2020) notes that the following measures should be the main directions of implementation:

- publication of lists of meetings of both government officials and representatives of corporations that have connections with the lobby;
- refusal to promote the interests of unregistered lobbyists, cancellation of their privileges;
- increased attention to manifestations of conflicts of interest;
- publication of decision-making documentation;
- facilitating the registration of lobbyists who promote civil rights (Samoilenko, 2020).

Therefore, further research can focus on determining the role of political lobbying in resolving armed conflicts, developing directions for the introduction of legislative regulation of lobbying.

Conclusions

The relevance of the issue of the escalation of conflicts of different origins around the world is beyond doubt. Many of them develop into armed confrontations, in particular, this applies to language conflicts. The language aspect has always been one of the most acute and controversial For Ukraine. In 2022, more than 80% of Ukrainians consider Ukrainian the state language, but the problem of language conflicts still exists.

This is related, among other things, to the lobbying of the political interests of certain groups of persons or individuals, in particular, pro-Russian politicians. There is no lobbying institution in Ukraine, which is the reason for using "uncivilized" lobbying methods by individual politicians.

The research by country proves that the existence of legislative regulation of lobbying corresponds to a smaller number of language conflicts. Besides, a successfully functioning lobbying institution is closely related to the reduction of corruption in the country. The countries with lower corruption rates have legal regulation of lobbying and almost no language conflicts.

The scientific significance of the research results is the established relationship between the legislative regulation of lobbying, language conflicts and the corruption rate. The novelty is the determined impact of political lobbying on language conflicts, because these issues have not been covered in the academic literature in a relationship.

The results of the study can be applied by the government to actualize the issues of improving anti-corruption legislation and adopting the Law on Lobbying. Prospects for further research include determining the role of political lobbying in the resolution of armed conflicts, as well as determining directions for the introduction of legislative regulation of lobbying.

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The role of digital technologies for the canine units involved in the law enforcement in European countries

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Abstract

The aim of the article was to consider the role of digital technologies in law enforcement by canine units in European countries. Comparison and observation methods were the main methodological tools. The research showed that European K9 units assist in rescue operations, detection of prohibited substances, firearms and ammunition. Their activity is necessary during the tracking and arrest of criminal suspects. European canine units are responsible for protecting service dogs from undue risk. It was found that tactile interfaces, UAV-based surveillance sensors, video surveillance systems and GPS are becoming components of European requirements for canine service activities. Projects implemented as part of the European research and innovation program Horizon 2020 aim to develop technologies for rapid response services. It is concluded that, the INGenIOuS Project resulted in the development of an effective K9 vest for a search dog, which is based on a complex of modern digital technologies. In addition, the installation of devices in patrol cars can help to save a working dog.

Keywords: situational awareness; companion dog; behavioural interaction; dog equipment; sensory interfaces.

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El papel de las tecnologías digitales para las unidades caninas implicadas en la aplicación de la ley en los países europeos

Resumen

El objetivo del artículo fue considerar el papel de las tecnologías digitales en la aplicación de la ley por parte de las unidades caninas en los países europeos. Los métodos de comparación y observación fueron las principales herramientas metodológicas. La investigación mostró que las unidades europeas K9 ayudan en operaciones de rescate, detección de sustancias prohibidas, armas de fuego y municiones. Su actividad es necesaria durante el seguimiento y arresto de sospechosos de delitos. Las unidades caninas europeas son responsables de proteger a los perros de servicio de riesgos indebidos. Se descubrió que las interfaces táctiles, los sensores de vigilancia basados en UAV, los sistemas de videovigilancia y el GPS se están convirtiendo en componentes de los requisitos europeos para las actividades de los servicios caninos. Los proyectos implementados como parte del programa europeo de investigación e innovación Horizonte 2020 tienen como objetivo el desarrollo de tecnologías para servicios de respuesta rápida. Se concluye que, el Proyecto INGenIOuS dio como resultado el desarrollo de un chaleco K9 eficaz para un perro de búsqueda, que se basa en un complejo de tecnologías digitales modernas. Además, la instalación de dispositivos en los patrulleros puede ayudar a salvar a un perro de trabajo.

Palabras clave: conciencia situacional; perro de compañía; interacción conductual; equipo para perros; interfaces sensoriales.

Introduction

Canine units are involved in search and rescue operations, assist during the collection of evidence, or during the apprehension of a criminal to contribute to a successful outcome in an optimal way. The goal of canine units in law enforcement is to achieve a proper arrangement of social relations in the field of use of dogs by authorized entities (Seliukov, 2020). This should be achieved both in official and everyday activities. This results in the provision of two directions: maintenance of proper conditions for the dog's life and effective use of all its abilities for the benefit of society and the state.

Dogs are intelligent animals that have an intrinsic value going beyond their contribution during service. This is reflected in changes to legislation and policy around the world (Chaney *et al.*, 2021). In case of working

dogs, the animal's condition largely reflects the interaction between three key components. These include individual dogs, human attitudes and behaviours, and the physical environment, including management practices (Cobb *et al*., 2021).

The five areas of working dog welfare include nutrition, environment, physical health, behavioural interactions and their impact on the animal's mental state. They are a necessary current model for determining the general condition of animals (Mellor *et al*., 2020).

Working dogs represent a small share of the population, but they can have a profound effect on human health and well-being (Van der Linden, 2021). These animals have become more in demand in the public service thanks to their special qualities. The use of dogs is especially necessary in the specific detection (search and rescue dogs, explosive detection dogs) and protection (military and police dogs).

However, even a well-trained dog with the most developed skills is unable to complete the tasks without outside help. Providing canine units with well-trained dogs will not lead to the desired result in the absence of qualified and professional canines (Shvets, 2020). Success in these roles requires dogs to meet complex behavioural criteria and undergo careful training, while the end result is not guaranteed (Bray *et al*., 2021).

Many law enforcement agencies and the military use dogs for a dual purpose: protection and detection. The military trains single-purpose working dogs in reconnaissance, building searches, and the use of controlled aggression. Search and rescue dogs are trained to find alive people or human remains, and may be trained to respond at times of urban disasters or wilderness environments.

The use of special detector dogs is necessary to detect drug and contraband odours. Dogs also began to play an important role in the investigation of arsons, the search for computer and electronic materials (Petersen and Schoon, 2021). The search for currency, tobacco and help in the fight against poaching occupy a special place (Ricci *et al*., 2021).

Digital technologies have grown exponentially, and their use has become global. The digitization has covered most of humanity. The technological revolution has combined with a change in the strategy of government organizations, which seek to be at the forefront of the use of digital technologies. The increase in the number of new sophisticated threats increases the need for the use of highly effective means during the work of canine units, for example, during the detection of explosives (Lazarowski *et al*., 2020).

A high-tech solution becomes necessary to facilitate each step of this process (Vosinakis *et al*., 2022) New innovative technologies may include

devices, automated vehicles, drones or server services. They become necessary to support canine services in the fulfilment of their tasks, ensuring the safety and efficiency of operations (Douklias *et al.*, 2021).

In view of the foregoing, the aim of the article is to consider the role of digital technologies in law enforcement by canine units in European countries. The aim involved the following research objectives:

1. summarize the main characteristics of the law enforcement agencies of European countries as the main subjects of canine support and to determine the forms and methods of organizing the work and training of special working dogs in the European countries;
2. identify the state of application of digital technologies in canine units of European countries for the purpose of possible implementation of relevant innovations for the maintenance of canine units of law enforcement agencies in Ukraine.

1. Literature review

The choice of the research topic is correlated with the modern vectors of the theoretical research in different states. The study conducted by Vosinakis *et al.* (2022) became the main tool and background for the article. The study focused on the analysis of search and rescue operations in terms of the use of digital technologies.

The work emphasized that the use of modern digital technologies for the companion dog of the K9 unit increases the unit's safety when working in the field, helps the K9 operator to better control the location and environment of K9. This results in an increased information volume provided to the command-and-control centre during the operation.

The work of Seliukov (2020) had an influence on the author's position regarding the subject under research. The author conducted a comprehensive analysis of the current legal framework of Ukraine, which determines the activities of canine agencies and services of different departments. Attention was paid to the problematic issues that arise during the everyday activities of canine units, the main gaps in the current legislation were identified, and attention was also focused on the resultant negative consequences.

The findings of Cobb *et al.* (2021) on the attitude of society towards the use of animals were taken into account in this research. The survey of studies on working dogs in relation to modern ethics, human interaction and five areas of animal welfare: nutrition, environment, behavioural interaction, physical health and mental state occupied a special place in the work.

In turn, Bray *et al.* (2021) explored best practices for evaluation, selection and improvement of working dogs, and concluded on necessary steps and recommendations for working dog organizations, breeders, trainers and researchers. Special attention should be paid to the findings of Foster *et al.* (2022) regarding research on the body-worn and airborne sensors to monitor working dogs and their environment during scent detection, as well as search and rescue operations. The paper by Douklias *et al.* (2021) regarding technologies that may include devices, automated vehicles and drones or server services required in rescue operations was of particular importance.

The studies of Ricci *et al.* (2021) and Lazarowski *et al.* (2020) used in the paper emphasize the role of recent advances in forensic odorology, a method that uses dogs to detect evidence at crime scenes, and the improvement and standardization of assessment technology to identify and improve behavioural characteristics of dogs.

The study of Shvets (2020), who emphasized the growing need of the law enforcement system for highly qualified canine handlers and service dogs, were used when shaping the author's position. The author made a detailed analysis of the problems of the modern stage of the development of service cynology and proposed ways of updating the administrative legislation in the field of canine support of law enforcement.

Bozkurt *et al.* (2014) analysed related technologies that can measure aspects of a dog's behaviour to assess temperament, predict training success, and even monitor health. The author outlines relevant vectors such as objectivity, subjectivity, implementation in practice and demonstrates the innovative technologies that have been developed for dogs, as well as new interactions that these technologies enable.

The active study of the issues selected in the article confirms that digital technologies in law enforcement by canine units deserve special attention and demonstrates the diversity of research in this field. Therefore, it is urgent to conduct the study according to new research criteria.

2. Methods

A set of practical and general methods of scientific knowledge was tested in the research, which was reflected in the consistently presented material of the article. Figure 1 illustrates the course of the research expressed in the step-by-step use of methodological tools for shaping the author's positions and drawing conclusions.

Observation was the main method of the research, which enabled identifying and confirming the latest innovative technologies tested by

canine units in Europe. This method was used to reveal the main problems that the government bodies of Ukraine encounter in the use of specialized dogs in professional activities; the peculiarities of new technological solutions in the studied field in Europe; practical aspects of training dogs to perform special tasks in the relevant units.

The observation method also made it possible to choose a vector of promising reforms in Ukraine in order to ensure a balance of approbation of positive European practices and taking into account national realities. The observation method was included in the experiment as its integral part, and its results were interpreted in the article with a view to the need for further research.

The main hypothesis of the study was the provision that certain methods of training dogs tested in Europe in the course of digitalization can be partially actualized in terms of the European integration of Ukraine, especially in the wartime.

Specific sociological and statistical methods of collecting and summarizing information were used to study materials for research on the effectiveness of canine units. These methods were the basis for the systematization of the practice of involving dogs by specialized divisions of government bodies.

The inductive method helped to generalize and present the main factors that make full adaptation of European innovative practices impossible in Ukraine. The synthesis method contributed to the formulation of new provisions, theoretical conclusions, proposals and practical recommendations in the field of effective interaction between a dog handler and a dog.

The method of comparative law was used to study the positive experience of European states, where specialized canine units are actively functioning as part of government bodies, in order to substantiate the appropriateness and further effectiveness of adapting positive foreign experience in Ukraine.

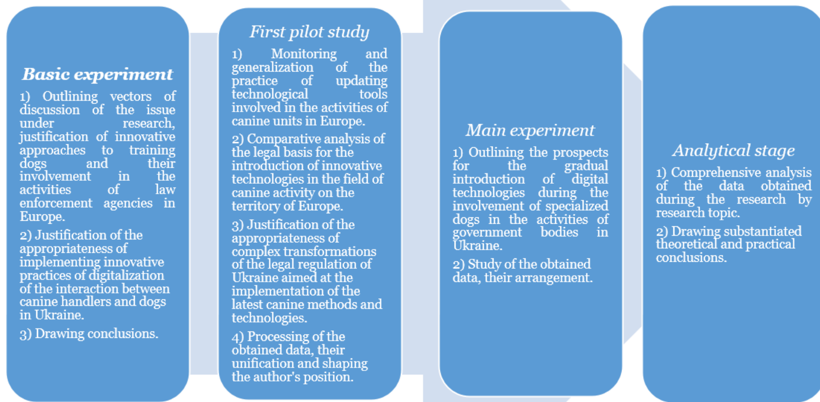

Figure 1: Research Design. Source: authors.

The method of interpretation of international and national legal acts in the field of regulation of methodologies and technologies of canine units was also used in the course of the research. The method of legal modelling was applied in the search for necessary and urgent legislative innovations in order to ensure the greatest compliance of national legal regulation with canine innovations, as well as with the latest trends in the European space and transformations of law enforcement agencies.

The reliability of the obtained results, the soundness of the conclusions and recommendations in law enforcement practice were confirmed by the study of a sufficient number of primary documents that constitute the information background for the identification of statistical regularities, the scientific understanding of the issue under research and modelling of the most optimal ways to solve it. The 47 surveyed references served as a stable background for building the author's conclusions and proposals in the area under research.

3. Results

Law enforcement is the main function of the canine service. Canine services are responsible for law enforcement, maintaining public order and ensuring public safety in their field. The functions of the relevant units include the performance of canine duties aimed at the preparation, training, maintenance and use of dogs during professional activities. The organizational function is also important, which implies the creation of proper conditions for the system of canine units or institutions. In European countries, canine units are interested in the well-trained service dogs and pay much attention to animal welfare.

The relevant activity is based on a five-factor model that includes nutrition, environment, health, behaviour and mental health. The mental health of the animal is studied in more detail through the application of this model. The result is the recognition that for every disturbed physical aspect there may be an accompanying emotion or subjective experience that may also affect well-being.

Dogs used for sniffing and scent detection are usually sporting breeds such as Labrador Retriever and Golden Retriever. Poodles and Jack Russell terriers are included in the list for their excellent sense of smell. German Shepherds, Dutch Shepherds, and Belgian Malinois top the list of tactical military dogs.

Malinois are especially ideal for tactics involving parachuting and abseiling. Breeding decisions can be based on generational information, giving organizations more control over the health and characteristics of their dogs. Dogs must not have physical problems such as hip dysplasia. Lameness is a common condition for early retirement in working dogs, sometimes reported in as many as 69% of cases.

The average cost of training a military dog, for example, ranges from $20,000 to $40,000. Training a dog to work as an explosive's detection expert can cost more than $150,000. Dog training classes take place in several stages (Figure 2).

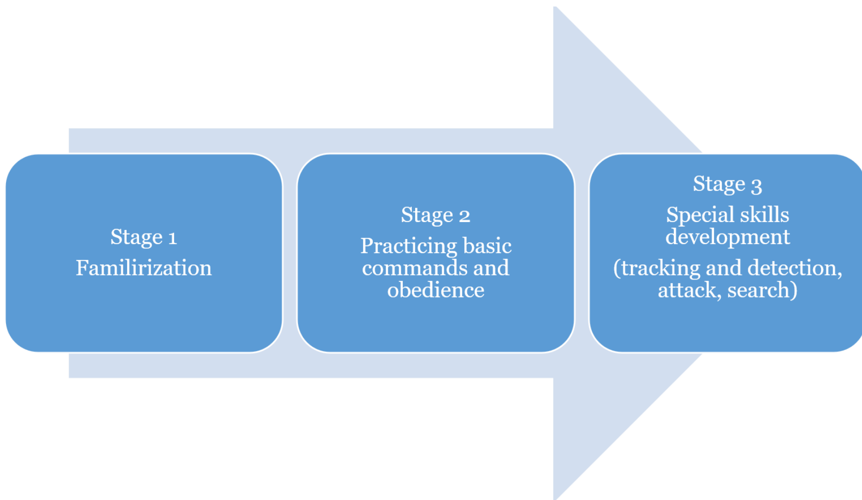

Figure 2: The Main Stages of Training Working Dogs (Grouped by the Author).

The obedience and familiarization stage involves a special emphasis on kindness and firmness, as well as immediate checking of the dog when it acts contrary to the command. In modern canine service dog training centres, no piece of equipment used in operations is ever used as an instrument of punishment (Council of Europe, 1987).

Tracking is used when pursuing and apprehending a suspect fleeing a crime scene. The trainer shall typically introduce the dog to a game of tug-of-war with a towel that does not have a scent to begin tracking/detection training. Later, the drug or weapon that the dog must detect is wrapped in the same towel so that it acquires the scent of the item. Trainers hide a towel with the smell of a drug or weapon wrapped in it so that the dog can search for it in different places and environments. Soon the dogs learn that when they smell these scents accurately, they start to play and this motivates them.

It is worth noting that a dog's nose has about 300 million olfactory receptors, compared to about 6 million in a human nose. So, the olfactory cortex occupies 12.5% of the total mass of the dog's brain, while it is barely 1% in the human brain. Search dogs are trained to distinguish more than 19,000 different scents for their work.

There are two ways to train working dogs to warn about the specialty scent. The first method is called "passive alert", which is common among explosive detection dogs. This mostly requires a non-aggressive reaction to

prevent detonation. This method implies that the dog sits next to a person when it smells the relevant scent. The method of "aggressive alert" is most common among dual-purpose police dogs, as the dog is trained to show signs by vigorously scratching and barking at an item having a scent of a particular substance.

Having learnt to track, the dog learns to act when meeting a suspect at the attack stage. If a man stops at the sight of a dog, the dog learns to keep him at a distance and bark until the handler arrives. But if a person runs, the dog will attack. The two most important things a dog learns when learning to attack are where to grab and when to let go. The dog is taught to grab the right hand or the hand holding the weapon and clamp it between the jaws until the handler arrives.

The dogs are then trained to attack under fire. At the fourth stage of the training cycle, the dog learns to search buildings, forests, factories and other objects that it may encounter during the work. Typical training scenarios might include detecting explosives in a convoy of 10 or more vehicles using decoys to create distracting stimuli. A special place is given to training in searching for victims under rubble.

There are many areas of specialization for working dogs (see Figure 3). In particular, detection dogs are used in crime prevention, rescue operations and investigation to identify and track the subject. These dogs are trained to distinguish scents by recognizing molecules scattered in the environment. Human scents are usually classified into primary, secondary, and tertiary categories. The main category of scents includes genetically determined compounds. Their relative concentrations remain constant over time regardless of environmental factors.

These factors include diet, weather conditions, air humidity, state of internals, emotional state, phases of the menstrual cycle, etc. The secondary category includes skin scents that depend on internal and external factors. Tertiary scents come from the environment (scents of the workplace, cosmetics, cigarette smoke, gasoline, scents of other people or pets). This method has also found important applications in the civil defence sector and in judicial investigations.

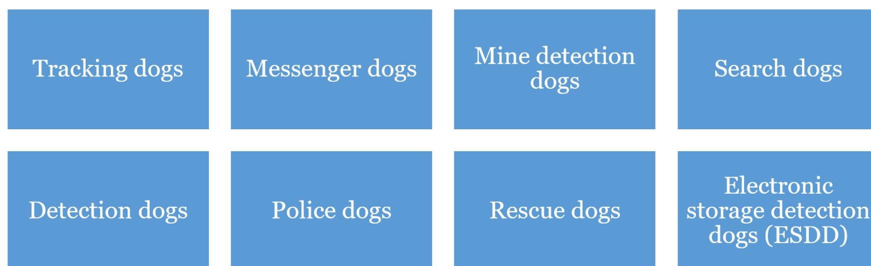

Figure 3. The Main Dog Training Specializations in Canine Units (Summarized by the Author).

A military guard dog is different from police patrol dogs, which are trained to protect a handler. Military guard dogs are trained to alert their handlers to the approach or presence of strangers and are used to guard supply depots, airports, military factories, bases and other important facilities. Scout dogs are trained to work in absolute silence to detect snipers, ambushes and other enemy forces nearby. Messenger dogs learn to work off-leash and must be equally loyal to two trainers. They must be motivated to leave one trainer to go to another, and vice versa, to transmit and deliver messages at a distance.

Messenger dogs are also trained to move silently and hide in their surroundings to keep themselves safe while following their routes. Mine detection dogs are trained to find tripwires, trap mines, as well as metal and non-metal mines. Explosive detection dogs are trained to alert when they detect the scent of relevant chemicals. Dogs are trained to respond to the following scents: nitrate and chlorate salts, HMTD, TATP, PETN, RDX (labelled and unlabelled), TNT, C4 (labelled and unlabelled), Semtex A&H, smokeless powder, black powder, dynamite and their derivatives. Some devices can only be detected by dogs because the explosives are contained in wooden or plastic boxes and the electric fuse is made of graphite.

Search dogs detect narcotic drugs and psychotropic substances, such as marijuana, hashish, cocaine, heroin, LSD, methamphetamine, ecstasy. Learning to find electronic equipment by scent is the least known specialization, which is highly in demand in dog training. trained detection dogs can identify respiratory secretion samples from hospitalised and clinically diseased SARS-CoV-2 infected individuals.

Rescue dogs are trained to search for both alive people and dead bodies in obscure or hard-to-reach places. Cadaver dogs are commonly used in police operations in special units. Cadaver dogs can find whole bodies, decomposed bodies, and body remains (such as blood, tissue, hair, bones, and skeletal remains). Cadaver dogs can operate in water to find submerged bodies. They sit in front of the boat, scan the environment, and bark when they intercept target molecules on the water surface.

This limits the search area and makes the work of divers easier. Presence of the dog in the courtroom is a new direction in the training of working dogs. A police dog is trained to handle emotionally strained situations, such as cross-examination, where a rape victim comes face-to-face with the assailant. The dog does not leave the victim in court, allows itself to be stroked and hugged. This provides support in court for victims of crime, especially those who have suffered violence or sexual abuse.

Some military dog breeding organizations, such as the Swedish Armed Forces, have their own breeding programmes. Dog training centres are

based in Märsta and in Kungsengen, north of Stockholm, as well as at the dog breeding station in Sollefteå. Between 35 and 40 litters of German Shepherds are born in the Sollefteå breeding unit every year (Swedish Armed Forces, 2022). In the Canine Training Department in Märsta, dogs are trained to patrol, search for ammunition, drugs and weapons for military units of the Armed Forces of Sweden. It is important to note that causing unnecessary suffering to a protected animal is an offence (Legislation.gov.uk, 2006).

This may include unnecessary suffering caused by inappropriate training methods. Electronic shock (static pulse) collars, digital anti-bark collars, electronic restraint systems are specific training devices that the Scottish Government does not approve. They may include any other methods of physical punishment or negative reinforcement. This includes using any device that injects oils such as citronella or other poisonous chemicals. They interfere with the dog's acute sense of smell, or emit any other aversive stimuli. Different countries also purchase working dogs from specialized breeders in Germany and the Netherlands.

Once assigned to a specific canine handler, each canine service dog lives with its partner in the unit. Only law enforcement officers who have undergone appropriate canine training in specialized educational institutions are allowed to work with working dogs. The youngest age of working dogs usually starts between 12 and 15 months of age, because that is when they are mature enough to concentrate effectively.

European K9 units are well trained and specialized in specific tasks. In those units' dogs outperform humans and machines in their ability to identify and track scents even in stressful and challenging situations. For example, in Sweden, the K9 staff includes 400 police officers and the same number of working dogs. Dogs are involved in 25,000 to 30,000 operations each year. Most police dogs in Sweden are German Shepherds and Malinois. More than 2,500 dogs work in different police departments in Great Britain; most of them are Belgian Malinois (Palmer, 2021).

In Southern Italy and the main islands, special K9 units are combined into helicopter police squadrons called Cacciatori (hunters) (Carabinieri, 2022). These units primarily operate in high-crime areas where the geography and topology provide a criminal organization with natural hideouts to store illegal weapons and explosives. Conceptually, this department is highly specialized, which combines military procedures and police techniques in a single operational vision.

The International Mine Action Standards (IMAS) are applied when using, for example, mine detection dogs in European countries (Geneva International Centre for Humanitarian Demining, 2022). IMAS 09.40 provides guidelines for using mine detection dogs (MDD). They are widely

used for scent detection, including applications related to the military, police, border control, health care, emergency response, and many others.

The standards 09.41 “Operational Procedures for Animal Detection, 09.44 “Guide to Occupational Health and General Dog Care” are also used. Dog handlers together with trained dogs assist Explosive Ordnance Disposal (EOD) and Improvised Explosive Device Disposal (IEDD) teams in EU countries.

The European Border and Coast Guard Agency (Frontex) promotes, coordinates and develops European border management. The Agency acts in accordance with the EU Charter of Fundamental Rights and the European integrated border management (IBM) (EUR-Lex, 2019). Frontex provides technical and operational assistance to member states through the development of standards (including in cynology).

An example of the expansion of the cooperation of the K9 units of Europe in the context of the fight against the consequences of armed conflicts is the implementation of the Support to Strengthening of the Canine (K9) Capacity of the Police Services to Detect and Confiscate SALW, Ammunition and Explosives Project (OSCE, 2022).

It also aims to increase the direct contribution of Kosovo K9 Police to the prevention, suppression and investigation of the misuse and illicit trafficking of small arms and light weapons, ammunition and explosives. According to the Project being implemented during 2020-2022, support will be provided to relevant institutions in fulfilling their obligations according to key performance indicators.

It is worth noting that new technologies using non-traditional materials, such as polymers, are increasingly being used in the production of small arms. Five K9 dogs were purchased for the police in 2020 under the United Nations Development Programme in Kosovo and the Support to Countering Illicit Arms Trafficking (CIAT) project in Kosovo, funded by the German government. They will be trained by certified K9 instructors and will be engaged in finding polymers (UNDP, 2020).

European law enforcement officers have begun training detection dogs to seize electronic equipment such as USB drives, micro-SIM cards, mobile phones, DVDs, CDs, external hard drives and memory cards. Specialist canine units in this sector are called electronic storage detection dogs (ESDD). ESDDs are taught to sniff out a chemical component, triphenylphosphine oxide (TPPO), which is common to most electronic gadgets. The ability to sniff out these electronic devices can be important in a variety of criminal cases, such as child pornography, financial crimes, terrorist activity, burglary, murder, and many others.

The National Police of the Netherlands and the police of Great Britain used dogs as detectors for hidden digital storage devices the most among European countries. Hertz, a German short-haired pointer, can be an example of the result of such work, who was trained to detect personal electronic devices while serving in the Royal Air Force Police. Since 2010, Hertz has detected more than 100 items of contraband in Afghanistan, including drugs and personal electronic devices that posed a serious threat to the lives of military personnel and civilians. In 2022, he was awarded the UK PDSA Dickin Medal in recognition of his service with the Royal Air Force in Afghanistan (Grierson, 2022).

The use of various digital technologies in K9 units, which require the appropriate equipment of the dog, is becoming very common in European countries. The collar is not always the best place for equipment. It is one of the strictest in terms of safety, space, weight and comfort. The weight of any attached device should be less than the recommended norm of 4-5% of body weight. It is important to make the device as small as possible and not to use the entire collar circle in order to increase comfort.

This will allow the dog to lie down without device's pressing down on the neck. The collar design means not only the weight minimization, but also the softest and most seamless surface near the neck. Unlike the collar, a harness provides much more space. Built-in sensor technology is also used as a new strap that fits into a dog vest.

Interest in the field of animal-computer interaction has led to research into computer technologies for communication between service dogs and their handlers. Tactile (sensory) interfaces in the form of vibrating motors are a promising approach to communication between the trainer and the dog. Tactile interfaces can provide a silent method of sending commands to a dog over long distances when voice or hand signals are inappropriate or impossible.

Dogs can successfully communicate tactile sensations by responding with a "message" by touching a target. Most modern electronic collars have a vibration function that can direct the dog to return to the handler without any verbal commands. The use of a UAV with cameras to monitor the dog from the air during the dog's performance of the task set by the dog trainer is also worth of attention. UAV-based sensors enable collecting data about the location of the dog within the environment and its interaction with specific objects.

The data are transmitted in real time. There is also an option when the dog is equipped with a video camera system on its head and a transmitter connected to a monitor at the dog handler's workplace. When the dog goes in search, the dog handler observes through the monitor what the dog sees at a distance of up to 10 kilometres. At the same time, the UAV overhead watches the dog, which works with a daytime or infrared camera.

The information is overlaid on a Google map, giving the team a unique view of the search, showing where the dog has been and areas that require further study. A discrete connection with the dog can also be built into the system, so the handler can send the dog commands such as "seek", "lay down" and "return to the handler". In addition, dogs can be equipped with a GPS-like tracking device that works inside buildings, tunnels, etc. As soon as a dog is sent to search, the track of that dog is then transmitted to the dog handler's display.

Horizon 2020 — the European research and innovation programme — provides for establishing the connection between the cluster projects DRS-02 ASSISTANCE, CURSOR, FASTER, INTREPID, PathoCERT, RESPOND-A, RESPONDRONE, Search & Rescue, MED1stMR. They are funded under SU-DRS02-2018-2019-2020 theme — Technologies for First Responders — by sharing their concept and activities while creating synergies and planning future joint actions. For example, integrated Next Generation Integrated Toolkit (NGIT) for Collaborative Response is being continuously developed under the European project INGENIOUS (2022).

NGIT is used directly during response operations and increases the level of protection and operational capabilities of first responders. This ensures cooperation and coordination between team members, agencies, as well as between victims and infrastructure owners. This results in an increased situational awareness due to local and remote detection, monitoring and analysis of passive and active threats.

It also provides fail-safe data and voice communication between teams and victims. One of the objectives of INGENIOUS is to develop a set of special wearable technologies and miniature sensors. They are to protect and empower emergency responders and their K9 companions during response operations. A vest designed for a search dog involved in the work of a K9 unit can be an example.

The K9 vest provides the dog handler with the information about the dog's well-being, location and working condition. It offers two video streams (HD and thermal) as well as bidirectional audio. Besides, it tracks the dog's location using a high-precision GNSS receiver. Communication is provided through a connection to a local Wi-Fi network. Developers discussed the interfaces of the K9 vest in detail with K9 units. They concluded that ease of use, minimal overhead, and convenience would be most acceptable in this case.

The main switch is used to turn the K9 vest on and off, including the stabilizer and cameras. This button is located on a 3D printed box and is carefully designed to prevent accidental pressing. An LED battery level indicator is installed on the vest. The user interface includes a card to record the GPS coordinates of the dog's location. Information is provided

almost in real time in the form of streaming video from cameras connected to the main processor.

The vest provides real-time tracking of the dog's position, thereby providing detailed information of the dog's detection with the help of visual confirmation through cameras. This enables the dog handler to remotely control the dog and communicate with detected victims via smartphone. Video and audio playback functions are not an integral part of field conditions. However, GPS location and field video are very useful for commanders in the operations centre, who can have near-real-time images of the situation in the field.

The K9 vest successfully passed the test in wet conditions (moving in shallow water and wet thorny thickets). The dog handler can use the two-way speaker to give commands to the dog, to communicate with found victims, to listen to the dog's barking over the loud sounds of the rescue operation.

The use of digital technologies in the work of canine units of European countries can save the life of a service dog. The K9 officers often leave dogs in patrol cars during routine police operations. This can cause a dog overheating situation, which can lead to the death of the animal. As a result, patrol cars are equipped with innovative devices such as Hot-N-Pop Pro and K9 Heat Alarm Pro (AceK9.com, 2022), which track information about the temperature inside the car.

In case of high temperatures, a notification from the thermal alarm is sent directly to the dog handler's smartphone, tablet or PC with the internet browser. After the alarm is triggered, the window automatically opens and the fans or air conditioners turn on. Besides, the driver can remotely open the door to allow the dog to leave the vehicle.

The involvement of dogs in the work of law enforcement and other government agencies is also being actively implemented in Ukraine (Figure 4).

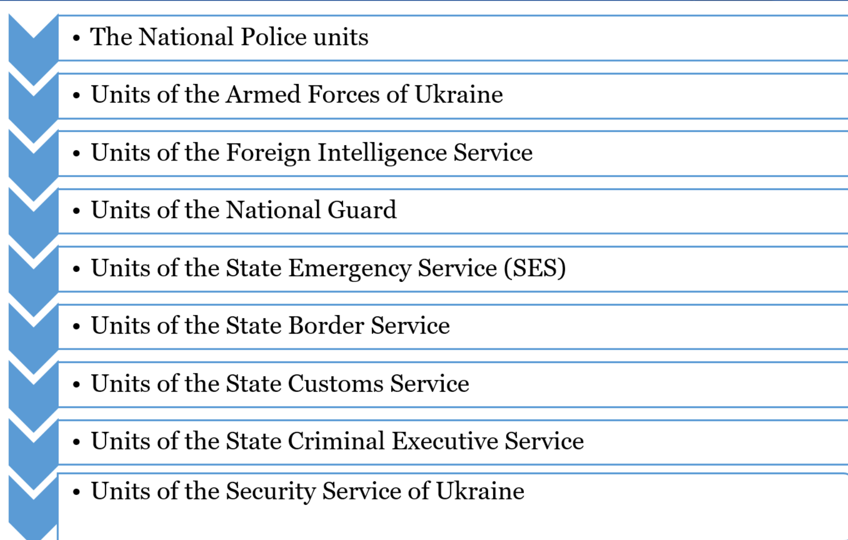

Figure 4: Subjects of Canine Support in Ukraine. Source: authors.

For example, the use of canine teams in the State Customs Service of Ukraine is regulated by law (Legislation of Ukraine, 2021b), a canine unit is established in the State Border Service of Ukraine (Legislation of Ukraine, 2018b), and the canine units of the State Emergency Service (Legislation of Ukraine, 2018a), the National Guard of Ukraine (Legislation of Ukraine, 2014) and the National Police of Ukraine (Legislation of Ukraine, 2016).

In 2017, the 2020 Concept of Development of Canine Services was approved in Ukraine (Legislation of Ukraine, 2017). One of the tasks of the Concept was to create an effective system of material and technical support for updating the existing resources of canine units and providing them with modern means of training, maintenance and use of service dogs.

Canine agencies can be established as departments, centres, units, services, groups and divisions. For example, the State Customs Service of Ukraine had 109 canine teams as of December 31, 2020. According to the specialization types, 67 canine teams are trained to search for narcotic drugs and psychotropic substances, 13 canine teams — to search for weapons, parts for weapons and ammunition, 17 — to search for tobacco products, 1 canine team to search for paper money, as well as 20 canine teams with dual specialization (State Customs Service of Ukraine, 2021). In 2021, the canine teams detected 616 items and substances prohibited for movement across the customs border of Ukraine.

In 2021, the canine units of the State Emergency Service of Ukraine were involved 71 times in the search for victims in forest (mountainous) areas and in the destroyed buildings, having saved the lives of 18 people (State Service of Ukraine for Emergency Situations, 2021). According to the results of the annual certification for determining the level of training of canine teams, 40 search and rescue dogs and 7 mine detection dogs of the State Emergency Service were certified and allowed to perform their assigned tasks.

Work has begun on the implementation of departmental digital radio communication in the system of the State Emergency Service. The departmental digital radio communication system has been partially deployed in the Donetsk and Luhansk regions with the international technical assistance from the UN Development Programme in Ukraine; in Chernivtsi and Ivano-Frankivsk regions — due to the Cross-border Cooperation Development Programme. By the way, Patron the dog from the Chernihiv canine unit of the State Emergency Service, whose specialization includes explosive detection, became a kind of symbol in Ukraine during the armed aggression of the Russian Federation.

In May, he received the state Award for Dedicated Service presented to him by the President of Ukraine V. Zelenskyi (Pavliuk, 2022). Patron the dog detected more than 300 explosive devices. The Ukrainian Kennel Union presented Patron the Four-Legged Defender Award in September 2022.

The standards in canine science developed by Frontex together with EU countries are being implemented in Ukraine with due regard to the national legislation). The International Mine Action Standards (IMAS) are used in the practical activities of the canine units of the Armed Forces of Ukraine. Canine units of Ukraine face a number of problems. These include the lack of comprehensive legislative regulation in this area, a heavy burden on the dog handler and the dog.

There is a lack of a sufficient number of institutions in the country for the effective training of dog handlers, as well as an understaffed canine unit in different bodies and services. A positive step in this area was the development and implementation of the State Standard for the training of dog handlers (code 6129 of the Classifier of Professions, DK 003:2010) in the Canine Training Centre of the State Border Service of Ukraine.

The provisions on the feeding of working dogs are also outdated (Legislation of Ukraine, 2001). However, positive changes regarding the feeding of working dogs of the canine units of the State Customs Service of Ukraine with dry food are worth noting (Legislation of Ukraine, 2021a).

The use of dogs that do not meet the requirements for work in the canine unit because of their health or age has not been fully regulated. Legislative regulation of the status of working dogs is also required.

Detection, patrol and search, special, convoy, guard dogs, reserve, breeding dogs, puppies are used in canine units of Ukraine. For example, the concepts of a border service detection dog, a border control detection dog, a special dog, a mine detection dog, a guard dog, a breeding dog, a service dog, puppies were introduced in the border canine service (Legislation of Ukraine, 2018b). According to the introduced changes, detection and attack dogs are legally established in the State Border Service (State Border Service of Ukraine, 2022). These changes include the possibility of transferring dogs for care and lifelong maintenance to a canine inspector, as well as natural or legal persons of any form of ownership upon their consent.

The storage conditions of the original scents shall be revised. The legislation of Ukraine provides for a possibility of using original narcotic and psychotropic substances during a special canine training course (Legislation of Ukraine, 2009). However, this option does not find practical application because of insufficiently regulated method of storage of such substances, as well as the conditions of their use. This is why the employees are not willing to bear responsibility for the failure to comply with the relevant requirements. Scent substitutes are mostly used in such cases, which do not create a more stable reflex in the dog.

In 2022, in view of the consequences of the criminal aggression of the Russian Federation, there is an insufficient level of organizational, legal and material support of canine units during the martial law in Ukraine.

4. Discussion

It can be stated that allowing animals to engage in species-specific behaviours can lead to an overall positive state of well-being, provided the minimization of negative affective experiences. Recognizing the vulnerability of working dogs leads to moral obligations and duties of justice (Vink, 2020). Industries that depend on working dogs must be proactive and transparent in ensuring that their animal breeding and animal care practices do not disappoint community expectations (China *et al.,* 2020). This is obligatory if people want animals to continue to perform these roles (Gibson and Oliva, 2022).

It can be concluded that the use of digital technologies provides dog handlers with real-time information about the behaviour of working dogs and the environment in which they work. Related digital technologies can measure aspects of dogs' behaviour to assess temperament, predict training success, and even monitor health (Bozkurt *et al.*, 2014).

The use of cyber-physical systems to complement the two-way exchange of information between dog handlers and dogs will enhance the sensory

capabilities of working dogs and help them save more lives (Bozkurt *et al.*, 2014). Combining data streams obtained from body and airborne sensors can provide more effective performance of remote scent detection tasks (Foster *et al.*, 2022). This will also ensure the well-being of the working dog in a potentially dangerous environment.

It can be stated that animal-oriented digital technologies help people to manage them. It is very important to carefully and consistently assess the problems arising from the use of animal-oriented technologies (Van der Linden, 2021). According to the researcher, the development of hardware and software should be carried out in cooperation with those who understand physiology and behaviour of animals.

It was found that cases of actual reduction of the amount (weight) of the narcotic substance due to its physical properties (airing, evaporation) are possible in the process of training. Such a situation can be considered from the perspective of appropriation of a narcotic substance by a dog handler (Seliukov, 2020). According to the researcher, the process of regulatory settlement of this issue requires a more careful and thorough study of the physical properties of narcotic substances in terms of their use for dog training.

It can be stated that the proper resource provision, including the provision of digital technological equipment, is the key to the effective operation of canine units. Canine units are not a priority area of public funding in view of the current political, social and economic situation in Ukraine (Seliukov, 2020). Further development of this industry depends on the increase of financial investment. The researcher states that changing the principles of the distribution of the budget for canine support is a priority. The development of measures aimed at including the canine service in the complex of defence activities at the level of the state policy of Ukraine is also of great importance (Bezpalova, 2020).

Conclusions

Providing improved external conditions allows working dogs to exercise freedom of action with potentially positive affective results. They have more opportunities for voluntary independent purposeful behaviour that they may find useful. The sale and transportation of drugs, smuggling, an increased number of armed conflicts, and acts of terrorism indicate the urgency of continuing to use working dogs as a valuable asset for law enforcement agencies.

European K9 units are an important part of law enforcement. They provide support and assistance in a variety of operations, including

patrolling, drug control and emergency response. They help find missing persons, track lost or stolen items, detect firearms and ammunition, as well as track and arrest crime suspects. Dog handlers have an additional responsibility to protect their companion dog from undue risk. The dog shall be intelligently obedient to hand signals, voice commands, and premeditated training procedures.

Digital technologies are constantly evolving, the pace of development of new equipment for service dogs and related tactics is accelerating significantly. Many projects in European countries are aimed at achieving wearable modern digital equipment, appropriate ammunition and inventory for working dogs. Sensory interfaces in the form of vibrating motors, UAV-based surveillance sensors, tracking devices in the form of video camera systems and similar to GPS are gradually becoming components of modern European requirements for canine services.

Investment in new tools and training will allow K9 units to remain more effective and safer. One of the objectives of the INGENIOUS Project is to develop a set of wearable technologies and small sensors that protect and empower emergency responders and their K9 companions during response operations. The designed K9 vest for a search dog that is involved in the work of the relevant unit can be an example. The developed innovative device such as Hot-N-Pop Pro and K9 Heat Alarm Pro, which monitors information about the temperature in the car, is also worth noting.

Canine units of Ukraine responsibly perform their official duties in relation to compliance with laws, maintenance of public order and provision of public safety in different areas of law enforcement. In 2022, Ukraine does not provide a sufficient organizational, legal and material support for canine units in the context of approbation of digital technologies during the martial law in view of the consequences of the criminal aggression of the Russian Federation.

The mentioned European options of modern digital equipment for working dogs, using the example of complex digital developments of the INGENIOUS Project, and innovative devices such as Hot-N-Pop Pro and K9 Heat Alarm Pro can be used as examples for the implementation of appropriate digital equipment for canine units in Ukraine. These innovations will become a further vector of research in the context of conducting comparative law studies.

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Man of the information society: problems of formation and development

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Abstract

The purpose of the research was to reveal the process of becoming a person in the information society. The problem of personal formation in the modern conditions of growth of the role of information communication technologies becomes topical problems in the field of social studies. The volume of information, information resources and corresponding technologies significantly influence different sides of social life and processes of humans. The following methods were used in the study: analysis, synthesis, modeling, mathematical statistics and others. The tasks of the study included analyzing the approaches, ideas about the features of personality formation in the information society. It has been shown that the solution of this problem is associated with the formation of human information culture. The paper presents the process of perception of the essence of this category, as well as describes a number of concepts, the essence of which allows to specify the content of the concept of «information culture». These are the following categories: information, culture, information needs. Special attention was paid to the development of information needs in educational institutions.

Keywords: human person; information society; information culture, current society; training and development.

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El hombre de la sociedad de la información: problemas de formación y desarrollo

Resumen

El propósito de la investigación fue revelar el proceso de convertirse en una persona en la sociedad de la información. El problema de la formación personal en las condiciones modernas de crecimiento del papel de las tecnologías de comunicación de información se convierte en problemas tópicos en el campo de los estudios sociales. El volumen de información, los recursos de información y las tecnologías correspondientes influyen significativamente en los diferentes lados de la vida social y los procesos de los humanos. En el estudio se utilizaron los siguientes métodos: análisis, síntesis, modelado, estadísticas matemáticas y otros. Las tareas del estudio incluyeron analizar los enfoques, ideas sobre las características de la formación de personalidad en la sociedad de la información. Se ha demostrado que la solución de este problema está asociada con la formación de la cultura de la información humana. El trabajo presenta el proceso de percepción de la esencia de esta categoría, así como también describe una serie de conceptos, cuya esencia permite especificar el contenido del concepto de "cultura de la información". Estas son las siguientes categorías: información, cultura, necesidades de información. Se prestó especial atención al desarrollo de las necesidades de información en las instituciones educativas.

Palabras clave: persona humana; sociedad de la información; cultura de la información, sociedad actual; formacion y desarrollo.

Introduction

The modern stage of the development of civilization is characterized by the growing power of information and communication technologies, which is, in fact, a global information revolution, which in terms of scale and consequences is many times greater than the industrial revolution of the 19th century and the scientific and technical revolution of the middle of the 20th century.

Analysis of existing concepts of modern society shows their mainly economic orientation. It is called differently: "transitional", "informational", "informational civilization", "electronic", "collective mind", "cognitive", etc. One thing is certain, according to the information, the dominant status is recognized.

Information in its various forms exerts an increasingly powerful influence on all aspects of social life:

- more modern technique for the production, storage and distribution of information is created;
- new information environment emerges that allows optimizing the functioning of production, state bodies, management structures, educational, scientific, and cultural institutions;
- new information technologies are increasingly entering the everyday life of a person, modern information systems are becoming an increasingly essential and integral part of it.

However, human existence in the information society turns into existence in a super-symbolic reality. The orientation of the individual is complicated by the sharp increase in the amount of information that circulates in society and affects the individual. On the other hand, the infrastructure of the information society provides a person with significant opportunities for creative development in connection with access to all the diversity of knowledge and values that have ever existed, the use of which is possible only for a person with formed information needs and skills, which are included in the concept of information culture.

1. The aim of the study

To clarify the analysis of the problem of formation of personal characteristics of a person in the modern world. To reveal the content of basic categories and concepts. To justify the development of the information culture of society and to show the influence of information technologies. To carry out a diagnosis of informational influences on the process of development of the specified characteristics on the example of the ability to informational self-development.

2. Literary review

Philosophical, psychological, pedagogical study of the essential forces of the individual, the disclosure of personal potentials and ways of their effective use have long traditions - from the philosophy of the Upanishads to the works of modern scientists: Furman (2018), Nikitenko (2022), Maksymenko (2022) etc.

However, in the works of foreign and domestic pedagogues and psychologists, the aspect of personality formation in the conditions of informatization is only partially investigated.

So, the relevance of the problem of personality formation in the conditions of updating the information culture of society stems, on the

one hand, from the ontological significance of information in being, on the other hand, from the increase in the functional value of information in human life in modern society, in which information has become a system-forming value.

3. Research Methodology

The methodological basis of the concept of human development in the modern world at the philosophical level is: ideas of activity, the essence of a person, his role in solving social and personal problems, ideas of natural and social integrity, ideas about cognition and reflection of reality in human consciousness, epistemological functions of the modeling method; theory of developmental learning; psychological theory of activity; research of well-known domestic and foreign psychologists, teachers and methodologists regarding the patterns of the educational process.

The laws of the dialectic of unity and the struggle of opposites, the transition of quantitative changes into qualitative ones, the principles of objectivity, determinism, development, systematicity and interaction, which allowed: to reveal the dialectics of the pedagogical educational process leading to the realization of the concept of the development of social maturity; to identify contradictions, interrelationships of quantitative and qualitative changes inherent in the process of personality development; to investigate the regularities of the development of subjects of pedagogical education in the conditions of updating the information culture of society, taking into account the psychological regularities of all types of activities.

Consideration of the methodological foundations of research, as a set of sufficient conditions for cognition, thinking or activity, was carried out using a four-level methodological analysis. Methodological analysis as a method and an effective tool is carried out using thinking and general logical techniques (analysis and synthesis, abstraction, induction and deduction, analogy, modeling, etc.).

The following theories and concepts are the methodological basis of the organization of human activity in the information and educational environment:

- the theory of educational activity, according to which the assimilation of the content of education is carried out in the process of the person being taught, which contributes to the development of the personality;
- the concept of general didactic principles of higher education: scientificity, the connection of theory with practice, systematicity and consistency in the training of specialists, consciousness, activity

and independence of students in learning, the combination of individual knowledge search with educational work in a team, the strength of assimilation and availability of scientific knowledge.

The use of new information technologies expands the possibilities of activating cognitive activity, improving the set of general logical thinking techniques and the set of special techniques of mental activity, as well as increasing the effectiveness of teaching methods.

We have taken into account the conducted research on the use of machine learning opportunities during quarantine, in particular the opportunities of social networks.

The practical application of new information technologies can improve or even partially replace in the educational process such classic methods of teaching as methods of oral presentation of educational material (lecture, story, explanation, etc.), methods of visual and practical training, methods of consolidating acquired knowledge, methods of independent work.

4. Discussion of the problem

In modern conditions, information is considered as something independent, along with such categories as matter and energy. Thus, A. Ursul (Ursul, 2018) claims that information is not just a property, even an attribute of matter and all its systems, and plays a much more important role in the "life" of these systems, in nature in general. More and more facts and patterns that are being discovered testify to the priority of information over matter and energy. The scientist also notes that increasingly replacing material and energy resources, or significantly supplementing them, information helps to fundamentally change the entire structure of social activity.

The most general definition of the term "information" is given by philosophers, who define it as "... the reflection of diversity in any objects and processes of animate and inanimate nature" (Kyridon, 2019, 78).

For the entire time of its existence, humanity has produced enormous spiritual and material values in the form of scientific achievements, worldviews, and the spiritual and material culture of peoples. All these various achievements are presented in the form of knowledge that is often "lost", not used, not in demand. In order to become the property of society, knowledge must be transformed into information, alienated from its immediate carrier, reflected in a symbolic form and fixed on a material carrier.

Information, unlike knowledge, is not associated with a specific person, it is equally accessible to everyone, although the ability to turn it into knowledge is unique to everyone, based on personal experience. The information-cognitive process includes two aspects: the transformation of personal knowledge into information and subsequent reproduction, extraction of this knowledge from information, although it should be noted that in the cognitive chain: "knowledge - information, as transformed knowledge - new knowledge" is the weakest link inability to find the necessary information, use it.

So, we are dealing with a new social phenomenon, informatization, the consequences of which are difficult to assess in full.

It should be immediately noted the complexity and ambiguity of the term "informatization". To understand the meaning of this category, it is probably worth paying attention to the similarity of this term and terms with a similar ending: industrialization, automation, and computerization.

As history shows, terms with this ending often mean complex socio-economic, scientific-technical and socio-political processes of activation of certain spheres of human activity, which are caused by the needs of society at a specific stage of its development and make special demands on professionals in this field.

The analysis of the literature allows us to conclude that most concepts have not reached unity regarding their interpretation. In a number of publications known to us, informatization is essentially reduced to computerization and automation. Although some authors do not agree with this point of view, they do not go further than noting that informatization is a broader concept.

According to A. Rakitov the processes of computerization is related to the technical component of the sphere of productive forces, while the processes of informatization are "superimposed" on top of them (Rakytov, 2013).

According to N. Morse, informatization means the process of creating a social and informational structure based on the widespread use of computer technology (Morze, 2018). This definition, in our opinion, adequately reflects the general direction of this phenomenon, but with the clear priority of the technical base of informatization as a means of telecommunications.

The concept of informatization is a dynamic and pervasive process of the socio-economic life of any society. Despite the multifaceted nature of the informatization process, researchers often consider it as a result and element of scientific and technological progress, without fully elucidating the economic origins and economic significance of this outstanding modern phenomenon.

The reference dictionary “Man and society. (Culturology)” reveals the concept as follows. The difference between this concept and the above-mentioned ones is that this definition is more complete, adequately reflects the essence of the processes that actually occur, and is the most appropriate for practical use.

If information resources are taken as individual documents and arrays of documents in information systems, and an information system is considered to be an organizationally ordered collection of documents and information technologies based on the use of computing and communication tools, then the following definition appears clearer and more correct.

Thus, the informatization of society is a socio-economic, as well as a scientific and technical process of creating conditions for more complete satisfaction of society’s information needs based on the effective use of information systems. From this definition, in our opinion, it is possible to highlight the purpose, essence and content of informatization of society.

The purpose of informatization is to more fully satisfy society’s need for information. The essence of informatization of society is to create conditions for improving the information provision of society and satisfying information needs.

The content of the informatization of society is the improvement of specific technological, financial, organizational and other conditions to increase the efficiency of the use of modern information technologies and information resources in order to improve the awareness of society.

While revealing the essence of the processes of computerization and informatization, it is also necessary to pay attention to the difficulties that arise. A. Rakitov (Rakytov, 2013) sees the way to eliminate the causes that hold back and complicate the processes of computerization and informatization of society in raising the level of “computer culture” in society. N. Gendina calls information culture a “special culture” (Hendina, 2016), giving it a particularly high importance in the development of modern society.

Awareness of the importance of the phenomenon of information culture, the expansion of the fields of its application led to the inclusion of this information in reference publications on other fields of knowledge. Thus, in the encyclopedia “Culturology. 20th century” two meanings of the term “information culture” are given:

> A set of norms, rules and stereotypes of behavior related to information exchange in society (today it has practically fallen out of use in science); 2. A concept that characterizes culture from the point of view of information that is accumulated, processed and transmitted within its borders (Levit, 1998: 40).

It is also generally accepted to consider the issue of the formation of information culture in the public sphere as well.

The information culture of the society is closely related to the corresponding aspect of the culture of the people living in this society and who make up it: without one, there is simply no other. But any society, of course, is not equivalent to the sum of individuals included in it. The culture of society cannot be presented as the result of a mechanical composition of people's qualities. Analogous to this, the information culture of an individual cannot be considered as an arithmetic mean or average statistical value on the scale of the entire society.

A qualitatively different approach is needed, which deeply takes into account the personal characteristics of each person, on which lies the imprint of the culture of a certain era and the socio-ethnic environment as a kind of result. The progress of material production and various manifestations of the spiritual life of people are involved in the formation of the information culture of society. Without a deep mastery of the constantly growing volumes and flows of various information, serious social changes are impossible. This determines the importance of information culture, which has long been a special and very important characteristic of the development of society.

An analysis of a number of other existing definitions of the concept of "information culture" allows us to assert that this concept has an unstable scope, is interpreted in different ways, in connection with the comparison with other concepts: general human culture, educational activity, information activity, summing up the rules of human behavior in the information society. The reasons for the ambiguity of the term "information culture" are also the ambiguity of the terms "information" and "culture".

One of the most important social functions of information culture is the creation of a developed self-regulation mechanism of the emerging information society.

In turn, for the successful implementation of the specified social function of information culture, it is necessary to form in society and in the personal structure of a person the corresponding needs and methods of their reproduction, support and stimulation.

In connection with the formulation of the problem of the formation of the personality of the information society, it is shown that without participation in informational interaction with other people, the personality cannot exist and take place. Here the question arises about the emergence and development of such a social need as the need for information or info needs. V. Kogan determined the importance of the information need, labeling it as a "meta-need", because the realization of all other needs presupposes, first of all, the satisfaction of the need for information.

The right V. Kogan asserts the following: "Implementation of all other needs: in work, education, leisure, cultural and scientific benefits, etc. - as a necessary condition presupposes the prior satisfaction of the need for information" (Kogan, 1981, 31).

Currently, there are a significant number of definitions of information needs. According to N. Markova, it is appropriate to consider the information need in a broader sense:

> As a need for a complex of information that complements the original meaning, with the help of which the subject of information influence solves the objective problem that arose before him in the process of interaction with the environment reality and the resolution of which is connected with the maintenance of his activity in the period of time available for review at the optimal level, within the framework of society, professional activity" (Markova, 2003, 24).

The formation of information needs can be carried out in different ways: through upbringing and education, through a specially oriented sphere of leisure, through professional activity, etc.; individually, collectively, remotely, etc.

In our opinion, forming the informational need as a social need of the individual is most effectively possible through the education system, the strategic task of which today is the formation of a person's ability and motivation for self-education and self-determination.

It should be noted that scientific research activity allows to fully reveal individuality, creative abilities, readiness for self-realization of the individual.

We have developed and tested an effective variant of the scientific research organization - a "virtual laboratory" (Fig. 1).

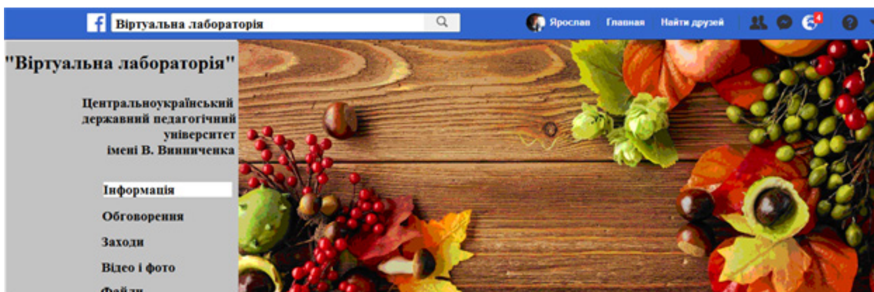

Fig. 1. Virtual laboratory. (Source: Haleta, 2018).

In our case, it is an electronic educational resource made in the form of interactive computer material (assignments, tasks, tests, experiments, etc.). The «virtual laboratory» set provides computer support for research activities. It includes two types of hardware and software complexes:

- laboratory installation with remote access, which includes a real laboratory, software and hardware for managing the installation and digitizing the received data, as well as a means of communication;
- software that allows you to simulate various psychological and pedagogical processes and situations.

The capabilities of the «virtual laboratory» make it possible to organize research in various scientific fields, as well as to ensure the interaction of scientific research activities and educational institutions of the city.

The material bank of the «virtual laboratory» is formed according to three levels of complexity with the possibility of both the reproductive educational activity of individuals and the activation of their creative potential.

The complex can be used in different modes: demonstration of tasks using a single computer or projector; individual and group work in the computer class; individual work.

Research abilities, skills and methods of activity that are formed and developed within the framework of «virtual laboratories» include:

- Observation of objects; detection of changes occurring with the object; verbal description of the object of observation; written presentation of information about the observed object - creation of an algorithmic model.
- Identification of individual features in the process of computer modeling and comparison of objects and the results of their transformation.
- The use of a computer model can be accompanied by experimental measurements in various ways.
- Formation of the ability to solve creative tasks at the level of combinations and improvisations: independently draw up an action plan (decision algorithm).
- Acquiring the skills of transmitting, searching, transforming, and storing information; mastering different ways of presenting information.
- Gaining experience of cooperation in the implementation of group projects.

In the conditions of informatization of education, the general complex of important qualities necessary for the success of activities is supplemented by specific qualities that characterize the level of information culture of an individual. This logic allows us to analyze the content of the ability to informational self-development through the following indicators:

the need for constant updating of knowledge;

mobility and adaptability in the information society;

responsibility when working with technical means;

relation to information, objects and phenomena in the information environment;

critical attitude to information consumption;

self-assessment and reflection at the level of informational contacts.

The results of experts' assessment of the level of development "ability to informational self-development" in the expert and control groups are presented in Table 1

Table 1. Level of development "ability for informational self-development"

№	Indicators	EG	CG
1	The need for constant updating of knowledge	58	24
2	Mobility and adaptability in the information society	57	25
3	Responsibility when working with technical means	68	50
4	Relation to information, objects and phenomena in the information environment	36	22
5	Critical attitude to information consumption	39	47
6	Self-assessment and reflection at the level of informational contacts	43	22
	Total	301	190

Source: (Haleta, 2018).

To check the consistency of experts' opinions, we calculated the dispersion coefficient of concordance (Hrabovetskyi, 2010) for EG and CG.

$$W = \frac{12\ S}{m^2\left(n^3 - n\right) - m\sum_{j=1}^{m} T_j} = 0{,}604771 \qquad (1)$$

To do this, we rank the expert evaluations; calculate the sum of the ranks, the deviation of the sum of the ranks from their overall average value $r_i - \bar{r}$, as well as the square of the deviation $\left(r_i - \bar{r}\right)^2$. The obtained data were close to 1. Therefore, the peer review is meaningful and thorough.

5. Research results

The appeal to education as a socio-cultural phenomenon is conditioned by the belief that it is in the education system, the result of which is the functioning of a socially "prepared" personality, that the informational needs of the individual can be most fully formed.

Based on the above, when solving the problem of information needs, it is necessary to keep in mind three components:

- a person (consumer of information), who is forming his own tasks;
- the world fund of scientific information (information array), which contains the necessary information;
- an information system, a corresponding device - an intermediary between the consumer and the information array.

With regard to the educational process, modern informational means of education are of great importance:

1. Computer training programs, which include electronic textbooks, simulators, laboratory practices.
2. Educational systems based on multimedia technologies, built using personal computers, video equipment, drives.
3. Intelligent and educational expert systems used in various subject areas.
4. Distributed databases by fields of knowledge.

Therefore, an important place in education should be occupied by modern means of telecommunications, which include e-mail, teleconferences, local and regional communication networks, as well as electronic libraries, distributed and centralized publishing systems.

However, the use of new information technologies and tools in education should not exclude the training of specialists in a real subject area. It is unacceptable to replace real physical phenomena only with a model representation of them on a computer screen. Investigating the peculiarities of information activity, we found out the fact that the information environment becomes effective if it has the property of comfort for the information consumer, and for this it is necessary to create favorable

conditions for the interaction of the information system and the specialist. Thus, the human factor is included in the activity system as the main component of ensuring any process.

Conclusions

In connection with the high dynamics of information processes in society, it is no longer acceptable to rely on random factors of socialization in the conditions of informatization, it is necessary to purposefully prepare a person for life in the information society. To develop in these conditions, a person must acquire certain knowledge, skills and abilities to successfully operate with information, have qualities that allow improving these knowledge, abilities and skills in accordance with modern information technologies, and have a worldview of an information society.

Modern society cannot develop without information, the level of development of which is often related to the level of development of culture, in which a person plays the role of creator, distributor and custodian of information, realizing the model "person - information - person". Thus, a special feature of this society is the formation of a new image of society and the transformation of the individual. In the information society, the process of forming a new personality with its own internal characteristics takes place, and this process can be characterized as the main socio-ontological search in modern conditions.

The article focuses on the impact of information on social life. The content of this phenomenon is characterized.

The process of development of the essence of the "informatization" category is revealed. The object and subject of this process are defined.

It was found that the information culture of a person is a necessary condition for the development of his personality in the conditions of informatization of society.

Based on the analysis of the essence of the concept of "information culture", it was determined that the success of the implementation of the self-regulation mechanism of society depends on the formation of information needs in society and the personal structure.

The results of the diagnosis of the level of development of the social capacity for informational self-development gives reason to claim that the well-founded and implemented positions are effective.

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Factors of Volitional Attributiveness of the Legal Transaction based on International Experience

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Abstract

The aim of the study was to determine the most effective model of legal regulation of the form of declaration of will in legal transactions from the survey of the legislation of several countries and their respective jurisprudence. The research covered the methods of statistical analysis, comparative law, dialectics and legal epistemology, as well as data selection and legal modeling. It is shown that the model of legal regulation of the form of declaration of will, which is based on the principle of free choice of the form of declaration of will, is the most effective in terms of these indicators in the case of: (Greece, Poland, Czech Republic). At the same time, these States provide for strict requirements for challenging legal transactions and provide for the prohibition of abuse of rights. It is concluded that it is justified that in the majority of states the principle of valid will is applied when concluding legal transactions. Moreover, the results of this study can be used to develop proposals for the improvement of legislation in the field of regulation of the forms of declaration of will in the conclusion of legal transactions in their various forms and modalities.

Keywords: volitional attributivity; declaration of will; international experience; legal business; valid will.

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Factores de atributividad volitiva del negocio jurídico a partir de la experiencia internacional

Resumen

El objetivo del estudio fue determinar el modelo más eficaz de regulación jurídica de la forma de declaración de voluntad en los negocios jurídicos a partir del levantamiento de la legislación de varios países y su respectiva jurisprudencia. La investigación abarcó los métodos de análisis estadístico, derecho comparado, dialéctica y epistemología jurídica, así como la selección de datos y la modelización jurídica. Se demuestra que el modelo de regulación legal de la forma de declaración de voluntad, que se basa en el principio de libre elección de la forma de declaración de voluntad, es el más eficaz en términos de estos indicadores en los caso de: (Grecia, Polonia, República Checa). Al mismo tiempo, estos Estados prevén requisitos estrictos para impugnar los negocios jurídicos y establecen la prohibición del abuso de derecho. Se concluye que se justifica que en la mayoría de los Estados se aplica el principio de voluntad válida al celebrar negocios jurídicos. Por lo demas, los resultados de este estudio pueden utilizarse para desarrollar propuestas de mejora de la legislación en el ámbito de la regulación de las formas de declaración de voluntad en la celebración de negocios jurídicos en sus variadas formas y modalidades.

Palabras clave: atributividad volitiva; declaración de voluntad; experiencia internacional; negocio jurídico; testamento válido.

Introduction

One of the problematic issues in contract law is the determination of the factors of volitional attributiveness of legal transactions. The main conflict in this area is the contradiction between the theory of declaration of will and the theory of valid will when concluding a legal transaction.

The first approach is based on the fact that clarifying the intention of the parties is possible only through the analysis of their external declaration of will because only the legal form of the contract distinguishes it from other agreements of individuals (Haidulin, 2021). However, this "internal and invisible phenomenon" needs "character symbols for its recognition (Haidulin, 2021: 171)".

This position corresponds to the so-called theory of will, which implies that the interpretation of contracts means that in the event of a contradiction between the literal presentation and the content of the agreement, the court attaches the main importance to finding out the true will of the parties, their intentions regarding the conclusion of the agreement (Savigny, 1840).

The declaration of will of the parties is ultimately substantivized in the legal transaction. At the same time, delusion, error, coercion, etc. lead to the probable inconsistency between the declared will and the internal, real will. In such cases, the matter is about a defective will (Savchuk and Trofimova, 2008).

As a rule, the conflict between the principles of valid will and the declaration of will by the subject of the legal transaction is resolved in most states in favour of the former. In particular, the prerequisite for applying this approach is the ***Contra*** Proferentem principle established in Roman law (from the Latin expression "verba fortius accipiuntur contra proferentem" — interpretation against the draftsman). For example, this approach exists in the legal system of England, Germany, France and a number of other countries (Youngs, 2020).

The emergence of new forms of concluding legal transactions, in particular, with the help of digital technologies, complicates legal regulation of contract law. In this regard, the legally defined forms of declaration of will are constantly expanding. This entails an increasing number of factors of volitional attributiveness of transactions and the need to improve their legal regulation.

The following researchers studied the theoretical issues of the declaration of will when concluding legal transactions, in particular, the classification of legal facts according to the volitional criterion in the mechanism of legal regulation, methods of interpreting the terms of the transaction, etc.: Adamova (2017), Haidulin (2021), Sulieimanova *et al*. (2022) Syrovatskyi (2020) and others.

The largest group of studies deal with the problems of expressing and verifying the valid will of the parties in the contract law of the European Union (EU) from the perspective of protecting the rights of consumers when concluding contracts, and protecting the rights of the more vulnerable party to the legal transaction. Such studies were conducted by Wagner (2012), Hulmak (2022), Mikłaszewicz (2019), Houska (2019), Schulte-Nolke (2015) and others.

Some studies focus on the contract with the effect of third-party protection, which provides that the contracting parties have an obligation not only to each other, but also to third parties to hold them harmless Eren (2015) and the principle of good faith during the presentation of the offer by Benli (2020).

The studies of such scholars as Guttler and Matejka (2016), Dudorov and Pysmenskyy (2020), Kharitonova (2016) and others should be included in a separate group. These scholars studied the issue of volitional attributiveness in non-contractual legal relations and unilateral legal transactions.

The review of these studies allows concluding that the issues about the factors of volitional attributiveness of the legal transactions were studied mainly from the perspective of the protection of the acceptor against the bad faith behaviour of the offeror, in particular, misleading by providing unreliable or ambiguous information about the terms and conditions of the legal transaction. At the same time, most of the practical issues of determining the influence of volitional attributiveness factors on the occurrence of defective will and contesting the legal transaction on this basis are poorly studied.

In particular, there are almost no studies on the connection between the model of legal regulation of the form of declaration of will when concluding a legal transaction in one or another state and the possibility of ensuring the valid consent of the subject to the conclusion of the legal transaction.

Therefore, the analysis of the factors of volitional attributiveness of the legal transaction under the legislation of foreign countries and determining the most effective model of legal regulation on this ground is a topical subject of research.

1. Aim

The aim of this research is to determine the most effective model of legal regulation of the declaration of will in the legal transactions based on the analysis of the legislation of foreign states. The aim involved the following research objectives:

1. analyse the legislative acts of selected foreign states that regulate the form of declaration of will when concluding a legal transaction;
2. identify the forms of declaration of will provided for by the legislation of selected foreign states;
3. outline the mechanisms for contesting transactions on the ground of defective will according to the legislation of foreign states;
4. analyse judicial statistics in cases of contestation of legal transactions on the gound of defective will in some foreign states;
5. generalize the factors of volitional attributiveness of legal transactions and develop proposals for improving the legal regulation of forms of declaration of will when concluding legal transactions.

2. Methodology and methods

The methodological background of the research was a system of methods of statistical analysis, comparative law, dialectics and legal epistemology, as well as data selection and legal modeling. Together, these methods allowed revealing the main problems of the factors of volitional attributiveness of legal transactions under the legislation of foreign states. Scientifically grounded combination of the methods referred to above allowed establishing the most effective model of legal regulation of the form of declaration of will when concluding legal transactions. This research was also carried out on the basis of effective sublimation of methods of empirical analysis and theoretical research of the selected subject.

The empirical background of this study was the legal acts of Belgium, Greece, Italy, the Netherlands, Germany, Poland, Romania, France, the Czech Republic, Switzerland, the case law of these states in cases on the recognition of legal transactions as invalid on the ground of a defective will.

The methodology of writing this article inmplies conducting research in three interrelated stages.

The first stage included the collection and systematization of theoretical material, its generalization and analysis, grouping and thorough study in order to further identify outstanding issues and gaps in the given subject under research and substantiating its topicality.

The first stage of the research involved formulation of the research methodology, outlining a set of theoretical and empirical research methods, and determining the principles of their sublimation to comprehensively reveal the research topic. An important task of this stage was the correct justification of the aim and objectives of the research. The theoretical phase of the study also involved an analysis of theoretical approaches to interpreting key terminology.

The second stage involved sampling for conducting an empirical study. The sample was formed on the basis of the official sources of information, web resources and websites of the legislative and judicial authorities of the selected European states.

The following indicators were used in order to choose the most effective model of legal regulation of the declaration of will during the conclusion of the legal transactions: a high-level protection of the parties to the legal transaction from deception and a small number of appeals to judicial authorities to contest the legal transaction on the ground of a defective will.

At the same time, the mechanism of protection of the acceptor against the bad faith behaviour of the offeror became the indicator of a high-level protection. Information on these factors was collected and analysed for such

EU countries as Belgium, Greece, Spain, Italy, the Netherlands, Germany, Poland, Romania, France, the Czech Republic, and Switzerland. Data for Ukraine were also provided for comparison of relevant indicators.

The final stage of the research involved summarizing the results of the conducted analysis, as well as their presentation in comparative tables. It was proved through selected research methods that, according to the given indicators, the model of legal regulation is the most effective in states with stricter requirements for the procedure for recognizing legal transactions as null and void and prohibiting the abuse of law (Greece, Poland, the Czech Republic). The obtained results made it sure that in most states the principle of validity of the will is applied when concluding legal transactions, and this corresponds to the principles of the rule of law.

3. Results

In EU countries and Ukraine, the issue of declaration of will when concluding legal transactions, as well as the forms of declaration of will, are defined in civil law acts (Table 1).

Table 1: Civil law acts of the EU states and Ukraine, which determine the forms of declaration of will when concluding legal transactions

State	Civil law act
Belgium	Civil Code of Belgium of 13 April 2019, Laws of Belgium: On Consumer Protection of 18 July 2013, On Services of 28 December 2009, On Unfair Commercial Practices, On Electronic Signatures and Electronic Archiving of 21 July 2016
Greece	Civil Code of Greece No. 2783/1941 of 17 October 1984, Laws of Greece: On Consumer Protection No. 2251/1994 of 16 November 1994, On the Legal Background of Electronic Signatures and Related Issues No. 3852 dated 30 April 2004, Decrees of the President of Greece "Code of Consumer Ethics" No. 10/2017 of 1 March 2017, On the Adaptation of Greek Legislation to the Provisions of Community Directive 2000/31 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce No. 131/2003 of 16 May 2003, etc.
Spain	Civil Code of Spain of 24 July 1889, Laws of Spain: On Electronic Signatures of No. 59/2003 of 19 December 2003, On Information Society and Electronic Commerce Services No. 34/2002 of July 12, 2002, On the Regulation of Some Aspects of Electronic Trust Services No. 6/2020 of 11 November 2020, On the Protection of the Rights of Consumers and Users No. 26/1984 of 19 July 1984, etc.

Italy	Civil Code of Italy No. 262 of 16 March 1942, Italian Consumer Code No. 229 of 06 September 2005, Legislative Decree "Implementation of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market No. 70 of 09 April 2003, etc.
Netherlands	Civil Code of the Netherlands of 01 October 1838, The Act of the Netherlands on the Protection of Consumer Rights of 20 November 2006, Decree for the implementation of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on Payment Services in the Internal Market of 8 February 2019, etc.
Germany	The Civil Code of Germany of 18 August 1896, the Laws of Germany: On Trust Services of 18 July 2017, On the Legal Principles of Electronic Commerce No. 70 of 20 December 2001, On Framework Conditions for Electronic Signatures and Amending Other Regulations of 21 May 2001, etc.
Poland	Civil Code of Poland of 23 April 1964, Laws of Poland: On Consumer Rights No. 827 of 30 May 2014, Trust Services and Electronic Identification No. 1579 of 5 September 2016, On Payment Services No. 1175 of 19 August 2011, etc.
Romania	Civil Code of Romania No. 287/2009 of 17 July 2009, Laws of Romania: Law on Combating Unfair Practices by Traders in Dealings with Consumers and Harmonising Regulations with European Consumer Protection Legislation No. 363/2007 of 21 December 2007, On Consumer Information about Food Products No. 279 of 12 January 2018, On Electronic Signature No. 455/2001 of 13 December 2001, On Time Stamp No. 451 of November 1, 2004
France	Civil Code of France of 21 March 1804, Consumer Code of France of 27 July 1993, Postal and Electronic Communications Code, Law of France on Electronic Identification and Trust Services for Electronic Transactions No. 2017-1426 of 04.10.2017
Czech Republic	Civil Code of the Czech Republic No. 89/2012 of 22 March 2012, Laws of the Czech Republic: Consumer Protection Act No. 634/1992 of 12.31.1992, Act on Trust Services for Electronic Transactions No. 297/2016 of 19 September 2016, On Electronic Acts and Documents Authorised Conversion No. 300/2008 of 19 August 2008
Switzerland	Civil Code of Switzerland of 30 March 1911, Laws of Switzerland: Electronic Communication Act No. 2022:482 of 03.06.2022, Consumer Services Act No. 1985:716 of 1985, Consumer Contract Terms Act No. 1994:1512 of 1994, Distance and Off-Premises Contracts Act No. 2002:562 of 2002

Ukraine	Civil Code of Ukraine of 16 January 2003, Laws of Ukraine: On Consumer Rights Protection of 12 May 1991, On Electronic Trust Services of 5 October 2017, On Electronic Documents and Electronic Documents Circulation of 22 May 2003, On Electronic Commerce of 3 September 2015
EU	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 On certain aspects of the sale of consumer goods and associated guarantees, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation), Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a community framework for electronic signatures, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market

Source: authors.

So, civil codes are the main codified acts in EU countries and Ukraine. Their provisions regulate the procedure for concluding legal transactions and, accordingly, determine the main forms of declaration of will during this procedure. Such forms include: written form (simple and notarized), to which the electronic form is equated in all states, and oral.

Laws on the protection of consumer rights have been adopted in most EU countries, as well as in Ukraine. In some countries they are codified (for example, Italy and France). However, consumer rights protection is not regulated by a separate law or code in some countries, but enshrined in various legal acts. For example, in Germany, this is the Food and Feed Code, the Cosmetics Ordinance, the Medicinal Products Act, etc.

Table 2 presents the forms of declaration of will during the conclusion of legal transactions and the conditions of their admissibility in accordance with the civil legislation of the EU states and Ukraine.

Table 2: Forms of declaration of will in legal transactions in accordance with the legislation of EU states and Ukraine.

State	Forms and conditions of declaration of valid will
Belgium	The declaration of will is considered valid if the legal transaction is concluded: 1) by a person who has civil capacity sufficient for this type of a legl transaction; full capacity is reached with adulthood; 2) the will is declared in the form prescribed for a specific type of legal transaction; 3) valid consent has been reached and declared on all terms of the legal transaction. The forms of declaration of will are: 1) written and electronic form by signing with one's own hand or with an electronic signature; 2) providing tacit consent to conclude a legal transaction by performing certain actions to declare consent; 3) consensual way — when obligations arise at the moment of the very fact of declaration of will (Article 1559). As a general rule, all contracts in Belgium are consensual, and consent does not necessarily have to be given in a certain way: it can be declared directly or indirectly.
Greece	The legal transaction is valid from in terms of its form if it complies with the law regulating the content (Article 11). A particular form of the legal transaction is required only in cases where it is expressly provided by law (Article 158). If the law or the parties have determined the form of the legal transaction, the document must be written by hand; if it is a contract, the same document must bear the signatures of the parties; if several originals are drawn up for the contract, it is sufficient for each party to sign the copy intended for the other party (Article 160). Signing with an electronic signature is equivalent to a conventional signature (Article 163). In the absence of agreement of the parties on certain clauses of the contract, it is considered that the legal transaction has not been concluded (Article 195).
Spain	The following requirements must be met for the legal transaction to be valid: consent of the parties; the object that is the subject of the contract is determined; legal consequences of the deed (Article 1261). The consent is manifested in the acceptance of an offer, thing or obligation, which is the subject of the contract (Article 1262). Minors can enter into those contracts which the law allows them to perform independently or with the help of their representatives, as well as those relating to goods and services of ordinary life, characteristic of their age, in accordance with public needs (Article 1263).

Italy	Requirements for the validity of the legal transaction: 1) agreement of the parties; 2) legal reason; 3) object; 4) the form prescribed by law (Article 1325). In contracts concluded by signing forms intended for the uniform regulation of certain contractual relations, clauses added to the form take precedence over the provisions of the form if they are incompatible with them, even if the latter have not been deleted (Article 1342). The written form of legal transactions is mandatory under the risk of invalidity for: 1) contracts transferring ownership of real estate; 2) contracts that create, alter or transfer the right of usufruct to immovable property, the right to land, the rights of the grantor and the lessee; 3) contracts that constitute a community of rights specified in the previous numbers; 4) contracts that establish or change servitudes, the right to use immovable property and the right of residence; 5) acts on the waiver of rights specified in the previous numbers, etc. (Article 1350). If the parties have agreed in writing to adopt a specific form for the future conclusion of the contract, this form shall be considered valid (Article 1352).
Netherlands	An oral offer shall become null and void if not accepted immediately, a written offer — if not accepted within a reasonable time; the offer shall be invalid if it is rejected before acceptance (Article 221). If the law provides that the contract is valid or inviolable only in written form, this requirement shall also be fulfilled if the contract is concluded electronically (Article 227a). Before concluding a contract electronically, a person must provide the other party with at least clear, understandable and unambiguous information about: a. the method of concluding the contract and, in particular, the actions necessary for this; b. whether the agreement is archived after its conclusion, and also, if the agreement is archived, how the other party can read it; c. the way in which the other party can learn about actions that it does not want, as well as the way in which it can correct them before the conclusion of the contract; d. languages in which the contract may be concluded; e. the codes of conduct followed and the manner in which the other party can familiarize with these codes of conduct in electronic form (Article 227b).
Germany	A declaration of intent shall be invalid if the applicant secretly reserves the right not to will what was declared (Article 126). In case of replacing the written form prescribed by law with an electronic form, the party must add its name to the proposal and attach a qualified electronic signature on an electronic document. The electronic form of the contract shall be equivalent to the written form (Article 126a). In order to declare a will in writing, it is sufficient to transmit it by means of a telecommunication means and exchange of letters (Article 127).

Poland	Any legal transaction can be concluded by fully capable persons, that is who have reached the age of majority or have entered into a marriage (Articles 11, 12). With the exceptions provided by law, the person who concludes the legal tranaction can declare his or her will by any behaviour that sufficiently reveals his or her will (Article 60). If the law establishes a mandatory written form of the legal transaction, then consent shall be considered reached if the parties have agreed on all the terms of the contract (Article 73). To confirm the declaration of will in written legal transactions, it is enough to sign a document containing the content of the declaration of will; conclude a contract, it is sufficient to exchange documents containing the content of the declaration of will signed by the relevant party (Article 78).
Romania	The legal transaction is valid on the condition that it is concluded by a person with sufficient legal capacity; full legal capacity is acquired upon reaching the age of majority or upon entering into marriage (Articles 38, 39). The will can be declared in written or oral form; written form is mandatory only for those legal transactions determined by law; an electronic form shall be equated to a written form (Article 98).
France	One of the parties who knows the information, the importance of which is decisive for the consent of the other party, must notify it, if the latter does not know this information on legal grounds or trusts the other consenting party; information that has a direct and necessary connection with the content of the contract or the quality of the parties is decisive (Article 1112-1). Silence does not mean acceptance, unless otherwise required by law, custom, business relations or special circumstances (Article 1120). Electronic means can be used to make contractual provisions or information about goods or services available (Article 1125). Consent of the parties; their ability to understand the meaning of their actions and understand the terms of the contract; legal content is required for the contract to be valid (Article 1128).
Czech Republic	Written form is provided for all contracts except those that are subject to immediate execution; in a written legal transaction, the will is declared by means of a handwritten signature or an electronic signature (Article 990). If the parties consider the contract concluded, although they have not actually agreed to all the terms, their will is considered declared if their further behaviour indicates acceptance of the terms (Article 1726). After concluding a contract between the parties in a form other than written, the parties shall be left to decide whether to confirm the content of the contract in writing. If in the course of activity one of the parties does this in relation to the other, believing that its confirmation correctly reflects the content of the contract, the contract shall be considered concluded with the content set forth in the confirmation, even if it indicates a deviation from the actually agreed content of the contract (Article 1757).

Switzerland	The legal transactions can be concluded by a capable person who has reached the age of majority and is able to understand the meaning of his or her actions (Article 14). A special form of declaration of will in the legal transaction is necessary only if it is provided for by law; the law does not provide for such a special form, and if the parties themselves have not agreed on any such form, a free form applies, that is, contracts can be concluded without any form, for example, orally or by e-mail (Article 11). An agreement that is not executed in writing shall be also binding on all parties, unless the law requires a written agreement; all contracts for which the law requires a simple written form may also be concluded electronically (Article 12).
Ukraine	The will of the parties shall be declared by teletypewriter, electronic or other technical means of communication; signed by its party (parties), including by means of an electronic qualified signature. Mandatory written form for legal transactions: with legal entities; for an amount that exceeds the size of the tax-free minimum income of citizens by twenty or more times and those that are subject to mandatory notarization. In oral form if the legal transaction is fully executed at the time of conclusion; small household transactions. Taking conclusive actions requires a sufficient level of legal personality

Note: Prepared based on the following references (Burgerlijk Wetboek Van België, 2019; Burgerlijk Wetboek Van Nederland, 1838; Cod Civil Al României, 2009; Code Civil Français, 1804; Codice Civile D'italia, 1942; Código Civil De España, 1889; Das Bürgerliche Gesetzbuch Der Bundesrepublik Deutschland, 1896; François, 2018; Kodeks Cywilny Rp Z Dn., 1964; Občanský Zákoník Čr Ze, 2012; Zivilgesetzbuch Der Schweiz, 1911; Civil Code of Greece, 1984; Judicial Statistics of Greece, n.d.; The Civil Code Of Ukraine, 2003).

Therefore, in all EU states, the main conditions for the validity of legal transactions are their conclusion by persons with full legal capacity and compliance with the established form of the transaction. Greece, Spain and Poland provide the highest freedom of agreement, in particular, regarding the establishment of the form of declaration of will.

The Civil Code of Italy directly specifies the types of legal transactions for which a mandatory written form is required. The principle of exclusivity is applied in the Czech Republic, which implies that all legal transactions must be executed in writing, except for those defined by law. In the Netherlands, considerable attention is paid to the regulation of the specifics and procedure of declaration of will in case of concluding a legal transaction electronically.

It is necessary to study the legal mechanisms of protection of a person available in European states in the event that his or her valid declaration of will does not correspond to his or her internal will. This mechanism includes the possibility of contesting the legal transaction on the gound of a defective will (Table 3).

Table 3: Grounds for contesting legal transactions on the gound of a defective will in the EU states and Ukraine

State	Grounds for contesting the legal transaction on the ground of a defective will
Belgium	The contract becomes invalid as as result of mistakes in concluding it (Article 1508). For example, providing incorrect information to the other party can be a mistake (Article 1520). The legal transaction shall be invalid if it can be proven that the person was unable to declare any will that entails legal consequences (lack of will) at the time of giving consent (Article 1523). A mistake is a misrepresentation that induces one or both parties to commit a legal act, if that party would not have committed the act if it had known the information (Article 1525). Fraud is an error intentionally committed by the counterparty (Article 1116). In order to declare the legal transaction invalid on the ground of a mistake, the interested party applies to the court (Article 1526). A mistake can cause the legal transaction to be null and void only when it concerns an essential part of the content of the legal transaction (Article 1528).
Greece	The real will is sought during the interpretation of wills (Article 173). A statement of intentions that was made frivolously and fictitiously shall be invalid (Article 138). Only a significant error causes the invalidity of the legal transaction; the error is significant when it comes to important terms of the contract, if the person knew the true information, he would not have concluded this legal transaction (Article 142). The legal transaction shall not be recognized invalid if the party that made a mistake accepted its terms and conditions (Article 144). The will of a person who was not aware of his or her actions and was in a state of mental disorder shall be invalid (Article 171). Abuse of the right shall be prohibited (Article 291).
Spain	The law does not protect the abuse of the right or its anti-social use (Article 7). Consent given by mistake, under the influence of violence, intimidation or fraud shall be invalid (Article 1256). In order for a mistake to invalidate a deed, it must relate to the essence of the subject matter of the contract, or those terms of the contract that were the main reason for its conclusion (Article 1266). If the terms of the contract are clear and leave no doubt as to the intentions of the contracting parties, the literal meaning of its clauses will apply; if the words seem contrary to the obvious intention of the contracting parties, the latter will prevail over the former (Article 1281). If any provision of the contracts admits different meanings, it must be understood in the meaning which is the most acceptable in order for it to enter into force (Article 1284).

Italy	When interpreting the contract, it is necessary to examine the common intention of the parties, and not be limited to the literal meaning of the words; this requires evaluating their general behaviour even after the conclusion of the contract (Article 1362). The contract must be interpreted in good faith (Article 1366). Ambiguous provisions shall be interpreted according to what is usually practiced in the place where the contract was concluded (Article 1368) and the nature and subject matter of the contract (art. 1369). The contracting party, who gave its consent by mistake, as a result of violence or coercion, may demand the termination of the contract in accordance with the following provisions (Article 1247). A mistake is material if: 1) it concerns the nature or subject of the contract; 2) it depends on the identity of the object of the service or its quality, which, according to the general assessment or in connection with the circumstances, should be considered decisive for consent; 3) it depends on the personality or personality qualities of the other party, provided that one or the other was a determining factor of the agreement; 4) it was a mistake in law, it was the only or main basis for concluding the contract (Article 1429). A mistake is considered recognized if a person with ordinary prudence could have discovered it in relation to the content, circumstances of the agreement, or the quality of the contracting parties (Article 1430).
Netherlands	An agreement that was concluded under the influence of a mistake and would not have been concluded if the facts had been correctly stated shall be invalid if: the mistake is caused by information provided by the other party, unless the latter assumes that the agreement would also be concluded without this information; the other party should have informed the party which made a mistake that it knew or should have known of the mistake; the other party, in entering into the agreement, made the same wrong assumption as the party which made a mistake, except where it should not have been interpreted, even provided a correct presentation, that the party which made a mistake would not be able to enter into the agreement (Article 228). Invalidity cannot be based on a mistake that relates exclusively to future circumstances or that, due to the nature of the contract, generally accepted views or the circumstances of the case, should be clear to the party that made the mistake (Article 228).
Germany	The grounds for the nullity of the declaration of will are: the subject of the declaration of will is incapacitated, including temporarily incapacitated (Article 105); the legal transaction is a fictitious, provided the consent of the person who is offered to conclude it (Article 117); lack of serious intention, but with the expectation that it will be noticed by the other party (Article 118); defects of the form, which can be the ground for contested invalidity (Article 125).

Poland	A one-year period from the moment of its conclusion is established for declaring the legal transaction invalid (Article 61). The declaration of will must be interpreted in good faith in accordance with customs and legal provisions, the purpose of the contract, or rely on literal wording (Article 65). A list of deficiencies in the declaration of will that may cause its invalidity: insufficient consciousness or personal freedom; implicit declaration of will for the purpose of concealing another legal transaction; substantial mistake: if the declaration of will was made to another person, evasion of its legal consequences is allowed only if the mistake was made by this person even without his of her fault or if he or she knew about the mistake or could easily notice the mistake; this limitation shall not apply to free legal transactions; threat or distortion of the declaration of will (Articles 82-88).
Romania	The legal transaction shall be invalid if it was committed as a result of a mistake, except for cases where the person who made the mistake accepted the terms and conditions (Article 17). A minor who has reached the age of majority can confirm a legal transaction committed alone when being a minor, when he should have been represented (Articles 47, 48).
France	The defective will (vice du consentement) is a mistake, violence, deception (Articles 1109, 1304). A mistake is recognized as a ground of invalidity only if it concerns the essence of the subject matter of such an agreement (Article 1110). A mistake regarding the person related to the other party to the contract is the ground for declaring the agreement invalid only when this person was not the main cause of this agreement (Article 1110).
Czech Republic	If a person needs help in making a decision because a mental disorder causes difficulties in doing so, even if he or she is not limited in his or her capacity, he or she can resort to counceling ***(Article 45).*** If someone acted erroneously regarding crucial circumstances and was misled by the other party, the deed shall be invalid (Article 583). If the mistake relates to a secondary circumstance that neither party has declared decisive, the legal transaction shall be valid, but the person affected by the mistake is entitled to reasonable compensation from the person who caused the mistake (Article 584). A contract shall be deemed invalid if, in its conclusion, somebody takes advantage of distress, inexperience, intellectual weakness, agitation or recklessness of the other party and extracts a promise to provide performance to himself or somebody else the value of which is in stark contrast to the mutual performance (Article 1796). If the content of the contract can be interpreted in different ways, the interpretation that is most favourable to the consumer is used (Article 1812).
Switzerland	According to the legislation of this state, the invalidity of the legal transaction is not provided for on the ground a defective will, but only on the ground of non-observance of the established form.

Ukraine	If the person who concluded the legal transaction made a mistake regarding the essential circumstances, such legal transaction may be declared invalid by the court; a mistake regarding the nature of the legal transaction, the rights and obligations of the parties, such properties and qualities of the property that significantly reduce its value or the possibility of using it for its intended purpose is of significant importance. A mistake regarding the motives of the legal transaction is not significant, except for cases established by law (Article 229). If one of the parties to the legal transaction intentionally misled the other party regarding essential circumstances, such legal transaction shall be declared invalid by the court; deception is the case if the party denies the circumstances that may prevent from concluding the legal transaction, or if it conceals their existence; the party that resorted to deception shall compensate the other party for double losses and moral damage caused by the conclusion of this legal transaction (Article 230).

Note: Prepared based on the following references (Burgerlijk Wetboek Van België, 2019; Burgerlijk Wetboek Van Nederland, 1838; Cod Civil Al României, 2009; Code Civil Français, 1804; Codice Civile D'italia, 1942; Código Civil De España, 1889; Das Bürgerliche Gesetzbuch Der Bundesrepublik Deutschland, 1896; François, 2018; Kodeks Cywilny Rp Z Dn., 1964; Občanský Zákoník Čr Ze, 2012; Zivilgesetzbuch Der Schweiz, 1911; Civil Code of Greece, 1984; Judicial Statistics of Greece, n.d.; The Civil Code Of Ukraine, 2003).

Therefore, the civil legislation of Greece, Spain, Poland and the Czech Republic provides for the strictest requirements for declaring a legal transaction invalid on the ground of a defective will, while Italy and the Netherlands provide for the least strict.

We compare the above-mentioned approaches with the statistics of the appeals to the court to declare legal transactions invalid on the ground of a defective will (Table 4).

Table 4: Statistics in disputes concerning legal transactions in EU countries and Ukraine

State	2019	2020	2021
Greece	2,202	3,903	4,105
Spain	132,471	110,426	115,947
Italy	121,090	119,225	116,781
Netherlands	23,941	23,117	22,021
Poland	10,874	9,603	8,715
Czech Republic	3,276	5,194	4,512
Ukraine	250,410	234,916	232,502

Note: Prepared based on the following references (Estadísticas Judiciales De España, n.d.; Juridische Statistieken Van Nederland, n.d.; Katalog Životních Situací, n.d.; La Dg-Stat, n.d.; Statystyka Sądowa Polski, n.d.; Judicial Power of Ukraine, n.d.).

Therefore, the largest number of appeals to the court for this category of cases is observed in Ukraine (with a downward trend), and the lowest – in Greece (with an upward trend), Poland (a downward trend) and the Czech Republic (with no definite trend) (Figure 1).

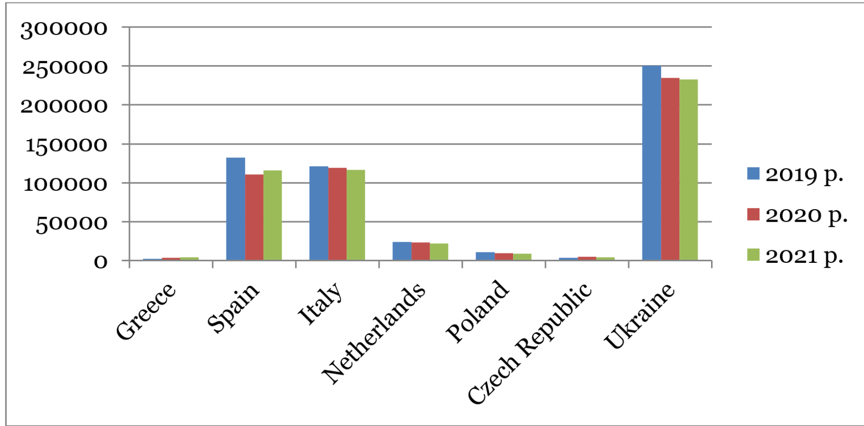

Figure 1: Statistics on disputes related to legal transactions in EU countries and Ukraine. Source: authors.

Therefore, the most effective is the legal regulation of the form of declaration of will, which is based on the principle of free choice of the form of declaration of will (Greece, Poland, Czech Republic). At the same time, these states have strict requirements for contesting legal transactions and prohibiting the abuse of rights.

4. Discussion

In most states, the prevailing principle is presumption of conformity of a valid will at the time of concluding a legal transaction to the declared will. Such conclusions are in line with the findings obtained on the basis of research by the French civil lawyer François (2018). The researcher notes that this rule derives from the binding force of the contract and respect for the will of the parties (du respect de la volonte des parties).

At the same time, the conformity of the valid will of the parties in the legal transaction to the declared will depends on the received information about the terms of the legal transaction and its interpretation. A number of studies support this hypothesis.

For example, Markovits and Atiq (2021) noted that it is necessary to distinguish the semantic intentions of the parties regarding their speech acts (intentions to mean one or the other thing by their words) from their pragmatic and clearly legal intentions (intention to cause legal consequences with the help of their speech acts, such as the creation of an enforceable promise).

Some scholars (Selucka *et al.,* 2018) also confirm the conclusions that the private law of most European countries is based on the informed consumer principle. The scholars studied the general regulation of consumer information, requirements for pre-contractual information, deceptive practices that adversely affect consumer decisions, unfair contract terms, and reasonable consumer expectations.

The information overload is the reverse side in the course of conscious decision-making and achieving the correspondence of the valid will to the declared will. It also carries the danger of distorting the acceptor's perception of the terms of the legal transaction and leads to a defective will in the legal transaction (Miklitz and Domurath, 2015; Tarasevych *et al*., 2022).

A number of scholars (Marakarkandy *et al*., 2017; Akhter *et al*., 2022) used the example of banking contracts to carefully analyse the terms and conditions that seem attractive to consumers and which encourage them to more willingly accept other terms of the legal transaction. They include: the promised safety, simplicity, ease, and clarity of using financial services. Therefore, there is a high risk of misleading interpretation of the terms of the contract in this area and, accordingly, the resulting defective will (Tsyganii *et al.,* 2022).

According to the legislation of many states, defective will is the ground for canceling the legal transaction or declaring it null and void in court.

Such conclusions confirm the findings of Akbar (2016). The researcher notes that misrepresentation can in all cases be the ground for cancellation of the legal transaction.

However, the opinion of Akbar (2016) that such measures to cancel the legal transaction on the ground of a defective will is a discretionary means of legal protection does not seem to be fully justified. The researchers provides the following arguments in support of his opinion: a) the party has already confirmed its will by signing the contract; b) the party did not take measures to clarify the actual content of the terms of the legal transaction; c) sometimes the cancellation of the legal transaction in court makes it impossibile for the parties to return to their original position, or the third party has acquired legal rights as a result of the original contract.

This opinion is supported by Haidulin (2021) in the context of bona fide interpretation (bonae fidei interpretatio). The researcher believes that this refers to relapses of mass abuse of the law (objective — the letter of the law, and subjective — the form of declaration of will), which is almost always the case under market liberalization.

The research carried out in this article confirms that such conclusions are false. It proves that giving the parties the right to contest the legal transaction in the event of a defective will is what times demand and an effective protection against the abuses of commercial entities and other bad faith offerors.

One should agree with the scholars (Kar and Radin, 2019; Matejka and Güttler, 2018), who studied the issue of concluding legal transactions remotely using digital technologies. The development of digital technologies entails complications of forms of declaration of will when concluding such legal transactions. Such forms include biometric or other similar identifiers, which are not stricto sensu a signature in the legal sense, but perform a similar function.

Conclusions

In most states, the principle of the valid will is applied when the transactions are concluded. The subjective and objective factors of volitional attributiveness can be distinguished. The former include: subjective perception of the terms of the legal transaction, interpretation of information, compliance with the form of declaration of will when concluding the legal transaction. These factors are determined by a person's capacity, which is why the laws of most states set restrictions on concluding legal transactions by partially incapacitated and fully incapacitated persons. Objective factors should include: the subject's position at the time of making the decision to conclude the legal transaction, the good faith of the offeror, the reliability of the information.

The legislation of most EU states and Ukraine establishes strict requirements for the submission of information, especially commercial information and advertising. The bad faith of the offeror's actions may lead to misunderstanding of the terms of the legal transaction by the acceptor, and to contesting his or her consent to conclude the legal transaction. Some EU states (Belgium, Greece, Italy, Spain, etc.) allow to contest legal transactions only in case of a significant mistake.

The main indicator of the effectiveness of the legal regulation of the declaration of will when concluing the legal transaction is a high-level protection of the parties to the legal transaction from deception and a small

number of appeals to judicial authorities to contest the legal transaction on the ground of a defective will.

According to these indicators, the most effective model of legal regulation of the form of declaration of will is based on the principle of free choice of the form of declaration of will (Greece, Poland, Czech Republic). At the same time, these states have strict requirements for contesting legal transactions and prohib the abuse of rights.

The results of this study can be used to develop proposals for improving legislation in the field of regulation of forms of declaration of will when concluding legal transactions.

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Comparative Analysis of Public Administration Models on the Example of Healthcare Sector

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Abstract

The goal of this article is to disclose the main models of public administration in the example of healthcare sphere. The authors used such general scientific and special methods: historical and legal, comparative, relative and legal, system analysis and formal logics. Revealed the link between the models of public administration and the healthcare sphere. It was marked on the most typical manifestations of administrative influence inherent in particular model in the sphere of healthcare. It was established that different models of public administration function effectively in different states. However, national healthcare systems predominantly use a combination of several models by adding elements of other models to the dominant model. It was concluded that the current models of public administration in the field of healthcare are characterized by: verticalization and centralization of power responsibilities for OPM, implementation of market techniques in the public sector for NPM and an emphasis on human rights and growth for GG. Among modern paradigms of public administration, we have highlighted the LG model, the essence of which lies in continuous implementation

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of innovations to improve efficiency and prioritize the interests of the consumer, which is the patient in the sphere of healthcare.

Keywords: public administration; health model; public interest; human rights; comparative analysis.

Análisis comparativo de modelos de administración pública sobre el ejemplo del sector salud

Resumen

El propósito del artículo es dar a conocer los principales modelos de gestión pública sobre el ejemplo del sector salud. Los autores utilizaron los siguientes métodos científicos generales y especiales: histórico-legal, comparativo, comparativo-legal, análisis de sistemas y lógica formal. Se revela la conexión entre los modelos de administración pública y el ámbito sanitario. Se hace hincapié en las manifestaciones más típicas de influencia administrativa inherentes a un determinado modelo en el campo de la atención de la salud. Se ha establecido que diferentes modelos de administración pública funcionan efectivamente en diferentes Estados. Sin embargo, los sistemas nacionales de salud utilizan principalmente una combinación de varios modelos al agregar elementos de otros modelos al modelo dominante. Se concluyó que los modelos modernos de administración pública en el campo de la salud se caracterizan por: verticalización y centralización de poder para OPM, implementación de métodos de mercado en el sector público para NPM, y énfasis en derechos humanos y transparencia para GG. Entre los paradigmas modernos de la administración pública destaca el modelo LG, cuya esencia es la constante introducción de innovaciones para mejorar la eficiencia y priorizar los intereses del consumidor, que es el paciente en el ámbito de la salud.

Palabras clave: administración pública; modelo de salud; interés público; derechos humanos; análisis comparativo.

Introduction

Each state aims to carry out effective implementation of national policy by combining public administration with the system of administrative and territorial organization of state and municipal authorities. This is most important value during a special period (state of emergency, martial law) or in relation to socially important spheres (healthcare, education), etc.

In the most systematized form, the power-management influence can be represented through models of public administration as types of organizational structures. At the same time, changes that accompany the reform of this or that sphere often make it necessary to transform the managerial model that functions in the state. Under such conditions becomes actual research of models of public administration in relation to certain components of social life.

In modern world one of the most important spheres for any state is healthcare (Lohvynenko *et al.*, 2019). This is explained by the fact that healthcare issues is directly linked to the level of public health and average life expectancy, economic stability, social policy, sanitary and epidemiological well-being of the population and the sustainable development of the state as a whole. In particular, it concerns resistance to the spread of the COVID-19 pandemic, which has become a kind of challenge of the national healthcare systems for their efficiency and effectiveness (Teremetskyi *et al.*, 2021). According to this, the study of modern models of public administration will be carried out on the example of the healthcare sphere.

1. Methodology

Scientific and theoretical backgroundl of the presented research were scientific works of scientists devoted to managerial, medical, social and legal aspects of public administration in the sphere of healthcare. The normative and informational basis of the study consists of international and national legislation of individual states, which governs relations in the sphere of healthcare, political and legal publicity, works on management and administration, and materials from open Internet sources.

The choice of research methods is determined by the method, objectives and the subject of the scientific article. The process of scientific search has determined the use of general scientific and special methods of scientific knowledge, which allowed to form a scientifically grounded conclusions.

For example, the historical and legal method allowed us to consider the formation of models of public administration. The comparative method enabled us to compare the models of public administration of the healthcare sphere in separate states. The comparative and legal method assisted in reviewing international and national norms related to healthcare management. The method of system analysis made it possible to identify the advantages and disadvantages of each type of current public administration model. The method of formal logics was used to identify advantages and disadvantages of specific models and prospects for improvement of public administration by the healthcare sphere.

2. Results and Discussion

In general, the management model is understood as a theoretically selected holistic set of ideas about how the management system looks like, what its structure and functions are, how it interacts with different subjects, how it adapts to changes. Such model includes the main principles of management, strategic vision, goals and objectives, values, organizational structure and the order of interaction of its elements (Kropyvnytskyi, 2018).

Throughout the history of its development, humanity has created and implemented various models that reflected the managerial connection between the subject of power and the controlled object. By uniting, mixing, and borrowing from each other certain elements, these models were adapted by national administrations in each state. At the same time stable forms of some of these models allowed us to consolidate the main types of organization of public administration. Having their origins in the style of state influence on this or that sphere, modern types of models include a broader number of subjects, becoming public, and replacing the traditional management of the administrative process.

In the opinion of O.M. Okhotnikov and Y.O. Arbich, it is the transparency, openness and stability in the activities of public authorities will contribute to the effective maintenance and respect for human rights and freedoms, as a result, effective public administration in the interests of the citizens will increase the credibility and trust of the public in the functioning of public authorities (Окhotnikova and Arbych, 2020). It should be stressed that this is what distinguishes the process of public administration from the previously dominant public administration.

Models of public administration are not the same organizational and social constructions that take place in the state, because the process of administration precedes the formation of state policy in a certain sphere. Thus, in the context of our research the models of social policy are of interest. There are four such models:

1. scandinavian, which is characterized by wide participation in public administration not only by the state, but also by trade unions. Moreover, the main responsibility is held by the state, while public administration is a sufficiently well-organized system, where power actions are clearly coordinated and public responsibility is at a high level;
2. the anglo-saxon model, which also provides for state responsibility, but public administration is carried out only at the level of the state;
3. the continental model, under which public administration is carried out through insurance organizations, while financing of the social sphere is carried out through insurance contributions;

4. the southern European model, where public administration is carried out through insurance organizations, and the family and the church are included in the subjects of responsibility (Azarova, *et al.*, 2019).

The mentioned models differ in the subject composition and the scope of managerial (administrative) influence in the formation and implementation of social policy, while the criterion for their typologization is the geography of their spread across the countries.

Unlike social policy models, the main models of public administration differ from each other in principles, subjects and methods of organization and implementation of public administration, which is most clearly manifested in relation to specific spheres of social life.

Besides this, it is worth mentioning the models of organization of health care systems depending on the sources of funding, which are accepted to be divided into market (provision of medical services through private funds), state (budget financing of healthcare spheres) and mixed (combination of elements of the previous models, for example, the presence of a state medical insurance fund and elements of state-guaranteed non-paid medical services).

In lot of things those models have repeatedly been modified since the time of their development and implementation, but in general, they have retained their inherent features to the present. However, in healthcare models, are considered and can be individualized some factors, that effect on the transformation (state guarantees; mechanism for financing the healthcare, medical services and other).

Of course, national healthcare systems are influenced by state policy in the social sphere and are part of certain economic models of healthcare financing. At the same time, healthcare in one state or another is ensured through the purposeful influence of the subjects of power, which is a reflection of the model of public administration in the healthcare sphere. In our conviction each of these models has its own specific manifestation in the healthcare sphere.

Before outlining the main types of models of public administration, we should take into account the opinion of G. Shaulsky about the fact that the experience of foreign countries shows the absence of a specific model successfully implemented in several countries. On the contrary, taking as a basis the general principles, methods and outputs of the models of public administration, taking into account national economic and social peculiarities, each state adapts this model to its own realities and requirements (Shaulska, 2018).

Scientists distinguish three main types of models of public administration, namely: Old Public Management (OPM), New Public Management (NPM), Good Governance (GG). For example, V. I. Nikolaeva allocates the old management model, which is characterized by bureaucracy, lack of initiative, lack of efficiency, and one-sidedness. Instead, she considers NPM to be a new model and its more modern version - New Public Service (NPS). The latter is a model of a new public service in which the people, the community and the civil society as a whole are the key subjects, while the government's mission is to satisfy the public interest. Among the new models is also called GG, which involves a significant dialogue between private subjects and the state, openness, transparency and broad involvement of the public in the management process (Nykolaieva, 2019).

The importance of taking into account the level of public satisfaction with the quality of services provided is an important part of public administration in general and the sphere of healthcare in particular. It should be taken into account that in the case when citizens are not involved in making management decisions, they are less satisfied with the authorities. Then the desire for a balanced connection between the people and the state will encourage the population to support the state's leading role in providing public services instead of seeking alternative managerial methods (Cohen *et al*., 2022).

The first model, OPM, represents the traditional bureaucratic apparatus. As M. Syomich notes, the OPM model has the longest history of application, which allowed it to form an effective combination of managerial methods and techniques. The essence of this model lies in the functional approach to division of labour, clear subordination, rules that enshrine the rights and duties of the officials, the system of standardization of processes, promotion and career, the unification of office management (Syomych, 2019).

This is most clearly represented by healthcare in authoritarian states, where severe centralization of power is combined with bureaucratization of any organizational procedures, and the population's access to quality medical services is nervous and uncomfortable. For example, in the sphere of healthcare in North Korea, researchers emphasize the great differencies in the state of public health and real access to medical care, which is mostly due to political and economic inequality. The possibilities for eliminating such inequality are severely limited, while informing international organizations about the existence of such problems gives hope that they will be solved (Lee *et al*., 2020).

The second classical model of the NPM is based on the theory of public choice, in which the performance of public officials is subject to public control to prevent ineffective activities and corruption. A new perspective of public service that is embodied in the democratic theory of social system development, predetermines the accountability of public officials and civil servants to the citizens.

This model assumes that public officials will serve public interests and meet the expectations of the citizens with the proper public service, and the state together with the local self-government will take care of public benefits and become more sensitive to the needs of society. In the opinion of Y. I. Lyakh namely Great Britain became the founder of this model, which during the last decade of the XX century spread to the United States, Australia, Ireland, the countries of the Asia Pacific region (Liakh, 2019).

S.O. Levchenko notes that the NPM model concerns not only the implementation of modern rational management methods, but also suggests a new pricing paradigm, genesis of which is similar to business management methods. The main postulate of NPM is the management of the state according to market approaches and implementation of market approaches in the public sector.

First of all, it concerns the various practices successfully implemented in the private sector. Thus, the state becomes a participant in the market process, using methods of business management in the activities of public institutions and sharing business values. Managed approach has gradually made NPM one of the most popular models of public administration, which is successfully used today (Levchenko, 2017).

As N.S. Latipova notes correctly, NPM is a model of public administration, which is used for modernization of the state sector. The corresponding model is based on the approach where the person (citizen) is a client who has a variety of alternatives to choose from, while the market approaches are used in management. This can be expressed in three words: economy, efficiency and effectiveness (Latipova, 2020).

Gudbjörg Erlingsdottir and Cecilia Lindholm pay attention to the fact that NPM as a model of public administration is no longer new and, perhaps, it is time to remove the component of newness from this abreviation. On the other hand, the emphasis on novelty of public management allows to separate this model from the old, so-called OPM. What concerns the sphere of healthcare, innovations in medicine, particularly eHealth, have emerged, in the opinion of the authors, due to the introduction of the NPM model in the public sector (Erlingsdottir and Lindholm, 2013).

The NPM model manifests itself mainly in those states where healthcare financing is carried out at the expense of the combination of state programs and the developed private sector. For example, in the United States, private health insurance funds cover most of the healthcare needs of the population. Currently, a public guarantee of realization of the right to health protection for socially unprotected groups of the population or for all citizens at the basic level (package of guaranteed medical services) is ensured at the expense of state and municipal programs, for example, «Medicaid».

The shortcomings of the managerial approach to public management, implemented in the NPM model, provoked the emergence of a new management model – «Good Governance» (proper management), which has been expanded in Japan, Indonesia, New Zealand, Germany and Brazil. The new model was mainly aimed at overcoming such shortcomings of the NPM as secondary importance in solving social problems and increasing social inequality and poverty. This is especially relevant in developing states, where there is an erosion of the exclusive role of the state (public officials) in social relations. Instead, the emphasis is shifting toward the universality of management methods instead of seeking components inherent to a particular state.

In general, the concept of "Good Governance" first appeared on the agenda of the World Bank's Annual Conference in the field of economic development in 1992 (Bolotina and Nikitenko, 2017). According to the recommendations "What is Good Governance?" developed by the United Nations Economic and Social Commission for Asia and the Pacific, GG has a number of basic characteristics.

It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and adheres to the rule of law. The GG model requires minimizing corruption and taking into account the views that the positions of the most diverse members of society are taken into account in decision-making process. This model of public administration is also respectful of the current and future needs of society (Yap Kioe Sheng, 2016).

O.A. Morgunov emphasizes the popularity of the GG model in the modern European community. In his research he pays attention to the fact that despite the widespread nature of the relevant model, it is not characterized by the typical principles, tasks and goal.

This peculiarity is explained by the fact that the GG model is a unique template, according to which each state that chooses this paradigm makes changes and additions to it, forms its own priorities in the implementation of public administration. At the same time, despite the disagreements in the determination of priorities, the choice of forms and methods of managerial influence, the GG model is based on adherence to the key principles - democracy and the rule of law (Morgunov, 2018).

In June 2006, the Ministers of Health of the European Union member states agreed that healthcare must be based on certain values and principles, which they considered: universality, accessibility of high quality medical care, fairness and solidarity.

Moreover, the corresponding statement of the Council of the European Union stipulates that universality means ensuring accessibility of medical care for everyone.

Fairness means equal access to medical care according to need, regardless of ethnicity, status, age, social status or ability to pay.

In its turn, solidarity is closely linked to the financing of healthcare systems, according to which everyone contributes to the medical fund according to its capabilities. This requires that the member states have open access to the necessary medical services through a fair distribution of healthcare costs and medical services to the entire population. This can be achieved through the institution of social medical insurance, based on solidarity. In this case, the more wealthy subsidize the poor and the healthier subsidize the sick.

Access to high quality medical care requires states to ensure the provision of the most feasible such care, which must be patient-oriented and meet the individual needs of the patient (Kickbusch and Gleicher, 2012).

In the sphere of healthcare GG model is associated, first of all, with a focus on people's needs, on the patient's guidance from the moment of his application for medical care to the completion of the treatment (rehabilitation) process, on the openness and accessibility of the national healthcare system. Mentioned model is the most appropriate for democratic and developing countries. Primarily, it concerns the member-states of the European Union and some other countries of the world, which are guided by European democratic principles and values.

Referring to the works of R.B. Denhardt devoted to the New Public Service (NPS), researchers consider this model to be a distinctive development of GG. It should be noted that this model was formed in response to the need to reform the institution of public service from a bureaucratic system in the direction of the service concept, according to which the activity of public servants is focused on satisfying the needs of citizens and helping to provide them with public services.

The supporters of this model believe that the basis for large-scale social and economic changes in society is improvement of working conditions. Moreover, the significant importance is attached to the behavior of the individual, but also for all the components that influence interrelations between people, an open dialogue between all parties, including between citizens and public servants (Gordon *et al*., 2018).

In the aspect of healthcare it is about the dialogue between patients and the state. The latter formulates, for example, a list of pharmaceutical products, the cost of which requires partial or full reimbursement of expenses for acquisition by citizens, based on the identification of the needs of the population in the provision of appropriate medicines.

Considering other modern models of public administration, Y.O. Arkhipova points to Networked Government (NG), a model of merged

administration that defines the overall goal of modern public administration as the development of a democratic state using effective new management methods and technologies to provide the population with simple and high-quality public services (Arkhipova, 2015). For instance, making an appointment with a doctor on a certain date via an electronic line greatly simplifies the patient's life and unloads the healthcare facility and the medical staff themselves from an excessive number of people, which becomes especially important in the period of spread of infectious diseases, pandemic threats, etc.

One has to agree that the factors that hinder the formation of electronic governance include: the low level of interest of the population in the electronic form of interaction with the institutions of public authority; lack of awareness of digital technologies; low indicators of electronic interaction between authorities and citizens; lack of awareness and interest of the population in using the possibilities of digital technologies for interaction with state institutions, etc.

For example, in Ukraine the elements of this model are manifested in some aspects of the healthcare sphere. Thus, at the strategic level the necessity of forming a unified medical space as a system of interaction between healthcare bodies and institutions at all organizational levels is determined. For its part, the development and implementation of eHealth allows for simplification of document management and access to medical services. Let us emphasize that the Ukrainian electronic healthcare system is a two-component system where the user is connected to the central data base through the electronic medical information system.

The eHealth system consists of two components:

1. The central data base is an information and telecommunication system, which contains the statutory registers, software modules, the information system of the National Health Service of Ukraine, to the extent necessary for the implementation of state financial guarantees and others. (provides the possibility to create, review, exchange the information and documents between registries, state electronic information resources, electronic medical information systems).
2. The electronic medical information system is an information and telecommunication system that enables to automate the work of public entities in the sphere of healthcare, to create, view and exchange information in electronic form, in particular, including the central data base (in case of connection) (The Ministry of Healthcare of Ukraine, 2022).

Another new model to consider is Lean Government (LG), i.e., economical management. The essence of this model is that the subjects of

authorities act «economically,» reducing the budgetary cost of their own maintenance, simplifying for and improving administrative services, and minimizing costs and barriers upon applying of citizens. In the long term, this will improve the quality of services provided to the population, save budget expenditures and minimize bureaucratic obstacles.

It should be noted that the methods of free administration are used for a wide range of public services and administrative procedures, from the development of rules to the execution of grants and contracts. That is why a lot of state institutions today take part in programs of economical transformation, achieving significant results due to a significant improvement in the quality, transparency and speed of relevant processes.

Using the LG model helps government institutions to change their methods of work, creating new capabilities and competencies, as well as improving organizational capabilities for better service to the population.

For example, taking the LG model as the basis for the management of a specific healthcare facility, we can talk about these innovations: all rooms are created as single rooms; standard rooms are projected so that they can be easily adapted to provide more specialized care than usual; individual rooms are created to a «bariatric» standard, which allows for comfortable housing of tall or overweight patients; rooms are not designed for specific medical services and can easily be reconfigured to meet the needs of different patients to avoid an imbalance in beds; the department is allowed to admit more patients to its areas by expanding the appropriate neighboring units if necessary; the facilities take into account epidemic standards and infection control; minimizing waiting areas; in the emergency department, patients are taken directly to the room, rather than being transported after sorting to the waiting area, before being placed in the room (Florizone, 2015).

Of course, it should be noted that the implementation of LG model in the sphere of healthcare in general, despite its significant cost at the stage of implementation, can significantly improve the indicators of economics and efficiency in the near future.

The importance and relevance of this model of public administration is also evidenced by the fact that healthcare providers around the world are still facing enormous challenges, because the aging of the population and unhealthy lifestyles are increasing the cost of healthcare faster than the income and tax revenues of the middle class are growing. At the same time the quality of medical care has not improved as much as public services in other spheres, so more and more medical organizations are turning to the implementation of the lean management in their activities (Lean Healthcare, 2021).

Continuous implementation of quality changes in activities together with a change of orientation to meet the needs of the customer and the

formation of an economical worldview of the subjects of power are the key foundations of this model of public administration.

Conclusion

The authors of the article analyzed the main modern models of public administration on the application of the sphere of healthcare. It was established that the traditional models are Old public management, New public management and Good governance. And each of mentioned models can be fully effective in a particular state. At the same time, it is also impossible to talk about the appropriateness of any state borrowing and implementing a particular model of public administration in its pure form.

Most often, national healthcare systems use models of public administration, where the dominant model is supplemented by elements of other models. It is also possible to talk about the transformation of the corresponding models of public administration, caused by changes in approaches to the formation and implementation of public policy in the sphere of healthcare.

However, it is impossible to claim the existence of only three models: OPM, NPM and GG, because the rapid development of technology, combined with external factors, necessitates the testing of new universal paradigms to achieve a balance between the private needs of the individual and the public interest of the state. Such modern models change the view of traditional notions of public administration, making important not only the vectors of managerial influence, but also the methods and ways of its implementation.

The analysis of national normative legal acts and international soft law allows us to determine the peculiarities of each of the main models of public administration in the sphere of healthcare. These are the verticalization and centralization of power for the OPM, the introduction of market techniques in the public sector for the NPM, and the emphasis on human rights and transparency for the GG.

Among modern paradigms of public administration, we consider the LG model to be the most promising, the essence of which lies in the constant introduction of innovations to improve efficiency and the priority of consumer interests, which in the sphere of healthcare is the patient. In addition, lean methods not only simplify the services received by the patient, but also involve the constant transformation of public administration in order to find the most effective combination of forms and methods of management.

The sphere of healthcare in any state is extremely important, and this is common to all countries of the world. At the same time, national healthcare systems differ greatly from one another in terms of economic capabilities, level of public health, sanitary and epidemiological state and other indicators. In its turn, a better understanding of management processes should help to form a sustainable link between public health policy and public administration in order to take into account everyone's needs and satisfy the public interest.

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Theoretical and practical aspects of modern politics: challenges and reformatting of the global world

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Abstract

The aim was to analyze the problems of global development of the modern world, including controversial global processes and to investigate the theoretical and practical aspects of modern politics in the conditions of challenges and reformatting of today's world. The novelty of the research lies in the understanding of objective processes of intensification of global political relations in extreme conditions, including war, crisis, uncertainty and instability. The methodology employed consisted of the use of tools such as political modeling and forecasting, which help to look behind the scenes of the global world as a new integral entity in a new way. The conclusion of the study is that the analysis of the new problems of reformatting the modern world in the context of globalization has been carried out and the ways of solving these problems have been shown. Theoretical and practical approaches to finding ways to increase the effectiveness of global management and activities of international organizations were considered. A new model of modern politics is analyzed, within which the basic problems of globalization are outlined and a solution to the negative political consequences of the existing world order is proposed.

Keywords: modern politics; globalization; global reformatting of the world; politics in the 21st century; modern world.

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Aspectos teóricos y prácticos de la política moderna: retos y reformulación del mundo global

Resumen

El objetivo fue analizar los problemas del desarrollo global del mundo moderno, lo que incluye procesos globales controvertidos e investigar los aspectos teóricos y prácticos de la política moderna en las condiciones de desafíos y reformateo del mundo actual. La novedad de la invetsigacion esta en la comprensión de los procesos objetivos de intensificación de las relaciones políticas globales en condiciones extremas, que incluyen: guerra, crisis, incertidumbre e inestabilidad. La metodología empleada consistió en el uso de herramientas como el modelado político y la previsión, que ayudan a mirar detrás de escena del mundo global como una nueva entidad integral de una nueva manera. La conclusión del estudio es que se ha llevado a cabo el análisis de los nuevos problemas de reformatear el mundo moderno en el contexto de la globalización y se han mostrado las formas de resolver estos problemas. Se consideraron enfoques teóricos y prácticos para encontrar formas de aumentar la eficacia de la gestión global y las actividades de las organizaciones internacionales. Se analiza un nuevo modelo de política moderna, dentro del cual se esbozan los problemas básicos de la globalización y se propone una solución a las negativas consecuencias políticas del orden mundial vigente.

Palabras clave: política moderna; globalización; reformateo global del mundo; política en el siglo XXI; mundo moderno.

Introduction

The relevance of global politics research is aimed at making political decisions, studying global public solutions that apply to power relations, understanding the civilizational dimensions of human existence as an integral system. Global politics always affects many people, its consequences have an echo in many spheres of activity, its decisions are made within the community. Such community can be called a political system. Referring to the subject of global politics, we understand it as various forms of activity related to the control and adoption of global public decisions in relation to a certain people living in a particular territory, possessing certain natural and cultural resources, having its own national mentality, the code of the nation.

Global politics refers us to political interests and conflicts concerning the use of such means, to the decision of the ways and purposes of their application. Especially today, politics is influenced by the processes of

globalization associated with the transformation of the world, which is testing its new capabilities.

The object of the study of global politics is the phenomenon of world reformatting associated with globalization, which involves almost all countries of the West and East, North and South, resulting in their fruitful interaction. Today, there are two problems associated with the concept of global politics: 1) it implies that a unique system of connections, where the capital and goods markets, information flows, mental images are located, and it permeates the entire socio-political and economic space; 2) it can be understood as the fact that we are in a "global" era.

Behind the notion of "global politics" as an organic entity is the desire to understand the interconnections between different parts of the world, to explain the new mechanisms that govern the movement of capital, people and cultures, and to invent institutions capable of regulating them. However, the current debate does not include historical questions or a precise analysis of the structure of connection mechanisms of and their limitations.

The world has long been - and still is - a space where economic and political relations are very unequally distributed, where epy power is contested and conflictual, so it is necessary to study political processes as discourses, as statements of a global world, or as a global process, a set of changes that really affect the world's population. Contrasting the global with the local - even if it is to study how they construct each other – is clearly underlining the inadequacy of modern tools to analyze everything else. It must be noted, that pressure on the part of the United States, the IMF and transnational corporations is breaking down national barriers that have impeded the movement of capital. This view is an argument for a global rules new regime that would remove residual barriers to the flow of capital and goods. It is also an argument that the global market, conceived as a network of transactions, now obliges governments to obey its dictates. Global policies are constantly used to encourage rich countries to roll back the welfare state and poor countries to cut social spending, all in the name of the need to compete in a globalised economy. The social democratic political left has devoted much of its energy to softening the brutality of capitalism through policy intervention.

The object of the study is global politics as a unique system of relations that faces the challenges of modernity and contributes to the reformatting of the global world, where the market of capital and goods, flows of information, mental images that permeate the world are located. Globalization as an expression of global politics raises serious concerns in public opinion.

The acceleration of globalization is accompanied by the intensification of commercial, financial and migration flows under the influence of not

only the opening of markets, but also rapid technological changes leading to technological breakthroughs due to digitalization, globalization, intensification of international relations.

The novelty of this study is the analysis of the new phenomenon of geopolitical reformatting of the world in the context of globalization, which is based on the objective processes of intensification of world political relations in extreme conditions, including war, crises, uncertainty, instability, digitalization. As a result of globalization, globalism as a political theory of deepening the management of globalization and the world system is being formed. and the theory of globalization is an appendage of the theory of modernization, - noted in the author's article "Philosophy of Geopolitical Reformatting of the World in the Context of Modern Challenges of Globalization" (Voronkova *et al.*, 2021).

1. Materials and methods

Political forecasting methodology often uses mathematics, statistics and data science, psychology. Such models include average poll results, such as the RealClearPolitics poll average. Political scientists and economists often use regression models of past elections. The purpose of this task is to help predicting the votes of political parties - for example, Democrats and Republicans in the United States. This information helps the next presidential candidate from their party to predict the future. Most models include at least one public opinion variable, a sample poll or presidential approval rating. The principles of global political forecasting are:

1. uncertainty, which corresponds to the new scientific picture of the world associated with the criticism of classical determinism and the discovery of stochastic processes;
2. bifurcation - the bifurcation of the course of certain processes that have reached a certain critical value, after which the unambiguous relationship between the past and future states of the system is lost;
3. discreteness of space-time, which means that at the bifurcation points the preconditions for qualitatively new states are formed, giving a qualitatively different future (Voronkova *et al.*, 2020).

An important role was played by the method of modeling political processes, which includes a set of principles, techniques, methods, technologies, aimed at a new understanding of global politics, based on global reformatting of the world, understanding of new roles and functions of global politicians, the formation of new concepts, theories, models of global politics.

The research is based on a number of general philosophical methods - analysis and synthesis, systematic, historical and logical, cross-cultural analysis, which helped to reconstruct and take a fresh look at global governance. It represents a dynamic and innovative sphere as the basis for a breakthrough in the technological field, on which the competitiveness of states depends. Globalization means compression of the world and intensification of awareness of the world as a whole. At the same time, global processes play the role of social transformation of large parts of the world (Nikitenko *et al.*, 2021).

2. Results and discussions

2.1. New challenges of global politics

The world is entering the third year of the worst pandemic in history. No less dramatic is the current geopolitical tension between the great powers, the North Korean nuclear problem, the spread of hot zones in the world. All these are major obstacles that need to be overcome to build a better world in 2022. UN Secretary General Antonio Guterres warned on January 21 that the world is on the threshold of a new form of soft confrontation that will be worse than the Cold War. In fact, there are many signs that geostrategic tensions between the great powers will intensify in 2022.

Tensions between the United States and China, the world's two largest economic powers, have risen significantly, and recent mutual flight suspensions have added to the friction between the two sides. Trade disputes, which have escalated to include accusations of cyberattacks and human rights violations, to the thorny issues of Taiwan and the East Sea, between Washington and Beijing have also intensified. China's neighboring Korean Peninsula is on alert. Since last year, the Democratic People's Republic of Korea has been conducting missile tests.

The situation is not much better in the post-Soviet space, where Ukraine, Armenia and Kazakhstan are on the verge of becoming the scene of new confrontations between Russia and the West, which are multiplying warnings against each other. In Africa, although a number of hotspots such as Mali, Yemen, Libya, Sudan, South Sudan show no signs of cooling down, the military of Burkina Faso announced on 24 January the overthrow of President Roch Kabore, the suspension of the Constitution and the dissolution of the government and the National Assembly. In this context, the Covid-19 pandemic, which is entering its third year, shows no signs of ending soon.

The director-general of the World Health Organization warned on January 24 that it is dangerous to assume that the highly infectious

Omicron variant will be the last option or to talk about the endgame, as the world now has ideal conditions for other options to emerge. But at the same time globalization raises serious concerns in public and political opinion. Globalization, instead of equalizing prices and living standards, leads to the polarization of profits, and capital becomes the engine of capitalism development, which often displaces knowledge (Punchenko *et al.*, 2018).

The basis for the analysis of modern politics in the context of challenges and the study of the reformatting of the global world is the methodology of complexity as an instrument of self-organization, which is based on the knowledge of philosophy, management, theory of organizations, called Agile-methodology (agile methodology, SCRUM-methodology), which fits into the theory and methodology of spiral dynamics (Voronkova *et al.*, 2022).

3. Global economic policy and intensification of international relations and foreign affairs

In the EU countries we consider economic global policy as a process of closer integration of world markets, either it is financial, labour or commodity. The integration of economies has been growing steadily for centuries. Over the last fifty years, however, this process has accelerated, first with the liberalization of trade after World War II and then, more recently, with the end of the Cold War, the rapid development of Asia and the opening up of China and many Latin American economies.

The acceleration of globalization is accompanied by intensification of commercial, financial and migration flows, driven not only by market opening but also by the rapid technological changes. The share of trade in world GDP has tripled since 1950. Foreign direct investment has quadrupled as a share of GDP in OECD countries since the early 1970s, and global FDI reached approximately $610 billion in 2004. As for the average number of immigrants arriving each year in OECD countries, it has more than tripled in the last twenty years.

Globalization has become a powerful factor of development and economic transformation. It has helped millions of people lift themselves out of poverty. It has fostered innovations that have increased productivity and led to scientific discoveries that will help us live longer and healthier lives.

Scientists estimate that liberalization of trade in industrial and agricultural products and services, as well as trade facilitation, should lead to significant welfare gains. In Europe there is some unwillingness to allow cross-border mergers and acquisitions in sectors as diverse as

steel, banking and energy. In the United States, there are concerns about foreign investment in oil companies or port facilities. In March 2022, Chinese officials warned against foreign presence in strategic sectors of the economy. Finally, expropriations have been on the rise in some Latin American countries for some time.

Joe Biden announced a ban on Russian oil and natural gas imports to the United States, arguing that the new economic sanctions would deal a «powerful blow to Putin's war machine.» As the war in Ukraine remains a big issue in the world, the question is how to stop a nuclear attack. However, the brand of laissez-faire globalization that has been relentlessly promoted since about 1990 by American banks and corporations at the expense of American workers is now collapsing.

The sudden introduction and adoption of economic sanctions clearly shows that democratic governments do have the power to rein in global corporations and banks. If they can be curbed through gross human rights violations, then perhaps labour and environmental rights are next in line. Let's hope that this will be a core principle of Globalization 4.0.

Today's geopolitical cracks and their economic consequences - sky-high gas prices, threatening wheat shortages, Europe's energy supply under threat, etc. - highlight the underestimated benefits of the neoliberal world order that has prevailed since about 1990. Considering Russia's role as a «full spectrum commodity superpower» (as British commentator Ambrose Evans-Pritchard put it), supplying many of the world's minerals, it can restrict sales of titanium, palladium, neon and uranium to Western consumer markets.

These raw materials are essential for applications in aerospace, chip manufacturing, lasers, nuclear power, electronics and weapons. Consequently, disruption of their global supply chains would cause significant economic chaos.

Another potential opportunity for Moscow is to conduct cyberattacks against geo-economically significant Western corporate targets, such as investment banks, hedge funds, stock exchanges, large technology firms, and multinational corporations involved in large-scale business operations related to agriculture, energy, telecommunications, and the manufacture of military equipment. Hubs such as Wall Street or the City, and offshore financial centers that have aligned themselves with the West, may also be in the crosshairs.

Given that the actions taken by Washington and Brussels are intended to trigger a chain of events that could lead to the downfall of the Russian government, the Kremlin could be entering a sinister and dangerous global political game.

4. Globalism versus globalization?

Many people would think that these two terms refer to the same phenomenon, but there are important differences between them. Globalism, at its core, seeks to describe and explain a world characterized by networks of connections covering multi-continental distances. It tries to understand all the interconnections of the modern world and to illuminate the patterns that underlie them. In contrast, globalization refers to the increase or decrease in the level of globalism, focuses on the forces, dynamism or speed of these changes.

If globalism is considered as a basic network, globalization refers to the dynamic reduction of distance on a large scale. Globalism is a phenomenon with ancient background. Thus, the Silk Road provided an economic and cultural connection between ancient Europe and Asia, the transition to different dimensions of globalism demonstrates globalization, the speed of which depends on how fast it achieves it.

Of course, the Silk Road was followed by only a small group of enduring traders, its direct impact felt primarily by a small group of consumers along the way. In contrast, transactions in the world's financial markets today affect millions of people, indicating that globalization is a process through which globalism is becoming increasingly intense.

Analysis of globalism ideology shows that the growing intensity of globalism in the density of networks of interdependence. The increasing intensity of globalization changes relations because it means that different relations of interdependence intersect deeper at more different points. It is important to note that globalism does not imply universality, as ultimately the ties that make up the networks defining globalism may be felt more strongly in some parts of the world than in others.

For example, at the turn of the 21st century, a quarter of the US population used the World Wide Web (Globalism Versus Globalization, n/d). At the same time, however, only one hundredth of a percent of the population of South Asia had access to this information network. Since globalism is not about universality and given that globalization is about dynamic change, it is not surprising that globalization is neither about equity nor homogenization. In fact, it is equally likely to increase differences or at least make people more aware of them. Globalism and globalization are often defined in purely economic terms, meaning that these terms refer to the world economy as such, which defines globalism.

There are four distinct dimensions of globalism: economic, military, environmental and social. (Globalism Versus Globalization, n/d). Economic globalism includes the long-distance flows of goods, services and capital, as well as the information and perceptions that accompany market exchange.

These flows, in turn, organize other processes related to them. One example of economic globalization is low-wage manufacturing in Asia for markets in the United States and Europe.

Economic flows, markets and organization as in multinational companies develop together. Environmental globalism refers to the long-distance transport of materials in the atmosphere or oceans or biological substances such as pathogens or genetic materials that affect human health and well-being.

In contrast, examples of environmental globalization include the accelerated depletion of the stratospheric ozone layer as a result of ozone-depleting chemicals, or the spread of the AIDS virus from central Africa around the world since the late 1970s. Military globalism refers to long-distance networks in which force is deployed, as well as the threat or promise of force.

A well-known example of military globalism is the «balance of terror» between the United States and the Soviet Union during the Cold War as a strategic interdependence that was both acute and widely accepted (Four Dimensions of Globalization, n/d).

What was special about this interdependence was not that it was entirely new, but that the scale and speed of potential conflict arising from interdependence was so enormous. Military globalization was most recently manifested in the tragic events of September 11. Here, geographical distances shrank as the lawless mountains of Afghanistan became the launching pad for attacks on New York and Washington some 4,000 miles away.

The fourth dimension is social and cultural globalism, which involves the movement of ideas, information, images and people, who of course carry ideas and information with them.

Examples include the movement of religions or the spread of scientific knowledge. In the past, social globalism often followed military and economic globalism. However, in the modern era, social and cultural globalization is driven by the Internet, networking platforms, and human interaction in the networked space (Voronkova *et al.*, 2017).

5. Directions for overcoming international conflicts and achieving peace, dialogue and cooperation

Faced with these challenges, the world will have to redouble its efforts in 2022 to create a peaceful environment conducive to economic recovery. Dialogue and cooperation remain the main means to resolve the current

crises. On January 21, 2022, UN Secretary-General Antonio Guterres called on the United States and China to engage in dialogue and negotiations on trade and technology to avoid polarization of the world's market and economy.

Today, all countries are united to overcome six pressing challenges: 1) Covid-19 pandemic; 2) global financial reform; 3) climate emergency; 4) anarchy in cyberspace; 5) conflicts; 6) Russian-Ukrainian war. We need to put people at the center of the digital world and advanced technologies. Earlier in his New Year's message for 2022, Antonio Guterres called on countries and the world to act «in a renewed spirit of dialogue, compromise and reconciliation» for the sake of humanity, the planet and prosperity.

At the Pearson Institute for the Study and Resolution of Global Conflict and the Pearson Global Forum, we study societies and people divided by conflict. We ask empirically relevant questions. We use rigorous research methodologies. By collaborating with partners and policymakers, we can shape public policy. Our goal is simple but ambitious: to reduce human suffering and create peace in the world.

Conflicts cause 80% of all humanitarian needs and reduce gross domestic product (GDP) growth by an average of two percentage points per year. During this decade, the number of civilian deaths in violent conflict has doubled. The Stockholm International Peace Research Institute (SIPRI) cultivates dialogue in Northeast Asia, whose members use dialogue and mediation to prevent conflicts from escalating into violence. The Ulaanbaatar Process, a civil society dialogue for peace and stability in Northeast Asia, was launched by GPPAC in the Mongolian capital Ulaanbaatar in June 2015.

The process, which is coordinated by the GPPAC Global Secretariat and the Northeast Asia Regional Secretariats, together with the Mongolian NGO Blue Banner, promotes effective regional Track 2 dialogue (non-governmental, informal and informal dialogue) to strengthen the role of civil society. This complements a process aimed at developing an institutionalized regional peace and security mechanism for Northeast Asia.

To develop a habit of dialogue, the process envisages: regular face-to-face closed-door meetings among members of civil society groups in the Northeast Asia region, and, most importantly, an annual meeting of the Ulaanbaatar Process in the Mongolian capital. Convening additional annual working group meetings on thematic issues (e.g., the Korean Peninsula and gender) (BRANDT, n/d).

Dissemination of strategic and targeted action-oriented policy recommendations through presentations to actors and public/constituency meetings in relevant capitals, including Seoul, Tokyo, Washington, Beijing and Pyongyang. Publication of journal articles analysing key issues in the

region and recommendations from civil and digital society (Voronkova *et al.*, 2022).

Conclusions

In order to solve the problems of global politics and the new reformatting of the world, humanistic explication of programs and reliable democratic control, which is required by the global challenges of civilization, are necessary. «Peace is not everything, but without peace everything is nothing» (Guidelines On Preventing Crises, Resolving Conflicts, Building Peace, n/d). In this succinct phrase, coined in a speech in 1981, former Federal Chancellor Willy Brandt summarized a thought that particularly emerged from the history of Germany in the 20th century, and has remained a constant reminder and mission for other countries.

It is the duty of all progressive forces on the planet to stand up for crisis prevention, conflict resolution and peace building around the world out of moral obligation as well as for our own interests. It is a vision that focuses more on the structural causes of violent conflict, such as poverty, social inequality, human rights violations and restrictions on political participation (Foundation for Partnership Initiatives in the Niger Delta - PIND, n/d).

Conflicts are a natural part of social processes of change (Dialogue in Northeast Asia, n/d) However, peace and development depend on the ability to resolve conflicts constructively and without resorting to violence. This is where peace efforts come into play: to prevent violence as a means of conflict resolution, to reduce instability as a breeding ground for violence, and to create opportunities for long-term development.

Respect, protection and fulfilment of human rights, participation in public and political life, gender equality, social cohesion and the rule of law are key in this regard. What we see now is a world that «seems to be falling apart».

Civil wars, ethnic and religious conflicts, suppression and violation of human rights, as well as poverty, hopelessness and lack of access to natural resources, the Russian-Ukrainian war create fertile ground for ideological radicalization and terrorism. Modern prosperity is based on peace, absence of wars and free and fair global trade.

Even today, our future largely depends on our ability to attract the best ideas and brains to our country through international exchange. The pursuit of peace not only reflects our fundamental values - it is in fact in our best interests. The state of law must find ways to respond to new threats that meet the security needs of our citizens while protecting the principles of a free democratic order.

International engagement in crisis prevention, conflict resolution and peacebuilding is a long and hard work. However, perseverance and a long-term approach will pay off in the end. After war, terrorism and genocide, it has finally been possible to put an end to unresolved territorial wars, overcome bloody civil wars and lay the foundation for economic recovery. Promoting peace requires the concerted efforts of foreign, security and development policies, as well as the contribution of educational, cultural, trade, environmental and economic policies to the international context. The new principles aim to set a new strategic course in the global era.

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State Regulation of the Higher Education System in the Context of Ensuring the Universities' Autonomy

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Abstract

The purpose of the article was to study the processes of state regulation of the higher education system in Ukraine in the context of ensuring the autonomy of universities. General and special scientific methods were used in the research process. It was determined that the target priorities of the regulation of higher education system development are: a) regulatory influences on higher education institutions; b) promotion of the level of investment attractiveness of the higher education system; c) optimization of the use of limited financial resourcesn and; d) improvement of approaches to distribution of state orders for personnel training for the national economy, which further includes: state financing of research works carried out by higher education institutions. In conclusion, it has been proved that in order to ensure modernization changes in the higher education system, it is necessary

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to stimulate enterprises to cooperate with universities in the spheres of education and scientific research; to stimulate the inflow of investment resources from the business sector into the higher education system and to improve specific financial support tools for higher education institutions and enterprises developing cooperation with universities.

Keywords: higher education; globalization; state regulation; educational policy; university autonomy.

Regulación Estatal del Sistema de Educación Superior en el Contexto de Asegurar la Autonomía de las Universidades

Resumen

El propósito del artículo fue estudiar los procesos de regulación estatal del sistema de educación superior en Ucrania en el contexto de garantizar la autonomía de las universidades. En el proceso de investigación se utilizaron métodos científicos generales y especiales. Se determinó que las prioridades objetivo de la regulación del desarrollo del sistema de educación superior son: a) influencias regulatorias en las instituciones de educación superior; b) promoción del nivel de atractivo de inversión del sistema de educación superior; c) optimización del uso de recursos financieros limitadosn y; d) mejora de enfoques para distribución de pedidos estatales para la formación de personal para la economía nacional, lo que incluye ademas: financiación estatal de trabajos de investigación realizados por instituciones de educación superior. A modo de conclusión, se ha comprobado que para garantizar cambios de modernización en el sistema de educación superior, es necesario estimular a las empresas a cooperar con las universidades en las esferas de la educación y la investigación científica; estimular la entrada de recursos de inversión del sector empresarial al sistema de educación superior y mejora de las herramientas de apoyo financiero específicas para instituciones de educación superior y empresas que desarrollan la cooperación con las universidades.

Palabras clave: educación superior; globalización; regulación estatal; política educativa; autonomía de las universidades.

Introduction

At the current stage of development, higher education is undergoing significant transformations, as a result of which new characteristics and features are being formed. There is an imbalance between the effectiveness of the functioning of higher education and the needs of the labor market due to certain factors, such as the lack of funds for its financing, etc., as a result of which this aspect must be given special attention.

At the same time, in permanent crisis conditions or their intensification, innovative shifts in both the economy in general and the higher education system in particular are needed, which are aimed at its ability to take a leading position in positive transformations of the socio-economic and innovation systems.

In the conditions of the market and capitalist economy, the management of the educational process becomes more complicated, the role of civil society and self-governance of educational institutions in regulating the process of higher education management is increasing. But, as before, the performance of all elements of the educational system depends on the efficiency of higher education management bodies.

Today, education is the same sphere of market relations as industry, construction, financial and credit and other systems and needs greater autonomy to be able to quickly respond to new challenges caused by globalization, European integration processes and too low, compared to other EU countries, population welfare.

The purpose of the article is to study the processes of state regulation of the higher education system in Ukraine in the context of ensuring the universities' autonomy.

1. Literature Review

At the stage of significant transformations of the national economic system and its integration into the world environment, the system of higher education becomes extremely important. In the conditions of permanent instability and crisis phenomena and the strengthening of migration processes, the sphere of education becomes one of the main components of acquiring strategic competitive advantages of the country and an activator of its further development.

The education sector as an element of the economic system is the leading direction of development of any country, as it is responsible for the quality characteristics and competitiveness of human resources, which are one of its main resources in the conditions of the modern economy.

The category «higher education» is interpreted as a certain process of mastering by a certain person general experience, values, etc.; a special component of social life; as a way of self-development and development; a specific sociocultural phenomenon aimed at mastering knowledge, skills, and developing intellectual potential (Bazhenkov *et al*., 2020; Cosmulese *et al*., 2019; Djakona *et al*., 2021; Obushna *et al*., 2021).

The study of many scientific sources on the subject of education and higher education (Djakona *et al*., 2020; Kholiavko *et al*., 2022; Shaposhnykova *et al*., 2022; Zhavoronok *et al*., 2021) made it possible to draw the following conclusions: firstly, it is observed lack of a unified understanding of the category "education"; secondly, the study of scientific sources testifies to the complexity, multifacetedness and multifacetedness of this term, which includes a system of a type of activity, and an organized specific process, and practical activity in social and cultural spheres, and the consequence of functioning. On the basis of the studied variety of interpretations of the above-mentioned category, the following approaches to its understanding can be singled out (Fig. 1).

At the same time, it should be noted that higher education is an essential component in the context of ensuring sustainable development in the conditions of the spread of the knowledge economy, which influences the development of both education in general and higher education in particular (Popelo, 2017; Tulchynska *et al*., 2022).

In the conditions of rapid improvement of modern society, the degree of importance of education, which contributes to the effective functioning of the state system, active growth and development of the economy, the field of science and technology, is difficult to overestimate. A high level of development of the education system is the basis of the socio-economic and socio-cultural well-being of society.

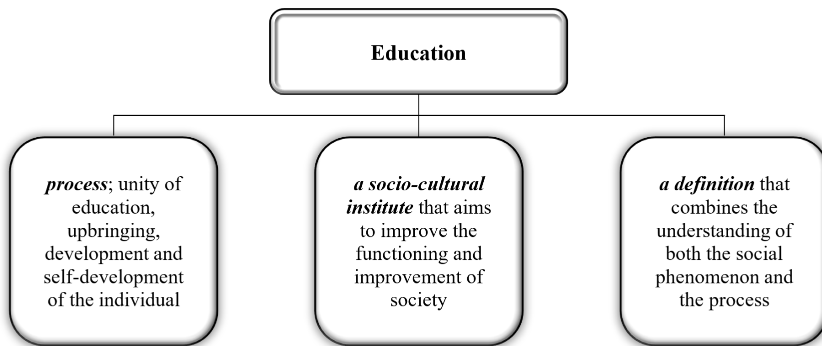

Fig. 1. Approaches to understanding the essence of the concept of «education»
Source: systematized by the authors.

Studying the process of transformation regarding the understanding of the concept of «higher education», it should be noted that certain shifts in its interpretation are noticeable. Thus, there was a gradual understanding of this concept as a set of knowledge, abilities, skills and competences that students of higher education receive. The further development of the educational sphere makes it possible to interpret this definition not only as a social institution aimed at the transfer of knowledge, skills, a certain system of views and values, but also the creation of such competencies that become relevant in the conditions of innovative and technological development, in particular: the formation of creative skills and skills, permanent learning, development and self-development, production of new ideas, etc.

This approach makes it possible to integrate elements of higher education into the labor market at the stage of the educational process, which guarantees their need in certain areas of employment, increases the level of competitiveness, and ensures sustainable development. Also, higher education becomes a center for the formation of a favorable environment for the implementation of scientific activities aimed at the creation of scientific developments.

State regulation of the sphere of education is a system of economic, social, legal, political and organizational forms and methods of directing influence on the subjects of educational processes, which creates conditions for their realization of those goals and tasks that would simultaneously correspond to the strategic interests of the state and direct interests the subjects themselves (Grosu *et al*., 2021; Derhaliuk *et al*., 2021). In this, the state influence should be felt both on the side of the demand for education and on the side of the supply of educational services.

In scientific publications (Arkorful *et al*., 2015; Habib *et al*., 2021; Johnston *et al*., 2018; Jones *et al*., 2012; Kholiavko *et al.,* 2021; Zhavoronok *et al*., 2022) investigated the regulatory policy and the role of e-learning, advantages and disadvantages of its implementation in higher education, and also in the works of scientists (Milos *et al*., 2021; Popelo *et al*., 2022) the issues of development of the higher education system in the context of sustainable development of the country are analyzed.

Despite the large number of publications on education and higher education, currently important issues of state regulation of the higher education system in particular remain insufficiently researched, as evidenced by the global statistics of bibliographic analysis of published articles in the Web of Science database (150 articles in total).

Research on regulation of the higher education system according to Web of Science was first published in 6 articles in 1970. The world centers for the activation of research by scientists in the field of state regulation of the higher education system based on the analysis of publications in the Web

of Science database today are: USA (32 articles), Spain (15 articles), Brasil (8 articles), Australia (7 articles), Belgium (6 articles) and others. The key directions of these studies are presented in Fig. 2.

Fig. 2. Graphic map of keywords in publications, in which titles the word "state regulation of the higher education system" is met. Source: compiled by the author based on the analysis of the Web of Science database and using the tools of the VOSviewer program. These arguments determined the choice of the topic of scientific research, definition of its purpose, tasks and structure.

2. Methodology

The theoretical and methodological basis of the study was both special and general methods of scientific research. When determining the topicality of the topic, bibliometric and dialectical methods of scientific knowledge were taken as a basis, which were used to rank scientific research in the field of state regulation of the higher education system using the VOSviewer program.

The methods of information collection, analysis, processing and systematization were also used in determining the levers and target priorities of the application of economic methods in regulating the modernization

processes of the higher education system. Abstract-logical method - for forming conclusions and proposals regarding the state regulation of the higher education system in Ukraine. The graphic method is intended for visual representation of the results of this study.

3. Results

At the current stage of the development of the education system, the unification of the efforts of the state and society in solving the problems of higher education, the provision of professorial teaching is relevant. members and representatives of the public, in the form of parents or official representatives, the possibility of choosing the content, forms and methods of education, creating conditions for the comprehensive development of the student within the framework of the implementation of the concept of state-public management of the higher education system.

Effective reform of higher education in Ukraine can bring additional financial income to the state budget, lay the groundwork for a favorable investment climate for foreign investors. Therefore, the decentralization of the field of education, which began with the implementation of the Law «On Higher Education», expands the autonomy of universities, giving them the opportunity to independently carry out educational, scientific, educational activities and bear responsibility for the level of training of specialists.

It is possible to implement the provisions of the above-mentioned law in practice, provided that the state creates appropriate conditions for providers of educational services, and not due to the implementation of direct management of this sphere by the state. The main problem in the conditions of the growing autonomy of higher education institutions is the establishment of rational limits of state regulation, improvement of existing and development of its new mechanisms, adequate to modern challenges and trends in the development of the educational market.

To date, despite the foundations of university autonomy laid down by law, in fact higher education institutions have not acquired it. According to the EAU methodology, the level of autonomy of universities is measured by four components: academic, financial, organizational, personnel. Although Ukraine is not included in the list of EUA autonomy rating countries, within the framework of the ATHENA project, supported by the European Union TEMPUS program, a study of the state of autonomy of Ukrainian universities was conducted based on the existing experience of rating countries.

The results showed that changes in the legislation of Ukraine made it possible to achieve certain shifts in the direction of increasing the level of organizational (from 44% to 68%) and academic autonomy (from

51% to 57%). The level of organizational autonomy remains low in terms of the components of organizational autonomy related to the selection of the manager, criteria for his candidacy, the removal procedure, the establishment of the term of office, as well as the right of the institution to invite persons who are not its employees to its management bodies. Regarding academic autonomy, the lack of rights in the institution to independently determine admission rules remains a weak point.

Limiting factors in the processes of modernization of the higher education system can be defined as (Table 1):

1. financial disincentives: reduction of budget funding; lack of private investment; slow pace of attracting foreign investments; underdevelopment of university endowment funds; low rates of commercialization of university research results; insufficient financial autonomy of higher education institutions; shortcomings in the organization of financial management both at the national and local levels;
2. normative and legal factors: instability of the legislative framework in the spheres of higher education, regulation of entrepreneurial activity, foreign investment, taxation; insufficient level of harmonization of current national legislation with European norms; incomplete coherence of the provisions of normative legal acts in the field of higher education;
3. material and technical factors: outdated equipment of educational and scientific laboratories of the vast majority of institutions of higher education; slow pace of introduction of modern information and communication technologies in educational and research processes; slow updating of profile, professional software; low level of development of innovative infrastructure at universities;
4. socio-economic barriers: political, economic, geopolitical, social instability in the country, which is accompanied by a frequent change in the priorities of foreign economic, scientific and technical, innovative, educational activities; deficit of the state budget, which in the analyzed context means the formation of a tendency to reduce state funding of higher education; demographic and migration problems of the country;
5. endogenous disincentives: low adaptability of individual institutions of higher education; unpreparedness and resistance to innovative changes on the part of employees of universities and institutes; outdated methods of university management; the low level of flexibility of individual educational institutions and, as a result, their inability to adequately and promptly respond to the demands of the exogenous environment.

Table No. 01. Targeted priorities for the application of economic methods in regulating the processes of modernization of the higher education system

Economic method	The target priority of regulating the development of the higher education system	The target priority of ensuring modernization changes in the higher education system
Tax regulation	Regulatory influences on institutions of higher education	Encouraging enterprises to cooperate with universities in education and research
Investment regulation	Helping to increase the level of investment attractiveness of the higher education system	Stimulation of the inflow of investment resources from the entrepreneurial sector into the higher education system
Financial and credit regulation	Optimizing the use of limited financial resources	Improvement of targeted financial support tools for higher education institutions and enterprises developing cooperation with universities and institutes
Budget regulation	Improvement of approaches to: distribution of state orders for personnel training for the national economy; state funding of research works carried out by institutions of higher education	Implementation of tools for targeted support of projects, which involves the development of cooperation between higher education institutions and the business and public sectors

Source: systematized by the authors.

The choice of institutional levers for ensuring the adaptability of higher education is based on taking into account the following aspects:

1. complexity in regulation, which is explained by the complex structure of relationships between stakeholders;
2. the dynamism of the institutional environment, which is manifested in changes in the development trends of individual institutions and the nature of relations between subjects of the higher education system;
3. the destructiveness of the influence of exogenous environmental factors on the processes of ensuring the adaptability of the higher education system;
4. the difficulty of synchronizing the activities of institutional subjects, caused by difficulties in harmonizing their interests and goals.

Table No. 02. Levers of ensuring the adaptability of the national system of higher education

Class	Characteristics of constituent elements	Justification of the use of levers in ensuring the adaptability of the higher education system
Administrative levers	Implementation of strategic planning; promotion of the development of external contacts, research and innovation activities, personnel support of the national economy, control over the quality of educational services	Ensuring purposeful development of the higher education system in accordance with state strategic priorities and current trends in the global educational environment. Formation of prerequisites for increasing the competitiveness of domestic institutions of higher education and increasing the quality of educational services
Regulatory and legal levers	Current legislation, its harmonization with international legal norms; strategies, concepts, etc.	Creation of a favorable legal field for the interaction of institutional subjects
Financial and credit levers	Development of the practice of educational lending; preferential lending	Creation of a favorable financial and credit environment for economic entities developing cooperation with higher education institutions
Tax levers	Preferential taxation, optimization of the tax structure	Promoting the formation of a favorable investment climate in the field of higher education; stimulating business sector entities to invest in the educational and research activities of universities
Social and psychological	Informational and promotional activity in Ukrainian society and abroad	Formation of a positive image of the domestic system of higher education and the reputation of its subjects at the national and international level

Source: systematized by the authors.

Table 2 systematizes the institutional levers that, in our opinion, can be effectively used by state institutions in the process of ensuring the adaptability of the higher education system to the current turbulent

conditions of the development of the national economy and its gradual transition to information-based functioning.

The levers presented in the table should be implemented under the conditions of their optimized combination with a predominance of elements that have an indirect influence (financial and credit, tax, social and psychological levers). With regard to administrative and regulatory levers, it is necessary to emphasize the problem of low legal culture of the country's population, which is often manifested in incomplete or selective compliance with current legislation.

The improvement of the institutional environment for ensuring the adaptability of the higher education system to the conditions of the information economy is aimed at increasing the competitiveness of universities and reducing the risks of the destructive influence of exogenous environmental factors. At the same time, emphasis should be placed on creating a favorable climate for investing in the fields of education and science by introducing relevant norms and rules with the help of state mechanisms of economic and legal regulation. The imperfection of the institutional environment in Ukraine is explained by:

1. the obsolescence of formal institutions, their inconsistency with the modern realities of the formation of the information economy - incomplete observance of property and intellectual property rights, in particular, problems of the development of the financial market (including in terms of educational lending), unsatisfactory technical and technological equipment of universities, low rates of implementation of information and communication technologies, mediocre quality of educational services, etc.;
2. the underdevelopment of informal institutions - the low level of activity of the public sector in the development of higher education, innovative culture and trust in society;
3. the existence of institutional traps.

We have grouped the main subjects of the higher education system by levels:

1. global (elements of the management subsystem) - international organizations in the field of education (UNESCO - the United Nations International Commission for the Development of Education, Science and Culture; Organization for Economic Cooperation and Development; International Monetary Fund; World Bank; Council of Europe; International Association universities; the European Center of Higher Education; the European Association of Higher Education Institutions; the Association of Specialists in International Education; the Union of National Student Unions of

Europe, etc.), the separation of which is justified by the growing globalization of the educational environment, the intensification of the processes of integration of national systems of higher education into the global space and the active influence of these organizations on the policy of countries in the field of education and science and competition in the domestic markets of educational services;

2. national (mainly elements of the governing subsystem) - state organizations and institutions in the field of education and science (the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Academy of Sciences of Ukraine; the Ministry of Education and Science of Ukraine; the National Agency for Quality Assurance of Higher Education; the Ministry of Finance of Ukraine, The Ministry of Economic Development and Trade of Ukraine, the Institute for Modernization of the Content of Education, the Council of Rectors of Higher Education Institutions, the Ukrainian Association of Students, etc.), which exert a direct influence on the reformation and modernization processes in the country's higher education system;

3. local (elements of the managed subsystem) - institutions of higher education (including administrative, scientific and pedagogical and student staff) that are present in the domestic market of educational services of the country (including foreign universities, the functioning of which exacerbates competition in the market).

Table No. 03. Powers of state authorities in the field of higher education, according to the Law of Ukraine «On Higher Education»

Body	Authority, according to the Law of Ukraine
Cabinet of Ministers of Ukraine	1) ensures the implementation of state policy in the field of higher education;
	2) organizes the development, approves and ensures the implementation of national programs for the development of the sphere of higher education;
	3) ensures the development and implementation of measures to create a material and technical base and other conditions necessary for the development of higher education;
	4) issues normative legal acts on higher education issues within the limits of its authority;
	5) directly or through a body authorized by him, exercises the rights of the founder, provided for by this and other laws of Ukraine, in relation to state-owned institutions of higher education;
	6) creates effective mechanisms for the realization of the rights of higher education institutions, scientific, scientific-pedagogical and pedagogical workers and persons studying in higher education institutions provided for by the Law;

	7) ensures broad participation of independent experts and representatives of the public, employers and persons studying in higher education institutions in the preparation and adoption of draft regulations and other decisions related to the regulation of the interaction of the components of the higher education system and its functioning as a whole;
	8) establishes special conditions for the training of specialists in priority high-tech areas in accordance with state target programs;
	9) ensures monitoring of compliance with the legislation on higher education;
	10) ensures the implementation of control over compliance with the restrictions established by the Law when approving the composition of the National Agency for Quality Assurance of Higher Education;
	11) approves the composition of the National Agency for Quality Assurance of Higher Education and, in the cases established by the Law, terminates the powers of members of the National Agency for Quality Assurance of Higher Education
The central body of executive power in the field of education and science	1) develops a strategy and programs for the development of higher education and submits them for approval to the Cabinet of Ministers of Ukraine;
	2) participates in the formation and implementation of state policy in the field of higher education, science, training of specialists with higher education;
	3) systematically monitors and analyzes the needs of the domestic labor market, makes proposals regarding the scope and directions of state support for the training of specialists with higher education;
	4) conducts analytical and prognostic activities in the field of higher education, determines the trends of its development, the influence of the demographic, ethnic, socio-economic situation, the infrastructure of the production and non-production spheres, forms strategic directions for the development of higher education taking into account scientific and technical progress and other factors, summarizes world and domestic experience of higher education development;
	5) carries out international cooperation on issues within its competence;
	6) ensures the functioning of the Unified State Electronic Database on Education;
	7) forms a list of fields of knowledge and a list of specialties for which higher education applicants are trained, in particular at the request of the National Agency for Quality Assurance of Higher Education, and submits them for approval to the Cabinet of Ministers of Ukraine;
	8) approves forms of documents on higher education (scientific degrees) of the state model;
	9) carries out licensing of educational activities in the field of higher education and control over compliance with the requirements of licensing conditions in accordance with legislation;
	10) forms proposals and places a state order for the training of specialists with higher education in the manner established by legislation;
	11) promotes employment of graduates of higher education institutions;
	12) approves the list of specialties for which admission to study is carried out taking into account the level of creative and/or physical abilities of entrants;

	13) on behalf of and within the limits established by the Cabinet of Ministers of Ukraine, implements the rights and duties of the authorized body in relation to state-founded institutions of higher education;
	14) establishes the procedure for certification of teaching staff of higher education institutions for assigning them qualification categories and teaching titles in accordance with the procedure established by legislation;
	15) forms an attestation board, which, based on the principles of transparency and openness, approves decisions of the academic councils of higher education institutions (scientific institutions) on awarding scientific and scientific-pedagogical employees the academic titles of senior researcher, associate professor and professor, organizes its work, considers the issue of depriving these titles , draws up and issues relevant certificates, as well as considers appeals against the decisions of the certification board;
	16) develops and approves standards of higher education and standards of educational activity in agreement with the National Agency for Quality Assurance of Higher Education, publishes them on its official website;
	17) approves, in agreement with the National Agency for Quality Assurance of Higher Education, the procedure for recognition of higher education degrees and scientific degrees obtained in foreign institutions of higher education and carries out the procedure for their recognition, except for the cases provided for by the Law;
	18) at the request of the National Agency for Quality Assurance of Higher Education, approves the procedure for awarding academic degrees by specialized academic councils of institutions of higher education (scientific institutions) and submits it for approval to the Cabinet of Ministers of Ukraine;
	19) establishes the procedure for awarding academic titles to scientific and scientific-pedagogical workers by institutions of higher education and scientific institutions, as well as the procedure for depriving them of academic titles;
	20) issues normative legal acts on higher education issues in the cases stipulated by the Law;
	21) at the request of the National Agency for Quality Assurance of Higher Education, approves regulations on accreditation of educational programs and the procedure for institutional accreditation;
	22) develops licensing conditions for carrying out educational activities in the field of higher education and submits them for approval to the Cabinet of Ministers of Ukraine;
	22-) develops the procedure for training applicants for the degree of doctor of philosophy and doctor of science in higher education institutions (scientific institutions) and submits them for approval to the Cabinet of Ministers of Ukraine;
	23) develops provisions on the procedure for implementing the right to academic mobility and submits it for approval to the Cabinet of Ministers of Ukraine;
	24) determines the standards of material, technical and financial support of institutions of higher education in accordance with the procedure established by the Cabinet of Ministers of Ukraine;
	25) exercises other powers in accordance with legislation

State bodies whose sphere of management includes institutions of higher education	1) participate in the implementation of state policy in the field of higher education, science, professional training of specialists, in licensing of educational activities carried out by institutions of higher education;
	2) form proposals and place a state order for the training of specialists with higher education in the manner established by legislation;
	3) participate in determining the standards of material, technical and financial support of institutions of higher education;
	4) promote the employment of graduates of higher education institutions belonging to the sphere of their management, carry out the distribution of graduates of higher military educational institutions (higher education institutions with specific training conditions) for further service and provide graduates of other higher education institutions with information about the availability of vacancies in legal persons regardless of the form of ownership and subordination for possible employment;
	5) analyze the quality of educational activities of institutions of higher education that belong to the sphere of their management;
	6) directly or through a body authorized by them, exercise the rights and obligations of the founder, provided for by this and other laws of Ukraine, in relation to institutions of higher education that belong to the sphere of their management;
	7) exercise other powers in accordance with legislation

Source: systematized by the authors.

In Ukraine, in accordance with the Law «On Higher Education» (2014), higher education institutions have been granted autonomy in drawing up curricula, and each educational institution can, at its own discretion, set mandatory disciplines for studying in one or another specialty. This makes it possible to respond more promptly to modern challenges.

Purposeful influence on the processes of ensuring the adaptability of the higher education system in order to bring it into line with the key challenges of the information economy and the global educational space requires coordination of activities, coordination of interests and analysis of the systemic properties of key subjects.

The scientific problem is that ensuring the adaptability of the higher education system requires synchronizing and organizing the interaction of systems that are characterized by fundamentally different characteristics, which have different natures and patterns of development, corresponding to the laws of systems theory or theoretical provisions of synergy. Based on this, we consider it expedient to justify the system-synergistic research paradigm of the outlined problem.

Conclusion

Thus, the study of the theoretical and conceptual foundations of the state regulation of the higher education system on the example of Ukraine made it possible to conclude that the improvement of the state regulation of the higher education system involves the optimization of the administrative and legal mechanism, the expansion of society's participation in management, the further development of academic freedoms and the autonomy of educational organizations with the necessary preservation of state influence, as well as state support in various forms.

Changes in the legislation of Ukraine made it possible to achieve certain shifts in the direction of increasing the level of organizational and academic autonomy of universities. However, today the level of the components of organizational autonomy related to the selection of the manager, the criteria for his candidacy, the removal procedure, the establishment of the term of office, as well as the right of the institution to invite persons who are not its employees to its management bodies, remains low. Regarding academic autonomy, the lack of rights in the institution to independently determine admission rules remains a weak point.

It was determined that the target priorities of the regulation of the development of the higher education system are: regulatory influences on higher education institutions, promotion of increasing the level of investment attractiveness of the higher education system, which needs greater autonomy for the ability to quickly respond to new challenges caused by globalization processes, optimization of the use of limited financial resources resources, improvement of approaches to: distribution of the state order for the training of personnel for the national economy; state funding of research works carried out by institutions of higher education.

It was determined that the target priorities of the regulation of the development of the higher education system are: regulatory influences on higher education institutions, promotion of the level of investment attractiveness of the higher education system, optimization of the use of limited financial resources, improvement of approaches to: distribution of state orders for the training of personnel for the national economy; state funding of research works carried out by institutions of higher education.

It has also been proven that in order to ensure modernization changes in the higher education system, it is necessary to: encourage enterprises to cooperate with universities in education and scientific research; stimulating the inflow of investment resources from the business sector into the higher education system; improvement of targeted financial support tools for higher education institutions and enterprises developing cooperation with universities and institutes; implementation of targeted project support tools, which involves the development of cooperation between higher education institutions and the business and public sectors.

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Aspects of implementation of the law enforcement function of the state under the legal regime of martial law in Ukraine

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Abstract

The aim of the article was to analyze the main scientific and practical provisions with respect to the aspects of ensuring the implementation of the law enforcement function of the state under the legal regime of martial law in Ukraine. The object of the analysis were the social relations arising in the sphere of its implementation under the legal regime of martial law. The diversity of the posed object of research gave rise to the use of a wide range of methods, namely: analysis, logical, generalization, interpretation, system and structural, comparative and legal method. It was concluded that the most essential mechanism for the functioning of complicated legal regimes for the state is the provision of human and citizens' rights and freedoms (performance of law enforcement functions) regardless of varying circumstances, situations and factors. In practical terms, the rights violated as a result of the martial law regime must be restored by the state, which includes a set of relevant actions and means. The implementation aspects of the State's law enforcement function are defined as the main vectors that are grouped according to common characteristics.

Keywords: State functions; law enforcement; martial law; rights and freedoms; war in Ukraine.

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Aspectos de la implementación de la función de aplicación de la ley del Estado bajo las condiciones del régimen legal de la ley marcial en Ucrania

Resumen

El objetivo del artículo fue analizar las principales disposiciones científicas y prácticas con respecto a los aspectos de garantizar la implementación de la función de aplicación de la ley del Estado, bajo el régimen legal de la ley marcial en Ucrania. El objeto del análisis fueron las relaciones sociales que surgen en el ámbito de su implementación bajo el régimen legal de la ley marcial. La diversidad del objeto de investigación planteado dio pie a la utilización de una amplia gama de métodos, a saber: análisis, lógico, generalización, interpretación, sistema y método estructural, comparativo y jurídico. Se concluyó que el mecanismo más esencial para el funcionamiento de los regímenes jurídicos complicados para el Estado es la provisión de los derechos y libertades humanos y ciudadanos (desempeño de las funciones de aplicación de la ley) independientemente de las circunstancias, situaciones y factores variables. En términos prácticos, los derechos vulnerados como consecuencia del régimen de ley marcial deben ser restituidos por el Estado, lo que incluye un conjunto de acciones y medios pertinentes. Los aspectos de implementación de la función de aplicación de la ley del Estado se definen como los principales vectores que se agrupan de acuerdo con características comunes.

Palabras clave: funciones del Estado; aplicación de la ley; ley marcial; derechos y libertades; guerra en Ucrania.

Introduction

The rights and freedoms of a person and citizen in Ukraine and the world are the important indicators that provide a reference point in the activities of the State. Ensuring them is one of the main tasks of all State institutions without exception, which in turn belongs to one aspect and literally permeates the institution of law enforcement in the system of State functions. However, the invasion of the Russian Federation on the territory of Ukraine changed both the world order and the state of protection of the rights of individuals on the territory of Ukraine (Prytuliak *et al.*, 2022).

The introduction of martial law is reflected in the provision of constitutional human rights under martial law conditions (Panasiuk *et al.*, 2022). That is why the law enforcement function of the State, the procedure for its implementation and the main vectors (directions) are almost the most important and relevant in the conditions of a large-scale military invasion of Ukraine by Russian troops.

The content and essence of the concept of the law enforcement function has been studied by many scientists and scholars; it is fragmentarily highlighted in a number of regulatory and organizational and administrative acts, but some aspects of its implementation, especially during the operation of the legal regime of martial law, remain neglected.

The legal regime of martial law, its administrative essence, fundamentally changes the work algorithms of State authorities and, accordingly, dynamizes and globalizes law enforcement processes in general. In such circumstances the risk of significant violation of the citizens's liberties remains extremely high.

The Office of the United Nations High Commissioner for Human Rights also notes this in a declarative format, emphasizing that during the investigation of the circumstances and events related to the beginning of the Russian invasion of Ukraine at the end of February and in March 2022 in Kyiv, in the Chernihiv, Kharkiv and Sumy regions, the use of explosive weapons with a wide range of action in populated areas was recorded, causing 1,495 deaths and injuries in these four regions alone during the reporting period, which represents 70% of the civilians killed and harmed in these areas and the damage or destruction of thousands of residential buildings, schools, hospitals and basic infrastructure facilities (Korotkyi 2022).

The above, as well as the absence of standardized and thoroughly developed scientific works on the issues of determining aspects of the law enforcement function of the State, which in the general legal sense create prerequisites for fragmented implementation by specially authorized subjects of various law enforcement branches, necessitate the need for research in the indicated direction.

1. Methodology

The outlined object of research gives grounds for the use of a wide methodological toolkit. Thus, the authors used the method of analysis, which made it possible to establish the basic views on law enforcement as a function of the State mechanism, which should be implemented in any, including complicated conditions (for example, during martial law), as a basic theoretical legal category.

Logical method was applied in the context of the need to structure important State processes and functions assigned to it, made it possible to consistently investigate all the necessary processes, draw scientifically based and accessible conclusions.

The generalization method revealed the prospects for composition and logically correctly presentation of the text, which should clearly convey to the reader the scientific opinion and position held by the authors, and also allowed, as a result of the application of other methods, to complementarily present the proposals based on the results of the discussion.

The method of interpretation in the legal sense was used to clarify the legal content of legal instruments regulating the implementation of the law enforcement function of the State and, in fact, the operation of the legal regime of martial law in Ukraine.

The system-structural method, as one of the forms of analysis of legal validity, allowed to combine all the information obtained in relation to the object of research and to present it consistently, logically and in an orderly manner.

The comparative legal method was applied in the context of making analogies and parallels in the interpretation of aspects of the law enforcement function of the State under the legal regime of martial law in Ukraine and in other countries.

2. Literature Review

It should be noted that a number of researchers analyzed the problematic issues of implementing the law enforcement function of the State and its aspects. For example, Vakarova (2019) drew attention to the issue of constitutional and legal status of law enforcement agencies, which, in our opinion, is an element of ensuring certain aspects of the law enforcement function of the State, and needs to be used in our research.

Bilas (2016) also paid considerable scientific attention to the issues of law enforcement activities of the European Union countries, proposing to incorporate th relevant experience into the activities of Ukraine.

Mamchur (2019) in her scientific research thoroughly characterized the law enforcement function of the state and noted the presence of significant shortcomings.

Shay (2012) studied the issues related to the theoretical and legal understanding of the law enforcement function of the legal State (its theoretical and practical aspects).

However, a prominent place is occupied by the work by Bezpalova (2014), who examined the issues related to the administrative and legal mechanism of implementing the law enforcement function of the state at the doctoral dissertation level.

At the same time, the effect of the legal regime of martial law in Ukraine significantly complicated the functioning of the State apparatus and caused the need for additional scientific study of the law enforcement function of the State in wartime conditions. Another important argument for the need to research this topic is that Ukraine, having chosen the course of European integration and received the status of a candidate for the European Union membership, took democracy and law and order as the formats and concept of life of the entire society, which, in turn, requires systematic provision of effective functioning of all State institutions and the State as an entity in general.

3. Results and discussion

First of all, the issue of the conceptual-categorical relationship, which is currently used in the scientific article, needs to be clarified, since, depending on the content of the basic principles, it is possible to substantiate logical conclusions. The essence of the term of «function» can be established by means of lexical and legal analysis of the corresponding definition, since the content of its main features is laid down in this way. "Functio", from Latin, literally means the performance of something, some activity; it serves to determine the role of a separate part in the general system of a certain phenomenon.

Khamula (2013) emphasizes that in the theory and philosophy of law, as well as the history of the State, the use of this term in the national sense and through the prism of law enforcement as a socio-political phenomenon, the general structure is personified by the State as the main subject of ensuring human and citizen's rights and freedoms, and law enforcement agencies act as tools for achieving the outlined. That is, the function of the State in the context of law enforcement is a regulatory obligation, which is implemented with the help of a certain authority (or specifically authorized service).

Besides, one should pay attention to the fact that there is a certain terminological inconsistency with the interpretation of the very phenomenon of «protection» and «defense» of law. For example, Parshak (2014) justifies that they differ because their content and essence direct their main characteristics to achieve different goals and in various ways. For example, the author emphasizes that protection is aimed at preventing violations of rights, while their defense is performed during the actual breach of rights, the threat of it, or when preventing their implementation. This means that the categories cannot be equated, since «rights protection» in the legal sense means a static state of legal norms aimed directly at preventing rights violations.

Thus, we should note that through the prism of legal statehood, the prerequisites for the implementation of the law enforcement function of the State are those principles and fundamental categories that make it impossible to violate and even attempts or the emergence of tendencies to encroach on other people's rights.

Since the most characteristic features of modern civilization are the rule of law, the priority of public interests and the supremacy of human rights in general – the issue of implementing the law enforcement function of the state is quite acute. Law enforcement activity, the organization of which is entrusted to the State as the central institution in the legal relations of society, involves the use of force and coercion, which are actually forms (tools) of the State law enforcement mechanism, which can be implemented only by the authorities.

Since the state authorities, their officials are obliged to act exclusively within the limits and in the manner provided for by the legislation of Ukraine, specifically coercion and force (as forms of ensuring the implementation of the law enforcement function of the State) must be clearly regulated within outlined limits and correspond to the principles of legality and proportionality of the damage caused and the averted offense; in addition, such activity cannot be carried out by anyone, but only by the authorized actors.

When referring to the concept of «law enforcement function of the State», it should be noted that the scientists put different meanings into it, which can negatively affect the further study of this phenomenon in synergy with the essence and content of the legal regime of martial law. That is why it is suggested to describe it briefly.

Thus, it is an independent and priority direction of the State policy, which is carried out with the help of legal means to achieve a certain social effect, such as the protection of law in general, the foundations of the constitutional system, including rights, freedoms and legitimate interests of an individual, strengthening legality and law and order, and at the same time acts as a legal form of achieving other goals of society and the country.

Thus, the corresponding phenomenon has a clear direction – the protection of laws and interests of a person by all legal instruments and means available, as well as the expansion of the number and pluralization of their forms, taking into account the development of society and civilizational assets.

Some researchers draw attention to the fact that the law enforcement function of the State is a tool and direction of exclusively internal State activity, which is designed to ensure the prevention of violations of all social relations established and regulated by law (Moskovets, 2011). In our opinion, this interpretation can be considered only in a narrow understanding (in

the work of a separate sectoral law enforcement institution), since the activity of Ukraine, as the actor of international humanitarian law, also extends its boundaries to the protection of citizens, including abroad, as well as the prosecution of persons who have committed offenses, including on international level.

As a rule, researchers distinguish the following sub-functions among the internal elements of the law enforcement function of the State: protection of the constitutional order; protection of human rights and freedoms; property protection; protection of public order; protection of natural resources and environment; fight against crime (Buhaichuk 2017).

At the same time, such a view should be based on the classification criteria, since, for example, the above classification is more than applicable (even practically oriented) in terms of the scope of law enforcement, and through the prism of the characteristics of the tools of achievement, it can be a set of the list of measures of persuasion and coercion enshrined in the legislation.

A number of scientists justify the position that the types of law enforcement functions of the State can be: restrictive, proactive, preventive, resocialization, etc., which in turn can also be considered as structural elements of the corresponding theoretical and legal category.

However, since we have outlined the aspects of this term as a dynamic element of social and legal structure of society, which will allow us to characterize the relevant phenomenon through the prism of risks and threats of systematic violation of human and citizen rights and freedoms under the legal regime of martial law in Ukraine, it is proposed to provide their meaningful characteristics by outlining the content and differences.

Thus, relying on the position by Kritcak (2009), which, in our opinion, should become the main one in the issue of defining aspects of the law enforcement function of the State, the following targeted programs for its implementation will be distinguished in jurisprudence: prevention of individual violations of public order that may occur; termination of current violations of public order; general deterrence of potential violations of public order in the future; restoration of public order after it has been violated; correction of behavior that causes a violation of public order; rehabilitation of victims of public order violations; restoration in a broader social sense in order to eliminate conditions that may cause violation of public order.

By accepting this interpretation, we state that without a meaningful characterization of the essence and circumstances created by the legal regime of martial law in Ukraine, it will be impossible to unify the relevant aspects.

The aggression of the Russian Federation against Ukraine, first of all, had a significant negative impact on the observance of the rights of every person and citizen living not only on the territory of Ukraine, but also throughout the world, since it provoked a commodity crisis, the impossibility of maintaining Ukraine's grain turnover; the usual level of migration of the world's population, tourist routes and other civilized aspects of the functioning of society are at risk.

First of all, through the prism of people-centrism, the freedoms of an individual are under threat, since the cruel atrocities of the Russian invaders, who illegally started hostilities on the territory of peaceful Ukraine, negatively (and in some places destructively) affect the observance of the institutions of laws in general, the possibility of State provision of social and individual benefits.

At the same time, the legislation of most countries of the world contains an indication of a special legal structure that would grant additional rights to the public administration in cases when theSstate is faced with unforeseen situations that make the normal functioning of society impossible, overcoming which requires the mobilization of all available resources – the so-called emergency regimes or martial law regimes state (Slavko, 2016).

The legislation of Ukraine defines that martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the independence of Ukraine, its territorial integrity, and grants the relevant State agencies, military command and administrations and local self-government bodies of authorities necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the State, its territorial integrity, as well as temporary restriction of the constitutional rights and freedoms of a person and citizen and the laws and interests of legal entities resulting from the threat with an indication of the period of validity of these restrictions (Law No. 389-VIII, 2015).

Thus, the legal regime of martial law is the introduction of the series of measures aimed at ensuring the prevention of violation of the liberties of a person and a citizen under significant threat in the manner of consolidation of all State law enforcement institutions and providing them with tools to achieve the goals of establishing law and order and protecting the population.

Kyrychenko *et al.,* (2019), analyzing the relevant direction, draw attention to the fact that under the introduction of martial law, the task of ensuring the rights and freedoms of a person and a citizen acquires special importance. Clearly, when the normal functioning of the State and society becomes impossible, individual interests are subject to certain restrictions.

Precisely because any State activity is directed and regulated by the legislation of Ukraine, its individual norms directly «determine the rules», even in matters of narrowing the limits of the rights. For example, the Law of Ukraine "On the Legal Regime of Martial Law" (Law No. 389-VIII, 2015) establishes the main mechanisms for the operation of such a regime, the limitations that are permissible and a clear list of the functions and powers of authorities, in order to ensure law and order and repel armed aggression or the threat of attack, other danger, respectively to the legislation of Ukraine.

Fihel (2015), in turn, draws attention to the fact that the operation of the legal regime of martial law in Ukraine is regulated not only by national legislation, but also by the international instruments ratified by Ukraine, since each person should undergo restrictions established by law solely for the purpose of ensuring proper recognition and respect for the rights and freedoms of others and ensuring fair requirements of morality, public order and general welfare in a democratic society.

However, according to Topolnitskyi (2019) in relation to the specifics of the Russian armed aggression against Ukraine, which, in his opinion, lies not in the general methods and goals of war, but in the unconditional violation of the system of basic international legal agreements, all customs of warfare, the issue of the ratio of limited liberties of an individual with the aim of averting the likely damage is gaining considerable seriousness and urgency, since, as we have noted, the level of damage already caused by the Russian invaders both to the State as an actor of international legal relations and to the society and each of its members individually, is extremely high.

Senatorova (2018), having analyzed international legal provisions and in particular judicial practice, notes that restrictions on human rights and freedoms are applied only under clearly defined conditions, namely: 1) their determination by legislation and clear delineation of the boundaries and methods of their implementation (law must be sufficiently accessible; the rule of law must be formulated clearly enough to enable a person to foresee the consequences of the relevant actions); 2) be necessary in a democratic society (proportional in terms of limiting the liberties of an individual and the achieved (protected) interests of society); 3) interest-oriented (since legislation, including international one, enshrines the list of goals for limiting each specific right, corresponding restrictions and vice versa; the procedures for ensuring them should be properly incorporated).

Therefore, the legal regime of martial law in Ukraine in the conditions of undeclared war by Russia Federation, determines the situation in which the law enforcement function of Ukraine as the actor of international legal relations and the central element in the system of national legal relations plays a key role in all types of relation. The content of this function and its main purpose, individual aspects and directions are clear.

Among the most important are: the cessation of further violations of rights and freedoms that have already been violated; the prevention of violations of the rights and freedoms of vulnerable persons; introduction of comprehensive preventive programs to avoid the spread of deviant manifestations in society at all levels.

Conclusions

Thus, on the basis of the analyzed approaches to the concept and essence of the law enforcement function of the State as a theoretical and legal structure, the mechanism and content of the legal regime of martial law, its close mutual (dualistic) relationship with law enforcement, as well as other views and opinions of scientists and researchers regarding of the studied phenomenon, the main aspects of the law enforcement function of the State under the legal regime of martial law, in our opinion, may be such as:

- Organization and prevention of re-occupation of the de-occupied territories, or centralized provision of resettlement of local residents in order to ensure the highest social value – human life.
- Establishment of the main mechanisms and structural subdivisions of law enforcement agencies to ensure the compliance with the inviolable and those that cannot be limited rights and freedoms of an individual and citizen both on the territory of the entire State and, first of all, on the de-occupied territories.
- Ensuring the implementation of State programs and strategies aimed at improving and raising the level of public understanding of potential and real threats of occupation of their permanent residences by enemy troops.
- Creation of mechanisms for the social rehabilitation of injured persons, which in turn will contribute to both the restoration of violated rights and within the scope of the law enforcement function, - to the prevention of further violations.
- Introduction of a wide range of social and legal instruments and regulators of State influence on the issues related to the reconstruction of destroyed territories (first of all – critical infrastructure, and immediately after – civilian objects and housing stock).
- The prospect of further research, in our opinion, lies in the need to outline the main actors of such activity and determine their competence in relation to each of the outlined aspects with a simultaneous justification of the interconnectedness of the functions and duties specified and available in the legislation.

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Ukraine's security and Pakistan's security: mechanisms to overcome threats

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Abstract

The sphere of security plays an important role in the domestic and foreign policy of states. In this regard, the object of the study were security threats that determine stability in Ukraine and Pakistan. The authors used the method of comparative analysis to draw parallels between the security of Ukraine and Pakistan and identify possible ways to improve it. It is concluded that, both Ukraine and Pakistan are quite geopolitically distant, have different histories and state-building processes, but are affected by traditional and "non-traditional" security threats. Definitely, the main unifying factor for the states is the antagonistic or "enemy" state - India for Pakistan and Russia for Ukraine, which becomes a catalyst for the formation of national identity and unity of society. The conflicts in Pakistan (Kashmir, Baluchistan and Pashtunistan) and Ukraine (war in Donbass, illegal annexation of Crimea by the Russian Federation) have had common consequences and mechanisms for overcoming them, which are implemented in the context of the internal and state policy of both Kiev and Islamabad.

Keywords: Ukraine and Pakistan security; security threats; Ukraine-Russia relations; Pakistan-India relations; international politics.

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La seguridad de Ucrania y la seguridad de Pakistán: mecanismos para superar las amenazas

Resumen

La esfera de la seguridad juega un papel importante en la política interior y exterior de los Estados. En este sentido, el objeto del estudio fueron las amenazas a la seguridad que determinan la estabilidad en Ucrania y Pakistán. Los autores utilizaron el método de análisis comparativo para establecer paralelismos entre la seguridad de Ucrania y Pakistán e identificar posibles formas de mejorarla. Se concluye que, aunque Ucrania como Pakistán están bastante distantes geopolíticamente, tienen historias y procesos de construcción del Estado diferentes, se ven afectados por amenazas de seguridad tradicionales y "no tradicionales". Definitivamente, el principal factor unificador de los Estados es el estado antagonista o "enemigo": India para Pakistán y Rusia para Ucrania, que se convierte en un catalizador para la formación de la identidad nacional y la unidad de la sociedad. Los conflictos en Pakistán (Cachemira, Beluchistán y Pastunistán) y Ucrania (guerra en Donbass, anexión ilegal de Crimea por parte de la Federación Rusa) han tenido consecuencias comunes y mecanismos para superarlos, que se implementan en el contexto de la política interna y estatal de tanto en Kiev como en Islamabad.

Palabras clave: seguridad de Ucrania y Pakistán; amenazas a la seguridad; relaciones entre Ucrania y Rusia; relaciones entre Pakistán e India; política internacional.

Introduction

The security sphere is an indicator of the level of interdependence not only of domestic and foreign policy of the state, but also an attribute of the construction of the region, where the national interests of its subjects collide.

Ukraine has identified the priority of its foreign policy to join the European Union not only as geographical unity with the European Community, but also in the political, economic and social spheres. Therefore, Ukraine's security is directly interconnected and interdependent with EU security. In parallel with Pakistan, it is possible to confidently assert that this state of South Asia region also has determinism in its policy: security of the state – security of the region.

Actualization of the European direction of Ukraine's foreign policy is connected with the 2014 Revolution of Dignity and the aggression of the neighbouring state – Russia against Ukraine (the annexation of the

Crimea and the hostilities in eastern Ukraine (Donbas). After the events of 2014, the reformation of Ukraine's security policy took place, realizing the importance of a military factor in the country's internal and external policies. The Ukrainian state faced new challenges and threats for itself – the terrorist-minded separatist alignments and the aggression of the neighbouring state.

In turn, Pakistan, as a South Asia state, also has such characteristic features as counteraction to the neighbouring state – India, in particular, using military methods, and the overcoming of the consequences of existing territorial conflicts as well. The consequences of the conflicts for Pakistan's security environment are common to Ukraine's realities – the anti-terrorist operation, the problem of internally displaced persons and the impact of all security threats on the social and economic spheres of the states.

Therefore, the authors aim to carry out a comparative analysis of the security of Ukraine and Pakistan. Firstly, it is necessary to thoroughly consider the threats and their sources, which are identified by states at the official level and objectively exist and destabilize the security and regional environment to which these states belong. Secondly, consider the conflicts in Pakistan (the problems of Kashmir and Pashtunistan) and the problem of Donbas in Ukraine in terms of the impact of conflicts on states and mechanisms for overcoming their consequences. The authors limited the chronology of study by the Russian Federation invasion of Ukraine in February 2022, because this event changed the objective field of security situation in Ukraine and reasons to compare with Pakistan.

1. Research Objectives

The aim of the research was to carry out a comparative analysis of the security of Ukraine and Pakistan, using a category of threats as a determinant of estimation of security situation and policy of both countries.

The aim involved the following research objectives:

- Consider the threats and their sources, which are identified by Ukraine and Pakistan at the official level and destabilize the security and regional environment to which these states belong, dividing them on traditional and non-traditional types.
- Analyze the peculiarities of conflicts in Pakistan (the problems of Kashmir and Pashtunistan), the problem of Donbas in Ukraine and some non-traditional aspects of security, based on the evolution of relations with the antagonist state (India to Pakistan and Russia to Ukraine)

- Find out similarities between security of Ukraine and Pakistan (internal and external levels), estimating mechanisms of overcoming the aftermaths of conflicts.

2. Methods and Theoretical Background

The methodological basis of the study is based on a variety of fundamental scientific methods (problem-chronological, systemic) and methods of political science in the prism of the paradigm shifts of neorealism and constructivism. The systemic approach is a background of the study and allow to consider the security of Ukraine and Pakistan as elements of national and regional levels of international relations. The method of comparative analysis makes it possible to reveal the results of comparisons between the states.

State security is interdependent with the concept of "threat". B. Buzan, a representative of the school of neorealism in international relations, is a supporter of a dualistic approach to the classification of threats to national security: the territory of the state "may be under internal threat, as well as threats may come from outside the state" (Buzan, 1983:83). From the point of view of national security, B. Buzan (Buzan, 1991) distinguishes between military threats (seizure of territory, invasion, occupation, change of government, manipulation of policy), economic threats (exports, import restrictions, price manipulation, debt default, currency control, etc.), and environmental threats.

Chinese researcher Xiong Guangkai explains two big groups of threats, calling them "traditional" (connect with the political and military spheres) and "non-traditional" (terrorism, drug smuggling, serious infectious diseases, piracy, illegal migration, and environmental, economic, financial and information security threats) (Xiong, 2009).

State security is linked to the concept of state identity. The state determines its regional identity by forming images of "I", "others" and "we", which was explained in the study of the Norwegian constructivist I. Newman. "Others" are states that have opposing interests, as a result, a different identity. This judgment is similar to the notions of "enemy" and "threat" in the security system. In turn, the clash of values forms a common regional identity in the format of "we", becomes a tool for cooperation in building a complex of regional security (Taran, 2013).

If there is a conflict of identities, then there are territorial conflicts (Patratiy, 2011). This statement describes the conflict situations in both Pakistan and Ukraine. According to S. Huntington's concept (Huntington, 1993), there is a "clash of civilizations" between Pakistan and India – Muslim

and Hindu, as well as the religious factor underlying them. In particular, Ukraine's orientation towards European integration (European civilization identity) is a difference from the Russian identity ("Russian World") and the idea of Eurasianism.

Note that the current state of affairs in South Asia, according to Professor McGill University (Montreal, Canada) T.V. Paul (Paul, 2006), is defined as a feature of asymmetric conflicts in international relations. Pakistan, from the point of view of T.V. Paul, acts as a "weak" state: the peculiarity of domestic policy (signs of a "garrison" state, the existence of terrorist groups and lack of national identity), military-strategic goals (nuclear "deterrence" of India as an "enemy") and having a strong ally (China).

At the same time, Pakistani researcher I. Ahmed stressed that Pakistan will be able to continue its existence in the format of "garrison" state as long as donors are ready to provide all the necessary resources (Rumi, 2013).

In Ukrainian (and in the world') science, this question remains in the field of little-studied problems (see, for example, works: I. Horobets (Horobets, 2018; 2019a; 2019b), M. Napang, S. Nurhasanah and S. Rohman (Napang *et al.*, 2019) and etc.

It should be noted that the asymmetry of relations and the asymmetry of the conflict are inherent in the security of Ukraine, as a state that has an antagonist – the Russian Federation, as a global player in the international arena, and a state that has a significant military advantage over Ukraine.

According to the security situation, Ukraine and Pakistan can be described as states that contribute to the transformation of the regions to which they belong in the format of regional security complexes (Kotlyar *et al.*, 2020). However, this study will be based on an analysis of threats and their consequences for states in the format of national security (internal situation and counteraction of the antagonist on a bilateral basis).

Therefore, analysing Pakistan's security environment and Ukrainian one, it is possible to classify security threats to each of the states, dividing them into "traditional" and "non-traditional" ones.

For Pakistan's security, it will look like this:

- traditional threats (territorial conflicts with India and Afghanistan, Pakistan and India nuclear confrontation);
- "non-traditional" threats (terrorism combined with Islamic extremism and separatism leading to hostilities, as well as illegal drug trafficking and the problem of Afghan refugees).
- For Ukraine it will be the following variant:
- traditional threats (aggression of Russia and the warfare in eastern Ukraine);

- "non-traditional" (the existence of terrorist-minded alignments of the Donetsk People's Republic (DPR) and the Lugansk People's Republic (LPR), the problem of internally displaced persons, "gas" wars with the Russian Federation).

Thus, Ukraine and Pakistan are diverse states with their own achievements, but they have something consolidating the states – threats and their consequences.

3. Results and Discussion

3.1. Traditional and "non-traditional" threats: evolution of relations with the antagonist state

It should be emphasized that the first consolidating factor in the context of security threats, both for Pakistan and for Ukraine, is the neighbouring state. For Ukraine – Russia, and for Pakistan – India.

As for Ukraine, the National Security Strategy of Ukraine, approved by the decree of the President of Ukraine of September 14, 2020 (President of Ukraine, Decree of the President of Ukraine No. 392/2020, 2020), stated the actual threats to the national security of Ukraine, among which of the top priority are Russia's aggressive actions aimed at attrition of Ukrainian economy and undermining of social and political stability with the aim of abolishing the statehood of Ukraine and capture its territory. Thus, Kyiv officially recognized Russia as a real threat to the national security of Ukraine.

Army plays an important role in Pakistan's policy. In particular, on the pages of "HILAL" (Pakistan Armed Forces' Magazine), India is defined as a state that represents a traditional threat. "In the case of India, there should not be any confusion in terms of achieving peace, security and stability. Any weakness in this regard will increase the chances of India aggression" – notes Professor Rasul Bakhsh Rais (Lahore University of Management Sciences) in the "HILAL" magazine (Rasul Bakhsh Rais, 2015).

In turn, the confirmation of India as the primary threat to Pakistan's security in National Security Policy of Pakistan 2022-2026: "The political exploitation of a policy of belligerence towards Pakistan by India's leadership has led to the threat of military adventurism and non-contact warfare to our immediate east" (National Security Policy of Pakistan 2022-2026, 2022:36).

India's deterrence in the nuclear-missile sphere is topical for Pakistan's foreign and regional policy. As for Ukraine and its relations with Russia, the nuclear sphere is not currently included into the means of counteraction,

since Ukraine voluntarily gave up its nuclear arsenal in 1994, and signed the Treaty on the Non-Proliferation of nuclear weapons (Uatom, 2020). Although, some Ukrainian politicians and experts are now appealing to the fact that if Ukraine had nuclear weapons - Russia would not have carried out aggressive actions against our state.

In the opinion of the authors, between Pakistan and Ukraine and their relations with the antagonistic states, India and Russia, it is possible to find certain common features using as the criteria the nuclear and energy factors (as "non-traditional" threats). For example, a catalyst showing the periods of aggravation of relations between Pakistan and India are the nuclear crises, as a consequence of the Kashmir issue aggravation, and, accordingly, the strain of relations between Ukraine and Russia can be traced through the so-called «gas» wars.

Nuclear crises between Pakistan and India, which are directly related to the existing Kashmir territorial affairs between the states. Russian scientist M. Braterskiy (Braterskiy, 2003) identifies the following crises:

The first nuclear crisis (1983-1984*)* was the initiation of nuclear programs in India and Pakistan. During India's "Brasstacks" military exercise, Pakistan moved troops to the state Punjab border. The conflict was resolved, but it has demonstrated the readiness of official Delhi to a preemptive warfare and strikes aimed at eliminating Pakistan nuclear facilities.

Nuclear crisis "Zarb-i-Momin" (1990). Along with the start of the largest military exercise in Pakistan's history, "Zarb-i-Momin", the guerilla movement in Kashmir intensified. India accused Pakistan of supporting terrorists and carried out military strikes on rebel training camps. In response, Pakistan threatened to use nuclear weapons. An active role in resolving of the conflict was played by the United States.

Nuclear tests of 1998 and the Kargil crisis. In the spring of 1999, Pakistan troops crossed the control line, separating the Pakistan and India zones of Kashmir, and captured some Indian posts in Kargil. The United States put pressure on Pakistan and the conflict was resolved.

Crisis of 2008. The events of the 2008, terrorist attack in Mumbai, which led to new allegations from the official Delhi of Pakistan's support of separatists in Kashmir.

Events on January 2, 2016 may also have the features of the 2008 format nuclear crisis. This was an attack of jihadists from the "Jaish-e-Mohammad" terrorist group on Indian air force base in Pethankot, located in the Indian state of Punjab. After that, the round of bilateral talks at the level of foreign ministers between Pakistan and India was broken off.

In turn, the events of February 14, 2019, according to Dr. Adil Sultan Muhammad (Adil Sultan, 2020) – Balacot Crises – related to the terrorist attack in Pulwama (Kashmir district controlled by India), where 40 Indian soldiers were killed. The responsibility for the attack was claimed by the terrorist group "Jaish-e-Mohammed" (banned in Pakistan, but has some permanent posts on the Pakistan territory).

Such crises between Pakistan and India had and have a direct impact on the regional security system in South Asia and have encouraged both states to increase their nuclear-missile potential.

Energy crises between Ukraine and Russia, in turn, have an impact on the stability in Europe. The effects of such crises, "gas" wars between states, are similar to those observed between Pakistan and India, in particular, as part of the diversification of energy sources supplying. In Ukraine, it is a decrease in the gas volume procurements from Russia and the search for new partners, and in Russia, it is the construction of the pipelines "Nord Stream" and "South Stream".

The "gas" war of 2005-2006 began when in March, 2005 Russian "Gazprom" demanded from Ukraine (National Joint Stock Company "Naftogaz of Ukraine") to pay for gas from 2006 at prices close to the European ones (about $250 per 1 000 m³). On January 4, 2006, both parties succeeded in signing an agreement that ended the practice of barter trade (gas transit in exchange for gas supplying).

Ukraine-Russia gas conflict of 2008-2009. 2009 is characterized by the fact that from 9:00 a.m. January 1, 2009, Gazprom cut off gas supplies to Ukraine. On January 18, 2009, after the five-hour talks, Prime Ministers Vladimir Putin and Yulia Tymoshenko agreed to resume gas supply to Ukraine and EU countries. According to new gas contracts, the reference price for Russian natural gas for Ukraine was $450 US per 1 000 m³.

Russia-Ukraine gas war of 2014 – aggravation of contradictions in gas supplying between "Naftogaz of Ukraine" and "Gazprom" against the background of political relations between the RF and Ukraine after the events of EuroMaydan. From April 1, 2014, "Gazprom" raised the price of Russian gas to Ukraine from $268.5 to $485 per 1 000 m³ (Espreso, 2014).

February 26, 2018, the last «gas» aggravation of relations between Ukraine and Russia took place (*Gas War of 2018*). Russian gas monopolist lowered the pressure in the pipeline, and that did not allow hydrocarbons to be supplied to Europe, although Ukraine had not been buying gas directly from Russia since 2015. Such «gas manipulations» can be regarded as the undermining of Ukraine's prestige in the eyes of European partners, because, despite the aggravation of Ukraine-Russia relations, Ukraine continues to supply Russian gas to Europe (Vasylchenko, 2018).

Despite the differences in the instruments of realization of the confrontation between the states, both Ukraine-Russia and Pakistan-India have a certain common ground in this counteraction – "non-traditional" component – "gas dependence" and "peaceful atom".

The threat of territorial integrity violation because of a significant number of territorial disputes also is very important for official Islamabad.

The above-mentioned conflicts take place both in the north and in the south of the country. South conflict region – Kashmir (Pakistani Azad Kashmir and Indian state of Jammu and Kashmir). The North conflict region is the place of Pakistan territorial dispute with Afghanistan (Pakistan's province Khyber-Pakhtunkhwa). The official Islamabad has to find common ground with the separatist groups of eastern Balochistan province, which is on the border with Afghanistan and Iran (Grare, 2013).

For Ukraine, starting from 2014, the main threat is the similar to Pakistan – conflict with the neighbouring state and the opposition to the separatist-minded terrorist groups formed in eastern Ukraine by the DPR and the LPR, which are fighting by military means against Ukraine with financial and military support of Russia.

In parallel, one can observe a slightly similar situation in Pakistan, where a paramilitary separatist organization Balochistan Liberation Army (BLA) operates in the province of Balochistan with the purpose to establish the sovereignty of Balochistan. After a series of attacks using explosive devices, in 2006 BLA was declared a terrorist organization by the Pakistan and British governments (Sahni, n.d.).

In 2010, Prime Minister of Pakistan Y.R. Gilani officially stated that he had a dossier proving that India was involved in Balochistan conflict, but the Indian authorities denied the statement (Sajjad Syed, 2015). The British intelligence also shares the opinion of Pakistan that New Delhi is secretly sponsoring Balochistan rebels to put pressure on Pakistan (Dawn, 2006).

Ukraine has also repeatedly stated the financing and support of the DPR and LPR separatists by the Russian party (so-called humanitarian convoys and cargo from Russia) (Ipressa.ua, 2017). The province of Balochistan in Pakistan is rich in gas deposits, while Donbas in Ukraine is rich in coal and shale gas. Therefore, these regions for each of the states are of great economic importance.

The Pakistan Government is considering the possibility of foreign participation in conflict resolution under the aegis of the United Nations. In turn, in July 2017, former President of Ukraine Petro Poroshenko declared that Ukraine would insist on placing the United Nations peacekeeping mission in Donbas on acceptable for Ukraine terms (UNIAN, 2017). It is necessary to say that both Pakistan (the problem of Kashmir) and Ukraine

(the Russian aggression in the east of Ukraine and the annexation of the Crimea) raise the issues of conflicts at the UN General Assembly meetings, which are criticized by both India and Russia.

3.2. Conflicts in Pakistan and Ukraine: the aftermaths and mechanisms of their overcoming, or how to find positive in the negative

The existing conflicts in Pakistan lay the groundwork for the formation of the "Pashtunistan-Kashmir" axis in the security environment of the state, which testifies to the high level of conflict in South Asia. Pakistan is gaining the status of a "middle" state, while responding to both threats, and Islamabad's policies depend not only on stability in the state, but also on strengthening security mechanisms in the region. After all, a stable Pakistan is an important link in ensuring not only regional but also global security (Tykhonenko, 2017).

Conflicts in Pakistan and Ukraine impact on the state and its internal stability. It is necessary to highlight the areas that affect these conflicts and are both common to Pakistan and Ukraine and have certain mechanisms of overcoming the aftermaths of conflicts:

- conducting of the Anti-Terrorist Operation (ATO);
- army modernization;
- the existence of the "enemy state", which assists in forming a single national identity;
- the problem of refugees (Pakistan) and internally displaced persons (Pakistan and Ukraine);
- fragility of the state as the result of conflicts.

It should be emphasised that the mentioned consequences of conflicts are closely interrelated with each other, and the aftermaths of the conflicts, surprisingly enough, have a positive impact on the state as well.

- ***Conducting of the Anti-Terrorist Operation (ATO)***

Speaking about the ATO, it is necessary to emphasize some features and give some explanations. In Pakistan, anti-terrorist operations are quite common and, as the practice of recent years shows, are effective as mechanisms of overcoming the terrorist threat in the state. Such operations take place in the provinces of Balochistan, Khyber Pakhtunkhwa and Pakistan's Federally Administered Tribal Areas (FATA). The purpose of the operation is to "mop up" the territories of militants of terrorist organizations such as "Al-Qaeda", "Taliban", "Lashkar-e-Jhangvi", "Haqqani Network" etc.

In particular, Operation “Zarb-e-Azb”, which was launched in 2014 on the territories of East Waziristan and FATA, is considered as being the most successful. The casus belli for the military operation of the Pakistan army (30,000 soldiers) were the attack of militants on the Jinnah International Airport Karachi (Mujtaba, 2014). Concerning Ukraine, the battles for the airport in Donetsk were among the heaviest and the most furious at the initial stage and during the first phase of the ATO (Sushynskyi and Podilska, 2020).

April 13, 2014, the National Security and Defence Council of Ukraine headed by the Acting President of Ukraine Oleksandr Turchynov decided to start the ATO (Decree “On the Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine” (Law of Ukraine, 2014) was signed April 14, 2014 – the official launching of the ATO).

The difference between Pakistani concept of ATO and Ukrainian one is that it takes place in Pakistan using coordinated military methods against terrorists under the command of the Chief of Army Staff (land forces of the Pakistan Army) – R. Sharif, and from 2016 – Q. Bajwa with the involvement of other types of troops and Pakistan Rangers. In Ukraine, the ATO was subordinated only to the Security Service of Ukraine (SSU) without the right of the military (according to the Minsk Agreements) to use heavy weaponry and to break the ceasefire.

Verkhovna Rada of Ukraine adopted the Law “On Peculiarities of State Policy on Ensuring Ukraine’s State Sovereignty Over Temporarily Occupied Territories in Donetsk and Luhansk Regions” (February 24, 2018), which stated that the Russian Federation was recognized as an occupying state, while territories in the East of Ukraine were recognized as temporarily occupied.

The general command by the forces and means of the Armed Forces of Ukraine in Donbas would not be exercised by the SSU, but by the Joint Operational Headquarters of the Armed Forces, the general leadership of which would be carried out by the President of Ukraine as the Supreme Commander-in-Chief of the Armed Forces of Ukraine. Also, the post of Ukraine’s Commander of the Joint Forces was introduced (Pryamyi, 2018).

Therefore, the existence of ATOs in Pakistan and Ukraine has a somewhat different background, however, operations are conducted against separatist groups that possess weapons and are fighting against the state and the civilian population using terrorist methods.

- ***Army modernization***

It should be noted that Pakistan can be characterized as a “garrison” state according to some theoretical background. Pakistan is constantly

modernizing its army. According to the Global Firepower Index, a competent authority in the state's ranking and modernization of the armed forces of all countries of the world, in 2022 Military Strength Ranking Pakistan is the 9th on the list, and Ukraine is the 22th (Global Firepower Index, 2022).

The third Indo-Pakistani War of 1971 became the reason for modernization of the army in Pakistan and, consequently, the acquisition of nuclear weapons. In the 1970s, Prime Minister of Pakistan Z.A. Bhutto said that "…we will eat grass or leaves, even go hungry, but we will get our own (nuclear weapons)" (Moore, 1993:2). It is necessary to say that in Chapter 1 of the "Pakistan Army Ordinance" of 1965, with the amendments of 2001, it is noted that Pakistan reserves the right to use nuclear weapons of all types to protect national security (The Pakistan Arms Ordinance, 1965).

After the events of 2014, Ukraine began to revive its Armed Forces and upgrade its military-technical base. Ukraine continued to increase its defence budget. The corresponding indicator of financing the security and defense sector in 2021 was 5.92%, and in 2020 it was 5.45% of GDP (Radio Svoboda, 2021).

Therefore, the similar effect of the conflicts for Pakistan and Ukraine is, oddly enough, a positive impact on the modernization of the army and the defence capability of the state.

- ***Forming a national identity and overcoming the impact of the conflicts on the social sphere***

It should be mentioned that the fact of the existence of an "enemy" state, an aggressor state became the element of consolidation of the society, raising of a patriotic spirit.

At the documentary level, the Government of Pakistan in 2014 made a step towards the consolidation of the society by developing an action plan till 2025 "One Nation – One Vision" (Pakistan 2025. One Nation – One Vision, 2014).

President of Ukraine Volodymyr Zelenskyi in his address to Ukrainians on the Day of Unity on January 22, 2020, noted about unity of Ukrainians not only through common traditions, culture and religion, but also other values that are acceptable for every corner of Ukraine and according to which, in the future, Ukrainians could be identified in every corner of the planet (Zelenskyy, 2020).

The feeling of patriotism for one's state becomes a catalyst for the unity of society.

In Ukrainian realities of 2014, the army was not ready to repulse Russia's aggression in full, and therefore civilians (patriots and volunteers),

conscripts, who subsequently got ATO participant status, took part in military operations. Such citizens were included in the population group that the state cared for through the Centers for Assistance to the Anti-Terrorist Operation Participants.

The State performed some actions for the ATO participants to get land plots gratuitously, sanatorium-and-spa treatment and rehabilitation, as well as social and professional transition. Also, on the territory of Ukraine, the volunteer movement was started with the purpose to assist the military in the ATO zone (products, necessities, weapons), and the ATO participants. In particular, it was the Public Union "All-Ukrainian Association of ATO Participants "Ukrainians-Together!". Various events, meetings with the heroes ATO participants were organized with children and students for raising the patriotic spirit (Ukraintsi Razom, 2016).

In Pakistan, since the gaining of independence, the army had and has a strong position in the state and such civilian support of ATO is not topically for Pakistan.

However, if we talk about the counteraction with antagonist state, it implements not only in military sphere. Very indicative was the fact of re-imposing a ban on Indian television content in 2018 when I. Khan became as Pakistan Prime Minister. Note that Ukraine, after a Russian aggression (although with some delay), also banned the broadcasting of media content from the Russian Federation, which is a demonstration of the use of common methods of counteraction to the aggressor state, both in Pakistan and in Ukraine (Kotlyar *et al*., 2020).

- ***The social component of the security factor in Pakistan and Ukraine***

According to the dates of ReliefWeb (humanitarian information service provided by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) on April 30, 2021 in Pakistani territory locates 1,44 million registered afghan refugees (Relifweb, 2021).

In Pakistan-Afghan relations, the problem of refugees is not purely bilateral. The United Nations High Commissioner for Refugees (UNHCR) is involved in the negotiation process between Pakistan and Afghanistan, providing both advisory and material assistance and facilitate.

The Pakistan Government has been making significant efforts for many years to satisfy the needs of internally displaced persons. Registration has given hundreds of thousands of people the opportunity to get asylum, cash grants, food, water, sanitation and medical services. At the state level, the Ministry of States and Frontier Regions (SAFRON) coordinates the changes in society caused by violence, in particular, the Ministry of Kashmir Affairs

and Gilgit Baltistan regulates the policy concerning internally displaced persons from the state of Azad Kashmir when the situation on the ceasefire line with India is escalated.

Ukraine faced the issue of internally displaced persons, their registration and assistance to such persons in 2014. According to the Unified Information Database on Internally Displaced Persons of the Ministry of Social Policy of Ukraine, the number of registered internally displaced persons (IDPs) who moved from the temporarily occupied territories of Donetsk and Luhansk regions, as well as the Autonomous Republic of Crimea and Sevastopol as of December 31, 2021 – 1 476 148 people. It should be noted that in 2022 after Russians invasion of Ukraine this total raised to 8 million people (Ministry for Reintegration, 2022).

In comparison with Pakistan, the problem of internally displaced persons is less topical in Ukraine for the certain reasons. Pakistan is a Muslim state, where the religious factor is an important factor in the gender division of society and the habitation of women and men. In addition, in Pakistan takes place a constant process of internally displaced persons returning to the territory of permanent residence after its "cleansing" from militants and terrorists by the Pakistan army.

It is worth pointing out that, the problem of Afghan refugees in Pakistan is also great importance. Afghan refugees are closely linked to drug trafficking in Pakistan. Although there are general agreements on counteractions against drug trafficking, such as the Tripartite Agreement between the Islamic Republics of Afghanistan, Iran, and Pakistan aimed to strengthen border cooperation and drug control, however, the struggle at the national level is in the forefront (United Nations Office on Drugs and Crime, 2010).

As noted in the report of the National Institute for Strategic Studies, in connection with Russian aggression in 2014 and the activities of the DPR and LPR, Ukraine began to be characterized as a state that international terrorist organizations may use as "transit" for their activities. The Security Service of Ukraine has already revealed the facts that Ukrainian territory was being used by international terrorists. This issue becomes urgent in the context of justification of possible aggressive actions of the Russian Federation (air strikes or the official bringing of Russian armed forces into the territory of Ukraine) in the guise of counter-terrorism (Reznikova, 2017). As of 2022 we can see such aggressive Russian invasion of Ukraine.

- **Social unity and coexistence under the pressure of instability**

Above mentioned implementation of Pakistan-India relations and Ukrainian-Russia one in the format of "friend / enemy" is not unfounded

and is formed by the relevant situations of both domestic and interstate nature.

In particular, on August 5, 2019, the Indian government announced its intention to lift the special status of the Indian-controlled part of the disputed region of Kashmir, sent thousands of troops there and cut off telephone and Internet communications in the region. This event has exacerbated bilateral relations between Pakistan and India as a nuclear power to the highest level, as evidenced by the consideration of the Kashmir issue at a closed meeting of the UN General Assembly for the first time in 50 years.

The Prime Minister of Pakistan I. Khan stressed the pro-fascist orientation of the Indian government and the deliberate oppression of Muslims living in Jammu and Kashmir (Khan, 2019). A campaign has been launched in Pakistan in support of Kashmiri people living in the Indian states of Jammu and Kashmir. On August 30, 2019, Pakistan hosted a nationwide Kashmir Hour (Dawn, 2019).

An action in support of the Crimean Tatars – "Crimea is Ukraine" has been held in Ukraine since 2014. Emphasis is placed on the non-recognition of the legitimacy of the Russian referendum in Crimea and its annexation, and condemns the persecution of the inhabitants of the peninsula who oppose the Russian government, especially the Crimean Tatars. The Ministry of Foreign Affairs of Ukraine constantly issues notes of protest and condemnation of Russia's actions in Crimea (Ministry of Foreign Affairs of Ukraine, 2020).

- ***Fragility of Ukraine and Pakistan as result of security instability***

According to former Ambassador of Pakistan to the United States, Husain Haqqani to overcome all of the above-mentioned negative internal political characteristics and factors of influence on the foreign policy of Islamabad it is necessary to do the following:

> If the Pakistani establishment decides to turn the corner, it would have to embrace a new national narrative for the country. To do so, it would have to change the defensive national narrative about Pakistan's creation, raison deter and prospects of survival" (Haqqani, 2014: 112).

The internal environment of the state, its security, stability, social security and economic development are structural elements that shape not only the state of the state and the processes in it, but also the vision of this state by others. It would be analysed the level of state fragility. The independent research organization The Fund for Peace has developed criteria and

presented the overall Fragile State Index 2021 (Fiertz, 2021) rating of all countries. For our study, the table highlights Ukraine and Pakistan. Ukraine was included to category "Warning" (position number 91 in 2021 year and number 92 in 2020) and Pakistan – "Alert" (position number 29 in 2021 year and number 25 in 2020). There is such interdependence – higher number – more stable situation in the country.

Table No. 01. Fragile State Index (Ukraine, Pakistan)

	Security Apparatus	Factionalized Elites	Group Grievance	Economic Decline	Uneven Economic Development	Human Flight and Brain Drain	State Legitimacy	Public Services	Human Rights and Rule of Law	Demographic Pressures	Refugees and Internally Displaced Persons	External Intervention	Total	Change from previous year
Ukraine	6.7	8.0	5.7	6.8	3.2	5.8	6.8	4.5	6.0	4.3	4.2	7.8	69.8	0.8
Pakistan	7.9	9.0	8.8	7.1	5.3	6.2	7.3	8.0	7.3	7.9	7.5	8.2	90.5	-1.6

Source: Fiertz (2021).

Conclusion

Threats to the national security of Pakistan and Ukraine have a common basis in the military-political sphere. In particular, the main external threat to both states is the neighbouring state. In the case of Pakistan, the main antagonist in the region is India, and for Ukraine is Russia, which has been an objective fact since 2014.

Threats to national security are classified as traditional and "non-traditional". For Pakistan, the traditional threats are territorial conflicts with India and Afghanistan, the Pakistani-Indian nuclear confrontation, and the "non-traditional" ones are terrorism combined with Islamic extremism and separatism, which leads to hostilities, as well as illegal drug trafficking and the problem of Afghans refugees. For Ukraine, this classification can be applied in the following format: traditional threats – Russian aggression and the war in eastern Ukraine, and "none-traditional" – the existence of terrorist separatist groups DPR, LPR, the problem of internally displaced persons, "gas" wars with Russia.

The authors emphasize in the article that the consequences of conflicts and mechanisms for overcoming conflicts have become common for Ukraine and Pakistan. Firstly, attempts to unite society and create a single national identity, raising patriotism. Secondly, conducting anti-terrorist operation, which in Ukraine's one transformed in Operation of Joint Forces and modernisation of army.

Thirdly, and the most commonly for states – the social aspects of the impact of conflicts and mechanisms for overcoming their consequences. All these common features have influenced the stability of the state and made it in some aspects as a "weak" state.

As a result of the study, the authors substantiated the following idea. Both Ukraine and Pakistan should not only counteract to threats, but also reform the state policy, improve living standards of the population and create a positive image on the international scene.

"Allah does not change the condition of a people until they change what is in themselves". This Quran Surah, which the Pakistan government has taken as an epigraph to the framed by the 2030 "Agenda for Sustainable Development" (Pakistan in the 21st century: vision 2030, 2007:30), is somewhat consistent with the Ukrainian proverbs sounds like, "God helps them who help themselves".

Despite the difficult socio-economic situation in Pakistan, the authorities use the geopolitical position of the state to receive financing and investments from other states. In particular, these are states, whose national interests include cooperation with Pakistan – the United States and the People's Republic of China. "Deterrence" of India in Afghan direction has one more explanation and direct implementation in the relations between Pakistan and the People Republic of China. The territory of Pakistan is part of the Chinese "Belt and Road Initiative". Ukraine is also a part of such Beijing's initiative.

Ukrainian favourable geopolitical position gives it the traits of a "bridge between the West and the East". These features should be used more effectively by the Ukrainian authorities in attracting investments that will develop our country, and it will not just be in the status of ally for the EU and the US in "deterrence" of Russia.

Therefore, both Pakistan and Ukrainian authorities should pursue more flexible and effective policy on the domestic scene. In addition, they should not only wait for assistance from the outside, but also overcome corruption, develop industry and economy. It is necessary to create such an image of the state so that it would be interesting to others and known all over the world not only because of its crises.

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Systems of Advocates' Self-Governance Bodies in European Union Countries

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Abstract

The purpose of the article was to study the experience of self-governance of lawyers in the countries of the European Union EU. On the basis of this material recommendations aimed at improving the advocacy system are provided. Achieving the set goal involved the resolution of the following tasks: a) to reveal the mechanism of functioning of the system of self-government of lawyers in the EU countries and identify its universal features, and; b) to determine the main models of the system of self-government of lawyers in the EU countries. The scope of the study was constituted by public rules, regulated by law, arising in the provision of legal services in the application of the legal profession and the implementation by representatives of its bodies of the right to self-government. The methodological basis of the study consists of general and specific research methods. It is concluded that, the manifestation of the principle of independence of the legal profession and the guarantee of full functioning of the self-governing bodies of bar associations in the EU countries consists in ensuring the freedom of their activities within the legality and its implementation in practice.

Keywords: self-governance activity; advocacy bodies; EU Member States; self-governance model; lawyers' monopoly.

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Sistemas de órganos de autogestión de los abogados en los países de la Unión Europea

Resumen

El propósito del artículo fue estudiar la experiencia de autogobierno de los abogados en los países de la Unión Europea EU. Sobre la base de este material se proporcionan recomendaciones destinadas a mejorar el sistema de defensa. La consecución del objetivo fijados implicó la resolución de las siguientes tareas: a) revelar el mecanismo de funcionamiento del sistema de autogobierno de los abogados en los países de la UE e identificar sus características universales, y; b) determinar los principales modelos del sistema de autogobierno de los abogados en los países de la UE. El ámbito del estudio lo constituyeron las normas públicas, reguladas por la ley, que surgen en la prestación de servicios jurídicos en la aplicación de la abogacía y la aplicación por los representantes de sus órganos del derecho al autogobierno. La base metodológica del estudio consiste en métodos de investigación generales y específicos. Se concluye que, la manifestación del principio de independencia de la profesión de abogado y la garantía del pleno funcionamiento de los órganos de autogobierno de los colegios de abogados en los países de la UE, consiste en garantizar la libertad de sus actividades dentro de la legalidad y su aplicación en la práctica.

Palabras clave: actividad de autogobierno; órganos de defensa; Estados miembros de la UE; modelo de autogobierno; monopolio de abogados.

Introduction

The relevance of the study is beyond doubt in connection with Ukraine's obtaining the status of a candidate for EU membership and the need to develop such a system of bar self-government in our country in accordance with European standards, which would ensure further development of democracy and guarantee the rule of law.

In 2013, the Law of Ukraine "On Advocacy and Advocacy Activity" was adopted, which regulates the basic principles of organization and functioning of the advocacy system in Ukraine, the rights and obligations of its representatives (Law of Ukraine "On Advocacy and Advocacy Activity", 2013). In 2017, the Rules of Advocate's Ethics were approved, which establish binding rules of professional conduct for advocates based on the traditions and customs of the national bar, as well as international standards and rules of the legal profession (Rules of lawyer ethics, 2017).

However, it is necessary to note the fact that, despite the positive changes in the system of advocacy in Ukraine in recent decades, the level of provision of legal services by its representatives remains average and not effective enough, which is recognized as the citizens of our country, the direct consumers of such services. This problem is relevant to guaranteeing the quality of legal services and the state authorities, and the legal community itself. This problem is relevant with regard to guaranteeing citizens their right to defense, provided by the Constitution of Ukraine, in addition, military aggression against Ukraine and other negative socio-economic phenomena in our country, such as the spread of coronavirus infection and the pandemic has forced us to notice deepening inequalities and has generated troubling questions oits causas, and who and what can be sacrificed in a pandemic (O'Donovan, 2020).

The further improvement and development of advocacy self-governing bodies is also affected by the fact that in the past year there is an unsustainable interest in studying the results of identification, but a limited attitude will work in the role of public opinion (Rasmussen *et al*., 2017), which does not give a real picture of the functioning of the advocacy system in Ukraine in general, highlighting its shortcomings and fix them.

The main problem in the sphere of lawyers' self-governance is that in Ukraine one can observe the double standard of this type of legal profession. We are talking about the fact that some of the lawyers practicing and being lawyers are dependent on corporate legislation when it comes to lawyers' associations, while the other part of the lawyers' community are self-employed persons, working individually and, accordingly, free from the requirements of the said legislation.

Given this fact and the fact that market services provided by lawyers in Ukraine is decentralized and is not subject to control either by the state or by advocates' corporate governance (Vilchyk *et al*., 2021), lawyers' self-governing bodies in Ukraine need to comply with the standards of European Community regulations, in particular the Common Code of Conduct for European Lawyers (Code of Conduct for European Lawyers, 1988).

There is also an obvious need to update national legislation in accordance with modern international patterns of advocacy, as well as the participation of representatives of the legal community in the post-war reconstruction of Ukraine after the end of the armed aggression against it, in a particular implementation of their provision of quality and effective legal assistance to the population of our state to protect their rights and freedoms, guaranteed by Art. 55 of the Constitution of Ukraine (Constitution of Ukraine, 1996), cause the need and relevance of the study of the organization and functioning of lawyers self-government in the EU, whose member countries have provided the institution of lawyers new content at the present stage and turned it into a universal instrument of legal assistance to consumers of such legal services.

1. Theoretical Framework or Literature Review

It should be noted that a number of scientific works of domestic and foreign scholars and legal practitioners are devoted to the study of the issues of advocates' self-government. The study of the issues of the outlined problems is relevant, in particular, to clarify the new legal realities in which the advocacy is carried out in the EU countries, as well as to analyze the achievements in the field of the right to self-government, which is implemented by its bodies and representatives.

For example, N.I. Bochulyak, taking into account the requirements of the modern social world and the rapid development of information and communication technologies, the need to adapt the profession of a lawyer to the new realities of his work, has studied the ethical and deontological aspects of the behavior of a lawyer in social networks.

In the scientific work, the lawyer-practitioner concludes that it is necessary to amend the Rules of lawyer ethics and the Law of Ukraine "On Advocacy and Advocacy Activity", namely, the exclusion of norms in the said legal acts, which may lead to a broad interpretation of lawyer conduct in disciplinary practice when a lawyer uses social networks in carrying out his professional activities and outside of it (Bochulyak, 2019). У. Beck devoted her scientific work to the study of the problems of lawyers' self-government, noting that it is a state-guaranteed right of the legal profession to independently decide the organization and activities of the legal profession in accordance with the Law of Ukraine on Advocacy and Advocacy Activity (Beck, 2022).

Regarding the scientific works of foreign scholars, it should be noted that they have studied the lawyers' self-government in a fragmented way, certain aspects of this system while studying general issues of lawyer's professional activities.

Thus, J. Courvoisier (2017) studied the procedure of interrogation of suspects in Switzerland, the scientist also notes the role of a lawyer, his compliance with professional ethics, and moral and ethical standards during this procedure. Ganner (2015) devoted his research work to the study of the changes that took place in the legislation of Austria, which concerned the issues of limiting the lawyer's monopoly, he notes that this reform left intact the privileges of lawyers, which were provided by the local system of lawyer self-government.

Boni-Le Goff (2020), who in her study on the gender characteristics of the legal profession is a relevant research topic because, as the research indicates, "serial mediation analysis demonstrated that, compared with other-advocating women, other-advocating men were calculated to dainty activities that were based on the lack of competence of what is

extremely great to big penalties" (Bosak *et al*., 2018: 159), also examines also the reasons for the change in the profession by lawyers in France and Switzerland, stresses the importance of matching the moral personality of the lawyer according to the position he or she holds.

2. Methodology

The methodological basis of the study consisted of general and special legal methods. To achieve the goals and objectives of the study the methods of analysis, synthesis, generalization, induction, deduction was used. Also, the comparative legal method was used. Combination of methods of research allowed to achieve its goals and objectives.

3. Results

With the creation of a new, supranational formation of the European Union, the formation of a new type of state, the innovative institute of advocacy in its member states begins to form. On the one hand, it preserves its traditional function, is an integral part of the civil society of the European community, a means of ensuring state guarantees for the realization of constitutional rights to legal assistance, on the other hand, it is a peculiar, specific element of the EU legal system, given its organizational structure and distribution of competences between it and its member states.

The modern period of development of the legal profession in the EU countries can be characterized by a great diversity of its institutions (in particular, models of lawyers' self-governance, organizational and legal forms of practicing law, as well as the attitude of the state and society towards lawyers' monopoly) existing at the same time with the universality of its characteristics for all EU member states (for example, the presence in their legislation of Codes of Professional Ethics of Lawyers).

The EU countries, which have a long history of the development of the Bar, well-established professional traditions in this area, as well as a developed democratic regime (France and Germany) can be defined as a classical model of advocates' self-governance.

The territorial model of advocates' self-governance is characteristic for Austria, which has its own specific administrative-territorial structure, resulting in peculiarities of the activities and functioning of advocates' bodies in this country. This model of advocates' self-governance is similar to the Ukrainian model, which also has a specific territorial aspect, involving representatives from the advocates' community.

The union model of lawyers' self-governance, without compulsory membership, envisaged by the Swiss legislation, which is implemented through the creation of associations of representatives of the lawyers' community.

Bodies of lawyers' self-government in the EU member states are as independent as possible from the state authorities, have sufficient freedom in the implementation of their activities, which allows to effectively implement the provision of the constitutional right to receive qualified legal assistance. For example, in Germany this mechanism is implemented through the existence of the institute of the trustee, in Italy - through the legislated right to defense and legal representation, a similar right to defense is enjoyed by citizens of Switzerland, in Spain, this mechanism is implemented through the legislated right of citizens to appeal to a lawyer in case of restriction of their freedom in any form.

The Bar in the EU member-states is a public-law institution in its legal nature, and by adopting the corresponding special legislation the countries set certain criteria for its functioning, provide conditions, which facilitate lawyers' professional activity, and provide them with legal services effectively and properly. In the first place, first of all, through a ramified, correctly structured organizational network of advocates' self-governing bodies in these countries.

The legislation of the majority of EU member-states defines the Bar as a professional association of persons carrying out a legal profession. At the same time, the notion "legal profession" has substantive content covering all persons recognized and registered as lawyers in accordance with the procedure established by the laws of this or that state, as well as the organization of lawyers, which has its own principles of activity, competence, requirements to knowledge, skills, and abilities, as well as relevant moral and ethical qualities of representatives of the legal profession.

The models of lawyers' self-governance are independent and do not coincide with the forms of lawyers' professional activities. National legislation of the EU member states is aimed at encouraging lawyers' activities in various organizational-legal forms, which at the same time provides for certain restrictions in respect of persons who are not lawyers and do not carry out this form of legal activity, in order to weaken their influence on the activities of lawyers' associations.

The main organizational and legal form of lawyers' associations in the EU member-states is a non-commercial partnership (an association established in accordance with the requirements of civil law). In addition, in France, the lawyers' associations can be established in the organizational-legal form of a holding company, in Denmark - a limited liability company or a joint-stock company of lawyers. Depending on the established legal

form of the lawyers' associations in this or that EU country, the form in which the advocates' self-governing bodies will function will also differ.

The political, economic, and social integration processes, which are taking place in the EU countries at the present stage, directly affect the creation of a specific system of legal norms, related to the implementation of lawyers' activities by their representatives in the common European space, which involves creating appropriate conditions for the functioning of the Bar in these countries, as well as lawyers' self-governing bodies.

We are talking, first of all, about ensuring conditions for free provision of legal services (freedom of provision of services provided for by the EU legislation), about providing sufficient freedom of operation of legal institutions, elimination of protectionist documents that restrict the freedom of movement of lawyers, which is especially important in the field of criminal justice with the spread in the European space of crimes of transnational nature.

The mechanism for controlling the performance by lawyers of their professional duties at the proper level is the lawyers' professional ethics, which provides for strict compliance with its provisions by those who are subject to its influence. Most of the national Codes of Professional Ethics for Lawyers adopted in the EU Member States are normative rather than legal acts, because they are adopted by lawyers' self-governance bodies, and not by the legislative or state-authorized bodies for adopting such legal documents. However, there is an exception to this general rule, since a small number of codes of professional ethics for lawyers are legal acts by their legal nature, since they are approved either by laws of these states or by decrees of their presidents, and some Codes supplement provisions of legislative acts by their prescriptions, which is expressly mentioned in them.

The fundamental basis of all the Codes of Professional Ethics adopted by the EU Member States are the principles of independence and inadmissibility of certain activities for lawyers (an incompatibility of a lawyer's professional activities with his/her status). The legislation of the EU member-states and regulatory acts of the lawyers' associations operating in their territory reflect the common business practice and different approaches to the definition of "inadmissibility" of certain activities for lawyers, which significantly differ from each other, are implemented - from a total ban on any other activities to permission to combine practicing law with certain other activities, and in most cases only if lawyers observe the principle of independence.

4. Discussion

"Both law and medicine rely on self-regulation and codes of professionalism to ensure duties are performed in a competent, ethical manner" (Hamm and Esplin, 2018: n/p). As I.I. Bochulyak (2019: n/p) notes, "the extreme importance of the functional load of the Bar requires lawyers to follow high ethical standards of conduct in both professional and personal activities". To ensure an appropriately high level of such behavior, there is an obvious need for appropriate regulations governing the advocacy. For example, in the EU Member States, deontological codes of advocates have been adopted and are in force, which in their content are a peculiar means of controlling the proper quality of performance of their professional duties.

By its legal nature, the bar self-government body is a quasi-governmental body, which is a subject of public law relations, which, on behalf of the state, performs certain functions related to the optimization of the practice of law by guaranteeing the independence of advocates, ensuring their protection from interference in the practice of law, maintaining a high professional level of advocates and creating an optimal mechanism for the implementation of these tasks (Beck, 2022). In addition, at present, the process of development of Ukraine as an independent, sovereign, democratic state governed by the rule of law continues (Pasha, 2022). Equally important is the fact that "in human rights advocacy, lawyers have the right to use various means of communication with government agencies and municipal authorities..." (Pogosian *et al*., 2021: n/p).

In accordance with the above, at the present stage, the issue of reforming the methods of providing legal aid is relevant, theoretical legal knowledge and developed practical experience on the activities of the bar system and the professional ethics of its representatives in the EU countries are needed, which will allow borrowing positive experience in this area.

"Over the past three decades, the legal profession has experienced globalization, the rise of mega-law firms, and intensified competition" (Boni-Le Goff *et al*., 2020: n/p). However, despite the changes taking place in the legal profession, there are a number of member states that have a classic model of bar self-government with a long history. These are, first of all, France, Germany, Italy, Spain, and Greece, in which membership in the Bar is directly related to belonging to the chamber (collegium) of advocates, and the representatives of the bar community are assigned to the Supreme Court of a certain region or oblast.

Another approach to the organization of the bar self-government exists in Austria. The legislation regulating this activity has been amended, "in Austria, the main reason to make a legal amendment was to safeguard the interests of the grantor at times, grantors of an attorney can control the

attorney, give him or her directives and revoke his or her power at any time" (Ganner, 2015: 35), that is, in this way the attorney's monopoly in this country was limited. It should also be noted that Austria is characterized by such a model of bar self-government, which can be defined by the following characteristics: the bar chambers are distributed on a territorial basis, and they unite all those representatives of the bar community who are registered by the authorized body located in a certain administrative-territorial unit.

According to this division, the jurisdiction of each chamber of advocates will extend to a certain territory for which it was introduced, as well as to all advocates included in its register.

It should be noted that it is important not only to properly organize the system of advocacy, whose representatives carry out their professional duties effectively but also to comply with the norms of morality and ethics at all stages and in all forms of its implementation. For example, the issue of videotaped interrogations seems to be currently important in Switzerland and most of these practitioners see this practice as potentially beneficial (Courvoisier, 2017). Switzerland, as well as Sweden, provide for a model of advocates' self-governance, created through the formation of associations and unions of representatives of the legal community, and membership in them is not mandatory.

Sufficient attention in the legislation of these countries is also paid to the issue of professional ethics of lawyers, as noted in his scientific work K. Helgesson:

> The lawyers perceived their role as front-line workers to be more complex due to their professional norms and ethics on client privilege, and what they saw as the proper role of lawyers, being in conflict with the obligation to report clients and their transactions (Helgesson and Mörth, 2018: 236).

Despite the differences that exist between the main models of lawyer self-governance in Europe, it is clear that "...on the role and impact of lawyers outside the litigation context, followed by the influence of the legal system on lawyers, with a focus on lawyer distress (prevalence, causes, and consequences)" (Reed, 2020: n/p), the role and influence of lawyers in the exercise of their professional duties is limited.

However, regardless of the country in which an attorney performs his/her professional activities, he/she must possess the relevant skills and professional competencies, for example, one of the core assumptions is that more experienced attorneys have more in-depth knowledge of the intricacies of the patent system and, thus, are more likely to pursue more elaborate and successful filing strategies (Frietsch and Neuhäusler, 2019).

One of the most important tasks of the bar self-government bodies is to control the quality of legal aid services, "on the other hand, partners

are apt to claim that associates are not legal-beagle savvy enough to work without strict instructions" (Eliot, 2021: 1). Legal services provided by lawyers, control and self-control over their implementation, as well as the provision of legal education among the population, which is being actively implemented in the EU countries and can be used in Ukraine to improve the efficiency of the bar system, in particular.

Conclusions

Based on the study, we can conclude that:

1. The manifestation of the principle of independence of the profession of advocate and ensuring the full functioning of the bar self-government bodies in the EU countries is to guarantee the freedom of their activities within the law and its implementation in practice.
2. It is possible to distinguish three main models of bar self-government in the EU countries: classical, territorial, and union, depending on the conditions in which lawyers carry out their activities.
3. The formation of a certain model of bar self-government in a particular EU country depends on a set of factors, in particular, the history of the establishment of the Bar in it, as well as the administrative and territorial structure of the country.
4. The institution of the Bar and bar self-government is sensitive to the economic, social, and political changes that take place in a particular country, so its reform should meet the realities of time and the needs of the population in need of legal aid services.
5. Reform of the Bar and bar self-government bodies in Ukraine should take into account international professional standards introduced in the EU countries.
6. The above testifies to the relevance, importance, and timeliness of the chosen research topic.

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Peculiarities of ensuring the constitutional right to a fair trial: international and national aspects

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Abstract

Using a documentary methodology combining different research techniques such as dialectics, the article conducts a scientific analysis of the implementation of the constitutional right to a fair trial in Ukraine and defines its essence and content; it also investigates the peculiarities of normative consolidation of the right in international legal acts and studies the positive experience of applying the precedent practice of the European Court of Human Rights, to solve the main problems of the implementation of this right in the national judiciary in the conditions of martial law in Ukraine. Among other things, the essence of the term "right to a fair trial" was clarified and a study of the peculiarities of the implementation of the right to a fair trial in conditions of war from the perspective of the European Court of Human Rights was conducted. It is concluded that, both in theory and in concrete reality, the right to a fair trial is complex in nature and includes the fairness and publicity of the proceedings, the reasonableness of the terms, the presumption of innocence, the independence and impartiality of the court, the existence of a dispute over rights and obligations, among other aspects.

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Estándares internacionales para procesos penales en regímenes legales de emergencia

Resumen

Mediante una metodología documental que conjuga diferentes técnicas de investigación como la dialéctica, el artículo realiza un análisis científico de la implementación del derecho constitucional a un juicio justo en Ucrania y define su esencia y contenido; además, investiga las peculiaridades de la consolidación normativa del derecho en los actos jurídicos internacionales y estudia la experiencia positiva de aplicar la práctica precedente del Tribunal Europeo de Derechos Humanos, para resolver los principales problemas de la implementación de este derecho en el poder judicial nacional en las condiciones de la ley marcial en Ucrania. Entre otras cosas, se aclaró la esencia del término «derecho a un juicio justo» y se realizó un estudio de las peculiaridades de la implementación del derecho a un juicio justo en condiciones de guerra desde la perspectiva del Tribunal Europeo de Derechos Humanos. Se concluye que, tanto en la teoría como en la realidad concreta, el derecho a un juicio justo es de naturaleza compleja e incluye la equidad y publicidad del proceso, la razonabilidad de los términos, la presunción de inocencia, la independencia e imparcialidad del tribunal, la existencia de un litigio sobre derechos y obligaciones, entre otros aspectos.

Palabras clave: derecho a un juicio justo; poder judicial; Tribunal Europeo de Derechos Humanos; ley marcial; regímenes legales de emergencia.

Introduction

The problem of justice, as a basic value, is one of the central ones throughout the history of civilization, constitutional and legal science and practice, and the right to a fair trial is one of the fundamental human rights that the state must protect. The realization of this right enables citizens to feel protected from any offenses, and the state to be considered truly democratic and legal. Thus, in the case of “Holder v. Great Britain”, the European Court of Human Rights (hereinafter - the ECHR) notes that the very model of the right to a fair trial would be pathetic and meaningless if this norm did not ensure the right to have your case considered at all (Holder v. Great Britain. Decision No. 4451/70, 1975).

However, the administration of justice in some countries sometimes does not stand up to criticism, and due to a number of organizational, technical, procedural, economic and other reasons of an objective and subjective nature, the provisions on the justice of the court are declarative and are often violated. This also applies to Ukraine, which is confirmed by the annual increase in the number of applications to the ECHR regarding violations of the right to a fair trial.

The formation of the constitutional-legal mechanism for the implementation of European standards of the right to a fair trial to the national legal system of Ukraine directly affects the problems of its effectiveness. At the same time, it is worth emphasizing that the standards of the ECHR, set out in its decisions regarding the guarantees enshrined in Art. 6 of the European Convention on Human Rights is an implementation measure that requires a series of actions, without which it is impossible for Ukraine as a state party to fulfill its obligations under the European Convention on Human Rights, or to ensure fundamental rights and freedoms in general.

One of the key issues of today's Ukraine, on the territory of which martial law has been introduced, is whether the modern national judicial system is able to ensure the administration of justice and the right of citizens to a fair trial, which is a fundamental and priority duty of the state, within a reasonable time. Issues of access to justice and public hearings are also important. In the conditions of special legal regimes, these aspects of the right to a fair trial, unfortunately, are not always fully implemented, and the state faces a number of problems, the complex solution of which is one of the priority directions of a modern democratic society.

1. Methodology of the study

The set goal and tasks of the scientific article, its object and subject, determined the methods and techniques of scientific knowledge, with the help of which an objective study of the subject was achieved.

At each stage of the research, a set of general scientific and special methods of scientific knowledge was used. Through the prism of the dialectical method of scientific knowledge of legal processes and phenomena and systematic analysis, a deepening of the conceptual apparatus was ensured, the essence of the category «justice» and «right to a fair trial», the interpretation of the ECHR of the violation of the right to a fair trial, conflicts and gaps in the legislation of Ukraine and in practice were investigated its application, specific proposals for overcoming them are formulated.

The use of the system-structural method made it possible to investigate the internal structure of the mechanism for the implementation of the right to a fair trial in the national judiciary, to establish the relationship between the constituent elements of this right. Comparative legal and analytical methods are used to study the conventional and constitutional regulation of the right to a fair trial, as well as in the process of comparing the norms of international legal acts, the practice of the ECHR and national legislation.

With the help of the inductive method and scientific pluralism, proposals were formulated to improve the domestic constitutional regulation of the right to a fair trial in the context of the provisions of the Convention and national legislation. The statistical method was used in summarizing statistical data and practice materials on the implementation of the researched law. The forecasting method was used during the development and formulation of proposals aimed at improving national legislation and the organization of the judiciary in terms of regulation and implementation of the right to a fair trial.

A comprehensive approach and the use of all the above-mentioned methods of scientific research provided reliable and objective results of scientific work, and the methods used in connection and interdependence made it possible to comprehensively consider the legal conceptual foundations of fair justice in the world and at the national level, to reveal their theoretical and practical significance in legal science.

The normative and legal basis of the scientific article is composed of provisions of the Constitution of Ukraine, international legal acts in the field of legal regulation of the right to a fair trial, national and foreign legislation, precedent practice of the ECHR, relevant decisions of the Constitutional Court of Ukraine.

The empirical basis of the study was the decisions of the ECHR concerning the right to a fair trial, the interpretive acts of the higher courts of Ukraine, which are placed in the Unified State Register of Court Decisions, and the materials of judicial practice.

2. Analysis of recent research

The principle of justice as a phenomenon and category is the subject of study in various sciences: philosophy, jurisprudence, ethics, political science, sociology, cultural studies, and economics. From the doctrinal positions of constitutional science, the importance of studying the issue of justice in its relationship with law lies in the fact that it occupies a decisive central place among the values that constitute the ontological basis of law and are derived from such a legal phenomenon as human dignity.

Justice, as a basic legal value, has a decisive role in the understanding of law, the construction of its institutions, in the formulation of requirements for the legal regulation of relations in modern society. It serves as a peculiar tool of scientific analysis, ensures the organic unity of general theoretical and branch sciences, its implementation in justice is one of the main priorities in the conditions of building a legal state (Stepanov, 2018).

The problem of ensuring the constitutional right to a fair trial has a multifaceted nature, which is why its consideration requires a comprehensive comprehensive approach, the study of various aspects, and the effective implementation of Art. 6 Convention on the protection of rights and fundamental freedoms during war is extremely necessary, since courts are obliged not only to restore the violated right in such conditions (Shelever, 2022), but the state - to ensure the comprehensive implementation of justice, as a basic legal value society.

The right to a fair trial is the subject of research by many scholars. Modern scientists such as V. Horodovenko, P. Guivan, U. Koruts, O. Lemak, T. Lukash, O. Lyoshenko, A. Medvid, G. Nechiporuk, S. Stepanova, S. Shevchuk and others devoted their works to this issue. However, a stable and universally recognized approach to determining the legal nature of the right to a fair trial among scientists and practitioners has not yet been developed due to its multifaceted nature. In today's conditions, one of the main problems of an applied nature is the problem of interpretation and application of precedent provisions of the European Court of Human Rights.

Despite the fact that the quarantine and martial law introduced in Ukraine, although they became an impetus for the digitization of justice, the introduction of fundamentally new procedures aimed at protecting the rights, freedoms and safety of the participants in the trial (Tatulych, 2022), at the same time, significant restrictions on the rights of citizens and negative the consequences of these phenomena encourage the development of optimal ways of their protection in the realm of national justice.

The purpose of the article is a scientific analysis of the implementation of the constitutional right to a fair trial in Ukraine, the determination of its legal nature and the normative consolidation of the right in international legal and national normative acts, the study of the positive experience of applying the precedent practice of the ECHR in order to solve the main problems of the practical implementation of the said right in the national judiciary in the conditions of martial law in Ukraine.

3. Results and discussion

3.1. Doctrinal and legislative interpretation of the constitutional right to a fair trial in Ukraine

The study of the right to a fair trial is an integral part of the theoretical basis of the constitutional right to judicial protection, to an adversarial trial, to a legal and fair resolution of a legal conflict. The right to a fair trial is a person's right enshrined in Art. 6 of the Convention for the protection of human rights, which guarantees the right to a fair and public trial within a reasonable time by an independent and impartial court established by law (Convention for the protection of human rights and fundamental freedoms, 1950).

The term «justice» is interpreted not only in its legal sense, but also in its philosophical and aesthetic sense. In particular, according to the etymological origin, «justice» means impartiality of actions, judgments, recognition of someone's rightness, dignity, retribution to everyone on legal and honest grounds and, in general, compliance of human relations and actions with generally recognized moral and legal norms.

Without delving into the scientific debate about the definitions of the «right to a fair trial», we will take as a basis the interpretation of its essence by T. Lukash, as an opportunity for a person (individual and/or collegial entity), which is legally established, to protect in special state institutions (judicial system bodies and bodies in the justice system) violated rights and freedoms, the result of which is the actions of special state institutions to restore the violated right and/or an individual's ability to hold a position in the bodies of the judicial system and bodies in the justice system (Lukash, 2020).

In general, the right to a fair trial is one of the fundamental human rights, because if the legal construction of the specified provision does not apply, then the rest of the human rights remain unprotected, which excludes the guarantee of quality and impartial justice.

The right to a fair trial is guaranteed, in particular, by the provisions of the Law of Ukraine «On the Judicial System and the Status of Judges». In particular, in his art. 2 stipulates that the court, administering justice on the principles of the rule of law, ensures everyone the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine, as well as international treaties, the binding consent of which was given by the Verkhovna Rada of Ukraine. Article 7 states that everyone is guaranteed the protection of their rights, freedoms and interests within a reasonable time by an independent, impartial and fair court established by law (On Judiciary And Status Of Judges: Law of Ukraine, 2016).

O. Lyoshenko singles out two interrelated structural elements of the right to a fair trial: 1) institutional and functional, which includes: access to justice; independence and impartiality of the court; publicity and openness of court proceedings; 2) procedural, which includes: reasonableness of terms; adversarial nature of parties to criminal proceedings; appeal of procedural decisions, actions or inaction (Lyoshenko, 2021).

T. Lukash proposed to consider the constitutional right to a fair trial as a combination of two elements, namely: 1) the right to judicial protection, which, in turn, consists of: a) the right to access to court or access to justice; b) the right to a fair trial; c) the right to the strict execution of a court decision and 2) the right to hold positions in the bodies of the judicial system and in the bodies of the justice system (Lukash, 2020).

In our opinion, the provisions of Part 2 of the Law of Ukraine «On the Judiciary and the Status of Judges». testify that in the context of the specified regulatory legal document, the term «fair court» is used both in the context of a requirement for the court as an institution (an independent, impartial, fair court, established by law), and from the position of a requirement for the procedure for the administration of justice (executing justice on the principles of supremacy rights, ensures everyone the right to a fair trial).

From the above, it can be concluded that the essence of «trial justice» is formed by the procedural and content components of justice. Procedural justice consists in the implementation of judicial proceedings in accordance with the procedural form defined by law, which in its essence meets the requirements of justice. Substantive (material) justice is characterized by the content of the decision made by the court (punishment determined by it or application/non-application of other coercive measures).

In performing their functions of applying the law, courts often have to carry out so-called judicial law-making related to the interpretation of national law in accordance with European standards, that is, creative activity, in particular, regarding the specification of norms on fundamental rights and freedoms. And this kind of activity is mostly based on the doctrine of judicial precedent, the content of which is the obligation for judicial authorities to implement their previous decisions (Shevchuk, 2007).

Along with the normative acts of the legislation, the law also included the judicial precedent in the part of the decisions of the ECHR in the application of procedural legal norms to the sources of Ukrainian procedural law. Individual court statements and remarks, which in themselves do not create a precedent (in the classical sense), nevertheless, given the authority of the court that adopted them, significantly influence the practice of other courts (Popov, 2010).

Actually, individual guarantees provided by the ECHR's application of the principle of legal certainty have the meaning of obiter dictum (obiter

or dicta in abbreviated version). Thus, judicial precedent, from the point of view of legal nature, is «a decision on a specific case, which is binding for courts of the same or lower instance when deciding similar cases or serves as a model of interpretation of the law, which do not have binding force» (David and Joffre-Spinoza, 1999: 31).

Applying judicial precedent as a way of regulating relations, the ECHR achieves certainty in the legal resolution of disputes by rendering decisions, the content of which (the motivational part) either does not coincide with the current legislation, or refers to those moments that were not foreseen when the laws were adopted. This is the peculiarity of the concept of European judicial law or the European judicial model (Koruts, 2015). Decisions of the ECHR, on the basis of which the interpretation and practice of applying the provisions of the Convention for the protection of human rights are provided, are a form of precedent law that expands its normative scope by establishing new universally binding rules.

Based on this, we share the point of view of S. Stepanova, that taking into account the subsidiary nature of the Convention for the protection of human rights, which is that the protection of the rights and freedoms guaranteed by this document must be carried out primarily at the national level, a key feature of the effectiveness of the judicial system is the adaptation of national standards to the standards of the ECHR in the context of precedent practice of the ECHR (Stepanova, 2018).

It should be emphasized that the structure of the right to a fair trial, provided for in clause 1 of Art. 6 of the Convention for the protection of human rights, not fully defined element by element. Therefore, precisely as a result of precedent developments and interpretation of the provisions of the specified norm, the content of not only the specified elements, but also those that are not prescribed in the relevant article, but are sufficiently significant in revealing the essence of the law, is revealed. So, along with such categories as publicity of the trial, impartiality of the court, reasonable terms of the trial, such unnamed elements as legal certainty, reasonableness of the trial, determination of jurisdiction acquire the importance of the principles of law.

Part of the specified guarantees, which constitute the content of the right to a fair trial, in Art. 6 of the Convention for the protection of human rights is not mentioned, but they are developed and interpreted by the precedent practice of the ECHR, without applying the decisions of which it is impossible to define unambiguously and outline the meaning of the specified terms.

Therefore, in addition to solving specific cases, the purpose of the ECHR is much broader and consists in ensuring that states comply with the provisions of the Convention for the protection of human rights, eliminating

systemic deficiencies that underlie the violations identified by the ECHR, eliminating grounds for new applications to be submitted to it by bringing national legislation to European criteria, adjustment of law enforcement practice, etc. (Guivan, 2019).

The national legislation tries to incorporate these principles into the Ukrainian legal system. In particular, Article 17 of the Law of Ukraine «On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights» indicates the need for courts to apply the ECHR and the practice of the ECHR as a source of law, and Art. 18 of this Law determines the procedure for referring to the Convention and the practice of the Court (Law of Ukraine, 2006). As we can see, the Law refers specifically to the «practice of the Court» in its general sense, and the defining principle of a fair court is the opportunity to receive fair justice regardless of which social group a person belongs to or other personal characteristics (Horodovenko, 2012).

Summarizing the specified part of the scientific article, we note that in view of the importance of justice, as one of the fundamental values, which is filled with content in the law and determines its value essence as a whole, as well as the meaning of justice for the conceptual idea of ensuring legal foundations in a court decision, we consider it expedient to make appropriate changes to the wording of Art. 129 of the Constitution of Ukraine, enshrining in it the principle of justice as fundamental in the administration of justice.

The introduction of appropriate amendments to the Basic Law of Ukraine will enable national courts in the most difficult cases to apply justice or to restore justice violated when the relevant regulatory act was adopted. We also see the expediency of making appropriate changes to all procedural codes of Ukraine, providing in them the principle of justice as one of the general principles of proceedings.

As you know, a fair trial is a world heritage as a manifestation of honest and impartial timely consideration of each person's case. In the Ukrainian legal system, there is still an insufficient awareness of judges with the basic principles of a fair trial in the sense of the Convention for the protection of human rights and the decisions of the ECHR. Even when applying the precedent practice of the ECHR, the courts do not always clearly and unambiguously understand the legal content of the application of the relevant provisions.

We see one of the ways to solve this issue in increasing the level of responsibility of judges and introducing their systematic training. This issue has become especially relevant in the conditions of martial law in Ukraine, when numerous changes are made to specific and other laws, the consequence of which is a change in law enforcement practice, in particular, in terms of the organization and implementation of judicial proceedings.

3.2. Implementation of individual provisions of a person's right to a fair trial in Ukraine

Along with other legal institutions, the judicial branch of government in Ukraine has been affected by the war, which has made adjustments to the process of administration of justice, and the domestic judicial system remains understaffed and morally depressed. The main reason for this state of affairs is, first and foremost, the incompleteness and controversy of the reformation processes in the sphere of administration of justice.

According to the latest data, since the beginning of the full-scale armed Russian aggression, more than 70 judicial institutions have suffered damage of varying degrees up to their complete destruction. The damage caused by the destruction of the premises of judicial authorities is estimated at billions of hryvnias (Ognevyuk, 2022). However, even under martial law, a person's constitutional right to judicial protection cannot be limited (Tatulych, 2022).

As the Constitutional Court of Ukraine notes, no one can be limited in the right to access to justice, which includes the ability of a person to initiate a court proceeding and take direct part in the legal process, or be deprived of such a right (paragraph seven of subparagraph 2.2 of point 2 of the motivational part of the Decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizen Troyan Anton Pavlovich regarding the official interpretation of the provisions of Article 24 of the Constitution of Ukraine dated April 12, 2012 No. 9-рп/2012 (Decision Of The Constitutional Court Of Ukraine, 2012).

Adequate awareness of the participants in the court process about court decisions, court hearings, and information about cases under consideration by the court is a necessary prerequisite for the realization of the right to access to justice. It is obvious that under the conditions of mass movement of citizens to other places of stay and limited possibilities of the postal operator to deliver correspondence in the conditions of martial law, the administration of justice by the courts in general and the right of access to justice of specific citizens in particular are endangered (Medvedev, 2022).

According to Art. 26 of the Law of Ukraine «On the Legal Regime of Martial Law» shortening or speeding up any forms of judicial proceedings under martial law is prohibited (Law of Ukraine, 2006). However, it is not always possible to ensure the continuous operation of the court during the war, and some courts do not conduct justice at all, since according to the Supreme Court of Ukraine, 20% of the courts were under occupation or in the war zone (Tatulych, 2022).

In the case «Andrenko v. Ukraine» (ECHR Decision No. 50138/07, 2011), the ECHR came to the conclusion that the main responsibility for

the excessive duration of the proceedings in this case lies with the state bodies in connection with the violation of Article 1. 6 of the Constitution of Ukraine. The behavior of the parties does not exempt the respondent state from responsibility, since the organization of the proceedings must be done in such a way that it is fast and efficient, which is the task of national courts (9, paragraph 43).

In the conditions of martial law, the courts continue to work in the territory controlled by Ukraine, because in accordance with Art. 10 of the Law of Ukraine «On the Legal Regime of Martial Law» during the period of martial law, the powers of the courts cannot be suspended. And according to Art. 12-2 of this Law, in the conditions of the legal regime of martial law, courts act exclusively on the basis, within the limits of their powers and in the manner determined by the Constitution of Ukraine and the laws of Ukraine, and their powers are provided for by the Constitution of Ukraine, in the conditions of the legal regime of martial law, they cannot be limited (Law of Ukraine, 2006).

At the level of the Basic Law of Ukraine (Article 124), it is established that justice in Ukraine is exclusively carried out by courts, and the delegation of court functions, as well as the appropriation of these functions by other bodies or officials, are not allowed (Constitution Of Ukraine, 1996). These regulations oblige the courts to work and administer justice even under the conditions of an extraordinary legal regime. At the same time, the new conditions make it necessary for the state to take decisions aimed at ensuring the proper performance by the courts of the functions assigned to them.

In order to settle this issue, the Council of Judges of Ukraine adopted a number of important and relevant decisions «Regarding the adoption of urgent measures to ensure the stable functioning of the judiciary in Ukraine in the conditions of the termination of the powers of the Ukrainian People's Liberation Army and martial law in connection with armed aggression by the Russian Federation» 24.02.2022 (Decision of the Council of Judges of Ukraine, 2022). In particular, it published recommendations on the work of courts under martial law, the main ones of which are as follows:

1. to postpone the consideration of the case (with the exception of urgent court proceedings) and remove them from consideration, since a large number of participants in court proceedings are not always able to submit an application for postponement of the consideration cases cannot come to court due to danger to life;
2. cases that are not urgent should be considered only with the written consent of all participants in the court proceedings;
3. to explain to citizens the possibility of postponing the consideration of cases in connection with military actions and the possibility of

considering cases in the mode of video conference; for this, the participants in the case must declare their participation in the court session via video conference. In case of impossibility to participate in the court session, it is recommended to submit a petition to the court for:

- postponing the consideration of the case and consideration of the case with the participation of a representative;
- participation in a court session via video conference (Decision of the Council of Judges of Ukraine, 2022). It is possible to send relevant petitions to the court by mail or through the «Electronic Court» system.

The implementation of European standards of the right to a fair trial in Ukraine is reduced not only to the law-making activity of the state in the person of its bodies on the adoption of the norms of European law by domestic legislation, but also involves the implementation of a complex of systemic measures of a law enforcement nature, which ensure the actual implementation of the prescriptions of international legal norms. In this sense, when talking about the observance of judicial principles that correspond to the practice of the ECHR, special attention should be paid to the organizational and technical issues of changing the territorial jurisdiction of cases, observing reasonable investigation deadlines, as well as remote participation in court hearings.

- **Change of territorial jurisdiction of cases**

For the normal provision of the right to access to justice as a component of the right to a fair trial, such elements as procedural and physical possibilities of applying to the court are necessary. In its decisions, the ECHR has repeatedly emphasized that the right of access to the court cannot be considered as something absolute. Thus, in the decision «De Geoffre de la Pradelle v. France» (Geouffre de la Pradelle v. France), dated December 16, 1992, the ECHR stated that «the right to go to court may be limited, but these limitations must not complicate or limit the access of a person so or to such an extent that it damages the very essence of this right» (Geouffre de la Pradelle v. France. Decision, 1992).

In turn, in the Ashingdean v. United Kingdom decision of May 28, 1985, the ECHR stated that any restrictions on access to the court are under the control of the ECHR, which checks whether such state intervention pursued a legitimate aim and whether it is proportionate and necessary in a legal and democratic state between the measures taken and the goal set (Ashingdane v. United Kingdom. Decision, 1985). However, these restrictions should not, however, interfere with the exercise of the right to access to justice in such a way or to such an extent that the very essence of this right is violated.

The adopted Law of Ukraine «On Amendments to the Law of Ukraine «On the Judiciary and the Status of Judges» stipulates that in connection with a natural disaster, military operations, measures to combat terrorism or other extraordinary circumstances, the work of the court may be suspended with the simultaneous determination of another the court that will administer justice on the territory of the court that has ceased operations and that is territorially closest to the court whose work has been terminated (Law of Ukraine, 2022).

As a result of the full-scale invasion of the Russian Federation on the territory of Ukraine, the conduct of active hostilities and the temporary occupation of certain territories, a number of courts by the relevant orders of the Chairman of the Supreme Court «On changing the territorial jurisdiction of court cases under martial law», taking into account the impossibility of courts to administer justice during martial law, territorial jurisdiction the court cases considered in these courts were changed.

The implementation of such powers became possible thanks to the adopted changes to the wording of Part 7 of Article 147 of the Law of Ukraine «On the Judiciary and the Status of Judges», according to which in the event of the impossibility of administering justice by a court for objective reasons during a state of war or emergency, in connection with a natural disaster, military operations, measures to combat terrorism or other in extraordinary circumstances, the territorial jurisdiction of court cases considered in such a court may be changed by a decision of the High Council of Justice, which is adopted at the request of the Chairman of the Supreme Court, by transferring it to the court that is territorially closest to the court that cannot administer justice, or another specified court.

In the event that the High Council of Justice is unable to exercise such authority, it is exercised by order of the Chairman of the Supreme Court. The corresponding decision is also the basis for the transfer of all cases pending before the court whose territorial jurisdiction changes (Law of Ukraine, 2016).

The resumption of work in some courts, in particular in the de-occupied territories of Ukraine, is accompanied by a large number of organizational and technical problems, because a significant number of court premises were damaged or completely destroyed, and computer equipment and other material assets were stolen. Therefore, regardless of the fact that the court that was supposed to consider the case has ceased its activity, the consideration of the case should be carried out by another court that is territorially closest. Information on the change of territorial jurisdiction of court cases can be found directly on the website of a particular court.

On February 26, 2022, the Verkhovna Rada of Ukraine registered a draft law on amendments to the Code of Administrative Procedure of Ukraine,

the Civil Procedure Code of Ukraine, and the Economic Procedure Code of Ukraine (regarding the implementation of judicial procedures in conditions of martial law or a state of emergency) No. 7316, which provides: during the period of martial law whether a state of emergency provides for the possibility of remote work of the secretary and the granting of his powers to other employees of the court apparatus; features of court summonses and notices during the period of martial law or state of emergency; that the preliminary proceedings and/or trial must be conducted within a reasonable time, taking into account the possibility of the parties to the case to participate in the proceedings; to expand the scope of application of written proceedings in courts of all jurisdictions; to extend the features of consideration of court cases, which were applied in connection with the introduction of quarantine due to COVID-19, also to the period of martial law or state of emergency; peculiarities of serving a copy of a court decision during the period of martial law or state of emergency (Project Law No. 7316, 2022).

- **Procedural terms**

One of the elements of the requirements of Art. 6 of the Constitution of Ukraine there is a requirement that the case must be considered within a reasonable time. Its improper application in Ukraine is also recorded in the practice of the ECHR, which has repeatedly established a violation of Clause 1 of Art. 6 of the Constitution of Ukraine in cases related to temporal issues of unreasonableness of judicial terms, namely: «Vashchenko v. Ukraine» (paragraph 50), «Popilin v. Ukraine» (paragraphs 24–31), «Pavlyulynets v. Ukraine» (paragraph 53).

Also, the analysis of the practice of the ECHR proves that when determining the reasonableness of the trial period, not only such criteria as the importance of the case for the applicant, the complexity of the case, the behavior of the parties, the number of stages of the proceedings, but also the peculiarities of the political or social situation in the state, etc. are taken into account» (Tregubov, 2010).

Martial law does not affect the course of procedural terms, but may be a valid reason for renewing or extending the procedural term; the procedural term established by the court is not subject to renewal, but can only be extended at the request of the party to the dispute; during the period of martial law, the general and special statute of limitations provided for by the norms of civil and economic legislation are extended.

Undoubtedly, the introduction of martial law made it impossible for many people to submit the relevant documents to judicial institutions on time. If at the beginning of the war it was popular to think that martial law is a valid reason for recognizing the reasons for missing procedural terms

as valid, now every court is based on the current situation in the respective region (Chernilevska, 2022).

One should not forget about the discretionary powers of the court and the absence of a general rule that martial law is a valid reason for extending the terms, therefore one should not neglect the defined procedural terms. At the same time, it is necessary to realistically assess each specific situation and respond to it promptly and advocated.

Of course, the format of the activity of courts and judges has undergone changes, adapted to the peculiarities of the legal regime caused by the martial law, but under such, even temporary conditions, judicial proceedings must be carried out in all cases and cannot be suspended in order to prevent the limitation of a person's constitutional right to judicial protection.

- **Remote participation in the court session**

Provisions regarding the administration of justice in a specially equipped room - a courtroom are contained in every procedural law. This places an obligation on judges and court staff who, being faithful to their oath and acting in accordance with the Constitution, are physically present at their workplaces so that justice continues to be administered.

Under such conditions, a completely logical question arises among scientists and law enforcement officers: Is the condition that obliges judges and court employees to be physically present in court adequate during martial law, chronic underfunding, and a colossal personnel crisis? After all, if every participant in the case can fully exercise his right to participate in the video conference mode, being in a safe place, then why expose court employees to danger and force them to go to work under the enemy's crosshairs (Ognevyuk, 2022)?

The only adequate and balanced solution to these problems is the introduction of remote justice in Ukraine, which gained popularity in the world during the coronavirus pandemic. Of course, for remote hearings, people must be able to prove their identity if they are not physically present in court. For this, countries allowed the use of electronic signatures, making changes, in particular, to the criminal and civil procedural codes (Ognevyuk, 2022).

The issue of providing the possibility of remote justice gained wide popularity in 2022 due to the spread of the coronavirus pandemic. Countries where video conferencing is used in civil and criminal proceedings include: United States of America, United Kingdom, Austria, Sweden, Ireland, Croatia, Hungary, Kazakhstan, Portugal, Serbia, Slovenia, France (hearings also take place by telephone), North Macedonia (only during the state of emergency).

In 2020, the Verkhovna Rada of Ukraine adopted laws that made it possible for litigants to exercise their right to participate in court hearings remotely, thus exercising their right to a fair trial. Instead, the State Judicial Administration of Ukraine has developed a procedure for video conferencing during the court session with the participation of the parties outside the court premises.

This format of holding court hearings helped to normalize the administration of justice in quarantine conditions. However, practice confirms that the conditions of martial law prevent the realization of the rights of individuals to have their case heard by a court, even in this way, due to the risk of becoming a target of chaotic shelling and bombing.

We believe that the problem of interrupting court sessions in connection with frequent cases of air alert announcements needs to be further worked out and resolved, taking into account the imperative principles of judicial proceedings and the need to ensure the safety of court session participants and other court employees. Further steps to expand the possibilities of remote judicial proceedings also require a technical and regulatory basis in order to ensure the possibility for participants in the proceedings and judges to participate in court sessions remotely.

While the expansion of the use of online court proceedings is pending, it is worth actively using the resources of the «Electronic Court» subsystem, which, after registering in their own electronic account, allows the participants in the case and their representatives to submit documents to the court, receive documents, get acquainted with case materials, etc. However, there are reasons that today, mostly for objective reasons, not all Ukrainian courts have joined the «Electronic Court» subsystem, and this, in turn, slows down the full use of the capabilities and resources of this subsystem and encourages the use of alternative ways of participating in adversarial litigation.

The situation that has developed in Ukraine today requires quick and decisive steps to establish the participants' access to the court, without excessive formalism, which will harm the authority of the judiciary, which must protect the interests of citizens under any conditions. Necessary and at the same time comfortable conditions for high-quality and effective resolution of the dispute must be created for the participants in the legal process. For this purpose, it is necessary to ensure the successful and balanced application of the legislation, which, of course, will require the appropriate technical support of the courts.

All the elements considered in the specified part of the article (territorial jurisdiction of cases, compliance with reasonable investigation deadlines, remote court proceedings) are integral components of the right to a fair trial within the meaning of Part 1 of Article 6 European Convention on human

rights and serve as guarantees established by the European Convention on human rights and the practice of the ECHR as the most effective regional international human rights protection system at the moment (Lemak, 2014).

At the same time, analyzing the current state of the practice of national implementation of the European Convention on Human Rights, as well as the precedent practice of the ECHR in modern conditions, we can characterize the latter as not yet systematic, and the mechanism of appeal to the precedent practice of the ECHR is still undeveloped. In this context, as well as taking into account the legislative, organizational and economic difficulties caused by the state of war on the territory of Ukraine, we consider it appropriate to provide advisory clarifications of higher judicial institutions on the issues of forming approaches to the application of the practice of the ECHR in conditions of emergency legal regimes.

Conclusions

Justice is one of the fundamental values, which is filled with content in the law, determines the value nature of the law as a whole and is of essential importance for the idea of ensuring legal foundations in a court decision. In view of this, Art. 129 of the Constitution of Ukraine, which enshrines the basic principles of the judiciary, should be supplemented with a provision on the principle of justice, as fundamental in the administration of justice. The introduction of appropriate legislative changes to the Basic Law and to the criminal procedural codes will help in the most difficult cases (primarily, in the conditions of a special legal regime) to carry out judicial proceedings, based on the fundamental principle of justice, established at the constitutional and branch level.

The right to a fair trial is one of the elements of the rule of law and a fundamental right of every person, enshrined in national legislation and in the provisions of the European Convention on human rights, which are clarified and detailed in the decisions of the ECHR. Based on the provisions of Art. 6 of the European Convention on human rights and the practices of the ECHR, the state must ensure guarantees for every person regarding access to justice, which will be fair and legal, and the independence and objectivity of the court is a significant sign of the rule of law and the justice of the court. However, even in spite of this, in the conditions of judicial reform and the martial law introduced in Ukraine, there are not enough legal means of its implementation at the legislative level, which prompts the improvement of national legislation in terms of developing effective mechanisms for the implementation by a person of the fundamental principle of access to justice.

The right to a fair trial is complex in nature and includes fairness and publicity of the proceedings, reasonableness of terms, presumption of innocence, independence and impartiality of the court, existence of a dispute regarding rights and obligations, etc. Such elements of the right to a fair trial, such as territorial jurisdiction of cases, compliance with reasonable investigation deadlines, remote court proceedings in the conditions of martial law introduced in Ukraine, require an immediate and at the same time comprehensive approach in order to create the necessary and at the same time comfortable conditions for a high-quality and effective resolution of the dispute, ensuring continuous functioning of the judicial system.

In this case, the following should be identified as priorities: provision of advisory clarifications of higher judicial institutions on issues of forming approaches to the application of the practice of the ECHR in conditions of emergency legal regimes; introducing systematic training of judges and increasing their level of responsibility; proper organizational and technical support of courts.

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Repensar la promoción del turismo rural como estrategia en las políticas de comunicación para el cambio social

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Resumen

La industria del turismo representa un gran motor de desarrollo sostenible para los mercados del siglo XXI, de modo que, se trata de una industria prometedora donde interactúan un conjunto diferenciado de actores y factores como: el Estado, el empresariado, las comunidades organizadas y los turistas. El objetivo de la investigación consiste en repensar una política pública coherente para la promoción del turismo rural en general, con especial énfasis en la comunicación para el desarrollo y el cambio social. Se empleó la metodología de investigación documental y la técnica de análisis FODA como condición de posibilidad para visualizar las fortalezas, oportunidades, debilidades y amenazas que tendría en un contexto específico la implementación de una política como la que se propone. Los autores concluyen que, en cualquier escenario imaginable, siempre entra en la ecuación para la formulación de políticas del sector turismo: (turismo rural+ desarrollo sostenible = cambio social) la comunicación política, en tanto espacio de síntesis que articula en los imaginarios colectivos, las ideas,

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conceptos, sentimientos y objetivos que crean y recrean las condiciones para el cambio social, como etapa superior del desarrollo sostenible en el siglo XXI.

Palabras clave: turismo rural; políticas públicas en América Latina; promoción del turismo rural; comunicación para el cambio social; comunicación para el desarrollo.

Rethinking the promotion of rural tourism as a strategy in communication policies for social change

Abstract

The tourism industry represents a great engine of sustainable development for the markets of the 21st century, so that it is a promising industry where a differentiated set of actors and factors interact: the State, the business sector, organized communities and tourists. The objective of the research is to rethink a coherent public policy for the promotion of rural tourism in general, with special emphasis on communication for development and social change. The documentary research methodology and the SWOT analysis technique were used as a condition of possibility to visualize the strengths, opportunities, weaknesses and threats that the implementation of a policy such as the one proposed would have in a specific context. The authors conclude that, in any imaginable scenario, political communication always enters into the equation for the formulation of tourism sector policies: (rural tourism + sustainable development = social change), as a space of synthesis that articulates in the collective imagination, ideas, concepts, feelings and objectives that create and recreate the conditions for social change, as a higher stage of sustainable development in the 21st century.

Keywords: rural tourism; public policies in Latin America; rural tourism promotion; communication for social change; communication for development.

Introducción

En la presente investigación se conjugan tres conceptos particulares que requieren de tratamiento específico por parte de los investigadores interesados en dilucidar su alcance y significación, como condición de posibilidad para entender sus relaciones dialécticas, los cuales son: promoción de turismo rural, comunicación política y cambio social.

Como se sabe, el turismo puede ser, sin duda, una herramienta de desarrollo sostenible para personas, regiones y localidades, siempre y cuando haya un marco político e institucional coherente que permita su desarrollo. No obstante, como parte de cualquier política pública surge además la necesidad de definir una estrategia de comunicación política que pueda instrumentalizar los objetivos de un programa de turismo que, por lo demás, debe transcender a sus fines económicos específicos y, lograr, por lo tanto, impulsar un proceso de cambio social que lleve a una colectividad determinada a desplegar significativamente sus capacidades multidimensionales para ser y hacer en el mundo actual (Nussbaum, 2012).

En este orden de ideas, a o largo del artículo se desarrollan de forma relacional y dialógica los conceptos de turismo rural, comunicación política y cambio social en el marco del objetivo planteado de repensar una política pública coherente para la promoción del turismo rural en general, con especial énfasis en la comunicación para el desarrollo y el cambio social. De modo que y, como es lógico suponer, se instauró un diálogo cognitivo que permitió construir algunos puentes epistemológicos entre nociones, categoría y conceptos diferentes.

El artículo está dividido en cuatro secciones particulares, pero al mismo tiempo relacionadas: en la primera sección, se describen *groso modo*, los aspectos teóricos que posibilitaron el desarrollo de la investigación; en la segunda, se explica la metodología empleada para procesar las fuentes recabadas y lograr el objetivo propuesto. Por su parte, la tercera sección, constituye *metafóricamente hablando* el plato fuerte de la investigación ya que buscó repensar, esto es, pensar varias veces desde diferentes perspectivas de análisis y sentidos, una política para la promoción del turismo rural con énfasis en la comunicación para el desarrollo y el cambio social; finalmente, se arriba a las conclusiones del caso sin ninguna pretensión de desarrollar un modelo teórico general aplicable a diferentes situaciones y contextos, en este particular es preferible que nuestros benévolos lectores lleguen ellos mismos a determinar la validez y confiabilidad general de este estudio.

La justificación de la investigación viene dada, desde nuestro punto de vista, por el hecho de que la industria del turismo representa un gran motor de desarrollo económico sostenible para los mercados del siglo XXI, de modo que, se trata de una industria prometedora donde interactúan un conjunto diferenciado de actores y factores como: el Estado, el empresariado, las comunidades organizadas y los turistas. En consecuencia, el desarrollo de esta industria y sus actividades contiguas no se da de forma espontánea, ni mucho menos, por la inercia de los actores involucrados, requiere, en contraste, de la conjunción de un conjunto de fuerzas sinérgicas y actividades particulares entre las que destacan las investigaciones científicas de alto impacto que puedan aportar propuestas y estrategias en beneficio del turismo rural, que, como se argumentará en las páginas que siguen, es un fenómeno inmanente al cambio social.

1. Aspectos teóricos de la investigación

Nuestra comprensión del turismo en general y del turismo rural en particular fue posible por la lectura de un conjunto de artículos y monografías científicas que además hicieron viable la visualización de las posibilidades heurísticas y límites de una investigación como esta. Tal como sostiene Acerenza (2006) el turismo es un campo de estudio que admite variadas definiciones según la particularidad de la disciplina que lo trate: economía, sociología, piscología o geografía, entre otras. De cualquier modo, hay un consenso amplio al abordar este tema como: "(…) conjunto de las relaciones y fenómenos producidos por el desplazamiento y permanencia de personas fuera de su lugar de domicilio, en tanto que dichos desplazamientos y permanencias no estén motivadas por una actividad lucrativa principal, permanente o temporal" (Asociación Internacional de Expertos Científicos en Turismo (AIST), citado por: Acerenza, 2006: 26).

Por su parte, la actividad del turismo rural ha significado una oportunidad de desarrollo sostenible para un conjunto de poblaciones periféricas que históricamente se han limitado a las actividades agro-productivas y artesanales del campo y, ahora, bajo ciertas condiciones políticas y económicas, pueden dedicarse a la prestación de servicios turísticos cada vez más demandados por una población citadina que busca huir, aunque sea momentáneamente, del estrés típico de las grandes metrópolis, en consecuencia, todo indica que:

> La implementación de actividades turísticas en áreas rurales en América Latina ha depositado fuertes expectativas como promotora de un cambio, tanto a nivel social como económico y ecológico. El consenso mundial sobre el tema ha permeado las políticas públicas nacionales, y ha establecido un modelo de desarrollo en el cual se enmarca la implementación de programas e incentivos vinculados al turismo… (Kieffe, 2018: 08).

Destaca de la cita el hecho de que el turismo no se reduce únicamente a ser una industria respetable económicamente en la región, sino, además, una herramienta de desarrollo sostenible que puede elevar sistemáticamente las condiciones y el nivel de vida de poblaciones enteras, de ahí su condición de fuerza impulsora del cambio social. En este sentido, conviene destacar que entendemos por cambio social a un conjunto de transformaciones materiales y simbólicas sucedidas en una formación societal por la acción de factores internos o externos a la misma.

Entre los factores internos destacan los cambios intersubjetivos relativamente espontáneos que se dan por las variaciones de las identidades, representaciones sociales y prácticas que cohesionan a la comunidad a través del tiempo y el espacio. Entre los factores externos que producen cambio social, resaltan la ejecución de políticas públicas que, como el

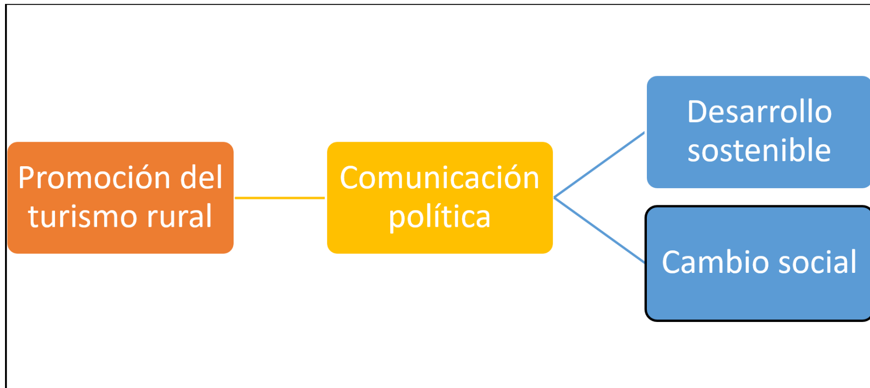
desarrollo sostenible, intentan apalancar las capacidades de la comunidad en diferentes ámbitos de desempeño (Gómez y Álvarez, 2013; Nussbaum, 2012), con resultados disimiles.

En este hilo conductor, queda claro entonces que el turismo rural puede ser una estrategia para el cambio social bajo determinadas condiciones objetivas y subjetivas y lógicas políticas, pero en cualquier escenario imaginable, siempre entra en la ecuación (turismo rural+ desarrollo sostenible = cambio social) la comunicación política en tanto espacio de síntesis que articula en los imaginarios colectivas que configura a los climas de opinión, las ideas, conceptos, sentimientos y objetivos que crean y recrean en cada momento las condiciones para el cambio. En palabras de Villasmil:

> Por comunicación política se quiere significar a un campo del saber inter y trans disciplinario en el que confluyen dialécticamente distintas herramientas teóricas y metodológicas de áreas como: la semiótica, la pragmática, la neo-retórica, el análisis del discurso, la filosofía del lenguaje, la comunicación social, la antropología cultural y la ciencia política, entre otras. Con el propósito de justificar --en cada momento-- las acciones y decisiones de los agentes del poder, en las representaciones sociales y, más específicamente, en los dominios de la opinión pública (2022: 02).

Desde esta perspectiva, una buena política no es suficiente para el logro de sus objetivos programáticos porque siempre hace falta por parte de los agentes de poder la capacidad manifiesta de comunicar de forma clara y coherente, en la comunidad o comunidades receptoras de políticas, los propósitos de esta y los mecanismos de participación que permiten a la sociedad civil organizada crear, en lo materialmente posible, sus propios espacios de convivencias y; asimismo, estructurar sus propias realidades junto con los instrumentos participativos a su disposición. En contraste, una buena estrategia de comunicación política puede hacer también que una *política no exitosa* sea percibida de forma positiva en la opinión pública o que, al menos, no sea descartada por completo.

Figura No. 01: Articulación conceptual.



Fuente: elaboración propia con base a los conceptos abordados en la investigación.

Finalmente, en la figura No. 01 queda claro gráficamente que la promoción del turismo en general y del turismo rural en particular, que tiene en las zonas rurales caracterizadas tendencialmente por poseer exuberantes paisajes naturales de amplia biodiversidad, adquiere en la comunicación política su máxima expresión. Sin embargo, como se verá más adelante, la estrategia de comunicación política que se propone desarrollar logra su legitimidad social en la medida que relaciona de forma concreta al turismo rural con el binomio conceptual: desarrollo sostenible y cambio social, bajo la hipótesis que postula axiomáticamente que toda manifestación de desarrollo sostenible produce, a su vez, experiencias satisfactorias de cambio social que conjugan crecimiento económico con equidad y capital social.

2. Metodología

Básicamente el diseño de investigación instrumentalizado para el logro del objetivo planteado en este artículo se sustentó en dos factores metodológico particulares; por un lado, la investigación documental que implica en cada momento el arqueo de fuentes documentales escritas o incluso audiovisuales, de probada veracidad en cuanto a su origen científico o académico como condición de posibilidad para recabar información que permita entender la esencia o ser del tema turismo y sus sujetos protagónicos. En este orden de ideas, no es del todo incorrecto suponer entonces que la investigación documental se aproxima a los estudios hermenéuticos que tienen en la correcta interpretación de textos –entendiendo el texto en

sentido amplio, como toda cadena de símbolos que pueden ser interpretado para fijar su significado verdadero– su función científica primordial, aunque los autores de una investigación dada sin formación epistemológica no sean conscientes de ello.

Por el otro, al análisis FODA muy empleado en el estudio de las políticas públicas por su versatilidad para mostrar las Fortalezas, Oportunidades, Debilidades y Amenazas de una premisa, propuesta, idea o planteamiento, que busca incidir en una realidad determinada. Estos cuatro elementos son fundamentales para formular y, posteriormente, evaluar a una política pública, ya que, sin la visualización de sus puntos fuertes en términos de capacidades instrumentales, recursos y ventajas; de las oportunidades que permiten el logro de sus objetivos o de las debilidades o amenazas que se deben gestionar para su efectiva realización, estaría *a priori* en buena medida condena al fracaso o, por lo menos, al logro de niveles parciales de éxito.

Figura No. 02: Síntesis de matriz FODA

Fuente: Bolivia emprende (2021).

Tal como indican Dymchenko *et al.* (2022), el análisis FODA es un componente inmanente de la política para la promoción del turismo rural con énfasis en la comunicación para el desarrollo y el cambio social, que se propone a continuación como un ejercicio de creatividad y reflexión teórica que permita aportar luces en el desarrollo del turismo rural en diferentes comunidades del Ecuador, con amplio potencial turístico y con capacidades importantes para el desarrollo de este negocio, pero con carencias en términos de una propuesta política y comunicativa coherente con sus necesidades, aspiraciones y requerimientos de desarrollo sostenible.

3. Políticas para la promoción del turismo rural con énfasis en la comunicación para el desarrollo y el cambio social

En principio en este punto conviene revisar el alcance semántico y límites del concepto *política*, usado por nosotros como contracción de la noción de políticas públicas, las cuales se pueden expresar por lo demás y, al mismo tiempo, no solo en decisiones ejecutivas de una instancia de poder vinculante a nivel local, regional o nacional, sino también mediante programas, leyes planes, omisiones y proyectos a ejecutarse en un tiempo y espacio previamente delimitado. Para los fines concretos de esta investigación, nos concentramos en una política de comunicación para la promisión del turismo rural. En palabras de Aguilar y Lima queda claro que:

> Las políticas son el diseño de una acción colectiva intencional; el curso que toma la acción como resultado de las decisiones e interacciones que comporta son los hechos reales que la acción produce. En este sentido, las políticas son "el curso de acción que sigue un actor o un conjunto de actores al tratar un problema o asunto de interés. El concepto de políticas presta atención a lo que de hecho se efectúa y lleva a cabo, más que a lo que se propone y quiere. Las políticas se conforman mediante un conjunto de decisión, y la elección entre alternativas" (…) (2009: 02).

En efecto, todas las políticas incluidas las que se definen en cada momento para el sector turismo son el resultado de un diseño colectivo de tipo intencional y racional que producen resultados tangibles en la realidad, resultados que no solo son valorados por personas y comunidades mediante sus modelos interpretativos de la realidad de franco carácter subjetivo, sino que además, son susceptibles a la investigación científica por campos de estudio como la evaluación de política públicas de la ciencia política contemporánea.

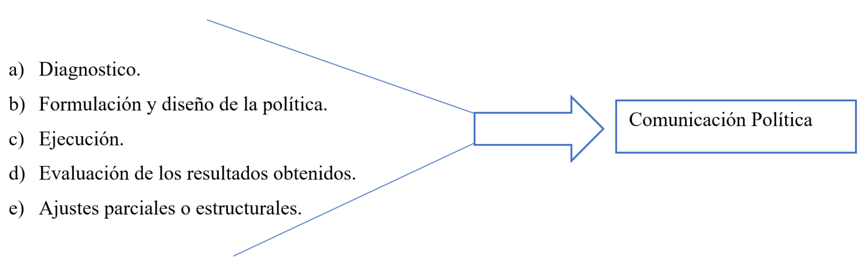
La intencionalidad de una política pública es determinada entonces por el objetivo que busca lograr, normalmente relacionado a la resolución de un problema social, de modo que es vital que exista –desde un primer momento– en el diseño de una política pública mucha claridad sobre sus

fines, propósitos y objetivos programáticos, como condición de posibilidad para determinar los resultados que se quieren lograr.

En cuanta la racionalidad de una política (esto es, su carácter racional-instrumental) viene dada porque su diseño, formulación, aplicación y posterior evaluación, estas, no son en ninguna caso conocido fenómenos aleatorios o espontáneos en la vida de las comunidades humanas, sino el resultado de un ardua proceso científico de carácter gerencial que se sirve de instrumento de diagnóstico y evaluación de la realidad que se busca intervenir y, conjuntamente, de variables contraladas al menos teóricamente (financiera, logísticas, materiales y legales), medibles y cuantificables, que en su agregación dialéctica promueven la transformación de las realidades problemáticas y, en último término, el cambio social asumido como el salto cuántico a una fase cualitativamente superior en la vida de una colectividad humana.

Simplificando las cosas las etapas del proceso gerencial de elaboración de políticas públicas son cuatro:

Figura No. 2. Simplificación del proceso gerencial de elaboración de políticas públicas



Fuente: elaboración propia.

Como se aprecia en el la figura No. 02 la comunicación política es el marco general o eje trasversal que puede acompaña a todas y cada una de las etapas de elaboración de las políticas públicas aplicadas, en este caso, a la promoción del turismo rural, todo dependerá de los intereses de comunicación que identifican a los agentes promotores de la política en términos de lo que se quiere comunicar, en que momento y bajo que estrategia y medios. Por ejemplo, quizá a una alcaldía determinada la interese comunicar su política de promoción de turismo desde el momento de diseño y formulación de la misma, pero a otra, de otro lugar distinto y con otras dinámicas, identidades y características, solo le interese comunicar los resultados obtenidos mediante esta.

De cualquier modo, clarificado el objetivo de la política en cuestión que en nuestro caso no es otro que impulsar el logro del cambio social mediante una estrategia de desarrollo sostenible en la prestación de servicios de turismo rural, el análisis FODA es crucial para efectuar el diagnóstico, esto es, determinar científicamente las necesidades, aspiración y problemáticas que muestra política vendría a gestionar como condición de posibilidad para su éxito. Por su puesto, mediante la herramienta analítica FODA se puede revelar: ¿Qué fortalezas hay para el impulso de la política imaginad? ¿Qué oportunidades se pueden aprovechar para el logro de los objetivos planteados en la política de promoción del turismo? ¿Qué debilidades identifican la esencia o el ser de la política diseñada e implementada? ¿Qué amenazas reales impiden o dificultan su desarrollo?

Las oportunidades se manifiestan normalmente en la visualización de las capacidades que posee la comunidad en la cual se piensa aplicar la política y de su posible usa estratégico para el negocio turístico, normalmente estas oportunidades se relacionan con muchos aspectos como recursos turísticos naturales y culturales; capital social, infraestructura hotelera, servicios públicos, gastronomía, empresariado local, empatía de las ciudadanía por los turistas, población proactiva, es decir, las oportunidades implican la comprensión objetiva de los recursos materiales y simbólicos a disposición y, además, de la estrategia mas adecuada y racional para emplearlos satisfactoriamente en un marco político y estratégico coherente con su realidad.

De la mano con la oportunidades, la etapa de diagnóstico, de diseño y de aplicación de la política, aunque sea simplemente un ejercicio de imaginación constructiva, se presentan las fortalezas en dos dimensiones particulares a saber: por un lado, emergen las fortalezas de la comunidad en la que se aplicar la política muy conectadas al reconocimiento de sus capacidades y oportunidades de desarrollo sostenible mediante el turismo rural y; por el otro, se da la visualización de las fortalezas de la política misma como dispositivo para la transformación de la realidad. Aunque ambas cosas están relacionadas realmente no son lo mismo.

Por su parte y como es lógico suponer las amenazas y debilidades están íntimamente relacionadas y tendencialmente se manifiestan en dos momentos particulares: o bien en la etapa del diagnóstico, si los hacedores de políticas tienen el potencial prospectivo para visualizar desde un primer momento las posibles debilidades o amenazas de su política, programa o proyecto –que siempre los hay en mayor o menor media–, o en la etapa de evaluación donde se puede valorar *post facto* cuales fueron los actores y factores, individuales o colectivos, abstractos o concretos, generales o específicos que debilitaron las fuerzas que convergen en el logro de los objetivos planteados, o como factores de oposición o contradictores amenazaron el desarrollo y consecución de la política en cuestión en su esencia y existencia.

De cualquier modo, las políticas para la promoción del turismo rural con énfasis en la comunicación para el desarrollo y el cambio social que se propone no pretende en ninguna caso ser el resultado de diseño de un equipo tecnocrático distanciado de la realidad, sino un ejercicio dialógico y consensuado en el cual las personas y comunidades involucradas, pueden manifestar abiertamente sus ideas, sentimientos, prácticas, intereses y visiones de lo que esperan lograr mediante el turismo rural en sus propios mundos de vida, mundos que normalmente han sido subordinados, marginados e invisibilizados por el Estado nación y sus burócratas, razón por la cual algunas personas pueden mostrarse legítimamente reacios a cualquier propuesta para el desarrollo sostenible y el cambio social, si previamente no se gana su confianza.

Conclusiones

Todo intento fructífero por repensar una política pública coherente para la promoción del turismo rural en general, con especial énfasis en la comunicación para el desarrollo y el cambio social, requiere, como condición de posibilidad para su éxito, de un conjunto de reflexiones epistemológicas, esto es, sobre el sentido y relaciones de los conceptos utilizados y, más aún, de su impacto en la realidad concreta. En consecuencia, todo indica que el turismo rural puede se una herramienta de desarrollo sostenible y de cambio social en completa sintonía con la constitución vigente del Ecuador, la cual establece taxativamente en su artículo tres (03) lo que sigue:

> Art. 3.- Son deberes primordiales del Estado: 1. **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…
>
> 6. Promover el desarrollo equitativo y solidario de todo el territorio, mediante el fortalecimiento del proceso de autonomías y descentralización (Asamblea Nacional, 2008).

Queda claro que, en el texto constitucional ecuatoriano el desarrollo sostenible se asume como una suerte de eje transversal, que de nuevo entiende que el crecimiento económico sin justicia social ni equidad, en la relaciones hombre-hombre y hombre-madre tierra, no tienen ningún sentido si no se garantiza inexorablemente la dignidad de la persona humana junto a la dignidad de todas las formas de vida superior, asumiendo a la naturaleza –espacio primordial para el desenlace del turismo rural– como sujeto activo de derechos.

En este sentido, en el plano jurídico el desarrollo sostenible busca articular las condiciones suficientes y necesarias para materializar el derecho a la salud, a la educación, a la alimentación y a la seguridad

social, entre otros, de personas y comunidades enteras, derechos que solo pueden ser efectivos cuando se da una *experiencia general de desarrollo equitativo de todo el territorio nacional*. En consecuencia, los hacedores de políticas deben poder responder entonces a la pregunta ¿Cómo hacer que el turismo rural sea una herramienta efectiva para el goce y disfrute de los derechos fundamentales de las comunidades involucradas? Obviamente todo dependerá de su creatividad y de un concepto supra-capitalista de este negocio, es decir, que no se restrinja al lucro económico solamente.

No obstante, es bien sabido que la proclamación de un catálogo de derechos de avanzada no es suficiente, por sí solo, para generar cambio social, entendido por nosotros como conjunto dialéctico de transformaciones materiales y simbólicas sucedidas en una formación societal por la acción de factores internos o externos a la misma que, en último término, mejoran la calidad de vida de la comunidad en general en términos de justicia social y bienestar inclusivo. En cualquier circunstancia, para construir cambio social hace falta la participación activa de las comunidades para la superación definitiva de las trabas que dificultan su desarrollo y suprimen el ejercicio de sus derechos fundamentales, incluso a contravía en algunos casos de los intereses hegemónicos en lo político y económico.

En este hilo conductor se debe, además, precisar entonces como se revela el ser, en la teoría y en la realidad concreta, de la relación turismo rural, comunicación política y cambio social en el marco de la política que hemos propuesto en el apartado tercero del artículo, esto, conociendo *a priori* que en cualquier escenario imaginable, siempre entra en la ecuación para la formulación de políticas del sector turismo: (turismo rural+ desarrollo sostenible = cambio social) la comunicación política, en tanto espacio direccional de síntesis que articula en los imaginarios colectivos, las políticas, ideas, conceptos, sentimientos y objetivos que crean y recrean las condiciones para el cambio social, como etapa superior del desarrollo sostenible en el siglo XXI.

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Legal Instruments for Solving Socio-Economic Problems in Buchanskyi district of Kyiv region: International Experience and Legislation of Ukraine

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Abstract

The purpose of the article is to identify the legal instruments that can be used to solve the socio-economic problems of post-conflict Ukraine based on the analysis of international experience. The research methods used were: analysis, synthesis, systematic interpretation, comparison, generalization and prognosis, etc. The socio-economic situation in the Buchanskyi district of the Kiev region of Ukraine after the occupation and military actions is considered. Socio-economic problems associated with the occupation and military actions are justified: destroyed housing, transport infrastructure, social infrastructure, industrial facilities and municipal facilities; low level of socio-economic development of the region; outflow of working population, including qualified specialists; lack of workplaces. It is concluded that, to solve the socio-economic problems of post-conflict Ukraine, such legal instruments can be used as: imposition of special economic zones, granting the status of "recovery territory", creation of innovation parks, simplification of

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permit procedures for the acquisition of land rights and for the start of reconstruction. Finally, the legal norms that are premises for the use of the above-mentioned legal instruments and revealing the directions of their improvement are investigated.

Keywords: legal instruments; Buchanskyi district of Kiev region; socio-economic problems; special economic zones; reclamation territory.

Instrumentos legales para resolver problemas socioeconómicos del distrito de Buchansky de la región de Kiev: experiencia y legislación internacional

Resumen

El propósito del artículo es identificar los instrumentos legales que se pueden utilizar para resolver los problemas socioeconómicos de la Ucrania posterior al conflicto en función del análisis de la experiencia internacional. Los métodos de investigación utilizados fueron: análisis, síntesis, interpretación sistemática, comparación, generalización y pronóstico, etc. Se considera la situación socioeconómica en el distrito de Buchanskyi de la región de Kiev de Ucrania después de la ocupación y las acciones militares. Los problemas socioeconómicos asociados con la ocupación y las acciones militares están justificados: viviendas destruidas, infraestructura de transporte, infraestructura social, instalaciones industriales e instalaciones municipales; bajo nivel de desarrollo socioeconómico de la región; salida de población activa, incluidos especialistas calificados; falta de lugares de trabajo. Se concluye que, para resolver los problemas socioeconómicos de la Ucrania posterior al conflicto, se pueden utilizar instrumentos legales como: la imposición de zonas económicas especiales, otorgando el estatus de «territorio de recuperación», la creación de parques de innovación, simplificación de trámites de permisos para la adquisición de derechos de tierra y para el inicio de la reconstrucción. Finalmente, se investigan las normas jurídicas que son premisas para el uso de los citados instrumentos jurídicos y revelando las direcciones de su perfeccionamiento.

Palabras clave: instrumentos jurídicos; distrito de Buchanskyi de la región de Kiev; problemas socioeconómicos; zonas económicas especiales; territorio de recuperación.

Introduction

The negative socio-economic situation resulting from the military actions in Ukraine requires an extraordinary and immediate solution. The destruction of industrial and infrastructure facilities during the military actions had an extremely negative impact on the economic processes in Ukraine, so the economy in this period is significantly different from the economy in peacetime. During the war there are intensive population movements, macroeconomic imbalance, low mobilization of public incomes, deterioration of social indicators and weakening of institutions. The combined weight of these problems makes it extremely difficult to generate income and grow the economy long after the conflict is over.

Ukrainian society cannot wait for the end of military actions, so the problems in the socio-economic sphere must be solved without delay. “Post-conflict reconstruction is aimed at strengthening peace and security, as well as achieving sustainable socio-economic development in a country destroyed by war.

The term “post-conflict” does not mean the destruction of the root causes of the conflict. It also does not mean the complete cessation of military actions, which often reoccur even after the signing of a peace agreement or the holding of elections. It often means only a reduction in military actions or “a window of opportunities” for peace in a conflict that can escalate again if not managed properly (Fischer, 2004; Hamre *et al*., 2002).

It is worth noting that when the United States announced the Marshall Plan, the result of World War II was generally accepted. On the contrary, modern reconstruction works often begin in highly unresolved post-conflict conditions where renewed military actions are still very likely (Chesterman, 2004).

1. Methodology of the study

The authors of this study used the dialectical method of cognition and a number of general scientific special methods of scientific research.

Thus, the method of monographic analysis helped to clarify the issues that are relevant and researched by scientists and covered in scientific publications. The method of analysis and synthesis made it possible to summarize information on the main trends in solving socio-economic problems in military conflicts in world practice. The application of the systematic method allowed to systematize socio-economic problems in Buchanskyi district of Kyiv region, which are caused by the occupation and military actions.

The method of economic and legal analysis was used to identify legal instruments that can be used to solve socio-economic problems in the Buchanskyi district of Kyiv region, namely: the introduction of special economic zones, granting the status of "territory of recovery", the creation of innovation parks, simplification of permitting procedures for acquiring land rights and for the beginning of the construction. The method of generalization allowed to make conclusions based on the conducted research.

2. Analysis of recent research

A small number of scientific works are devoted to the study of legal instruments that can be used to solve socio-economic problems in Buchanskyi district of Kyiv region through the prism of world experience. We are convinced that this indicates the relevance and need for research on this issue.

Thus, the peculiarities of legal regulation of the introduction of martial law in Ukraine are considered in the joint work of Teremetskyi and Vasyliev (2022). The scientific work Cohn *et al.,* (2018) is devoted to the directions of post-war economic recovery. The issue of revival and reintegration is considered in the scientific work of Fischer (2004). The formation of the process of economic governance in post-conflict countries and the application of the lessons of the Marshall Plan in Iraq is devoted to the work of Lewarne *et al.* (2004). The problems of post-conflict reconstruction are discussed in the scientific research of Hamre *et al.* (2002).

The issue of economic reconstruction of Bosnia and Herzegovina is considered in the works of Tzifakis *et al.* (2006). The issues of rebuilding the war-destroyed economy are considered in the scientific work of Haughton (2001), the issues of introducing priority development areas to solve socio-economic problems in Ukraine are considered in the scientific work of Ustymenko et al (2021).

Based on the results of the studies of these scientists, it is advisable to direct scientific research to identify legal instruments that can be used to solve the problems of post-conflict Ukraine.

3. Results and Discussion

3.1. Analysis of the socio-economic situation in Bucha district of Kyiv region after the occupation and military actions

As a result of the military actions in the Kyiv region of Ukraine, such human settlements as Bucha, Irpin, Hostomel, Borodianka were critically

damaged. According to the specialists of the Ministry of Economy of Ukraine, the damage caused to Bucha amounts to 449 million US dollars. Totally, 1,354 buildings were damaged in Bucha, 1,230 of them are residential buildings, 29 - educational institutions, 9 - medical institutions, 12 - municipal facilities. 55 km of power lines, 75 km of gas pipeline and 10 km of water pipeline were destroyed, a traction power plant and water supply facilities that centrally supplied Bucha with electricity and water were bombed (It became known what damages Russian troops inflicted on Bucha, 2022).

During the occupation of Irpin, 10.5 thousand buildings were damaged, 2501 of which were completely or strong destroyed, and the damage to the city's infrastructure is estimated at 25.3 billion hryvnias or almost 922 million US dollars. A significant number of industrial infrastructure facilities were destroyed (Irpen's losses from the war with Russia amount to $922 million, 2022).

Damages from the destruction of the airport in Gostomel are estimated at one billion US dollars. Except for the destruction of the An-225 Mriya and other airplanes, the airfield infrastructure and the flight test base were almost completely destroyed (Hordiichuk, 2022). In urban settlement Borodyanka, 164 buildings were damaged, including 42 completely destroyed houses (Pryshchepa, 2022).

Currently in the human settlements: Bucha, Irpin, Hostomel, Borodianka have the following problems: destroyed housing stock, transport infrastructure (roads, bridges, etc.), social infrastructure (educational institutions, medical facilities, etc.), industrial facilities, power lines, water supply facilities, other municipal facilities; low level of socio-economic development of the region; there is an outflow of working population, including qualified specialists; lack of working places.

Therefore, it is necessary to create new and preserve existing working places:

> First, there is the need to rebuild what war too often destroys: homes; tools, animals, plants, markets, workshops, factories and other means of livelihood; bicycles, carts, cars, buses and other forms of mobility; roads, bridges, railways, power grids, schools, hospitals and clinics, and more. Second, beyond rebuilding that which has been destroyed, war creates an entirely new set of needs, including: gaps caused by war's disruption of health care and education which need to be remedied; both individuals and families dealing with the injuries and traumas of war need systems of care; roads and fields need to be de-mined; despoiled and poisoned landscapes need recovery efforts; widow- and child-headed households need new forms of livelihood and support; and large numbers of people who have been displaced need to be resettled. Third, there will need to be a transformation from a war economy, in which some of a country's most violent actors' control and exploit both licit and illicit goods, to a peacetime economy (Cohn *et al.*, 2018: 2).

Solving these problems requires significant financial resources, but the state and local budgets of Ukraine do not have such resources. This is due to the fact that Ukraine has a very low capacity to collect revenues to meet these needs, as the productive sector of the economy has decreased disproportionately during the war, and it is the main tax base. At the same time, there is a need for high military spending during the war.

Despite the existing problems, it is necessary to find effective tools to solve the whole complex of problems. Their solution is possible by attracting national and foreign investments. However, it is very problematic to attract investors to the region where there were military actions and destroyed transport, social and industrial infrastructure. Therefore, it is necessary to find a special economic and legal mechanism that will solve this problematic situation.

> It is not enough to determine what needs to be done; it is also important to know when - i.e., to sequence reforms properly and, implicitly, to make choices about what to do and what not to do at any point in time. The main lesson is that one must move quickly, especially with the stroke-of-the-pen measures, which include opening up to trade, getting an appropriate exchange rate, cutting inflation, bringing the budget deficit to a manageable level, and petty privatization. Most other issues simply cannot be resolved so quickly, and will need to wait (Haughton, 2001: 256).

3.2. The main trends of solving socio-economic problems in the conditions of military conflicts in the world practice

To develop solutions in such a difficult situation, it is necessary to turn to the experience of countries that have been in the same or similar situation and analyze the economic and legal instruments that have been used in world practice to solve these socio-economic problems in the context of military conflicts, as well as the possibility of adapting them to Ukrainian realities.

Despite the fact that donors have recently participated in numerous post-conflict reconstruction programs, the recovery of Western Europe after the end of World War II is considered the most successful story. This is not due to the amount of money that was provided to Western European countries.

While Germany received about 200 USD per person during the first two post-war years, Bosnia and Herzegovina received over 1400 USD per person after the signing of the Dayton Agreement (Lewarne *et al.*, 2004). However, in the case of Bosnia, the availability of such large amounts of aid had a negative side effect on the dependence of the local economy on aid. The Bosnian case has also shown that serious coordination problems can

arise when several donors are involved in reconstruction and each of them defines their own aid programs. "For example:

> The reconstruction of Bosnia demonstrated that the adoption by the international community of a predominant role in the management of a recipient's economy could have as a side-effect the absence of 'local ownership' and the development of passivity towards the reform process (Tzifakis *et al*., 2006: 79).

The analysis of existing examples in the world practice of solving socio-economic problems after military actions allows us to highlight several aspects:

1) there are many ways in which donors can usefully help in post-war economic recovery;
2) projects in war-torn economies need to be flexible, as conditions change rapidly;
3) the control over the project implementation is very important;
4) it is important to develop local human and financial potential;
5) some projects, no matter how promising they may be on paper, may be premature in conditions of weak governance structures;
6) it is necessary to use existing advantages;
7) recovery can be very slow and requires the creation of long-term growth relationships.

Thus, successful post-conflict recovery requires sustained economic growth that is accompanied by employment expansion and solves horizontal inequalities where they are severe. State capacity, including the ability to generate revenue and spend it effectively, must be quickly restored. Recovery efforts should first prioritize incentive policies that will attract investment and also facilitate the return of skilled labor. This can be crucial for recovery, especially in the early stages.

3.3. Analysis of Ukrainian legislation that can be a premise for solving socio-economic problems of post-conflict Ukraine

The study of Ukrainian legislation shows that there are legal norms that can be used to solve socio-economic problems in post-conflict Ukraine. These are the existing legal norms that have already demonstrated in practice the possibility of being a mechanism for solving problems in the economy of Ukraine, as well as the legal norms that have recently been adopted or are awaiting adoption and are directly related to the need to solve the socio-economic problems that have developed after the hostilities in the Buchanskyi district of the Kyiv region of Ukraine.

Let us dwell in more detail on the norms of law that can become a legal instrument for solving the problems of modern Ukraine, including in Buchanskyi district of Kyiv region (table. 1).

Table No. 01. Legal instruments for solving socio-economic problems of post-conflict territories of Ukraine.

	Legal instruments for solving socio-economic problems of post-conflict territories	Regulatory and legal support
1.	Creation of special (free) economic zones (SEZ), providing incentives for investors who invest in the restoration of production and infrastructure facilities.	Article 401 of the Commercial Code of Ukraine
2.	Granting the status of "territory of recovery", which provides for the establishment of special mechanisms by the executive authorities and local self-government bodies to stimulate the development of territories where military actions took place and which suffered destruction of infrastructure and housing.	Article 11^2 of the Law of Ukraine "On the Principles of State Regional Policy" as amended on 27.07.2022
3.	Creation of innovation parks as an instrument for the development of the post-conflict economy of Ukraine in an innovative way.	Draft Law of Ukraine "On innovation parks"
4.	Simplification of permitting procedures for acquiring land rights and for the beginning of the construction	Draft Law of Ukraine "On quick investments"

Source: compiled by authors.

Firstly, Article 401 of the Economic Code of Ukraine (Verkhovna Rada of Ukraine, 2003) provides for the possibility to create special (free) economic zones (SEZ), which can be of different types: free customs zones and ports; export; transit zones; customs warehouses; technology parks; technopolises; integrated production zones; tourist and recreational; insurance; banking; etc. and combine functions inherent in different types of SEZ.

In Ukraine, in the period from 1998 to 2005, such types of special management regime as special economic zones and territories of priority development functioned, which demonstrated a positive impact on the economy of depressed regions of Ukraine. This is confirmed by figures and examples of activities of a number of significant enterprises in Ukraine. In particular, investments of approximately USD 4.2 billion were attracted, 50709 new working places were created and 83 028 working placess were preserved, 11.3 billion UAH were paid to the budgets of different levels (Ministry of Economy of Ukraine, 2020).

Among the most significant companies that implemented investment projects under the special management regime in Ukraine, it makes sense to highlight the following: plant firm of CARGILL (USA), which processed

sunflower and produced vegetable oil; «Knauf Gypsum Donbas» Limited Liability Company, which implemented an investment project with an investment volume of more than 50 million euros to create a modern production of dry building mixtures and «Knauf» gypsum boards, and it was with this project that «Knauf» company associated further prospects for its development in Ukraine; taking advantage of the economic incentives under the special management regime, world-famous companies worked in Ukraine: Philips, Volkswagen, Audi, Skoda, Flextronics, Leoni, Yazaki, Jebill, Henkel, Lego and others.

The analysis of the functioning of the special management regime in Ukraine, in the period from 1998 to 2005, shows the following: incentives were provided for investors, which had a positive impact on the investment attractiveness of Ukraine and allowed to attract additional funds to the economy of Ukraine; revenues to the budgets of different levels gradually increased; new working places were created and existing ones were preserved; it was possible to attract world-famous companies to the territory of Ukraine; the creation of new and preservation of existing enterprises allowed to launch a multiplier effect, i.e. with the growth of production there was a corresponding increase in the costs of intermediate products, then because of the costs of related industries there was an increase in almost the entire economy.

At the same time, it should be noted that today the law that determined the mechanism of creation and functioning of special economic zones in Ukraine has lost its force. Thus, the rules of law on the creation of special economic zones, which are provided by the legislation of Ukraine, are a premise for the use of this legal instrument to solve the problems that exist in the post-conflict territories in Ukraine. At the same time, for the effective functioning of this legal instrument it is necessary to develop and adopt a mechanism for the practical application of special economic zones.

Special economic zones, as an important tool for attracting investments and developing territories, have been successfully used in foreign practice for a long time.

The experience of Poland is interesting, since the input parameters of the introduction of special economic zones are similar to the Ukrainian realities of economic development (the presence of depressed regions, high unemployment, weak development of market relations). The special economic zones of Poland provide for a differentiated system of benefits: exemption of legal entities from corporate income tax until 2026, the amount of tax preferences is 30-70% of the volume of investments made (depending on the territory and scale of the business) or, optionally, compensation for two years of expenses for the created workplace; exemption of individuals from income tax; preferences can be provided on private territory, which can be included in the special economic zone (SEZ, 2021).

It is worth mentioning that in Poland, as well as in Ukraine, the issue of the destructive impact of the use of preferential financial and credit conditions as schemes for shadowing economic processes was actively discussed. At the same time, the effectiveness of the functioning of special economic zones in Poland is indicated by the economic positive effect: an increase in the number of working places (in the areas where special economic zones operate, unemployment is lower by 2-3 %, GDP is higher by 7-8 % compared to other regions of the country); crisis regions have been rebuilt; the volume of investments in 2005-2015 increased from 19.9 to 101.0 billion PLN, i.e., by 407 % (Barański *et al*., 2014). This allowed, even after the expiration of the initial functioning of special economic zones (until 2017), to continue at the legislative level the use of the potential of special economic zones until 2026.

Of interest is the experience of Italy, where the depressed region is the agrarian South, where live 40% of the country's population and produces more than 25% of total GDP. In order to stimulate investment activity in depressed regions of Italy, legislation on special economic zones was adopted in 2017-2018. The legislation provides three types of benefits for companies located in special economic zones (Dialti, 2018):

1. tax credit for companies that start their business activities or invest in special areas consisting of harbours, airports and adjacent areas, logistics platforms and marinas. The tax credit is equal to 20% of the investment (limited to a maximum of 50 million EUR) for small businesses, 15% for medium-sized businesses and 10% for large companies, unless different rates apply in certain areas. The tax credit can only be compensated at the expense of other tax obligations;
2. accelerated procedures and terms for issuing permits;
3. reduced administrative fees.

Secondly, the Law of Ukraine "On the Principles of State Regional Policy" in the editorial office on 27.07.2022 (Verkhovna Rada of Ukraine, 2022) provides for the classification of regions and territories of Ukraine into functional types for the purpose of planning recovery and introducing special mechanisms and tools to stimulate the development of these territories.

Thus, depending on the consequences of the destruction and according to the indicators defined by the Cabinet of Ministers of Ukraine, 4 functional types of territories have been identified:

- territories of recovery - territorial communities, micro-regions where military actions were conducted or which were temporarily occupied, suffered destruction of infrastructure and housing stock

as a result of military actions and have a sharp deterioration of socio-economic development and significant displacement of the population to other regions or other states;

- regional growth poles - micro-regions, territorial communities characterized by significantly better geographical, demographic, socio-economic indicators of development compared to other similar territories of the region, and whose growth has a positive impact on adjacent territories, the region and the state as a whole;
- territories with special conditions for development - macro-regions, micro-regions, territorial communities, the level of socio-economic development of which is low or where there is natural, demographic, international, security or other objective restrictions on the use of the territory's potential for development;
- territories of sustainable development - self-sufficient micro-regions, territorial communities with existing socio-economic potential of the territories and capable of balanced development in the economic, social and environmental spheres.

Despite the fact that the legislation of Ukraine has established the possibility of granting the status of "territory of recovery", which provides for the introduction of a special mechanism to stimulate its development, this novella of Ukrainian legislation has not received proper filling. In particular, the essence and procedure for introducing special mechanisms to stimulate the restoration of the territories where military actions took place and which suffered destruction of infrastructure and housing are not defined, there are no benefits for investors and the possibility of insuring military-political risks.

The analysis of the Ukrainian legislation shows that the legislator provides for investment insurance as one of the types of guarantees of their protection, but does not define the mechanism of practical application of this rule of law. As a result, investment insurance has not found proper application in Ukraine. However, taking into account the military-political situation, it is the insurance of military-political risks that should become one of the key guarantees of investor protection. This will allow to offset the risks of investors.

According to scientists, the legislator should provide for insurance against the following military-political risks: loss of investments and other property of the investor; physical damage to investments and other property of the investor; change in the conditions of investment activity, including the abolition of a special mechanism that makes it impossible for the investor to fulfil its obligations (Ustymenko *et al*, 2021).

Thus, the current rules of law on granting the status of "territory of recovery" are a premise for using this legal instrument to solve the problems of post-conflict territories in Ukraine, which includes Buchanskyi district of Kyiv region. The lack of substantive content of such a legal instrument as granting the status of "territory of recovery" makes it declarative and does not allow its use in practice. Therefore, it is necessary to adopt a number of legal acts that should establish a procedure for the introduction of special mechanisms to stimulate the restoration of territories, provide preferential treatment for investors and insurance of military-political risks.

Thirdly, the Cabinet of Ministers of Ukraine has prepared a draft law of Ukraine "On Innovation Parks" (The Cabinet of Ministers of Ukraine, 2022), which introduces a comprehensive and systematic approach to the activities of innovation parks as a tool for the development of the post-conflict economy of Ukraine in an innovative way.

Ukraine has legislation regulating the establishment and operation of technology and science parks, which can be conditionally referred to as "innovation parks". Technology or science parks are quite common in the world and contribute to the development of the economy. In particular, Poland, Slovakia, Czech Republic, Romania pursues an active economic policy through technology and science parks, creating the most favourable conditions for investors who are able to bring innovative technologies and create workings.

However, in a post-conflict economy, new impulses should be given to activate the mechanisms available in the legislation. Thus, without an active economic policy that would launch the tools of innovation parks at full capacity, it is difficult for Ukraine to reach a new level of economic development.

The draft law "On Innovation Parks", if finally adopted, will be able to improve the legislation and systematize different types of parks into one in the field of innovation based on the best international practices. This document defines the mechanism for state policy in the field of innovation development, support and stimulation of innovation activities by providing state support to innovation parks, creating favourable conditions for the activities of innovation parks. With the help of mentioned draft law, the state will ensure effective interaction of elements of the national innovation ecosystem, which can become the engine of accelerated economic growth of post-conflict territories.

Fourthly, the Cabinet of Ministers of Ukraine has prepared a draft law "On Rapid Investments", which provides for the simplification of permitting procedures for acquiring land rights and for starting construction during the implementation of projects aimed at economic recovery. This draft law will soon be sent to the Verkhovna Rada of Ukraine (Ministry of Economy of Ukraine, 2022).

The draft law "On Rapid Investments" stipulates that during martial law and during the reconstruction period, business entities implementing projects included in the List of Economic Recovery Projects will receive the most favourable conditions for investment, namely: reduction of the terms for acquiring land rights - from 18 months to 3 months; the right to a land plot will be acquired without an auction, without land management documentation, with guarantees of non-alienation of the plot; the establishment and change of the intended purpose of the land can be made without observing the rules of correlation between the type of intended purpose and the type of functional purpose of the territory; the design of the construction object can take place without observing urban planning conditions and restrictions, provided that it complies with building regulations.

A restoration project will be considered a project that costs from 500 thousand euros and is aimed at any industry sector (except for waste management and housing construction). To be included in the List of Recovery Projects, a business entity must submit an application to the Ministry of Economy.

These rules of law, if adopted, should become a premise for the use of such a legal instrument as simplification of permitting procedures for acquiring land rights and for beginning construction during the implementation of projects aimed at economic recovery. These legal provisions also require further improvement.

Conclusion

Based on the results of the analysis, the following conclusions can be drawn:

1. The socio-economic situation in the Buchanskyi district of Kyiv region after the military actions demonstrates the need for huge financial investments to restore the housing stock, social and transport infrastructure, production enterprises, etc. Taking into account that the budget of Ukraine does not have such resources, it is possible to solve these problems by involving investment funds.

2. In order to involve investment funds, it is necessary to create an attractive investment environment, which is possible with the help of the following legal instruments: creation of special economic zones, granting the status of the territory of recovery, creation of an innovation park, simplification of permitting procedures for acquiring land rights and for beginning construction in Buchanskyi district of Kyiv region.

3. The positive experience of functioning of special economic zones in foreign countries (Poland, Italy, etc.), as well as in Ukraine, demonstrates that the creation of favorable conditions for investors is an effective mechanism for involving investors and attracting investment funds.
4. The introduction of a differentiated system of incentives for investors at the legislative level, depending on the tasks to be solved in a particular territorial community, insurance of military-political risks will lead to a significant increase in investment capital inflows to Buchanskyi district of Kyiv region.

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Políticas municipales en el ordenamiento del transporte urbano de la provincia de San Román *

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Resumen

El trabajo de investigación tuvo como objetivo determinar la política municipal en el ordenamiento del transporte urbano de vehículos mayores en la municipalidad provincial de San Román en Perú; asimismo, el estudio tuvo el propósito de plantear propuestas de formulación de ordenanzas municipales con la participación de los ciudadanos. En cuanto a la metodología, se aplicó el estudio analítico, transversal, observacional y prospectivo, comprendido dentro del tipo de investigación aplicada, de diseño no experimental con el nivel de investigación correlacional. En cuanto a los resultados, la población estuvo conformada por un total de 1,956, la cual estuvo compuesta básicamente por los conductores de empresas y corporativas en vehículos minibuses de mayor tamaño. Se aplicó un muestreo probabilístico mediante el método de muestreo aleatorio simple por proporciones, de los cuales se seleccionó una muestra considerable de 83 conductores. La técnica usada fue la encuesta y el instrumento aplicado el cuestionario. En conclusión, en el estudio de las políticas públicas del transporte urbano, se percibe que son trabajos mancomunados son los más interesados en el surgimiento de las propuestas de políticas normativas que sean promovidas, implementadas, dirigidas y controladas, desde la realidad misma de los actores que involucra al transporte urbano.

Palabras clave: políticas públicas; propuestas de ordenanzas; ordenamiento; tránsito terrestre; participación ciudadana en Perú.

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Municipal policies on urban transportation planning in the province of San Roman

Abstract

The objective of the research work was to determine the municipal policy in the regulation of urban transportation of large vehicles in the provincial municipality of San Román in Peru; likewise, the study had the purpose of proposing the formulation of municipal ordinances with the participation of the citizens. As for the methodology, an analytical, cross-sectional, observational and prospective study was applied, comprised within the type of applied research, of non-experimental design with a correlational level of research. As for the results, the population consisted of a total of 1,956, which was basically composed of company and corporate drivers in larger minibus vehicles. A probabilistic sampling was applied using the simple random sampling method by proportions, from which a considerable sample of 83 drivers was selected. The technique used was the survey and the instrument applied was the questionnaire. In conclusion, in the study of urban transport public policies, it is perceived that the most interested in the emergence of regulatory policy proposals that are promoted, implemented, directed and controlled, from the very reality of the actors involved in urban transport, is the joint work.

Keywords: public policies; ordinance proposals; ordinance; land transit; citizen participation in Peru.

Introducción

En esta investigación se proponen políticas de transporte urbano, con la participación ciudadana, para una ciudad ordenada en desarrollo. Teniendo ese propósito de forma objetiva, se han evaluado las formulaciones de normativas de transporte urbano de vehículos mayores, en esa medida, se ha percibido la existencia de malestares, en las diferentes localidades del mundo, son millones de sus habitantes que emergen a las vías en calidad de transeúntes temporales que circulan en las vías públicas, por estos trayectos a veces ellos enfrentan un problema similar, que conlleva la inseguridad vial a consecuencia de la congestión vehicular, como proyectan los datos en cumplimiento de las políticas municipales, junto a los elevados costos de vida; está es el drama que sufren las familias en el ámbito social, cuya dimensión se presentan con mayor frecuencia en los países bajos, en subdesarrollo.

Estos crecimientos del parque automotor, expansión de las ciudades y el incremento de humanos, hacen que en los países más avanzados del

mundo afronten las reducciones en accidentes de tránsito, recayendo esas labores a los gobernantes ediles que mitiguen con planteamientos en las políticas municipales del ordenamiento de tránsito.

En un estudio amparado por (Fernández Arroyo y Schejtman, 2012) estiman que el plan estratégico institucional PEI, es un proceso de planes a mediano plazo, que cada gobernante enfocara sus prioridades plasmándolas en un documento de gestión, dentro de ellas establecerán estrategias, para llevar a cabo una serie de actividades de planificación con las gerencias de la organización, para fines de programar antes de un trimestre de finalización del año siguiente en el plan operativo institucional POI.

En la formulación de un plan de transporte y tránsito, se busca resolver las problemáticas generales en la accesibilidad a través de la construcción de infraestructura vial enfocados en el usuario. La política pública de la elaboración de los proyectos de infraestructura, tienen un objeto claro en fijar políticas de mejoramiento de las movilidades del transporte urbano, luego de esa mejora, el ciudadano debe hacer uso cómodo de las vías expresas, avenidas, calles, paraderos de transporte urbano, parqueo para vehículos particulares.

En las plenarias de las sesiones concejales, los gobernantes ediles son temerarios en la creación, modificación, regulación y seguridad vial o diseños viales en la ciudad de Juliaca, se observa escasas proposiciones de políticas normativas consultadas a los ciudadanos en ordenamiento vial.

La saturación del transporte deviene por deficientes playas de estacionamiento en los centros comerciales, no existen vías exclusivas para el recorrido del transporte urbano, tampoco restringen a vehículos particulares al centro de la ciudad. Las descongestiones es poner limitaciones en la movilidad de automóviles particulares para el control del tráfico, verificando los números finales de placas pares o impares, por determinadas zonas céntricas con la finalidad de mitigar las externalidades negativas del transporte que conlleva la contaminación ambiental, congestión y seguridad vial (Pérez y Osal Herrera, 2019).

1. Políticas públicas

Las autoridades ediles dentro de sus facultades en las políticas de ordenamiento del transporte urbano deben considerar al usuario como el sujeto participe de las políticas, no así a los vehículos de transporte. Desde ese interés humano, surge las políticas públicas como una integración de actividades que emanan de uno o varios actores políticos que están investidos en una función pública al servicio de la sociedad, con el propósito de cumplir acciones coordinadas para ser tomadas en decisiones, que se

llevan a cabo en objetivos claros, en un período de gobierno municipal para solucionar los problemas de movilidad ciudadana de forma integral y sostenible.

En cuanto al compromiso de tratativas del ordenamiento es integral defendido por (Torres y Santander, 2013), que comprenden a las políticas públicas como el resultado de un trabajo agrupado que se desarrolla en el ámbito público, las cuales están dadas en una serie de transacciones políticas, por lo que el gobierno no solo tiene como único objetivo ejecutar todo lo planeado, sino también avalar la coordinación y participación de los representantes claves.

Por otro lado, tenemos la aseveración de (Molero Gonzáles, 2007) donde estima que las políticas de transporte público son las acciones tomadas por el Estado como atribución al rol de administrador en los conjuntos de decisiones y orientaciones emanadas desde el gobierno nacional, regional o municipal que se plasman en programas, proyectos, normas, reglamentos u otros marcos legales. Dichas orientaciones persiguen responder a las problemáticas sociales innatas de una parte del sector transporte, que significativamente favorecen al desarrollo de la economía y legitiman las acciones del Estado.

La política pública municipal es velar por el bien común de los ciudadanos, con mejoras en calidad de servicio al usuario, una de estas acciones gubernamentales es el ordenamiento del transporte urbano de las ciudades de Juliaca y San Miguel, por encontrarse desordenado la parte céntrica de la ciudad, en momentos son incontrolable el transito urbano y peatonal. Señalando que es de ahí, donde nace la prioridad en tomar decisiones de acuerdo a los planes y presupuestos establecidos en la base de la gestión pública.

Las tareas conjuntas entre autoridades y ciudadanos son las alternativas que se requieren en el desarrollo de la infraestructura del transporte urbano fijadas en la ejecución del gasto presupuestal. “En este sentido, la reciprocidad de facultades permite a los entes gubernamentales tomar decisiones coordinadamente, dando respuesta inmediata a la colectividad en sus necesidades, dejando atrás molestosas diligencias burocráticas unilaterales en la ejecución de proyectos” (Belloso Monsalve, 2019:93)

2. Políticas de propuesta normativa

Por medio del mecanismo de la iniciativa ciudadana, se abre las posibilidades de generar cambios requeridos por sus necesidades conocidas por ellos mismos. Por estas circunstancias cercanas a sus problemas reales en el ámbito del transporte urbano, los ciudadanos legitimados, pueden

recurrir a presentar al municipio proyectos de creación, modificación, reforma o derogación de algunas ordenanzas municipales en las materias señaladas dentro de sus competencias.

Las iniciativas ciudadanas son dirigidas desde los gobernantes ediles detectadas por Aranzamendi Ninacondor (2006) señala que es evidente la existencia de muchos municipios donde la ciudadanía no se halla debidamente organizada, frente a esta situación, los municipios como órganos de gobierno y de poder dentro de su jurisdicción deben convertirse en promotores de las organizaciones populares emanadas desde la sociedad civil, otorgándoles representatividad con capacidad de decisión y respetando su independencia institucional.

La formulación de las ordenanzas es un factor clave para el ordenamiento del transporte urbano en las ciudades, que involucran la participación de la sociedad civil, en sus diferentes representaciones, que puedan influir en su consulta de diseño de las vías e implementación de políticas municipales que concentre la contemplación de los vecinos, usuarios y ciudadanos de las comunas de la provincia de San Román, siendo este un medio de proceso legal que pasa por diversas fases que están reguladas por ley.

En la creación de iniciativa de participación ciudadana, se podría protocolizar el reconocimiento generados por los gobernantes dándole facultades participativas como vecinos que tienen derecho de iniciativas de propuestas enmarcados en la formación de los dispositivos municipales de la ley orgánica de municipalidades, tal como lo encontramos en el art. 114, que permite un mecanismo vecinal conformado de vecinos donde puedan plantear una propuesta de iniciativa legislativa ante el alcalde o al concejo municipal, que lo hagan suya la propuesta como órganos de decisión, dándole el inicio al trámite de emisión y aprobación (Mállap Rivera, 2013).

En cuanto a participación ciudadana en el respaldo legal advierten (Shack y Arbulú, 2021) será entendida como la capacidad que tienen las y los ciudadanos de influir de manera individual o colectiva, siendo en calidad de organizaciones formales e informales en los procesos de toma de decisiones conjuntas con la entidad pública, a través de mecanismos concretos como partes de la construcción social de las políticas públicas, en el ejercicio del derecho fundamental de todo ciudadano de intervenir en la vida de la nación como parte involucrada activamente, pero también es el cumplimiento del deber de corresponsabilidad para lograr una mayor cohesión social y mejor calidad de vida de los intereses de esa nación.

Coligiendo ideas es evidente, que la iniciativa legislativa surge por voluntad política de la comuna edil, impulsado por los regidores, el alcalde y los ciudadanos comprendidos en la circunscripción que tienen las facultades de proponer proyectos de normativas municipales en materias de ordenamiento del transporte urbano. Estas actividades de labores

legales en algunos casos, serian pre publicados para recibir las sugerencias o críticas de la opinión pública que serán llevados al grupo de los ciudadanos reconocidos por la municipalidad.

3.Políticas normativas

Desde el plano normativo, la participación ciudadana se valora en sí misma porque promueve la autonomía y la corresponsabilidad entre los ciudadanos, además de que se traduce en una mayor legitimidad de las decisiones públicas. Los gobiernos democráticos deben mantener informada a la ciudadanía de las decisiones que la van a afectar, deben promover debates sobre las implicaciones de los proyectos o programas que planean llevar a cabo y, en consecuencia, auspiciar instancias de consulta por medio de diálogos para poder conocer e incorporar las demandas, necesidades y aspiraciones de la población en el proceso de hechura de las políticas públicas (Díaz Aldret, 2017).

Las promulgaciones de normatividades expresados por los concejales en los asuntos del transporte urbano deberían ser simplificadas necesariamente por las frecuencias, continuas y seguidas en las señalizaciones de las vías o carriles del transporte urbano, que deben estar ubicados siempre al lado derecho de la vereda u acera, por rutinas continuas de subida y bajada, con el uso adecuado de embarque y desembarque de pasajeros en paraderos o estaciones fijos, estos costumbres deberían ser diseñados en relación a una política de planificación nacional, regional, local y participación vecinal de movilidad urbana en el transporte urbano sostenible, fijados en el crecimiento poblacional, como también en el parque automotor de buces, corredores, metro o trenes más rápidos y ampliados de las ciudades de Juliaca y San Miguel.

En cuanto a la exclusividad de uso vial Bull Simpfendorfer (2003) refiere que, las vías exclusivas para buces se han aplicado en forma permanente en diversos países del mundo en un lapso largo de años. Sin embargo, la modalidad de generar esta exclusividad es sólo por períodos de tiempo, tal parece ser una innovación reciente, y que ha sido experimentada en la ciudad de Santiago de Chile como parte del conjunto de proyectos implantados en el año 2001 para disminuir la congestión vehicular.

Estas alternativas de circulación diseñadas por otros países, son modelos de carriles de uso exclusivo para vehículos urbanos, que pueden ser implementados en la parte céntricas de las ciudades de la provincia de San Román, por ejemplos se propone; carril derecho A (vehículos de transporte urbano mayores, asfalto de color azul), carril intermedio B (vehículos particulares, asfalto de color blanco) y carril izquierdo C (vehículos de transporte urbano menores, asfalto de color rojo) sugeridas como uso

exclusivo para vehículos permitidos en esas vías fijadas, con excepción en caso de traslación de vehículos de emergencia, los vehículos particulares deben acomodarse a cualquier carril dejando libre el carril intermedio para dar paso seguro a la unidad de bomberos voluntarios o ambulancias.

Son vías exclusivas de uso únicamente para la circulación de autobuses, esta diferenciación de los determinados carriles, que normalmente están marcados por demarcaciones. Su implementación se basa en caracterizar su bajo precio en zonas alejadas, pero su desempeño en zonas céntricas es dificultoso, salvo en el caso de contraflujo, esto dependerá de la voluntad de los automovilistas de cumplir con la medida de prohibir ciertos sitios, lo que los obliga a invertir en acciones de vigilancia constante, en otras ocasiones las sanciones están sostenidas por largos períodos de tiempo, sin poderlos cambiar. Hay momentos que la medida resulta invalidada por la violación sistemática de la restricción continua en los lugares céntricos, por ello se estima que, no siempre es posible generar disciplina de uso de estas pistas (Bull Simpfendorfer, 2003).

En estas medidas que sugiere el autor, es verídico y real, se aprecia un desorden en la circulación, invasión de carriles por otros conductores, vehículos estacionados, los mismos que dificultan la circulación rápida de vehículos de auxilio o emergencia en denominadas horas punta, también es aprovechado mayormente por los conductores de vehículos menores moto taxis en ganar espacios.

La implementación de un plan piloto de restricción de circulación de vehículos dentro del casco central de la ciudad, es aplicado por etapas de acuerdo con los horarios establecidos de 6:00 am a 7:00 pm., y de acuerdo al número de placa que identifica al vehículo, con excepción de los vehículos oficiales y de transporte público. Es importante establecer el horario de aplicación, difundiendo en campañas publicitarias los puntos de control, por otro lado, en cuanto al manejo de la logística deben anticiparse a las posibles rutas alternas con un plan de control, monitoreo y fiscalización (Pitrangeli de Leon y Alizo, 2012).

Una de las estrategias en el congestionamiento vehicular en los días de mayor afluencia en las calles céntricas de la ciudad de San Miguel y Juliaca, deberían permitirse el uso del carril derecho de la vía a efectos que los transportistas en vehículos mayores circulen sin limitaciones en las restricciones de los planes de pico y placa, siendo lo contrario para los que circulan por el carril intermedio usado por los automóviles particulares, que serán fijados el ingreso al centro de la ciudad a ciertos números de placas, con las políticas de liberar los horarios congestionados o saturados, abarcando estas medidas también para los vehículos menores de transporte urbano.

4.Materiales y métodos

4.1. Diseño de investigación

Para el proceso de viabilidad del estudio, fue el diseño no experimental, por el hecho que no se genera ninguna situación, sino que se observan situaciones ya existentes, no provocadas intencionalmente en la investigación, en otras palabras, no es posible manipularlas, tampoco se puede tener control directo de las variables (Hernández, Fernández, & Baptista, 2014).

4.2. Métodos

Empleado en el trabajo de investigación. Se expresa que, es descriptivo, porque describe e interpreta sistemáticamente las características de las variables de estudio. En el sentido de que trata de determinar el grado de asociación entre las dos variables existentes. La investigación se enmarca en el tipo de investigación aplicada. Se señala que, es una investigación de tipo aplicativo, porque se busca dar solución a un problema de la sociedad, particularmente de los pobladores y ciudadanos de la provincia de San Román (Hernández, Fernández, & Baptista, 2014).

4.3 Participantes

Para determinar la muestra representativa, se utilizó el muestreo probabilístico, en el que se consideró a un total de 83 miembros que forman parte de la población de estudio, dentro de los cuales se ha asignado a los conductores en minibuses o combis de las empresas societarias que son: Sociedades anónimas (accionistas) y sociedades comerciales (participaciones), cooperativas (cooperan) representado por presidentes o gerentes, ante las municipalidades distritales de la provincia de San Román: Juliaca, Caracoto, Cabana, Cabanillas y San Miguel, de los que se obtendrá la información requerida para nuestro trabajo de investigación.

4.4. Instrumentos

Para darle sostenibilidad a nuestra investigación recurriremos a las fuentes primarias y secundarias, respecto a los instrumentos se realizó el uso de todo tipo de textos referidos a la temática, fichas de estudio, encuestas, entre otros. En las técnicas se aplicó la observación y la estadística, siendo una escala de 09 indicadores para determinar la política municipal del transporte urbano de vehículos mayores, cuya puntuación oscila entre: 1= nunca 2= a veces 3= siempre y 06 indicadores para caracterizar el ordenamiento del transporte urbano de vehículos mayores de la provincia de San Román, cuya valoración oscila entre: 1= malo 2= regular 3= bueno.

El modelo de escala de estudio desarrollado, explican que originalmente, era de tipo de instrumentos que consistía en una colección de ítems, donde la mitad expresaba una posición acorde con la actitud a medir y la otra mitad determinaba en contra. Cada ítem iba acompañado de una escala de valoración ordinal con opciones de respuesta numéricas de 1 a 5 (Matas, 2018).

5. Resultados

Ilustrados los resultados en tablas y gráficos estadísticos, se interpretan las canalizaciones detalladamente de un total de 1,956 que está conformado básicamente por los conductores de las empresas societarias en vehículos mayores minibuses. Visualizando los resultados en la tabla N° 1 y grafico N° 1, se refleja que, el 55.4% de los transportistas de la jurisdicción de la municipalidad provincial de San Román indican el nivel regular de las políticas públicas, el 26.5% de ellos figuran en el nivel de malo y los que presentan nivel bueno representan el 18.1%. Sobre el ordenamiento del transporte urbano, los transportistas manifiestan de a veces representan el 49.4%, el 33.7% de ellos indican el nivel de nunca, y los transportistas que forman el nivel de siempre figuran con el 16.9%.

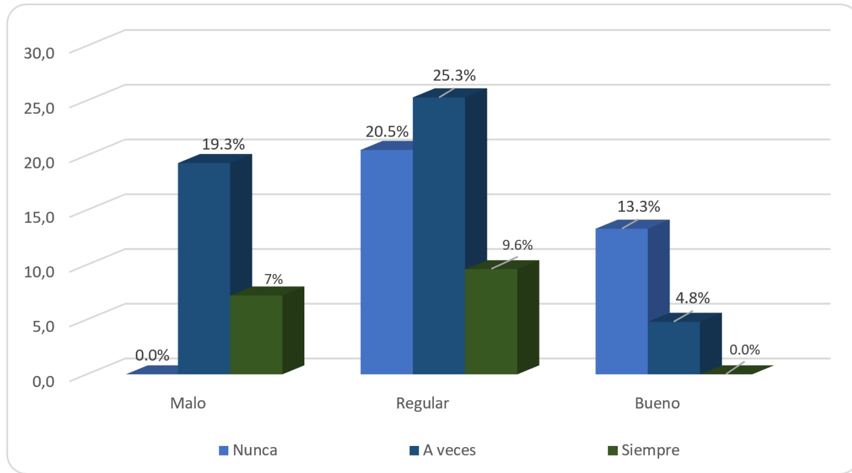
Al asociar las políticas públicas con el ordenamiento del transporte urbano, se observa con predominio el 25.3% de ellos indican que se aplica regularmente las políticas y a la vez revelan de a veces se cumple el ordenamiento; así mismo el 13.3% presentan de bueno las políticas y presentan de nunca se aplica el ordenamiento, en cambio los que señalan las políticas son malas y a veces se aplica el ordenamiento forman el 19.3%.

Tabla No. 01: Políticas públicas asociado al ordenamiento del transporte urbano en la municipalidad provincial de San Román.

Ordenamiento del transporte urbano	Políticas públicas							
	Mala		**Regular**		**Bueno**		**Total**	
	Nº	%	Nº	%	Nº	%	Nº	%
Nunca	0	0.0	17	20.5	11	13.3	28	33.7
A veces	16	19.3	21	25.3	4	4.8	41	49.4
Siempre	6	7.2	8	9.6	0	0.0	14	16.9
Total	**22**	**26.5**	**46**	**55.4**	**15**	**18.1**	**83**	**100.0**

Fuente: Elaborado por el autor.

Gráfico No. 01: Políticas públicas asociado al ordenamiento del transporte urbano en la municipalidad provincial de San Román.



Fuente: Tabla N° 1

Percibiendo los resultados en la tabla N° 2 y grafico N° 2, se ilustra que, el 34.9% de los transportistas de la jurisdicción de la municipalidad provincial de San Román indican el nivel regular de las políticas de propuesta normativa, el 24.1% de ellos figuran en el nivel de malo y los que presentan nivel bueno representan el 41.0%. Sobre el ordenamiento del transporte urbano, los transportistas manifiestan de a veces representan el 49.4%, el 33.7% de ellos indican el nivel de nunca, y los transportistas que forman el nivel de siempre figuran con el 16.9%.

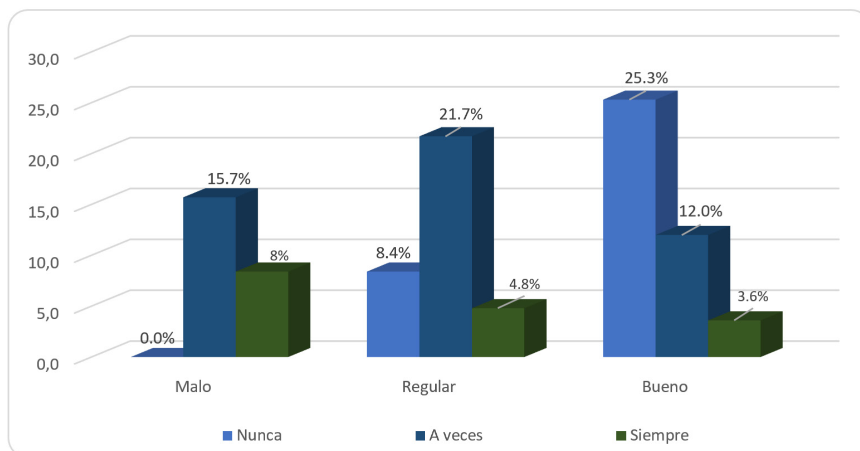
Al asociar las políticas de propuesta normativa con el ordenamiento del transporte urbano, se observa con predominio el 25.3% de ellos indican que es buena las políticas y a la vez revelan de nunca se cumple el ordenamiento; así mismo el 21.7% presentan de regular las políticas y presentan de a veces se aplica el ordenamiento, en cambio los que señalan las políticas son malas y a veces se aplica el ordenamiento forman el 15.7%.

Tabla No. 02: Políticas de propuestas normativas asociado al ordenamiento del transporte urbano en la municipalidad provincial de San Román

Ordenamiento del transporte urbano	Políticas de propuestas normativas							
	Mala		**Regular**		**Bueno**		**Total**	
	Nº	%	Nº	%	Nº	%	Nº	%
Nunca	0	0.0	7	8.4	21	25.3	28	33.7
A veces	13	15.7	18	21.7	10	12.0	41	49.4
Siempre	7	8.4	4	4.8	3	3.6	14	16.9
Total	**20**	**24.1**	**29**	**34.9**	**34**	**41.0**	**83**	**100.0**

Fuente: Elaborado por el autor.

Gráfico No. 02: Políticas de propuestas normativas asociado al ordenamiento del transporte urbano en la municipalidad provincial de San Román

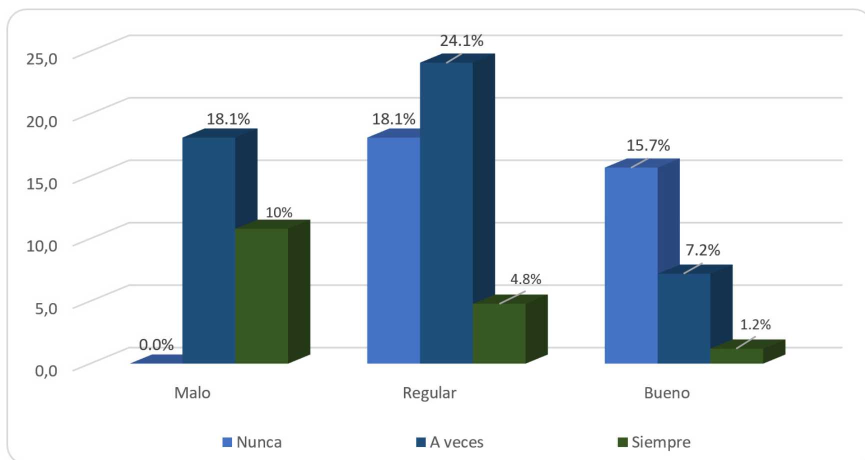


Fuente: Elaborado por el autor.

En la tabla N° 3 y grafico N° 3, reflejan que, el 47.0% de los transportistas de la jurisdicción de la municipalidad provincial de San Román indican el nivel regular de las políticas normativas. El 28.9% de ellos figuran en el nivel de malo y los que presentan nivel bueno representan el 24.1%. Sobre el ordenamiento del transporte urbano, los transportistas manifiestan de a veces representan el 49.4%, el 33.7% de ellos indican el nivel de nunca, y los transportistas que forman el nivel de siempre figuran con el 16.9%.

Al asociar las políticas normativas con el ordenamiento del transporte urbano, se observa con predominio el 24.1% de ellos indican que se aplica regularmente las políticas y a la vez revelan de a veces se cumple el ordenamiento; así mismo el 15.7% presentan de bueno las políticas y presentan de nunca se aplica el ordenamiento, en cambio los que señalan las políticas son malas y a veces se aplica el ordenamiento forman el 18.1%.

Gráfico No. 03: Políticas normativas asociado al ordenamiento del transporte urbano en la municipalidad provincial de San Román



Fuente: Elaborado por el autor.

6. Discusión

Los datos obtenidos de las encuestas a los transportistas de servicio urbano, al realizar la asociación de las políticas públicas concerniente a los diseños de planes y presupuestos compartidos a nivel local a largo o mediano plazo en el área de ordenamiento del transporte urbano, se predice que su aplicación en esas políticas públicas es regular a veces, de ese modo los gobernantes ediles de la municipalidad provincial de San Román, no son calificados de malos, pero tampoco son buenos, entonces esta estimación moderada balanceada demuestra conformismo en la labor de ordenamiento por la ciudadanía y la autoridad municipal.

Los resultados similares, se obtuvo de los pobladores Arequipeños de Yanahuara, en cuanto a las políticas municipales, se observa que el 97.30% de los habitantes se encuentran en un nivel regular de conocimiento en su labor emprendida por la subgerencia de transporte de la municipalidad distrital de Yanahuara, mientras el 2.80% aprueban el nivel de su labor edil de forma eficiente y ninguno en el nivel deficiente. En cuanto a educación vial, se observa que el 75,80% de los habitantes se encuentra en un nivel regular, el 24,30% en un nivel eficiente y ninguno en un nivel deficiente (Del Carpio Tejada, 2019).

En cuanto a los resultados de propuestas normativas, referente al diseño de reconocimiento de la participación ciudadana en la participación de sesiones de concejo municipal en la provincia de San Román con voz y voto, esta acción es calificada de bueno por los transportistas, mas no en su cumplimiento o legalidad en decisiones municipales. Se puede decir que, la propuesta de ordenamiento del tránsito vehicular a resaltar están las labores mancomunadas entre sociedad civil y gobierno edil, este anhelo es lo que encajaría con el pedido del cumplimiento de sociabilizar el ordenamiento del transporte urbano al agrado de los ciudadanos, pero en la actualidad no tienen esa facultad de legislar al igual que los concejales.

Otro estudio en propuesta normativa, se empodera a la participación ciudadana, destacando que no es un elemento fortuito, sino fruto de la gestión de los gobiernos locales, entonces el ordenamiento es bueno en la medida en que se planifiquen, organicen, lideren y controlen acciones en materia de participación ciudadana, solo así serán considerados un gobierno edil eficaz y eficiente (Salvador Hernández, et al., 2017).

Analizando las políticas normativas entrelazando con el ordenamiento del transporte urbano, en políticas normativas de definir los carriles exclusivos para vehículos de transporte urbano en las calles céntricas de la ciudad de Juliaca, este acto es calificado de regular por los transportistas, en cuanto al ordenamiento es a veces, por los desaciertos en restringir o crear nuevas aperturas en las vías solo con el consenso de las autoridades municipales.

Como parte de solución en las politicas normativas tenemos a la gerencia de transportes de la municipalidad de Tacna para contrarrestar la congestión vehicular de la zona comercial. Una de las soluciones consistió en dividir el carril de subida de la avenida Bolognesi en dos carriles con la ayuda de delineadores de tránsito conocidos como postes refractivos. “De tal manera que, por la división izquierda, circulen solo vehículos livianos incluyendo taxis; y por la división derecha circulen solo los vehículos denominados combis y minibuses pertenecientes al transporte masivo urbano, una especie de carril solo para buces” (Pari Pinto, et al., 2019: 341).

Otro autor tambien alcanza una similar acción de crear vias exclusivos solo para el transporte urbano, con miras a mejorar la operación del sistema, en las ciudades más saturadas, en esas circunstancias lograron definir carriles exclusivos para el transporte público en tres corredores viales dentro del área central con el fin de concentrar la circulación del transporte masivo en el área más conflictiva, mejorando la circulación sobre un número reducido de vías y asegurando una mayor velocidad comercial (Riera y Falavigna, 2016).

Conclusiones

Se determinó que las políticas municipales al ser asociados con el ordenamiento del transporte urbano de vehículos, no es una gestión desarrollada solo por la autoridad edil, tampoco son aplicadas las reglamentaciones municipales pensando en los vehículos, deben desarrollarse en cada momento entonces dando prioridad a los usuarios del ámbito de la municipalidad provincial de San Román.

Ampliando el estudio de las políticas públicas del transporte urbano, se percibe que son trabajos mancomunados, además para el surgimiento de las propuestas de políticas normativas necesitan ser planteadas, promovidas, implementadas, dirigidas y controladas desde la realidad misma de los actores que involucra al transporte urbano.

Así se sitúa el panorama de los transportistas que conocen de cerca las necesidades o dificultades que se presentan en el servicio de transporte, siendo esas las razones justificadas que permiten un acercamiento idóneo para ser partícipes en las consultas de los asuntos legales del ordenamiento municipal, compartiendo roles en las propuestas de políticas normativas establecidas desde la participación ciudadana y empoderadas por la entidad municipal con reconocimiento de funciones ediles equivalentes a los miembros del concejo municipal.

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El interés superior de los niños, niñas y adolescentes y su derecho a alimentos en Ecuador

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Resumen

El objetivo principal de este trabajo fue determinar el derecho a los alimentos de los niños, niñas y adolescentes como parte de su interés superior en el ordenamiento jurídico ecuatoriano. La presente investigación es descriptiva, de tipo documental, fundada en la revisión bibliográfica mediante el método analítico. El ordenamiento jurídico ecuatoriano reconoce como sujetos de atención prioritaria y preferencial a los niños, niñas y adolescentes, y prevé dentro de su regulación la vigencia y aplicación del su interés superior. Este interés superior del niño, niña y adolescente supone un avance progresivo en la prevalencia de sus derechos y garantías. El derecho a los alimentos forma parte de dicho interés superior, dado que está referido a la satisfacción de sus necesidades más básicas, indispensables para proteger su vida, salud, bienestar, supervivencia, desarrollo y vida digna. El derecho a alimentos configura un aspecto integral imprescindible para el buen vivir del niño, niña y adolescente, que abarca necesidades desde la alimentación sana y nutritiva, educación, vivienda, recreación y deportes, entre otros. Los padres se configuran en los titulares principales de la obligación alimentaria de sus hijos niños, niñas o adolescentes, aún en los casos de limitación, suspensión o privación de la patria potestad.

Palabras clave: interés superior de los niños, niñas y adolescentes; derecho a alimentos; ordenamiento jurídico ecuatoriano; estudios jurídicos; derechos en Latinoamérica.

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The best interest of children and adolescents and their right to food in Ecuador

Abstract

The main objective of this work was to determine the right to food of children and adolescents as part of their best interest in the Ecuadorian legal system. The present research is descriptive, of documentary type, based on the bibliographic review by means of the analytical method. The Ecuadorian legal system recognizes children and adolescents as subjects of priority and preferential attention, and provides within its regulations the validity and application of their best interests. This best interest of children and adolescents is a progressive advance in the prevalence of their rights and guarantees. The right to food is part of this best interest, since it refers to the satisfaction of their most basic needs, indispensable to protect their life, health, welfare, survival, development and dignified life. The right to food is an integral aspect essential for the good life of the child and adolescent, covering needs from healthy and nutritious food, education, housing, recreation and sports, among others. Parents are the main holders of the food obligation of their children or adolescents, even in cases of limitation, suspension or deprivation of parental authority.

Keywords: best interest of children and adolescents; right to food; Ecuadorian legal system; legal studies; rights in Latin America.

Introducción

El objetivo principal de este trabajo es determinar el derecho a alimentos de los niños, niñas y adolescentes como parte de su interés superior en el ordenamiento jurídico ecuatoriano. Para alcanzar este objetivo, la presente investigación es descriptiva, de tipo documental, fundada en la revisión bibliográfica mediante el método analítico, que permite el estudio y comprensión de normas jurídicas, jurisprudencias y doctrinas, a través de la interpretación, cotejo y análisis de fuentes primarias y secundarias en cuanto a las nociones del interés superior del niño, niña y adolescentes, su derecho a alimentos, y la responsabilidad del Estado, sociedad y familia, todo en el contexto del orden interno ecuatoriano.

El ordenamiento jurídico ecuatoriano reconoce como sujetos de atención prioritaria y preferencial a los niños, niñas y adolescentes, y prevé dentro de su regulación la vigencia y aplicación del su interés superior. Este interés superior del niño, niña y adolescente supone un avance progresivo en la prevalencia de sus derechos y garantías, en tal sentido, todo órgano estatal

que tenga a su cargo alguna decisión atinente a niños, niñas y adolescentes debe hacerlo desde una consideración primordial a la que se atenderá de forma principal dicho superior.

Dada la interdependencia e indivisibilidad de los derechos de los niños, niñas y adolescentes, su interés superior resulta exigible en todo momento, y el Estado, la sociedad y la familia debe garantía, respeto y protección, por ser un principio de directa e inmediata aplicación que adquiere vigencia cuando sea necesario sopesar distintos intereses entre los cuales se pueda afectar a un niño, niña o adolescente, dado que el fin último es asegurar su desarrollo integral, tanto físico como emocional, y lograr su crecimiento de forma digna y sana.

En este sentido, uno de los elementos que incide sobre ese desarrollo integral está asociado con su salud y correcta nutrición, de ahí la importancia de verificar el derecho a alimentos de los niños, niñas y adolescentes. Este derecho a alimentos en el contexto ecuatoriano está relacionado con el régimen del Buen Vivir, referido a un sistema de inclusión y equidad social, donde priva la armonía, solidaridad y la diversidad cultural y ambiental.

El derecho a alimentos de los niños, niñas y adolescentes forma parte del derecho a la vida, a la supervivencia y vida digna, que va más allá del concepto de alimentos en su sentido más estricto, puesto que abarca todos los recursos necesarios para satisfacer lo más básico factores que inciden en el crecimiento sano, estabilidad emocional y capacidades físicas y mentales de los niños, niñas y adolescentes. Por esta razón, la necesidad e idoneidad deben ser tomados en cuenta al momento de brindar atención integral y adecuada.

1. Interés superior del niño, niña y adolescente en el orden jurídico ecuatoriano

Conforme a la Constitución de la República del Ecuador, los niños, niñas y adolescentes forman parte de los grupos de atención prioritaria y especializada en los ámbitos público y privado (artículo 35). En tal sentido, el: "…Estado, la sociedad y la familia promoverán de forma prioritaria el desarrollo integral de las niñas, niños y adolescentes, y asegurarán el ejercicio pleno de sus derechos; se atenderá al principio de su interés superior y sus derechos prevalecerán sobre los de las demás personas" (artículo 44). Al respecto, la Corte Constitucional de Ecuador, en sentencia de fecha 11 de marzo de 2015, expone que los niños, niñas y adolescentes:

> …son sujetos de protección constitucional agravada, lo cual se traduce que la satisfacción, ejercicio efectivo y plena vigencia de sus derechos e intereses legítimos deberán constituir el objetivo esencial cuando se adopten medidas políticas, administrativas, económicas, legislativas, sociales y jurídicas, por medio de la

formulación y aplicación de políticas públicas, sociales y económicas (sentencia No. 064-15-SEP-CC: 17).

La concepción de interés general del niño, niña y adolescentes[3] alude a una visión integral de protección prevista desde la Convención de Derechos del Niño[4]. Según el artículo 11 del Código de la Niñez y Adolescencia, el interés superior del niño, niña y adolescente es "...un principio que está orientado a satisfacer el ejercicio efectivo del conjunto de los derechos de los niños, niñas y adolescentes; e impone a todas las autoridades administrativas y judiciales y a las instituciones públicas y privadas, el deber de ajustar sus decisiones y acciones para su cumplimiento".

Bajo este principio se pretende mantener y garantizar un justo equilibro entre los derechos y deberes del niño, niña y adolescente. Se trata de un principio de interpretación, que no puede alegarse como norma expresa y, en los casos procedentes, debe ser manifestado por medio de la opinión del niño, niña o adolescente. En este sentido, el Comité de los Derechos del Niño de las Naciones Unidas, en su Observación General No. 14, señala que interés superior de niños, niñas y adolescentes es un concepto triple, dado que puede entenderse desde tres perspectivas: como derecho sustantivo, como principio jurídico interpretativo fundamental, y como norma de procedimiento.

En cuanto derecho sustantivo, la Corte Constitucional del Ecuador expresa que el interés superior de niños, niñas y adolescentes garantiza el derecho a que su interés superior sea "...un elemento primordial que siempre sea evaluado y tenido en cuenta, al momento de ponderar distintos intereses en la toma de decisiones que puedan afectar sus derechos" (sentencia No. 983-18-JP/21, de fecha 25 de agosto de 2021: 14).

Como principio interpretativo, también se ha pronunciado la Corte Constitucional, y plantea que el interés superior del niño, niña y adolescente dispone: "(...) que frente a una disposición jurídica que admita más de una interpretación, deberá adoptarse el sentido que mejor favorezca a la vigencia de los derechos de este grupo de atención prioritaria" (sentencia No. 983-18-JP/21, de fecha 25 de agosto de 2021: 15).

Por su parte, como norma de procedimiento, el interés superior del niño, niña y adolescente "...obliga a que toda persona que tenga que tomar

3 "Niño o Niña es la persona que no ha cumplido doce años de edad. Adolescente es la persona de ambos sexos entre doce y dieciocho años de edad" (Código de la Niñez y Adolescencia, 2003: artículo 4).

4 Se trata de un: "...instrumento normativo internacional de carácter coercitivo y vinculante que cambió la protección jurídica del grupo formado por niños, niñas y adolescentes, 'establece un mínimo estándar de protección de los derechos de la infancia, aplicables a todas las personas menores de 18 años, reconociendo además con igual énfasis la importancia del disfrute tanto de los derechos civiles y políticos como de los económicos, sociales y culturales'" (Corte Constitucional de Ecuador, Sentencia No. 064-15-SEP-CC, de fecha 11 de marzo de 2015).

una decisión que afecte a uno o un grupo de NNA en concreto o de forma general, siempre tenga que seguir un proceso de decisión donde pondere las posibles repercusiones (positivas o negativas) sobre las NNA involucradas" (Corte Constitucional de Ecuador, sentencia No. 983-18-JP/21, de fecha 25 de agosto de 2021: 15).

Por lo tanto, este derecho sustantivo, principio jurídico y norma de procedimiento, refleja un precepto ampliamente aceptado en el derecho interno y en el derecho internacional. En ese último escenario, consiste que al niño, niña y adolescente: "...se le debe otorgar un trato preferente, acorde con su caracterización jurídica en tanto sujeto de especial protección, de forma tal que se garantice su desarrollo integral y armónico como miembro de la sociedad" (Corte Constitucional de Ecuador, sentencia No. 022-14-SEP-CC, de fecha 29 de enero de 2014: 19). En otras palabras:

> ...al ser un criterio orientador de la interpretación y aplicación de las normas de protección de los niños, este principio pretende guiar el ejercicio interpretativo que debe efectuar la autoridad cuando se hiciere ineludible su actuación por existir dos o más intereses contrapuestos, entre los cuales uno tendrá prioridad en caso de prevalecer ante la respectiva ponderación de bienes constitucionales...las decisiones judiciales en las que se encuentren niños, niñas y adolescentes se deben orientar, dirigir y dictar en atención al principio del interés superior del niño para conseguir satisfacer completamente el mandato de prioridad de los intereses de los niños, garantizado en nuestro Estado constitucional de derechos y justicia (Corte Constitucional de Ecuador, sentencia No. 064-15-SEP-CC, de fecha 11 de marzo de 2015: 22).

Paulette Murillo *et al.* (2020: 388), exponen que el interés superior del niño, niña y adolescentes representa un: "...un mandamiento de evaluación de la situación jurídica de los niños, niñas y adolescentes para determinar la mejor situación para el goce de sus derechos...". Esto implica que su aplicación sea considerada de carácter indeterminado y subjetivo, por eso se dice que este principio representa todo un: "...un desafío a la jurisprudencia, amén de dotar a los procedimientos legales de flexibilidad y adaptabilidad a la situación social en la que se desarrolla".

Por esta razón, la Corte Constitucional ante la pregunta: "¿Qué significa que los niños sean titulares de derechos prevalecientes e intereses superiores?", plantea que la "...respuesta únicamente se puede dar desde las circunstancias de cada caso y de cada niño en particular..." (Sentencia No. 022-14-SEP-CC, de fecha 29 de enero de 2014: 19). "Esta subjetividad le inflige a este concepto un cierto carácter jurídico indeterminado, al no definirse ni establecerse parámetros que faciliten su concreción en la praxis, dejando su interpretación al buen criterio y juicio de los encargados de su aplicación" (Paulette Murillo *et al.,* 2020: 388).

En todo caso, ante estas circunstancias de indeterminación y subjetividad, el interés superior del niño, niña y adolescente se caracteriza porque tienen un conjunto de funciones: orientadora, reguladora, hermenéutica, de resolución de normas, directriz, de prioridad, y de obligatoriedad (Paulette Murillo *et al.*, 2020: 389), las cuales sirven de criterios guiadores para: "… lograr el equilibrio entre los distintos derechos según las prioridades que conlleva cada caso…" En definitiva:

> …por el principio de interés superior de las niñas, niños y adolescentes, dicho grupo de atención prioritaria tiene el status de sujetos de protección constitucional reforzada, condición que se hace manifiesta –entre otros efectos- en el carácter superior y prevaleciente de sus derechos e intereses, cuya satisfacción debe constituir el objetivo primario de toda actuación que les competa (Corte Constitucional de Ecuador, sentencia No. 022-14-SEP-CC, de fecha 29 de enero de 2014: 20).

No obstante, se destaca que toda decisión, administrativa o judicial, en la cual se haga prevalecer este interés superior, requiere su detalle y explicación, es decir, no es suficiente su mera mención o cita, sino que se exige que se determinen con exactitud los elementos que se tomaron en cuenta para su determinación, los criterios de análisis para su interpretación y la forma de ponderación de los derechos del niño, niña y adolescente alegados y su relación con su interés superior.

2. Derecho a alimentos de niños, niñas y adolescentes

En general, el constituyente ecuatoriano prevé el derecho al acceso seguro y permanente a alimentos sanos, suficientes y nutritivos para todas las personas y colectividades (Constitución de la República del Ecuador, 2008: artículo 13). A este tenor, la Corte Constitucional estima:

> De acuerdo al artículo antes señalado, el estado ecuatoriano, en general, debe procurar que las personas tengan acceso a una alimentación sana y congrua, en términos generales; así también, además de la garantía del derecho a la alimentación para todas las personas, a los grupos de atención prioritaria, el estado por su calidad y vulnerabilidad, debe proteger de forma directa y sin dilaciones y recibir atención especializada en los ámbitos público y privado, para proteger su derecho constitucional a recibir alimentos (sentencia No. 334-15-SEP-CC, de fecha 21 de octubre de 2015: 11-12).

Según el Código Civil, en su artículo 349, se deben alimentos a: cónyuge, hijos, descendientes, padres, ascendientes, hermanos, y, a quien hizo una donación cuantiosa, si no hubiere sido rescindida o revocada, pero se aclara que: "No se deben alimentos a las personas aquí designadas, en los casos en

que una ley expresa se los niegue. En lo no previsto en esta Ley, se estará a lo dispuesto en el Código de la Niñez y Adolescencia y en otras leyes especiales". De tal manera, en el Código Civil ecuatoriano se establecen de forma genérica las reglas que rigen la prestación de alimentos (artículo 350).

Por otro lado, el mismo texto normativo, en cuanto a la prestación de alimentos, los divide en dos tipos: congruos y necesarios. Los primeros: "…habilitan al alimentado para subsistir modestamente, de un modo correspondiente a su posición social", en tanto que, los segundos, refieren a los alimentos que: "…le dan lo que basta para sustentar la vida" (artículo 351). Por su parte, el artículo 352 del Código Civil, plantea que se deben alimentos congruos, entre otros, a los hijos, conforme a la clasificación estipulada en el comentado artículo 349, *ejusdem*.

En ese sentido, la Corte Constitucional de Ecuador (sentencia No. 334-15-SEP-CC, de fecha 21 de octubre de 2015: 12) expone que, si bien es cierto, el derecho a la alimentación es parte del catálogo de derechos del buen vivir:

> …es fundamental diferenciar que en el caso de la prestación de alimentos a niños, niñas y adolescentes; así como a personas con discapacidad, este derecho se deriva de una obligación normativa a cargo del alimentante y su prestación se encuentra, por su importancia y vulnerabilidad, regulada y desarrollada directamente en una norma de naturaleza infraconstitucional, como es la establecida en el artículo innumerado 4 del Código de la Niñez y Adolescencia.

Así, de forma específica, el derecho a alimentos de niños, niñas y adolescentes encuentra una regulación particular, dado que en el año 2009 se dicta la Ley Reformatoria al Título V, Libro II del Código de la Niñez y Adolescencia, estableciendo un conjunto de normativas atinentes al tema, derogando el mismo título correspondiente al Código de la Niñez y Adolescencia de fecha 3 de enero de 2003. Como se observa:

> …el Estado ecuatoriano a través de la función legislativa, estableció un mecanismo directo de exigibilidad del derecho constitucional a recibir alimentos, a los grupos previamente mencionados, por su importancia y referida vulnerabilidad, regulándolo con la intención de que existan acciones directas y eficaces regulatorias para la inexistencia de dilaciones para el cumplimiento del citado derecho, por la importancia y trascendencia del mismo (Corte Constitucional de Ecuador (sentencia No. 334-15-SEP-CC, de fecha 21 de octubre de 2015: 12)

Así, el artículo enumerado 2 del nuevo Título V del mencionando Código, prevé que el derecho a alimentos: "…es connatural a la relación parento-filial y está relacionado con el derecho a la vida, la supervivencia y una vida digna. Implica la garantía de proporcionar los recursos necesarios para la

satisfacción de las necesidades básicas de los alimentarios…”. Son diversas las necesidades básicas alimentarias que requieren ser satisfechas, pues según el comentado artículo, se incluye: alimentación nutritiva, equilibrada y suficiente; salud integral: prevención, atención médica y provisión de medicinas; educación; cuidado; vestuario adecuado; vivienda segura, higiénica y dotada de los servicios básicos; transporte; cultura, recreación y deportes; y, rehabilitación y ayudas técnicas si el derechohabiente tuviere alguna discapacidad temporal o definitiva.

Conforme a lo anterior, en sentencia de fecha 30 de septiembre de 2015, la Corte Constitucional de Ecuador (sentencia No. 320-15-SEP-CC: 13), define que los alimentos al que tienen derecho:

> …los niños, niñas y adolescentes comprenden no solo el grupo de cosas que se emplea para alimentarlos -como la definición de la palabra podría dar a entender- sino que implica elementos tales como la salud, el vestuario, la educación e inclusive la recreación; es decir, todo aquello que es necesario para su desarrollo integral, que les permita gozar de una vida digna y segura.

En principio los titulares de este derecho a alimentos y, por consiguiente, quienes tienen el derecho a reclamarlos, son: “Las niñas, niños y adolescentes, salvo los emancipados voluntariamente que tengan ingresos propios, a quienes se les suspenderá el ejercicio de este derecho de conformidad con la presente norma” (Código de la Niñez y Adolescencia, Título V: artículo innumerado 4[5], numeral 1).

Esta misma normativa en su artículo innumerado 3, establece como características de este derecho el ser intransferible, intransmisible, irrenunciable, imprescriptible, inembargables, además prevé que no admite compensación, ni reembolso de los pagado, “…salvo las pensiones de alimentos que han sido fijadas con anterioridad y no hayan sido pagadas y de madres que hayan efectuado gastos prenatales que no hayan sido reconocidos con anterioridad, casos en los cuales podrán compensarse y transmitirse a los herederos”.

El derecho a alimentos de los niños, niñas y adolescentes implica un conjunto de acciones y obligaciones destinadas a garantizar su salud y bienestar físico y psíquico. Como se aprecia, se trata de una regulación suficientemente exhaustiva que pretende reconocer un derecho protegido por características que le otorgan vigencia y permanencia.

5 Esta normativa también reconoce como titulares del derecho a alimentos a: “2. Los adultos o adultas hasta la edad de 21 años que demuestren que se encuentran cursando estudios en cualquier nivel educativo que les impida o dificulte dedicarse a una actividad productiva y carezcan de recursos propios y suficientes; y, 3. Las personas de cualquier edad, que padezcan de una discapacidad o sus circunstancias físicas o mentales les impida o dificulte procurarse los medios para subsistir por sí mismas, conforme conste del respectivo certificado emitido por el Consejo Nacional de Discapacidades CONADIS, o de la institución de salud que hubiere conocido del caso que para el efecto deberá presentarse”.

3. Responsabilidad en cuanto al derecho a alimentos de niños, niñas y adolescentes

Uno de los deberes primordiales del Estado ecuatoriano tiene que ver con la garantía, sin discriminación alguna, al efectivo goce de derechos establecidos en el texto constitucional y en los instrumentos internacionales, con especial atención, entre otros, a la alimentación de sus habitantes (Constitución de la República del Ecuador, 2008: artículo 3). Esta disposición se encuentra implícitamente relacionada con el derecho a la salud, "…cuya realización se vincula al ejercicio de otros derechos, entre ellos el derecho al agua, la alimentación, la educación, la cultura física, el trabajo, la seguridad social, los ambientes sanos y otros que sustentan el buen vivir" (artículo 32 constitucional).

El desarrollo integral de los niños, niñas y adolescentes es una de las prioridades del Estado, la sociedad y la familia, el cual implica un "…proceso de crecimiento, maduración y despliegue de su intelecto y de sus capacidades, potencialidades y aspiraciones, en un entorno familiar, escolar, social y comunitario de afectividad y seguridad", para lo cual es necesario asegurar el pleno ejercicio de sus derechos, la prevalencia de sus derechos y la atención al principio de interés superior (Constitución de la República del Ecuador, 2008: artículo 44). A este respecto, la Corte Constitucional, en sentencia de fecha 11 de marzo de 2015, expresa:

> Esta protección constitucional, consagrada en nuestra Carta Magna, le corresponde, primordialmente, al Estado, la sociedad y la familia, quienes tienen que garantizar y proteger el disfrute pleno de los derechos constitucionales de los niños, niñas y adolescentes, con el objetivo de lograr su desarrollo integral, en un marco de libertad, dignidad y equidad (sentencia No. 064-15-SEP-CC: 27).

Los niños, niñas y adolescentes son portadores de los mismos derechos previstos para todos los seres humanos, pero, además, de aquellos derechos que sean concretos y relacionados con su edad. El Estado es el principal responsable en garantizar su vida, cuidado y protección desde el momento de su concepción. En tal sentido, el artículo 45 constitucional menciona un conjunto de prerrogativas reconocidas a favor de los niños, niñas y adolescentes, entre las cuales destaca el derecho a la integridad física y psíquica, a la salud integral y nutrición.

Por esto, el Estado debe adoptar medidas suficientes que les aseguren: "1. Atención a menores de seis años, que garantice su nutrición, salud, educación y cuidado diario en un marco de protección integral de sus derechos" (Constitución de la República del Ecuador, 2008: artículo 46):

> En esta línea, la Corte Constitucional resalta el papel del Estado como el principal garante de los derechos de las NNA, estando obligado a adoptar todas

> las medidas administrativas, legislativas y de otra índole para dar efectividad a los derechos de este grupo de atención prioritaria. Empero, la protección de los derechos de las NNA no puede, ni debe limitarse a un plano normativo y abstracto, por ende, el Estado ecuatoriano debe adoptar todas las medidas idóneas y necesarias para garantizar en un plano material la plena eficacia y vigencia de los derechos de las NNA, "*hasta el máximo de los recursos de que dispongan y, cuando sea necesario, dentro del marco de la cooperación internacional*" (Corte Constitucional de Ecuador, sentencia No. 983-18-JP/21, de fecha 25 de agosto de 2021: 15-16).

Además del Estado, la responsabilidad íntegra de protección y salvaguarda de los niños, niñas y adolescentes le corresponde a la madre y al padre, quienes tiene la obligación de: "…cuidado, crianza, educación, alimentación, desarrollo integral y protección de los derechos de sus hijas e hijos, en particular cuando se encuentren separados de ellos por cualquier motivo" (Constitución de la República del Ecuador, 2008: artículo 69, numeral 1).

En general, el derecho a los alimentos de niños, niñas y adolescentes, configura una responsabilidad de cumplimiento tanto para el Estado como de los padres. No obstante, son estos últimos quienes fungen como los titulares principales de la obligación alimentaria. En este sentido, el Código de la Niñez y Adolescencia, cuyo objeto de regulación está relacionado con:

> …la protección integral que el Estado, la sociedad y la familia deben garantizar a todos los niños, niñas y adolescentes que viven en el Ecuador, con el fin de lograr su desarrollo integral y el disfrute pleno de sus derechos, en un marco de libertad, dignidad y equidad" (artículo 1°), estipula las personas obligadas a la prestación de alimentos respecto de los niños, niñas y adolescentes, verificando que los titulares principales de dicha obligación son los padres… aún en los casos de limitación, suspensión o privación de la patria potestad" (Código de la Niñez y Adolescencia, Título V: artículo innumerado 5).

Ahora bien, en caso de: "…ausencia, impedimento, insuficiencia de recursos o discapacidad de los obligados principales…", previa comprobación, esta prestación de alimentos será pagada o completada, en atención a la capacidad económica y siempre y cuando no se trate de personas con discapacidad, a los obligados subsidiarios en el siguiente orden: "1. Los abuelos/as; 2. Los hermanos/as que hayan cumplido 21 años y no estén comprendidos en los casos de los numerales dos y tres del artículo anterior; y, 3. Los tíos/as" (Código de la Niñez y Adolescencia, Título V: artículo innumerado 5). Para la procedencia de estos responsables subsidiarios, es necesario que se configuren y demuestren de forma estricta, los presupuestos mencionados.

En estos casos de responsables subsidiarios, se determina que la autoridad competente en ocasión del orden, grado de parentesco, de modo simultáneo y con base a los recursos, establecerá la proporción de la pensión que dichos parientes deben proveer. Se resalta que los parientes que hubieren realizado el pago podrán ejercer la acción de repetición de lo pagado contra el padre y/o la madre (Código de la Niñez y Adolescencia, Título V: artículo innumerado 5). A este tenor, resulta interesante la posición de la Corte Constitucional del Ecuador, al expresar:

> En este punto es importante enfatizar que no son solo quienes ejercen la patria potestad los obligados a garantizar los derechos reconocidos a favor de las niñas, niños o adolescentes; la familia, conforme lo establece el derecho constitucional, constituye el núcleo fundamental de una sociedad y está llamada a asegurar el ejercicio pleno de los derechos de este grupo de atención prioritaria; el cuidado y protección de un niño, niña o adolescente no puede por tanto ser visto como una obligación única y exclusiva de los progenitores, la familia sin lugar a dudas debe ser la base sobre la cual se asientan sus miembros más vulnerables y donde se garantiza el respeto y asegura el cumplimiento de sus derechos fundamentales; y, bajo esta premisa, tiene el deber de cuidar a sus integrantes brindando, si aquellos requieren, prestaciones económicas que satisfagan sus requerimientos diarios (Corte Constitucional de Ecuador, sentencia N.° 320-15-SEP-CC, de fecha 30 de septiembre de 2015: 15).

Por tanto, la obligación alimentaria recae sobre varios sujetos, algunos de forma directa y otras de forma subsidiaria, pues la intención del constituyente y del legislador es la de garantizar una cadena sucesiva de obligados, para darle soporte y seguridad al cumplimiento del derecho a alimentos de los niños, niñas y adolescentes como parte de su interés superior.

Conclusiones

Los niños, niñas y adolescentes gozan de protección constitucional especial, por lo que toda medida política, administrativa, económica, legislativa, social y jurídica debe apuntar al ejercicio pleno de sus derechos e intereses, es decir, su atención y protección preponderante y preferente constituye una de las principales tareas del Estado, la sociedad y la familia.

Como garantía de ello, prevalece el interés superior del niño, niña y adolescente, entendido como derecho sustantivo, porque está orientado a la satisfacción y ejercicio de todos los derechos de los niños, niñas y adolescentes, dichos derechos son de orden público, interdependientes, indivisibles, irrenunciables e intransmisibles; como principio jurídico interpretativo fundamental, porque en todas las decisiones que afecten a la niñez y adolescencia, debe ser considerado como un principio favorable al

ejercicio de sus derechos; y, como norma de procedimiento, porque implica un conjunto de factores y elementos que deben ser analizados de forma prioritaria en cada uno de las etapas de un proceso, como garantía de los derechos de los niños, niñas y adolescentes.

El derecho a los alimentos forma parte del interés superior del niño, niña y adolescente, dado que está referido a la satisfacción de sus necesidades más básicas, indispensables para proteger su vida, salud, bienestar, supervivencia, desarrollo y vida digna. El derecho a alimentos configura un aspecto integral imprescindible para el buen vivir del niño, niña y adolescente, que abarca necesidades desde la alimentación sana y nutritiva, educación, vivienda, recreación y deportes, entre otros. Por ello, se trata de un derecho intransferible, intransmisible, irrenunciable, imprescriptible, inembargables, que no admite compensación, ni reembolso de los pagado, estas dos últimas salvo excepciones previstas en la ley.

Por tanto, el derecho a alimentos de los niños, niñas y adolescentes representa una de las más importantes obligaciones del Estado, la sociedad y la familia, dada su incidencia en el proceso de crecimiento, maduración y despliegue del intelecto y de las capacidades, potencialidades y aspiraciones del niño, niña y adolescente, es decir, dada su incidencia en su desarrollo integral.

La responsabilidad en cuanto al derecho a alimentos de los niños, niñas y adolescentes en principio corresponde al Estado y a los padres, siendo estos últimos los responsables directos e inmediatos de su atención, es decir, los padres se configuran en los titulares principales de la obligación alimentaria de sus hijos niños, niñas o adolescentes, aún en los casos de limitación, suspensión o privación de la patria potestad. Sin embargo, en supuestos específicos, cuando se compruebe la ausencia, impedimento, insuficiencia de recursos o discapacidad de los obligados principales, de forma subsidiaria o supletoria algunos familiares directos –abuelos, hermanos, tíos-, de forma completa o parcial, pueden constituirse en responsables del derecho a alimentos del niño, niña o adolescente.

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SWOT analysis to assess the threat of illegal arms trafficking on the Ukrainian border with the European Union countries in the context of the war

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Abstract

The problem of combating threats of illegal trafficking of arms, ammunition and explosives at the border points of Ukraine with the countries of the European Union EU has become urgent under martial law. The aim of the study was to develop an optimal strategy for the State Border Guard Service of Ukraine (hereinafter referred to as "SBGSU") to combat threats of illegal arms trafficking at border points with EU countries under martial law. A comprehensive methodological approach combining the following scientific methods was used: comparative method, systems analysis method, structural-functional method, survey and group expert evaluation method, classification method and determination of numerical characteristics. A model was developed to assess the threat of illegal arms trafficking on the border of Ukraine with the EU countries under martial law based on SWOT-analysis. As a result, the factors of strengths and weaknesses, opportunities and threats, which exist in the Ukrainian border guard agency, were identified. It is concluded that

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the results of this study cannot be applied to the border areas of Ukraine with such countries as the Russian Federation, Belarus and Moldova.

Keywords: SWOT analysis; arms and ammunition; border security in Europe; combating threats; illegal arms trafficking.

El análisis FODA para evaluar la amenaza del tráfico ilegal de armas en la frontera de Ucrania con los países de la Unión Europea en el contexto de la guerra

Resumen

El problema de combatir las amenazas del tráfico ilegal de armas, municiones y explosivos en los puntos fronterizos de Ucrania con los países de la Unión Europea UE se ha vuelto urgente bajo la ley marcial. El objetivo del estudio fue desarrollar una estrategia óptima para el Servicio Estatal de Guardia de Fronteras de Ucrania (en lo sucesivo, «SBGSU») para combatir las amenazas del tráfico ilegal de armas en los puntos fronterizos con países de la UE bajo la ley marcial. Se utilizó un enfoque metodológico integral que combinó los siguientes métodos científicos: método comparativo, método de análisis de sistemas, método estructural-funcional, encuesta y método de evaluación de expertos grupales, método de clasificación y determinación de características numéricas. Se desarrolló un modelo para evaluar la amenaza del tráfico ilegal de armas en la frontera de Ucrania con los países de la UE bajo la ley marcial basado en el análisis FODA. En consecuencia, se identificaron los factores de fortalezas y debilidades, oportunidades y amenazas, que existen en la agencia de guardia fronteriza de Ucrania. Se concluye que los resultados de este estudio no pueden aplicarse a las zonas fronterizas de Ucrania con países como la Federación Rusa, Bielorrusia y Moldavia.

Palabras clave: análisis FODA; armas y municiones; seguridad fronteriza en Europa; combate a amenazas; tráfico ilegal de armas.

Introduction

On February 24, 2022, with the beginning of the full-scale aggression of the Russian Federation (hereinafter - RF) against Ukraine, our state was forced to counteract a number of security risks and threats on the state border, the impact of which has significantly increased. In particular, such

threats include potential attempts to smuggle weapons, ammunition and explosives (hereinafter - WAE) to the European Union (hereinafter - EU) at border crossing points, which currently continue to operate on the western area of the border after the introduction of martial law on the territory of Ukraine.

The conduct of combat operations in the southeaster part of Ukraine has caused the intensification of the traffic of WAE through its territory. In general, the entire amount of WAE that are currently on the territory of Ukraine can be divided into two categories: 1) WAE that had been on the territory of Ukraine before the war with RF began; 2) WAE that Ukraine had received from partner countries (EU, USA, etc.) during the war.

Today, there is a high probability of intensification of illegal elements' attempts to smuggle WAE at border crossing points on the western border of Ukraine (to the following EU countries: Poland, Hungary, Slovakia, Romania) using caches, hiding places, the structural features of vehicles of foreign destination and by attempts to involve border guards in illegal activities at border crossing points.

Taking into account the aforesaid, it is reasonable to find new effective ways to combat illegal trafficking in WAE at border crossing points, to take appropriate measures to improve the effectiveness of control at border crossing points over the trafficking in prohibited items and materials that threaten the security of the state.

It should be noted that under the martial law, this problem is especially relevant on the borders of Ukraine with EU countries. The Strategic Risk Analysis 2022, developed by the FRONTEX Agency (2022), emphasizes the crucial role of risk profiling in the field of illegal trafficking in weapons across the border, including from Ukraine. The GRIP report (Seniora and Poitevin, 2010) emphasizes the importance of interaction at different levels and joint risk analysis to combat illicit trafficking in small arms. The information about the illicit trafficking in firearms and the possible threat of weapons supplying from Ukraine to the European Union is provided in UNODC (2020) and Savona and Mancuso (2017).

The results of the analysis of the views of Ukrainian and foreign scientists have shown that a number of researchers have studied the application of risk analysis and threat assessment in the field of border and national security in their works. For example, Prezelj and Gaber (2005) considered the problem of cross-border trafficking in Slovenia and measures to combat illegal trafficking in weapons, including the use of a risk analysis system.

Horii (2016) devoted his article to the role of FRONTEX in risk analysis, in particular how information is collected and analysed, what is considered a "risk" to external borders of EU and how such analysis is subsequently used, while Paul (2018) discusses the growing significance of FRONTEX

risk analysis in the field of migration management. Csaba (2012) in his article considers the problem of risk profiles at different levels and focuses on advanced information systems and their role in risk reduction and trade facilitation through their positive impact on the border crossing point capacity.

Ackleson (2005) studied several technology-oriented border control systems: screening, biometrics and information technology. The dissertation research of Thoreson (2011) is devoted to technical aspects of detecting materials for nuclear weapons. Peterka-Benton (2012) studied the issue of Transnistria as a security threat, including illegal weapons trading. Mackenzie (2020) speaks about the consequential effects of arms trafficking.

Makhnyuk and Kyrychenko (2012) studied approaches to conduct monitoring of threats and their classification. In their article, the authors considered certain issues of information and analytical support of integrated border management, in particular the development and creation of a database of border security threat passports, suggested the form and structure of the threat passport. Scientists Mosov, Salii and Chukanov (2020) considered the issue of different approaches to the methodology for identification and assessment of challenges, dangers and threats to border security of the Republic of Kazakhstan based on risk analysis.

In his study, Farion (2021) researched issues related to the strategic criminal analysis of threats to border security based on the tools used in the SOCTA methodology. In the article "The Use of SWOT Analysis in the Field of National Security Planning" (Bratko *et al.,* 2021), the team of authors investigated the methodology of planning of operational and service activities based on defense planning in the national security system based on opportunities, using SWOT analysis. Reznikova (2022) studied the state of the security environment of Ukraine, formed on the eve of a full-scale war launched by RF against Ukraine in February 2022, as well as the changes that took place after these events; predicted the tendencies of the Ukrainian security environment development in the post-war period.

The author has identified the sources of the main threats to the national security of Ukraine, as well as vulnerabilities, advantages and opportunities for the development of the state and society in the new conditions (Reznikova et al., 2020).

Braga et al. (2002) investigated the problem of illegal supply of firearms in America from the juridical point of view, as well as Buhaichuk (2021) studied the current state of legal regulation of civilian firearms circulation in Ukraine. Shevchuk and Kotiuk (2020) explored the methods of smuggling of firearms and ammunition in the structure of criminalistic characteristics. Feinstein and Holden (2014) studied legal mechanisms of reduction in

arms trafficking. Bastien Olvera's (2014) investigation deals with the ways of combatting illegal transfer of small arms and light weapons (SALW) to non-state actors, in particularly by means of arms embargoes sponsored by the United Nations Security Council.

Beznogykh (2021) in his article analyses the potential of the illegal arms market in Ukraine and possible risks of weapons smuggling into European countries taking into account the characteristics of the local market for illegal weapons and ammunition.

A comprehensive assessment of the situation in Ukraine related to illegal trafficking in weapons from the war zone to European countries is represented by Buscemi et al. (2018) and Martyniuk (2017). The problem of trafficking in ammunition from Ukraine to Europe is studied in the work of Schroeder and Shumska (2021) and Dziundziuk et al. (2020).

At the same time there is an urgent need to increase the effectiveness of counteraction by officials of the State Border Guard Service of Ukraine (hereinafter - SBGSU) to threats at border crossing points, in particular on the illegal trafficking in weapons and ammunition, so **the purpose of the article** is to determine the optimal strategy of the SBGSU to combat the threat of illegal trafficking in WAE at border crossing points with EU countries under the martial law.

In accordance with the set purpose, the following **main tasks of the study have been identified:**

1. To develop a model for assessing the threat of illegal trafficking in WAE on the border of Ukraine with EU countries under the martial law.
2. To identify the factors of strengths and weaknesses, opportunities and threats that exist in the border guard agency of Ukraine, to assess the level of their potential impact on the process of illegal trafficking in WAE at border crossing points of Ukraine with EU countries under the martial law.
3. To develop practical recommendations for SBGSU officials to improve the efficiency of border guard units in order to combat the threat of illegal trafficking in WAE at border crossing points with EU countries under the martial law.

1. Research methodology

In order to solve the tasks of the study, a comprehensive methodological approach has been used, which involved the use of a number of techniques and methods, the combination of which made it possible to achieve the

purpose of this study. The basis of the approach was the idea of synthetic theorizing, which led to the use of various scientific approaches not as oppositional, but as complementary to each other.

The comparative method has enabled to determine the degree of influence of each strategic factor from four categories (strengths/ weaknesses, opportunities/threats) on the problem studied. *The method of system analysis* made it possible to determine the relationship of each element in a complex system structure. *The structural-functional method* has been used to develop a model for assessing the threat of illegal trafficking in WAE on the border of Ukraine with EU countries under the martial law.

In addition, the study has been conducted using the following scientific methods:

theoretical – analysis, generalization, systematization and interpretation of a number of scientific sources and materials;

empirical – surveys – to identify the factors that affect the process of illegal trafficking in WAE at border crossing points of Ukraine with EU countries under the martial law; the method of group expert assessments – to determine the correlation of strengths/weaknesses, opportunities/ threats that exist in the border guard agency of Ukraine;

mathematical and statistical methods - the method of ranking and determining numerical characteristics - to systematize, analyze and process the data obtained and establish relationships between the problems studied.

In order to choose the optimal strategy of SBGSU activity on combating the threat of illegal trafficking in WAE at border crossing points with EU countries under the martial law, we have applied *SWOT analysis*. The purpose of the analysis was to identify the strengths, weaknesses, opportunities and threats of the Ukrainian border guard agency and to assess their potential impact.

It should be noted that in the process of applying *SWOT analysis*, we considered strengths and weaknesses as the subjective factors on which SBGSU has a planned and managerial influence, and opportunities and threats as the objective factors on which the border guard agency has no direct influence.

If we interpret the strengths and weaknesses as the internal factors of the border guard agency, and the opportunities and threats as the external ones, as a result, they can be attributed to one of the following strategies: aggressive, conservative, competitive or defensive one. In our opinion, it is the determination of the optimal strategy of SBGSU activity that will be able to increase the effectiveness of combating the threat of illegal trafficking in WAE at border crossing points with EU countries under the martial law.

To conduct this study, a group of 10 experts had been selected and formed. The total number of candidates was 58 representatives of the scientific and pedagogical staff. The category of persons who had been included in the group of experts was determined on the basis of the following criteria: more than 20 years of general experience in SBGSU units; more than 15 years of practical experience of service at border crossing points; more than 10 years of experience in teaching cadets of the specialized disciplines (experience in working with personnel); scientific degree; knowledge in the field of risk analysis and threat assessment that affect the quality of border checks (as confirmed by a certificate of completion of appropriate advanced training courses).

The group of experts brainstormed the factors for each of the 4 criteria (S, W, O, T) that could potentially affect illegal trafficking in weapons and ammunition across the state border. 7 factors per each criterion, which, in the experts` opinion have the greatest impact on the threat, were chosen, and the weight of the impact of each of these factors was determined on a seven-point scale from 0 (lowest level of impact) to 7 (highest level of impact).

2. Research results

The study has been conducted in three stages.

At the first stage, in order to effectively assess the threat of illegal trafficking in WAE at border crossing points on the western border of Ukraine with EU countries under the martial law (from February 24, 2022 to the present), a corresponding model was developed (Figure 1).

The model reflects schematically the relationship between the internal and the external factors. The internal factors include: ***strengths*** and ***weaknesses*** that exist in the border guard agency and may have a potential impact on the process of illegal trafficking in weapons and ammunition at border crossing points on the western border; the external factors include ***opportunities*** and ***threats*** that exist in the state and may have an impact on the intensification of the trafficking in weapons and ammunition.

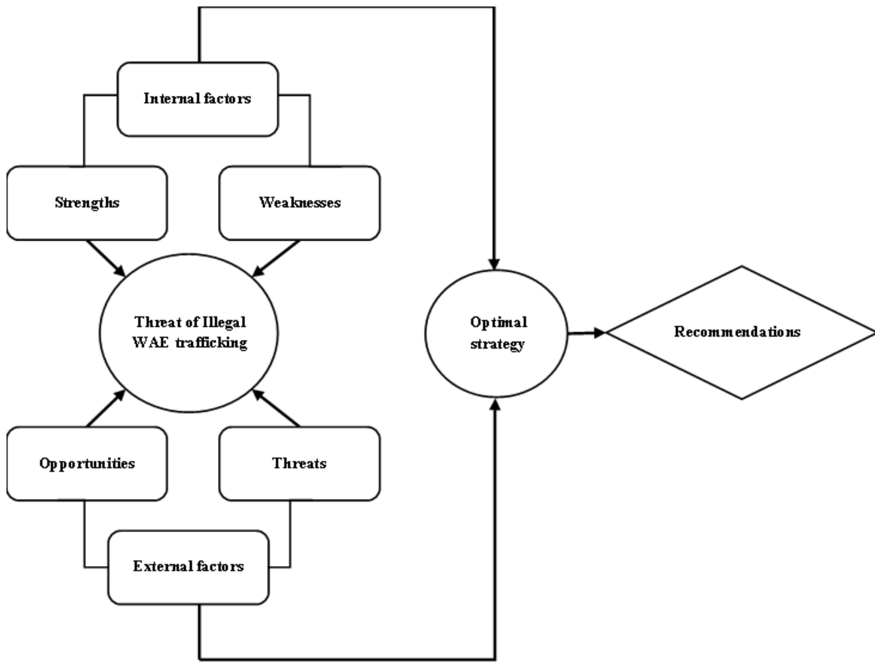

Figure 1: The Model of Assessment of Threat of Illegal WAE Trafficking on the Border of Ukraine with EU Countries under the Martial Law.

The result of ***the study at the second stage*** was the identification of factors for each of the 4 criteria (S, W, O, T).

The ***strengths*** included:

1. level of training (professional competencies on vehicle inspection by different categories of military personnel performing the tasks at border crossing points);
2. border checks technical aids provision (hereinafter – BCTA) (a large quantity of BCTA for vehicles inspection, which increases the efficiency of WAE detection in persons and vehicles crossing the state border);
3. personnel experience (a significant period of tasks performance at border crossing points, which is confirmed by multiple facts of WAE detection during the vehicles inspection);
4. databases use (check of persons and vehicles crossing the state border using available information databases, which increases the effective risk analysis);

5. personnel motivation (correlation of desire to perception of importance and responsibility for border checks at border crossing points);
6. risk profiles application (national, regional, local, based on the identification of risk indicators at border crossing points during the tasks performance);
7. efficient interaction with the other subjects of integrated border management (the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the State Customs Service, the Security Service of Ukraine, the National Police, the National Guard, the Armed Forces of Ukraine, local authorities, etc.).

The weaknesses identified by the experts were:

1. personnel overwork (increased involvement of personnel in the practical tasks at border crossing points, which leads to a decrease in the efficiency of service due to physical fatigue and reduced concentration);
2. insufficient capacity of the border crossing point (leads to long queues near land border crossing points, which negatively affects the possibility of compliance with the regime in the places of border checks);
3. insufficient number of service dog instructors specializing in weapons detection (the level of staffing of border guard units with service dog instructors used to search for WAE is not optimal, which reduces the probability of detecting WAE in persons and vehicles crossing the state border);
4. stress (unstable mental and emotional state of personnel due to nervous concerns for relatives and friends because of the war);
5. the necessity of personnel rotation for participation in combat operations (constant changes of personnel of border guard units, which negatively influences the level of coherence and interaction during the border checks at border crossing points);
6. personnel corruption (unlawful activities of military personnel performing border checks, which involves ineffective performance of their official responsibilities due to unlawful benefits from criminals and offenders at border crossing points);
7. impossibility of advanced training under the martial law (due to restrictions on the right to relocate personnel, except in extraordinary cases).

Potential opportunities, according to the experts, were:

1. opening of new and modern border crossing points (they will provide better conditions for border checks, vehicles inspection in particular, and increase the probability of WAE detection);
2. strengthening the responsibility for illegal trafficking in weapons across the state border (amendments to the legislation of Ukraine on strengthening criminal liability for illegal trafficking in WAE across the state border may lead to a reduction in the number of persons engaged in this type of illegal activity);
3. providing units with the latest models of BCTA within the framework of international projects, grants (constant improvement and change of tactics of offenders at border crossing points on illegal trafficking in WAE requires systematic updating of BCTA, which will increase the efficiency of vehicles inspection by border details);
4. intensification of personnel training activities with the involvement of national and international experts (the necessity to provide trainings, exchange of experience, etc. despite the difficulties arising under the martial law);
5. systematic joint risk analysis on combating the threat of illicit trafficking in WAE (increasing the effectiveness of combating the threat of illegal trafficking in WAE across the state border through constant joint risk analysis by the working groups of the countries for which this threat is the most relevant one);
6. creation of an effective mechanism to encourage the local residents for the assistance provided to SBGSU (financial motivation of border residents by paying them bonuses or reducing the tax burden);
7. strengthening the effective cooperation with the international agency FRONTEX under the martial law (reorientation of training courses on vehicles inspection at border crossing points to the online format using effective Internet platforms).

The following ***threats*** were identified:

1. a significant increase in the passenger and transport traffic on the border of Ukraine with EU countries (will lead to the inability to reorient this traffic to other border crossing points, which will negatively affect the level of social tension in the border areas of the countries);
2. an increase in the traffic of weapons and ammunition from Ukraine to EU countries due to the rise in their total number on the controlled

territory (increase in the total number of WAE on the controlled territory due to the assistance from the military coalition countries, increased demand for weapons for self-defence, difficulties in controlling the process of its circulation);

3. an increase in the probability of illegal trafficking in WAE in case of a negative scenario on the frontline (depending on the development of the theater of military operations, there is a risk of an increase in attempts to illegally traffic WAE across the state border of Ukraine with EU countries and in their number);
4. abrupt changes in the socio-political situation in the world, in neighbouring countries (increase in the number of countries directly involved in the war with RF, serious social and political changes in the countries bordering Ukraine, other global turbulence in the world);
5. intensification of cross-border criminal groups in the field of illegal trafficking in WAE across the state border (the emergence of new or intensification of existing cross-border criminal organizations, groups as a result of the increased demand for WAE in the world, in Europe in particular);
6. changes in the legislation of Ukraine on the circulation of weapons (simplification of the sale procedure, storage of weapons and ammunition for self-defence can lead to a weakening of control over their circulation both within the country and during their trafficking across the state border);
7. high probability of missile threat from RF (requires suspension of control procedures and operations at border crossing points across the state border at the time of the “Air raid alarm” signal, removal of persons at border crossing points to safe places, which can be used by illegal elements for illegal trafficking in WAE across the border).

The next stage was to assess the influence of each parameter and their correlation to each other (the results have been presented in Tables 1-4).

Table 1. Correlation of Strengths and Opportunities.

STRENGTHS / *OPPORTUNITIES*	Level of training	BCTA provision	Personnel experience	Databases use	Personnel motivation	Risk profiles application	Effective interaction with the other subjects of IBM	Weight	Number of relationships	Product of weight and relationships
Opening of new and modern border crossing points	0	0	0	1	1	0	1	0.211	3	0.633
Strengthening the responsibility for illegal trafficking in weapons across the state border	0	0	0	0	1	0	1	0.207	2	0.414
Providing units with the latest models of BCTA within the framework of international projects, grants	1	1	0	1	1	1	0	0.154	5	0.77
Intensification of personnel training activities with the involvement of national and international experts	1	0	1	0	1	1	1	0.136	5	0.68
Systematic joint risk analysis on counteraction to the threat of illicit trafficking in WAE	1	0	1	1	1	1	1	0.15	6	0.75
Creation of an effective mechanism to encourage local residents for the assistance provided by SBGSU	0	0	0	0	1	0	1	0.039	2	0.078
Strengthening the effective cooperation with the international agency FRONTEX under the martial law	1	1	1	1	1	1	0	0.093		
Weight	0.211	0.157	0.196	0.111	0.154	0.064	0.107			
Number of relationships	4	2	3	4	7	4	5			
Product of weight and relationships	0.844	0.314	0.588	0.444	1,078	0.256	0.535			
Sum of relationships	52									
Sum of products	7.384									

Source: authors.

Table 2. Correlation of Strengths and Threats.

STRENGTHS / THREATS	Level of training	BCTA provision	Personnel experience	Databases use	Personnel motivation	Risk profiles application	Effective interaction with the other subjects of IBM	Weight	Number of relationships	Product of weight and relationships
Significant increase in passenger and transport traffic on the border of Ukraine with EU countries	0	0	0	0	0	1	1	0.079	2	0.158
Increase in the traffic of weapons and ammunition from Ukraine to EU countries due to the rise in their total number on the controlled territory	0	0	0	0	0	1	1	0.143	2	0.286
Increase in the probability of illegal trafficking in WAE in case of a negative scenario on the frontline	0	0	0	0	0	1	1	0.146	2	0.292
Abrupt changes in the socio-political situation in the world (in neighboring countries)	0	0	0	0	0	1	1	0.171	2	0.342
Intensification of cross-border criminal groups in the field of illegal trafficking across the border of WAE	0	0	0	0	0	1	1	0.214	2	0.428
Changes in the legislation of Ukraine on the circulation of weapons	0	0	0	0	0	0	1	0.061	1	0.061
Missile Threat	1	0	1	0	0	0	1	0.186	3	0.558
Weight	0.211	0.157	0.196	0.111	0.154	0.064	0.107			
Number of relationships	1	-	1	-	-	5	7			
Product of weight and relationships	0.211	0.157	0.196	0.111	0.154	0.32	0.749			
Sum of relationships									28	
Sum of products										4.023

Source: authors.

Table 3. Correlation of Weaknesses and Opportunities.

WEAKNESSES / OPPORTUNITIES	Personnel overwork	Insufficient capacity of border crossing points	Insufficient number of service dog instructors specializing in weapons detection	Stress (mental-emotional state)	Necessity of personnel rotation for participation in combat operations	Personnel corruption	Impossibility of advanced training under the martial law	Weight	Number of relationships	Product of weight and relationships
Opening of new and modern border crossing points	1	1	0	0	0	0	0	0.211	2	0.422
Strengthening the responsibility for illegal trafficking in weapons across the state border	0	0	0	0	0	1	0	0.207	1	0.207
Providing units with the latest models of BCTA within the framework of international projects, grants	1	1	0	0	0	0	1	0.154	3	0.462
Intensification of personnel training activities with the involvement of national and international experts	0	0	0	0	0	0	1	0.136	1	0.136
Systematic joint risk analysis on combating the threat of illicit trafficking in WAE	0	0	0	0	0	1	0	0.15	1	0.15
Creation of an effective mechanism to encourage the local residents for the assistance provided by SBGSU	0	0	0	0	0	1	0	0.039	1	0.039
Strengthening the effective cooperation with the international agency FRONTEX under the martial law	0	0	1	0	0	0	1	0.093	2	0.186
Weight	0.243	0.15	0.172	0.146	0.089	0.146	0.054			
Number of relationships	2	2	1	-	-	3	3			
Product of weight and relationships	0.486	0.3	0.172	0.146	0.089	0.438	0.162			
Sum of relationships									22	
Sum of products										3.395

Source: authors.

Table 4. Correlation of Weaknesses and Threats.

WEAKNESSES / THREATS	Personnel overwork	Insufficient capacity of border crossing points	Insufficient number of service dog instructors specializing in weapons detection	Stress (mental-emotional state)	Necessity of personnel rotation for participation in combat operations	Personnel corruption	Impossibility of advanced training under the martial law	Weight	Number of relationships	Product of weight and relationships
Significant increase in passenger and transport traffic on the border of Ukraine with EU countries	1	1	1	1	0	1	0	0.079	5	0.395
Increase in the traffic of weapons and ammunition from Ukraine to EU countries due to the rise in their total number on the controlled territory	1	1	1	1	0	1	0	0.143	5	0.715
Increase in the probability of illegal trafficking in WAE in case of a negative scenario on the frontline	1	1	1	1	0	1	0	0.146	5	0.73
Abrupt changes in the socio-political situation in the world (in neighboring countries)	0	0	0	1	0	1	0	0.171	2	0.342
Intensification of cross-border criminal groups in the field of illegal trafficking across the border of WAE	1	0	0	1	0	1	0	0.214	3	0.642
Changes in the legislation of Ukraine on the circulation of weapons	0	0	0	0	0	0	0	0.061	-	0.061
Missile Threat	1	0	0	1	0	0	0	0.186	2	0.372
Weight	0.243	0.15	0.172	0.146	0.089	0.146	0.054			

Number of relationships	5	3	3	6	-	5	-		
Product of weight and relationships	1.215	0.45	0.516	0.876	0.089	0.73	0.054		
Sum of relationships								44	
Sum of products									7.187

Source: authors.

Table 1 shows the weights and relationships between the factors of strengths (influenced by SBGSU) and opportunities (beyond the control of the border guard agency).

The information presented in Table 2 reveals the relationships between the factors of strengths (influenced by SBGSU) and threats (not directly dependent on the border guard agency), as well as the weight indicators of each factor.

The data presented in Table 3 shows the presence or absence of relationships between the factors of weaknesses (influenced by SBGSU) and opportunities (dependent not only on the border agency) and the level of influence of each of them.

The information given in Table 4 indicates the weight of weaknesses (influenced by SBGSU) and threats (beyond the direct control of the border guard agency) and the relationships between them.

Summarizing the data from Tables 1-4, we created a general summary and reflected the relevant results in it (Table 5).

Table 5. SWOT – comparison of the results.

Correlation	Sum of relationships	Sum of products
Strengths /Opportunities (SO)	52	7.384
Strengths / Threats (ST)	28	4.023
Weaknesses/ Opportunities (WO)	22	3.395
Weaknesses / Threats (WT)	44	7.187

Source: authors.

The largest sum of the products of the total summary indicates which strategy we should choose. It follows from the analysis that the optimal strategy to combat illicit trafficking in WAE is an AGGRESSIVE strategy of expansion and development, which effectively uses both the strengths

of SBGSU and the opportunities in the environment around it. It should be noted that the difference in the returns of the aggressive strategy (SO) and the defensive strategy (WT) is not significant. This fact requires processing of specific actions depending on the interaction between the factors and focusing on those factors that are highly dependent on each other or intensively influence each other. For this purpose, our expert team has developed recommendations that could reduce the impact of weaknesses of SBGSU in combating the threat of illegal trafficking in WAE at border crossing points with EU countries and ensure the leadership of the aggressive strategy as the most effective under the martial law, according to the results of our research.

During the **third (final) stage**, practical recommendations have been developed for SBGSU officials to improve the effectiveness of border guard units in order to combat the threat of illegal trafficking in WAE at border crossing points with EU countries under the martial law.

We consider it reasonable to provide the following practical recommendations to reduce the influence of the main factors of weaknesses regarding the threat of illegal trafficking WAE at border crossing points:

1. in order to avoid personnel overwork, **it is necessary** to increase the number of personnel of the border units that carry out border checks on the border with EU countries to 100% or the maximum possible level;
2. in order to compensate for the insufficient capacity of border crossing points, the principle of electronic queuing **should be introduced** at all land border crossing points, which will allow to distribute proportionally the traffic of different categories of vehicles leaving Ukraine;
3. it is necessary to make changes to the training program for service dog instructors specializing in weapons detection to accelerate the timing and optimize the process of their training in special canters (the factor is the insufficient number of service dog instructors specializing in weapons detection);
4. in order to eliminate the causes and conditions that facilitate the emergence of stressful situations, it is **necessary to** intensify the work of staff psychologists at the level of the state border guard agencies; to introduce a position of a psychologist in the staff of border guard units that have border crossing points in their area of responsibility in order to increase the stability of the personnel's psycho-emotional state due to nervousness for relatives and friends because of the war;

5. in order to minimize the impact of such a factor as the necessity of rotation for participation in combat operations (constant changes of personnel of border guard units, which negatively affects the level of coherence and interaction during the fulfilment of border checks tasks at border crossing points), the rotation process **should be** carried out in an organized manner, without reducing the overall capacity to perform border checks tasks in general, and vehicles inspection in particular.

3. Discussion

The authors of the article have conducted a SWOT analysis, identified the factors of strengths, weaknesses, as well as opportunities and threats, which, according to the experts, have the greatest impact on the threat of illegal trafficking in WAE on the border of Ukraine with EU countries in war conditions.

The factors of these criteria identified in the study partially correspond to the criteria specified by Bratko *et al.*, (2021), namely, such strengths as ensuring the rhythmic crossing the border by persons and vehicles, the use of databases and risk profiles to identify threats to national security on the state border of Ukraine (obtaining of advanced information), high level of personnel training, the use of the latest equipment and service dogs, clear interaction with other subjects of integrated border management; as well as international crime threats, in particular, in the sphere of illegal WAE trafficking, increase of traffic etc. Similar is the use of the research tools by scientist Farion (2021) in the process of assessing threats to Ukrainian border security related to crime.

Our conclusions on the threat assessment coincide with those of Peterka-Benton (2012), who researched Transnistria from the point of view of the threat to national security, in particular, the illegal trafficking in weapons.

The conclusions on the activation of cross-border criminal groups in the field of illegal WAE trafficking across the border can be opposed to the conclusions of Prezelj and Gaber (2005), who considered the problem of cross-border flows in Slovenia and measures to combat illegal trafficking in weapons. The researchers considered this problem from the point of view of the high demand for weapons and their illegal trade on the black market (economic component), as well as paid great attention to different levels of interaction to combat the illicit WAE trafficking, including the use of a risk analysis system.

The conclusions obtained by the authors in the process of the formation of a model for assessing the threat of illegal WAE trafficking on the border

of Ukraine with EU countries under the martial law are closely connected with the conclusions of Horii (2016) concerning strategic risk analysis by the FRONTEX Agency and Csaba (2012), who analyzed the problems of risk profiling at different levels.

The authors of the article agree with the conclusions of Makhnyuk and Kyrychenko (2012) and Rudyk *et al.,* (2022) on the monitoring and classification of threats, the results of Mosov et al. (2020), who during the research identified challenges, dangers and threats to the border security of the Republic of Kazakhstan and Reznikova (2022) on the assessment of the state of the security environment of Ukraine. However, the authors of the article do not agree with Seniora and Poitevin (2010) on the approach to assessing possible threats.

The conclusions reached by the authors of the article do not correlate with the results of the research of these scientists, namely, the relationship between the illicit trafficking in small arms and light weapons and the specifics of the border residents, as well as the determining role of the unsatisfactory level of interaction with local authorities and the threat of corruption among personnel.

Conclusions

Thus, the research conducted by the authors made it possible to identify a group of factors, the impact of which should be reduced in order to increase the effectiveness of border checks at border crossing points for illegal trafficking in weapons, ammunition and explosives across the state border of Ukraine with EU countries that pose a threat to the security of the state under the martial law.

Existing research works investigate general issues related to the analysis and assessment of the threat of illegal trafficking in prohibited items and materials across the state border and do not take into account the specific factors affecting this type of illegal activity on the state border and the peculiarities and conditions of the martial law in Ukraine.

Based on the results of the SWOT analysis, the optimal strategy has been determined and practical recommendations have been developed for SBGSU officials to improve the effectiveness of border guard units to combat the threat of illegal WAE trafficking at border crossing points with EU countries under the martial law. In order to obtain the results, the group of experts has analyzed all the main factors of strengths, weaknesses, opportunities and threats that currently exist in Ukraine in the conditions of war.

The conducted research does not cover all the aspects of this problem. A perspective area of the research is the development of a technology for risk and threats assessment regarding possible attempts to illegally traffic WAE at border crossing points on the western border of Ukraine.

The results of the study are not perfect, due to the fact that most of the factors that were taken into account by the experts in the process of SWOT analysis, are relevant exactly during the martial law in Ukraine. Also, the results of the research cannot be applied to the areas of the Ukrainian border with such countries as RF, Belarus and Moldova.

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Guaranteeing the Exercise of the Right to Medical Care of Prisoners of War in the Context of International Protection

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Abstract

The aim of the article is to study the Ukrainian and international legal framework with respect to the exercise of the right of prisoners of war to medical care and, likewise, to determine the measures to ensure it. The following methods were used: analysis and synthesis, statistical analysis, graphical methods and logical-abstract method. The distinction of this study is the systematization of the legislative framework and non-legal measures concerning the exercise of the right of prisoners of war to medical care. In the course of the research, it was established that a number of Ukrainian and international legislative acts regulate the rules of treatment of prisoners of war, including the Geneva Convention relative to the treatment of prisoners of war. The findings of the investigation established that Russian occupiers regularly violate these provisions in relation to captured Ukrainians. However, the mechanisms for bringing war criminals to justice and the methods for assisting Ukrainian POWs are imperfect. The optimal way to help prisoners of war is exchange, but its procedure is also imperfect and communication with the enemy is complicated.

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Garantía del ejercicio del derecho a la atención médica de los prisioneros de guerra en el contexto de la protección internacional

Resumen

El objetivo del artículo es estudiar el marco legal ucraniano e internacional con respecto al ejercicio del derecho de los prisioneros de guerra a la atención médica y, de igual modo, determinar las medidas para garantizarlo. Se utilizaron los siguientes métodos: análisis y síntesis, análisis estadístico, métodos gráficos y método lógico-abstracto. La distinción de este estudio es la sistematización del marco legislativo y las medidas no jurídicas relativas al ejercicio del derecho de los prisioneros de guerra a la atención médica. En el curso de la investigación se estableció que varios actos legislativos ucranianos e internacionales regulan las reglas de tratamiento de los prisioneros de guerra, incluida la Convención de Ginebra relativa al trato de los prisioneros de guerra. En las conclusiones de la investigación se determinó que los ocupantes rusos violan estas disposiciones con regularidad en relación con los ucranianos capturados. Sin embargo, los mecanismos para llevar a los criminales de guerra ante la justicia y los métodos para ayudar a los prisioneros de guerra ucranianos son imperfectos. La forma óptima de ayudar a los prisioneros de guerra es el intercambio, pero su procedimiento también es imperfecto y la comunicación con el enemigo es complicada.

Palabras clave: servicio militar; Fuerzas Armadas de Ucrania; prisioneros de guerra; atención médica; derecho internacional humanitario.

Introduction

The outrageous and insane Russia's invasion of Ukraine on February 24, 2022 poses a threat not only to Ukraine and its citizens, but also to the entire world community. This is a good reason for conscious citizens and governments to unite and prove the value of the democratic rights and freedoms achieved by civilization. This is the time to demonstrate the supremacy of international humanitarian law over inhumane treatment, cruelty and lawlessness.

The ongoing hostilities on the territory of Ukraine are accompanied by the capture of prisoners by both sides of the conflict. Treatment of prisoners of war is one of the necessary humanitarian norms, which the parties must observe during war. The Geneva Convention relative to the Treatment of Prisoners of War establishes the complete list of rules for the treatment of prisoners of war. More and more evidence of the inhumane treatment of captured representatives of the Armed Forces of Ukraine and other prisoners by the occupiers is accumulating with the course of the conflict.

There are cases of murder, torture, insults to honour and dignity, as well as evidence of regular failure to provide medical care even to sick and wounded servicemen. This violates all provisions of international humanitarian law, and there are, in fact, no effective mechanisms to stop lawlessness. That is why the topic of this study is extremely relevant, as the health and life of Ukrainian prisoners often depends on the urgency of the measures taken.

Today, the actions of the Russian occupiers in the territories under their control resemble the Nazi atrocities described in detail in the work of Yakovliev (2022) regarding the Kharkiv region. The enemy also occupied part of the Kharkiv region in 2022. However, a significant part of the territories was liberated in September by the efforts of the Armed Forces of Ukraine. In addition to the return of the territories of the city of Kharkiv to Ukraine, the liberation was accompanied by the detection of the terrible crimes committed by the occupiers.

Many other evidence of war crimes committed by the Russian occupiers has already been accumulated. These are the testimonies of prisoners detained by the occupiers near Mariupol and later released by the Armed Forces of Ukraine. These are shootings of evacuation buses by Russian servicemen, queues for humanitarian aid and other crimes in Izium, Kharkiv region (Mernyk, 2022). This is a terrible truth revealed after the release of Bucha, Irpin, and Hostomel (Shchyhelska and Perets, 2022).

However, the crimes of the Russian Federation went beyond the genocide of the civilian population. They also include crimes against Ukrainian prisoners of war, representatives of the Armed Forces of Ukraine and other persons. In addition to undisguised brutality and torture of prisoners, Russian combatants keep them in inappropriate conditions without providing adequate medical care and proper nutrition.

So, the aim of the research is to study Ukrainian and international legislation regarding the exercise of the right of prisoners of war to medical care, and determine measures to guarantee it.

The aim involves the fulfilment of the following research objectives:

- review international and Ukrainian legislation regarding the treatment of prisoners of war;

- provide evidence of violations of the rights of prisoners of war as a result of the military aggression of the Russian occupiers against Ukraine;
- describe the mechanism of bringing war criminals to justice, and determine ways to guarantee the exercise of the rights of prisoners of war, including the right to medical care.

2. Literature review

The issue of guaranteeing the exercise of the right of prisoners of war to medical care is poorly studied. Most of the academic literature reviewed on this issue refer to the Geneva Convention relative to the Treatment of Prisoners of War (Verkhovna Raga of Ukraine, 1949). There are studies that deal with the development of the legal framework for guaranteeing the rights of prisoners of war at the country level. Researchers also study the attitude of the public to the issue under research, the preparation of prisoners of war for possible capture, rehabilitation after capture.

Fedorenko *et al*. (2022) provides a retrospective on the prerequisites and the process of building a modern international mechanism for bringing war criminals to justice. The article focuses on the violation of the rights of both the civilian population and prisoners of war, much evidence is provided about torture and ill-treatment of prisoners of war. The researchers listed the institutions that should ensure compliance with international provisions of humanitarian law. The steps that Ukraine takes in order to create a mechanism for bringing war criminals to justice are outlined.

Kallberg (2022) emphasizes the growing number of crimes committed by the Russian occupiers. The researcher attempts to reveal the reasons for this course of events. According to international law, all soldiers must have a clear understanding of the rights of prisoners of war, both from the perspective of the prisoner and the captured. But the Russian chauvinistic culture does not provide explanations to Russian soldiers about how to act if they are captured. This contradicts the regime’s narrative: the fact that a Russian soldier could become a prisoner of war does not fit the regime’s projection of national superiority and power.

Some scholars believe in compliance with the norms on the provision of aid to prisoners of war enshrined in the Geneva Convention by both parties to the conflict. For example, Arman *et al*. (2020) note that the Geneva Convention relative to the Treatment of Prisoners of War provides a “solid foundation” for their protection. On the contrary, Huffman (2018) considers that prisoners of war are insufficiently protected under this Convention. The researcher does not believe that any legal framework will ever be able to protect prisoners of war from cruel treatment.

Chu (2019) examines treatment of prisoners of war in terms of so-called "reciprocity". This means that the behaviour of one party to the conflict is determined by the actions of the other. That is, if one party does not expect "reciprocity", it can continue to commit illegal acts with impunity. "Reciprocity" may include torture in response to torture committed by one of the parties to the conflict, failure to provide appropriate assistance, etc.

Cruel treatment and lack of appropriate assistance to prisoners of war makes the issue of their return to the Motherland particularly acute. This requires facilitation and optimization of the procedure for the exchange of prisoners of war to the maximum possible extent. Maletov (2022) provides a list of problems associated with the exchange procedure because of the unregulated negotiation procedure. Kuznetsov and Syiploki (2022) emphasize the excessively complex procedure and the lack of transparency.

Some works deal with the study of preventive measures and those that must be applied after the release of servicemen from captivity. These measures relate to their mental health. Liebrenz *et al*. (2022) emphasize that not only a physical condition requires recovery after captivity, but also a mental one. Apalkov and Khmiliar (2022) believe that military personnel must be prepared in advance for the possibility of being captured. Leon *et al*. (2022) also pay attention to the restoration of health not only of prisoners of war, but also of other victims of war, including civilians. Among other things, the researchers distinguish the excessive pressure that the Ukrainian health care system faces as a whole.

3. Methods and materials

3.1. Research design

The complex nature of the research requires its division into three consecutive and interrelated stages. The division into stages was carried out in accordance with the research objectives and according to the following logic. First, the rights of prisoners of war are enshrined in Ukrainian and international legislation, so it is appropriate to consider the relevant legislative acts at the first stage. Second, there is a lot of evidence about violations of the rights of prisoners of war, accordingly, it is necessary to investigate such violations and their scale at the second stage. Third, it is necessary to determine how war criminals can be brought to justice and how it is possible to guarantee the exercise of the rights of prisoners of war.

So, the first stage involved a review of Ukrainian and international legislation in force during the period of martial law. Legal provisions regarding the treatment of prisoners of war were separately considered.

In particular, the constitutional rights of Ukrainian citizens and their limitations in connection with the declaration of martial law were considered. The legal grounds for introducing martial law and the regulatory framework for the legal regime of martial law were outlined. The substance of the "prisoner of war" status according to the Geneva Convention relative to the Treatment of Prisoners of War was revealed. Provisions of Ukrainian legislative acts regarding the treatment of prisoners of war are provided.

The second stage briefly describes the scale of war crimes committed by the Russian military on the territory of Ukraine. Articles of the Geneva Convention relative to the Treatment of Prisoners of War, which were violated by the occupiers in relation to representatives of the Armed Forces of Ukraine and other prisoners of war, are provided. The articles directly related to the provision of medical care to prisoners of war were distinguished among the violated articles. Testimony of released Ukrainian servicemen regarding their cruel treatment by the occupiers, including cases of murder and torture, is provided.

The third stage involved the description of the mechanism for bringing war criminals to justice. Besides, ways of exercising the rights of prisoners of war, including the right to medical care, were considered. The list of international institutions that ensure compliance with the laws and customs of war is provided. The main available ways to provide medical care to prisoners of war are outlined. The main barriers that often make the process of providing medical care even to sick and wounded prisoners of war impossible are indicated.

3.2. Informational background of the research

The information background of the research is a number of international and Ukrainian legislative acts, statements of official representatives of the Ukrainian government, journalistic research and official statistics. Legislative acts that were considered in the study:

The Constitution of Ukraine adopted at the fifth session of the Verkhovna Rada of Ukraine on 28 June 1996 (President of Ukraine, 1996);

- Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine".
- The Law of Ukraine on the Legal Regime of Martial Law (Verkhovna Rada of Ukraine, 2015).
- The Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 12 August 1949.
- Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for the Detention of Prisoners of War".

3.3. Research methods used

The following scientific methods were used in the article: methods of analysis and synthesis in the study of the legislative framework for the research, as well as evidence of violations of the law by representatives of the armed forces of the aggressor state; statistical analysis to establish the dynamics and structure of Ukraine's appeals under Rule 39 of the Rules of the European Court of Human Rights (2019), upheld and rejected in 2019, 2020 and 2021 by the respondent state; graphic methods for the presentation and arrangement of research results; the abstract-logical method was used to generalize information and draw research conclusions.

4. Results

4.1. Review of International and Ukrainian Legislation on the Treatment of Prisoners of War

An individual is the highest social value in every developed democratic state. Article 3 of the Constitution of Ukraine stipulates that "An individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value" (Constitution of Ukraine). The same article defines the main duty of the state to affirm and guarantee human rights and freedoms.

Different political, economic and social crises create obstacles for the adequate exercise of people's rights and freedoms. This issue is especially acute in the context of martial law. On February 24, 2022, Decree of the President of Ukraine No. 64/2022 introduced martial law from 5:30 a.m. of February 24, 2022 for a period of 30 days in connection with the military aggression of the Russian Federation (RF) against Ukraine (Decree of the President of Ukraine No. 64/2022 "On Introduction of Martial Law in Ukraine"). It was based on the proposal of the National Security and Defense Council of Ukraine.

The legal ground for the introduction of martial law is the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law" and the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine or in Some of its Localities" approved by the Verkhovna Rada of Ukraine (VRU) (Law of Ukraine "On the Legal Regime of Martial Law"). Figure 1 represents the regulatory framework for the legal regime of martial law.

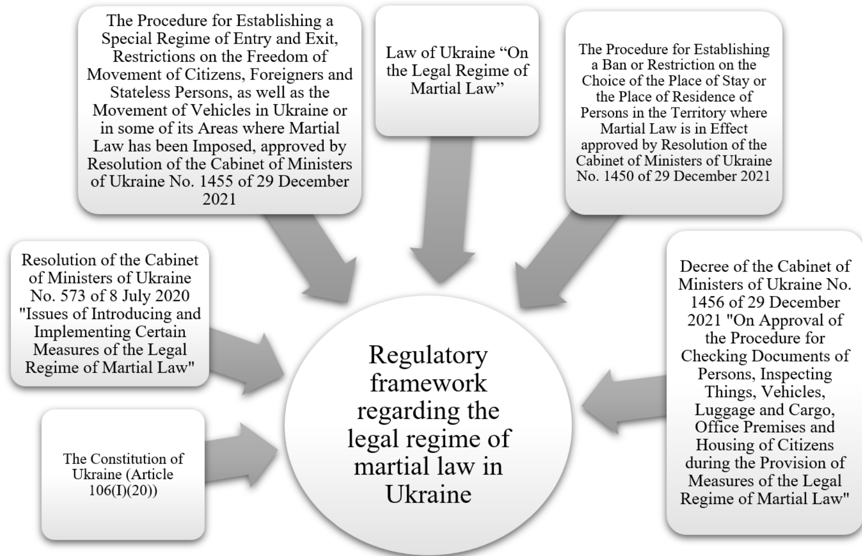

Figure 1: The regulatory framework for the legal regime of martial law in Ukraine.

According to Article 106(I)(20) of the Constitution of Ukraine, the President of Ukraine "adopts a decision in accordance with the law on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular areas, in the event of a threat of aggression, danger to the state independence of Ukraine" (Constitution of Ukraine). As of the end of September 2022, martial law has been extended four times. The last one — August 23, 2022 — extends martial law for 90 days.

The concept of martial law is defined by Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law". This Law defines martial law as "a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or a threat of attack [...]" and provides, among other things, "temporary, threat-driven, restriction of constitutional human rights and freedoms [...] with an indication of the period of validity of these restrictions" (Law of Ukraine "On the Legal Regime of Martial Law").

Article 6 of this Law establishes that the Decree of the President of Ukraine "On the Introduction of Martial Law" provides an exhaustive list of the constitutional rights and freedoms, which are temporarily limited in connection with the introduction of martial law. According to it, paragraph three of Decree of the President of Ukraine No. 64/2022 on the introduction of martial law in Ukraine defines the following constitutional rights and freedoms, which may be limited during martial law (Figure 2).

Article 30.

- Everyone is guaranteed the inviolability of his or her dwelling place.

Article 31.

- Everyone is guaranteed privacy of mail, telephone conversations, telegraph and other correspondence.

Article 32.

- No one shall be subject to interference in his or her personal and family life, except in cases envisaged by the Constitution of Ukraine.

Article 33.

- Everyone who lawfully stays on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave the territory of Ukraine, with the exception of restrictions established by law.

Article 34.

- Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.

Article 38.

- Citizens have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government.

Article 39.

- Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government.

Article 41.

- Everyone has the right to own, use and dispose of his or her property, and the results of his or her intellectual and creative activity.

Article 42.

- Everyone has the right to entrepreneurial activity that is not prohibited by law.

Article 43.

- Everyone has the right to labour, including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees.

Article 44.

- Those who are employed have the right to strike for the protection of their economic and social interests.

Article 53.

- Everyone has the right to education.

Figure 2: Articles of the Constitution of Ukraine that provide for the rights and freedoms which may be limited during martial law.

As Figure 2 shows, the rights and freedoms that cannot be guaranteed by the state during martial law due to objective need or certain threats are limited. However, such important articles as, for example, Article 49: "everyone has the right to health protection, medical care and medical insurance", are missing in the mentioned list.

In this context, guaranteeing the rights of Ukrainian citizens who have the status of prisoners of war is of particular interest. Article 15(3) of the Law of Ukraine "On the Legal Regime of Martial Law" states: "The prisoners of war accommodated in camps for prisoners of war and precincts for the prisoners of war are detained in accordance with the procedure determined by the Cabinet of Ministers of Ukraine, in compliance with Ukraine's international obligations, in particular in the field of international humanitarian law, and the requirements of the legislation of Ukraine" (Law of Ukraine "On the Legal Regime of Martial Law).

Mainly, the international norms that must be observed in the course of a military confrontation are approved in the four Geneva Conventions (GCs) of 12 August 1949. The provisions governing the treatment of prisoners of war are prescribed in the Third Geneva Convention (GC III) relative to the treatment of prisoners of war. According to Article 4 of this Convention, prisoners of war include persons captured by the enemy and belonging to one of the categories indicated in Figure 3.

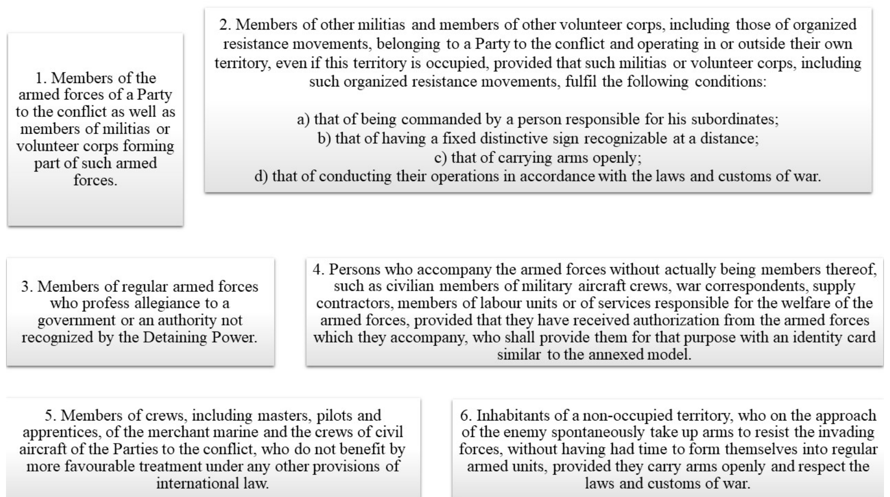

Figure 3: Categories of persons who are prisoners of war according to Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention relative to the Treatment of Prisoners of War).

The right of prisoners of war to the medical care is approved by Article 15 of GC III, which reads as follows: “The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.” (Geneva Convention relative to the Treatment of Prisoners of War). Chapter III of GC III fully explains the norms of hygiene and medical care that prisoners of war should receive. It concerns the implementation of sanitary and preventive measures, receiving the necessary medical care and proper nutrition, and establishes the rules of medical examinations.

Ukrainian legislation also prescribes the conditions of detention of prisoners of war. In particular, this is the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for the Detention of Prisoners of War”. It states that “timely medical care shall be provided to wounded and sick prisoners of war” (Verkhovna Rada of Ukraine, 2022).

Therefore, we can conclude that international legislation guarantees prisoners of war decent conditions of detention and provision of everything necessary to preserve their health. However, modern realities regarding the detention of Ukrainian prisoners of war testify to serious violations of the said provisions by representatives of the aggressor state. Numerous testimonies of gross violations of the provisions of GC III by part of the Russian Federation are discussed in the next sub-section of the study.

4.2. Violation of the Rights of Prisoners of War as a Result of the Military Aggression of the Russian Federation against Ukraine

Numerous testimonies about the inhuman treatment of Ukrainian citizens by the occupiers go beyond the crimes against civilians. They also violate international laws and customs of war against prisoners of war, as well as wounded and sick servicemen. Figure 4 shows the articles of GC III, which were violated in relation to the treatment of prisoners of war, as the Commissioner of the Verkhovna Rada of Ukraine states.

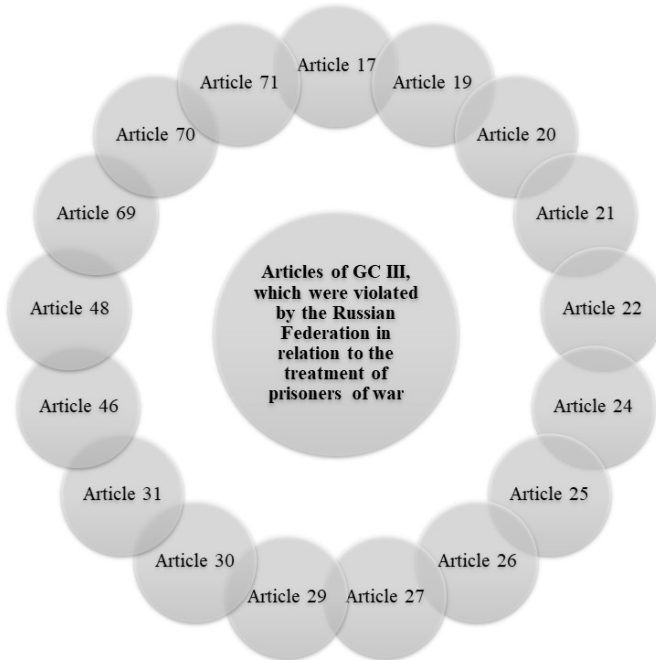

Figure 4: Articles of GC III, which were violated by the Russian Federation in relation to the treatment of prisoners of war (Commissioner: The Russian Federation Tortures Ukrainian Prisoners of War, 2022).

Along with others, Articles 29, 30 and 31, which are listed in Figure 4, refer to Chapter III: Hygiene and Medical Attention of GC III. Article 29 governs the use of sanitary measures in the camps, Article 30 applies to providing medical care, Article 31 prescribes rules for medical examinations (Geneva Convention relative to the Treatment of Prisoners of War).

The Commissioner of the Verkhovna Rada of Ukraine provides information received during a visit to a health care facility where servicemen released from captivity by the occupiers were placed. The facts of torture and ill-treatment of defenders of Ukraine by the occupiers were established in the course of the conversation with the servicemen undergoing treatment. Most of the prisoners were captured near Mariupol, at first, they were kept in the basements of commercial buildings.

Subsequently, they were transported under guard to the pre-trial detention centre in Donetsk, and after that — to the pre-trial detention centre in the territory of the Russian Federation. During transportation under guard, a bag was put on the head of the captives, their eyes were tied

with tape, and their hands were tied. Ukrainians were subjected to torture in captivity, they were beaten, humiliated, and threatened with death. One of the prisoners was fired from a machine gun above his head, and the other was simulated execution by shooting in the head with blank cartridges.

Another captive was forced by the Chechens to sit for two hours with a sack over his head next to a switched-on chainsaw, threatening to cut off his fingers and hands. Medical care was not provided to prisoners of war, including the wounded. The doctor examined them before the transfer to the camp in Sevastopol, where medical care was provided by representatives of the International Committee of the Red Cross (ombudsman.gov.ua, 2022). There are facts of the killing of prisoners of war: in particular, one of the prisoners of war captured near Mariupol on April 19-20, 2022. The man was killed after brutal torture, and a photo of the body of the murdered man was sent to his mother (ombudsman.gov.ua, 2022a).

The foregoing evidences that the occupiers do not observe international laws and customs of warfare, grossly violate them despite international agreements. This is why the development and introduction of a mechanism for preventing and punishing such violations is an extremely acute and relevant issue.

4.3. The Mechanism of Bringing War Criminals to Justice and Guaranteeing the Exercise of the Rights of Prisoners of War, including the Right to Medical Care

World War II gave an impetus to the revision of international mechanisms of liability for military aggression, violations of the laws and customs of war. Table 1 lists the institutions established to prevent and prosecute military aggression and crimes.

Table 1. Institutions established for the prevention of military aggression and their powers.

Initiative	Year and reason	Established institution	Powers of the institutions
UN Charter	1945 – the end of World War II	General Assembly, Security Council	Prevention of military aggression and bringing aggressor states to political responsibility
		International Court of Justice	Prosecution for violations of international law and crimes against peace

UN Security Council	The beginning of the war in the former Socialist Federal Republic of Yugoslavia (since 1991) and the genocide in Rwanda (1994)	Two special international tribunals	Investigation of war crimes during the relevant military conflicts
Signing of the Rome Statute by 120 states	1998 — an increase in the number of crimes against humanity, which stimulated the desire of the international community to bring war criminals to criminal justice, not just to political disapproval	International Criminal Court headquartered in the Hague	It is not the UN body, and has the right to initiate proceedings at the UN Security Council's request, having the status of an independent international organization. Conducts investigations and trials of individuals accused of serious crimes against humanity (genocide, war crimes, etc.) on a global scale

Source: (Fedorenko *et al.*, 2022)

Ukraine has not ratified the Rome Statute, this is why Poland and Germany, followed by more than 40 countries that signed the Statute, appealed to the institution with a claim that the Russian Federation had committed an act of military aggression on the territory of sovereign Ukraine. The Ukrainian government also made a number of decisions in relation to bringing the Russian Federation to justice.

In particular, the VRU adopted the Law "On Amendments to the Criminal Procedure Code of Ukraine regarding Cooperation with the International Criminal Court". Ukraine appealed to the European Court of Human Rights (ECtHR), but the Russian Federation does not recognize the decisions of this institution on its territory. The President of Ukraine, Volodymyr Zelenskyi, made a decision to establish a special justice mechanism in the country. This mechanism implies the cooperation of national and international specialists (investigators, prosecutors, judges) (Fedorenko *et al.*, 2022).

However, the aggressor country does not recognize international and universal humane rules, which causes more and more war crimes on the territory of Ukraine. Unpunished crimes will entail new crimes, so it is very important to develop and implement mechanisms of bringing war criminals to justice. But it is necessary to find ways to help Ukrainian servicemen as soon as possible during the development of such mechanisms using available methods. So, one of the most important tasks is to provide prisoners of war with appropriate medical care.

On September 12, 2022, the Minister of Health of Ukraine announced that the Ministry of Health of Ukraine continues to appeal to international organizations. The purpose of the appeals is, first of all, a request to check how the right of citizens and prisoners of war to medical care is guaranteed in the occupied territories. The Ministry of Health of Ukraine did not receive any information about the guarantee of these rights, although appeals were made to the Red Cross (RC), WHO and Doctors Without Borders (Ministry of Health of Ukraine, 2022).

The Media Initiative for Human Rights reports that there was no communication mechanism with the Russian Federation regarding the release of prisoners of war and the provision of medical care to them in May 2022. In this regard, Lawyer M. Tarakhkalo called the ECHR one of the mechanisms for the protection of prisoners of war. However, Ukraine can submit complaints to the ECtHR only until September 16, 2022, because the Russian Federation was excluded from the Council of Europe.

This Lawyer suggests using Rule 39 of the ECHR with regard to prisoners of war (Media Initiative for Human Rights, 2022). Rule 39 of the ECHR Rules provides for the application of temporary measures in cases where there is a risk of causing unjustified and unavoidable damage to basic human rights and freedoms (Futorianska, 2020). Figure 5 shows Ukraine's Rule 39 appeals upheld and rejected by the respondent state in 2019, 2020 and 2021.

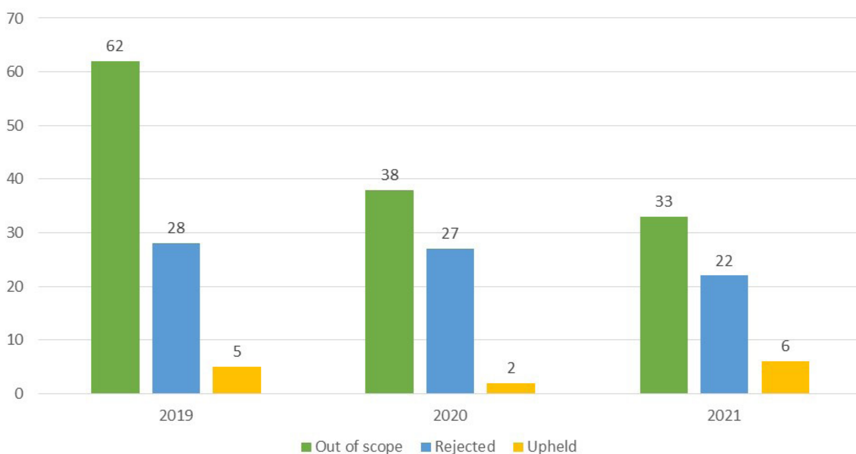

Figure 5: Ukraine's Appeals under Rule 39 upheld and rejected in 2019, 2020 and 2021 by the respondent state (built by the author according to (European Court of Human Rights, 2019).

As Figure 5 shows, most of Ukraine's appeals under Rule 39 of the ECHR are either out of scope or rejected. Therefore, it can be assumed that the application of this Rule does not fully solve the problem of helping Ukrainian prisoners of war.

While there was no possibility of communication with the Russian Federation regarding the release of prisoners of war in May, there was an extremely important shift in this regard in September. On September 21, 2022, 215 Ukrainian soldiers returned from captivity as a result of the exchange for V. Medvedchuk and 55 captured occupiers (LB.ua, 2022). As O. Tolkachova, Head of the Azov Regiment Patronage Service, testified, the state of Ukrainian soldiers was shocking.

The defenders of Ukraine were exhausted, many of them had contusions, closed fractures and acute condition of chronic diseases (Korohodskyi, 2022). Lubinets D., Commissioner for Human Rights of the VRU, reports that none of the Ukrainian soldiers in captivity saw the Red Cross representatives, who undertook to check the condition of the prisoners (Korohodskyi, 2022; Khobbi et al., 2022).

About two and a half thousand Ukrainians remain in the captivity of the occupiers, they include civilians, and women (Korohodskyi, 2022b). Some captured women are pregnant. The fact that Ukrainians continue to be held captive by the occupiers causes great concern in view of the above-mentioned facts regarding the treatment of Ukrainian prisoners of war.

Given the extremely limited access to medical care, as found in the article, one of the most likely ways to help is exchange. At the end of September 2022, Ukraine was conducting negotiations with the Russian Federation on the exchange of prisoners of war "all for all" (Perun, 2022). The release of war criminals from punishment is the disadvantage of the exchange, but this is the price of the return of Ukrainian prisoners of war (Hurin, 2022; Svoboda et al., 2022).

5. Discussion

The conducted research testifies that the Russian occupiers grossly and regularly violate the laws and customs of war in relation to Ukrainian prisoners of war. In addition to torture, cruel treatment, humiliation of honour and dignity, the Russian servicemen do not provide captured Ukrainians with access to medical care. This violates the norms of international humanitarian law, in particular, those established in GC III. Mechanisms for bringing criminals to justice, as well as mechanisms for guaranteeing the rights of prisoners of war, are still imperfect in Ukraine and are being developed.

However, the Ukrainian government continues to take steps to find ways to help Ukrainian prisoners of war. Such steps include the improvement of the legislative framework, the organization of the cooperation of national experts to create an appropriate mechanism of justice, etc. The September 21 exchange between Ukraine and the Russian Federation, when 215 Ukrainian defenders were released, was a significant step in improving the state of affairs with prisoners of war.

The article emphasized that many Ukrainians (about 2,500 people) are still in Russian captivity. In view of the facts presented in the article, it is not an exaggeration to assume that they may be subjected to cruel treatment and not provided with the necessary medical care. Therefore, it is extremely urgent to provide them with any help by all available means. This is why it is appropriate to survey the works of Ukrainian and foreign researchers on the treatment of prisoners of war and helping them during the war.

Fedorenko *et al*. (2022) notes that there have been almost no prohibitions that have not been violated by the occupiers since the beginning of the Russian invasion of Ukraine. Researchers state that unpunished crimes will recur, so it is important to introduce a mechanism of punishment before the end of the war. The researchers conducted a thorough literature review on the development of international law in the military sphere at different times and outlined current Ukrainian realities.

They drew a conclusion that modern international conventional and institutional mechanisms for the protection of fundamental human rights and freedoms are insufficiently effective. They mentioned the following improvement measures among others:

- rejection of the mechanism of consensual decision-making (regarding the UN and its bodies);
- attention of world governments to Ukraine's initiative to create a special tribunal in order to recognize the guilt of the aggressor state for violations in Ukraine;
- cooperation of Ukrainian and other experts from around the world (General Prosecutor's Office, National Police of Ukraine, judicial experts of different countries).

Fedorenko *et al*. (2022) outlined the actual mechanism of bringing war criminals to justice. However, as the authors of the article mentioned, sometimes it is necessary to give in to the need to punish war criminals, which is the case with exchanging prisoners of war. The answer to whether such a decision is correct should be considered from the perspective of morality, not the academic approaches or legal provisions.

Kallberg (2022) also focuses on the growing number of war crimes committed by the Russian servicemen. The researcher notes that cruelty

creates a vicious circle in which human suffering increases. Russian threats against future prisoners undermine respect for international humanitarian law and are short-sighted. Such threats act against the Russians themselves, because compliance with the customs and laws of war is in the interests of each of the parties to the conflict. Kallberg's findings support the results of the analysis of the evidence presented in this article.

The majority of world researchers refer to GC III where the matter is about the protection of prisoners of war from ill-treatment. Arman *et al.* (2020) consider that GC III provides a strong framework for the protection of prisoners of war. It states that prisoners should be treated humanely, equally, with respect for their dignity, and discrimination is prohibited.

The researchers refer to Articles 34, 38 of GC II, which provide that maintaining the health of prisoners of war and ensuring respect requires attention not only to the physical well-being, but also to the mental well-being of the prisoner. However, practice shows that the enshrinement of these provisions does not save Ukrainian prisoners of war from torture and other harm to physical and mental health.

Huffman (2018) reached the same pessimistic and topical conclusion. The researcher states that no significant changes have been made to the Geneva Conventions for almost seventy years despite evolutionary changes. An exception is the drawing up of Additional Protocols. However, the history of the 20th and 21st centuries shows that prisoners of war are insufficiently protected in accordance with Article 3.

The author expresses the opinion that the "innate fallibility of mankind" increases during war. This is the reason why no legal framework can ever fully eliminate the inhumane treatment of prisoners of war during armed conflict. "History reveals this truth again and again, and it is no longer possible to ignore it." Huffman believes that it will take a lot of effort to implement changes.

Chu (2019) studies the attitude of citizens towards committing illegal acts against prisoners of war, in particular the use of torture. Reciprocity is the key concept of the studies, which consists in determining one's behaviour by the behaviour of the other party. Researchers present two points of view: on the one hand, this is the opinion of citizens who oppose the use of torture. As the authors state in their work, citizens should understand that their activity can contribute to the wider acceptance of legal norms. However, their ability to legislatively restrict people from participating in this kind of reciprocity is limited. That is, when one side of the conflict uses torture, the other may consider it fair to use torture in return.

On the other hand, some observers believe that the legal prohibition of torture is ineffective without the threat of reciprocity. It is obvious that the occupiers on the territory of Ukraine are not afraid of legal punishment or

reciprocity, believing that it will not affect them. We can say that they are using the status of Ukraine as a legal democratic state to their advantage.

It was noted in the study that affordable and urgent measures must be taken, as providing prisoners of war with adequate medical care is unattainable. Separate studies deal with the exchange of prisoners of war between Ukraine and Russia. (Maletov 2022) notes that the problem is unregulated negotiation procedure in Ukraine. The authority, competence of negotiators, exchange process, principles of protection of the rights of prisoners of war transferred during the exchange, are not defined.

Kuznetsov and Syiploki (2022) also point out that the process of returning prisoners of war is excessively complicated. Researchers suggest increasing the transparency of the exchange procedure, finalizing the legislative framework, and dividing the exchange procedure into two separate ones. Such procedures should concern the exchange of prisoners of war who did not commit war crimes and those who did.

Finally, it should be noted that world researchers focus not only on the physical, but also on the mental health of Ukrainian prisoners of war. Liebrenz *et al.* (2022) reveal the range of mental needs of prisoners of war, in particular, the authors note that being a prisoner of war can cause post-traumatic stress disorder. This reveals another problem not outlined in the article — ensuring and restoring the mental health of prisoners of war. Along with the restoration of their physical condition, this problem is extremely important and requires further scientific research and proposals.

Some researchers propose to take measures to preserve the mental health of prisoners of war not only post factum, but also to prevent mental injuries. Apalkov and Khmiliar (2022) emphasize the need to prepare the servicemen for possible capture. The purpose of such training is survival in captivity and subsequent readaptation of the serviceman in society after captivity.

Many studies deal with the problem of psychological trauma caused by the invasion. Yes, Leon *et al.* (2022) note that the deep scars of physical injuries and psychological trauma will remain long after the end of the war. The researchers mean not only the servicemen of Ukraine, but also millions of Ukrainians. People living in areas of active hostilities, refugees and internally displaced persons also suffer severe injuries.

It can be concluded based on the foregoing that the situation with prisoners of war's access to medical care, as well as aid in general, is very complicated. The occupiers do not comply with international provisions of humanitarian law, and a constructive dialogue with the aggressor state is not always possible. The last positive development was the agreement on the exchange of prisoners of war.

Therefore, it is necessary to continue negotiations on further exchanges of prisoners of war according to the "all for all" formula. The lives and health of prisoners of war may depend on urgent decisions, but implementation of legislative changes may take time. Besides, as practice shows, even clearly prescribed legal provisions may not help to solve the problem of ill-treatment of prisoners of war.

Conclusions

The Russia's military aggression against Ukraine causes the destruction of civil infrastructure, the suffering and death of Ukrainian citizens, and the occupation of the territories of a sovereign state. Besides, it is accompanied by gross violations of international humanitarian provisions on both the civilian population and servicemen of the Armed Forces of Ukraine. Such violations include, among others, the failure to provide medical care to servicemen of Ukraine captured by the occupiers. That is the reason why it is urgent to find ways to restore justice, in particular ways to guarantee the exercise of the rights of prisoners of war.

The article analysed the legislative framework for the guaranteeing the exercise of the right of prisoners of war to medical care. It was established that such rights are clearly enshrined both in Ukrainian legislative acts and in international ones (GC III). However, this does not prevent the Russian occupiers from violating them.

The study documented numerous war crimes by Russian servicemen against Ukrainian prisoners of war. The consideration of the ways of guaranteeing the exercise of the right of prisoners of war to medical care and the mechanisms of bringing war criminals to justice revealed that these mechanisms are currently imperfect and difficult to apply. Therefore, the exchange remains one of the possible options for helping prisoners of war, but its procedure also requires improving and establishing communication with the enemy.

The results of the study can be used to improve the legislative provisions that govern guarantees for the exercise of the rights of prisoners of war. Besides, the government can use the outlined ways of possible assistance to prisoners of war in the development of further steps in this direction. Directions for further research may be the development of improvements to the negotiation procedure and exchange of prisoners of war.

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Mayor presupuesto no genera celeridad procesal y plazo razonable en el Tribunal Constitucional, Perú 1999 – 2020

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Resumen

El objetivo de la investigación fue demostrar la hipótesis que mayores presupuestos no generan mayor celeridad procesal, en el Tribunal Constitucional del Perú (TC), restringiendo el acceso a un plazo razonable entre los años 1999-2020. A nivel metodológico se recolectó la data de sentencias del (TC), de 22 años. Del Ministerio de Economía y Finanzas (MEF), los devengados del presupuesto transferido. Además, se utilizó el Rho de Pearson y análisis discriminante para conglomerados. Destacan en los resultados que la carga procesal depende de las acciones de amparo, *habeas corpus* e incumplimiento con R2 de 99.93%. Existe retraso en resolver las demandas, mientras el presupuesto crece. El Rho es 0.245. Si el presupuesto crece en 10%, las publicaciones se incrementarían en 2.45%. Las remuneraciones crecen 7 veces en el periodo y las resoluciones en 2.36 veces. La relación Rho es de 0.33. El análisis discriminante, prueba que, de las tres etapas, 1999-2002; 2003-2012; y 2013-2020, en la tercera decrecen la productividad y la celeridad, mientras se incrementan los presupuestos. La información procesada permite concluir que, la gestión pública del (TC) no muestra celeridad procesal en la resolución de los expedientes, en términos del acceso a la justicia en un tiempo razonable.

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Palabras claves: presupuesto público; celeridad procesal; economía procesal; retardo procesal; administración de justicia en Perú.

Increased budget does not generate procedural speed and reasonable time in the Constitutional Court, Peru 1999 -2020

Abstract

The objective of the research was to demonstrate the hypothesis that greater budgets do not generate greater procedural speed in the Constitutional Court of Peru (TC), restricting access to a reasonable time period between 1999-2020. At the methodological level, data was collected from 22 years of Constitutional Court (TC) sentences. From the Ministry of Economy and Finance (MEF), the accruals of the transferred budget. In addition, Pearson's Rho and discriminant analysis for clusters were used. The results highlight that the procedural burden depends on the actions of amparo, habeas corpus and non-compliance with an R2 of 99.93%. There is a delay in resolving lawsuits, while the budget grows. The Rho is 0.245. If the budget grows by 10%, publications would increase by 2.45%. Remunerations grow 7 times in the period and resolutions by 2.36 times. The Rho ratio is 0.33. The discriminant analysis proves that, of the three stages, 1999-2002; 2003-2012; and 2013-2020, in the third stage productivity and celerity decrease, while budgets increase. The processed information allows concluding that the public management of the (TC) does not show procedural celerity in the resolution of the files, in terms of access to justice in a reasonable time.

Keywords: public budget; procedural celerity; procedural economy; procedural delay; administration of justice in Peru.

Exordio extendido

Los estrategas y asesores como Montesquieu al decir Silva (2018), que en la práctica pensaban en la división de poderes, no podían imaginar en la aparición de un órgano, de una institución que estuviera en los extramuros del poder. De una institución procesal que seguramente como el ministerio público o la Junta Nacional de Justicia, podrían ser órganos constituidos con autonomía, pero estos no tienen la fuerza para el ámbito de la juridicidad como los denominados tribunales constitucionales (Ruay Sáez, 2017). En

el Perú, el TC de ser inexistente en el primer proyecto de la constitución de 1993 pasa luego estar vigente y en 27 años se ha convertido en la última palabra del derecho peruano, con protagonismo en los conflictos de reglas y principios de toda índole (Ródenas, 2008a, 2008b).

Merece valorarse en el contexto jurídico mundial, si el denominado, máximo referencial de la carta magna viene cumpliendo lo que debió ser su propósito inicial. Propiciado por la constitución austriaca del año 1920 y la genialidad de Hans Kelsen (Morales Saravia, 2016)que se caracterizan por su flexibilidad. En nuestro país el precedente constitucional vinculante es rígido y autoritario y más se parece a un tipo de legislación general que a la técnica del precedente de casos específicos. También, se analizan de manera global los 48 precedentes dictados por el TC según los criterios cronológico, temático, por sus efectos y según se trate de interpretaciones constitucionales o legales.

El resultado de dicha evaluación nos indica que el Pleno de los años 2005 a 2007 dictó 30 precedentes (62.5%. En su origen el tribunal constitucional era el contrapeso al poder legislativo, ese poder creador del derecho positivo (Sánchez, 2011), porque las mayorías del pueblo le habían otorgado prerrogativas para generar legislación en favor de él. Pero este, también estaba regido por hombres y los hombres a través de la historia han demostrado que sus propuestas pueden ser sesgadas, injustas y arbitrarias. De alguna manera –como se diría-inconstitucional. La ley no era suficiente, era preciso un control de la ley.

Y por ello debía construirse un órgano, no para el control difuso (Glave Mavila, 2017) que había sido creado en Norteamérica con el expediente Marbury y Madison, sino un órgano concentrado que verifique la constitucionalidad de las normas. El nombre del TC está y es reglamentado, por el artículo 201 de la constitución. El TC resulta ser el órgano del control de la constitucionalidad (Cruces Burga, 2013) a la hora de hacer la comparación, cuando se realiza el contraste entre la norma legal y la constitución. Allí, en ese momento lo que está sujeto al control de constitucionalidad es la ley, o lo que emite el ejecutivo nacional, local y regional(Silva Irarrázaval, 2020). Nunca la constitución y en ese sentido, en la práctica, algunas veces lo hecho por el TC resulta ser un exceso en sus funciones.

Del artículo 201 de la constitución, también se colige que sus miembros tendrían las mismas prerrogativas que los congresistas. Entiéndase inmunidad, denominada inviolabilidad. Con los requisitos y atribuciones de la Corte Suprema, pero respecto de los miembros de esta institución –Poder Judicial- hay diferencias; los jueces supremos están prohibidos de hacer política, mas, los miembros del TC devienen de un órgano que nace de un vientre político, del Congreso. Los jueces supremos tienen un límite de edad, puesto que cesan a los 70 años, mientras que los miembros del TC no tienen límite de edad, cesan al término de 5 años.

Para ser miembro del TC es importante que las 2/3 partes del Congreso de la República voten a favor. Y en muchas ocasiones se ha visto que es imprescindible el acuerdo entre las bancadas políticas. Los tribunales constitucionales de los países de Europa, de España, Italia, Alemania, y América tienen siempre el mismo fin; ser el máximo intérprete de la constitución (Jaramillo Marín, 2012).

Entonces el TC se norma por su ley orgánica y jurisprudencia, se auto titula, vocero del poder constituyente, alto tribunal e intérprete de los derechos del hombre y la sociedad. En su ámbito funcional el TC resuelve categóricamente los procesos de amparo, de cumplimiento, de habeas data, y de *habeas corpus*. El proceso se inicia en el poder judicial –primera y segunda instancia- y si en esta última resulta ser negativa, esto es, no se ampara la pretensión, entonces corresponde el Recurso de Agravio Constitucional (RAC) para que conozca al TC, claro con excepciones en los casos de tráfico ilícito de drogas, lavado de activos y terrorismo.

La labor fundamental del tribunal constitucional está vinculada al control y declara la inconstitucionalidad de las normas; no obstante, trata en lo posible, vía interpretación resolver y darle a la norma un sentido constitucional, ello mediante lo que se denominan las sentencias interpretativas, no hay en la constitución algo que haga prever, imaginar esta posibilidad; sin embargo el tribunal hace la sumatoria de lo positivo y negativo, y en su labor legisla para llenar aquellos vacíos dejados por el legislador. El TC de hecho ha variado la jurisprudencia peruana, a través de sendas decisiones que se agregan a las teorías de las fuentes del derecho y se coloca como una de las instituciones fundamentales, pilar de un estado constitucional de derecho.

El plazo razonable es un derecho fundamental, es una de las deudas que tiene la justicia peruana y latinoamericana, con los ciudadanos. Por ejemplo, un proceso civil patrimonial, puede durar cinco o seis años, hasta que se resuelve en casación. Allí hay dinero inmovilizado, es un capital de trabajo a costo hundido (ESAN, 2022). Otro ejemplo se origina cuando se retrasan los procesos contenciosos administrativos. Allí, se pueden encontrar pensiones de jubilados que esperan en el mediano y muchas veces en el largo plazo, y que en la hora undécima se otorgan, muchas veces tarde(CR, 2015). Hay jubilados que han muerto y solo comunican a familiares que ha llegado su atención. Uno de los principios de mayor incertidumbre en el país, es el plazo razonable y por eso a nivel jurisprudencial guarda correlación con ese desarrollo. Y en el ámbito penal, el de mayor afectación es el *habeas corpus* (Faúndez-Ugalde, 2020).

La CIDH ha señalado criterios sobre el plazo razonable (CIDH, 2022), y determinado como debe entenderse la duración razonable, sobre todo en el proceso penal. Son tres casos emblemáticos; el caso de Genie Lacayo versus Nicaragua, el caso Suárez Rosero versus Ecuador del 1997 y la sentencia

Valle Jaramillo y otros versus Colombia del año 2008. Sobre esa base el TC logra una línea jurisprudencial Importante es la sentencia (Exp-TC-2915, 2004), proceso de hábeas corpus, Federico Tiberio Berrocal Prudencio.

Respecto al plazo razonable , las siguientes sentencias: El (Exp-TC-3509, 2009) "*habeas corpus*" caso Walter Gaspar Chacón Málaga; (Exp-TC-5350, 2009), siempre en *habeas corpus*, caso Julio Salazar Monroe y posteriormente la sentencia de *habeas corpus* del (Exp-TC-295, 2012), caso Aristóteles Arce Paucar. Y en las investigaciones fiscales se tienen dos sentencias: el Expediente 5228 del año 2006, caso Samuel Gleiser Katz y la sentencia del Expediente 2748 del año 2010, caso Alexander Mosquera Izquierdo, ambos casos referidos a procesos de *habeas corpus*.

¿En qué consiste el derecho fundamental al plazo razonable? y ¿Cómo se computa dicho plazo? Su finalidad no es otra que evitar a una persona, permanezca de manera indefinida como procesada, se pretende establecer límites al estado; se inicia, con la intervención oficial, apareciendo dos puntos centrales, el primero, el de partida, Aquo y el de llegada Aquem. Por ejemplo, en materia penal se señala que pueden ser dos momentos, el momento de la aprehensión misma del investigado por la autoridad policial y si no ha habido aprehensión, desde el instante que la magistratura conoce el caso.

Por otro lado, el Aquem, es decir, la parte final cuando culmina el proceso con una sentencia final firme que adquiere la calidad de cosa juzgada. Determinar con raciocinio el plazo, nos lleva formar criterios; el primer criterio tiene que ver con la complejidad de cada caso, cuál es la materia que se está discutiendo, ir a los hechos o a un hecho único o a hechos múltiples. La obtención de pruebas no es sencilla, es difícil. Por otro lado, son hechos ocurridos en un espacio temporal t-1, es un hecho que se está investigando después de tres lustros, la complejidad del asunto determina un primer criterio fundamental.

El segundo criterio está ligado a la actuación procesal del investigado, imputado o procesado en materia penal; del demandante, demandado y terceros con interés en materia civil; toda vez que, estos tienen el derecho a buscar los medios de defensa, los medios de impugnación, las tachas, las oposiciones que pueda considerar; sin embargo, esto no debe pervertirse al punto de convertirse en conducta obstruccionista con la única finalidad de alargar irrazonablemente la causa para luego invocar a su favor dicho defecto.

En tercer lugar ¿cuál es la actuación del Órgano Jurisdiccional? ¿el Tribunal ha tenido una actuación diligente o negligente? Se tiene que observar si están con una elevada carga procesal o con una carga razonable, para poder resolver y como el tema, fundamentalmente, es de proceso, este resulta sencillo, o es uno que cae en formalismos o por el contrario es un

proceso que tiene una serie de vicisitudes que hacen que todo trámite de investigación y luego de juzgamiento se dilate.

El cuarto criterio, trata de si afecta al derecho fundamental del plazo razonable o la supuesta vulneración a la situación jurídica que tiene el procesado o demandante según corresponda, es decir, cuánto es lo que puede afectar y si hay daño psicológico o moral. Sin lugar a dudas habrá un daño económico. Y si no se tiene una sentencia con una debida motivación, o prueba suficiente, se estaría "destruyendo" lo que le ha costado a la humanidad, la presunción de inocencia(Izarra Huaman, 2017), para casos penales, civiles y otros respectivamente.

A propósito del plazo razonable como derecho fundamental, se encuentra en una categoría de derechos especiales. Hoy se reconocen por la simple condición de persona o de ser humano. En ese contexto, implica la internacionalización de los derechos fundamentales (Namuche Cruzado, 2017).

Se les denomina concretamente, derechos humanos(Carpizo Mac Gregor, 2006) que no es distinto de los derechos fundamentales. Ellos han sido creados o reconocidos en diferentes estados, de manera distinta, pero con el mismo objetivo de garantizar, el respeto de la dignidad de personas como último fin.

En el contexto esos derechos fundamentales han sido recogidos y planteados en la constitución política. En sus artículos 1 y 2. La dignidad humana es precisada en el artículo primero de la constitución. Se debe precisar que se tienen derechos fundamentales por conexidad, también hay derechos fundamentales por remisión propia. La constitución política por ejemplo enerva los derechos del niño que, si bien tienen un rango de mayor importancia, es un derecho que está por encima varios derechos y prevalecen.

Hay otros derechos constitucionales fundamentales y humanos, por ejemplo, los innominados. Se sabe que existe todo un ordenamiento internacional que garantiza los derechos fundamentales, y que hay un contexto, un sistema interamericano de protección de los derechos humanos.

En el entorno jurídico ellos se han vinculado a la constitución política como una figura jurídica que se llama o se denomina el bloque de constitucionalidad (Suelt-Cock, 2016). Es decir, no son supra constitucionales, menos infra constitucionales, sino vinculados en la misma categoría del texto constitucional. Si se integran a la constitución política es para darle ese valor superior a esos derechos fundamentales, de manera que, sin entrar a conceptualizar lo más importante es saber dónde se encuentran los derechos fundamentales.

En el proceso de los derechos constituidos se ingresa a explicar las ponderaciones entre derechos constitucionales versus derechos fundamentales. Derechos fundamentales versus derechos económicos sociales y culturales. Es de observar que se puede verificar la ponderación que hay entre principios y derechos. Donde unos consideran de mayor categoría que otros, no obstante tener rango constitucional. Y estos deben ser atendidos, con la celeridad del caso.

La serie histórica que se va observar en el proceso del presente trabajo académico sugiere que, si bien las remuneraciones de esta institución son crecientes y altas, no se corresponde con las resoluciones publicadas.

La carga procesal del tribunal constitucional desde 1996 al 2021 ha tenido altas y bajas. Por ejemplo, en el año 1996 la carga procesal fue de 1471 expedientes y se mantuvo en ese Rango hasta el año 2001 que llegó a 2982 expedientes, creciendo en el periodo 2002 al 2003, 2004 y alcanzar la media de 4000 expedientes anuales. En el período del 2005 al 2008 el número de expediente se incrementó hasta un aproximado de 7000 expedientes para luego tener una disminución el 2010 que llegó a 1314. De allí volvió a subir paulatinamente hasta el año 2016 que llegó a 10,117 expedientes. Luego volvió a disminuir. Se observa que en el año 2019 el número de expedientes fue de 7197 y en el 2020 fueron 5692 expedientes.

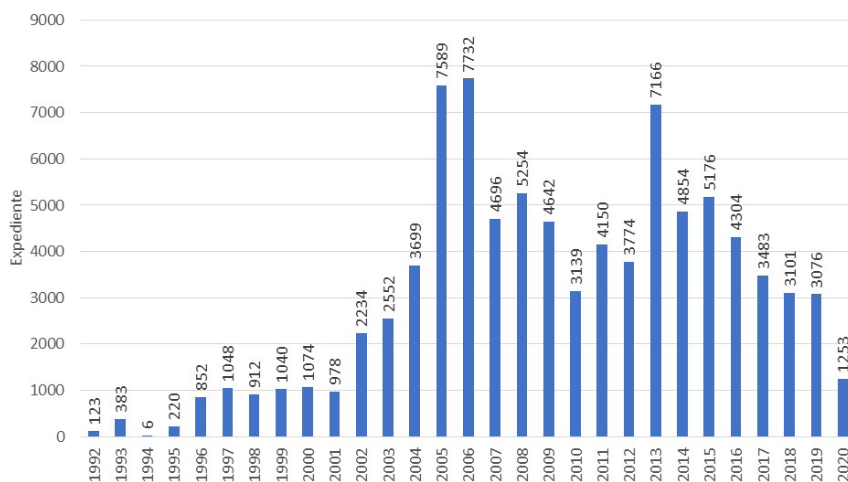
El proceso constitucional de amparo, tutela los derechos fundamentales, distintos a la libertad individual, su finalidad es reponer al afectado, en el ejercicio del derecho amenazado o vulnerado, con motivo de algún acto lesivo ejecutado por autoridad, funcionario o persona. El proceso de amparo en el siglo XXI es el instrumento que puede utilizar cualquier persona o ciudadano para preservar, asegurar la titularidad del derecho que quiere ser conculcado por quienes por la coyuntura detentan el poder. Y este abuso o exceso se manifiesta a través de normas, actos administrativos, actos de gobierno o actos condicionales y no se permita afectar un derecho, surgió en México con el nombre juicio de amparo.

Las experiencias con esta institución enseñan que es el primer contrapeso cuando alguien con poder se excede y genera arbitrariedades. Al respecto la jurisprudencia del TC es prístina en los casos Elgo **Ríos** (EXP-2383/PA/TC, 2013), el caso Vázquez Romero (EXP- 987/AP/TC, 2014), dado que son dos precedentes vinculantes y que necesitan una revisión a fin que matice y se admita cuando ha llegado al tribunal vía un recurso de agravio, para que se trate el tema de fondo. Lo importante es que el amparo es imprescindible para afirmar la consolidación de los DDHH.

Las demandas de esta naturaleza ingresados al tribunal constitucional desde 1992 a 2020 también han tenido relativamente, un ciclo interesante; la "amparitis" empezó a desarrollarse a partir del año 2002, anteriormente la media era de más o menos 1000 expedientes que ingresaban al tribunal

constitucional, sin embargo, en el período 2005-2006 se elevó a casi una media de 7500 expedientes. Esta también se mantuvo y entre el 2008 hasta el año 2012 con una media de más o menos 4200 expedientes. En el 2020 ingresaron 1253 expedientes. Se podría decir que la época del ciclo alto empezó en el año 2005 y que duró hasta aproximadamente el año 2016 donde la media de las demandas de acción de Amparo estaba por encima de los 4000 expedientes anuales. Procesos ingresados al tribunal constitucional

Figura 1. Demandas de acción de amparo ingresados al TC. 1992-2020.



Fuente: Elaboración propia con datos Tribunal Constitucional.

El proceso constitucional de *habeas Corpus*. Es la tutela de la libertad personal, cuando esta es afectada o amenazada. El CPC es el instrumento para la defensa del conjunto de libertades, que de manera taxativa señala y poder demandar la libertad de la persona afectada, por cualquier autoridad o funcionario. Existe el *habeas corpus* preventivo en caso de amenaza, ante cierta e inminente grave violación de la libertad. El reparador en el caso de que se haya afectado a la libertad y hay que ponerlo en su esfera natural, su libertad. Correctivo, cuando haya afectaciones a la integridad personal en el nivel carcelario, no se desestima que haya una medida de reparación inmediata de modo tal, que se mejoren las condiciones de los afectados.

En relación a la demanda de hábeas Corpus, como es obvio también se incrementa en los últimos años. A partir del año 2005 se podría decir que

esta ha crecido raudamente y que llega a una media promedio de más o menos 1000 expedientes. Anterior a ese año 2005, aproximadamente la media era de más o menos 200 lo que en promedio anual ingresaba al tribunal constitucional. Quiere decir que, en el año 2004, 2005 hasta el año 2019 se tienen más de 1100 expedientes. El año 2020 ingresaron 730 expedientes.

El proceso de cumplimiento supera los 25 años de vigencia en el mundo. Se genera en *United Kindom* en el siglo XVI, para luego validarse en Colombia y establecerse en la constitución de ese país en el año 1991.Llega a establecerse en el Perú en 1993. Y es regulado en el INC 6 del art. 200 de la carta magna. En el CPC queda establecido en los artículos del 65 a 73. Sobre esta garantía, hay serias controversias. Algunos juristas sostienen que el proceso de cumplimiento no sería tal, por varios considerandos entre ellos, que no es un derecho fundamental.

Son tres las observaciones sobre el proceso de cumplimiento. Se sabe que tiene por finalidad ordenar a aquellos renuentes a ejecutar la normatividad legal o resolución administrativa. Entonces, la pregunta que surge es si realmente es un proceso constitucional. Lo fundamental para que un proceso sea constitucional, es que liste en la constitución, tenga autonomía total, y resuelva controversias con rango constitucional sobre la vulneración de los derechos fundamentales. Entonces el proceso de cumplimiento tiene como precepto corregir aquella ilegalidad por omisión administrativa y no vincula ningún derecho fundamental.

En consideración, el artículo 200 inciso 2 de CP que protege todos los derechos fundamentales, los expresos y los implícitos. Bien se podría señalar que es el amparo el que está destinado a subsumir lo que asume el proceso de cumplimiento. Un precedente constitucional, en la sentencia recaída en el 00168-2005 (caso Maximiliano Villanueva Valverde), trata de un proceso constitucional y califica como derecho fundamental la eficacia de las normas, de aquellos actos administrativos, además señala que por la elevada carga procesal el proceso de cumplimiento es extraordinario interpretando el artículo 74 del código –derogado- en que se señala que se le debe dar un trámite similar al amparo.

En las demandas de acción de cumplimiento, se puede señalar que los ingresados al tribunal constitucional en el período 1995 al 2004 no superaba los 100 anuales. Una especie de arremetida es lo que ocurre en los años 2005-2006 cuando se eleva a 1805 y 1978. Pero luego vuelve a la normalidad de los 250 anuales hasta el año 2013, para luego en la etapa final lograr un ingreso medio de 400 demandas. En el año 2020 ingresaron 214 demandas de acción de cumplimiento al tribunal constitucional. El proceso de habeas data. (HD).

El partido republicano del presidente Richard Nixon fue investigado por realizar grabaciones en la Casa Blanca, y por ello en julio del año de 1974, la suprema corte norteamericana ordena la entrega de aquellas cintas, que se negó amparándose en su investidura presidencial, más luego de entregarlas, renuncia el 9 de agosto de 1974. El objetivo era tener información privilegiada con alcances y fines hasta ahora poco conocidos.

El habeas data (HD) encuentra su origen en el derecho norteamericano. En A.L., lo incorporan a la constitución brasileña en 1988 y en el Perú se escribe en el texto constitucional de 1993. Está la lista de derechos fundamentales en su artículo 59 incisos 5, el acceso a la información pública y el inciso 6, resguardo de la información personal. Se reclama para sí, la transparencia, por ello es un derecho el pedir información al estado sin expresar ninguna causa, sin afectar la intimidad de las personas menos la seguridad de los ciudadanos. La petición debe estar subsumida en el principio de razonabilidad y de ponderación, vinculada a los derechos de libertad de expresión y opinión.

Si bien permite la información pública, según el TC tiene límites, como un diario de debates, lo deliberado en un directorio. La clave es la información final. Y que esta sea completa. Procede para aquellas personas jurídicas de derecho privado que brindan servicios públicos. Respecto al derecho a la autodeterminación informativa, es el poder controlar y decidir sobre la información que se tiene sobre cada uno de nosotros, en un registro público o privado, puede ser de manera física o virtual y que se pueda decidir sobre ella.

Existe dos grandes grupos, el habeas data puro, relacionado a la autodeterminación informativa a cuidar o decidir de la información y el habeas data impuro relacionado al acceso a la información pública. El habeas data puro dirigido a reparar agresiones contra la manipulación de datos personalísimos que puede ser un habeas data de cognición o un habeas data manipulador.

Como se puede observar, el habeas data de cognición busca conocer qué se guarda quién, para qué y dónde, mientras que, por otro lado, el (HD) manipulador pretende la modificación de los antecedentes almacenados, así se tiene el habeas data aditivo, el correctivo, el restringido, el confidencial y el desvinculado para además sumarle el habeas data cifrador, el cautelar, el garantista el interpretativo y el indemnizatorio.

Por último, se tiene el habeas data impuro orientado a solicitar el auxilio judicial y lograr información pública como ya se ha señalado. La línea jurisprudencial del habeas data se sostiene sobre tres fallos, el primero es el expediente N° 1797 del año 2002, caso Willow Rodríguez Gutiérrez, en el cual esta persona solicitaba una información sobre los 120 viajes que había realizado el mandatario Alberto Fujimori y que estos habían sumado 551 días fuera del país durante su gobierno, solicitaba los gastos de viáticos,

los gastos de pasajes y los gastos de combustible utilizados por el avión presidencial. De la misma manera las referencias de su comitiva.

El poder judicial señaló que no tenía sentido pronunciarse dado que se había hecho público en medios oficiales, el TC declara fundada la demanda y dispone le brinde la información requerida y señala doctrina jurisprudencial acerca del acceso a la información pública. Un segundo fallo es el expediente 2579 del año 2003, caso Julia Arellano Serquén, jueza superior de Lambayeque que no había sido ratificada por la ex CNM. Ella demandó en su hábeas data tres pretensiones: la primera, el informe de la comisión permanente de evaluación integral y ratificación acerca de la calificación que había tenido sobre su conducta e idoneidad, la segunda, el acta que había establecido el pleno del CNM para poder determinar no ratificarla y, en tercer lugar, copia de su entrevista personal.

El CNM señala que es información reservada, entonces el tribunal constitucional la declara fundada. Al respecto el TC utiliza dos figuras procesales la primera la referida a la acumulación y la segunda la referida reiteración jurisprudencial. Expedientes publicados por el Tribunal Constitucional. Las sentencias en los procesos constitucionales (PC) de amparo (AA) publicados representan el 70.2% del total. Se ha particionado en tres etapas o conglomerados que van de 1999 al 2002; 2003-2010 y 2011-2020. La media en la etapa 1 es de 980 (EP), en la etapa 2 de 5151 y en la etapa 3 de 3889. La tendencia en los últimos 10 años es a la disminución. Si bien empezó con 1089 (EP), su cota más alta fue de 6859 en el año 2006 para cerrar el 2020 con 3386 (EP).

Los (PC) de acción de cumplimiento (AC) publicados por el tribunal son 15 en el año 1997, el año 2006 llega a 2227 casos publicados. luego hay un descenso paulatino y se mantiene en una media de 550 casos o expedientes publicados por el tribunal constitucional. El TC publica 535 casos resueltos el año 2020.Esta demanda representa el 8.9% del total. Los (PC) de *habeas corpus* (HC) publicadas por el tribunal constitucional, de 1996 al 2020 se nota la variabilidad de un modelo cíclico. Así empieza con 77 casos en el año 1996 y sube a los 172 casos en el 2003 para ascender el 2007 a 1368 EP. El año 2009 llega a los 1371 EP. Paulatinamente desciende al año 2014 con 456 casos. De ahí vuelve a incrementarse y se mantiene el año 2020 con 1373 casos. Este proceso representa el 14.8%.

Los (PC) de habeas Data (HD) también hay un crecimiento importante en los últimos años, desde el período 1997 hasta el año 2006 solamente había nueve casos publicados por año. Desde el año 2007 hasta el año 2016 los casos llegan en un máximo 165 publicados por año. Luego entre el año 2017 al año 2020 se observa una media de 205 EP. El año 2020 sorprende, debido a que, siendo época de pandemia, llega a 262 casos publicados. En un modelo matemático de que (PC) explican los (EP), se ha encontrado TOTAL (EP) = 76.2758628158 + 1.0465*Acción de amparo+ 0.947*Acción

de cumplimiento + 1.1276* *habeas corpus*. Para un R2 de 99.93%; DW= 1.678; Probabilidad de (0.057; 0.000; 0.000; 0.000) con lo cual se deduce que tres procesos constitucionales explican en un 99.93% la publicación de resoluciones por parte de del TC.

Tabla 1. Expedientes publicados (EP) por el tribunal constitucional (%) y Totales.

	AA	AC	HC	HD	Q	AI	CC	NSP	TOTAL
1999	69	6.9	16.2	0.2	7.8	0.1	0.1	0.1	1587
2000	81	7.6	8.5	0.2	2.4	0.3	0.1	0.2	1924
2001	58	6	21	0.2	5.1	2.3	0.1	7.4	881
2002	55	11	25	0.4	6.3	1.2	0.4	0.9	1391
2003	73	8	15	0.2	2.0	0.6	0.2	0.3	4617
2004	71	11	12	0.2	5.1	1.1	0.1	0.3	4184
2005	69	17	8	0.1	4.7	0.5	0.1	0.1	7059
2006	68	22	7	0.1	2.8	0.4	0.0	0.0	10147
2007	69	12	15	0.9	3.2	0.4	0.1	0.0	9333
2008	71	6	17	1.0	4.3	0.2	0.1	0.1	7079
2009	75	4	15	0.5	4.9	0.3	0.1	0.0	8954
2010	72	6	16	1.5	3.9	0.7	0.1	0.0	6934
2011	69	5	18	1.1	4.9	0.9	0.3	0.1	4835
2012	69	5	18	0.9	7.0	0.4	0.0	0.0	4230
2013	80	2	12	1.6	3.7	0.2	0.1	0.1	5668
2014	83	2	8	1.8	4.6	0.2	0.1	0.1	5422
2015	71	12	9	3.1	3.5	0.4	0.0	0.1	5242
2016	70	7	16	2.9	3.5	0.2	0.1	0.1	5309
2017	69	5	17	3.7	5.0	0.1	0.0	0.1	5421
2018	69	8	17	2.7	3.4	0.2	0.1	0.0	6966
2019	70	9	15	2.9	2.2	0.3	0.0	0.0	6021
2020	59	9	24	4.6	1.0	1.2	0.2	0.0	5693
Total	87577	11072	18496	2105	4703	573	126	161	124813
%	70.2	8.9	14.8	1.7	3.8	0.5	0.1	0.1	100

Fuente: Elaboración propia con datos del Tribunal Constitucional TC.

Los procesos de acción de inconstitucionalidad (AI) publicados por el TC en el período 1996 al 2020, son de una media de 30 a 35 casos anuales. El año 2020 sorprendió debido a que se resolvieron 66 casos. Representa el 0.5%. Los (PC) de quejas (Q) que se observan en los portales del tribunal constitucional entre 1998 y 2020 también crecieron. En el año 1998 fueron de 78 casos para llegar al año 2009 a 438 casos, este ascenso en el tiempo, empezó a disminuir, de tal manera que las quejas resueltas o publicadas en el año 2013, fueron 208, en el año 2018 de 235, en el año 2019 con 132 para llegar al 2020 con 58 quejas publicados por el TC.

Todas las garantías constitucionales resueltas en las demandas planteadas al tribunal constitucional en el año 1999 fueron de 1587 expedientes publicados. En el 2020 resulta ser de 5693. Pero en el año 2007 llegó a 10147 (EP), para luego empezar a descender en un 50%, en el año 2020. Al respecto se debe señalar que esta data se relaciona de manera inversa con las remuneraciones y el PIM del TC. Si se cruzan estas tres variables se ubicará una relación inversa sobre todo en la tercera etapa.

En el periodo 1999-2020 se notan tres etapas o conglomerados que señala que la media en 1999-2002, de 1446 (EP) en el segundo 2003-2012 de 7288 (EP) y en el tercero 2013-2020 de 5481 (EP). El comportamiento del presupuesto institucional modificado del tribunal constitucional creció desde el año 1999 al año 2020. Empezó con 7.2 millones de soles transferidos en el año 1999 y dio el gran salto en el año 2012 a 26 millones de soles. En el año 2013 llegó a 52 millones. El 2014 a 53 millones de soles. Luego sobrevino un descenso relativo, para los años 2017, 2018, 2019 con 42 millones aproximadamente, y en 2020, tener un presupuesto modificado institucional de 47.3 millones.

Respecto de lo ejecutado, el año 1999 lo hizo con 7.2 millones de soles el año 2013 llego a los 26.5 millones de soles, en el año 2014 fue de 53.1 millones y mantenerse en esta perspectiva hasta el año 2016, cuando llega a 49.9 millones. Entre los años 2019 y 2020 hay una media de 40 millones de soles. Las remuneraciones o pagos al personal y las obligaciones sociales en el tribunal constitucional constituyen un porcentaje significativo. Fue de 3.3 millones de soles en el año 1999 y se incrementa aproximadamente en el año 2020   a los 27 millones de soles. El ascenso ha sido de casi 7 veces más. Con un crecimiento anual de 10.8%.

Es importante señalar, que la adquisición de bienes y servicios en el período se ha incrementado. En el año 1999 este era de 3.6 millones. El 2019 fue de 9.9 millones. En el 2020 el Tribunal Constitucional compro por 8.2 millones de soles. Las inversiones realizadas por el tribunal constitucional durante los años 1999 hasta el 2020 han sido mínimas. Después de analizar los procesos constitucionales y el presupuesto para el TC la propuesta es demostrar que, la gestión pública del Tribunal Constitucional restringe el acceso a una justicia "justo a tiempo" donde la celeridad y los plazos no están rigurosamente en agenda. Sobre todo, cuando su productividad

procesal es baja, mayor el costo unitario y menor la celeridad procesal en los años 1999-2020.

En los paradigmas tradicionales, la gestión de los colaboradores era de subordinación a los propietarios de los activos, en el paradigma emergente la relación era de una telaraña donde todos opinan del que hacer de la gestión.(Montañez Huancaya De Salinas, Priscila et al., 2020) El mismo autor era de la recomendación que los ciudadanos deban participar con su punto de vista para la mejora de la institución cuestión que no se viene dando en el TC. Para ello se hace necesario que la población se entere de los controles que ha generado el propio estado sobre todo en el acceso a la información.(Montañez Huancaya De Salinas, Priscila et al., 2020).

No solo se trata de la eficiencia que es el objetivo sino de la legitimidad, que la ciudadanía valore a una institución en su gestión pública, atendiendo y resolviendo las demandas sociales de justicia. (Montemayor et al., 2018). La eficiencia, eficacia y legitimidad deberían ser tres banderas que el TC tendría que obtener y desarrollar en la perspectiva (Montemayor et al., 2018). La celeridad procesal, refiere la atención a los plazos de justicia, la mejor utilización de los recursos financieros, humanos e infraestructura. Pero sobre todo ubicar la satisfacción del ciudadano en el ranking de justicia que vía el nuevo modelo de gestión pública(Valdez Zepeda, 2019) debería realizarse y que no es práctica, todavía del TC.

1. Material y métodos

Se empleó la data del Tribunal Constitucional y del Ministerio de Economía y Finanzas - MEF. Los conceptos de Meta, Publicados, cumplimiento, ingresados, saldo, carga, reducción, el coeficiente de atención, y el resultado se extrajeron de esas fuentes. Es no experimental, básico, relacional. El TC define que los expedientes publicados son aquellos que cuentan con resolución y que el conjunto de tribunos ha determinado culminar en el año. Si la meta propuesta fue alcanzada o no, el TC denomina a ello nivel de cumplimiento.

Cada año ingresan nuevos expedientes esos reciben la denominación de ingresados y se registran en el periodo. La diferencia entre las resoluciones publicadas y los expedientes que ingresan se llama saldo. La carga procesal es el saldo que pasa al año siguiente y se suma con los ingresados para ser resueltos por el TC. Costo unitario de la carga procesal, se refiere a la división del devengado PIM/carga procesal. La productividad se refiere a la división entre Expedientes publicados (EP) y la carga procesal. Se utilizará el Rho de Pearson para probar la relación inversa y el análisis discriminante de conglomerado trietapico para consolidar la probación

2. Resultados

La presentación de las siguientes tablas, describen la confección de la base de datos que se han utilizado para poder asumir una postura.

En la Tabla 2, se lee en la segunda columna el PIM devengado, porque el PIM programado es mucho mayor. En la tercera columna, la carga procesal que tiene el TC cada año. La cuarta columna es el costo unitario por cada expediente de la carga procesal. La quinta columna, son de los expedientes resueltos o publicados, la sexta columna es el costo unitario de los expedientes resueltos. La séptima incluye los gastos incurridos en el personal y obligaciones sociales, la octava muestra lo ejecutado en bienes y servicios y la novena columna es la productividad de la carga procesal**.**

Tabla 2. costos unitarios del Tribunal Constitucional.

Años	Devengado (PIM) (2)	Carga procesal (3)	Costo unitario carga procesal (4)	Publicados	(6) Costo unitario publicados	(7) Personal y obligaciones sociales	(8) Bienes y servicios	Productividad. Publicad/ carga procesal
1999	7,263,235	2,460	2,953	1,586	4,580	3,352,617	3,609,041	0.64
2000	7,626,870	2,096	3,639	1,921	3,970	3,361,316	4,016,071	0.92
2001	8,283,347	2,982	2,778	816	10,151	4,081,375	3,821,315	0.27
2002	9,742,922	4,899	1,989	1,379	7,065	4,787,259	4,070,347	0.28
2003	11,157,293	3,995	2,793	4,601	2,425	5,136,606	4,080,814	1.15
2004	13,242,880	3,739	3,542	4,173	3,173	5,064,643	3,827,026	1.12
2005	13,242,880	7,492	1,768	7,052	1,878	5,910,430	4,337,605	0.94
2006	13,830,652	8,489	1,629	10,146	1,363	7,250,865	4,362,288	1.20
2007	15,457,335	6,747	2,291	9,332	1,656	9,049,615	3,940,766	1.38
2008	17,806,519	6,097	2,921	7,075	2,517	12,263,369	3,308,043	1.16
2009	20,138,650	3,655	5,510	8,953	2,249	13,418,058	3,533,698	2.45
2010	20,733,702	1,314	15,779	6,932	2,991	13,468,682	3,912,369	5.28
2011	24,238,887	2,351	10,310	4,832	5,016	17,855,397	3,931,350	2.06
2012	26,584,215	3,461	7,681	4,230	6,285	18,968,537	4,524,811	1.22
2013	26,566,531	6,624	4,011	5,661	4,693	18,377,118	4,950,270	0.85
2014	53,195,065	7,600	6,999	5,409	9,835	19,222,414	5,514,726	0.71
2015	44,122,588	9,744	4,528	5,236	8,427	16,040,043	6,533,067	0.54
2016	49,911,240	10,117	4,933	5,304	9,410	18,368,551	8,622,486	0.52
2017	35,825,781	10,112	3,543	5,420	6,610	20,663,891	9,202,192	0.54

2018	39,760,398	8,108	4,904	6,978	5,698	27,152,659	8,717,991	0.86
2019	40,539,876	7,197	5,633	6,031	6,722	27,310,982	9,963,087	0.84
2020	38,995,641	5,692	6,851	5,693	6,851	27,015,810	8,286,301	1.00

Fuente: Elaboración propia con información de Tribunal Constitucional.

La presente referirá lo que ocurría entre 1999 al 2020. (Tabla2), los devengados en el año 1999 fue de 7.2 millones de soles y llega al 2020 con 39 millones. Este ha crecido en 437% en el periodo y un incremento anual de 8.3%, con una media de 24.4 millones de soles. Sin embargo, la carga procesal en el periodo ha crecido solo 131% a un incremento promedio de 4.1% anual. Quiere decir que la carga procesal se ha incrementado en 1.3 veces, empero los devengados han crecido en 4.37 veces.

Ahora bien, cuando se trata de los expedientes publicados se observa que este ha crecido en 2.59 veces a un promedio anual de 1.9%. esto sugiere que los recursos económicos se han incrementado mucho más que la resolución de expedientes. Se observa que las remuneraciones en el periodo han crecido en 7 veces a un incremento anual de 10.4%. También se puede señalar que las remuneraciones han crecido 2.72 veces más que los expedientes resueltos o publicados.

Se observa que el costo unitario por expediente se ha incrementado disminuyendo la productividad. El incremento ha sido de 4580 soles en el año 1999 a 6851 soles en el año 2020. Aunque se debe señalar que en una primera etapa que va al año 2009 el costo unitario logro reducirse por mayor productividad. Ese año el costo unitario llego a 2249 soles, y que empezó a crecer para llegar al 2020 a 6851 soles.

En buena cuenta la productividad se reduce, a partir del año 2010 cuando se tiene que por cada expediente de carga procesal se llegó a publicar 5.28 expedientes resueltos, y el 2020 por cada expediente de carga procesal se publicaba uno, para ese entonces el presupuesto había crecido 4 veces y para remuneraciones 7 veces.

Se demuestra que existe relación directa y muy baja entre los presupuestos asignados al tribunal constitucional y los expedientes publicados. La correlación qué hay entre presupuesto y publicaciones del tribunal es de 0.233, que es baja. Que si se incrementa el presupuesto en 10% se incrementan las publicaciones de expedientes, pero en 2.33%. No necesariamente si se aumenta o incrementa el PIM devengados habrá mayores publicaciones realizadas y si así ocurriese este seria baja en relación al PIM devengado.

Tabla 3. Correlación entre devengado y las demás variables.

		Rho	Sig.
Devengado (PIM)	Carga procesal: Ingresos+saldo	,638**	.001
	Costo unitario carga procesal	.321	.073
	Expedientes publicados	.233	.148
	Costo unitario de publicados	,605**	.001
	Personal y obligaciones sociales	,848**	.000
	Bienes y servicios	,778**	.000
Personal y obligaciones sociales	Expedientes publicados	.315	.076

Fuente: Elaboración propia en base a datos del TC.

Los ingresos PIM del Tribunal Constitucional mayormente (Tabla 3), se eroga en remuneraciones del personal. En el 2020 llegó al 70%. Esto se confirma con el Rho de Pearson de 84.8%, lo mismo el PIM con la compra de bienes y servicios (BB.SS.) (Rho=77.8%), quiere decir a mayores transferencias al TC, se destinan en mayor proporción al personal (remuneraciones) y BB.SS. Lo mismo, cuando se correlacionan las remuneraciones devengadas respecto a los expedientes publicados en el año 1999 al 2020, se encuentra un Rho de Pearson de 31.5% que es baja. Esto confirma que al incrementarse las remuneraciones en 7 veces la resolución de expedientes se incremente 2.39 veces.

La celeridad procesal y la economía procesal son dos principios o preceptos importantes para el desarrollo de la actividad procesal que implica al tribunal constitucional en el servicio a la comunidad en la resolución de conflictos de derechos fundamentales. Ingresaron 125 201 expedientes en el periodo 1996-2021. Se puede afirmar que la celeridad no es una virtud del TC, en algunos hay una demora preocupante. Lo que se puede afirmar es que de 125,201 expedientes que ingresaron entre los años 1996-2021, 41394 fueron resueltos el mismo año. El 33% aproximadamente. Luego, 56524 expedientes fueron resueltos el primer año y 17092 expedientes en el segundo año. En el tercer año se resolvieron 4986 expedientes.

Tabla 4. Resolución de los expedientes ingresados 1996 - 2021

Año	Ingreso	Mismo año	1 año	2 año	3 años	4 años	5 años	6 años	7 años
1996	1228	49	302	509	204	12	5	1	8

1997	1555	159	655	277	213	10	1	17	0
1998	1251	128	766	334	3	4	16	0	0
1999	1402	307	984	37	36	38	0	0	0
2000	1452	391	590	351	117	3	0	0	0
2001	1585	174	644	697	12	0	0	0	0
2002	3157	346	2482	318	10	1	0	0	0
2003	3860	1343	2192	323	2	0	0	0	0
2004	5109	1700	3159	197	53	0	0	0	0
2005	10814	3569	5924	1313	1	0	0	0	0
2006	11150	4025	6013	1062	48	0	1	0	0
2007	6793	1953	3977	783	77	2	0	0	0
2008	7234	2035	4544	614	34	2	1	0	0
2009	6515	3578	2783	139	9	2	2	1	0
2010	4596	3458	1036	80	12	6	1	1	0
2011	5890	3620	1947	249	48	11	12	0	0
2012	5286	2192	2410	428	127	100	18	8	2
2013	8883	2987	3532	1115	720	291	195	27	6
2014	6433	1403	1981	1502	914	409	155	55	9
2015	7322	2000	1921	1984	960	299	113	41	
2016	5869	1046	1697	2114	688	226	90		
2017	5203	512	2146	1766	465	290			
2018	5012	1129	2124	1013	653				
2019	5102	959	2985	1007					
2020	2419	841	1453						
2021	4115	2366							
Total	125201	41934	56524	17092	4986	1680	588	133	17
Porcentaje (%)		33	45	14	4	1	0.47	0.11	0.01

Fuente: Elaboración propia en base a datos del TC.

En términos porcentuales (Tabla 4), se observa lo siguiente. En el mismo año se resolvieron o publicaron el 33%. Luego, en el primer año se resolvieron el 45% del total de expedientes, eso da un acumulado del 78%. En el segundo año lograron publicar el 14% con lo cual la sumatoria global

de lo atendido era del 92% aproximadamente. Al tercer año se acumula al 96% y al cuarto año se acumula al 97%.

Se entiende que, el proceso de *Habeas Corpus* de acuerdo al Código procesal constitucional, los plazos no deben ser mayor a 56 días, de la misma manera la demanda de Acción de Amparo no debe superar los 188 días, el de Habeas data tendría que ser de 158 días, la Acción de cumplimiento (AC) de 158 días, la demanda de Acción popular (AP) de 60 días y la Acción de Inconstitucionalidad (AI) de 90 días.

Se puede afirmar que el TC cumple con un 50% con la normatividad vigente, y que el otro 50% se resuelve en el periodo de 1 a 6 años. Esto es lo que genera la escasa celeridad procesal y el difícil cumplimiento del plazo razonable que debe comentarse a resultas de plazos y tiempos.

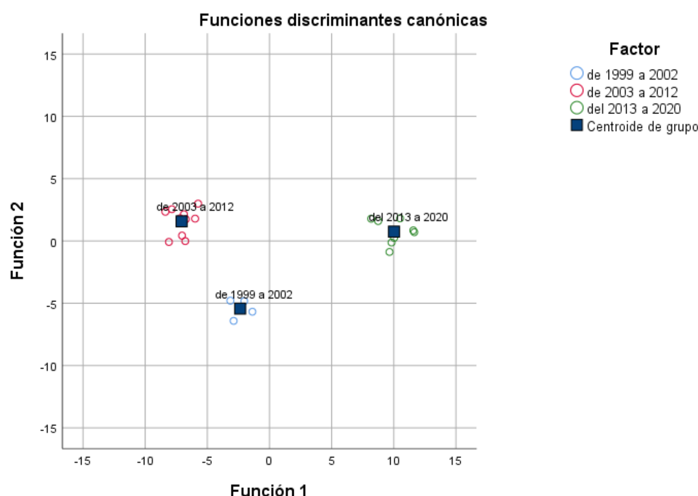
En la Tabla 5, se observa que la relación (Rho) del total de expedientes con los resueltos, en el mismo año es de 0.8, el cual indica que la publicación de resoluciones es significativa en el mismo año, en todas las demandas mantiene proporcionalidad, ocurre lo mismo con el primer año que el Rho es de 0.88, en el segundo año la relación es moderada-baja con 0.49 y en el tercer año las cosas son impredecibles puesto que se tiene un Rho de 0.23, el cuarto año ocurre lo mismo que en el tercero y así el quinto al sexto año. Esto confirma la resolución de expedientes en un 33% del primer año y 45% del segundo año. Pero no explica el otro 22% después del año de iniciada la demanda.

Tabla 5. Celeridad en resolución de demandas ante el TC

Resolución	R	Avance %	Resueltos
Mismo año e ingreso	0.80	33.00%	42270
Mas de 1 año e ingreso	0.88	45.00%	58247
Mas de 2 años e ingreso	0.49	14.00%	18212
Mas de 3 años e ingreso	0.23	4.00%	5406
Mas de 4 años e ingreso	0.27	1.00%	1706
Mas de 5 años e ingreso	0.34	0.47%	610
Mas de 6 años e ingreso	0.22	0.12%	151

Fuente: Elaboración propia con datos de TC, R=Rho de Pearson

Figura 2. Análisis discriminante de la evolución del PIM y resolución de expedientes. Fuente: Elaboración propia.



Se entiende que la hipótesis planteada sugiere que hay una evolución ascendente de la productividad, (Tabla 6), la celeridad en los años 1999-2003, este llega a su máxima expresión en la etapa dos, que va del año 2003 al 2012, pero ingresa a un proceso de declive en los años 2013 al 2020. Es la etapa cuando el PIM continúa incrementándose, pero los expedientes publicados se incrementan, aunque en menor proporción. Estas tres etapas se confirman con el análisis discriminante (Figura 1).

Tabla 6. Resultados de clasificación[a,c] Pertenencia a grupos pronosticada

Factor			de 1999 a 2002	de 2003 a 2012	del 2013 a 2020	Total
Original	Recuento	de 1999 a 2003	4	0	0	4
		de 2003 a 2012	0	10	0	10
		del 2013 a 2020	0	0	8	8
Validación cruzada[b]	Recuento	de 1999 a 2003	4	0	0	4
		de 2003 a 2012	1	9	0	10

	del 2013 a 2020	0	0	8	8
%	de 1999 a 2002	100.0	0.0	0.0	100.0
	de 2003a 2012	10.0	90.0	0.0	100.0
	del 2013 a 2020	0.0	0.0	100.0	100.0
a. 100,0% de casos agrupados originales clasificados correctamente. b. La validación cruzada. c. 95,5% de casos agrupados validados de forma cruzada clasificados correctamente.					

3. Discusión

El derecho fundamental al plazo razonable(Córdova Santos, 2018)no reparan en el plazo de investigación (muchas veces vencido no se cumple cuando hay demora , entonces, se observan procesos que son percibidos de poco agrado e implica a los tribunos del Tribunal Constitucional. El TC ha suscrito que justicia que tarda no es justicia, al respecto (Okogbule, 2010) dice que una variable importante es el tiempo demandado para hacer justicia. Un tiempo no adecuado, excesivo no es justicia. De allí la preocupación, porque el TC se tome tiempos que trasuntan el año (Chiluiza Camino, 2016).

El tiempo debe ser el menor posible para hacer justicia(Jarama Castillo et al., 2019). Y esa es una de las deudas que tiene la justicia peruana con los sujetos procesales. No solamente con la justicia local sino con la justicia latinoamericana e internacional. Cuando se extralimita o no se atiende el plazo se empieza a lesionar el principio de celeridad procesal(Zelada Flores, 2018). Son dos variables que se puede comentar, una referida al tiempo y una segunda que tiene que ver con lo cualitativo, que es la voluntad de servir y lo cuantitativo que se refiere a la complejidad del proceso.

Hay demandas que requieren motivaciones especiales, una acción de inconstitucionalidad, por ejemplo, dado que requiere una profunda y gran capacidad de investigación por parte del TC, entonces es presumible que

ese proceso vaya durar más (Zelada Flores, 2018). El segundo tema es la actitud. Se nota que el TC cuenta con un presupuesto mayor en los últimos años, cuenta con más personal, algunos dicen en exceso, pero aun así la publicación de las resoluciones registra demoras. Las normas sobre el plazo que emite el propio TC no se cumplen.

Aunque el proceso se desarrolle de manera leal, el proceso puede demorar simplemente porque el personal no tiene la voluntad de asumir su rol de confianza que le otorga el país. En algunos casos las propias autoridades son obstruccionistas (Viteri Custodio, 2012). Se debe observar la complejidad del proceso, lo que sería la conducta de las partes y la conducta del juez, los criterios del Tribunal Constitucional están plasmados y fueron fijados, en su oportunidad por el tribunal europeo de derechos humanos, de tal manera se está ante un tema más o menos universal de celeridad procesal y justicia del plazo razonable como un derecho fundamental.

Los procesos constitucionales tal como se observa en las tabla 4 duran desde uno a siete años (Ramírez, 2022). Pero es un hecho que la resolución (publicación) del 50% de los expedientes duran más dos años en el TC. En el ámbito del proceso civil se tiene experiencias de cinco o seis años hasta que se resuelve en casación. Cuando los expedientes quedan inmovilizados y la controversia son bienes, estos se convierten en un capital no aprovechado, que se desvaloriza y no genera la renta de mercado. Se puede ir pensando que la demora en lograr celeridad y plazos adecuados seria intencional porque obedecería a una concertación estructural en el sistema de justicia (Nino et al., 2008). Otros son, los procesos contenciosos administrativos donde se puede encontrar pensiones que esperan los jubilados (Ganga Contreras et al., 2016), a veces de siempre y que seguramente éstas serán atendidas algún día y como la ciudadanía percibe, en muchos casos muy tarde(Osorio Pérez, 2017).

Donde mayor inseguridad se siente respecto del principio del plazo razonable, son en los expedientes vinculados al tema de la libertad. Y es a nivel jurisprudencial donde se ha desarrollado, el proceso de habeas corpus del proceso penal, el imputado vive presionado por ser un procesado más. Sin menoscabar cualquier concepto, la privación de la libertad genera sin lugar a dudas esa sensación que hace que se focalice este derecho fundamental vinculado al plazo razonable. (Exp. 03689 PHC/TC, 2008).

Observar cómo ha sido el desarrollo de la jurisprudencia es importante y por ello se deben focalizar, la celeridad y economía; son dos principios o preceptos importantes para el desarrollo de la actividad procesal que implica al tribunal constitucional en el servicio a la sociedad, en la resolución de conflictos de derechos, entonces lo que se puede afirmar contundentemente, es que la celeridad no es una virtud del TC (tabla 3 y 5) en algunos hay una demora preocupante, así lo refiere también (Palma, 2016). Lo que se puede afirmar es que de 125,000 expedientes que ingresaron entre los

años 1996-2020, 41934 fueron resueltos el mismo año. Es decir, un 33% aproximadamente. Quedando en pendiente el 67% restante. Es de reproche que haya mayor transferencia presupuestal para remuneraciones y bienes mientras las resoluciones publicadas van muy retrasadas (Tabla 2).

Conclusiones

Es de reconocer que el incremento de presupuesto (PIM) otorgado al tribunal constitucional ha sido constante. La gestión pública del Tribunal Constitucional no muestra al país la celeridad procesal que se requiere en la resolución final de los expedientes respecto del incremento de las remuneraciones y del PIM. Esto restringe el acceso a la justicia a tiempo. Sobre todo, cuando la productividad procesal disminuye, mayor es el costo unitario y menor la celeridad procesal en los años 1999-2020.

Se muestra que la correlación entre presupuesto (PIM) y publicaciones del tribunal es un Rho de Pearson de 0.245, que es Baja, y que si el presupuesto avanza en 10% las publicaciones avanzarían en 2.45%; que al incrementarse el presupuesto también crecen las publicaciones de expedientes, pero en una relación menor. De la misma manera, cuando se relacionan los presupuestos devengados respecto a las publicaciones realizadas, se genera un Rho de Pearson de 0.233 que también es baja.

Que las remuneraciones de los miembros del Tribunal Constitucional, representa un buen porcentaje del PIM. Más no se refleja en mayor productividad más si, en una paulatina disminución de la celeridad. Por lo mismo que el Rho de Pearson es de 32.8%, que es considerada baja. La relación de las remuneraciones devengadas respecto a los expedientes publicados entre el año 1999 al año 2020 es de 31.5% que también es baja.

En el algoritmo análisis discrimínate por grupo de años, es entre el 2013 al 2020 donde el incremento presupuestal es notorio, mientras que las publicaciones tienen un incremento decreciente, generando menor celeridad relativa.

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Disadvantages of news aggregators in capitalist countries: overview and critique

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Abstract

The objectives of the article were to analyze the strengths, weaknesses, opportunities and threats of the most popular science news aggregators in capitalist countries, created as a communication tool between scientists and journalists. For the recent research the methods of analysis were used, especially SWOT analysis and synthesis method. 10 main criteria of science news aggregators were observed and highlighted by analyzing recent science news aggregators from all over the world such as: EurekaAlert, PhysOrg, ScienceDaily, Science Seeker and Open Science. As a result, the study looked at the dual issue of funding, where government funding of aggregators allows authorities to control the process of publishing information while support is stable. At the same time, crowdfunding funds or platforms allow an aggregator to exist without political bias, but without strong confidence in its future existence. The results obtained allow us to conclude that, the points considered in the relationship between capitalism and aggregators are of great importance to create a high-quality scientific news aggregator at national and international level.

Keywords: news aggregators; capitalist countries; SWOT analysis; communication technologies; information policy.

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Desventajas de los agregadores de noticias en los países capitalistas: panorama general y crítica

Resumen

Los objetivos del artículo fueron analizar las fortalezas, debilidades, oportunidades y amenazas de los agregadores de noticias científicas más populares en los países capitalistas, creados como herramienta de comunicación entre científicos y periodistas. Para la reciente investigación se utilizaron los métodos de análisis, especialmente el análisis FODA y el método de síntesis. Se observaron y destacaron 10 criterios principales de los agregadores de noticias científicas mediante el análisis de agregadores de noticias científicas recientes de todo el mundo como: EurekaAlert, PhysOrg, ScienceDaily, Science Seeker y Open Science. Como resultado, el estudio se fijó en la doble cuestión de la financiación, cuando la financiación gubernamental de los agregadores permite a las autoridades controlar el proceso de publicación de la información mientras el apoyo es estable. Al mismo tiempo, los fondos o plataformas de *crowdfunding* permiten a un agregador existir sin sesgo político, pero sin una fuerte confianza en su existencia futura. Los resultados obtenidos permiten concluir que, los puntos considerados en la relación capitalismo y agregadores son de gran importancia para crear un agregador de noticias científicas de alta calidad a nivel nacional e internacional.

Palabras clave: agregadores de noticias; países capitalistas; análisis FODA; tecnologías de comunicación; política informativa.

Introduction

The web-site aggregator of scientific news is an opportunity of fast access of users to the generalized, systematized and complex information to news of national and world achievements of scientific community.

Due to the absence of one main tool of Ukrainian science news channel, it exists an immediate need to create and promote information channels for Ukrainian citizens. According to an internal memorandum from the Stanford Research Institute and Edward Freeman in the 1980s, stakeholders are: “Groups without whose support the organization would cease to exist”(Freeman, 1983: 06). Given that science in Ukraine is largely funded by the state, taxpayers are its main stakeholders. It follows that every Ukrainian citizen is a stakeholder in the creation of a scientific product, reporting on the use of taxpayers’ budget funds, as well as the promotion of scientific products.

Information awareness is the achievement of awareness, which is based primarily on informing employees through simple forms of information transfer within organizations (Sedej, 2015). If a country is a political form of organization that has all the necessary criteria: association of people, division of responsibilities, organizational structure, rules, steering group, borders, organizational form and mission (Monastyrsky, 2019), we can perceive the state as an organizational structure or company, as well as to apply certain standard mechanisms inherent in business organizations.

According to the report for 2021 of the world organization We are Social and Hootsuite (Hootsuite Inc., 2021), of the total world population of 7.83 billion people, 5.2 billion people, which means 66.6% of the world's population use mobile phones, and 4.66 billion people are Internet users. These companies are aimed at ensuring communication between client companies and their target groups through the use of social networks, as well as other means of social communication on the Internet. In addition, the data show that the number of global Internet users increased by 7.3% in 2020, which shows a fairly rapid growth of human network improvements.

Figure No. 01. Percentage of Internet and mobile users in the world. Source: Datareportal (2021).

Given the above processes, we can conclude that the use of Internet technologies and social networks is a convenient and relevant tool that has a tendency to expand the target audience. Business corporations are already active users of the network in order to raise public awareness or

target groups. Thus, the constant growth of the use of the Internet has many positive consequences for the educational and scientific community, but at the same time, it complicates the process of analyzing the importance of information (McCrickard, 1999).

Namely, the task of the aggregator platform is to become the main channel of communication with the public, which will inspire confidence in the latter. The issue of misinformation is being actively studied after the Covid-19 pandemic (Trishchuk *et al.,* 2020) and the beginning of the war in Ukraine (Tylchyk, 2022), so the popular media call for constant checking of sources of information and look for the original source with its further analysis. It follows that the resource with scientific news should primarily be based on research conducted by scientists and their scientific publications as factors of truthfulness and verifiability of data.

The **objective** of a recent study is to highlighted main criteria of science news aggregator through the analysis of recent worldwide science news aggregators.

Methods which were used include general method of analysis and synthesis, descriptive method, forecasting methods to create SWOT-analysis and method of generating creative ideas.

1. Results and Discussion: Analysis of competitors and determination of the uniqueness of the platform-aggregator of scientific news

Analyzing the main competitors of sites aggregators of scientific news, which publish press releases to promote science, we have:

1. The most global American news aggregator network EurekaAlert from the American Association for the Advancement of Science, which is also the publisher of the journal Science and has the largest community of science promoters in the world. In order to understand the effectiveness of the resource, it is necessary to conduct one of the most popular (Hill and Westbrook, 1997) methods of analysis of strengths and weaknesses, prospects and risks, called SWOT-analysis (Strengths, Weaknesses, Opportunities, Threats). We will conduct a SWOT-analysis of this resource:

Figure 2. SWOT analysis of EurekaAlert news aggregator! Source: Own elaboration.

EurekaAlert! is the most important player among the aggregators of scientific news. In addition, they are published in a variety of languages and have the support of America's leading scientific institutions. In the analyzed media there are rather insignificant risks, which are expressed only in political involvement. The above criterion can be both an advantage and a disadvantage. With EurekaAlert, journalists from around the world receive press releases and translate into their own countries. In addition, each journalist confirms his identity by registering with corporate mail, which prevents the undesirable spread of embargoes on news that have a specific time of publication of the news in any media.

2. PhysOrg is the second, but no less popular resource for aggregating scientific news, which has a rather primitive design, but the team of publishers, editors and the depth of diversity of specialties make it the most popular among the public on social networks in terms of subscribers.

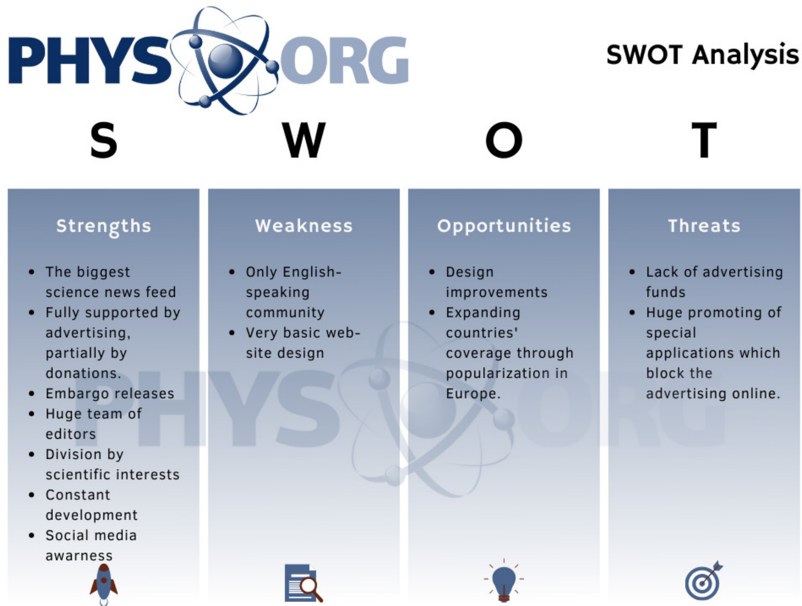

Figure 3. SWOT-analysis of the news aggregator Phys.Org. Source: Own elaboration.

According to the analysis, we see that one of the specific threats to the resource is the risk of popularity of special programs that block the display of advertising on sites. It is through advertising that Phys.Org gets the financial opportunity to survive. That is, political and any other bias can be a risk for the comfortable continuation of the resource.

3. ScienceDaily is one of the oldest aggregators of scientific news. The convenience of its use is that it has a collection of top news of each specialty. However, if the two previous resources were able to register and receive specific content by subscription, selected according to the interests of the recipient, then ScienceDaily does not have such an opportunity. A major shortcoming of the resource is the lack of clear information on financial security, which makes it impossible to fully implement the analysis.

Figure 4. SWOT analysis of ScienceDaily news aggregator. Source: Own elaboration.

It is worth noting that despite the availability of relevant social networks in the resource, their activity stopped in early 2021. That is, the pages are not updated and the resource for promotion does not fulfill its function of attracting new audiences. Analyzing the visual design of the web portal, similar to the previous resource, there is a need to update or adapt for use by smartphones.

4. ScienceSeeker is a unique aggregate of popular science blogs from students, PhDs, scientists and all those interested in promoting scientific achievements. A significant advantage of the resource is the ability to receive a large amount of news from various sources and professionals, but the disadvantage is full responsibility for the appropriateness and veracity of information to bloggers. Thus, if the resources previously analyzed had a large staff of editors and journalists, the resource may exist autonomously, but has a higher risk of misinformation or unverified facts.

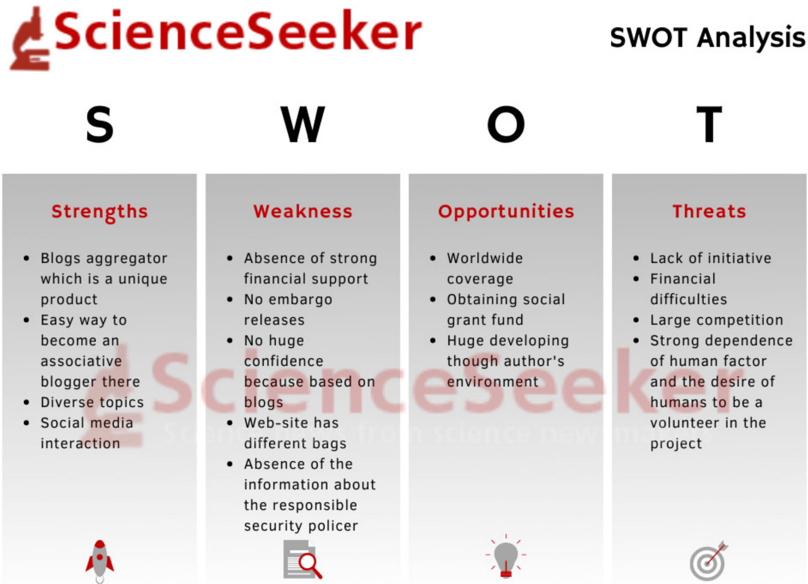

Figure 5. SWOT analysis of the news aggregator ScienceSeeker. Source: Own elaboration.

One of the important disadvantages of the site is that some functionality does not work. This criterion can lead to distrust of the new public, despite the considerable coverage of connoisseurs on social networks. The site needs updating, which means that it needs additional financial losses. The general idea of the aggregator of scientific blogs is interesting, because due to the large number of authors and their interested community, there is an opportunity for rapid "natural" promotion of the portal without additional funds.

However, the constant dependence on the amount of free time of scientists to support popular science publications causes a rather chaotic update of news on the resource and a great dependence on the human factor.

The four news aggregators analyzed above are American and mostly English-speaking. Thus, only a person who is fluent in English has the opportunity to freely receive materials and translate them into their native language. It follows that a journalist, namely a science journalist, needs to speak English at a high level. However, having an English-language

resource, we are usually familiar with English-language research. This is how the phenomenon of "British scientists" appeared (Sokolovska, 2017), about which any research the whole world learns very quickly.

Given that there are no aggregators of scientific news in Ukraine, there is a need to analyze their existence in the post-Soviet space.

5. Open Science is a resource that contains information in the form of press releases on the achievements and publications of n scientists. None of the other neighboring countries has a similar portal.

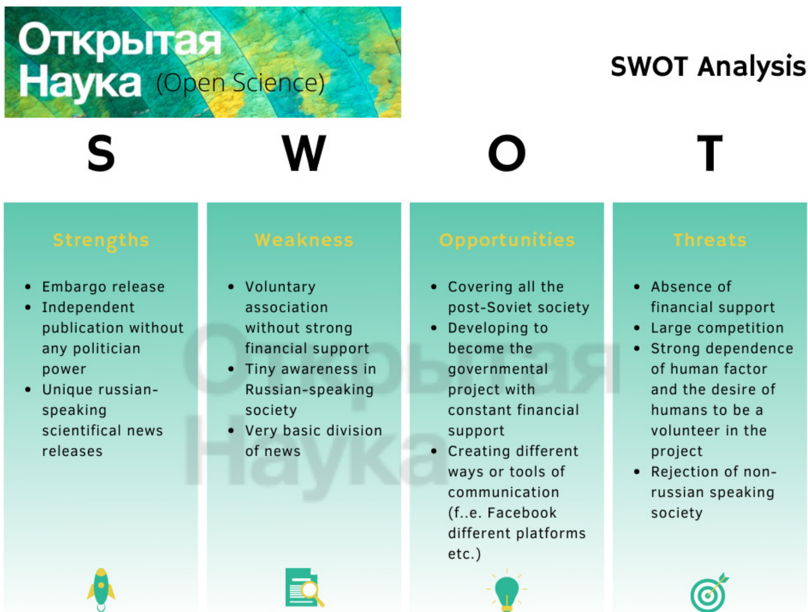

Figure 6. SWOT analysis of the Open Science news aggregator. Source: Own elaboration.

The undeniable advantage of the portal is its non-involvement in the political community and independence of scientific results. However, in order to apply for grants from the Russian Foundation for Basic Research, the competition application receives additional points through a clear plan to promote scientific results (RFBR, 2021). That is, in these circumstances, some dependence on state funding for research still exists, so one of the possibilities of the resource is full state funding of this initiative and

support for the development of the portal, its visual and informational improvement. The main threats to the development of the portal are the general dependence on the human factor, as well as the general political situation of the country, which cannot allow the resource to go beyond the Eurasian Economic Union due to Russia's image as a state in the political arena.

The analyzed aggregators of news allow us to draw conclusions and form the main criteria of the aggregator of scientific novelties for its further creation:

1. The presence of an editorial staff to quickly verify the veracity of information.
2. The presence of a link to the source of the message in the form of a scientific publication.
3. Perspective on multilingual content. In the context of promoting the scientific achievements of Ukrainian scientists, the translation of press releases into English is mandatory for the dissemination of news abroad.
4. Despite the contradictory possibilities of financial support by the state, there are not enough funds in Ukraine that would be interested in promoting science. As a result, we have rather unstable volunteer projects that are not supported by the state and do not have constant financial support. But in the case of the latter, the longevity of financial security ends in 3-5 years. That is why it makes sense for the selected projects in state support or in the existence of partnership assistance through which it is possible to obtain additional funding.
5. Qualitative promotion of the resource in social networks, because social networks are the first contact of the audience with the resource and the opportunity to build trust between participants.
6. Adaptation to mobile devices and quick and easy access to information through the use of tablets, smartphones, etc.
7. The presence of a news embargo.
8. Ability to submit your own news for publication.
9. Ability to register with accredited journalists to receive embargoes on press releases and industry subscriptions to scientific news.
10. Convenient modern design.

Having formed 10 main criteria of the aggregator of scientific news, according to which it is possible to create a high-quality latest Ukrainian product, we move on to creating its prototype.

Conclusion

In the paper, it was analyzing the strengths and weaknesses of the scientific news aggregators of the world. Some of them have government support, others have the support from foundations and an independent vector of news publishing. Nevertheless, the independence of the scientific press is one of the main criteria for the success of an aggregator and adherence to journalistic ethics.

The study was observer at the dual issue of funding, when governmental funding of aggregators allows the authorities to control the process of publishing information. While funds or crowdfunding platforms allow an aggregator to exist without political bias. In the contrary, this can lead to global questions of the existence of a scientific news aggregator as such due to a lack of funding.

After analyzing the above questions, it was decided that since the stakeholders of the aggregator are taxpayers, it is the state that should support the popularization of scientific results, as presented on the example of the largest scientific aggregator EurekaAlert.

The second most important factor in the creation of national news aggregators has become multilingualism, thanks to which the news of one country can be distributed around the world. Using the example of the Open Science resource, we saw a great lack of a resource for site visitors who are not native speakers of the national language of the resource.

Moreover, the work considered the issues of modern web-design, its convenience, a link to the original source of scientific news, the presence of an editorial board, embargo news, the possibility of registration for journalists and adaptation of content for mobile devices. The points considered are of great importance for creating a high-quality aggregator of scientific news at the national and international levels.

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The communicative potential of multinational communities to counter destructive ethno-rumors in modern Ukrainian society: a socio-political analysis

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Abstract

The aim of the study was to provide a sociopolitical analysis of approaches and means to engage members of multicultural communities in active participation to counteract the effects of destructive ethnic rumors and build their own spaces for coexistence. The need for sociological research on the effects of rumors is highlighted by the importance of finding means to counteract their manipulative use for destructive purposes. The empirical research method used was a questionnaire survey with the aim of creating new opportunities for interaction between people of different backgrounds, for the sake of harmony and exchange of experiences and thus being able to establish partnerships between the cities participating in the Intercultural Cities Network of Ukraine (ICC-Ukraine). It is concluded that the research allows us to affirm the effectiveness of using the method of counteracting ethnic rumors "Antitumor" proposed by the program "Intercultural Cities" of the Council of Europe in Ukraine, as a systemic means of solving the problems of communicative interactions in multicultural communities.

Keywords: ethno-cultural communities; destructive rumors; intercultural dialogue; sociological research; socio-political analysis.

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El potencial comunicativo de las comunidades multinacionales para contrarrestar los etno-rumores destructivos en la sociedad ucraniana moderna: un análisis sociopolítico

Resumen

El objetivo del estudio fue proporcionar un análisis sociopolítico de los enfoques y medios para involucrar a los miembros de las comunidades multiculturales en la participación activa para contrarrestar los efectos de los rumores étnicos destructivos y construir sus propios espacios para la convivencia. La necesidad de investigar sociológicamente los efectos de los rumores se pone de manifiesto por la importancia de encontrar medios para contrarrestar su uso manipulador con fines destructivos. El método de investigación empírica usado fue una encuesta por cuestionario con el objetivo de crear nuevas oportunidades de interacción entre personas de diferentes orígenes, en aras de la armonía y el intercambio de experiencias y, de este modo, poder establecer asociaciones entre las ciudades que participan en la Red de Ciudades Interculturales de Ucrania (ICC-Ucrania). Se concluye que la investigación nos permite afirmar la eficacia de la utilización del método para contrarrestar los rumores étnicos «Antitumor» propuesto por el programa «Ciudades Interculturales» del Consejo de Europa en Ucrania, como medio sistémico para resolver los problemas de las interacciones comunicativas en las comunidades multiculturales.

Palabras clave: comunidades etnoculturales; rumores destructivos; diálogo intercultural; investigación sociológica; análisis sociopolítico.

Introduction

The modern Ukrainian community is characterized by deep social transformations, accompanied by a significant intensification of intercultural relations, a constant complication of forms, principles and mechanisms of social interaction.(Afanasieva et al., 2021; Oleksenko et al., 2020) Migration processes within the country, in particular, the forced resettlement of many residents from the occupied territories, the increase in the number of labor migrants from Ukraine, etc., lead to the appearance in the information space of these social groups of various biased characteristics (Potapchuk, 2015).

It is important that a significant part of rumors is based on ethnic factors and is actualized thanks to widespread archetypes and stereotypes, forming the image of an outsider by voicing the negative characteristics of a certain

socio-cultural group, thus acquiring the characteristics of a "hate speech". The analysis of research materials proves that in the domestic information space there is a tendency to consider this phenomenon in scientific works only in a cursory, "applied" way - in the course of discussing certain problems of social consciousness (Yurkova, 2021, pp. 121–131).

The researchers leave unsolved the question of the role of communities as subjects of social life, in particular, the subject potential of their members in countering this phenomenon.

Therefore, the need for a sociological study of the effects of rumors is actualized by the importance of the problem of finding means of neutralizing countermeasures against the manipulative use of rumors as a manifestation of a hate speech.

A number of state acts and international documents testify to the social significance of the problem and the urgency of finding forms and means of countering destructive rumors as a form of spreading, provoking, stimulating or justifying various types of discrimination against minorities, migrants and people with emigrant roots (National strategy for promoting the development of civil society in Ukraine for 2021 - 2026; International Convention on the Elimination of All Forms of Racial Discrimination (Verkhovna Rada of Ukraine, 1994); Recommendation N R (97) 20 to the Committee of Ministers of the Council of Europe, to participating states on "incitement of enmity").

According to researchers, destructive rumors that always have a certain social orientation and are clearly or covertly based on the division of social groups into "us" and "them" are considered conflict-creating (Potapchuk, 2015; Khristenko, 2012, pp. 143–150; Yurkova, 2021, pp. 121–131). When the negative reflection of a migrant of foreign origin is not presented separately, but in connection with some significant problem of the country, then certain difficulties in the issue of migration that can be completely solved acquire the status of a threat to the development of communities.

The analysis of the works of foreign authors proves that rumors, as a specific form of social communication, contain contradictory, and at the same time, inextricably interconnected objective and subjective factors that form the phenomenon of a "hate speech" in a multicultural society. They characterize the dynamics of interaction of these phenomena, show both new opportunities and the need for certain limitations in the nature of interaction (Orban-Lembyk, 2004, pp. 47 – 62; Bondiyelli and Marchelloni, 2019, pp. 8–55; Smola, 2019, pp. 47-62).

Therefore, in the sociological context we distinguish the objective prerequisites for the emergence of danger of the influence of rumors as a denial of the natural existence of the subject to whom they are directed and specific subjective forms of their perception, including active opposition

to the transfer of destructive subjective definitions into the plane of the relationship of subjects of social interaction.

1. Methods

The Council of Europe Program "Intercultural Cities" ("Intercultural Cities" Project - Melitopol State University) serves the purpose of developing intercultural policy - prevention of segregation, discrimination, racism, and the spread of rumors, which often lead to conflicts and popularize hate speech. One of the currently important aspects of the implementation of the "Intercultural Cities" Program, which provides support to cities in revising their policies through the prism of intercultural interaction and in the development of comprehensive intercultural strategies and implies understanding and acceptance of the diversity of ethnic, religious and social communities as a resource of social, cultural, rural and economic development of communities is the Anti-Rumors Program (ANTI-RUMORS. Guide to Countering Rumors) (De Torres, 2018), which is aimed at preventing discrimination, improving coexistence and using the potential of diversity by initiating changes in the perception, attitude and behavior of the general population and specific target groups.

A pre-project study of the problem in the cities participating in the Project revealed that, despite the fact that 89% of respondents indicated a "relatively stable sense of community and respect" in their cities, in their opinion, there are problems in communities related to "negative statements in social networks" (37%), "language misunderstanding" (35%), "contemptuous attitude due to other ethnic affiliation" (33%), "religious affiliation" (31%), "disrespect for customs, traditions of other peoples" (25 %), which require an urgent solution.

A third of them (30%) expressed the opinion that these problems are directly related to rumors against specific groups of persons (ethnic, religious communities, forcibly resettled persons, etc.). This is confirmed by the respondents' answers to the question: "Are there rumors about migrants, refugees, ethnic groups, national communities or other groups in your city?". About 54% of respondents agree that such rumors are spreading. More than 73% of respondents who answered in the affirmative see them as having a negative content load.

This survey and focus group discussions revealed the most widespread rumors about groups of people in the public space: "Roma are thieves" (62%), "Ukrainians are cheap Western European labor force" (53%), "Jews are selfish" (53%), "internally displaced persons do not want to work (live on state aid)" (52.3%), "Muslims are terrorists and should be kept away from them" (57.5%), etc.

2. Methodology

In order to identify the impact of the activities of the ICC Program of the Council of Europe "Counterfeiting Rumors" on improving knowledge, skills and abilities in countering rumors, creating new opportunities for interaction between people of different origins for the sake of harmony and consolidation of intercultural urban communities, exchange of experience and establishment of partnership relations between cities participants of the Ukrainian Network of Intercultural Cities (ICC-Ukraine), a post-project questionnaire survey was conducted from November 28 to December 6, 2021 using Google Forms remote technologies: https://docs.google.com/forms/d/1uW9a0JgjUqzRcv2FrX2CprG1zsZLn531ScyTBsF-ftA/edit. The questionnaire consisted of 20 questions, the content of which corresponded to the purpose and objectives of the research.

Study sample. 108 residents of the cities of the Ukrainian Network of Intercultural Cities (ICC-Ukraine) participating in the Project took part in the survey. Age characteristics of respondents: 16-22 years (13.9%), 23-29 years (24.1%), 30-39 years (22.2%), 40-49 years (24.1%), 50- 59 years old (12%), 60 years and older (3.7%). Field of activity: education workers - 24%, civil servants - 21%, students - 14.8%, managers of enterprises/organizations/structural divisions - 13.9%, representatives of public organizations - 12%, representatives of small businesses - 3.7 %, representatives of religious denominations – 5.6%, forcibly displaced persons – 9.3%, representatives of ethnic communities – 13.9%, medical workers – 2.9%, lecturers/teachers – 25%, civil servants – 7.4%, media representatives - 4.6%, trainers - 1.9%, members of the city team "ANTI-RUMOURS" - 2.8%, library workers - 2.8%.

3. Results

The purpose of the conducted research was to identify the effectiveness of the measures proposed by the Regional Council for implementation at the previous stage of the Anti-Rumor Project in terms of:

1. the activity of involving respondents in the activities and events of the Program (social activity as a necessary condition for effective countermeasures);
2. the quality of knowledge, skills and abilities of the respondents acquired during the Program (social competence as a factor in countering rumors);
3. expectations and suggestions of respondents regarding the effectiveness of the Program (prospects of social communication as a means of countering rumors).

Below we present the most significant survey results for the specified positions:

- **Activities / events**

Communication campaigns against rumors were held in every city participating in the Project, which reached 80.5% of respondents. The project caused a wide resonance of these activities/events among representatives of ethno-cultural communities, public organizations, religious denominations, civil servants, forcibly displaced persons, teachers, domestic and foreign students and pupils. Respondents from all cities participating in the Project believe that the communication campaigns had an effective impact on their communities, namely: "established/improved relations with people of different origins/cultures" (94.4%) and "encouraged positive changes in residents' views of other cultures and expanded the boundaries of their worldview" (94.4%); helped to "better understand the differences of cultures" (93.5%) and "contributed to the development of the ability to listen and understand another culture" (93.5%); "taught to appreciate cultural diversity as a resource for the development of an intercultural community" (92.6%) and "increased the level of civic solidarity and social trust in an intercultural community" (92.6%), as well as "contributed to increasing the responsibility of residents for their actions and deeds" (90.7%).

Therefore, the use of the innovative ANTI-RUMOURS methodology in combating rumors, which combines the promotion of civil politics with the process of social participation, with the aim of involving a wide range of civil society actors and participation in trainings and communication campaigns, allowed the majority (84.3%) of participants to confirm their expected results.

- **Knowledge / abilities / skills**

During the implementation of the Project, the participants noted that they acquired a set of knowledge, skills and abilities to counter rumors, namely: "to perceive without judgment another culture, character, behavior, or appearance of other people" (95.4%); "to be open to the perception of the values of other cultures" (94.4%); "to form unbiased judgments about other cultures and to try to understand them" (92.6%); "to analyze similarities and differences between participants of intercultural communication" (91.6%); "to conduct a dialogue, listen to others with understanding" (91.6%); "to get rid of superstitions and stereotypes" (87.0%); "to resolve intercultural conflicts and contradictions" (83.3%). The survey participants also expressed the opinion that the Project's activities "promoted the development of critical thinking", which is a necessary ability for countering rumors.

The acquired skills and abilities helped the participants to counter rumors in their cities. In particular: “to use analytical skills and critical thinking” (95.4%); “to use various verbal and non-verbal means to achieve mutual understanding between representatives of different cultures” (94.4%); “to make carefully considered and prejudice-free decisions” (94.4%); “to be empathetic, to put oneself in another’s place in order to understand his feelings and needs” (94.4%), “to prevent conflicts” (93.5%); “to cooperate more effectively with representatives of other cultures” (93.5%). The participants also expressed the opinion that the Project inspired them to “implement innovative measures, promotions”.

The respondents noted that they would use the acquired knowledge, skills and abilities in various spheres of life. 94.4% of the respondents indicated that they will apply the knowledge and skills in combating rumors acquired during the implementation of this Project in the professional sphere (among civil servants and participants of the Project “Implementation and Involvement of Cultural Diversity at the International Level”; the indicator is 100%). No differences in respondents’ answers between cities were found.

Respondents, regardless of the field of employment, will most often apply the acquired knowledge, skills and abilities in “everyday life” (95.4%), in “relationships with people of different origins/cultures” (95.4%), in “social networks” (91.6%), “with friends” (86.1%), with “neighbors” (85.2%).

This is confirmed by the post-project answers, where 91.6% of respondents indicated the effectiveness of the acquired knowledge and the intention to use it both in everyday life and when communicating in social networks.

- **Expectations / proposals**

The effectiveness of the Project is evidenced by the fact that a significant majority (84.3%) of the participants in the post-project survey claim that the Project was useful and that their expectations were fully or partially met. In their opinion, this gave *“an impetus to their own initiatives”, “helped expand the circle of like-minded people” and “enriched experience”, etc.*

12% of respondents for whom participation in the Project did not live up to expectations and 3.7% respondents who were uncertain, indicated that they faced such obstacles and difficulties as “indifference or lack of understanding of the importance of this problem on the part of the population”; “distrust of residents”, “due to quarantine restrictions, the online format did not allow to fully communicate with people and understand feedback from partners”, “the project is not fully adapted to Ukrainian realities, but is aimed only at working with migrants.

In general, for 96.8% of active participants who were introduced to the method of "Anti-rumour", took part in trainings and communication campaigns, regardless of the city of residence, this Project fully met their expectations. 100% of coaches and members of the Anti-rumor city team think so. According to the respondents, participation in the Project events helped them: "to change their views on another culture" (97.2%); "to have a more positive attitude towards speakers of another cultur e" (96.3%); "to live harmoniously in the world of different people" (95.4%); "to understand better a representative of another culture" (95.4%); "to broaden the outlook" (93.5%).

Choosing possible and desirable partners for the further implementation of ideas, the Project participants emphasize the need for partnership and close cooperation with "representatives of local self-government bodies, ethnic communities and national-cultural societies";"media representatives with local self-government bodies"; "representatives of religious denominations with forcibly displaced persons"; "volunteers and educational youth"; "scientists of higher education institutions, teachers and educational youth".

98.2% of active participants point to the expediency of further implementation of the Project and suggest the following steps for its implementation: "to continue information activities"; "to hold thematic meetings and trainings"; "to continue to spread positive narratives"; "from time to time to launch informative posts about combating rumors"; "to attract representatives of different cultures to cooperation"; "to pay attention to closer cooperation with young people"; " to cooperate with local self-government bodies"; "to hold more projects and joint activities"; "to involve active members of the community"; "to hold festivals and forums".

For more effective further implementation of the Project, they suggest: "to organize more often joint thematic social and artistic events with the participation of the city community"; "to cooperate with authorities and public organizations, ethno-cultural communities, religious denominations"; "to organize more often communication campaigns against rumors"; "to carry out such projects in secondary schools and higher educational institutions"; "to popularize positive narratives about representatives of different cultures and communities in social networks"; "the mass media and social networks should more widely popularize the rapprochement of ethnic cultures and respect for citizens' religions", "to implement anti-rumor campaigns through social networks and to inform residents by placing information on boards, city light information posters, etc."

Conclusion

The results of a sociological study aimed at identifying the impact of the ICC Program of the Council of Europe "Countering Rumors" allow us to state that the cooperation of intercultural cities within the framework of the Anti-Rumor Program is a confirmation of its effectiveness in cities where ethno-cultural diversity is the norm, promotes awareness of the potential of community members in creating positive examples of neighborly existence.

The implementation of the Project contributed not only to the improvement of knowledge, skills and abilities to counter rumors, but also helped to "develop an adequate response to problematic situations", "attitude to cultural diversity as a resource for community development". The majority of Project participants noted positive changes in residents' views on the culture of the "other", expanding the boundaries of their own worldview, increasing the level of civic solidarity and social trust in the community, "intercultural competence in the process of direct participation in countering rumors from different layers of communities".

The innovative methodology of "ANTI-RUMORS" (De Torres, 2018) in combating rumors effectively combines the promotion of public policy with the process of social participation in order to attract the widest possible range of participants. The key factor of effectiveness is the involvement of a number of social partners and citizens dedicated to the fight against superstitions and breaking the chain of false rumors that humiliate residents and threaten their basic rights.

Participation in the Network also creates a sense of solidarity between participants and organizations involved in its work, and participation in joint efforts gives network members legitimacy and relevance.

Therefore, the implementation of the project in the studied communities is a positive example for its implementation in other communities of Ukraine, and has a significant potential for dissemination, taking into account both the nature of local problems and circumstances, as well as the latest challenges of Ukrainian realities.

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Modern globalization transformations: methodological approaches

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Abstract

The modern state of legal relations is characterized by the growing influence of globalization factors. These lead to global transformations of the international legal system, in which the methodology of understanding the principles of law is of significant importance. The aim of the article was to explore the methodological framework for identifying the key approaches to understanding the principles of law in modern globalization transformations. The methodological basis consists of methods such as: systematic analysis, generalization, systematization, graphical analysis and cluster tabulator. The results of the studies have established that global transformations have a destructive impact on the principles of law. They deepen the processes of unclear distinction at the international and national levels. It has been found that in the countries of Central and Eastern Europe approaches to the understanding of the principles of law differ from each other. It has been found that Germany and Slovenia set higher standards for the application of the principles of law and are more globalized than

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Hungary, Romania, Bulgaria and Croatia. It has been suggested that special measures should be designed in which the principles of law act as an instrument of globalization.

Keywords: structural transformations; globalization; methodological approaches; principles of law; legal system.

Transformaciones modernas de la globalización: enfoques metodológicos

Resumen

El estado moderno de las relaciones jurídicas se caracteriza por la creciente influencia que ejercen sobre ellas los factores de la globalización. Éstos provocan transformaciones globales del sistema jurídico internacional, en las que la metodología de comprensión de los principios del Derecho reviste una importancia significativa. El objetivo del artículo fue explorar el marco metodológico para identificar los enfoques clave de la comprensión de los principios del derecho en las transformaciones modernas de la globalización. La base metodológica consta de métodos como: análisis sistemático, generalización, sistematización, análisis gráfico y tabulador de conglomerados. Los resultados de los estudios han establecido que las transformaciones globales tienen un impacto destructivo en los principios del derecho. Profundizan los procesos de poca claridad en su distinción a nivel internacional y nacional. Se ha comprobado que en los países de Europa Central y Oriental los enfoques de la comprensión de los principios del derecho difieren entre sí. Se ha comprobado que Alemania y Eslovenia plantean estándares más altos para la aplicación de los principios del derecho y están más globalizados, que Hungría, Rumanía, Bulgaria y Croacia. Se ha sugerido que se diseñen medidas especiales en las que los principios del derecho actúen como instrumento de globalización.

Palabras clave: transformaciones estructurales; globalización; enfoques metodológicos; principios del derecho; sistema jurídico.

Introduction

The global transformations observed in today’s world are a consequence of globalization as a process of world socio-economic, socio-political and cultural unification and integration into a single space. Under such conditions, the problem of ensuring civilized relations between people

and standardizing the basis for regulating changes and transformations of the phenomena occurring in the system of legal relations is exacerbated. Evidently, the development of the principles of law in the context of globalization transformations is subject to various destructive factors.

However, bringing them into a unified form will make it possible to solve a number of global problems and ensure successful integration into the unified world legal system. This requires understanding the essence of the principles of law, the peculiarities of their enforcement depending on the level of development of the national legal system and the influence of modern globalization transformations thereon. This topic is extremely pressing, little researched and requires in-depth study.

1. Literature review

The dynamics of the modern world make it necessary to align the phenomena and processes of legal development of states. The strengthening of globalization factors and the formation of regional groupings have a significant impact on international and national legal systems as well, resulting in significant disruptive changes. O. Sydorenko (Sydorenko, 2016) argues that in today's context, the need to study law under the influence of globalization transformations is particularly relevant. The view prevails that globalization processes apply only to economics, finance, public administration and society.

In fact, it has a great impact on the legal system at both the international and national level and, through the principles of law, provides a solid basis for the formation of a set of tools to anchor and manage globalization processes. At the same time, the scholar focuses on the interpenetration of legal principles and posits this process as convergence, assimilation and integration. They contribute to the legal autonomy of state legal systems and the definition of cultural identity.

G. Huk (Huk, 2017) notes the threats of globalization transformations affecting states' sovereignty and the 'transparency' of borders. This brings to the fore the consideration of legal principles such as non-interference in the internal affairs of states and the protection of sovereignty and territorial integrity, which is particularly acute in the present context. At the same time, Baimuratov *et al.*, (2019) supplement this list with a principle such as the rule of law and argue that basic fundamental and generally defined principles of law should be enshrined in legal instruments. Meanwhile, Ja. Varuhas (Varuhas, 2020) insists that the principle of legality is equally important, which requires clarity and must be taken into account when examining the principles of law and identifying the impact of contemporary globalization transformations on them.

Yet A. Atilgan (Atilgan, 2017) sees globalization as a catalyst for the challenges and transformations of legal principles that, despite the boundaries of national borders, are in the process of transformation, in which the challenges and dangers of modernity play a decisive role. T. Halliday & P. Osinsky (Halliday & Osinsky, 2006) highlight the notion of the globalization of law, which refers to the worldwide progress of transnational legal structures.

In today's context, quite often the focus of scholars is on empirical research and the evaluation of law, policy and the performance of public authorities. T. Tyler (Tyler, 2017) positions this as evidence-based law and emphasizes the particular value of applying empirical methods and theories of social science in this context. This, according to the scholar, enables different models of legal system development to be tested. A similar view is held by S. Taekema (Taekema, 2021), who also develops a theory of empirical evaluations of the principles of law in order to determine the effectiveness of the legal system and to identify factors influencing legal relations.

At the same time, O. Minchenko (Minchenko, 2021) has identified that the principles of law as its form are not distinguished in the context of globalization transformations, despite the definition of the rule of law as the basis of national legal systems and the understanding of law as a form of right corresponding to the principle of rule of law.

S. Skryl (Skryl, 2014) has researched that the convergence of the legal systems of Central and Eastern European countries is taking place within the framework of cohabitation in the Western civilisation. It is characterized by the recognition of human beings, their rights and freedoms as the main state and social value, and the formation of a common political and legal space contributes to the unification of legal principles. V. Machuskyy (Machuskyy, 2020) argues that the development of legal principles within the legal system depends on the progress of economic development. He distinguishes between the legal systems of developed countries and the legal systems of developing countries, which are more sensitive to global transformations.

The standardization of approaches to the understanding of principles of law at the international and national level remains a matter of debate. Some scholars argue that from the perspective of an international legal system, principles of law generally apply to all legal systems, while from the perspective of national law, they apply within the legal system of a particular country. In this context, O. Pomson (Pomson, 2022) proposes a solution to this dilemma by harmonizing the principles of national law with international law, while C. Eggett (Eggett, 2019) considers their frequent overlap and identity to be acceptable.

Consequently, theoretical and methodological approaches to understanding the essence of the principles of law and the impact on them of global transformations observed in the modern world allow stating certain inconsistencies. These are driven by different types of development of national legal systems and with their implementation in accordance with international and European standards, regulations and norms.

2. Research aims.

The aim of this article is to explore the theoretical and methodological foundations for identifying the main approaches to understanding the principles of law in contemporary globalization transformations.

3. Materials and methods

The methodological basis of the study consists of methods of fundamental and economic analysis. Analysis, synthesis and system analysis have been used to clarify the essence of the principles of law and determine the place of globalization transformations in the legal system. The historical-logical method served to explore scientific approaches to understanding the place and role of the principles of law in contemporary globalization transformations. Comparison and statistical analysis were aimed at identifying the main trends in the impact of globalization on the implementation of the principles of law in modern conditions.

Functional analysis supported the search for ways to improve the principles of law. Generalization and systematization helped in formulating hypotheses and drawing conclusions on the results of the study. Graphical and tabular methods were used to illustrate the outcome indicators. Finally, cluster analysis allowed for the grouping of Central and Eastern European countries according to the Globalization Index and the State Instability Index.

The Central and Eastern European countries chosen for the study are Estonia, Latvia, Lithuania, Germany, Czech Republic, Slovakia, Hungary, Poland, Romania, Bulgaria, Slovenia and Croatia.

The information base for the study is the 2018-2021 Fragile States Index Annual Report and Fragility in the World on the Fragile States Index; KOF Globalization Index and Top 50 Countries in the Globalization Index on the Globalization Index.

4. Results

The globalization of state and social processes has intensified the integration aspirations of the subjects of world relations. As a result, there is a need to unify the basic rules of implementation of the rights and obligations of the subjects of legal relations. In view of the indicated tendencies the problem of legal principles has become more acute and has gone beyond national borders and has spread at the international level. Obviously, this issue is methodologically complex and contradictory at the international level, while at the national level it is not so clear-cut. Nevertheless, most scholars interpret the principles of law as the basic rules and ideas that are legislated in laws and regulations.

Significant transformations of a globalizing nature are having a significant impact on the entire legal system and the shaping of the principles of law in particular. While recently globalization was seen as the innovative mainstream of the world community, today it is undergoing a systemic crisis. This crisis manifests itself in a radical change of basic attitudes, and the vector of development is shifting towards regionalisation, if not localisation. As a consequence, the bifurcation processes which are observed in the realities of the present provide for constructive and forward-looking changes to which the legal system, like the principles of law, is all too sensitive.

Certainly, the basic values of law remain the rule of law, respect for human dignity, ensuring human rights and freedoms, and the development of democracy. Nevertheless, the principles of law cannot be reduced only to externally expressed certain iconic forms. Their institutionalization allows for the unity, integrity and clear definition of the legal system. Moreover, some scholars have noted that the classification attributes of the principles of law differ significantly when they are examined at the national and international level.

In particular, a study of the European framework of understanding the principles of law makes it possible to establish their prevalence in all legal systems. Moreover, if the principles of law are analyzed in terms of national jurisprudence, the principles of law are positioned within the legal system of a particular country according to the criterion of prevalence. With such features in mind, in Fig. 1 the principles of law are reflected according to the classification features.

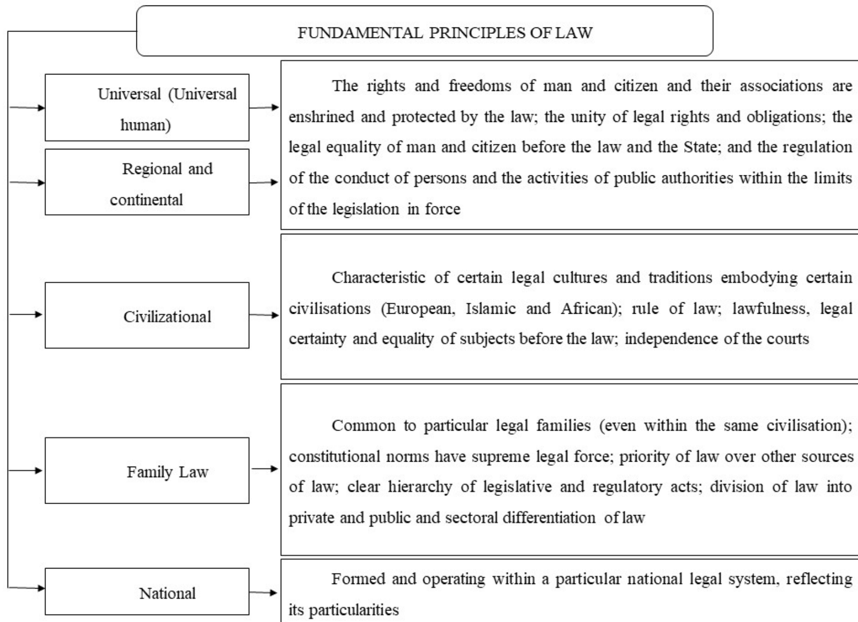
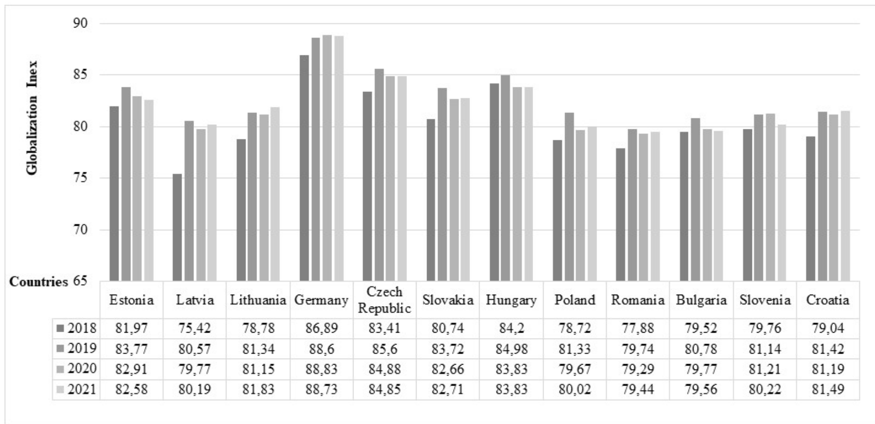


Figure No. 01. Fundamental principles of law according to classification criteria. Compiled according to: (Koziubra, 2017).

A peculiarity of the classification of legal principles is that there is a certain overlap in their affiliation. In particular, regional and continental principles of law actually coincide with universal principles, while the European legal system does not deny such a coincidence, positioning their conformity and systematicity on the contrary. It is customary to distinguish civilizational, family law, and national principles of law. Obviously, each of these groups has its own characteristics as well as common and distinctive features. Nevertheless, all of them, without exception, are aimed at protecting human and civil rights and freedoms and are equally affected by global transformations.

With this in mind, it is suggested to investigate the main trends in the level of globalization of the main social processes in the countries of Central and Eastern Europe and to identify destructive factors in the development of the principles of law in them. It is advisable to conduct the study on the basis of the analysis of the Globalization Index, which makes it possible to determine the degree of globalization of a country and involves the assessment of state parameters according to such criteria as: (1) economy; (2) politics; (3) society.

The empirical calculations shown in Figure 2 reveal a mixed picture of globalization in the countries of the group in question. In particular, Germany's economy, politics, and society are most deeply affected by globalization (GI: 86,89–88,83), Czech Republic (GI: 83,41–85,60) and Hungary (GI: 83,83–84,98), and the lowest rates are observed in Latvia (GI: 75,42–80,57), Romania (GI: 77,88–79,74) and in Bulgaria (GI: 79,52–80,78).



	Estonia	Latvia	Lithuania	Germany	Czech Republic	Slovakia	Hungary	Poland	Romania	Bulgaria	Slovenia	Croatia
2018	81,97	75,42	78,78	86,89	83,41	80,74	84,2	78,72	77,88	79,52	79,76	79,04
2019	83,77	80,57	81,34	88,6	85,6	83,72	84,98	81,33	79,74	80,78	81,14	81,42
2020	82,91	79,77	81,15	88,83	84,88	82,66	83,83	79,67	79,29	79,77	81,21	81,19
2021	82,58	80,19	81,83	88,73	84,85	82,71	83,83	80,02	79,44	79,56	80,22	81,49

Figure No. 02. State and dynamics of the Globalization Index in Central and Eastern Europe in 2018-2021. Calculated according to: (KOF Globalization Index, 2018–2020; Top 50 Countries in the Globalization Index, 2021).

At the same time, it should be noted that the development of the principles of law in contemporary globalization transformations is characterized by a regional dimension and confirms the systemic crisis of globalization. At the same time, there have been some positive shifts in this direction. In particular, the countries chosen for analysis belong to a regional alliance, the European Union, and position themselves to comply with the norms of European law. Accordingly, national legal systems are harmonized as much as possible with European law and are systematically codified.

The principles of law implemented in Germany, Poland and Croatia form the basis of their legal systems belonging to the Romano-Germanic family of law. They reflect the tradition of Roman law, are of high quality and are structured in a way that allows for an understanding of the aims and purposes.

In the Czech Republic, Slovenia and Slovakia, the principles of law reflect the basic functioning of their national legal systems, which belong

to the German branch of the continental legal family. They are oriented towards ensuring the rule of law, declaring the protection of human and civil rights and the development of democracy.

Hungary belongs to the Romano-Germanic family of law, and its legal system has developed on a European basis. The peculiarity of the principles of law in Hungary is that they can be defined by the Constitutional Court, whose competence includes the cancellation of legal regulations. The legal principles of Bulgaria and Romania are modelled on the German and French legal systems, but contain many elements of Soviet legal thinking. Such trends need increased attention from the international community and constant monitoring of the state of implementation of human and civil rights and freedoms in these countries.

The implementation of the principles of law in the Baltic States (Estonia, Latvia, Lithuania) takes place in close cooperation between the national law subjects and is aimed at ensuring the rule of law in society.

Meanwhile, an assessment of the validity and effectiveness of the principles of law in Central and Eastern Europe should include a study of the stability of the processes and phenomena taking place on their territory. It is proposed that this be undertaken using the State Instability Index, which aims to provide an assessment of a country's vulnerability to conflict and the potential loss of sovereignty and territorial integrity. In addition, it aims to identify vulnerabilities, threats and extraneous interference in state governance.

The results of the research conducted on the state and dynamics of the Fragile States Index in Central and Eastern Europe in 2018-2021 (Figure 3) reveal the following trends: Germany is considered the most stable over the whole period under review (FSI: 23,2–25,8) and Slovenia (FSI: 25,8–30,3), which showed the lowest values of the indicator in question. At the same time, Bulgaria (FSI: 49,2–51,7), Hungary (FSI: 47,6–51,1), Romania (FSI: 46,7–51,0) and Croatia (FSI: 46,1–49,8) were found to be the most unstable.

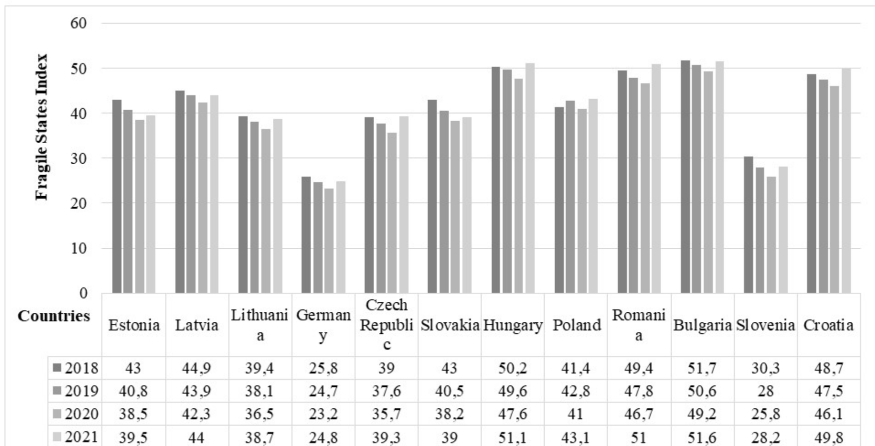


Figure No. 03. State and Dynamics of the Fragile States Index in Central and Eastern Europe in 2018-202. 1Calculated according to: (Fund for Peace. Fragile States Index Annual Report, 2019–2021; Fragility in the World. Fragile States Index, 2022).

Note that there is a trend where the state stability of countries does not depend on their level of globalization. In particular, Germany has the highest values of globalization and the lowest in relation to state instability. As for the Czech Republic and Hungary, the hypothesis is confirmed: with sufficiently high values of the Globalization Index, state instability is at a high level.

It is reasonable to deepen our research towards identifying common and distinctive features among Central and Eastern European countries with respect to globalization and state instability in 2018-2021. Therefore, it is proposed to make calculations using the Statistical 7.0 software package, based on k-means cluster analysis technology, and to systematize the results in Table 1.

Table 1. Grouping of Central and Eastern European countries according to the Globalization Index and the Fragile States Index in 2018-2021.

Years							
2018		2019		2020		2021	
Country	Cluster number	Country	Cluster number	Country	Cluster number	Country	Cluster number

Germany	1	Germany	1	Germany	1	Germany	1
Slovenia		Slovenia		Slovenia		Slovenia	
Estonia	2	Estonia	2	Estonia	2	Estonia	2
Latvia		Latvia		Latvia		Latvia	
Lithuania		Lithuania		Lithuania		Lithuania	
Czech Republic		Czech Republic		Czech Republic		Czech Republic	
Slovakia		Slovakia		Slovakia		Slovakia	
Poland		Poland		Poland		Poland	
Hungary	3	Hungary	3	Hungary	3	Hungary	3
Romania		Romania		Romania		Romania	
Bulgaria		Bulgaria		Bulgaria		Bulgaria	
Croatia		Croatia		Croatia		Croatia	

Calculated according to: (KOF Globalization Index, 2018–2020; Top 50 Countries in the Globalization Index, 2021; Fund for Peace. Fragile States Index Annual Report, 2019–2021; Fragility in the World. Fragile States Index, 2022).

As the results of this study indicate, three stable groups of countries in Central and Eastern Europe stand out throughout the period under analysis, sharing common features of globalization and state stability. The first group includes Germany and Slovenia, which have positioned themselves as highly globalized countries with fairly high indicators of state stability. In such countries, the legal system is built on democratic principles and is sensitive to the interests of the individual and the citizen. It protects their rights and freedoms, whereas the principles of law regulate the organizational and legal mechanisms of state and society.

The second group consists of the Baltic States (Estonia, Latvia and Lithuania) and the Czech Republic, Slovakia and Poland. They are characterized as countries with an average level of legal development. The implementation of the principles of law in them occurs with occasional irregularities. The level of state instability is also assessed as mediocre, requiring appropriate measures to improve the organizational and legal mechanisms for the development of the state and society.

The third group includes Hungary, Romania, Bulgaria and Croatia, which have not completed the processes of transformational change, have rather low globalization rates and high levels of state instability. Moreover, individual countries have been too slow in transitioning from the Soviet model of development to the European one and still show a pro-Russian stance, in particular Hungary. Accordingly, the implementation of legal principles is heavily influenced by power structures. The enforcement and

protection of human and civil rights and freedoms is questioned and not fully implemented.

Consequently, the results of the research conducted prove different levels of understanding of the principles of law in individual countries. The highest level of implementation is common for countries with a higher level of development.

5. Discussion

The research of theoretical and methodological foundations to identify the main approaches to understanding the principles of law in modern globalization transformations indicates a significant impact on the principles of law of globalization processes, which are in a state of systemic crisis at the present stage. A weighty factor of the crisis period is regionalization, which is exacerbated in conditions of instability and non-standard challenges, and also forms regional peculiarities of the development of the legal system.

The study has shown that the countries of Central and Eastern Europe, being part of a regional association such as the European Union, share common features of national legal systems. Therefore, the principles of law comply with European norms and standards. Nevertheless, some of the countries in the group under review have retained elements of the Soviet legal system, which results in violations of legal principles and calls into question the protection of human and civil rights and freedoms.

The countries of Central and Eastern Europe have been grouped into three clusters, indicating different levels of development of the legal system and legal principles under the influence of global transformations. The first cluster combines high achievements in the development of the legal system as a whole and of legal principles. In particular, it is positioned on a high level of globalisation and state stability, achieved through quality and efficient legislation and regulation (Germany and Slovenia). The second group of countries shows an average performance and has isolated problems with the efficiency of the legal system and the protection of human and civil rights and freedoms. However, considerable efforts have been made to neutralize and minimize destabilizing factors (Estonia, Latvia, Lithuania, the Czech Republic, Slovakia and Poland).

The third group consists of transitional countries, which have been indirectly affected by globalization processes. However, they are characterized by a high level of state instability. As a consequence, the legal system is characterized by a significant number of negative trends, and the principles of law are not fully implemented.

It is therefore advisable to introduce reforms in the third group of countries and to develop a set of measures for the sustainable development of the legal systems in these countries.

Conclusions

Thus, the conducted research of theoretical and methodological foundations on identifying the main approaches to the understanding of the principles of law in modern globalization transformations allowed to obtain the results confirming that globalization has a significant impact on the indicators of development of legal systems in Central and Eastern Europe. It has been established that the principles of law are positioned as basic rules and ideas that are enshrined at the state level in legislative and regulatory acts and are generally binding for all subjects of legal relations. A lack of clarity in the distinction between the principles of law at the international and national level has been identified.

It consists in extending the principles of law to all legal systems in accordance with the international concept and limiting them within one country in terms of the national concept. It has been shown that Central and Eastern European countries enforce the principles of law equally, which depends on the functioning of their national legal systems, their level of development, globalization, and their ability to ensure state stability. Germany and Slovenia have been found to have higher standards of legal regulation of relations and the principles of law have been implemented to a greater extent there compared to developing countries. In particular, Hungary, Romania, Bulgaria and Croatia are more exposed to destabilizing factors, which calls for the development and implementation of appropriate measures in which the principles of law will act as an instrument of globalization and a means of managing it.

Thus, the conducted studies of the theoretical and methodological fundamentals on identifying the main approaches in order to understand the principles of law in modern globalization transformations have made it possible to obtain certain results. They testify that globalization has a significant impact on the indicators of the developing the legal systems of the Central and Eastern European states. It has been established that the principles of law are positioned as the basic rules and ideas. They are enshrined at the state level in legislative and regulatory legal acts, and they are universally binding on all subjects of legal relations.

The lack of clarity in distinguishing the principles of law at the international and national level has been revealed, which lies in spreading the principles of law to all legal systems in accordance with the international concept, and in limiting their effect within one country in terms of the

national concept. It has been identified that the main principles of law, depending on the classification features, are divided into universal, regional-continental, civilizational, right-of-family and national ones.

Their development in the conditions of modern globalization transformations takes place under the influence of regionalization, which confirms the systemic crisis of globalization. It has been proven that the countries of Central and Eastern Europe do not ensure the implementation of the principles of law to the same extent, which depends on the features of functioning of their national legal systems, the development level, globalization and the ability to ensure state stability.

It has been established that the standards of legal regulation of relations are higher in Germany and Slovenia, and the principles of law are implemented to a greater extent. Along with this, developing countries, in particular, Hungary, Romania, Bulgaria and Croatia, are exposed to greater influence of destabilizing factors, which requires the development and implementation of appropriate measures, according to which the principles of law will act as an instrument of globalization and a means of its management.

It has been found that Germany and Slovenia are more globalized (GI: 86,89–88,83) and (GI: 79,76–81,21) than developing countries (Hungary (GI: 83,83–84,98), Romania (GI: 77,88–79,74), Bulgaria (GI: 79,52–80,78) and Croatia (GI: 79,04–81,49). At the same time, it has been revealed that higher indicators of state stability are observed in the countries of the first group, while these indicators are significantly lower in developing countries.

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Discriminatory manifestations in the context of transhumanism: socio-legal aspect

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Abstract

The aim of the research was to identify a set of discriminatory challenges related to the development and implementation of the concept of transhumanism in a digital society, as well as to develop and justify a system of socio-legal measures aimed at their partial leveling. The main methods employed by research were: the system method, cybernetic and synergistic methods, extrapolation methods, socio-legal modeling, as well as the formal-legal method, the legal-practical method and the case method. The research proposes and substantiates the concept of sociotechnological inequality. It is concluded that there is a mutual conditionality of social (socioeconomic) and sociotechnological inequality. On the other hand, a better socioeconomic situation will also provide more opportunities for technological modifications of one's own body. This may lead to a further deepening of the transhumanist gap, the possibility of which is justified in the research.

Keywords: discrimination and human rights; somatic rights and transhumanism; digital society; sociotechnological inequality; transhumanist gap.

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Manifestaciones discriminatorias en el contexto del transhumanismo: aspecto socio-jurídico

Resumen

El objetivo de la investigación fue identificar un conjunto de retos discriminatorios relacionados con el desarrollo y la aplicación del concepto de transhumanismo en una sociedad digital, así como desarrollar y justificar un sistema de medidas socio-jurídicas destinadas a su nivelación parcial. Los principales métodos empleados por investigación fueron: el método de sistema, los métodos cibernéticos y sinérgicos, los métodos de extrapolación, la modelización sociojurídica, así como el método formal-legal, el método jurídico-práctico y el método del caso. La investigación propone y fundamenta el concepto de desigualdad sociotecnológica. Se concluye que existe la condicionalidad mutua de la desigualdad social (socioeconómica) y sociotecnológica. Por otra parte, una mejor situación socioeconómica también proporcionará más oportunidades para las modificaciones tecnológicas del propio cuerpo. Esto puede conducir a una mayor profundización de la brecha transhumanista, cuya posibilidad se justifica en la investigación.

Palabras clave: discriminación y derechos humanos; derechos somáticos y transhumanismo; sociedad digital; desigualdad sociotecnológica; brecha transhumanista.

Introduction

The formation and development of digital society is confidently spreading its influence in all spheres of life, giving humanity new opportunities, but also creates many challenges. One of such challenges is undoubtedly the formation of the concept of transhumanism, as the technological improvement of one's own body is too tempting not only in terms of combating disease and aging, but also in terms of gaining additional competitive advantages. However, these same competitive advantages potentially involve numerous discriminatory risks.

International law has long and consistently established mechanisms to ensure equality and protection against all forms of discrimination. In particular, the Universal Declaration of Human Rights in Articles 1 and 7 states that "All human beings are born free and equal in dignity and rights. ... All are equal before the law and are entitled without any discrimination to equal protection of the law. All persons have the right to equal protection against any discrimination that violates this Declaration and against any incitement to such discrimination" (Universal declaration of human rights:

Proclaimed by the united nations general assembly, Paris, December 1948, 2021), and in the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 (ratified by the Law of Ukraine № 475/97-BP of 17.07.97) Article 14 prohibits discrimination, namely "The exercise of the rights and freedoms recognized in this Convention shall be ensured without discrimination on any grounds - sex, race, color, language, religion, political or other beliefs, national or social origin, belonging to national minorities, property status, birth, or other grounds» (Law of Ukraine, 1997).

The national laws of all modern democracies are also moving towards the prohibition of discrimination, but with varying degrees of generalization and concretization. Thus, in Ukraine, the basic provisions on equality are contained in the Basic Law, including Article 21 of the Constitution of Ukraine that stipulates «all people are free and equal in their dignity and rights» (Verkhovna Rada of Ukraine, 1996).

In addition, the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" of 6 September 2012, № 5207-VI, provides a legal definition of discrimination (as a situation in which a person and / or group of persons on the basis of race, color skin, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, linguistic or other characteristics that were, are and may be valid or presumed, is restricted in recognition , exercise or use of rights and freedoms in any form established by this Law, except when such restriction has a legitimate, objectively justified purpose, ways to achieve which are appropriate and necessary), establishes forms of discrimination, as well as general principles of state non-discrimination policy (Law of Ukraine, 2012).

1. Literature review

But a significant degree of generalization of the above legal requirements (including the rules of a special law) leads to doubts about their effective implementation. In the field, which at the present stage is practically outside the scope of legal regulation, the issue of implementation of anti-discrimination legislation is moving into the plane of their interpretation. Antoshkina *et al.,* (2021) rightly emphasize the need to implement common law requirements in the interpretation (p.27), and, perhaps, only their application can, if not save, then at least somewhat improve the situation in terms of the research topic.

The problem is that the general principles of law were developed and implemented by people and in relation to people. In the case of the implementation of the transhumanist concept, everything will depend on

the degree and depth of modification of the human body. And if with applied and cosmetic improvement the situation looks more or less clear, because a person who has undergone such modifications does not lose his human essence, then in the case of connection (merging) of the human brain with artificial intelligence (hereinafter - AI) the question arises, whether such a transhuman can be considered a person in the full sense of the word.

That is, in a very broad interpretation of the above legal norms, this can be recognized in some way as «other features» of the person. But what should we do if the term «human» instead of «person» is used in national law or relevant international law?

Thus, based on the above-mentioned, the purpose of this research is to identify a set of discriminatory challenges related to the development and implementation of the concept of transhumanism in digital society, as well as the development and justification of a system of socio-legal measures aimed at their partial leveling.

2. Research methodology

The research methodology consists of a set of general scientific and special methods aimed at obtaining a verified scientific result. Of course, the basis of legal and technological research should be, above all, the system method, as well as cybernetic and synergetic methods, which logically follow from the theory of systems.

The interdisciplinarity of scientific work determines the use of extrapolation, as it allows you to make the most of the positive achievements and developments of related fields of knowledge, through the prism of which the subject is analyzed. It will certainly be useful to use the formal-legal method, because discrimination, although a social phenomenon, but it acquires very clear signs and manifestations, through the prohibition of discrimination its legal nature reveals. An analysis of the terminology used in national anti-discrimination and supranational legislation is also needed.

One of the fundamental methods of work, as a study aimed at modern, not yet formed legal relations, are socio-legal modeling and legal-prognostic method, which are designed both speculatively and with additional application of the case method, to form ideas about possible scenarios of society development during the implementation of the concept of transhumanism, to identify the positive and negative consequences of these development options, to predict possible discriminatory risks. In addition, the methodological approaches and principles on which the work is based are highlighted.

First of all, there are the principles of determinism and interdisciplinarity as the quintessence of the general objective conditionality of legal, social and technological phenomena, which determines their sustainable continuous development, but also creates new challenges, including inequality and discrimination. The humanistic approach is also used, because the concept of transhumanism directly challenges human nature itself, which creates discriminatory threats.

3. Results

3.1 Transhumanism as a doctrinal teaching and socio-legal phenomenon

Transhumanism is a relatively new phenomenon in social and legal reality, so its doctrinal justification lies in the vast majority of modern publications. The most popular in scientific discourse is the definition of transhumanism, formulated in 1990 by the transhumanist philosopher.

More (1996), as a class of life philosophies that seek to continue and accelerate the evolution of intelligent life beyond its current human form and human limitations through science and technology, guided by the principles and values that contribute to life. In fact, if we analyze the philosophical origins of the doctrine, the emergence of transhumanism began much earlier with the ideas of critical rationalism.

The Encyclopedia Britannica provides the following definition of «transhumanism»: a social and philosophical movement devoted to promoting the research and development of robust human-enhancement technologies. Such technologies would augment or increase human sensory reception, emotive ability, or cognitive capacity as well as radically improve human health and extend human life spans. Such modifications resulting from the addition of biological or physical technologies would be more or less permanent and integrated into the human body (Ostberg, 2022).

In the legal field, the formulation of the legal definition of transhumanism began with The Transhumanist Manifesto in 1993, namely: it is the modern worldview and the modern legal philosophy, which aims to ensure the human right to modernize their bodies, freedom from aging and is based on tolerance, justice, preservation of life, glorification of the mind, protection of person as a subject of the transformation process.

Thus, the legal context of transhumanism is based primarily on the right to transform one's own body, which derives from the «philosophical principle of self-transformation» (More, 2010). Gromovchuk (2022) notes that the human right to modify one's body can be positioned as a somatic

right to external identity, and is the ability of person to change one's anatomy or phenotype regardless of the motivating factors that guide him/her to making such a decision (p. 7).

That is, for transhumanism the highest value is «posthuman», a new type of person who is open to change, including body modifications, cultivated by the development of biotechnology (Babina, 2021). But the modern concept of transhumanism actually perceives transformations much more broadly and considers them in the following aspects: 1) improving the physical characteristics of person; 2) improving the cognitive (mental) characteristics of person; 3) improving the emotional, behavioral characteristics of person.

Moreover, each type of change ultimately gives different advantages to person in society, compared to others. According to the general principles of law, the right of one person ends where the right of another person begins. From this it follows that the right to modify one's own body is permissible to the extent that it does not harm another person. But there is a logical question, whether the potential risk of discrimination against a non-advanced person can be considered such harm.

And how to assess the discriminatory risks between people who have undergone different types of transformations, among those identified above (whether in this case the modifications will conflict with each other, and in which cases). And most importantly, whether it is possible to consider the potential threat of the very sign of humanity, which is becoming especially relevant in light of the rapid development of artificial intelligence.

3.2 The origins of the concept of transhumanism and the factors contributing to its formation

As already mentioned, the concept of transhumanism has been actively developing for about three decades, and its origins can be found in the doctrine of the formation of the so-called «posthuman». According to N. Bostrom, based on the research of Drexler Eric K. and Kurzweil R., transhumanism contributes to an interdisciplinary approach to understanding and assessing opportunities for improving the human condition and the human body, which arise due to the development of technologies (Eric & Nanosystems, 1992; Kurzweil, 1999).

Attention is paid to both modern technologies, such as genetic engineering and information technology, and expected technologies of the future, such as molecular nanotechnology and artificial intelligence. The range of thoughts, feelings, experiences and actions available to human bodies is probably only a tiny part of what is possible. And, in N. Bostrom's comparison of an ordinary modern human with a chimpanzee, humans may not even have the ability to form a realistic intuitive understanding of what it is like to be a radically improved human («posthuman»).

According to the scientist, our current way of life covers only an insignificant subspace of what is possible or allowed by physical limitations, but this framework expands significantly with the gradual transition of human to transhuman and then posthuman (Bostrom, 2020, p. 499-500; Bostrom, 2003a-2003b). That is, at the present stage, transhumanism, as a teaching and as a socio-legal phenomenon, is not devoid of a certain mythologizing and idealization. Of course, before the transhuman (not to mention the posthuman) opens up fundamentally new, unprecedented opportunities to overcome disease, prolong life expectancy, scientific breakthroughs and more.

However, it would be more appropriate to feel cautious optimism in this regard, given not only the positive expectations, but also the possible crisis in society related to the implementation of the concept of transhumanism. Because it is difficult to talk about the discovery of the universe of a new person and humanity, while humanity itself may lose its significance. Criticism of realism should not grow into the idealization of the future posthuman (in the modernized world of which ordinary people may not find a place).

Rather, we should focus on socio-legal modeling of socio-technological development options and the creation at the legislative level of effective safeguards to prevent discrimination from transhuman in the economic sphere (e.g., in production, services), sports, medicine, science, etc.

The formation and establishment of the concept of transhumanism was facilitated by a number of factors, ranging from the general pattern of technological development to the complex processes of evolution of the human brain and human consciousness. In view of this, it is advisable to identify two main reasons for the emergence of modern philosophical direction and its logical division into external (related to the development of science) and internal (caused by modernization of human essence) for a better understanding of the origins and specifics of transhumanism (Dovhan & Mikhailina, 2021).

The arguments that confirm the set of external causes include the following. Ross (2020) believes that the intellectual core of transhumanism is to move to the next stage of human evolution. The tools that contribute to improvement are nano-, bio- and info technologies, especially artificial intelligence and genetic engineering.

Kurzweil (2012), in «How to Create a Mind: The Secret of Human Thought Revealed», argues that thousands of scientists and engineers today are working hard to create a repository of human consciousness like modern Google -cloud (p. 13). Thus, one of the prerequisites could be considered the idea of creating a human brain artificially, put forward by Henry Markram in the project «Blue Brain 2005-2023» (EPFL, n.d.).

From this it follows that the combination of human and artificial intelligence is scientifically desirable in order to make maximum progress in the discovery of brain abilities. Among the arguments that confirm the internal causes, we can highlight, above all, the processes of modernization of human consciousness.

Melyakova (2020) characterizes them, relying in her judgments on the pleasure that is at the very top of achievable freedoms of posthuman. That is, modern person, going through all stages of its development, has formed its own pyramid of values, the most significant of which is called pleasure. But to achieve it, according to the author, ordinary people need to move in their development in the direction of transhuman.

According to Dzoban (2021), the implementation of transhumanist postulates precedes the formation of the information society and the deepening of person into the «virtual» computer world.

One of the prerequisites for this set of internal causes can be considered the implementation of Synchron's brain-computer interface device test program on humans (implantation of chips in the brain), or rather the human will to participate in the experiment and accept the possibility of interfering with his/her brain.

The implantation of the Stentrode device, according to company representatives, will take place through a blood vessel in the human neck directly into the brain (Center for Devices & Radiological Health, n.d.), which, firstly, characterizes a certain intervention in human consciousness through modernization of his/her body, and secondly, gives a modified person competitive advantages due to partial merge with artificial intelligence technologies and improvement of its cognitive abilities and expansion of access to information.

It can be argued that this is a significant layer of the problem of socio-technological conditionality of today's law. It should be noted that, as a rule, the modernization of law is caused by a change in the public interest. Thus, if scientific and technological discoveries have an impact on a person, it leads to changes in the legal dimension. Given this, it can be seen that elements of the transhumanist concept can already be traced in law.

We are talking about the formation of the fourth generation of human rights - born by the evolution of social processes of human rights, which includes somatic (the right to change gender, organ transplantation, cloning, same-sex marriage, artificial insemination, euthanasia, child-free family and independent of government intervention life according to religious, moral views) and information (right to virtual reality, access to the Internet and others) rights (Dovhan, 2020, p. 45).

The latter becomes especially relevant in light of the fact that in 2021 the well-known company Facebook was renamed Meta and began to actively promote the idea of the so-called «metauniverse», i.e., a full virtual world with which people can interact through connected or embedded special technology. Moreover, if we analyze the possible legal basis of such relations, now it is almost a solid legal gap.

It is natural that the unresolved problems of the real world (including social inequality) move to the virtual world, but, at the same time, there will be a huge layer of completely new issues: partly - «borrowed» from the real world, and partly - completely unconventional for mankind at the present stage of its development.

This directly indicates the need to analyze the forms and types of human integration with technological devices, as well as the risks associated with it. The latter becomes especially relevant in light of the fact that in 2021 the well-known company Facebook was renamed Meta and began to actively promote the idea of the so-called «metauniverse», i.e., a full virtual world with which people can interact through connected or embedded special technology.

Moreover, if we analyze the possible legal basis of such relations, now it is almost a solid legal gap. It is natural that the unresolved problems of the real world (including social inequality) move to the virtual world, but, at the same time, there will be a huge layer of completely new issues: partly - «borrowed» from the real world, and partly - completely unconventional for mankind at the present stage of its development. This directly indicates the need to analyze the forms and types of human integration with technological devices, as well as the risks related to this.

3.3 Protection of human rights and ways to protect against discrimination in the era of transhumanism

It should be emphasized that the principle of protection against various forms of discrimination is fundamental both at the level of international and national law. For example, Part 1 of Art. 24 of the Constitution of Ukraine states that there can be no privileges or restrictions on the grounds of race, color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics. However, the analysis of scientific developments suggests that in in terms of formation of the information society a tendency to actively «improve your body», to improve its functionality in accordance with modern standards of beauty will gradually develop.

On the one hand, legal interference in such tendencies seems absurd at first glance, as it is an interference in the private life of a particular individual. And according to part 1 of Art. 8 of the Convention for the Protection of

Human Rights and Fundamental Freedoms, everyone has the right for respect of his/her private and family life, home and correspondence. By «private and family life» the European Court of Human Rights means a term with a broad meaning (Council of Europe, 2018).

4. Discussion

However, analyzing the case law of the European Court, it can be concluded that any interference in a person's private life could be justified. And in all other cases, the person is guaranteed non-interference from the state and other entities in its decision-making on their own lives.

But such «non-interference» in the future may lead to the problem of stratification of society into «advanced» and «ordinary», which will be even more acute than the forms of discrimination that exist in the world today.

Thus, experts predict that due to technological progress, today's 18-year-olds will have to retrain and get a new profession every five years (Future of Work 2030: how to prepare for change in Ukraine, n.d.), but even this may not help them get a job in competition with modified people. As for the older generation, for most of them, even retraining will create a significant problem due to lack of understanding of modern technologies. That is, there will be an irreversible social gap, based on the availability of new technologies and the ability to master them.

Based on the above-mentioned, the paper proposes the concept of socio-technological inequality. Already at the present stage it is possible to state the preconditions for the deepening of social inequality by socio-technological inequality, i.e., the acquisition of social (socio-economic) benefits through technological (or IT) modification of one's body.

Moreover, the mutual conditionality of social (socio-economic) and socio-technological inequality is obvious. Thus, technological or information and technological modifications can provide social benefits to improve one's appearance, i.e., increase attractiveness, get a job, higher income, and so on. On the other hand, a better socio-economic situation will also provide more opportunities for technological modifications of one's body. This vicious circle may lead to further deepening of the transhumanist gap.

This allows us to formulate a hypothesis about the levels of discrimination generated by the implementation of the transhumanist concept in the future: 1) human and transhuman; 2) human and ASI; 3) ASI and transhuman; 4) transhuman and transhuman with modifications, different in nature and depth. Also based on the prognostic method of research, it was found that the full implementation of the transhumanist concept through the analyzed potential discriminatory risks can lead to a new round of crisis of legal

awareness around the world, as legal awareness is currently fluctuating due to widespread implementation of the fourth generation of human rights (somatic rights). But the differences between humans are potentially much smaller than those between humans as such and artificial intelligence.

Partial leveling of the situation is possible through the application of a set of measures related with: 1) further unification and internationalization of legal regulation of the implementation of the transhumanist concept; 2) moderate regulatory restrictions on the right to modify one's own body and to use artificial intelligence; 3) conducting legal education activities at various levels aimed at «smoothing» differences and, consequently, discriminatory risks between humans and transhuman, as well as developing algorithms for legal protection and protection against discrimination in the era of transhumanism and digital society.

Conclusions

This research suggests that the implementation and development of the transhumanist concept, along with all the positive achievements and opportunities to overcome the problem of aging and many incurable diseases, can pose a completely new challenge to society, moving discrimination into a completely different plane. That is, along with the traditional stratification of society, there may be a stratification of society into two classes: humans and transhumans - the gap between them will be much deeper and more tangible than even the worst manifestations of inequality between people.

We propose and substantiate the concept of socio-technological inequality. Already at the present stage it is possible to state the preconditions for the deepening of social inequality by socio-technological inequality, i.e., the acquisition of social (socio-economic) benefits through technological (or IT) modification of one's own body. The conclusion is made about the mutual conditionality of social (socio-economic) and socio-technological inequality.

Thus, technological or information and technological modifications can provide social benefits to improve one's appearance, i.e., increase attractiveness, get a job, higher income, and so on. On the other hand, a better socio-economic situation will also provide more opportunities for technological modifications of one's body. This vicious circle may lead to further deepening of the transhumanist gap, the possibility of which is justified in the research.

The possibility of technological improvement is considered in the context of the human right to modify one's own body. The classification of technological modifications of the human body according to a number of criteria is given.

Therefore, on the volitional basis we divide technological modification into: voluntarily modification; modification in accordance with social needs; modification according to medical indicators (but, in accordance with the bioethical principles of medical experiments with human participation, if there is a medical indicator, the patient's consent to the technological modification of his/her own body must be taken into account).

Based on the essence of changes there are: actual technological modifications (for example, robotic prostheses); information and technological modifications related to the increase of human intellectual abilities (through the improvement of the ability to process information) or the ability to connect brain to information networks of various kinds and certain information resources. Such modifications are made possible by intervening directly in the human brain; combined, namely, the use of a complex of ways to improve one person.

According to the functional purpose we should be distinguish technological modifications into: special, i.e., designed to improve certain aspects of the functioning of the human body; general, i.e., aimed at improving the overall functionality of the human body.

The depth of modification can be distinguished as: connection of technological or information-technological devices with the human body; implantation of technological or information-technological devices in the human body; merging of technological or information-technological devices with the human body.

These categories («connection», «implantation», «merging») characterize the degree of depth of integration and the constancy or temporariness of the use of information and technological devices to improve the functioning of your own body. The hypothesis about the levels of discrimination generated by the implementation of the transhumanist concept is substantiated: 1) man and transhuman; 2) human and ASI; 3) ASI and transhuman; 4) transhuman and transhuman with modifications, different in nature and depth.

It is argued that recognizing the subjectivity of artificial intelligence will inevitably lead to a new debate: possible, acceptable and admissible types of legal liability for AI. In addition, the thesis is supported and further argued that even before the full implementation of the transhumanist concept, humanity must experience the discriminatory challenges associated with the robotization of most areas of human activity. Competition with robots is already reducing jobs in certain areas of production, but so far, such an impact is not so significant, but this could change in the near decades.

The research predicts that the full implementation of the transhumanist concept through potential discriminatory risks could lead to a new round of legal awareness crisis around the world, as legal awareness is currently

fluctuating due to the widespread implementation of the fourth generation of human rights (somatic rights).

But the differences between humans are potentially much smaller than those between humans as such and artificial intelligence. Partial smoothing of the situation is possible through the application of a set of measures related with: 1) further unification and internationalization of legal regulation of the implementation of the transhumanist concept; 2) moderate regulatory restrictions on the right to modify one's own body and to use artificial intelligence; 3) conducting legal education activities at various levels aimed at «smoothing» differences and, consequently, discriminatory risks between people and transhuman, as well as developing algorithms for legal protection and protection against discrimination in the era of transhumanism and digital society.

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Determinants of smuggling and ways to combat it

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Abstract

Given the peculiarities of Ukraine's geographical location and military conflicts in the east of the country, the harmful effects of smuggling on the economic development of the country are constantly increasing. The volume of smuggling amounts to about 209-311 billion grivnas. The article aims to identify the main determinants of smuggling in order to develop measures tailored to the needs of Ukrainian social development. In the article we have used various methods of scientific knowledge, which allowed us to enrich our research to make it more meaningful. Analysis of official statistics, examples of police practice, sociological and legal research allowed us to identify the main causes of smuggling in Ukraine. The authors conclude that, based on the selected determinants of smuggling in Ukraine, it is essential to give priority to the implementation of preventive measures, i.e. to prevent the conditions of its commission and also the resumption of criminal liability for commercial smuggling of goods. In addition, there is a need to design more and better public policies to minimize the conditions that enable the action of smuggling agents.

Keywords: determinants of smuggling; determinants of corruption; fight with smuggling; State Customs Service of Ukraine; Eastern Europe.

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Determinantes del Contrabando y Formas de Combatirlo

Resumen

Dadas las peculiaridades de la situación geográfica de Ucrania y los conflictos militares en el este del país, los efectos nocivos del contrabando en el desarrollo económico del país no dejan de aumentar. El volumen del contrabando asciende a unos 209.000-311.000 millones de grivnas. El artículo pretende determinar los principales factores determinantes del contrabando para elaborar medidas adaptadas a las necesidades del desarrollo social ucraniano. En el artículo hemos utilizado diversos métodos de conocimiento científico, que nos han permitido enriquecer nuestra investigación para hacerla más significativa. El análisis de las estadísticas oficiales, los ejemplos de la práctica policial y la investigación sociológica y jurídica nos permitieron identificar las principales causas del contrabando en Ucrania. Los autores concluyen que, sobre la base de los determinantes seleccionados del contrabando en Ucrania, es esencial dar prioridad a la aplicación de medidas preventivas, es decir, impedir las condiciones de su comisión y también la reanudación de la responsabilidad penal por el contrabando comercial de mercancías. Además, se impone la necesidad de diseñar más y mejores políticas públicas para minimizar las condiciones que posibilitan la acción de los agentes contrabandistas.

Palabras clave: determinantes del contrabando; determinantes de la corrupción; lucha con el contrabando; Servicio Estatal de Aduanas de Ucrania; Europa del este.

Introduction

Smuggling as a negative and modern phenomenon has become a challenge for many countries (Hossein and Mohammad, 2019). Smuggling has existed since ancient times. Its development is inextricably linked with the formation of statehood: establishing state borders, economic development, foreign and domestic trade, and the development of customs. On the territory of modern Ukraine, smuggling began to be recognised as an illegal act in the XIV-XVI centuries. With the advent of capitalism, at the time of the mass spread of commodity-money relations, the connection with which the available import and export of goods harmed the economy (Filippova, 2019).

Currently, the volume of shadow schemes in the economy of Ukraine is estimated at 550 to 1050 billion UAH, of which the amount of smuggling – is 209-311 billion UAH, budget losses per year – 63-93 billion UAH (The

state budget losses from shadow schemes are estimated at UAH 150-275 billion, 2019). Such volumes are enormous and cause numerous problems in Ukraine's economic development, political stability, and investment attractiveness. In addition, smuggling leads to the export of cultural property or strategic raw materials, a complete ban or restriction on the export of which is established by the state to stabilise the economic situation or for other purposes, such as improving the financial crisis (restrictions on the export of timber in Ukraine).

Therefore, the fight against smuggling is important (Reznik *et al.*, 2021). It is first essential to identify the main determinants of this phenomenon and develop effective countermeasures. Smuggling of goods reduces the mismanagement of state customs and taxes, causing mass seizure of currency, mass flight of capital, increase in unemployment, reduction of domestic industrial production, etc. (Miri and Ghasemi 2019).

The authors want to emphasise that the complexity of combating smuggling is due to the wide range of its items defined by Ukrainian law, such as commercial goods, excisable goods, timber or lumber, rare tree species, cultural values, poisonous, potent, explosives, radio materials, weapons or ammunition, parts of firearms, as well as unique technical means of covert information, drugs, psychotropic substances, their analogues and precursors (Criminal Code of Ukraine, 2021). Considering all these factors, the authors aimed to identify the main determinants of smuggling in general and offer adapted to the needs of Ukrainian social development, economic situation, the level of civil society and legal culture, and measures to combat key determinants of smuggling in Ukraine.

1. Methods

In the article, the authors used various methods of scientific knowledge, which allowed us to enrich our research to make it more meaningful. Such practices were chosen to consider the purpose and objectives of scientific research. The authors used a method of logical analysis to develop proposals for improving criminological measures to combat smuggling. A synthesis method unites the abstract aspects of an object and reflects it as a concrete whole.

The historical approach allowed the authors to understand the origin and historical essence of smuggling deeply. The method of hermetic analysis was used to transform the system of countermeasures for smuggling. The statistical method was used to analyse statistics on the facts of smuggling and the damage it caused. The generalisation method was used to identify the conclusions based on the study. In addition to these, other forms of scientific knowledge were used.

2. Results and Discussion

Analysis of official statistics, examples of law enforcement practice, and sociological and legal research allowed us to identify the leading causes of smuggling in Ukraine. Their study is essential for developing unique, narrow-profile measures to combat and eliminate smuggling. On each of the determinants, the authors offer special attention.

- **Corruption**

Corruption and smuggling are manifestations of internal aggression, two destructive phenomena designed to destroy economic gains and ensure the enrichment of particular groups. Especially disastrous is their arrangement of a single crime scheme. According to the official data of the Ministry of Finance of Ukraine, almost UAH 3 million of revenues to the state budget of Ukraine were lost in the first six months of 2021 due to the existence of corrupt smuggling schemes (Ukraine lost up to UAH 3 billion a month due to corruption at customs, 2021). The authors want to note that the permanent renewal of the management of the State Customs Service of Ukraine, unfortunately, is associated with the failure to eradicate corruption in this structure. Employees of this body of state power are often members and sometimes founders of organised criminal groups and criminal organisations.

To eliminate these factors, the State Customs Service has created a particular unit - the Department for Prevention and Combating Corruption. The primary purpose is to implement anti-corruption measures within this public authority. For example, from January-May 2021, this department, within the competence defined by anti-corruption legislation and regulations of the department, considered the involvement of territorial units for the prevention and detection of corruption 21 reports of possible corruption by officials of the State Customs Service and its territorial bodies, one of which – introduction by the whistleblower.

The Department for Prevention and Counteraction of Corruption of the State Customs Service systematically checks the possible presence of potential or actual conflicts of interest and relatives working in the State Customs Service and its territorial bodies. After conducting electronic public consultations to study public opinion on April 22, 2021, a general discussion of the Anti-Corruption Program of the State Customs Service for 2021-2022 took place. The meeting with the public took place in the format of a web conference chaired by the Deputy Head of the State Customs Service with representatives of the Working Group on the EU4PFM project, NGO “Association of Taxpayers of Ukraine (Prevention and anti-corruption, 2021).

An analysis of the official statistics of the Office of the Attorney General clearly shows the high-profile monthly revelations of corrupt customs officers who are subsequently punished. However, severe punishment is not a panacea. Measures to prevent corruption and develop a mandatory methodology for professional selection of the State Border Guard Service employees and the State Customs Service should become more effective.

In the authors' opinion, it is essential to introduce mandatory testing for the level of legal and anti-corruption culture (1), an interview with a psychologist who will help determine a person's propensity to commit corruption offences (2); verification of applicants for a polygraph (3). Comprehensive application of these measures will limit the access of "potential corrupt officials" to the service in border areas and reduce corruption schemes.

- **Temporarily occupied territories**

The peculiarity of smuggling on the territory of Ukraine is the presence in our state of territories not controlled by the central government. The temporarily occupied territories are subject to a special legal regime for crossing the borders of the temporarily occupied territories, making transactions, holding elections and referendums, and exercising other human and civil rights and freedoms. First of all, the authors propose to analyse smuggling from occupied Crimea. In the seven years since Russia's annexation of Crimea, the peninsula's economy has gone from a free economic zone in the occupied territories to a blockade and from blocking to a ban on the supply of goods, which, however, does not rule out Ukrainian interests, especially food, in Crimean shops.

The authors would like to note that per the resolution of the Cabinet of Ministers of Ukraine № 1035 of December 16, 2015, "On restricting the supply of certain goods (works, services) from the temporarily occupied territory to another territory of Ukraine and/or from another part of Ukraine to the temporarily occupied territory "is prohibited for the period of temporary occupation of the supply of goods (works, services) under all customs regimes from the temporarily occupied territory to another territory of Ukraine and from another part of Ukraine to the temporarily occupied territory, except personal belongings of citizens moving in hand luggage and accompanied baggage; socially significant foodstuffs driven by citizens, the total invoice value of which does not exceed the equivalent of 10,000 hryvnias and the total weight of which does not exceed 50 kilograms per person.

These restrictions apply when a person who imports goods into the temporarily occupied territory of Ukraine (On the restriction of supplies of certain goods (works, services) from the temporarily occupied territory

to another part of Ukraine and from another territory of Ukraine to the temporarily occupied territory, 2015). The border between occupied Crimea and mainland Ukraine is now demarcated, so there are no conflicts with illegal smugglers across the customs border. The situation with the temporarily occupied territories of Donbas is a bit more complicated. After all, according to the essence of smuggling, it is an illegal act to move certain items outside the customs border or conceal them from the customs border.

The customs border is the border of the customs territory of Ukraine (Customs Code of Ukraine, 2021). The customs border coincides with the state border of Ukraine. Of course, those currently occupied territories are de jure considered by Ukraine to be their territory, but de facto, they are not such at the moment. Various researchers propose establishing a border between the controlled and uncontrolled territories of Donbas in the form of a demarcation line or customs border, etc., with the appropriate regimes (as was the customs delimitation of the Crimea based on the relevant Law of Ukraine (Babikov, 2019).

The partial loss of state control over the country's customs border has restored old smuggling schemes and led to the emergence of new ones, opening vast opportunities for drug trafficking, counterfeit intervention, and uncontrolled movement of cash, which are often used to finance terrorism and undermine economic and socio-political the foundations of society. According to a Transparency International report, the goods enter the occupied territories of Donetsk and Luhansk oblasts through four illegal routes. The first is the movement of goods through checkpoints on highways through agreements with employees, through humanitarian and logistics centres for retail trade, where wholesale work with self-proclaimed republics is carried out.

The second illegal route is through the entry-exit checkpoint on the railway and agreements with employees and outside specific road corridors. In this case, arrangements are made with military or law enforcement officials to move goods to the occupied territories by bypassing official checkpoints.

Another way of illegal transportation of goods - "interrupted transit" – is the movement of goods to the self-proclaimed republics through the territory of Russia. "The carrier is allowed to move goods in transit to a third country, such as Kazakhstan or Georgia, but in Russia, the truck changes course and arrives in the temporarily occupied territories. According to the organisation, there is also a fourth way - the sea.

The study found that in some cases, some Ukrainian servicemen collaborated with militants on illegal trade. There were also situations when conflicts arose, including weapons, between units that separately facilitated the unlawful movement of goods to the temporarily occupied

territories. There are cases when both servicemen promote illegal trade and those who oppose it serve in one unit. The primary motivation to facilitate the illicit movement of goods is its high profitability (5 ways of smuggling to the occupied Donbass, 2021).

Counteraction to the so-called smuggling on the line of contact should be strengthened through organisational, preventive, control, and technical measures. In particular, it is appropriate to carry out individual preventative work with residents of the temporarily occupied territories to increase the qualification requirements for law enforcement officers and service members serving on the border with Crimea and the Joint Forces Operation area. In addition, the material and technical base require improvement.

- **No criminal liability for smuggling commercial goods**

Geographically, Ukraine is located in the centre of Europe, on the border with the European Union, and therefore is attractive for smuggling. According to which the number of cases of smuggling of goods, including excisable interests, is growing every year; this is confirmed by official statistics. Smuggling is the exemption of imported goods from any taxes and duties on the territory of Ukraine. The importer, having received a VAT refund on average at 20% when exporting products from the country of origin and paying about 5% as transaction costs for illegal delivery of products to Ukraine, automatically acquire an undue competitive advantage over domestic producers.

Thus, even in the shadows, Ukrainian business is still inferior to smuggled imports. Do ordinary citizens lose out? By buying contraband goods and receiving short-term benefits, domestic consumers launch a multiplier to reduce domestic demand and curtail production. As a result, companies are starting to cut staff and payrolls. Accordingly, the actual payer for smuggling schemes, in the end, are ordinary citizens (Analysis of smuggling volumes in Ukraine: scale, direct/indirect losses of the budget and the economy, 2021).

At the same time, despite the lack of social conditioning in 2011, there was an artificial narrowing of the subject of smuggling, so now it is only cultural values, deadly, potent explosives, radioactive materials, weapons, or ammunition (except smooth-bore hunting weapons or ammunition, it) parts of firearms, as well as unique technical means of secret information; timber or lumber of valuable and rare tree species, unprocessed wood, as well as other timber prohibited for export outside the customs territory of Ukraine and narcotic drugs, psychotropic substances, their analogues or precursors or falsified medicines. So the issue of application of legal liability for movement through the customs border of goods in violation of the current customs legislation has acquired a particular relevance in Ukraine (Pidgorodynskyi *et al.*, 2021).

However, first, to counter the smuggling of large quantities of goods, including excisable; second, filling the state budget by paying customs duties and applying fines (as criminal penalties), as well as special confiscation to the state revenue of all goods moved outside the customs border or with concealment from the customs border, criminalisation of smuggling of goods is necessary and urgent.

That is why today, scientists and practitioners need cooperation to develop an effective model of legal liability for smuggling goods, notably by expanding its boundaries and updating the content of the articles providing for the penalty for smuggling various items.

- **Problems in the coordination of international cooperation**

Given the cross-border nature of smuggling, controlling its level is the responsibility of a particular country and part of synergistic governance worldwide (Sui *et al*., 2018). Ukraine's orientation towards integration into the international community in general and the European Union, in particular, implies the obligation of the international community to ensure compliance of the national legal system with the standards of the European community, including the creation of effective mechanisms to combat smuggling (Nastyuk *et al.,* 2020). To this end, Ukraine became a member of the World Customs Organization (the name is unofficial and has been used since 1994).

It has 172 member states, sometimes referred to as the United Nations Customs Organization. This organisation proclaims an open, transparent, and predictable customs environment, resulting from which the national economy should develop and the social welfare of the organisation's member countries should increase.

Of course, a robust national economy will be attractive to other countries, contributing to the prosperity of international trade and, simultaneously, making it possible to combat criminal activity effectively. Since its inception, the World Customs Organization, Ukraine has become a party to the following international customs conventions developed by the World Customs Organization: Customs Convention on the International Carriage of Goods under Cover of an International Road Transport Book; International Convention on Mutual Administrative Assistance in Preventing, Investigating and Ending Violations of Customs Law; International Convention on the Harmonization of Frontier Controls of Goods, October 21, 1982 (Geneva Convention); International Convention on the Harmonized Commodity Description and Coding System of 14 June 1983, as amended by the Protocol of 24 June 1986 (HS Convention); Convention on Temporary Admission of 26 June 1990 (Istanbul Convention); International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention, June 26, 1999).

The Customs Service of Ukraine is constantly expanding the legal framework of international cooperation on customs issues. In October 2006, Ukraine acceded to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), the General Annex and Special Annexes A, B, C, D, E, F, G, H, J, and K to that, as amended by June 26, 1999, approved by the Protocol amending the International Convention on the Simplification and Harmonization of Customs Procedures. Ukraine's accession to the Convention was to establish common standards and approaches to regulating identical legal relations.

Regarding Ukraine's cooperation with the World Customs Organization, it can be said that Ukraine's accession to this organisation and the conventions developed by it and the proposed Security Framework Standards will simplify customs procedures, promoting international trade, information technology, and legal and technical bases. Effective customs control (Kredisov *et al.*, 2009). According to the Memorandum of Understanding between the State Customs Service of Ukraine and the World Customs Organization on the establishment of the Regional Training Center of the World Customs Organization in Ukraine, in June 2010, such a centre was established in Dnipro, and in 2016 the Regional Training Center of the World Customs Organization was relocated.

To the city of Khmelnytsky. This centre aims to train and train representatives of customs administrations of the European region of the World Customs Organization and conduct seminars and training on customs issues. The main tasks of this centre are to strengthen cooperation between customs administrations and the World Customs Organization (1), develop of efficiency and effectiveness of customs authorities, preparation and publication of scientific and educational journals on customs issues (2), provide training, technical assistance on uniform application of fundamental customs conventions, recommendations, and standards of the World Customs Organization (3). In addition, the Regional Cynological Training Center of the World Customs Organization operates in Ukraine. It is a body for training service dogs for the needs of the customs authorities of the member countries of the World Customs Organization.

As part of the operation of the Regional Cynological Training Center of the World Customs Organization, developed and approved programs for training cynologists with service dogs of foreign customs authorities to search for drugs, psychotropic substances, weapons, ammunition, tobacco products, banknotes; explosives for law enforcement (World Customs Organization, 2021).

Despite such positive steps in the context of international cooperation, unfortunately, one of the critical reasons for smuggling in Ukraine is the lack of coordination and lack of coordination between the State Customs Service and the State Border Guard Service of Ukraine and relevant bodies

of neighbouring countries on mutual exchange of information (Busol, 2019). To overcome this negative factor, it is essential to create a single database of customs authorities, at least in the framework of cooperation of neighbouring countries, and further expand it to the borders of the European region. Such a measure would significantly reduce the movement of goods outside customs control or concealment from customs control.

- **A significant difference in the cost of goods in neighbouring countries**

Assessing the current state of the shadow economy of Ukraine, we can confidently confirm that it poses a real threat to the country's national security and democratic development. According to various estimates, the shadow turnover in Ukraine is 20-60% of the GDP (Kulish *et al.*, 2018). The economic well-being of any people, nation, or state is associated primarily with developing its national production and commodity market. Conquest of the market by another country, as a rule, threatened the existence of independence and statehood of this country.

Therefore, states sought to protect their production by restricting importing goods from other states and increasing the export of goods of their output. For this purpose, tariffs and taxes on moving goods were set. In addition to protecting its production, the goal was to obtain income for its development and reimburse the price difference between imported and exported goods (Turchin, 2010). Avoid unsubstantiated statements; the authors give a real example. First of all, due to their consumer properties as a commodity, tobacco products are traditionally in very high demand worldwide and have stable sales. This provides appropriate profits to their producers and sellers. At the same time, the steady sales of tobacco products have made them a reliable object of taxation worldwide.

Moreover, the level of taxation of tobacco products relative to the cost of their production, as a rule, is relatively high compared to other taxable goods in the relevant national economy. However, since the levels of income and taxation of tobacco products and economic policy, in general, vary from state to state, the retail prices of tobacco products vary depending on the national market (Kulitsky, 2021). Thus, in almost every country, in parallel with the legal demand for tobacco products, there is an illegal market for them. The sum of these two markets determines the total supply of tobacco. Smuggled cigarettes are sold at a price lower than what can be afforded by traders selling cigarettes for which all taxes have been paid.

This, in particular, increases their consumption. The problem is exacerbated by significant tax disparities between neighbouring countries, where widespread corruption and smuggling are tolerated. Large-scale tobacco smuggling relies on criminal organisations, relatively complex

distribution systems for smuggled cigarettes in the destination country, and shortcomings in controlling international cigarette trafficking.

To improve the quality of counteraction to the illegal movement of tobacco products across the customs border of Ukraine, the immediate attention of customs authorities should be paid to the detection of foreign illicit trade transactions with tobacco products using fictitious enterprises and measures to counter such transactions (1); control over export-import operations with tobacco products carried out by residents and non-residents (2); application of covert control measures during the movement of tobacco products across the customs border of Ukraine (3); comparing the statistical data of the State Customs Service of Ukraine with the data of the customs service of the country of location of the sender (recipient) of goods on the origin, quantity, value of tobacco products exported from Ukraine and imported into it (4); to establish effective interaction of customs authorities with law enforcement agencies (5) (Lipinsky, 2014).

- **The imperfection of the technological arrangement of the state border**

In the dynamic development of modern society, ensuring security and control of the state border is a simultaneous goal of the country's internal and external security. Therefore, it is vital to identify and develop tools and ways to address new challenges (Kublickis, 2020). An essential tool for such counteraction is the involvement of modern technologies. After all, today, the development of control technologies is becoming one of the priorities of the relevant bodies.

It is of interest as a system of measures aimed at customs control after registering enterprises' goods, especially in the conditions of a large-scale shadow sector of the economy of Ukraine (V. Yevimov et al., 2018). It is technology, not politics, one of the essential systems in charge of protecting borders and countering the influx of illicit drugs and smuggling (Military+Aerospace Electronics, 2018).

Engineering support of the state border is inextricably linked with a set of organisational and practical measures taken to create the necessary conditions for the timely detection of violators of the state border, effective service of border guards and their use of weapons and equipment, covert advancement, implementation of the State border service of the necessary manoeuvre by forces and means, increase of protection of divisions in case of complication of a social and military-political situation (On the State Border Guard Service of Ukraine, 2003).

In the authors' opinion, the urgent issues of legal regulation at the level of bylaws are the definition of an exhaustive list of entities, the organisation of their activities, resource provision for engineering and technical

arrangement of the state border; the procedure for granting state border protection bodies permanent use of land plots along the state borderline. Currently, there are no program documents that would define the system of measures for engineering and technical arrangement of the state border and allow the State Border Guard Service of Ukraine to build and maintain engineering structures, fences, border signs, and border clearings communications, other border infrastructure.

These questions determined the relevance of the chosen topic. According to Nikiforenko V., the most appropriate approach is that, with adequate funding, allows: to introduce methods of sectoral assessment of the impact of legal regulation of integrated border management (1) (V. Nikiforenko, 2020b), to increase the effectiveness of measures to implement the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring Engineering and Technical Arrangement and Maintenance of the State Border" (2); to improve the arrangement of engineering infrastructure along the state border of Ukraine by consolidating the efforts of the subjects of integrated border management (3); to take high-quality measures to strengthen the banks of transboundary rivers, which will protect them from erosion and reformatting and, as a consequence, from the loss of territories of Ukraine by involving more competent personnel of the relevant executive authorities (4); to create additional motivating factors due to the competition within the competence of the subjects of integrated border management on the engineering and technical arrangement of the state border (5).

To implement these measures, it is advisable to develop the concept of the State target law enforcement program for the arrangement of the state border for the construction of engineering and technology and fortifications, fences, border signs, border clearings, communications of the State Border Service (Nikiforenko, 2020a).

- **Imperfect control over international postal services**

Global trends show that the volume of international postal traffic is constantly growing, which creates a violation of fair competition, even in developed countries. In particular, the latest OECD report devoted dozens of pages to the significant negative impact on countries' economies from tax-free goods imported through small mail. That is why developed countries are introducing stricter requirements for postal imports; in particular, Europe currently has a significant restriction on the tax-free value of international parcels. The EU plans to eliminate the minimum tax threshold in the next few years. All lots will be taxed from zero euros.

In Ukraine, more and more of our compatriots use foreign online stores, allowing buying a wide range of goods. This way, 42 million international

postal and express items worth about 1 billion euros are imported to Ukraine annually. And this is good for the development of competition: the consumer gets more choices and often at a lower price than in Ukrainian stores. Of course, buying something in China, we still have to pay for its delivery, which will cost a few euros, but the volume of orders in such stores from Ukraine is so large that it allows Chinese companies to save on books significantly reduce the delivery price.

However, the norm on duty-free import of goods into the territory of Ukraine through postal items has interested not only ordinary citizens. Several multibillion-dollar online stores have repeatedly been the subject of journalistic investigations into the use of “postal import” schemes. All that needs to be done is to break up a commercial party and register it as a fictitious recipient in Ukraine and across the border legally. And this scheme is actively spreading because today, there is no mechanism for identifying the recipient and almost no control over the customs value of goods imported into Ukraine in the form of parcels.

In addition, the standard on the marginal cost of lots of 150 euros is subjective, and the only mechanism to control whether the maximum limit of tax-free imports is exceeded is the vigilance and honesty of the customs officer.

At first glance, this scheme will benefit an ordinary citizen, who seems to buy goods cheaper, but in reality, he is the primary victim of this scheme. First, the goods are sold almost at the price of imported goods with payment of all taxes, and the difference usually does not exceed 3-5%. Secondly, there are severe problems with obtaining warranty repairs or refunds for substandard goods; thirdly, the possibility of duty-free and uncontrolled sales kills fair competition and hints of domestic production within the country.

Neither foreign nor domestic investors will develop business in a country where their products will be uncompetitive and their activities unprofitable. As a result, hundreds of thousands of Ukrainians do not receive decent wages, do not have jobs, and are forced to seek work in other countries or engage in the same smuggling.

The Ministry of Finance sees this problem, but some deputies of the tax committee oppose more from the standpoint of budget losses, even those legislative initiatives that are put forward.

In particular, from the beginning of this year, a mechanism of restrictions on the number of parcels received by one recipient per month without paying taxes, namely up to three boxes per month, was to work, which completely covered the needs of the vast majority of Ukrainians. This was aimed not so much at filling the budget as stopping “postal smuggling.” For a few years, this would make it possible to reduce shadow schemes through

this channel significantly. After studying the EU's experience with a new integrated model for moving goods across the border, such as the EU's One-Stop Shop system, introduced by Europeans in 2021 - perhaps it would be considered to introduce a similar model in Ukraine.

Developing and implementing an accounting system for parcels and their recipients was necessary to implement this form of control, but this work has not been done. As a result, a few months before introducing new rules for importing goods into Ukraine in the form of postal parcels, postal operators began to sound the alarm: "the lack of registration of parcels following the law can lead to collapse" and refused to implement it.

To simulate the fight against smuggling, the Parliament adopted a norm of reducing the tax threshold from 150 to 100 euros, which does not solve this problem ("Postal smuggling": cheap imports or European wages, 2019).

- **Limited powers of the state customs service**

In Ukraine, counteraction, prevention, regulation, and control over a particular area are often scattered among various state institutions. Unfortunately, this situation does not cause the eradication or at least reduce the manifestations of negative phenomena, including smuggling, but vice versa. Thus, state institutions are simply trying to compete for spheres of influence and their own, sometimes corrupt interests, according to Kulish *et al*., (2020), the current situation is primarily due to the lack of authority in the State Customs Service to investigate the smuggling of commercial goods.

After all, according to the Regulations of the State Customs Service of Ukraine, the powers of this service include only the organisation and conduct following the law of operational and investigative activities and control over its implementation by functional units of the State Customs Service and its territorial bodies fighting to smuggle; interaction within the powers defined by the law with other bodies carrying out the such activity; taking measures to compensate the state for damages within the powers prescribed by statute.

The authors believe that the effectiveness of combating smuggling directly depends on the need to expand its capabilities and its total concentration in this public authority. Such "concentration" will determine efficiency and controllability. In addition, proper coordination within and between government agencies is necessary to achieve high anti-smuggling productivity (Basu, 2014).

- **Unemployment and low wages of residents of the border areas**

Undoubtedly, the analysis of the determinants of smuggling in Ukraine clearly shows that they are objective due to external factors and causes. However, there is a solid subjective reason for them. The economic crisis and corruption in Ukraine cause a situation where exercising one's constitutional right to legitimate business activity is almost unrealistic and unprofitable. That is why many entrepreneurs and businesses operate in the shadows.

In addition, urbanisation is complicated by urbanisation, with young people moving to large cities and rural areas, where most border crossings are located, in decline. It is difficult for people and sometimes impossible to find a job. Even the emergence of large agricultural enterprises or farms requires knowledge of the latest processes and technologies. And the inhabitants of rural areas, predominantly middle-aged and older people, do not have such knowledge.

To overcome such negative processes, it is advisable to implement such measures. First, to improve the legal and organizational and economic support of the labor migration regulation system and increase employment in the domestic markets of border areas, especially in the western regions by: creating specialized employment agencies in border areas to ensure jobs and cooperation of Ukrainian and European employers in the field of work and staffing:

1. development and adoption of state and regional programs for the return and reintegration of domestic labor migrants, the main direction of which should be to promote entrepreneurship and create new jobs in the border areas of Ukraine;
2. strengthening legal protection and providing social guarantees, providing assistance in protecting labor disputes with foreign employers to domestic labor migrants during their stay abroad (subject to repatriation), opening consulative centers on the basis of diplomatic missions, cooperation with centers Ukrainian diasporas;
3. development of an action plan for the implementation of migration policy with an emphasis on the opportunities and benefits of employment in the border areas of Ukraine;
4. introduce the practice of providing special state subsidies for wages to employed young people, the unemployed or persons of pre-retirement age in the amount of 50% of the employer's expenses for these purposes for 3-6 months, which can be provided directly to citizens for vocational training and self-employment;

5. It is appropriate to implement the European experience of job quotas for non-competitive categories of workers by developing a joint action plan for allocating quotas for employment of their citizens in border areas within the framework of cross-border cooperation programs and projects;
6. Secondly, to diversify the economy of rural areas to ensure productive employment, increase labour efficiency and income, self-employment and streamline “shuttle” trade-in border areas. It can be achieved by: promoting the development of small and medium-sized businesses in the non-agricultural sector as the main direction of diversification of the rural economy) (On improving the efficiency of labour market regulation in the border areas of the western regions of Ukraine, 2021).

Conclusions

Summarising the above, we emphasise that the key to counteracting any negative phenomena is to determine the causes of these phenomena accurately. Despite the transnational nature of such an illegal act as smuggling, its reasons and conditions may vary. Undoubtedly, there are universal, but at the same time, some of the determinants are due to the specifics of historical development, economic situation, level of legal awareness, and legal culture of the population. In addition, the existence of a political field to combat smuggling is essential.

Analysis of official statistics, examples of law enforcement practice, and sociological and legal research allowed us to identify the leading causes of smuggling in Ukraine. In our opinion, they are corruption in the activities of bodies to protect the state border of Ukraine, the presence of temporarily occupied territories, lack of criminal liability for smuggling of commercial goods, problems in coordinating international cooperation, significant differences in the cost of goods in neighbouring countries, arrangement of the state border, imperfect control over international postal traffic, limited powers of the State Customs Service, unemployment, and low wages of residents of border areas.

Based on the selected determinants of smuggling in Ukraine, we consider it essential to apply not universal measures to combat smuggling but specialised, which would take into account the essence of each determinant. In addition, it is necessary to prioritise the application of preventive measures, i.e., to prevent the conditions of its commission. At the same time, the resumption of criminal liability for commercial smuggling goods should be an essential measure.

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Criminal liability for the establishment or spread of criminal influence in post-Soviet countries (literature review 2011-2021)

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Abstract

The purpose of this study was to review the literature on the types of criminal liability for the establishment or spread of criminal influence in the countries of the post-Soviet space. Achievement of the set goal implied the resolution of the following task: the analysis of legal acts in the sphere of criminal justice. The specific subject was the social norms regulated by law, which are formed in the sphere of criminal justice in the fight against criminal action. Theoretical ideas about the activities of criminal justice bodies are also reviewed. The methodological basis of the research consists in the combination of general and special research methods. The theoretical basis was the scientific works of researchers on the issue of criminal liability. It is concluded that, in the reviewed literature, on the one hand, post-Soviet countries faced with the problem of combating organized crime and forced to take immediate measures to combat it; on the other hand, the methods and mechanisms to prevent, counter and combat organized crime, were

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relatively similar, focused mainly on preventive measures to the emergence of this phenomenon.

Keywords: post-Soviet space; criminal influence; criminal liability; scientific literature review; criminal law in Eastern Europe.

La responsabilidad penal por el establecimiento o la propagación de la influencia criminal en los países postsoviéticos (revisión de la literatura 2011-2021)

Resumen

El propósito de este estudio fue revisar la literatura sobre los tipos de responsabilidad penal por el establecimiento o la propagación de la influencia criminal en los países del espacio postsoviético. La consecución del objetivo fijado implicó la resolución de la siguiente tarea: el análisis de los actos jurídicos en el ámbito de la justicia penal. El tema concreto fueron las normas sociales reguladas por la ley, que se forman en el ámbito de la justicia penal en la lucha contra la acción criminal. También se revisan las ideas teóricas sobre las actividades de los órganos de justicia penal. La base metodológica de la investigación consiste en la combinación de métodos de investigación generales y especiales. La base teórica fueron los trabajos científicos de los investigadores sobre la cuestión de la responsabilidad penal. Se concluye que, en la literatura revisada, por un lado, los países postsoviéticos que se enfrentan al problema de la lucha contra la delincuencia organizada y se ven obligados a tomar medidas inmediatas para combatirla; por el otro, los métodos y mecanismos para prevenir, contrarrestar y combatir la delincuencia organizada, fueron relativamente similar, se centraron principalmente en las medidas preventivas a la aparición de este fenómeno.

Palabras clave: espacio postsoviético; influencia criminal; responsabilidad penal; revisan de literatura científica; derecho penal en Europa del este.

Introduction

The establishment or spread of criminal influence is an extremely negative phenomenon in the life of any society, but it should be noted that this phenomenon is typical for post-Soviet countries and atypical for European countries that have established democratic traditions, effective

legislation in the field of criminal justice, as well as the developed mechanism of counteraction, fight, and prevention of organized crime.

In contrast to the countries of the European community, the countries that were part of the Soviet Union, after the termination of its existence, went through a long process of formation of their statehood and the formation of their nation, accompanied by crises in the political, social and economic life of their societies. The processes of development of statehood in post-Soviet countries and these crisis phenomena entail an increase in the level of organized crime.

The unlawful act of criminal liability for occupying the highest position in the criminal hierarchy was the result of the development of two trends in the criminal legislation of post-Soviet countries. The first trend is related to the legislator's desire to respond with a criminal reprisal to the challenges of organized criminal activity. The second trend can be traced in connection with the expansion by the legislator of the criminal-legal meaning of public danger of the person who committed a crime, or other socially dangerous act or offense.

The desire of legislators of post-Soviet countries to respond with criminal repression to the challenges of organized crime lies primarily in the long-term search for the most optimal model of criminalization of socially dangerous activities of leaders of the criminal environment, aimed at its cohesion to commit unlawful acts.

The result of this search in the countries of the post-Soviet space was the enshrinement in the criminal codes or special laws of these countries of norms on criminal liability for the establishment or dissemination of criminal influence.

1. Theoretical Framework or Literature Review

The effective fight against organized crime and the spread of criminal influence in Ukraine and other post-Soviet countries is possible only in conditions of effective functioning of the entire criminal justice system, not excluded from this list and the police. In recent decades in our country, there is a reform of their activities and functional load, as noted in his scientific study R. Peacock, Ukraine has followed an aggressive "shock therapy" approach in this process since the beginning of 2015, after the February 2014 Maidan protests. and the subsequent change of government (Peacock and Cordner, 2016).

The scholar also draws attention to the fact that various factors of internal and external nature and political, economic, and social content, aimed at demonstrating loyalty to our country in the fight against organized

crime, primarily against corruption, as well as criminal influence and compliance with the rule of law in the administration of justice, guided its reforms towards the Georgian model of police shock reform (Peacock and Cordner, 2016).

Hrechyn and Burba (2019) explored the impact of corruption as one of the forms of organized crime that exists in the field of foreign economic activity, and also illustrates his own research with examples of illegal actions in this area (Hrechyn and Burba, 2019). The scientist, based on the results of the study of the indicated problems, concludes that organized crime in the foreign economic sphere significantly goes beyond the violation of the regime and procedures of customs service, evasion of customs and other payments, which directly threatens the functioning of all sectors of the economy of post-Soviet countries (Hrechyn and Burba, 2019).

It is also necessary to agree with the position of Tokubayev, who notes in his scientific research the importance of theoretical developments in the field of criminal justice for the implementation of practical solutions and mechanisms in the fight against organized crime in the world:

> One of the reasons of the circumstances existing in the field of combating organized crime is the insufficient scientific analysis of the problem, the lack of clear ideas about the strategy and ideology of the fight, as well as legal, criminological, forensic, and investigation concepts for identification, detection, investigation, and prevention of organized crime (Tokubayev, 2015: 32).

2. Methodology

The methodological basis of the study consisted of general and special legal methods. To achieve the goals and objectives of the study we used methods of induction, deduction, generalization, synthesis, to perform general analysis, highlighting common trends in the functioning and further development of such phenomenon of the criminal community as the establishment or spread of criminal influence in post-Soviet countries.

Also, the comparative legal method was used to study the provisions of normative legal acts of post-Soviet countries in the sphere of criminal justice on criminal liability for the establishment or distribution of criminal influence. The combination of methods of research allowed to achieve its goals and objectives.

3. Results

Analysis of the provisions of the criminal codes and special laws of Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, and Ukraine shows that they

criminalize the establishment or distribution of criminal influence. This unlawful act is especially socially dangerous and poses a threat not only to the economic but also to the political and social life of the society of a particular country.

The establishment or spread of criminal influence occurs on the verge of the decline of the existence of the Soviet Union and the moment of the termination of its existence, the independence of its constituent countries. The main reason for the emergence of this phenomenon of criminal association can be defined as economic, the consequences of the inefficient functioning of the planned economy of the Soviet Union, the limited material and financial resources in its constituent countries after its collapse.

The reason for the establishment or spread of criminal influence can be defined as the consequences of the unviable public administration of the state authorities in the Soviet Union, the widespread committing the crimes of bribery, financial fraud, and other mercenary crimes among their representatives associated with abuse of their official position.

Criminal liability for the establishment or spread of criminal influence in the post-Soviet countries is provided as a grave or especially grave crime, given the high level of public danger of this illegal act.

4. Discussion

"Widely accepted findings in developmental and life-course criminology cannot be extended to criminal careers of organized crime offenders" (Meneghini and Calderoni, 2022: N/P), however, with regard to "thieves in law", there is a tendency for them to maintain their status in the criminal community and to have a significant influence on participants in illegal activities. It is obvious that «organized crime influences important political and social processes in the state, interferes with the work of public authorities, which damages the efficiency of these bodies and reduces the level of trust in the state apparatus (Perelyhina and Dmytryshak, 2019).

The most common reason for the emergence and spread of criminal influence in Ukraine, as well as in most post-Soviet countries, can be defined as corruption, bribery, and other crimes committed by representatives of public authorities related to abuse of their official position. For example, "the criminalization of the foreign economic sphere is caused by a wide range of factors, among which the internal ones prevail, which are connected with the institutionalization of corruption in the state authorities and administration" (Hrechyn and Burba, 2019: 268).

It is the imperfection of public administration in the former Soviet Union, as well as "inadequacies of the Soviet system of central planning

led to the criminalization of the Soviet economy and the emergence of the thief's in-law as critical players" (Terzyan, 2019: 6).

Crisis phenomena in the economy, the aggravation of the political situation with regard to the domestic and foreign policy of the Soviet Union, the social conflicts occurring in the country inevitably led to the death of the Soviet empire. In turn, the collapse of the Soviet Union, loosening of border and immigration controls, and lack of cooperation between law enforcement agencies in the post-Soviet space all contributed to the development and growth of transnational criminal groups and the planning and execution of criminal activities involving more than one country (Orlova, 2021).

At the present stage, organized crime in the post-Soviet countries "covers six key areas: drug-related issues; human trafficking and prostitution; sports and crime; procurement and corruption; and enforcement and prevention" (Nelen and Siegel, 2021: N/P).

It is obvious that overcoming the consequences of the spread of organized crime and the spread of criminal influence that followed the collapse of the Soviet Union proved to be a difficult task for the countries that were part of it, as evidenced by the review of scientific literature. Each country dealt with the said problem in accordance with its own political, social, economic realities and established legal traditions.

As noted in his study A.M. Pasha, the Republic of Azerbaijan has carried out a number of effective reforms, in particular relating directly to the updating of national criminal legislation in accordance with international standards, which allowed effective fight even with such a widespread crime in the post-Soviet area as corruption. The scholar notes that:

> "In particular, the State program for fighting corruption for 2004-2006, the adoption of the new National strategy for increasing transparency and fighting corruption in 2007, and the action plan for 2007-2011 constitute important progress in the criminalization of corruption in that country" (Pasha, 2022: 603).

In addition to overcoming corruption, the fight against terrorism and money laundering, crimes that have become widespread at this stage as a result of their transnational nature, has proved effective (Pasha, 2022). Another important tool in the fight against organized crime and the spread of criminal influence in the Republic of Azerbaijan has been the extensive use of international cooperation mechanisms in the field of criminal justice and the conclusion of bilateral and multilateral agreements in this area with other countries (Pasha, 2022).

International cooperation in the field of criminal justice has proven to be an effective tool for combating organized crime, more rational use of resources and targeted identification and solution of priority tasks (Korniienko *et al.*, 2021).

As for combating organized crime in the Republic of Azerbaijan, the Criminal Code of Azerbaijan Republic stipulates criminal liability for the crimes committed in this way and also refers the crime itself to the grave and especially grave crimes (Article 34 of the Criminal Code of Azerbaijan Republic), also a special type of criminal liability for persons who organize criminal groups (Criminal Code of Azerbaijan Republic, 1999) is taken into account.

"After the collapse of the Soviet Union in 1991, Georgia quickly gained a reputation as a corruption-ridden country and a hotbed of racketeers" (Campana, 2015: n/p), which significantly complicated the economic and socio-political life of this country.

The situation became more complicated when "...out of Georgia by some of the most authoritative thieves made mutual monitoring harder, agency costs increased, and the network, therefore, got larger and took on factional characteristics" (Slade, 2013). In order to combat the rapid spread of criminal influence, the Georgian government enacted the Law on Criminal Activity and Racketeering, which provided for the criminal prosecution of perpetrators as well as confiscation of their property in favor of the state (Law of Georgia on Criminal Activity and Racketeering, 2005).

"The socio-economic changes since the collapse of the socialist system in the early 1990s contributed to the rise of organized crime and corruption in Kazakhstan" (Siegel and Turlubekova, 2019).

The Government of the Republic of Kazakhstan is actively combating the establishment and spread of criminal influence in the country, in particular, the Criminal Code of Kazakhstan stipulates that "the establishment or leadership of a criminal association, as well as the creation of an association of leaders or other participants of organized groups (criminal organizations) or coordination of criminal actions of independently operating organized groups (criminal organizations) to commit one or more crimes, shall be punished by imprisonment for a term of 12 to 15 years with confiscation of property" (Criminal Code of the Republic of Kazakhstan, 2014).

In addition, this Government has other measures to combat organized crime, "include development of a unified government strategy to combat organized crime, involvement of the whole society in the struggle against this crime, as well as the study and implementation of the international experience" (Tokubayev, 2015: 40).

"Organized crime groups in Kyrgyzstan have reached a level where they are competing with governmental authorities and institutions, leaders of OC groups can assign members of their groups into law enforcement positions and parliament" (Bakiev, 2021). The Government of the Kyrgyz Republic adopted the Law "On Combating Organized Crime," which, in particular, provides that "the leader of an organized group, criminal

community (criminal organization) and the gang is a person, who enjoys recognized authority in the criminal hierarchy and has the highest and personal position.

Influence on the coordination and organization of the activities of organized groups, criminal communities (criminal organizations) and gangs, ensuring the formation and structures of such groups or communities" (Law of the Kyrgyz Republic "On Combating Organized Crime", 2013). Consequently, the government of this country has also taken measures to combat the establishment and dissemination of criminal influence, as well as the criminal liability of persons found guilty of such unlawful acts in accordance with the law.

As evidenced by the literature review of 2011-2021, in most post-Soviet countries the criminal justice system was reformed, the existing legal acts in this area were amended or new legal acts were adopted when the existing ones did not meet the requirements of modern realities and could not be used effectively to combat organized crime and the spread of the criminal influence.

The Constitution of Ukraine defines basic human rights and freedoms, as well as the protection of human life and health from unlawful infringements (Constitution of Ukraine, 1998). Also the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Liability for Crimes Committed by Criminal Organizations" provides that unlawful acts of organization of a criminal group: "...committed by a person having criminal influence or who is a person in the status of a subject of increased criminal influence, including the status of a "thief in law" - shall be punished by imprisonment for a period from twelve to fifteen years with confiscation of property" (Law of Ukraine "On Amendments to the Law of Ukraine on Criminal Organizations".

However, despite the obvious positive changes that have taken place in Ukraine in recent decades in the sphere of combating the establishment and spread of criminal influence, many problems remain unresolved. In particular:

> ...including sustaining the reform political coalition, overcoming bureaucratic resistance to change, surviving the armed insurgency in eastern Ukraine, downsizing the old police, reshaping the culture of corruption that permeates the entire government and much of society, and convincing the citizenry that the new police are truly committed to serving the public, not regime protection" (Peacock and Cordner, 2016: 88).

"The world community recognizes that organized crime in the financial system has become a global threat to economic security that requires states to adopt measures agreed to combat this socially dangerous activity,

both nationally and internationally" (Holovkin and Marysyuk, 2019: 52). In addition, post-Soviet organized crime is extremely dangerous for the entire global community because of its own access to nuclear materials, as evidenced by the threat of nuclear weapons use against Ukraine in the context of armed aggression against it.

Conclusions

Based on our research, we can conclude that:

1. Post-Soviet countries were faced with the problem of combating organized crime and were obliged to take immediate measures to combat it.
2. Methods and mechanisms to prevent, counteract and combat organized crime in post-Soviet countries, was similar, focused primarily on preventive measures to the emergence of this phenomenon.
3. The countries of the former Soviet Union have criminalized in their respective national legislation the establishment or dissemination of criminal influence.
4. Criminal liability for the establishment or dissemination of criminal influence is provided for in the criminal codes or special laws of post-Soviet countries.
5. Criminal liability for the establishment or dissemination of criminal influence in post-Soviet countries is provided for as a grave or especially grave crime.

The above testifies to the relevance, importance, and timeliness of the chosen research topic.

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Parliamentary opposition and democratic transformation issues: Central and Eastern Europe in focus

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Abstract

The article presents a framework for comparing the policy-making rights of the parliamentary opposition in the parliamentary democracies of Central and Eastern Europe (Czech Republic, Hungary, Lithuania, Poland and Ukraine). The right of the parliamentary opposition to oppose the government formed by the ruling majority is a fundamental feature of liberal democracy. The application of constitutional values (democracy and rule of law) in Central and Eastern European states demonstrates the actual level of fragmentation, polarization and cartelization of the opposition. The Rule of Law Index 2021 explicitly shows that, among the Central and Eastern European countries surveyed, Lithuania ranks 18th, the Czech Republic 22nd, Poland 36th, Hungary 69th and Ukraine 74th. The Rule of Law Index refers to limitations of government powers, absence of corruption, open government and other issues related to the mission of the parliamentary opposition. It is concluded that, the distance (not only ideological) between the ruling majority and the parliamentary opposition is based on the ability to form government, participation in policy making, scrutiny of strategy and (populist) government policy.

Keywords: parliamentary opposition; government-opposition relations; parliament in Europe; public policy making; democratic transformation.

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Oposición parlamentaria y cuestiones de transformación democrática: Europa Central y oriental en el punto de mira

Resumen

El artículo presenta un marco para comparar los derechos en la elaboración de políticas de la oposición parlamentaria en las democracias parlamentarias de Europa Central y Oriental (Chequia, Hungría, Lituania, Polonia y Ucrania). El derecho de la oposición parlamentaria a oponerse al gobierno formado por la mayoría gobernante es una característica fundamental de la democracia liberal. La aplicación de los valores constitucionales (democracia y Estado de Derecho) en los Estados de Europa Central y Oriental demuestra el nivel real de fragmentación, polarización y cartelización de la oposición. El Índice del Estado de Derecho 2021 muestra explícitamente que, entre los países de Europa Central y Oriental investigados, Lituania ocupa el puesto 18, Chequia el 22, Polonia el 36, Hungría el 69 y Ucrania el 74. El índice del Estado de Derecho se refiere a las limitaciones de los poderes del gobierno, la ausencia de corrupción, el gobierno abierto y otras cuestiones relacionadas con la misión de la oposición parlamentaria. Se concluye que, la distancia (no sólo ideológica) entre la mayoría gobernante y la oposición parlamentaria se basa en la capacidad de formación de gobierno, la participación en la elaboración de políticas, el escrutinio de la estrategia y la política gubernamental (populista).

Palabras clave: oposición parlamentaria; relaciones gobierno-oposición; parlamento en Europa; elaboración de políticas públicas; transformación democrática.

Introduction

Democracy, a fundamental value internationally (on UN and European levels) and globally, is mentioned in many international agreements, but none provides an explicit definition. A similar situation relates to the opposition as minority groups in parliament. In this article, we try to focus merely on government-opposition relations. We support an argument that contemplative 'parliamentary rules that allow opposition parties (in parliament) to have a more significant impact on the policy-making process lead to increasing opposition fragmentation' (Maeda, 2013). Furthermore, opposition parties deprived of particular political influence usually tend to reduce such fragmentation.

One of the primary indicators of the level of development of democracy is the observance of the principles of pluralism and freedom, which usually

guarantee equal rights and opportunities for both the current government and the opposition (Michel and András, 2012).

It (political opposition) is formed by one or more political parties elected to the parliament but are not involved to form the government. They oppose the government (primarily ideologically) and take opposite measures (to its initiatives, plans, and strategies).

1. Literature review

Its primary mission is to question and scrutinize the work of the government (monitor and criticize government actions) and participate in policy-making (in or directly influencing on legislative production) (Louwerse and Otjes, 2018). The parliamentary opposition parties have two specific motivations to disclose and highlight differences within the governing coalition and intra-coalition tensions and unveil ongoing policy conflicts and ministerial drift within the governing coalition (Whitaker and Martin, 2021). Dahl identified six possible differences of the opposition: organizational cohesion (discipline, concentration), competitiveness, goals, site of the encounter, distinctiveness or identifiability, and strategy (Kersell and Dahl, 1966).

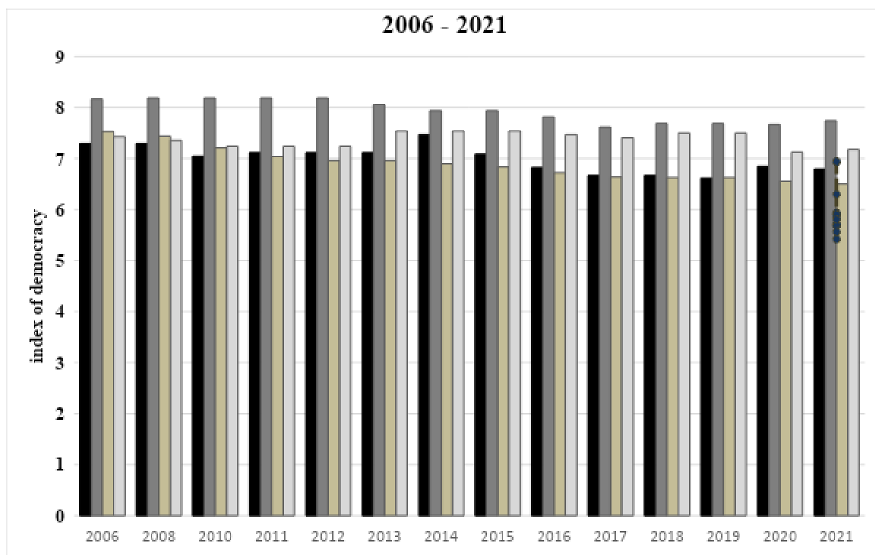
Every democratic state worldwide should respect values of pluralism and freedom and share responsibility, and it cannot exist without checks and balances amongst different state (public) institutions; loyal and constructive cooperation amongst all state bodies; guaranteeing political change and allowing efficient decision-making.

Every constitutional democracy should be full of freedom, pluralism, checks and balances, loyal cooperation and respect for institutions, solidarity towards the society, the possibility of alteration of power, and efficient decision-making. The opposition, which represents the interests of the minority in parliament, should be on an equal footing with the governing party, which represents the will of the majority. Each of them performs its inherent functions, and control over the activities of power is by definition an act of domination since control over power should be a pure manifestation of power.

Simultaneously, we should emphasize that there can be a change of roles. Those who represent the majority can become the opposition, and those who represent the minority - the state government. Such a situation usually implies specific rules of effective interaction between two elements of the power mechanism: tolerance for those who have gained broad powers and caution for those who have lost them. Such interaction is due primarily to pragmatic considerations, which include, at least, the potential variability of power.

The collapse of the communist system in Central and Eastern Europe in the late 1980s, which preceded the collapse of the Soviet Union in 1991, was a landmark event for everyone. This transformation was not instantaneous but resulted from a highly complex transition from authoritarianism to democracy. A classic example of successful transit we saw in Poland, Czechia, and Hungary, those Eastern and Central European countries where the formation of political institutions took place simultaneously with constitutional reform (Waldron-Moore, 1999: 32-62). Visible proofs of positive developments in these countries are the growth of the indexes of democracy, happiness, freedom, and the rule of law.

Figure 1. Index of democracy (2006-2021)



Source: own elaboration based on information provided by Economist Intelligence (2022).

We should consider EU Eastern enlargement 2004 when Czechia, Hungary, Lithuania, and Poland joined the EU; and political paradigm change after the Lisbon treaty came into force in 2009. The process of democratization is crisp and much more complicated in the newest sovereign states, which emerged due to the collapse of the USSR (except the Baltic countries). This occasion also applies to Ukraine since it has significantly lagged behind its western neighbors by declaring universal values and adherence to European standards of democratic development declared in the Constitution of Ukraine (1996).

However, recently even in those successful (completed) democracies, there occurred problems regarding transposing fundamental values of constitutionalism into ongoing politics. Finally, in 2021, Czechia decreased from full democracy in 2006 to 29 places (flawed democracy), Lithuania – 40, Poland – 51, Hungary – 56 stayed in a flawed democracy, and Ukraine also decreased from flawed democracy to 86 (hybrid regime).

Why? What is the possible background (and impact in the visible future) of such changes? What are the primary circumstances of such changes related to the state power and (political) opposition? Therefore, this article wants to answer these vital questions, quoting essential influencers in law and politics, and projecting the existing situation with parliamentary opposition in Central and Eastern European countries on Ukraine.

2. Materials and methods

Our main task is to make a comprehensive analysis of the parliamentary opposition, particularly its legal status and regulation of interrelations with the authorities (government) regarding the democratic transformation in Central and Eastern Europe and Ukraine, and search for practical recommendations to improve it.

We use general scientific research methods (like systematic and axiological analysis, synthesis, analogy, generalization, prognosis) to achieve the main objective, which considers pluralism and freedom as fundamental principles of a democratic society that ensure respect and tolerance between political opponents in parliament and outside. Apart from them, we use other specific methods (data-analyze, statistical, comparative) to emphasize that the parliamentary opposition is a group of MPs representing some part of citizens who disagree with the political course of the current government (because it pursues policies, and even strategies, that do not really align with voters' preferences).

Usually, there is one main precondition for becoming parliamentary opposition: losing confidence (no-confidence motions (NCMs) being in government (besause of bias and corruption, for example), therefore dissolution of parliament, and decreasing MPs cast in a newly elected parliament.

All these methods help depict the legal status of the opposition and legislative regulation of relations between the parliamentary minority and the majority in Central and Eastern Europe and Ukraine. The historical and legal approach allowed us to study specific features of the formation of the opposition in the period of democratic transit, regarding the values, legal tradition, and cultural ties of every country in concern.

The system analysis method allowed us to determine the political and legal phenomenon as constructive and destructive (populist) opposition. The final point is hidden in attempts to scrutinize the interaction of the parliamentary opposition and the ruling majority in the context of democratic transit in Central and Eastern Europe and Ukraine.

The article analyzes the constitutions, laws, and bylaws (regulations and statutes) of particular Central and Eastern European countries and Ukraine, directly (or indirectly) related to the legal regulation of the parliamentary majority and minority, draft legislation on the opposition. The sociological method is used to express the clear vision and mission of the government and opposition and their effective interrelations to show a level of democracy in particular countries (specific attention we paid to European Commission for Democracy Through Law (further - Venice Commission) reports regarding the rule of law). Among all the philosophical approaches we used in this article, the axiological method is considered the exact one to show researched dichotomy (government and opposition) as a vital necessity (especially now, in Spring 2022).

Venice Commission, in its Opinion on Draft law on the parliamentary opposition in Ukraine (2007), stated that activity of parliamentary opposition should be based on the following principles: 1) the state's recognition of the oppositional activity as a necessary condition for the functioning of a democratic state based on the rule of law and the parliamentary opposition – as an essential component of its political system; 2) the rule of law; 3) voluntary commencement or termination of the oppositional activity; 4) equality; 5) legality; 6) openness; 7) the state's guarantees of free and unimpeded activity of the parliamentary opposition.

3. Research and results

A precise analysis of the constitutional processes during at least the last twenty years in Central and Eastern European countries, from one side, and the republics of the former USSR, from the other, shows a negative trend of ousting the opposition from the political field after the election. The role and activity of political opposition in the parliament usually depend merely on: type of the electoral system of a particular country (majoritarian, proportionate, mixed), type of government (parliamentary, semi-presidential, or presidential), its structure (bicameral or unicameral), etc.

In Hungary, Poland, the Czech Republic, and Ukraine, the intensity of this process is some way different. Usually, it happens after the victory of one of the parties in the elections, when the winner 'takes all' ('Prawo i Sprawiedliwość' in Poland, 2015, 'Fidesz-Magyar Polgári Szövetség' in Hungary, 2010, "Sluha narodu (Servant of the people)" in Ukraine, 2019).

Figure 2. Governing parties (Poland, Hungary, Ukraine).

Country	Poland	Hungary	Ukraine
Country profiler	Parliamentary unitary republic		Semi-presidential unitary republic
Parliament	Bicameralism	Unicameralism	
Party parliamentary regime	Multi-party		
Party name	Prawo i Sprawiedliwość	Fidesz-Magyar Polgári Szövetség	Sluha narodu
Foundation year	2001	1988	2017
Governing/ in majority	2015 – till now	2010 – till now	2020 – till now
Coalition	2005–2007	1998–2002	-
In opposition	2007–2015	1990–1998; 2002–2010	-
Party profiler	- right-wing populist; - national-conservative		- centrist

Source: authors.

In these states is formed the parliamentary opposition, which has almost no voice in the political establishment (minimal participation in policy-making, no influence on election and appointment to public offices, etc.). The winning party (sole or in coalition with its allies or satellites) is trying to oust the opposition from the political process (particularly policy-making). As a result, laws are passing without proper consideration (and scrutiny) under the accelerated procedure.

The opposition is losing all possible influence regarding the appointment to key positions within parliament and other public institutions. The challenges (even danger) of such processes are apparent; it leads to the monopolization of power and the loss of instruments of political control over the majority's actions.

Another feature of transit democracies is the emergence of an unconstructive (populist) opposition, which blocks any cooperation with the pro-government majority. Populist parties show disagreement in almost all spheres of political life in the country (even in those where the partnership with the majority is possible in principle, reasonable and plausible). The consequence of such an unconstructive policy is a prolonged boycott of the parliament work activity with a senseless obstruction of any legislative initiatives and essential appointments to public offices. Such destructive behavior is inefficient, provokes chaos, and inability to make crucial decisions for society and the state.

It causes a real challenge to 'young' democracies in both cases. Therefore, developing an effective mechanism to prevent these negative manifestations is one of the government's main tasks and the opposition in these countries. Today there is no single standard and rules for building a democratic society where the parliamentary majority and the opposition would interact effectively, which would be reflected in international acts.

Not many international documents related to 'soft law' are associated with this issue. The Recommendations of the Venice Commission are primary documents in this sphere. The first one is contained in the Report "On the Role of the Opposition in a Democratic Parliament" (2010). And the second one is in the Report "On the relationship between the parliamentary majority and the position in democracy" (2019). The first, Report of Venice Commission (2010), did not really deal with the political opposition in the society in general, with the level of human rights and freedoms, or basic constitutional choices. It described the situation primarily when the opposition parties were in the minority.

Therefore, they need some level of protection to perform the basic legitimate opposition functions necessary to ensure effective and sustainable democracy in the particular country. In particular, the latter Report (2019) primarily concerns the interaction of the pro-government majority and the opposition in the parliaments of democratic transit countries, where the principles of pluralism and freedom are still quite fragile.

The Constitutions of Lithuania, Poland, the Czech Republic, and Ukraine enshrine only the principle of pluralism and freedom, as well as certain rights of deputies or their small groups to initiate essential decisions: to submit bills to parliament (Constitution of the Czech Republic, Article 41 (2): a draft law may be submitted by [...] groups of deputies), and also to amend them (Constitution of the Republic of Poland, Article 119 (2): the right to introduce amendments to a bill in the course of its consideration by the Sejm shall belong to [...] Deputies [...]), to make a submission to the Prime Minister or Minister of Interpellation (Constitution of the Republic of Lithuania, Article 61 (2): at a session of the Seimas, a group of not less than 1/5 [one-fifth] of the Members of the Seimas may direct an interpellation to the Prime Minister or a Minister), to establish temporary commissions of investigation (Constitution of Ukraine, Article 89(3): to investigate issues of public interest, the Verkhovna Rada of Ukraine establishes temporary investigatory commissions, if no less than one-third of the constitutional composition of the Verkhovna Rada of Ukraine has voted in favor thereof).

Another important issue concerns the right of the opposition during parliamentary debates. First, the parliamentary opposition must have enough time to criticize the bills proposed by the (governing) parliamentary majority. Suppose you give the authority to regulate the time for speeches at the discretion of the parliament's governing body or personally the speaker.

In that case, likely, the opposition will not get enough opportunities to influence the legislative process. The Venice Commission believes that legislation, particularly parliamentary rules, should lay down basic rules to prevent haste in the adoption of laws, such as intervals between readings and discussions in committees.

It primarily concerns the procedure for amending the constitution, which should be 'slow and gradual' to allow the opposition to resist the constitutional changes proposed by the governing majority. The procedure to amend the Constitution of Lithuania, Poland, the Czech Republic, and Ukraine is 'rigid' (regarding the relation between the rank of constitutional law and the rules for constitutional amendment) both in the number of successive stages of its implementation and in the number of legal entities, which allows the parliamentary opposition to control its course.

The intent to require a supermajority in parliament to amend the basic law (constitution) is, inter alia, aimed to provide a consensus in majority-opposition relations and a framework in which the political competition can take an orderly, peaceful and effective route. In case of simple majority necessary to amend the Constitution, its functioning might be put at risk since it becomes a perfect political instrument in the hands of the governing majority. In addition, the parliamentary minority may initiate amendments to the basic law proclaimed in the Constitution of Lithuania (Article 147(1)), the Constitution of Poland (Article 235), the Constitution of Ukraine (Article 154).

Regarding adopting ordinary laws, the parliamentary opposition should have enough time to discuss bills and make suggestions for their improvement. The Venice Commission recommends introducing more transparent rules for equal time distribution for debates between the parliamentary majority and the opposition. However, the regulations of Poland, Lithuania, and the Czech Republic do not provide such preconditions, and minority deputies take part in parliamentary debates on a general basis as ordinary members of parliament.

This issue is partially regulated by the Statute of the Lithuanian Parliament, which stipulates that the Speaker of the Seimas may change the order of speeches to provide more proportional representation in the debates of factions, committees, arguments for and against (Article 105(2)). Also, if the decision to stop the debate is opposed by the opposition and is supported by one-third of the members of the Seimas present at the meeting, they will continue (Article 108(7)).

It is also vital to allow the opposition to formulate an agenda, propose bills and amendments to them by a governing majority. Only in the Lithuanian Seimas, the parliamentary opposition has the right to determine the order of the evening sitting every third Thursday (Article 97(5)). Establishing a

fixed time for consideration of issues proposed by the minority is one of the main demands of opposition factions in transit countries where such a right has not been formally enshrined. As for the right of legislative initiative in policy-making and amendments to bills allows the parliamentary opposition to become an actual participant in the legislative process.

First, the opposition should have enough time for public consultations, which will allow it to influence the content of legislative initiatives in policy-making. Public consultations should be accompanied by (informal) public discussions in the media and civil society. If in Lithuania, Poland, and the Czech Republic, such a practice has become common, in Ukraine, it is only being introduced and is often formal. One of the last steps in this direction is to establish a scientific advisory council and attract highly qualified specialists in law to write law drafts, make expertise on draft laws, and prepare scientific opinions on law-making.

Second, the parliamentary opposition must have reasonable access to law-making (bills and accompanying documents). The agenda for consideration of the bill should be published; the necessary materials should be distributed in advance to the opposition and the public to prepare for the successful debate. Such a requirement should prevent the harmful practice of the cavalier legislative ('legislative rider') used by the pro-government majority to avoid checking its legislative proposal.

The internal rules of parliaments should ensure the clarity of the texts proposed for voting and the possibility for opposition deputies to read them in advance on the eve of the vote. Adoption texts cannot be changed after the vote (except for purely technical amendments that do not affect the bill's content). Failure to comply with these requirements is expected in the parliaments of 'young' democracies and harms the constitutional order.

4.Discussion

Third, the opposition must be allowed to amend the bills proposed by the majority without bias and hindrance. To this end, it is necessary to regulate the initiatives of pro-government factions to adopt bills under the accelerated procedure, particularly when it comes to regulating essential aspects of a political or legal nature. However, the parliament speaker should be able not to put to the vote amendments that were previously rejected or not relevant to the substance of the bill under consideration. It is necessary for the effectiveness of the legislative process. The opposition should not use its procedural rights in law-making for a long and meaningless blocking of parliament or other branches of government.

The destructive actions of the opposition or governing minority are another obstacle to the establishment of consolidated democratic regimes in Central and Eastern Europe and Ukraine: so-called 'parliamentary/legislative/amendment spam', defined as an abuse of parliamentary powers in law-making. For example, in Ukraine, in 2020, more than 16,000 amendments were submitted to the draft law 2571-d (the so-called 'Anti-Kolomoisky bank law', finally adopted by Ukrainian parliament on Mai 13, 2020). Imagine, one MP himself submitted 6,000 amendments (one-third of the total amount).

Afterward, possible ways to circumvent the amendment spam through Article 119 of the Rules of Procedure of the Verkhovna Rada of Ukraine. In such a situation, restricting some rights of the opposition might be a suitable solution. Still, it carries significant risks associated with a monopoly on power in the long perspective.

Conclusions

To conclude, we argue that the opposition (its official status, role, and place in the parliament and government) should be determined in the constitution of every democratic state, laws, and bylaws. Possession of strong parliamentary opposition but not just a hologram ensures scrutiny (even review) of planned governmental policy and strategy (probably populistic) regarding unemployment, taxes and social care issues, migration or environment protection, etc. Economic growth and food security are primary topics of interest for governing majority in the parliament to stay in government as long as possible (even so, those claims are too populistic).

The institutionalization of the parliamentary opposition is essential for several reasons for all 'democratic transit' countries. First, due to the lack of a constitutional tradition of relations between the parliamentary majority and the minority, the normative enshrinement of the latter's rights and guarantees of activity shapes its attitude as a crucial parliamentary institution, which is an effective alternative to the pro-government coalition. This approach emphasizes the value of the parliamentary opposition, which performs specific functions and is much more than just a personal cast of deputies being in the minority proportionally to the majority.

Secondly, legally enshrined and clearly defined rights and guarantees are a more effective tool for the functioning of the parliamentary opposition than exercising the powers of an ordinary parliamentary minority. It establishes the status of the opposition, endowed with equal powers as the governing coalition.

Finally, the legitimization of the parliamentary opposition in the constitution, for example, provides, on the one hand, legal guarantees within government-opposition relations to limit the political influence of the parliamentary (governing) majority on the minority. On the other hand, it imposes on the opposition right to be with the governing majority on equal footing; therefore, to be jointly legally responsible for the exercise of power. So, the existence of the effective parliamentary opposition able to scrutinize (populistic) policy of governing majority is a visible symbol of the salvation of state political order and parliament itself.

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The issue of the application to the European Court of Human Rights in the context of the Russian invasion of Ukraine

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Abstract

The aim of this study was to analyze the practical aspects involved in filing applications to the European Court of Human Rights in the context of armed aggression against Ukraine. The achievement of the objective also involves the resolution of the following tasks: the analysis of the works of scientists who studied various aspects of human rights protection; international legal acts, as well as the legislation of Ukraine; the determination of the problems that exist at the present stage in the mechanism of human rights protection at the international level, and; the determination of the level of its effectiveness and the possibility of its application in Ukraine in the conditions of a military conflict. Specifically, the subject of the study is the prospect of implementation of the mechanism of appeal of citizens to the European Court for the Protection of Human Rights. The methodological basis of the research consisted in the dialectical combination of general scientific and special legal methods. It is concluded that, in view of the new socio-economic and political realities emerging in the modern world, it is

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necessary to update the whole system of human rights protection at the international level.

Keywords: human rights; human rights protection mechanism; armed conflict; international legal responsibility; principles of international law.

La cuestión de la solicitud al Tribunal Europeo de Derechos Humanos en el contexto de la invasión rusa de Ucrania

Resumen

El objetivo de este estudio fue analizar los aspectos prácticos que implica la presentación de solicitudes ante el Tribunal Europeo de Derechos Humanos en el contexto de la agresión armada contra Ucrania. La consecución del objetivo involucra además la resolución de las siguientes tareas: el análisis de los trabajos de los científicos que estudiaron diversos aspectos de la protección de los derechos humanos; los actos jurídicos internacionales, así como la legislación de Ucrania; la determinación de los problemas que existen en la etapa actual en el mecanismo de protección de los derechos humanos a nivel internacional, y; la determinación del nivel de su eficacia y la posibilidad de aplicación en Ucrania en las condiciones de un conflicto militar. Concretamente, el tema del estudio es la perspectiva de la aplicación del mecanismo de recurso de los ciudadanos ante el Tribunal Europeo de Protección de los Derechos Humanos. La base metodológica de la investigación consistió en la combinación dialéctica de métodos científicos generales y jurídicos especiales. Se concluye que, en atención con las nuevas realidades socioeconómicas y políticas que surgen en el mundo moderno, es necesario actualizar todo el sistema de protección de los derechos humanos a nivel internacional.

Palabras clave: derechos humanos; mecanismo de protección de los derechos humanos; conflicto armado; responsabilidad jurídica internacional; principios del derecho internacional.

Introduction

At the present stage of the development of human civilization, the protection of human rights is not an exclusive internal competence

of a certain state, there are additionally international institutions and mechanisms controlling the fulfillment by the state of its international legal obligations in the circumscribed sphere. One of such institutions is the European Court of Human Rights, established in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, whose competence includes consideration of complaints of citizens against those participating States that violate the rights and freedoms outlined in the said Convention.

The relevance of this study is that there is a war in Ukraine, there are numerous violations of the rights of citizens of our state. The study focuses on the fact that under such conditions there are problems of fixation on both war crimes and human rights violations on the territories where active hostilities are taking place or are under temporary occupation.

1. Theoretical Framework or Literature Review

It is necessary to note the fact that the issue of appeal to the European Court of Human Rights is relevant not only for Ukraine, but it also attracts the attention of the world scientific community, primarily due to the importance of man as the main social value in any democratic. state governed by the rule of law, as well as the protection of his fundamental rights and freedoms.

For example, (Paparinskis, 2020) explores the responsibility of states for violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, compensation for material and moral damages caused by their wrongful acts, as a fundamental principle of international law (Paparinskis, 2020). Paparinskis (2020) also draws attention in his scholarly work to the fact that when a state's responsibility is exercised before international courts and tribunals, compensation damages the responsible state or its people (Paparinskis, 2020).

Halewood analyzes the scholarly work of St. Wallace and examines the relationship between military operations conducted by states during armed conflicts and human rights violations. The scholar also focuses on the recent developments in the European Court of Human Rights, which have expanded the application of the European Convention on Human Rights to protect the fundamental rights and freedoms of victims of military operations around the world.

Relevant for the analysis of the problems of human rights violations and their correlation with war crimes in the context of armed aggression against Ukraine is a scientific study by O. Cherviakova and Mekheda (2021) who paid attention to the fact of the criminalization of war crimes, which are

compared at the international and domestic legislative level in accordance with military law (Cherviakova and Mekheda, 2021).

Sosnina, who in her research work investigated the international aspects of the protection of the rights of victims of the armed conflict in eastern Ukraine, draws attention to the fact that in almost all regions where armed conflicts take place, laws are violated, and prohibited means and methods of war are used against civilians (Sosnina *et al.*, 2021).

2. Methodology

The methodological basis of the study consists of general scientific methods (synthesis, generalization, induction, deduction) and special legal methods (state-legal regulation, comparative legal method).

3. Results

Resolutions adopted by the UN General Assembly and other international humanitarian law instruments provide for three fundamental principles whose observance is mandatory for states taking part in a military conflict, and for the state itself if its regional internal conflict is involved. These principles are the foundation of humanitarian law, and, in this case, we point to the right to choose methods and means of war, which is limited; the prohibition of aggression and attacks on civilians; the need to distinguish them from military and other paramilitary forces.

Violation of fundamental principles entails the need to protect individuals during a military conflict and responsibility for harm caused to the civilian population at the end of that conflict.

According to the results of the study, we can conclude that one of the urgent needs for Ukraine, both scientists-theorists and practitioners, is to develop an effective mechanism for the protection of the violated rights of citizens as a result of armed aggression against Ukraine.

Problems arising in this sphere are related both to the insufficient efficiency of Ukrainian national legislation under martial law and the imperfection of the international human rights protection system. In particular, the European Court of Human Rights has a limited period for appealing to it, a complicated procedure for receiving and considering complaints, as well as a long period for their consideration.

It is also necessary to note the fact that in Ukraine under the conditions of military conflict, not all citizens have the possibility to record their violated rights and timely appeal to the European Court of Human Rights.

No less important factor influencing the efficiency of such protection is the low level of awareness of the Ukrainian population about the possibility to apply to the European Court of Human Rights for protection of their violated rights.

We may also conclude that not only the mechanism of human rights protection at the European Court of Justice requires renovation and adaptation to new social, political, and economic requirements of the world community, but also the entire system of such protection at the international level.

4. Discussion

The armed aggression against Ukraine will provoke an increase of cases of appeal to the European Court of Human Rights by the citizens who suffered from it to receive material and moral compensation. "The obligation of States to provide full reparation for internationally wrongful acts, including by full compensation, is one of the bedrock principles of international law" (Paparinskis, 2020: 1255). "The peculiarity of a war crime is its predominant multi-object nature: the crime causes damage to several direct objects at the same time" (Cherviakova and Mekheda, 2021: 256), as for human rights violation, it can be both a separate type of crime and a war crime.

In the latter case we are talking about the disappearance or death of a loved one, fixation on facts of torture, torture, being in captivity, destruction or damage to property, restriction of a person's right to education or to movement, if the person, for example, is in temporarily occupied territory.

War crimes by their nature are the most dangerous for each individual society and humanity as a whole, they do not have a limitation period, but, unlike them, the period granted for the appeal to the European Court of Human Rights for protection of violated rights is limited. According to the above-mentioned, the question arises whether this term will be renewed if the person was in the temporarily occupied territory and had no possibility to apply for the protection of his rights in time.

Also, during active combat operations on the territory of our state a person does not always have an opportunity to record that his rights were violated, so additionally there is a problem of evidentiary basis of the unlawful act committed against a person.

This issue is relevant both for Ukraine, because "soon after its independence was declared, Ukraine chose the course towards ensuring the fundamental principles of protecting human rights and freedoms, firmly established in the international community" (Kononenko *et al.*,

2022: 355), and for all civilized states of the world. "Recent years have seen developments at the European Court of Human Rights (the Court) which have expanded the application of the European Convention on Human Rights (the Convention) to military operations throughout the world" (Halewood, 2019: 150).

However, it is debatable whether the international mechanism for the protection of human rights that exists today is sufficient, given the fact that most normative acts of similar content were developed and adopted at the end of the two world wars, during the period of peace coexistence of most states. Thus:

> Despite the international community's ratification of various conventions on international humanitarian law and the fight against their violations, as well as their partial implementation and the enshrined at the national level criminal liability for war crimes, almost all wars, and armed conflicts are accompanied by a commitment of serious war crimes (Sosnina *et al*., 2021: 125).

Accordingly, it can be concluded that the above-mentioned normative legal acts for the protection of human rights are effective and sufficient in peacetime, but in the context of armed aggression against Ukraine, as well as any other military conflict, which may take place in another state, their content and implementation seems not to be able to fully ensure the protection of human rights.

This view can be justified by two decisive factors concerning the role of the European Court of Human Rights. Firstly, it is: "...an international court that considers cases pertaining to violations of the European Convention on Human Rights" (Saintano and Jewell, 2015: 25), rather than a political body like most institutions that provide this function.

The European Court of Human Rights is a judicial body, which considers disputes based on cases referred to it, so, secondly, those legal procedures provided by both the Convention for the Protection of Human Rights and Fundamental Freedoms and the Rules of Court can significantly complicate the recourse to it, taking into account the circumstances and conditions of martial law.

Besides, the majority of Ukrainian citizens are not aware of the legal aspects of the very possibility to apply to the European Court of Human Rights, which indirectly violates the provisions of article 6 of the Convention, guaranteeing the right to a fair and public hearing within a reasonable time by an independent and impartial court, established by law, when determining the civil rights and obligations of a person or when considering any criminal charges brought against a person, at that:

> ...on (i) how general interpretative techniques that have been developed by the Strasbourg Court were applied by the Court in its jurisprudence concerning the said provision; (ii) on the interplay between the overall fairness of the trial and Article 6(3)(e) ECHR; and (iii) on Article 6(3)(e) ECHR and the relationship between legal assistance/legal aid and the right to interpretation (Vogiatzis, 2021: 29).

At the same time, as a result of the limited possibility of implementation under martial law, an appeal to the European Court of Human Rights for some citizens of our state may be, "... engaging with the law produces frustration and exclusion" (Greenberg, 2020: 405).

In addition, "it can further be concluded that the Court provides both indirect and direct access to justice and therefore both individual and general justice, albeit only to supplement domestic remedies" (Gerards and Glas, 2017: 25), and, given the precisely subsidiary nature of this mechanism, it cannot act as the only means of protecting the fundamental rights and freedoms of citizens affected by the armed aggression against Ukraine.

On June 23, 2022, our state filed a complaint to the European Court of Human Rights against the Russian Federation for unlawful acts committed by the aggressor state, and crimes committed against the Ukrainian people. Regarding the similar experience of Georgia, "although the Court did not establish Russia's jurisdiction over the disputed territory during the hostilities, this did not absolve Russia from all human rights violations stemming from the events taking place between August 8–12, 2008" (Dzehtsiarou, 2021: 293), it should be noted that there was no unanimity among the judges in reaching this decision.

Consequently, "throughout its history, the rule of law has been the lodestar guiding the development of the case-law of the European Court of Human Rights" (Spano, 2021), and the decisions made by the European Court are a necessary guide for state authorities in the process of bringing national legislation in the field of human rights and the practice of its application.

It is advisable: "... the need for critical appraisal of the construction, function, and evolution of this protection regime as well as its multi-scalar social and political effects, both intended and unintended" (Quintavalla and Heine, 2019: 138). "If genocide is occurring in Ukraine, the use of force is not necessary as other measures available under Genocide Convention to achieve the goals sought, i.e., to stop the genocide" (Dananjaya and Dhananjaya, 2022: 34), because Ukraine and its people, is the commission of an illegal act by an aggressor country that threatens the continued existence of all humanity.

There is also a clear need to eliminate the political dimension in the implementation of European assistance to end the military conflict on the territory of our state, because while armed conflict is ultimately about violent interaction between combatant groups, a variety of policies are pursued in conjunction with violence that contributes to the course of the conflict and its outcomes (Loyle and Binningsbø, 2016).

Avoidance of such a subjective attitude is extremely necessary for the future when considering complaints of Ukrainian citizens about violations of their fundamental rights and freedoms committed by the aggressor state against them.

"In fact, while the lexical field of human rights revolves around terms like 'absolute' and 'inviolable', the Court has relentlessly sought to soften the clout of the rights entailed in the European Convention it is supposed to enforce" (Manco, 2015; 527), which is inadmissible in the consideration of this category of complaints.

At the same time, there is a question of delineating the responsibility of the state itself, which has initiated a military conflict, and must bear responsibility in accordance with the fundamental principles of international law, as well as individuals belonging to its armed forces, as well as its other paramilitary formations, representatives of which commit unlawful acts.

Against citizens of Ukraine. If we analyze the provisions of the Criminal Code of Ukraine, it is clear that the identified problem goes beyond the limits of national criminal procedural legislation or granting legal effect within the legal system of Ukraine to international treaties in the manner prescribed by the Constitution of Ukraine (Constitution of Ukraine, 1996).

Any democracy in the world cannot exist in political isolation; crisis phenomena in one provoke negative tendencies in others. "Austerity measures have led to the denial of social rights and widespread socio-economic malaise across Europe" (Salomon, 2015: 530), the military conflict taking place in Ukraine has deepened the destructive processes in Europe and testified to the need to revise those international normative legal acts that regulate the protection of human rights but were not adapted to their implementation in conditions of martial law.

Given the close connection between international and humanitarian law, it is also necessary to change the very mechanism of human rights protection in order to avoid the situation that occurred in post-war Kosovo, which became: "... 'black hole state' reveals how the legal bureaucracies established to usher in human rights serve to perpetuate the state of suspension rather than realizing their utopian goals" (Mora, 2020: 90).

It is expected that changes in international law to regulate human rights protection will be a long and contentious process, because conservative

values and Conservative Party politicians helped to shape the Universal Declaration of Human Rights (UDHR) 1948 and the European Convention on Human rights (ECHR) 1950 (Tugendhat, 2019), and at the present stage, conservatism remains the leading ideological concept.

However, despite this fact, "...the significant role the UDHR has played in giving individuals a voice to hold states accountable", which is undoubtedly important for the full functioning and implementation of the human rights protection mechanism at the international level.

Conclusions

Based on our research, we can conclude that:

1. in connection with the new socio-economic, and political realities emerging in the modern world, it is necessary to update the entire system of human rights protection at the international level, as well as the mechanism for its implementation;
2. it is urgent for Ukraine to update the current legislation in accordance with the world standards of human rights protection, to bring it in line with the requirements that the society faces during martial law and after its termination;
3. territories, where there are active hostilities or those under temporary occupation, are particularly difficult to document war crimes and human rights violations;
4. the possibility of exercising the right to appeal to the European Court of Human Rights is limited, in the first place, for that part of the population of Ukraine living in the temporarily occupied territory.

The above indicates the relevance, importance, and timeliness of the chosen topic of research.

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Transformation of the legal system in a time of war: international, administrative, and criminal aspects

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Abstract

The authors of the article discuss international humanitarian law (IHL) as a normative mechanism for the protection and defense of victims of armed conflicts. The problems of IHL due to the loss of effectiveness of international legal regulation are pointed out. The aim of the article is a broad theoretical-legal and international-practical analysis of the transformations of the legal system under conditions of war. The basis of this scientific search was a system of methodology, which includes a complex of three levels of philosophical, general scientific and specifically scientific methods and a group of approaches, conditioned by the subject of the research. As a result of the analysis, it was shown that the current system of international legal regulation has significant drawbacks. The most significant of them is the declarative character of the rules, caused by the absence of an effective system of accountability and the failure to update the doctrine of IHL rules in the light of new challenges and transformations of the political and social reality. In addition, the analysis of the organizational and administrative problems of the regulation of the law of war indicated that the institutional guarantees in a military conflict also need revision.

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Keywords: international humanitarian law; wartime hostilities; international organizations; transformation of the legal system; war crimes.

Transformación del sistema jurídico en tiempos de guerra: aspectos internacionales, administrativos y penales

Resumen

Los autores del artículo discuten el derecho internacional humanitario DIH como mecanismo normativo de protección y defensa de las víctimas de los conflictos armados. Se señalan los problemas del DIH debido a la pérdida de eficacia de la regulación jurídica internacional. El objetivo del artículo es un amplio análisis teórico-jurídico e internacional-práctico de las transformaciones del sistema jurídico en condiciones de guerra. La base de esta búsqueda científica fue un sistema de metodología, que incluye un complejo de tres niveles de métodos filosóficos, científicos generales y específicamente científicos y un grupo de enfoques, condicionados por el tema de la investigación. Como resultado del análisis, se demostró que el actual sistema de regulación jurídica internacional presenta importantes inconvenientes. El más significativo de ellos es el carácter declarativo de las normas, provocado por la ausencia de un sistema eficaz de rendición de cuentas y la falta de actualización de la doctrina de las normas de DIH a la luz de los nuevos retos y transformaciones de la realidad política y social. Además, el análisis de los problemas organizativos y administrativos de la regulación del derecho de la guerra indicó que las garantías institucionales en un conflicto militar también necesitan una revisión.

Palabras clave: derecho internacional humanitario; hostilidades en tiempos de guerra; organismos internacionales; transformación del sistema jurídico; crímenes de guerra.

Introduction

Military conflict is a permanent process of human existence for many centuries of human existence, for “fighting and war are inherent in human history” (Filipec, 2019: 52–70). The system of collective security and legal mechanism of democratic states created in the world in the twentieth century has been for many years an effective form of prevention of major

armed conflicts. Moreover, scholars have stated that the threat of force is now dominant, "the special strategic conditions created by the nuclear age have encouraged states to engage in a ritualistic style of warfare in which demonstration, rather than the physical use of violence, has become increasingly important" (Chin, 2019: 765–783).

February 24, 2022 is the date of the newest countdown of the current social reality, where all spheres of life have been transformed, including the date of the beginning of a new challenge to collective world security. Russia's military annexation of Ukraine was the basis for the formation of a new geopolitical, legal and social system of interaction (Kononenko *et al.*, 2022). At the same time, the military full-scale attack on sovereign territories has revealed a number of significant problems that should have long been resolved at both the international and national levels.

Many areas of human existence are subject to dramatic change, among them a significant reshaping of approaches to natural resources, changes in the subjects of international market relations, a dramatic crisis in the financial sector, and the problem of food supplies. B. Kemmerling, C. Schetter, and L. Wirkus summarize that war on food security in the following four ways: a) destruction; b) conflict-induced displacement; c) food control; d) hunger as a "weapon of war" (Kemmerling *et al.*, 2022: 100634; Rekotov *et al.*, 2022: 901–918).

UN Secretary-General A. Guterres has said that grain and fertilizer shortages caused by war, rising temperatures, and supply problems caused by the pandemic threaten to "push tens of millions of people toward food security" (Guardian, 2022: 2). The U.N. Food and Agricultural Price Index hit an all-time high of nearly 160 points in March (The Food and Agriculture Organization, 2022), and other types of food are also affected.

There are also demographic changes that are overdue. The number of refugees from Ukraine who have been forced to leave their homes and go abroad as a result of the Russian invasion exceeded 5.6 million as of early June 2022 (UNHCR, 2022). This has caused significant political and economic challenges for many countries, especially in Europe, in the context of accepting these persons.

All of these changes and challenges require a review of the adequacy of the legal sphere's response to transformational change. The question that needs to be answered is "how prepared were the rules of law for military action in the current context of the development of the collective defense mechanism and the response of states to military action?" The established international and national system has a number of positive features, but significant shortcomings due to the emergence of new global challenges.

This is the main purpose of the presented research article. To achieve the goal, the authors set the following tasks: to reveal the debatable aspects

of the effectiveness of international humanitarian law and identify the most significant gaps in the legal regulation of the protection of victims of war; to experience organizational and administrative problems of the law of war regulation; to analyze the correspondence of criminal legal regulation to the modern challenges of military character on the example of the national legislation of Ukraine**.**

1. Literature Review

International humanitarian law is an established branch of international law, which is why many modern scholars have drawn attention in their works to the peculiarities of the legal protection of victims and participants in hostilities and the regulation of means and methods of warfare. Among them are the works of Solis (2021), Fillol Mazo (2020), Fleck (2021). Most of them are of a general doctrinal descriptive nature.

A whole school of scholars has devoted attention to the right of war in the context of the implementation of a policy of preventive actions (Stengel, 2020) or to the mechanism of the threat of force as a means of achieving a political result without military aggression (Chin, 2019). The activation of hybrid means of warfare has given rise to additional research in this area, in particular Gore *et al.* (2022), Filipec (2019), Kovalchuk *et al.* (2022) and others.

However, today we should speak about the necessity of renewed perception of legal needs in the context of additional, synergetic challenges in the sphere of military actions. The specified is connected both with certain controversial effectiveness of separate bodies and institutions of an international character and with the declarative nature of norms of international humanitarian law, therefore, requires additional motivation and strengthening of the legal doctrine of the military policy of civilized nations and the legislation of nation-states.

2. Materials and Methods

For the analysis of the subject of research was used humanistic approach as the primary determinant of the individual value of human rights, which is subordinated to the basic construct of social being of the twentieth century, even in the conditions of full-scale war. The basis of the author's scientific search is the system of methodology, including a three-level complex of philosophical, general scientific, and specifically scientific methods and a group of approaches, conditioned by the subject of research.

Among the philosophical methods, the metaphysical one is used to highlight the external factors influencing the hybrid form of warfare and the changing legal regulation of this sphere, and the synergetic one, which allows to address the issue of the need to update the legal system in light of the bifurcation factors of the impact of the new military reality.

The middle level of the methodology includes general scientific methods, among which special attention should be paid to: analysis and synthesis are applied to study the norms of international humanitarian law as a part of the integral concept of the international system of human rights, which in turn can be viewed as separate parts of influence on the national Ukrainian military situation; the method of induction reflects elementary components of national and international legal regulation of military activity; abstraction helps delimit the object of study

The last level of methodology is represented by special-scientific methods, in particular, the formal-legal method, which became one of the most used in the study, since it allows a dogmatic analysis of clear legal phenomena, helped in describing, classifying, and generalizing legal notions; legal-statistical - to study indicators of changes in social reality in Ukraine and the world and the functioning of international and public institutions in the studied area (among others UN, UNHCR, International Committee of the Red Cross, The Food and Agriculture Organization).

The method of individual observation is essential, since the authors directly have the opportunity of personal scientific research of objects and phenomena of military reality, as witnesses of the military and social situation in Ukraine.

According to the authors' questionnaires, the authors surveyed the population to determine the impact of disinformation on civil society. The survey was conducted in Lviv, but it can be considered representative of the entire territory since the subject included persons in centers for temporarily displaced persons. The focus group consisted of 102 adults who were residents of Kyiv, Lviv, Donetsk, Kharkiv, Zhytomyr, Odesa, and the Mykolaiv regions. The margin of error of the obtained results, taking into account the number of respondents, is 2-3.5%. Questionnaires are designed for anonymous and quick completion. The survey was conducted on March 7, 2022, following ten days of Russia's full-scale invasion of Ukraine.

3. Results

3.1 Debatable Aspects of International Humanitarian Law

The problem of ensuring and protecting human rights during armed conflicts has a long history. Civilized nations have developed an entire complex area of international law, international humanitarian law, whose task is to protect and alleviate the plight of the victims of war, who include both combatants and civilians. As Professor Turns (2018: 27), "rooted in customary law, often very ancient, since the late nineteenth century it has become one of the most intensely codified areas of international law".

The role of these rules is significant because it points to a legal "obligation of result to achieve humanity's ends" Longobardo (2019: 50) and "reflects the collective transnational view of the international community that unilateral tactics, coercion, and sheer force will no longer be tolerated to compel submission to individual ambition and desire" (Gore *et al.*, 2022).

In general, international humanitarian law (IHL) has the unique function of establishing rules of humanity in a totally inhumane situation, that is, in warfare. The laws of war are intended to act as a factor for the harmonization and international recognition of certain limits to violence during armed conflicts. The original of the most fundamental principles of IHL concerns the protection of victims of armed conflicts, including civilians and prisoners.

The 1949 Geneva Conventions and the subsequent 1977 Additional Protocols define many of the guarantees afforded to protected groups in time of war, along with the corresponding responsibilities of combatants. Article 27 of the Fourth Convention, governing the treatment of civilians, states: "They shall at all times be treated humanely and shall be protected, especially against all acts of violence or threats thereof, and against insults and public curiosity".

Similarly, Article 13 of the Third Convention, concerning prisoners of war, declares: "Prisoners of war must always be treated humanely. Any unlawful act or omission by a State which holds a prisoner of war which results in death or seriously endangers the health of the prisoner of war under its custody shall be prohibited." All four Conventions detail the rights and obligations of belligerents.

As Hrushko (2016) reasonably states, the objective factors of the low effectiveness of IHL include the ineffectiveness of the legal system of the state, the imperfection of the mechanisms of implementation of international legal norms, the insufficiency of its actions on organizational and legal issues of implementation of international humanitarian law, the low level of implementation of international humanitarian law norms in

national legislation, the ineffectiveness of the legal system of the state during an armed conflict and the mechanisms of accountability for violations of international humanitarian law. Indeed, the current system has significant disadvantages, let us point out only two major ones.

Declarative norms, due to the lack of an effective system of responsibility. Harm to civilian actors and the environment always accompanies military action. The principle of proportionality protects civilians and civilian objects from expected incidental harm from an attack, excessive to the military superiority expected from an attack (Henderson and Reece, 2018). The problem, however, is that the harm they inflict is often not proportional or incidental, but objectively targeted at nonmilitary targets.

In a full-scale war in Ukraine, as of June 9, 2022, 4,302 people have been killed and 5,217 wounded, according to the UN (Office of high commissioner for human right, 2022). However, the figures are far from the actual figure, in the occupied territories the count is complicated and not included in international reports.

According to local authorities, in Mariupol alone, there are bodies of about 23,000 civilians under the rubble of houses. Russia is actively using indiscriminate means of warfare in this war. According to the Office of the UN High Commissioner for Human Rights, "The majority of civilian deaths or injuries were caused by the use of large-area explosive devices, including heavy artillery and multiple rocket launchers, as well as missile and air strikes" (UN Security Council, 2022). This significant number of casualties is due to the fact that civilian infrastructure - cities and villages, including Mariupol, Kharkiv, Zaporizhzhia, and Severodonetsk - are being systematically shelled and destroyed.

This happens despite the existence of more than seventy years of norms that clearly prohibit such terrible actions. Therefore, we can talk about the declarative nature of the regulations and the lack of an effective system of accountability. This is the biggest and most significant, but unresolved, problem of IHL. The responsibility in IHL is imposed on states, it arises if the state has clearly failed to take all measures[...] that were within its "power" to prevent events (International Court of Justice, 2007, Feb. 26).

These measures require the belligerent State to continuously monitor compliance with international obligations of conduct. As the International Court of Justice affirms, the obligation of due diligence "entails not only the adoption of appropriate rules and measures but also a certain level of vigilance in their observance and the exercise of administrative control over the public and private operators" (International Court of Justice, 2010, Apr. 20).

Lack of clear legal regulation of a number of fundamental issues of protection of war veterans. "International humanitarian law has failed to

adequately address and protect important basic civilian infrastructure, especially water resources and managed water systems because the laws themselves are insufficient or improperly enforced" (Gilder, 2019: 62).

But it is quite difficult to bring to justice. Such a procedure is ad hoc and requires significant procedural, economic, and political decisions. In addition, the period of real functioning of the competent judicial body is long in time, which can lead to the avoidance of responsibility of representatives of the public authorities of the aggressor state.

The lack of an updated doctrine of IHL norms in light of additional challenges and transformations of political and social reality. The field of law under study formed its main ideology after World War II on the paradigm of social relations there. Modern methods and ways of warfare have an updated, far from the classical form. Now we should talk about hybrid wars, which, unfortunately, do not find proper regulation in the system of IHL. Hybrid war includes both classical forms of warfare and others, aimed at social destabilization of the enemy's side.

The following features of hybrid warfare are appropriately singled out by modern scientists: there are no classical approaches to military actions, the state of the "gray" zone between peace and war; the war is undeclared, using the rules of conspiracy and disguise their actions as humanitarian, protective actions; both classical forms of warfare and others aimed at social destabilization of the enemy side are used; transformation of participants of military actions by attracting hybrid actors (illegal combatants); the state of confrontation is ongoing; the means of hybrid warfare are applied not only to the individual state as an enemy, but also to other international entities and states that support the enemy side in the international arena (Kovalchuk *et al*., 2022).

The following features of hybrid warfare can be singled out:

- there are no classical approaches to hostilities in the State of the "gray" zone between peace and war;
- the war is undeclared, and their actions are disguised as humanitarian/protective actions; hybrid warfare includes both classic forms of hostilities and those aimed at social destabilization of the target enemy;
- the transformation of belligerents through the hybridization of different actors; (unlawful combatants);
- the state of confrontation is ongoing;
- hybrid warfare is not focus only on an individual State as a target enemy.

It includes other international entities and States that support this State in the international arena as well.

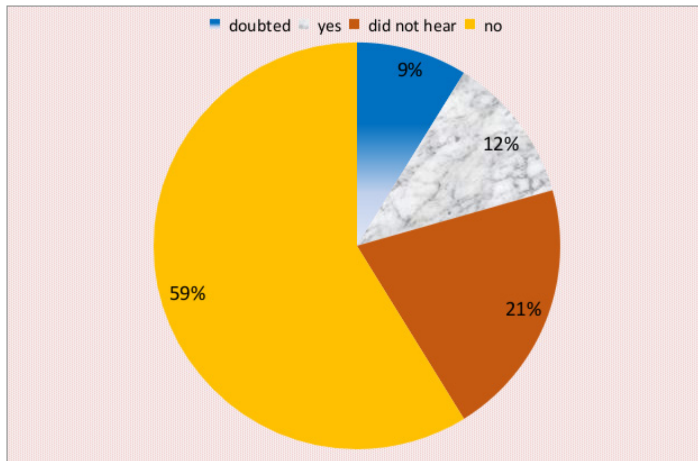
Among other things, information warfare plays an essential role in hybrid warfare. Types of information fakes and hybrid methodologies disseminated in the media and social networks to sow misinformation, panic, and fear. An analysis of the first ten days of the war in Ukraine allowed the authors, including as eyewitnesses to the events, to analyze the significance of fake information and its effectiveness. In our opinion, all information attacks can be divided into the following groups.

1. The information is focused on discrediting the public authorities. It is divided into two groups: a) about the capitulation of state authorities and representatives of local government; b) and that Ukraine is run by a "junta" and neo-Nazis who are destroying Russian-speaking citizens. The most massive fake is the report about Ukrainian President Zelensky fleeing with his family on the first or second day of the war. To debunk this information, the President promptly recorded two posts from his real location against the background of the Office of the President and the sights of the center of the Ukrainian capital, along with other senior members of the state's public authorities. This method of warfare is effective because it distracts the enemy from debunking disinformation and pacifying the civilian population.

Subsequently, misinformation spread to capitulate local authorities. For example, on March 4, 2022, there were attempts on the part of the Russian Federation to provide humanitarian aid in Kherson to demonstrate the joy of residents regarding the creation of a "Kherson People's Republic," similar to the "Donetsk People's Republic" and "Lugansk People's Republic," which were able to form in 2014. However, such a propaganda review failed, as an estimated 5,000 residents gathered for a spontaneous unarmed rally with national Ukrainian flags, demanding that they leave their native land.

A survey conducted among the respondents demonstrated insignificant effectiveness of the information flows to discredit the authorities. Only 12% of the respondents believed in such information. The results are shown in Fig. 1

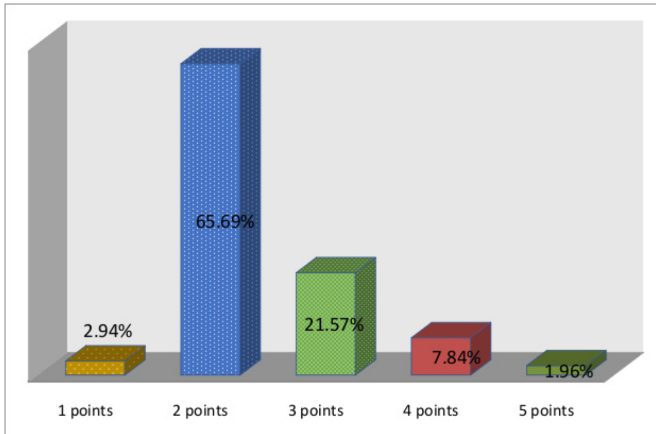
Figure. No. 01: Did you believe the information that Ukraine / President capitulated?



Source: authors.

2. Information about economic harassment by the authorities. In particular, SMS messages are circulating throughout the state about threats to disconnect mobile communications for non-payment, raise the prices of such services, charge fines for loans or utilities through non-payment, and stop payments of pensions and other social benefits. Perhaps such information would have had panic consequences at other times, but in the first days of the war the population is incredibly united, consolidated, helping each other and the army, and engaged in volunteer activities, so the vector of public attention is concentrated not on material factors, but on the aspects of security. The ineffectiveness of such information fakes is confirmed by the survey, the results of which are shown in Fig. 2

Figure No. 02: How worried you are today considering the information about non-payment of pensions or other economic harassment?

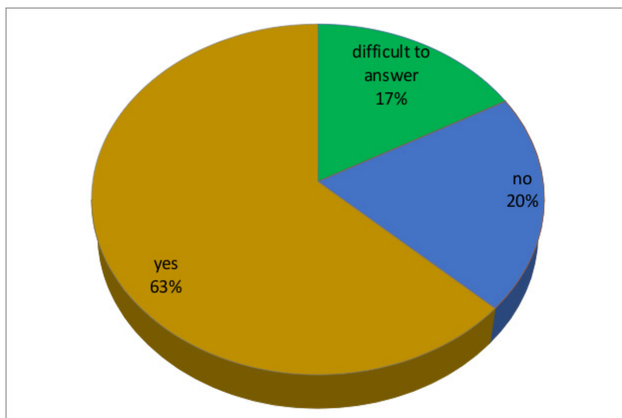


Source: authors.

3. Information aimed at inciting enmity and hatred within the country. They are concerned seemingly inappropriate behavior of internally displaced persons. To create clashes, information is spread in local telegram channels that the displaced abuse alcohol, organize feasts during the war, demand special attention, expensive food, new clothes, etc. Rumors of looting prices for housing and other services for this group of people are spread to negatively perceive displaced persons from the Eastern regions.

A survey conducted exclusively among local residents demonstrated the significant effects of such fake information. See Fig. 3.

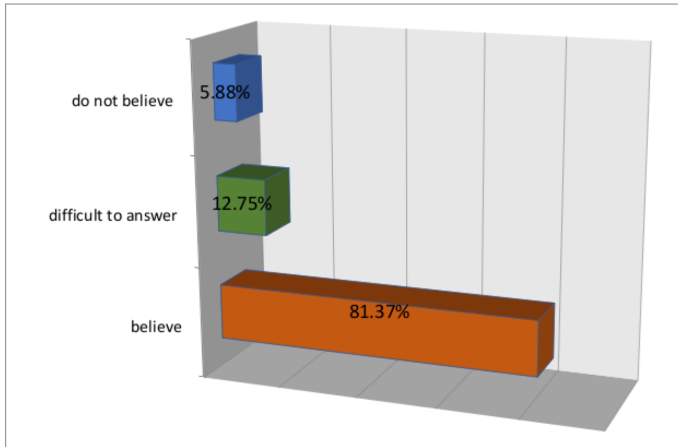
Figure No. 03: Do you agree with the statement that displaced persons often behave immorally / defiantly?



Source: authors.

4. Information on requesting assistance from the war arena. As of the tenth day of the war, there were at least eight hot spots of resistance, among them cities with significant numbers of residents, including Sumy - 250,000, Mariupol - 460,000, Zaporizhzhia - 710,000, Kharkiv - 1 million 400,000, where civilian infrastructure, including homes of civilians, is shelled. Therefore, the public's particularly destructive behavior, panic, and outrage are caused by reports that the armed forces of Ukraine and the central authorities have abandoned the inhabitants of these regions to their fate. Bots of the aggressor country in social networks spread messages "Everything is gone!", "Help us here we are dying!", "Everyone has abandoned us, we are without food, water, and light, freezing in basements". At the same time, the accounts have a patriotic design but do not contain personal information. The effectiveness of the fake information is 81%. The results are shown in Fig. 4.

Figure No. 04: Do you believe the information from social networks that contains requests for help?



Source: authors.

Therefore, information warfare is proving to be very effective, but there is a lack of international and national legal regulation of it.

4. Organizational and administrative problems of the law of war regulation

Institutional safeguards in a military conflict also need to be reconsidered. The functioning of certain bodies and international institutions designed to address the problem of countering armed aggression proved to be ineffective and passive in the context of supporting the Ukrainian people and protecting them from aggression. Such institutions include, first of all, the UN Security Council. As Gilder, A. points out, "the current debate in academic and political circles reflects the need to reassess UN peacekeeping doctrine in order to assess the impact of these doctrinal shifts in recent years" (Gilder, 2019: 47–73).

Scholars are not inclined to praise the UN's effectiveness, pointing out that Although there are a number of measures focused on peacekeeping, with notable successes, the UN still faces problems and challenges that negatively affect the effectiveness, efficiency, and success of its peacekeeping operations. Inefficiency is initially inherent in the very structure of the institution.

The UN Security Council consists of 15 members (among them 5 permanent members) and has the specific task of ensuring global peace and security. According to Article 1 of the UN Charter, the purpose of this organization is to promote international peace and security and, to this end, to take effective measures to eliminate threats to peace and suppress acts of aggression or other breaches of the peace. UN performance has faced well-deserved criticism for inaction since the invasion began in February, especially the UN Security Council. “Let me be as clear as possible: [the Security Council] has failed to do everything in its power to prevent and end this war”, – even the UN secretary-general stated (Ukraine war: Rockets hit Kyiv as UN chief admits failings, 2022).

In this case, a paradoxical, illogical situation emerges for a right that upholds the values of equality. It manifests itself in the fact that to quote Charles Michel, President of the European Council, “this is a barbaric war started by a permanent member of the UN” (UN Security Council, 2022). Russia, as a permanent member of the UN, vetoes resolutions concerning its own actions. On February 26, 2022, Russia used its powers as a permanent member of the UN Security Council to veto a draft resolution to respond to Russia’s act of armed aggression against Ukraine and to hold its governing bodies accountable.

The role of the permanent member is special and dominant in the system of these institutions, “permanent members are given greater influence in drafting, agenda setting and their ability to veto informally, even though this influence is uncodified and informal” (Albaret and Brun, 2022: 16). The problem of inequality has a general international character but is particularly significant in the issue of countering a bloody armed conflict.

There is also a discussion of the activities of the International Committee of the Red Cross. In the system of implementation of the provisions of international humanitarian law, a specific role is played by this organization. The ICRC is an international non-governmental organization, but it occupies a special place determined by the provisions of Article 9 common to the First, Second, and Third Geneva Conventions of 1949 and Article 10 of the Fourth Geneva Convention on the right to engage in humanitarian activities. The International Committee of the Red Cross is an independent humanitarian organization that played a leading role in the creation of the Red Cross Movement and in the formation and development of international humanitarian law.

“The ICRC promotes and monitors the application of international humanitarian law, provides legal protection and material assistance to military and civilian victims of wars and helps people affected by natural disasters in conflict zones and vulnerable migrants” (Canton, 2021:630). The ICRC may not only provide its good offices to facilitate the establishment and recognition of hospitals and safe zones and human settlements (Article

14 of the Geneva Convention IV) but may also take any humanitarian initiative it deems necessary.

Its importance and potential are often overestimated, even pointing out that the ICRC should become the kind of organization it was, mobilizing public opinion against their reluctant governments and cooperating with civil society (Sasso`li, 2019). (ICRC must become the advocacy organization it once was by mobilizing public opinion against their reluctant governments and cooperating with civil society.) Therefore, its relevance in the area of armed conflicts is particularly striking.

The significance for the Ukrainian-Russian war is manifested in the need for assistance in the following: full-scale support of green corridors from zones of occupation and hostilities, territories with humanitarian disasters; assistance in the logistics of humanitarian aid; stopping the forced deportation of people from Mariupol, Donetsk, and other territories temporarily or potentially under Russian control to Russia without their freely given consent and documents, especially given that the ICRC mission is collecting the bodies of Russian soldiers and sending them back to Russia (Public Appeal to ICRC, 2022).

However, none of these actions have been implemented, so criticism of this organization's inaction in hot spots is well-deserved. On March 17, 2022, the ICRC left Mariupol, where there were still hundreds of thousands of civilians in need of assistance. The war in Ukraine demonstrated that the Red Cross turned out to be completely unable to work in conditions of full-scale military conflict, although this is what is spelled out in the organization's objectives.

5. Discussion

5.1 The Transformation of Criminal Law in the Context of warfare

The open phase of the armed aggression of the Russian Federation against Ukraine, which began on February 24, 2022, needed urgent and immediate changes in the legal regulation of a significant array of important issues in the state. That's why the President of Ukraine has adopted the Decree "On the imposition of martial law in Ukraine" (President of Ukraine, 2022), by which martial law was introduced from February 24, 2022, for 30 days, and then continued, as the military actions did not stop.

The readiness of the national Ukrainian legislation for such events can be assessed at an average level. We cannot say that the national law was ready for legal regulation in wartime. We note that Ukraine had already

been at war for eight years prior to that since the Crimea peninsula and parts of the Donetsk and Luhansk regions were annexed back in 2014. On the one hand, the state had specialized legislation since 2015, in particular, the Law of Ukraine "On the Legal Regime of Martial Law".

It defines the content of the legal regime of martial law, the procedure for its introduction and cancellation, and the legal basis for the activities of public authorities, military command, military administrations, local self-government bodies, enterprises, institutions, and organizations under martial law, guarantees of human and civil rights and freedoms and the rights and legitimate interests of legal entities (Verkhovna Rada of Ukraine, 2015).

In addition, the present hostilities necessitated significant additions and configurations to the well-established legislation. They took place in all areas, from financial to administrative. But most of all they affected the criminal and criminal-procedural norms. This was due to the need to strengthen liability for offenses committed under martial law (Laws of Ukraine "On Amendments to the Criminal Code of Ukraine on strengthening liability for crimes against the foundations of national security of Ukraine under martial law" № 2113-IX, "On Amendments to the Criminal Code of Ukraine on strengthening liability for looting" № 2117-IX of March 3, 2022) (Verkhovna Rada of Ukraine, 2022a) and the inclusion of additional offenses to the list of criminal and punishable.

To preserve the state of law and order and the rule of law in wartime, the legislator amended the Criminal Code of Ukraine by increasing liability for property crimes committed under martial law (theft, robbery, extortion, as well as embezzlement, and seizure of property through abuse of official position). Certain of them during the war were transferred from the theoretical classification of criminal offenses to full-fledged criminal acts, for example, Art. 185 (theft) provides an additional aggravating circumstance, and the sanction is strengthened, requiring special qualification, thus moving from a simple sanction - a fine (under normal conditions) to a penalty of imprisonment of 5 to 8 years (under martial law).

New corpus delicti of crimes appeared. The Criminal Code of Ukraine was supplemented with Article 111, which defines collaboration activity (Verkhovna Rada of Ukraine, 2022b), which includes the following acts: public opposition by a citizen of Ukraine to the implementation of armed aggression against Ukraine, establishment and approval of temporary occupation of part of the territory of Ukraine or public calls to support the decisions and/or actions of the aggressor state, armed formations; propaganda of the aggressor state in educational institutions; transfer of material resources to illegal armed or paramilitary formations of the aggressor state; carrying out economic activities in cooperation with the aggressor State and illegal authorities; organization and conduct of

events of a political nature/information activities in cooperation with the aggressor State; voluntary occupation by a citizen of Ukraine of a position in illegal authorities; participation in the organization and conduct of illegal elections; provision of assistance to illegal armed or paramilitary formations of the aggressor State in conducting combat operations against the Armed Forces of Ukraine and other military formations of Ukraine. This crime must be committed only in the form of an active act and voluntarily.

Such an article is especially necessary in times of war because subversion within the country is just as harmful to national interests and territorial integrity as the occupation of territories. As for the latter, as of June 11, 2022, about 20 percent of Ukraine's territory is occupied, so collaboration with an aggressor country and voluntary occupation of positions in the so-called "authorities" is a criminal offense.

We cannot indicate the number of court decisions in these cases because access to the Unified State Register of Court Decisions is temporarily suspended during martial law to prevent threats to the lives and health of judges and participants in the judicial process. According to the State Bureau of Investigation, up to 200 criminal cases were initiated under this article in one month alone (State Bureau of Investigation, 2022).

The latest amendments concerned the emergence of another crime – "aiding and abetting the aggressor state" (Art. 111^2 of the Criminal Code of Ukraine). Such actions are defined as intentional actions aimed at assisting the aggressor state (aiding and abetting), armed groups, and/or occupation administration of the aggressor state, committed by a citizen of Ukraine, a foreigner, or a stateless person, except for citizens of the aggressor state, in order to cause damage to Ukraine (Verkhovna Rada of Ukraine, 2022c).

Changes were also made in other areas, in particular, additional regulation was implemented in the context of countering the unauthorized dissemination of information about the direction, movement of weapons, weapons and ammunition to Ukraine, the movement, movement, or deployment of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed under martial law or a state of emergency, increasing responsibility for cybercrime and crimes in the field of volunteerism, as well as in the field of the state of emergency.

Also, procedural activity in the context of improvement of the procedure of criminal proceedings under martial law has been formatted extensively. So, we can state the update of the criminal law of Ukraine in wartime conditions in the following: strengthening of criminal liability for crimes during wartime; the appearance of new corpus delicti of crimes of particular relevance in wartime.

Conclusions

IHL, as a rule of law designed to regulate relations during a military conflict, creates a collective security mechanism and is the legal form of prevention of major armed conflicts. Russia's aggression against Ukraine, which started on February 24, 2022, demonstrated a number of significant legal gaps, both at the international and national levels.

It is stated that the current system of international legal regulation has significant drawbacks, the most significant of which are recognized declarative norms, due to the lack of an effective system of accountability and the lack of updated doctrine of IHL norms in the light of additional challenges and transformations of political and social reality.

Based on the author's survey, it was demonstrated that disinformation is an essential, effective means of warfare, especially information aimed at discrediting public authorities; information aimed at inciting enmity and hatred within the country; information about inappropriate policies to protect civilians and help combatants, which came as a kind of arena of warfare. Information about economic harassment by the authorities did not have a significant impact on undermining public stability.

An analysis of the organizational and administrative problems of the law of war regulation indicated that institutional safeguards in a military conflict also need to be reviewed. The effectiveness of the UN in this fault has been criticized and it has been argued that this policy is primarily embedded in the very structure of the UN Security Council, as there are permanent members with the right of unquestioning veto. There is no mechanism for changing these provisions when a permanent member is an aggressor state. It is also stated that the International Committee of the Red Cross has not used all available mechanisms defined in the mandate of this institution and has demonstrated its inability to work in conditions of full-scale military conflict.

Military actions demonstrated the need to improve the norms of various branches, especially criminal law at the national level. The state of war demonstrated the need to strengthen criminal responsibility for material crimes in wartime, as well as the regulation of new elements of crimes of particular relevance during the war (collaborative activities, aiding and abetting the aggressor state).

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On the issue of choosing optimal ways to overcome crisis phenomena in the field of political communications against the background of large-scale military aggression

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Abstract

The paper examines the choice of optimal ways of overcoming crisis phenomena in the sphere of political communication in the context of the Russian-Ukrainian war. Special attention was paid to the theoretical explanation of the phenomenon of political communication in terms of its scope and practical usefulness. The article analyzes the features of the conduct of an information war by the Russian Federation. The purpose was to investigate the optimal ways of overcoming crisis phenomena (large-scale military aggression) by means of the tool of political communication. The article is based on the use of two types of research methods: general scientific (analysis, synthesis, induction, deduction) and special political (structural-functional, historical, etc.). The obtained results allow us to conclude that, on the basis of the analysis of the Russian-Ukrainian war, communication solutions should be aimed at fulfilling three tasks: neutralizing negative information, editing it and disseminating alternative information. The work of communicators during the war has certain limitations caused by their subordination to the military command. Definitely, the problem of the Russian-Ukrainian war

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demonstrated the existence of a considerable number of problematic issues in political communication in Ukraine and the world.

Keywords: political communication; overcoming the crisis; large-scale military aggression; information context; Russian-Ukrainian war.

Sobre la cuestión de la elección de las formas óptimas de superar los fenómenos de crisis en el ámbito de la comunicación política en el contexto de una agresión militar a gran escala

Resumen

El trabajo examina la elección de las formas óptimas de superar los fenómenos de crisis en el ámbito de la comunicación política, en el contexto de la guerra ruso-ucraniana. Se prestó especial atención a la explicación teórica del fenómeno de la comunicación política en términos de su alcance y utilidad práctica. El artículo analiza las características de la conducción de una guerra de información por parte de la Federación Rusa. El propósito fue investigar las formas óptimas de superar los fenómenos de crisis (agresión militar a gran escala) mediante la herramienta de la comunicación política. El artículo se basa en el uso de dos tipos de métodos de investigación: científico general (análisis, síntesis, inducción, deducción) y político especial (estructural-funcional, histórico, etc.). Los resultados obtenidos permiten concluir que, sobre la base del análisis de la guerra ruso-ucraniana, las soluciones de comunicación deben estar dirigidas a cumplir tres tareas: neutralizar la información negativa, editarla y difundir información alternativa. El trabajo de los comunicadores durante la guerra tiene ciertas limitaciones causadas por su subordinación al mando militar. Definitivamente, el problema de la guerra ruso-ucraniana demostró la existencia de un número considerable de cuestiones problemáticas en la comunicación política de Ucrania y del mundo.

Palabras clave: comunicación política; superación de la crisis; agresión militar a gran escala; contexto informativo; guerra ruso-ucraniana.

Introduction

The radicalization of the conflict in Ukraine and the direct aggression of the Russian Federation have actualized a number of political and social problems of the modern world. The biggest and bloodiest European war of the early twenty-first century has demonstrated the unwillingness of democratic elites to act decisively, and societies, overwhelmed by Russian propaganda and misinformation, have split. Although sociological polls lean toward support for Ukrainians, misunderstanding the cause and nature of the war is still a danger. Let us note the role of political communication in countering aggressors.

Thanks to timely informing the society and power elites of Ukraine and the world it was possible to prevent even greater casualties and to consolidate Ukrainian politicians and ordinary citizens. Therefore, the study of methods of political communication is the actual task of modern science, though it is important to compare theoretical bases with real steps in crises. Actually, the article aims to analyze the choice of optimal ways to overcome crises in the sphere of political communication (on the example of the Russian-Ukrainian war of 2022). Although the military actions are not completed, the actions of the Ukrainian government deserve an explanation from a political science point of view and can be recognized as certain patterns of behavior in the occurrence of future conflicts.

1. Materials and methods

Two types of research methods are used in the work: general scientific and special political methods. First of all, we used general logical methods: analysis, synthesis, induction, and deduction. With the help of the method of analysis, it was possible to divide the subject of research into separate components (definition of political communication, characterization of information war between Russia and Ukraine, definition of propaganda mechanisms of political communication of the Russian federation, characterization of optimal ways to overcome the crisis phenomena in the field of political communication on the background of military aggression).

The synthesis managed to combine previously selected parts into a complete study and draw specific conclusions. The historical method and the work used the method of projections, the application of which consisted in superimposing general recommendations to overcome crisis phenomena against the background of Ukrainian realities.

Thanks to this method it was found out to what extent theoretical remarks have success to be used in practice. In addition, the article is built on the application of special political research methods, in particular, structural-

functional. This method is based on the characterization of public problems as integrated parts of the general global political discourse. At the same time, the article is formed based on the principles of conflictology.

This theory assumes the creation of productive mechanisms for resolving various kinds of crisis (conflict) situations. The article also uses other methods: synchronous, retrospective, comparative, etc. The mentioned methods are auxiliary for the study of the problem of choosing the optimal ways of overcoming crisis phenomena in the sphere of political communication based on the analysis of the Russian-Ukrainian war.

2. Literature Review

This work is formed based on the properties of modern political literature. Note that given that the topic of the development of the Russian-Ukrainian war through the prism of various dimensions is relevant, so there are many works on this issue in the scientific opinion. The scientific literature used can be divided into two types: 1. Professional works of foreign scholars. 2. The work of Ukrainian authors. From the first category, let us highlight Park (2019), who investigated the main ways of solving conflict political problems. Piumatti *et al.* (2017) studied the importance of mediation on the development of modern politics. Davis *et al.* (2020) in a general monograph characterized the features of the formation of the phenomenon of political communication, the authors paid special attention to the importance of media in the system of political communication.

At the same time, this study is formed based on the analysis of modern historiography of the Russian-Ukrainian war. In particular, Kuzio (2021) characterized the peculiarities of the conduct and distribution of the Russian-Ukrainian war. Bînă and Dragomir (2020) investigated the problem of the development of the Russian-Ukrainian information war and analyzed its distribution and key mechanisms of its conduct. Also weighty for our study are the theoretical works of the definition of hybrid warfare.

Let us note that it is information warfare that is a component of this type of modern armed conflicts. For example, Manolea (2021) characterized the main aspects of hybrid war, its components, and mechanisms of use based on the analysis of the Russian-Ukrainian war. So, as we can see, the problem of Russian-Ukrainian confrontation is a popular topic for modern scholars. However, still little studied many aspects of this war, primarily because of its active development, which is difficult to analyze and foresee. Let us note that the problem of the information component of this war, which has noticeable importance in hybrid wars, remains poorly investigated.

At the same time, the issue of overcoming crisis phenomena in the sphere of political communications against the background of large-scale military aggression needs a thorough analysis. In addition, the issue of predictive development of the Russian-Ukrainian war based on the use of political mediation is poorly studied. The authors of this article will attempt to characterize the problems outlined above.

3. Results

3.1 Political communication: peculiarities of functioning in Ukraine

A kind of mediator between politicians and society is the media, whose influence on political communication is very high. The mass media have now invaded the entirety of human life. Yes, mass communication is a social process that connects individual parts, i.e., social groups of the general society with each other. Thus, this process performs the task of disseminating the information component in society. Despite this, the means of communication can be manipulative in nature. As the experience of the Russian Federation shows, it is common to manipulate the mass consciousness under the slogans of freedom, and equality, that is, under topical appeals (Bînă and Dragomir, 2020). At the same time, despite such glaring slogans, it should be remembered that it is information manipulation that is the most effective aspect for the suppression of freedom. For the individual, the process of manipulative action takes place unnoticed.

Often under the manipulative influence, the thinking of the consumer is not even formed, because the autonomous sense-making of the subject is replaced by intrusive considerations, values, and beliefs. The phenomenon of the process of manipulation today is a really significant social problem because the context of aggressiveness of manipulation is explained by the fact that it is a fairly new tool, at the same time adequate social response to it has not yet taken place. Consequently, society must understand the information environment as an environment for creating and shaping its consciousness (Davis *et al*., 2020).

The phenomenon of political communication - the transmission, exchange of political information, which systematizes political work and gives it new meanings, roles, forms of public opinion, and political socialization of citizens - stands out prominently in the system of mass communication. Broadly speaking, political communication is the process of transmission of political information, which takes place from one part of the political system to another, thus there is circulation between political and social systems, as well as between political groups, structures, and

individuals. In part, political communication also permeates all social levels, but traditionally it is identified with large masses, and thus it is related to the phenomenon of mass communication (Park, 2019).

In Ukraine political communication has a systemic and permanent nature. In times of crisis, the functioning of political systems is unstable because in this period many different threats can lead to the destruction of the existing system. Thus, public attention to information flows when various kinds of crises are spreading noticeably increases; citizens must critically analyze the main messages coming from the common information space (Davis *et al.,* 2020). However, if the authorities are not able to meet the information needs of the population, or are not simply engaged in communication with society, the evaluation of their work will be low.

At the same time, key officials of the state, before introducing a specific model of communication in times of crisis, should thoroughly approach the process of determining the schemes of action regarding a particular phenomenon, event, condition, or process that concerns society of the country.

However, a separate difficulty for the authorities at present is not only the understanding of the real situation but also the structuring of information flows according to the type of crisis process (Bînă and Dragomir, 2020). One type of information must become public in order to cover the official opinion, to explain the real state of affairs, and to overcome the panic moods in the society. At the same time, there should also be the second type - closed information. The main purpose of the latter is to maintain stability in the state.

Such circumstances lead to a noticeable transformation of political communication in the top leadership of Ukraine at the time of the crisis, which requires a detailed study. Let us note that such areas of the political system as social institutions, politics as part of public discourse, and politics as an element of the daily news image are under the significant influence of political communication.

Subjects in political communication are citizens of the state, social groups, political institutions and individual politicians, associations of citizens, parities, national and international organizations and movements, political parties, state and local authorities, and governmental, non-governmental, and international organizations. The peculiarity of political communication is that the directions of communicative action can change, and the subject and the object can change.

For example, when elections take place in cities and districts, the direction of communication can go from local authorities to citizens (because the subject in such a relationship is a simple voter) (Davis *et al*., 2020). Note also that there are horizontal and vertical levels of political communication.

On the horizontal level, primarily roughly equal institutional components or social actors (e.g., city mayors or party group leaders) communicate. The goal of vertical political communication is to establish communication between hierarchically different levels of the political structure. Establishing the feedback necessary for vertical communication is electoral races and voter participation, public opinion polls, etc.

3.2 Mechanisms of the Russian Information War against Ukraine

The Russian-Ukrainian confrontation, already eight years old in eastern Ukraine, is characterized by two basic dimensions: the real and the virtual. During 2014-2015, Ukrainians became victims, on the one hand of direct military aggression and, on the other hand, of unprecedented anti-Ukrainian propaganda deployed in the Russian media (Ghilès, 2022). The realization of manipulative influence on the pages of newspapers, therefore, can be qualitatively traced on the example of anti-Ukrainian hysteria, which is characterized by Russian newspapers. A typical feature of the anti-Ukrainian information war was that Ukraine experienced almost the entire arsenal of repressive discourse techniques - Russian media purposefully and unwaveringly denied all evidence that somehow conflicted with the official Kremlin version of the interpretation of political phenomena in Ukraine (Johnson, 2022).

The uncompromising stoicism in demonstrating the military struggle in Donbas became a specific alibi even for the global media, whose credibility in the Western world was not questioned (Materniak, 2020).

By its typical messages, style, and internal logic, the disinformation and information-psychological pressure operation launched by the Russian Federation around the problems of the “will” of the residents of the autonomous republic of Crimea and the southeastern regions of Ukraine is a “puzzle” of a more complex and much broader special information campaign. which reaches at least November 2013. - the course and results of the events of Euromaidan and the Revolution of Dignity (Materniak, 2020).

Practically since the end of February 2014, the overwhelming majority of the Russian traditional media have taken up information and psychological fight against Ukraine, trying to shape the conduct of an army attack against Ukraine. For example, such well-known Russian newspapers and news publications as Izvestia, Rossiyskaya Gazeta, Moskovsky Komsomolets (Kommersant), Vzglyad (Vzglyad), and the entire powerful RIA Novosti (Russian News Agency), ITAR-TASS (ITAR-TASS), ROSBALT, AIS (AIS), etc., not only actively disseminated inaccurate information but also formulated and replicated deliberately false information.

For example, since the winter of 2014, the same publications Izvestia, Rossiyskaya Gazeta, Moskovskiy Komsomolets, Kommersant, Vzglyad, and others have been spreading false information about the transfer to Russia of the flagship of the Ukrainian Black Sea Fleet, the frigate of the Ukrainian Navy, Hetman Sagaidachny.

The prevalence of destructive hostile propaganda since the spring of 2014 and the replication of untrue news through newspaper distribution in the occupied territories of eastern Ukraine was one of the main reasons for the considerable spread of anti-Ukrainian sentiments and separatist rhetoric among people (at 0 20%). Some publications actively use Internet resources and do not forbid administrators of their sites to use fictitious or false information to spread propaganda information messages (Bînă and Dragomir, 2020).

Such a source is, for example, Pravda.ru. The history of this resource is indicative because it was among the first Russian information and analytical publications to emerge on the Russian-language Web. If you trust the information posted on its website, Pravda.ru has a respected reputation and high ratings among Russians. Every day, more than 250 thousand unique users come to the Internet resource's page, browsing through at least a few of the materials on offer. Upon closer examination of the materials on this site, it is not difficult to notice that much information is openly propagandistic in nature and does not reveal the true nature of the events described. In addition, the "journalists" of this resource resort to the use of a number of methods that openly indicate the presence of custom-made propaganda purposes.

In connection with the military aggression of the Russian Federation against Ukraine as one of the directions of the information war, the aggressor uses war propaganda through TV channels (Bînă and Dragomir, 2020). Although objective television does not exist in contemporary Russia, more detailed attention should be focused on the real "mouthpiece of the Kremlin" - the TV channel Russia Today, whose product refers to aggressive anti-Ukrainian and anti-Western propaganda. Russia Today is one of the Russian state-owned television networks that broadcast primarily in foreign languages and is intended for foreign audiences.

This project has been in existence since 2005, funded by Russian taxpayers and headquartered in Moscow. The main working languages are English, Arabic, Spanish, Russian and German. The management of the channel positions the work of its journalists as an alternative view of the problems covered by American and English journalists, in particular those from CNN and BBC world channels.

The appearance of annexationist Russian propaganda fruit in the information space of the USA and EU countries recently influenced the

appearance of concern of the leaders of these countries in the context of strengthening of the latent information pressure on the citizens. It was connected, first of all, with the activation of the Russia Today channel. The analysis of Russian television conducted by Business Insider journalists received extensive publicity.

They noted that the conclusion of the week-long review of news exclusively from the perspective of Russia Today staff was that there is a powerful informational influence on the viewer's consciousness. This influence, according to experts, should create and validate a distorted view of certain events as the only true one and exclude any alternative interpretations of these events (Manolea, 2021).

Unfortunately, Russian television as a whole as of the first half of 2022 has turned into a collective "Russia today": Russian news agencies do not present truthful information, and when they even notify and actual events, they do not forget to add certain ideological Russian content to them. The Russian media is a weapon of hybrid warfare unleashed by the authorities against countries and ethnicities, mostly belonging to the Western democratic world (Cieślik and Gurshev, 2020). First of all, this concerns Ukrainians, who may fall into the "tenets" of Russian "journalists" and perceive exclusively distorted reality. This requires appropriate political communication on the part of the Ukrainian government and individual politicians.

4. How to organize political communication under conditions of Russian aggression?

First of all, we should note that the communication mechanisms applied by the leadership of the state in a crisis should have an offensive and creative character. If the top official does not take a dominant position from the beginning of the crisis situation, it will be difficult to correct the situation and overcome negative trends later on. However, if the crisis phenomenon (as in the case of the Russian-Ukrainian war) will increase rapidly, then the obligatory condition for the implementation of such communication remains its promptness.

The beginning of the Russia-Ukraine war in 2014 demonstrated that the complexity of unpredictable political crises is manifested in the novelty that affects the uncertainty of the functions of the main actors of the state (Kuzio, 2021). Note that, in part, top officials may be unprepared for such a crisis situation, so decisions may not always be made that are most appropriate. On the other hand, the complexity of the emergence of an unpredictable crisis event lies in its dynamic development (Schläpfer, 2016). Despite this, the rapid development of the crisis can be counteracted by the urgent response of the communication team.

Considering the unpredictability of crises, communication solutions in such circumstances should focus on such tasks (presented in Table 1).

Table No. 01. The main tasks of communication solutions in crises

Main tasks	Terms of execution
1. Neutralizing (or blocking) the flow of negative information	Performed at any period of appearance and dissemination of negative information.
2. Editing negative information	Is carried out at any stage of the dissemination of negative information.
3. Dissemination of alternative information.	This is done when necessary. For example, in the situation of the Russian-Ukrainian war - dissemination of truthful information to counter Russian propaganda.

At the same time, as the experience of the Russian-Ukrainian war shows from the mass media from the country's main speakers, information should be disseminated on such important grounds (presented in Table 2). Source: authors.

Table No. 02. Basic principles of information flow dissemination in case of crisis (military) conditions

Principles of information flow dissemination in case of crisis conditions
1. bad news should be reported first. The point is that other sources (in this case, Russian propaganda resources) should not be allowed to get ahead of the bad facts.
2. The tone of reporting should be entirely based on truthful facts and allegations made public
3. If there is no reliable information at a certain point, you should thoroughly argue the reasons, frame the situation, and outline the likely timing and method of presentation.
4. The communicating authority should be sure to honor its own promises.
5. Do not provide private comments about the situation, certain rumors, predictions, etc.

Source: authors.

Note that the work of communicators during a military threat is subject to certain restrictions due to their subordination to the military command. For this reason, many information cannot be disseminated. If we examine military conflict as a special kind of crisis management, three prerequisites of media information support must first be provided (Manolea, 2021). First, it is a real-time process of information delivery. Second, messages must contain truthfulness (or at least plausibility).

In addition, openness to communication and interactivity remains important. Let us note, however, that political communication is a special interaction of one society with another. For this reason, interaction shapes, supports, transforms specific social functions, rules, or norms in a particular social group or culture.

Given the Ukrainian practice of the political process, this kind of crises requires a structured work plan from official communication actors, because the key process of crisis deployment has certain phases, so during each period, appropriate communication activities should be organized to prevent the escalation of a threatening situation. Despite this, it is obvious that unpredictable crises are complex in terms of dynamism and novelty. Consequently, it requires the Ukrainian authorities to react swiftly, rationally in the managerial sphere and to provide clear operational information to citizens in the prism of communicative work.

However, unpredictable crises are defined in terms of basic parameters, therefore, for their media coverage and providing citizens with information in order to create appropriate perception by the public is quite likely to develop certain communication algorithms (Moore, 2020). It should be noted that the presence of communication plans and strategies of the top leadership of Ukraine for the time of crisis creates a pledge of loyal views in the society regarding negative events of political development, prevention of certain threats to the national security of the state.

We believe that society should trust, above all, accurate sources of information. As we can see, the major Russian media are instruments of propaganda, so a fair move by the Ukrainian government was to ban the broadcasting of Russian TV channels (subsequently the press and other ways of transmitting information). This step required a political decision and the will since it bordered on censorship, unpopular in post-Soviet countries. Such a decision paid off: as a result, even the leading states of the Western democratic world eliminated Russian TV channels from their broadcasting networks.

After the outright military aggression began in February 2022, Ukrainian officials chose the right strategy. Rejecting all accusations, the Ukrainian authorities did a lot to strengthen the social and informational space of Ukraine. In particular, they noted the different origins of Russian and Ukrainian statehood. While Russians take their roots from the Golden Horde, Ukrainians developed in accordance with European trends in the powerful Keevan Rus (later the Galicia-Volhynia state) (Mereniuk and Parshyn, 2021).

Additionally, it should be noted that communication during crises is quite different from that existing in the case of a stable and predictable political system. An important mission is now entrusted to the highest

officials and persons authorized by them, who turn into VIPs, whose actions should be aimed at eliminating public panic, asserting stability and calm in society.

To ensure a successful confrontation with the military crisis in the field of political communication, it is necessary, first of all, to classify the crisis. In particular, according to experts, crises are divided into long-, medium- and short-term according to the criterion of urgency. While according to the criterion of predictability they can be predictable and unpredictable.

Therefore, it is necessary to choose a political communication strategy based on understanding the essence of the crisis. In February 2022 Ukrainian politicians well understood the scale of the threat and united around the President of Ukraine. A strategy of promptly informing society about the military successes and defeats of the Ukrainian army was also chosen. The trust that was established between society and the state "disperse" panic and discord among the population and presented to the West exclusively their own point of view (as they did in 2014 with Crimea).

5. Discussion

One effective method of establishing political communication during crises is to conduct an active and generally honest dialogue at the vertical level of communication. The apex of this has been shown to be the president of Ukraine, high-ranking military officials, and other official speakers. It is they who relay relevant information for wider use. Military actions showed that the strength of Russia was in its ability to wage a "hybrid" war, using propaganda and agents of influence to substitute concepts, sow discord, and panic. In this, they were assisted by a wide network of state media, which were used as another weapon of moral, psychological, and political influence.

Ukraine's centralized information delivery system dealt a blow to the Kremlin's tactics. Although many pro-Russian intellectuals, businessmen, and cultural and educational figures advocated the continued existence of ties between Russia and the civilized world, their influence diminished considerably. The continued emphasis on Russia's war crimes "ties the hands" of the Kremlin lobbyists.

A successful example of political communication in Ukraine was the unity of political elites around the personality of the President of Ukraine. Despite the disagreements in the vision of the future of Ukraine. Among politicians, there is an opinion that unity is the key to success. We should also note the fiasco of pro-Russian political parties, whose activities were investigated by the security services and banned or disbanded. It remains to be regretted that this step has been taken only now.

For a long time, adherents of these political forces have positioned themselves as defenders of Russian-speakers, imposing a pro-Putin vision of the problems in political communications. The danger, however, has not been overcome, because the people who participated in the lobbying of foreign interests have never been punished. Theoretically, they could nominate themselves in the future, and therefore, in all likelihood, a partial representation of Kremlin stooges will remain. Though they will not be able to act openly.

The 2022 war demonstrated that Ukraine's political elites are capable of negotiating with their European counterparts. Successes on the diplomatic front have ensured the provision of sophisticated weapons, trainers, shelters for millions of refugees, etc. Regular consultations increase trust between the Ukrainian side and European and American partners. However, some people from President Volodymyr Zelenskyi's entourage are believed to have ties to Russia. For this reason, the active participation of the democratic world in the war against it is also important because of the internal resistance of some undisclosed agents.

Conclusions

So, in the narrow sense, political communication is the transmission, exchange of political information, systematizing political work and giving it new meanings, and roles, forming public opinion and political socialization of citizens. In a broad sense, the term refers to the process of political information transmission through circulation between political and social systems, as well as between political groups, structures, and individuals. The Russian-Ukrainian war demonstrated a significant crisis in political communication.

It was Russia's hybrid aggression, which was disseminated in several powerful ways: through pro-Kremlin media, through external and internal active propaganda, through agents of influence, and through opinion makers. Thanks to this authoritarian Russian regime and. Putin managed to partially camouflage the real unfolding of events in eastern Ukraine and Crimea in 2014. At the same time, already during the open Russian aggression (February 2022), the Ukrainian side was much better prepared for the confrontation.

Political communication acquired a clear vertical orientation, and public trust in the Ukrainian armed forces and official spokespersons of the Ukrainian government was established. This immediately dramatically reduced the influence of Russian propaganda. As the practice of political communication in Ukraine in the conditions of information society showed a more or less open dialogue with the society, partial provision of relevant information has an advantage over direct propaganda, which is resorted to by the Russian side.

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6. El cuerpo del trabajo debe tener el siguiente orden: introducción, desarrollo y conclusiones. El desarrollo debe dividirse en secciones, identificadas por subtítulos. Los comentarios al pie de página se realizarán cuando sea estrictamente necesario para explicaciones adicionales, enumerados consecutivamente, y escritos a un (1) espacio.
7. Las citas bibliográficas incluidas en el texto se deben realizar por apellidos del autor y año de la obra, por ejemplo: (Contreras Portillo, 2005). Cuando la cita es textual se coloca entre comillas, y debe aparecer los apellidos del autor, año de la obra y número de página, por ejemplo: (Contreras Portillo, 2005: 56); en caso de varios autores, se colocan los apellidos del primer autor que aparece en el texto a citar y se agrega la expresión et al, por ejemplo: (Contreras Portillo et al, 2005: 24). Si la cita está constituida por varias páginas continuas deben separarse por un guión, por ejemplo: (Contreras Portillo, 2005: 54-55), cuando la cita es de páginas aisladas, no continuas, deben separarse por una coma, por ejemplo: (Contreras Portillo, 2005: 56, 58, 60). Si existen varias citas de un mismo autor publicadas en el mismo año, se distinguen con letras, por ejemplo: (Contreras Portillo, 2005a) y (Contreras Portillo, 2005b). Cuando se trate de citas de jurisprudencias, se coloca el órgano emisor, fecha de la decisión, fuente, año y página, por ejemplo: (Tribunal Supremo de Justicia, Sala Constitucional: 6-11-2001, en Pierre Tapia, 2001: 55). En caso de citas de textos normativos, se coloca el nombre del texto normativo, año y artículo, por ejemplo: (Constitución de la República Bolivariana de Venezuela, 1999: artículo 49). Las citas de internet deben contener los apellidos del autor, página web y año de la publicación, por ejemplo: (Contreras Portillo, en: www.luz.edu.ve, 2008). Las citas textuales de más de 40 palabras serán incluidas en un párrafo aparte, en bloque, y a un solo espacio. Las citas de citas deben ser utilizadas en casos estrictamente necesarios, colocando los apellidos del autor comentado, luego la expresión citado por, los apellidos del autor de la obra, año y página, por ejemplo: (Contreras Portillo, citado por: Chirinos Medina, 2009: 54).
8. Las referencias bibliográficas están constituidas por los textos citados contextual o textualmente en el trabajo, deben aparecer al final del mismo con los datos completos de los autores citados en el contenido, y escribirse a un (1) espacio y (2) dos espacios entre cada una:

- Se debe disponer en orden alfabético, atendiendo al primer apellido del autor citado. Se deben seguir las normas del sistema Harvard, así: apellidos del autor en mayúsculas (coma); nombre (punto); año de publicación (sin paréntesis)(punto); título del libro, o, de ser el caso, del capítulo de libro, artículo de la revista o artículo de periódico seguido de la palabra "En" para luego colocar el nombre del libro, de la revista o del periódico (punto); editorial (punto); lugar de la publicación (punto); en caso de tratarse de un capítulo de libro, artículo de revista o artículo de periódico debe señalarse las páginas que comprenden el artículo, por ejemplo: Pp. 250-275.
- Si se hace referencia a más de un trabajo del mismo autor, pero publicados en años diferentes, se ordenará la lista cronológicamente, es decir, en forma descendente, comenzando por el año de la última de las obras publicadas.
- Si dos (2) o más trabajos de un mismo autor tienen el mismo año de publicación se añadirá a éste un código alfabético (a, b, c,...), se ordenarán entre sí tomando en cuenta la primera letra del título de la obra y siguiendo dicho código, por ejemplo 1995a, 1995b, 1995c.
- En caso de existir varios autores de la misma obra deben colocarse los apellidos y nombres de todos, separados con punto y coma.
- En caso de referencias de jurisprudencias se colocará de la siguiente manera: órgano que emitió la decisión (punto), fecha completa (punto), caso tratado (punto), fuente (punto), lugar (punto), editorial (en caso de tenerla) (punto) y páginas.
- Las referencias de los textos normativos serán de la siguiente manera: órgano emisor (punto), año de publicación (sin paréntesis) (punto), título de la norma (punto), lugar (punto), número del órgano divulgativo (punto) y fecha.
- Las referencias tomadas de Internet deben contener los apellidos y nombre del autor (punto), año de publicación (sin paréntesis) (punto), título de la obra (punto); la palabra "En" seguida de la página web (punto); día, mes y año en que se efectuó la consulta.

9. Enviar original debidamente identificado, más tres (3) copias sin identificación alguna y un CD contentivo del trabajo y transcrito en procesador de palabra Word. El disquete debe estar etiquetado identificando al (los) autor (es) y el título del trabajo. El trabajo se

debe enviar con una comunicación dirigida a la Directora o Director de la Revista, solicitando su publicación, y manifestar que el trabajo no ha sido sometido a arbitraje y/o publicado en otra revista. Dicha comunicación debe ser suscrita por todos los autores e indicar el nombre de cada uno de los autores con su dirección, teléfono (s) y correos electrónicos.

10. Los trabajos serán considerados por el comité editor de la Revista y serán sometidos a una revisión exhaustiva por parte de un comité de árbitros, seleccionado a fin de mantener un elevado nivel académico y científico. La evaluación será realizada de acuerdo a los siguientes criterios: identificación del manuscrito; correspondencia del título con el contenido del manuscrito, así como la correcta sintaxis de los mismos; la importancia del tema estudiado, esto es su pertinencia social, académica científica; originalidad y relevancia de la discusión; medida del impacto de los planteamientos en el trabajo; diseño y metodología; valoración de la arquitectura del artículo conforme a los criterios de presentación, tanto formal como metodológicos; organización interna, claridad y coherencia del discurso que facilite su lectura; calidad del resumen, el cual debe dar cuenta de manera sintética del contenido del mismo; actualidad y relevancia de las fuentes bibliográficas.

Realizada la evaluación por el comité de árbitros designado, se informará al autor sobre la decisión correspondiente. Si los árbitros recomendaran modificaciones, el comité editor establecerá un plazo prudencial para que el autor o los autores, procedan a efectuarlos. Transcurrido el plazo señalado, sin que se hayan recibidos las correcciones, se entenderá que se ha renunciado a publicar el trabajo en la Revista.

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1. Identificación del artículo: se examina la correspondencia del título con el contenido del artículo, así como la correcta sintaxis del mismo.
2. Sobre la importancia del tema estudiado, esto es su pertinencia social y académica-científica.
3. La originalidad de la discusión, si el artículo constituye un aporte, por los datos que maneja, sus enfoques metodológicos y argumentación teórica.
4. Relevancia de la discusión, medida del impacto de los planteamientos del artículo dentro de la comunidad científica en términos de su contribución.
5. Diseño y metodología: valoración de la arquitectura del artículo conforme a los criterios razonables de presentación tanto formal como metodológica.
6. Organización Interna: el artículo debe ser presentado con un nivel de coherencia que facilitando su lectura pueda contribuir a fomentar su discusión.
7. Calidad del resumen: el artículo debe poseer un resumen y suministrar palabras clave que puedan dar cuenta de una manera sintética

del contenido del mismo conforme a las indicaciones para los colaboradores.

8. Bibliografía y fuentes: deben ser suministradas con claridad. El evaluador tomará en cuenta su pertinencia, actualidad y coherencia con el tema desarrollado.

La evaluación de cada uno de esos criterios se hará en una escala que va desde excelente hasta deficiente. El árbitro concluirá con una Evaluación de acuerdo al instrumento: publicable, publicable con ligeras modificaciones, publicable con sustanciales modificaciones y no publicable. Los árbitros deberán explicar cuáles son las modificaciones sugeridas de una manera explícita y razonada cuando este fuera el caso. La revista no está obligada a explicar a los colaboradores las razones del rechazo de sus manuscritos, ni a suministrar copias de los arbitrajes dado el carácter confidencial que ellos poseen.

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