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ЗМІСТ

FOREWORD

Today more than a hundred specialized legal journals and collections are annually issued in Ukraine, publishing thousands of scientific articles from various branches of legal science.

In 2008 by the decision of the Presidium of the Academy the nationwide scientific periodical – the Yearbook of Ukrainian law was founded, in which the most important legal articles of academicians and corresponding members of the National Academy of Legal Sciences of Ukraine, as well as research associates, who work in the Academy's research institutions and other leading research and higher education institutions of Kyiv, Kharkiv, Donetsk, Lviv, Odesa, are published.

Yearbook aims to become a guide in the field of various scientific information that has already been printed in domestic and foreign journals during the previous year. "Yearbook of Ukrainian law" is a unique legal periodical dedicated to the widest range of legal science's problems striving to become a concentrated source of modern scientific and legal thought on current issues in the theory and history of state and law, constitutional, criminal, civil, economic, international and other branches of law, that has no analogues in Ukraine. The journal's pages contain modern legal concepts and theories of the further development of Ukraine as a democratic, social, law-governed state, full of the most provoking contemporary ideas, fundamental and substantial issues of jurisprudence.

The selection process of articles is carried out by the branches of the Academy (theory and history of state and law, state-legal sciences and international law, civil-legal sciences, environmental, economic and agricultural law, criminal-legal sciences), which combine leading scientists and legal scholars from all over Ukraine.

From 2014, the Yearbook of Ukrainian Law is published in English. Each issue of the English version is sent to more than 70 law libraries of the world, including USA, Canada, Australia, Great Britain, Germany, Portugal, Switzerland, Norway, Denmark, Latvia, and Lithuania. This enables scientists from other countries to get acquainted with the problems relevant to Ukrainian legal science, both the general theoretical, as well as different branches of law, modern Ukrainian legislation and practice, to provide opportunities for international scientific cooperation.

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LEGAL ARGUMENTATION: SOME GENERAL THEORETICAL ASPECTS

Abstract. *The relevance of the study is explained by the fact that the legal arguments used by judges in particular when making decisions are often criticised. The general theoretical understanding of legal argumentation, which is the purpose of this study, can help to solve the urgent problem of improving legal argumentation. The article substantiates the general theoretical model of legal argumentation, which is carried out in different types of legal activities – lawmaking, interpretation, law enforcement. For this purpose, such research methods as general theoretical, modelling, deduction, analysis and abstraction were used. It is proposed to distinguish between terminological legal argumentation as an activity and legal argumentation as a result of this activity, and the result of activities to reconstruct the legal argumentation of another entity, and provide a definition of each of these concepts. It is established that the general theoretical model of legal argumentation covers composition (corpus) of legal argumentation, tools of legal argumentation, reconstruction and evaluation of legal argumentation. It is identified that in the composition (corpus) of legal argumentation it is reasonable to include: argumentative situation; subjective composition; the purpose of the right argument; object of legal argumentation; the content of legal argumentation. The substantive and procedural aspects of the tools of legal argumentation are singled out. The practical value of the article is that*

the general theoretical model of legal argumentation creates grounds for improving argumentative practice in various types of legal activity

Keywords: *general theoretical model of legal argumentation, composition (corpus) of legal argumentation, argumentative situation, tools of legal argumentation, reconstruction and evaluation of legal argumentation*

INTRODUCTION

The issue of the quality of legal argumentation is the cornerstone of practical jurisprudence, especially law enforcement. Building a convincing legal argument for different recipients is a difficult task and requires special skills of the argumentator. The legal argumentation contained in national court decisions is often criticised as weak or unconvincing. The general theoretical comprehension of legal argumentation can help to solve the urgent problem of improving legal argumentation. It can offer a comprehensive answer to the question of which legal argument is convincing, including tools for building, reconstructing and evaluating such arguments through the construction of a general theoretical model of legal argumentation. The implementation of these tasks will serve to improve the practice of legal argumentation not only in law enforcement, but also in law interpretation, lawmaking, law enforcement and legal science.

The relevance of the study of legal argumentation is confirmed by the fact that in textbooks on the theory of law in recent years there are sections on legal argumentation, which outlines the most general issues of legal argumentation [1, p. 264; 2, p. 440]. Some issues of scientific journals are devoted to the issue of legal argumentation [3, p. 175–184; 4, p. 193–202]. Some special issues of legal argumentation have become the subject of Ukrainian legal research, in particular in the works of M. Koziubra, P. Rabinovych, B. Kistyanyk, and logical research, in particular in the works of O. Shcherbyna, O. Yurkevych. We are talking about the types of legal argumentation [5, p. 4–8], general theoretical characteristics of legal argumentation [6, p. 22], some features of judicial argumentation [7], logical aspects of legal argumentation [8; 9]. However, many aspects of the complex phenomenon of legal argumentation are unexplored or insufficiently studied in Ukrainian legal science, including the general theoretical model of legal argumentation.

In foreign research, legal argumentation is the subject of analysis both in the theory of argumentation and in legal research, in particular in the works of such authors as D. Walton [10]; F. Van Eemeren [11]; L. Bermejo-Luque [12]; E. Feteris [13; 14]; K. Tindale [15]; R. Alexy [16]; M. Hinton [17]. Among other aspects, representatives of different schools of legal argumentation study the components of the study of legal argumentation, normative and/or theoret-

ical models of legal argumentation as part of its research programme at the theoretical level, features of reconstruction and evaluation of legal argumentation, means of legal argumentation in legal discourse as a kind of general practical discourse.

In English-language sources on legal argumentation, the phrase "normative model of argumentation" is often used, but it is not always explained. According to D. Walton, the normative model of argumentation is how one should analyse and evaluate legal argumentation from a logical standpoint. This model is closely related to reality. It is based on the rationale used in everyday argumentation. This model simply reflects the legal justification in reality [10, p. 161].

F. Van Eemeren noted that the theoretical model of argumentation serves as a conceptual basis for the study of legal argumentation, outlines and approximates the philosophical ideal of reasonableness, specifying it in terms of types of argumentative steps and the validity of the grounds for these steps. If such a model well fulfills its purpose – it performs heuristic, analytical and critical functions and concerns the production, analysis and evaluation of argumentative discourse [11, p. 521].

From the standpoint of L. Bermejo-Luque, the normative model depends on what we want to evaluate – the result of argumentation, procedures or processes of argumentation [12, p. 9]. The argumentation model should perform two main tasks: to provide an acceptable characteristic of the *soundness of* the argument (which means assessing both the relationship between the basics and the conclusion, and the assessment of the basics) and to propose a method for establishing the validity of the argument. The latter depend on the concept of argumentation and the standard of validity of argumentation to adopt [12, p. 14–15].

E. Feteris believes that the theoretical model of legal argumentation contains legal arguments and norms and rules of their acceptability [13, p. 21]. The analytical model should specify the elements necessary for the rational reconstruction of the legal decision – the stages of the argumentative process, explicit and implicit arguments, hidden foundations and structures of the argument. At the same time, the logical minimum often does not allow to do so, a pragmatic maximum is needed to consider the broader verbal and nonverbal context of the argument [13, p. 201]. Rational reconstruction provides grounds for evaluating arguments [13, p. 22].

In foreign intelligence, in particular the Dutch, the theoretical model of legal argumentation represents only the theoretical level of research of the latter. In addition, it deals mainly with legal argumentation in law enforcement, disregarding official interpretation, lawmaking, law enforcement and legal doctrine. At the same time, we believe that the development of such investiga-

tions has a heuristic potential for building a general theoretical model of legal argumentation.

With this in mind, the *purpose of this article* is to, based on a certain understanding of the original concepts that reflect the complex phenomenon of legal argumentation, and the work of representatives of the theory of argumentation and legal argumentation, to propose a general theoretical model of legal argumentation. its further application for the creation, reconstruction and evaluation of legal arguments in various types of legal activities.

1. MATERIALS AND METHODS

To achieve the goal of scientific research presented in this article, a number of general scientific and special methods were used: general theoretical method, modelling method, method of analysis and synthesis, deductive method, abstraction method, generalisation method, comparative method. The study is based on the worldview axiomatic idea that legal argumentation is carried out in legal discourse, and its result bears the imprint of such a discourse, because it is its result. The main research methods presented in this article are the general theoretical method and the modeling method. It is the method of modeling allowed to propose a general theoretical model of a complex phenomenon of legal argumentation, which combines dynamic (activity) and static components.

The general theoretical method allowed to apply general theoretical categories and constructions to comprehend the mentioned phenomenon of legal argumentation and to fill various components of the general theoretical model of legal argumentation. In particular, the concept of composition (corpus) of legal argumentation as a general theoretical category with its content was proposed. This method gave grounds to single out the tools of legal argumentation, including the reconstruction and evaluation of such arguments as separate components of the general theoretical model of legal argumentation and describe them in terms of general theory of law and legal practice.

The method of abstraction together with the general theoretical method allowed to single out the components of the corpus of legal argumentation, namely: the argumentative situation, the subjective composition of legal argumentation, the object, purpose and content of legal argumentation. These methods also revealed the features of the argumentative situation in different types of legal activity, to determine the subjective composition of legal argumentation, isolating the argumentator, the addressee of such arguments and the audience, to establish the purpose of legal argumentation in different legal activities, its object and content. moreover, the general theoretical method allowed to identify the types of legal activities in which legal argumentation is carried out.

To clarify the meaning of the concept of legal argumentation, the catego-

ries of whole and part were used as methodological. It was suggested to mark the activity of legal argumentation with the term legal argumentation and consider it as a whole concept, and the result of this activity, and activities for the reconstruction of legal argumentation, should be marked with the term "legal argumentation" and considered as part of relevant activities. To clarify the scope of the concept of legal argumentation, a comparative method was used – to compare the meanings of terms that denote the concept of legal legal argumentation in its research in different languages. This led to the conclusion that legal argumentation is understood as a legal basis.

The application of the method of abstraction allowed to propose a definition of the concept of argumentative situation in which legal argumentation is carried out. Methods of analysis and synthesis were used to analyse the main positions on the theoretical (normative) model of legal argumentation presented in the literature, and then on this basis to synthesise their own vision of the general theoretical model of legal argumentation, considering the modeling method and general theoretical method. The method of generalisation was used to formulate definitions of the concepts of legal argumentation and legal argumentation. At the same time, the subject of generalisation were the definitions of relevant concepts, formulated in the main approaches to understanding and research of legal argumentation.

Given the peculiarity of the subject of research in this article we can state that it is based on the deduction method, which served as an approach, which, in turn, involves the presentation of research results in a deductive way. The research methods used follow from the subject of research and together with the subject of research determine the structuring of this article. First of all, the content and scope of the concept of legal argumentation are considered, and then the general theoretical model of legal argumentation is proposed and its main components are consistently characterised: composition (corpus) of legal argumentation, tools of legal argumentation, reconstruction and evaluation of legal argumentation.

2. RESULTS AND DISCUSSION

To build a general theoretical model of legal argumentation, it is necessary to clarify the meaning of the concept of legal argumentation. We propose, first of all, to distinguish between activities of legal argumentation and the result of such activities – legal argumentation. After all, the process of legal argumentation and its result are ontologically different, although mutually transitional.

Legal argumentation is a process concept that reflects the legally significant activity to substantiate the statement with the help of certain means – legal and non-legal arguments. It is communicative, it is carried out in various types of legal activities, often in the

form of discourse. For example, a judicial debate can be considered a real discourse, and a court decision with the argumentation of a final decision that reflects the results of the discourse. After all, such a decision is addressed to the parties and society and is a response to the arguments of the parties expressed during the trial.

It should also be noted that in the Ukrainian and foreign literature on legal argumentation, the distinction between legal argumentation and argumentation is mostly not carried out, instead the term "legal argumentation" is used to denote both concepts. This leads to the designation of activities ("legal argumentation") and its result ("legal argumentation") in one phrase and does not contribute to the deepening of understanding of the process and its result and the establishment of their patterns. However, for the sake of accuracy, we note that such a distinction can be traced in the works of some representatives of the rhetorical approach to argumentation, in particular L. Bermejo-Luque and K. Tindale, at least at the terminological level. K. Tindale writes about the acts of argumentation [15], and L. Bermejo-Luque emphasizes the need to take into account the results of argumentation, procedures or processes of argumentation in such a model [12, p. 9].

General theoretical model of legal argumentation not identical to the theoretical model of legal argumentation in her research in the theory of argumentation. In the latter, the theoretical model is part of the program of argumentation research, which covers the philosophical level (concept of rationality), theoretical level (theoretical model) and practical level (reconstruction and evaluation of argumentation) [11, p. 10]. From the analysis of the understanding of the relevant concept presented in the introduction to this article, it follows that the theoretical model of legal argumentation is understood differently, and its "content" depends on the concept of a particular researcher. The only common denominator is that such a model provides a vision of what legal arguments are [in legal argumentation] and how to evaluate them by reconstructing legal arguments [in legal argumentation]. The most detailed and general theoretical can be considered the above position of E. Fetheris, according to which the theoretical model includes analytical model and model of evaluation of legal argumentation, although it concerns the legal argumentation in law enforcement. At the same time, as noted, the general theoretical model of legal argumentation should contain such components that would allow to create, reconstruct and evaluate any legal argumentation in different types of legal activity. Such a model should cover both the specific features of the participants, the process and means of legal argumentation, and propose criteria for assessing such arguments. Only in the presence of such "content" can it be a question of the general theoretical model of legal argumentation.

So, under ***the general theoretical model of legal argumentation*** we understand the theoretical and analytical model of legal argumentation, which covers both the model of creation and the model of reconstruction and evaluation of legal argumentation. At the same time, it is important to note that the practical need for the reconstruction of legal argumentation does not always arise. It usually arises in *complex* cases in the process of law enforcement or interpretation, when it is necessary to provide an interpretation of a legal norm, there is a competition of legal norms on their interpretations, or it is necessary to substantiate allegations of facts. However, this does not exclude the possibility of reconstructing legal arguments in *simple* cases or in other types of legal activity. In simple cases, one deductive argument is enough for such a reconstruction. In complex cases, conditioned upon the need to justify the choice of norm or interpretation of the norm or qualification of facts, including argumentation in scientific discussion, there may be a need for complex argumentation by providing a chain of arguments, which can be either subordinate or cumulative.

The general theoretical model of legal argumentation, in our opinion, includes: 1) the composition (corpus) of legal argumentation; 2) tools of legal argumentation; 3) reconstruction and evaluation of the [effectiveness] of legal argumentation. Consider the three components of the general theoretical model of legal argumentation.

2.1. Composition (corpus) of legal argumentation

Class (corpus) of legal argumentation is a legal construction that covers static and dynamic elements in the complex phenomenon of legal argumentation, allows giving it a holistic description and show the transition from activity – legal argumentation – to its result – legal argumentation. The composition (corpus) of legal argumentation can include: 1) argumentative situation 2) subjective composition; 3) the purpose of legal argumentation; 4) the object of legal argumentation; 5) the content of legal argumentation.

2.1.1. Features of the argumentative situation in legal activity

Under the concept of *argumentative situation*, we propose to understand the abstract situation of argumentation, which is a generalised reflection of such situations, typical of a particular type of legal activity. In our opinion, this is the main component in the body of legal argumentation, because it determines the specific features of other components. As mentioned above, legal argumentation as a communicative activity occupies a certain place in the process (or procedure) of the main types of legal activity – lawmaking, interpretation, law enforcement, including in legal science. In each of them the argumentative situation is special, which we will try to demonstrate further.

Legal argumentation in lawmaking has its own specific features depending on the peculiarities of the legal system

of the state (or interstate formation), which determines the peculiarities of lawmaking. Let's try to outline the features of the argumentative situation in lawmaking, referring to the analysis of such a procedure in Ukraine. It is carried out both during the discussion of the draft normative act, and providing justification for the adoption of such an act, if it is a draft law. In this argumentative situation, written arguments are substantiated in the substantiation of the normative legal act and oral arguments are made during the speeches of the deputies of the parliament. The purpose of argumentation is different. The written argumentation in substantiation of the draft source of law aims to substantiate the necessity and expediency of its adoption. Oral argumentation is aimed at refuting the counter-arguments put forward. At the same time, if the arguments of rational orientation and prognostic character are stated in the written argumentation, then the arguments of emotional character also occur in the oral one.

Legal argumentation is part of the official interpretation. It allows, through the formulation of interpretative arguments, to "come out" in a certain way of interpreting the law in interpretative acts. The specific features of the argumentative situation in this type of legal activity are that it is carried out both in the constitutional proceedings in oral form and in writing in the decision of the Constitutional Court of Ukraine, which objectifies the results of such proceedings. Within these two manifestations of the argumentative situation in lawmaking, the subjects of argumentation are different, as well as its means and purpose.

Legal argumentation in law enforcement is carried out both on issues of facts and on issues of law. It allows to substantiate the legal qualification and is an independent type of activity in court proceedings, which is provided by procedural law. Even more, there is an argumentative dialogue situation in the trial, in which the parties provide their options for arguing the circumstances of the case, convincing the court of the acceptability of their position, and the court, weighing their arguments, offers its own arguments for the case. That is, this type of legal activity is also characterized by two types of argumentative situation with different subject composition, means and purpose.

Legal argumentation in legal science can be carried out orally and in writing in discussions, scientific papers, comments. The argumentative situation in legal science is characterized by the use of rational arguments in argumentation – legal and non-legal. In oral argumentation it is permissible to resort to emotional arguments. In general, oral scientific discussion has the peculiarities of argumentation, due to both the presentation of arguments and their content, and the ability to often resort to non-legal arguments to convince the audience and the recipients of the argument.

Legal argumentation in law enforcement is carried out, for example, in the process of legal advice or in the relationship "lawyer-client" or between the parties in concluding contracts, especially with the participation of legal advisers. Despite the presence of legal arguments in it, this situation is more like a practical argument, which is often carried out orally. Accordingly, it is dominated by non-legal arguments for the benefits and benefits of the terms of the contract or protection strategy for the client. At the same time, in the oral dialogic part of such arguments, they can also try, for example, to force the opposite party to agree with certain terms of the contract, which are not favourable to it, resorting to manipulation of arguments.

2.1.2. Subjective composition

The subjective composition of legal argumentation covers both its mandatory subjects and optional, and the legal audience. Legal argumentation depends on who are the subjects of legal argumentation – on their needs and interests, legal understanding, pre-understanding of the object of legal argumentation; concept of rationality.

Subjects of legal argumentation are classically recognised in the theory of argumentation as *the argumentator* (who through legal argumentation creates legal argumentation) and the *addressee of the argumentation* (the one to whom this argumentation is directed and who has a legitimate opportunity to refute the arguments put forward to put forward their arguments, i.e. not to have their point of view (position), but to accept the point of view proposed by the argumentator). These subjects can change roles in different argumentative situations. For example, in a court debate between the parties in a bilateral argument, the plaintiff will argue his position and the addressee of the defendant's position; in unilateral argumentation between the parties to the proceedings and the court, the former will act as argumentators with their positions, and the court – the addressee of the argument; in the unilateral argumentation between the court and the parties, the argumentator will be the court, and the parties – the addressees of the arguments set out in the court decision.

As K. Kargin rightly remarked, it is expedient to distinguish from the subjects of legal argumentation the subjects who assist him – persons who help the argumentator to make arguments, but do not do it themselves [18, p. 44]. We consider it expedient to call them not subjects, but participants in legal argumentation to terminologically distinguish them from subjects. As an example, we can cite the hearing of an expert, a witness in a lawsuit or the hearing of a specialist in constitutional proceedings. In addition, *an optional subject of legal argumentation* can be considered a *reconstructor* of such arguments. This is the individual or collective entity that reproduces the legal arguments of another entity for a specific purpose. For example, the court reconstructs the ar-

guments of the parties to the proceedings, the court of second instance reconstructs the arguments of the court of first instance to review the case on appeal; the scientist reconstructs the real legal argumentation for its scientific analysis and evaluation, the legal interpreter can reconstruct the legal argumentation of the initiator of the appeal to him to provide his legal interpretative arguments. The reconstructor can be present only in certain argumentative situations, so we consider him an optional subject.

The *audience* also, we believe, should belong to the subjective composition of legal argumentation. Audience in legal argumentation is a specific or abstract person or group of persons who have an interest in the content and outcome of legal argumentation and who seek to convince the subjects of legal argumentation of the acceptability of their argumentation. Audiences will differ in different argumentative situations. For example, the audience for the argumentative situation "court – the parties to the process" will be the society to which the court decision is indirectly addressed. A distinction should be made between the audience and the direct addressee of the argument, who, unlike the audience, can take part or participate in decision-making based on the results of the argument. For example, in the oral argumentation situation in lawmaking, the "initiator of the bill – the parliament", members of parliament who will vote in favor of the bill will be the addressees of the argument, and society or non-governmental organizations interested in the bill or the social group to which the bill applies – the legal audience.

The purpose of legal argumentation is the subject of analysis in the theory of argumentation. K. Kargin believes that the purpose of legal argumentation is to persuade the addressee of the argument and, as a consequence, to change his position [18, p. 51]. In our view, the notion of purpose should not add a sign of consequence. After all, only effective legal argumentation leads to a change in the position of the addressee – full or partial, but this does not preclude the intention of the argument to change the position of the addressee in whole or in part. Assessing the effectiveness of legal argumentation is a separate component of the general theoretical model of legal argumentation. In addition, the argumentator has a convincing influence not only on the addressee of the argument, but also on the audience. Therefore, in our opinion, the purpose of legal argumentation in the most general formulations is to convince the addressee of legal argumentation, and the audience in the acceptability of a position (standpoint, thesis, conclusion) by providing arguments – legal and illegal.

Of course, the purpose of legal argumentation is specific depending on the argumentative situation in a particular type of legal activity. For example, the purpose of legal argumentation in lawmaking is to convince members of par-

liament and society of the acceptability of establishing, changing or terminating legal regulation. The purpose of legal argumentation in legal interpretation is to convince the initiator of the appeal, stakeholders and society in the acceptability of a certain understanding or interpretation of the content of the legal prescription or other legal properties. The purpose of legal argumentation in law enforcement is to convince the parties to the case, the court and society in the acceptability of the presentation or interpretation of facts, law, the operative part of the law enforcement decision. The purpose of legal argumentation in law enforcement is to convince the addressee of the argumentation of the profitability or necessity of implementation of the legal requirement in a certain way. The purpose of legal argumentation in legal doctrine is to convince the addressee of the argumentation – direct or indirect, including the legal audience – in the correctness or acceptability of the position of the argumentator. At the same time, the result is the subject of evaluation of the effectiveness of argumentation and is a separate component of the general theoretical model of legal argumentation.

2.1.3. Object of legal argumentation

The object of legal argumentation is what the legal argumentation in a certain argumentative situation is aimed at. In the general scientific aspect, an object is a category that denotes any real or imaginary, materialised or ideal reality, which is considered as something external to man and his consciousness and which becomes the subject of theoretical and practical activities of the *subject* [19, p. 438]. Given that legal argumentation is a communicative activity, the object of legal argumentation can be considered a statement about something. After all, the very statement about something becomes the object of argumentation, as a result of which it becomes the conclusion of the argument.

P. Goutloser found that the concepts of "conclusion", "thesis", "assertion", "debate position", which are used in different approaches to understanding and research of argumentation, coincide or are very similar to the concept of "point of view" used in pragmodialectics [20, p. 54]. P. Goutloser believes that the *statement* has the status of a standpoint. The standpoint is put forward under the following conditions: 1) if the affirmative speech act was executed; 2) there is a reaction of the listener to such a speech act; 3) if the indicators of the standpoint can be found in the subsequent statements of the speaker [20, p. 58–59;].

It is possible to characterise features of object of legal argumentation taking into account in what argumentative situation in what kind of legal activity carry out such argumentation. For example, the object of legal argumentation in lawmaking may be the statement about the need for legal regulation of certain social relations, the need to establish rights and responsibilities of

a general nature through deontic judgments [21, p. 12]. The object of legal argumentation in law enforcement can be allegations of legally significant facts and allegations of law. The object of legal argumentation in the interpretation of law may be evaluative statements about the content of the law or other legally significant properties of the law. The object of legal argumentation in law enforcement is the statement about the profitability, necessity or usefulness of the implementation, use or compliance with the law. The object of legal argumentation in legal science is, in particular, statements about the law, interpretation of law, legal regulation, depending on the type of legal activity of doctrinal legal argumentation.

2.1.4. The content of legal argumentation

The most general wording can be defined as the presentation of arguments – legal or non-legal, which can be both arguments in the literal sense, and explanations and arguments from the evidence. In addition, it is a question of presenting the arguments of the argumentator, and refuting the counter-arguments of the addressee of the argument, including presenting the counter-arguments of the addressee of the argumentation and refuting his counter-arguments by the argumentator. In this sense, legal argumentation is a discourse activity and must be subject to the rules of discourse.

The content of legal argumentation undoubtedly depends on the subject and object of legal argumentation, including on the type of argumentative situation in the legal activity in which legal argumentation is carried out. For example, the content of legal argumentation in lawmaking is to provide arguments regarding the content of legal regulation of public relations. The content of legal argumentation in legal interpretation can be considered to provide arguments regarding the understanding or interpretation of the content of a legal prescription or its other legal properties. The content of legal argumentation in law enforcement can be considered to provide arguments about the possible content of facts, law, operative decision on facts and law. The content of legal argumentation in law enforcement, we believe, is to provide arguments about the need to implement or comply with the prescription, the usefulness or necessity of implementation (use) of the prescription. The content of legal argumentation in law enforcement can be specified depending on the argumentative situation in law enforcement. The content of legal argumentation in legal doctrine is to present arguments in favour of the position of the argumentator on the issue to which a particular argumentative situation relates.

2.2. Tools of legal argumentation

We believe that the category "tools of legal argumentation" will best reflect the system of substantive and procedural means of legal argumentation. Therefore, it is expedient to talk about

the tools of legal argumentation in the substantive and procedural aspects, which intersect in specific situations of argumentation and serve, first of all, for the reconstruction of argumentation, and for its evaluation.

Substantive aspect covers such means of legal argumentation as, in particular, arguments (legal and non-legal) and argumentative schemes, structures of argumentation. The general concept of argument is ambiguous. In post-Soviet works, it is often defined as "a statement that leads the subject of argument in support of his position or to refute the position of the opponent"; "statements used in the dialogue to confirm, substantiate or criticize the views expressed in this dialogue on the thesis" [8, p. 198; 18, p. 54]. Instead, Western sources have a broader approach. K. Tindale emphasised that in the European tradition, the argument covers both the basics of the argument (argumentation) and the conclusion – the standpoint, position [15, p. 45].

The concept *of argument* depends on the adopted approach to understanding argumentation [17, p. 45–46]. D. Walton considers the argument a sequence of justifications or a chain of conclusions that are used to address unresolved issues in the dialogue [10, p. 214]. J. Freeman with reference to J. Venzel stressed that the argument is related to the family of concepts. You can distinguish between *process, procedure* and *product*. The dialectical model of the argument also covers all three aspects of the argument [22, p. 44–45]. R. Alexy distinguishes the following forms of argument: 1) on interpretation, 2) on dogmatic argumentation 3) on the use of precedents 4) on general practical justification 5) on empirical justification 6) so-called special forms of argument. Each form of argument corresponds to certain rules of justification [16, p. 232]. Understanding the existence of certain types of arguments in itself can expand the arsenal of tools for creating legal argumentation in a particular argumentative situation.

The concept of argument is to some extent related to the concept of *argumentation scheme*. The latter is not identical with the concept of argument and reflects the internal connections between its elements. Consider this concept in more detail. "Argumentation scheme" is a term introduced by X. Perelman to denote conventional means of expressing the connection between what is stated in the foundation and between what is asserted in the thesis. However, in some works argumentation schemes are understood as a means to evaluate the whole process of argumentation, as a means of identifying arguments and as a basis for describing the argumentative competence inherent in a native speaker of a language [20, p. 99]. The concept of *"implicit basis"* is connected with the reconstruction of the argument scheme [20, p. 24] – an unexpressed element of the argument that must be reproduced in the context. Argumentation scheme

characterizes the *method of substantiation or refutation of the standpoint* in a single argument with the help of explicit basis [20, p. 25–26]. Each argumentative scheme contains a specific justification between the ground (or several grounds [foundations]) and the point of view [conclusion], which legitimises the transition of acceptability of the ground (grounds) put forward to support the standpoint [21, p. 12]. B. Garssen believes that each argumentation scheme is a special way of maintaining the point of view and defines it as *the most common models of argumentation*, which have an indefinite number of options for substituting elements. They differ from logical schemes in that the transfer of acceptability from the basics to the conclusion is based not only on the formal characteristics of the scheme that uses it [20, p. 119], but also on other factors arising from the context.

As B. Garssen found out, in most classifications the following argumentative schemes are distinguished: causal argumentation, comparative argumentation, argumentation by authoritative opinion in many classifications, symbolic argumentation is also distinguished, but its content is different. The typology of argumentative schemes is considered acceptable if speakers use it to build their arguments and can recognise the scheme of argumentation [20, p.118]. However, arguments and schemes of legal argumentation should be the subject of a separate study and are mentioned briefly in this article.

E. Fetheris talks about *factual* and *legal* arguments. By *factual arguments* she means arguments about facts. In her view, the theory of legal argumentation should develop standards for evaluating factual arguments. For *legal arguments* (arguments about the law) it is necessary to establish what types of schemes of legal argumentation need to be distinguished. In addition, it is necessary to formulate relevant critical questions for different argumentation schemes. After all, the correct application of argumentation schemes depends on whether certain critical questions can be answered in the affirmative [13, p. 202].

Thus, the scheme of the argument is a methodological concept, which covers not only the means of argumentation, but also its inherent way to justify the standpoint (conclusion of argumentation), given that it reflects the internal structure of the argument and the relationship between its elements – explicit or implicit. It is methodologically important for the analysis of legal argumentation to distinguish between legal and factual arguments, which are based on different argumentation schemes and standards of certainty.

The structure of the argument should be distinguished from the scheme *of argumentation*. The scheme of argumentation is, according to F. Van Emurenat and K. Gruterdorst, the internal structure of argumentation, and the structure of argumentation – the external structure is not a single argument, and argumentative discourse. The structure of

argumentation is determined by how the arguments are interconnected and how they allow to defend the standpoint. The structure of argumentation is single and multi-argument. In a single argumentation structure, only one argument is used, and in a multi-argumentation structure, many arguments are put forward for or against the standpoint, trying to anticipate the warnings of the opposite side of the argument. In a multi-argument structure, arguments can be presented in parallel (they can complement or reinforce each other hierarchically). The structure of argumentation can be determined by the content of arguments, context and other pragmatic factors [20, p. 26–27]. Let us give some typical examples. The parallel argumentative structure may look like this regarding the legal argumentation in the court decision: *"Considering the difficult financial situation of the accused, his positive characteristics at work, sincere remorse, the court considers it necessary to impose a suspended sentence."* The hierarchical structure of the argument may look like this: *"The plaintiff did not appear in court, did not report the reasons for non-appearance, although he was duly notified of the time and date of the trial, evidence of which is in the case file."*

Thus, the structure of the argument is a methodological concept, which includes the combination of arguments (argumentation schemes) in chains of arguments, and reflects the external structure of the argumentative construction and the relationship between arguments. To analyse the legal argumentation, it is important to find the structure of arguments and establish relationships between individual arguments in such a structure.

Process aspect legal argumentation tools cover the rules of argumentation. They depend on the type of legal activity in which legal argumentation is carried out and on the specific features of the argumentative situation. In this aspect, one should consider both the theoretical rules of general practical discourse and legal discourse (as a special case of general practical discourse, in particular in the research of R. Alexi [16, p. 211]), and procedural rules that establish the features and boundaries of such a discourse in a particular legal system.

In each of the forms of arguments mentioned above, R. Alexi talks about forms and rules of external argumentation. Let us clarify that the internal argumentation in R. Alexi wonders whether the conclusion follows logically from the foundations put forward in support of him. Whereas the correctness (correctness) of such foundations is the subject of external argumentation [16, p. 221]. In addition, R. Alexi talks about the rules of general practical and legal discourses, which include: basic rules, rules of rationality, rules of burden sharing justification, rules of justification, rules of transition [16, p. 206], rules of internal legal substantiation, rules of external legal substantiation

(concerning forms of legal arguments) [16, p. 231–284]. Given the limited scope of this publication, here are just the *basic rules*: 1) no speaker can contradict himself; 2) each speaker can claim only what he really believes; 3) each speaker can assert only those value judgments and judgments about responsibilities in a particular case, which he wishes to assert in the same terms for each case, which is similar to the present, in all relevant respects 4) different speakers can not use one and the same expression in different meanings [16, p. 188–191]. The set of substantive means in a particular argumentation, and the rules of argumentation, depends on both the subjective composition of legal argumentation and the peculiarities of their interaction in a particular argumentative situation, and the object of legal argumentation.

Summing up, we note that the minimum procedural rules of argumentative discourse, however, establish procedural acts that can be the subject of analysis to enshrine in them the theoretical rules of general practical discourse. In real argumentative situations, it is possible to analyse both compliance with procedural legal requirements and compliance with theoretical rules of discourse, provided that there is relevant information in the text with legal arguments and/or information about the context of the argumentative situation.

All these tools of legal argumentation in their entirety – arguments, argumentative schemes and structures, procedural rules of discourse – allow both to produce arguments and to reconstruct and evaluate it.

2.3. Reconstruction and evaluation of [effectiveness] of legal argumentation

Reconstruction and evaluation of [effectiveness] should be part of the theoretical model of legal argumentation. In our opinion, *the reconstruction of legal argumentation* is a reproduction of real legal argumentation, turning to the tools of legal argumentation, including to the context that allows to identify the features of legal argumentation, the result of which is. Despite the lack of definitions of this concept, it is one of the main works of dialectical and logical approaches to legal argumentation. Theoretical models of argumentation research in these approaches are based not on the creation but on the reconstruction of real legal argumentation.

Reconstruction of legal argumentation is carried out not only for theoretical purposes, but also for practical purposes. In our opinion, one way or another, the reconstruction of legal argumentation in legal activity can be a question of such cases. First, in lawmaking – when the addressees of a draft legal act, who can participate in the debate on its content and vote for it, study the rationale for this act. Secondly, in legal interpretation – when the subject of legal analysis analyses the arguments in the appeal on the need to resolve the issue of official interpretation of the rule of law or its compliance with the Con-

stitution; when the addressees of the argumentation (but not only) study the argumentation that substantiates the decision of the Constitutional Court of Ukraine on the interpretation of a rule of law or on the conformity of a rule of law with the Constitution. Third, in law enforcement – when the court examines the arguments of the parties; when the parties study the arguments of the court, which is the basis of its operative decision in the case; when the appellate or cassation court examines the argumentation of the lower court's decision; when the European Court of Human Rights examines the argumentation of the decisions of the national courts of a certain state, which led to the appeal to this court, etc. Fourth, in law enforcement – when a lawyer examines the case file, analysing the motivated refusals of public authorities to satisfy appeals, selects the facts and the right to write a statement of claim. Fifth, in legal doctrine – scholars using a wide arsenal of arguments, depending on the approach to understanding legal argumentation, can reconstruct it to reach scientific conclusions about the peculiarities of legal argumentation, links in the scheme and structure of argumentation to assess legal argumentation.

Obviously, the set of tools for doctrinal and practical reconstruction of legal argumentation is different and depends on the characteristics of practical legal activities and doctrine, as well as the purpose of reconstruction and the needs of the reconstructor. For example, researchers representing the dialectical approach to legal argumentation reconstruct legal argumentation, using such means of argumentation as argumentative schemes, argumentative structures, hidden foundations. However, they are unlikely to use such tools in practical legal argumentation, where it is often sufficient to single out the arguments that underlie the conclusion (point of view, resolution, etc.).

The evaluation of legal argumentation can be considered in two aspects – as the actual evaluation of such arguments and as an assessment of the effectiveness of such arguments (the ratio of the result of such arguments to its purpose [23, p. 120]). However, criteria for such an assessment need to be proposed. And it is the dialectical approach to legal argumentation that we believe offers such criteria. Assessment of argumentation is part of its study either separately from the reconstruction of legal arguments or as part of the reconstruction.

E. Feteris talks about the evaluation model for evaluating legal argumentation. It serves as a critical tool for establishing the acceptability of argumentation. After all, the reconstruction of the argument itself does not answer this question. E. Feteris proposes to assess the substantive and procedural aspects of legal argumentation. To *the material aspect*, she included evaluation standards for the use of statements that can be considered common starting points, and standards for the use of evaluation

methods for statements that are not common starting points [13, p. 202]. As indicated by E. Feteris and H. Kloosterhuis, to decide whether an argument is acceptable in accordance with legal standards, it is first necessary to check whether the argument is a valid rule of law. Norms of current law are considered a specific form of common legal provisions. To check whether the argument is a valid rule of law and, thus, a common starting point, it is necessary to check whether a certain rule comes from a recognised legal source [24, p. 317]. With regard to *procedural aspects*, to adequately assess, it is necessary to specify which rules of discussion apply to a particular case. For different types of legal discussion (discussions in legal process, discussions in legal science) it is necessary to specify which general and special legal norms are relevant for a rational legal discussion [13, p. 202]. It follows from the above that to assess legal argumentation, it is necessary, first of all, to reconstruct the means of legal argumentation, and then to propose criteria for its evaluation.

R. Alexy does not distinguish between a separate component of the evaluation of the outcome of the discussion. In his view, the rationality of the result depends on whether the discussion took place in accordance with the rules of rational discussion. After all, the rules for discussions already require that the argument be acceptable in accordance with the common starting points. This ensures the coherence of the final result with the initial provisions and values shared by the legal community [16, p. 318].

From the standpoint of F. Van Eemeren, the analysis, evaluation and creation of argumentative discourse concerns both the beginning of argumentation (which includes explicit and implicit material and procedural principles that serve as its starting points) and the presentation of argumentation (reflected in the statement of principles implicitly or explicitly vision). Both the starting position and the presentation of arguments should be assessed using appropriate assessment standards that are consistent with all the requirements of a rational judge who judges reasonably [11, p. 12]. Representatives of the pragmodialectical approach in the theory of argumentation propose to evaluate the argumentation considering the following factors: 1) points of view that they put forward in the presence of different positions; 2) the positions taken by the parties and the material and procedural starting points; 3) the arguments put forward by the parties in support of each point of view; 4) the argumentative structure of all arguments put forward in defense of the standpoint; 5) argumentation schemes used to substantiate the point of view in each individual argument, which together constitute the argument; 6) the result of the discussion presented by the parties [11, p. 537].

To evaluate the argument and find errors and arguments, some researchers

suggest asking critical questions to the arguments. H. Mercier proposes to use the typology of argumentative schemes and critical questions to them, developed in the theory of argumentation, as a starting point for assessing argumentation [25, p. 266]. D. Walton offers critical questions to each scheme of the argument [10, p. 327].

Thus, there are three different positions on assessing the admissibility of an argument. R. Alexy, F. Van Eemeren and other representatives of the pragma-dialectical approach link the acceptability of legal argumentation, and hence its persuasiveness, to the procedural aspect of the instruments of legal argumentation, namely, to the observance of the rules of discussion. The latter concern both general practical discourse and legal discourse, in particular the rules on the need to accept common starting points. It is no coincidence that the representatives of the dialectical approach to legal argumentation attach great importance to common starting points. For example, if the parties have different ideas about the presence or absence of a fact or about the applicability or content of a rule of law, it is unlikely that any bilateral legal argument will be convincing for them. In general, the conclusion on the acceptability or persuasiveness of the argument can be made by both the addressee of the argument, and the reconstructor, and the audience. H. Mercier, D. Walton proposes to evaluate the acceptability of arguments by assessing the acceptability of arguments by asking critical questions to them. E. Mehta and H. Kloosterhuis is talking about a comprehensive assessment, considering the assessment of substantive and procedural aspects of legal argumentation, including through the formulation of critical questions to the arguments. Probably, all these factors should be considered as criteria for assessing the persuasiveness of legal argumentation according to the dialectical standard of its acceptability.

CONCLUSIONS

According to the results of the study, it was found that legal argumentation should be considered as a process concept that reflects the legally significant activities to substantiate the statement by certain means – legal and non-legal arguments. Such activities are communicative, and are carried out in various types of legal activities, often in the form of discourse. Legal argumentation can reasonably be considered the result of legal argumentation or the result of the reconstruction of the argument, presented in writing, through the prism of the own consciousness of a particular subject (reconstructor). In this sense, legal argumentation is always the result of a certain activity of legal argumentation – its own or another subject.

It is substantiated that the general theoretical model of legal argumentation can be considered as a theoretical and analytical model of legal argumentation, which serves as a model of cre-

ation and a model of reconstruction and evaluation of legal argumentation in all types of legal activity. Such a model should cover 1) the composition (*corpus*) of legal argumentation; 2) tools of legal argumentation; 3) reconstruction and evaluation of the [effectiveness] of legal argumentation.

It is substantiated that the composition (corpus) of legal argumentation as a legal construction allows to give legal argumentation a holistic characteristic and show the transition from the activity – legal argumentation – to its result – legal argumentation. It is reasonable to include the following components: argumentative situation; subjective composition; goal; object of legal argumentation; the content of legal argumentation.

It is established that the tools of legal argumentation are a system of substantive (arguments, argumentative schemes and structures) and procedural means (rules of legal argumentation). Legal and factual arguments are based on various argumentation schemes and standards of certainty. As it was stated, the scheme of argument covers not only the means of argumentation, but also its inherent way of substantiating the standpoint (conclusion of argumentation) given the relationship between its other elements – the foundations (explicit or implicit). The structure of the argument covers the combination of arguments in chains of arguments, and reflects the relationships between arguments.

It is identified that the reconstruction of legal argumentation is a reproduction of real legal argumentation, turning to the tools of legal argumentation, including to the context, which allows identifying the features of legal argumentation, the result of which is. Assessment of legal argumentation allows drawing conclusions about the persuasiveness or acceptability of the result of legal argumentation, and possible errors in such arguments.

RECOMMENDATIONS

The scientific value of the article is explained by the fact that it contains substantiation of the general theoretical model of legal argumentation, which has not yet been studied with the help of such a methodological basis. Such a model has the heuristic potential for the analysis of legal argumentation in various types of legal activity. The author's definitions and visions of such a model based on the analysis of basic works on the theory of argumentation and legal argumentation are offered in the article.

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ENSURING QUALITATIVE SYSTEMATIZATION OF LEGISLATION AS AN IMPORTANT PART OF LAWMAKING ACTIVITY

The process of lawmaking includes not only formation of new normative legal acts, which contain norms that eliminate the existing gaps in the legal regulation of social relations, ensuring the function of their actual legal regulation, but also making necessary amendments to the current acts, which eliminate outdated mechanisms, contradictions between separate legal norms.

Systematization through the improvement of normative legal acts, the formation of internally consistent, logically constructed system of legislation, the preparation of the most important laws based on the developed concepts, as well as the formation of conceptual foundations for certain branches of legislation is the important task of lawmaking activity.

Streamlining of normative legal acts is a complex process of a permanent nature. It is important to determine both the scope of systematization and its forms. At the same time, it is unlikely that the streamlining of legislation should be considered exclusively in the form of incorporation, consolidation and codification, since the updating of legislation as a broad understanding of systematization may take place depending on specific conditions and partial changes in normative legal acts.

Systematization, the task of which is to ensure the unification of the national legislation and bring it to a single system through streamlining (elimination of differences, removal of contradictions, abolition of outdated provisions, etc.) is constantly in the field of

view of scientists. This problem is considered in all textbooks and study guides for the general theory of law course, as well as analyzed in monographs and scientific articles by O. Petryshyn, Yu. Tikhomirov, Ye. Hetman, V. Ryndyuk, G. Saribayeva and other legal scholars.

Legal regulation of social relations is considered as their streamlining through appropriate legal means. The list of these means is significantly expanding in modern legal doctrine, primarily due to those means that are being spontaneously formed in society.

As Yu. Tikhomirov puts it, the regulation of social relations is understood not only as a well-orchestrated process of managerial influence with the help of legal provisions coming from the body of power or management body (that is, the process of introducing any legal regulators from the outside into society (legislative regulation), but primarily as social interaction of members of society on the basis of legal norms formed in society itself[1].

This concept of legal regulation is particularly associated with social relations formed in a developed civil society, which is characterized by a high level of development of social activity. In particular, this is clearly manifested in the sphere of private law, where the range of sources of legal regulation is significantly expanding and includes principles, contracts, local legal acts, and in some places – legal doctrine.

Yu. Tikhomirov notes that it is necessary to correctly define sets of regulators to ensure the effectiveness of legal regulation. Improperly or hastily drafted norms and provisions do not contribute to sustainable and consistent regulation. But it is not limited exclusively to legal norms, which are traditionally and quite statically explained in the literature on the theory of law and the state. There are much more regulators including principles of law, doctrines and concepts, non-legal regulators that act in a general direction. Moreover, they remain unaddressed, as well as the relationship and dependence between the regulators themselves[2].

There is no doubt that these latest trends should be taken into account when organizing both the process of legal regulation itself and its study by scientists.

At the same time, it is undisputed that legal rules take an important (if not the most important!) place in the structure of the mechanism of legal regulation of social relations. Therefore, the process of rule-making requires close attention.

The rule-making activity as one of the forms of activity of public authorities must be properly regulated, since it is related to the creation, change or abolition of legal norms. These legal consequences (results) of rule-making activity are determined by its main functions, among which the primary regulation of social relations takes the leading place,

[1] Tikhomirov Yu. A. Legal regulation: theory and practice. M.: Formula of law. 2010. P. 25.

[2] *Ibid*, p. 29.

i.e., the adoption of new legal norms aimed at regulating relations that were not regulated before.

The function of secondary regulation includes the updating of legal regulation through the introduction of amendments and additions to the current normative legal acts, and, if necessary, the abolition of separate provisions or the adoption of new acts to replace the existing ones. It is quite clear that the body of legislation should be maintained in a state that correspond to modern conditions and trends in the development of society, as well as maintaining the legislation up to date[1].

Such functions of rule-making activity as *deregulation* of social relations (abolition of normative legal acts); *elimination of shortcomings* of legal regulation (improvement of legal regulation by eliminating gaps and conflicts, duplication, etc.); streamlining of legal regulation (systematization of normative and legal acts) are also mentioned in legal literature[2].

It should be noted that this is not the first attempt of the Parliament of Ukraine to regulate the process of drafting and adoption of normative legal acts at the legislative level. Back in March 1999, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Normative Legal Acts»[3], but it never came into force due to the use of the veto by the President of Ukraine L. Kuchma[4]. The Verkhovna Rada of Ukraine also considered the draft law «On Laws and Legislative Activity»[5], which was adopted by the Parliament and signed by the Chairman of the Verkhovna Rada of Ukraine V. Lytvyn. At the same time, this law was also vetoed by the President of Ukraine. In his opinion, this law did not introduce a unified conceptual approach to the regulation of issues related to the system, types, hierarchy of normative legal acts, the development of quality draft laws, their adoption and entry into force.

The veto of this law was recognized as justified in the literature. Moreover, the very idea of the expediency of its adoption was questioned[6]. There were heated debates about the draft law[7].

The legislative work in this direction was suspended for some time. It

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[2] Ibid., p.212.

[3] Proposals of the President to the draft Law «On Normative Legal Acts" No. 0923 of February 14, 2000 URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=0923&skl=4> (date of access: 10.12.2022).

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[7] Yushchyk Yu. The Law on Laws: Necessity and Concept. *University Scientific Notes*. 2005. No. 3 (15). P. 43.

was resumed only by the current Parliament in June 2021 when an initiative group of deputies proposed the draft Law «On Lawmaking Activity» (hereinafter – the Draft Law)[1].

The Draft Law adopted in the first reading is aimed at establishment of the principles and procedure for lawmaking activity in Ukraine, in particular the principles of lawmaking activity and the regulation of relations related to its planning, development, adoption (issuance) and implementation of normative legal acts.

The Draft Law pays considerable attention to the system of domestic legislation as a hierarchical system of normative legal acts and international treaties of Ukraine. This system is considered as an interconnected set of normative legal acts, hierarchically structured from acts of higher legal force to acts of lower legal force, and consists of two segments. The first one is legislative, which includes the Constitution of Ukraine[2], codes and laws. The second segment is filled with subordinate normative legal acts: resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, as well as acts of central state authorities, acts of heads of local state administrations, acts of local and professional self-government bodies. These acts form the body of subordinate normative acts if they contain legal norms.

It is a norm of law that is the main "building material" which is at the core of each normative act and legislation in general. The doctrine of legal norm was and continues to be significantly considered in the legal science of various periods of the social development (the pre-October period, the Soviet era, the modern stage)[3]. In general, a norm of law is defined as a generally binding, formally defined rule of conduct established or sanctioned by the state (people), which ensures the regulatory influence of the state on society by granting certain rights to subjects and imposing obligations, and which is protected and guaranteed by the state through the possibility of coercive influence[4].

[1] Draft Law of Ukraine «On Lawmaking Activity" of June 25, 2021 No. 5707. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72355> (date of access: 10.12.2022).

[2] Constitution of Ukraine: Law of Ukraine of June 28, 1996 No. 254k/96-VR. URL: <https://zakon. rada. gov. ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date of access: 10.12.2022).

[3] Korkunov N. M. Decree and law. S.-Pb., 1984; Korkunov N. M Lectures on the general theory of law. S.-Pb., 1908; Shershenevich G. F. General theory of law. M., 1911; Soviet socialist legal norms / Nedbaylo P. Ye. Lvov: Publishing House of Lvov University, 1959; Alexandrov N. G. Legality and legal relations in the Soviet society. M.: Gosjurizdat, 1955; Alekseev S. Soviet law as a system: methodological principles of study. *Soviet state and law.* 1974. No. 7. P. 11; Davydova M. Normative-legal prescription. Nature. Typology, technical and legal design. S.-Pb, 2009; Baytin M. I. Essence of law (modern normative legal understanding on the verge of two centuries). Saratov: SGAP, 2001.

[4] Theory of the state and law. Academic course: textbook / Ed. O. V. Zaychuk, N. M. On-

The consolidation (establishment) of the basic standards for the construction of the legislation system at the normative level, determination of its main components, the place of each normative element in an integrated, logically constructed system, as well as the functional and regulatory burden on these components is an extremely important prerequisite for the formation of high-quality domestic legislation.

It appears that the legislative regulation of a circle of participants in the lawmaking process, as well as its basic foundations and principles can undoubtedly be considered as a certain stage in the regulation of legislation in general. It is no coincidence that the literature states that the systematization (streamlining) of normative legal acts should begin with the drawing up of a model scheme[1].

One can also agree that the process of streamlining of the body of legislation must meet certain requirements. In particular, the work on systematization should be comprehensive, complete, ensure detail and clarity of regulation, ease of use of the system of normative legal acts and some legal norms, unity of the entire body of legislation, absence of contradictions in it. Systematization must also comply with the principles of planning, organizational support, and be carried out simultaneously to create an integrated, normatively ordered legal field. In the literature, it is reasonably noted that the above principles of systematization of legislation are closely related to each other and cause each other in the process of implementation[2].

In addition, it may be emphasized that a special place among these requirements-principles of systematization belongs to the normative consolidation of the entire process of creation, adoption and introduction into force of normative legal acts.

Speaking about the need to form a model scheme of legislation, first of all it is necessary to pay attention to the fact that such a model in the Draft Law is normatively established in the form of a hierarchically constructed system of normative legal acts with the definition of the functional purpose of each of them in this system.

In the context of ensuring the proper quality of lawmaking activity it is important to understand the entire process of systematization of normative material, which is expedient to begin with the analysis of the essence of this phenomenon.

The systematization of legislation as an important link of legal regulation is closely related to the concept of the system of law itself, which is quite disputable at the current stage. In our opinion, this is primarily due to the paradigm shift in legal understanding in general.

ishchenko. K.: Yurinkom Inter, 2006. P. 367.

[1] Systematization of legislation as a way of its development / Man. ed. V. A. Sivitsky. M.: Publishing House of the National Research University Higher School of Economics, 2010. P. 28.

[2] *Ibid*, p. 24.

If we turn to the analysis of doctrinal views regarding the concept of system of law, one may note that they have a fairly wide range.

For example, the system of law is considered as a set of legal norms integrated by the principles of law, conditioned by the combination of private and public interests and the internal organization of which is characterized by their unity, consistency, differentiation and grouping into relatively independent structural components[1].

The opinion was also expressed that the system of law is a set of well-ordered and mutually agreed legal norms that characterize its internal structure as a component of the legal system[2].

O. Chashin, who studied the doctrinal definitions of the concept of the system of law in considerable detail[3], views it to be a set of interrelated and interdependent branches, institutions and norms of law historically formed at a certain point in time and compiled in such order that allows to reproduce an entire picture of the set of legally established rules of conduct in a specific society[4].

Thus, despite certain textual differences, most definitions contain indications of the following main characteristics of the system of law: 1) a set of prescriptions of law; 2) their internal structuredness; 3) mutual consistency and interdependence; 4) objective character.

At the same time, in modern legal studies of a general theoretical nature, attention is rightly emphasized on the fact that the existence («being») of law has a mental-active nature: law exists primarily in the idea of proper, desirable behavior, which is implemented in the mass behavior of wider population groups. These ideas (mental images) are consolidated in legal norms, which are symbolic forms of these mental images[5].

It appears that such a modern vision of the essence of law as a social phenomenon makes it possible to see the relationship more clearly between two important legal categories – the system of law and the system of legislation.

The system of law is primarily a manifestation of our mental vision of law as proper: an internally coherent set of prescriptions that correspond to the proper legal order in various spheres of social life. But «externally» this system manifests itself in another way – as the system of legislation, which is a set of normative legal acts, combined in certain groups on a subject basis, which are built according to the hierarchical principle.

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[1] Petryshyn O. V. Theory of the state and law: textbook for students of law higher education institutions / O. V. Petryshyn, S. P. Pogrebnyak, V. S. Smorodynskyi, etc.; ed O. V. Petryshyn. Kh.: Pravo, 2014. P. 174.

[2] Theory of the state and law. Academic course: textbook / Ed. O. V. Zaychuk, N. M. Onishchenko. K.: Yurinkom Inter, 2006. P. 387.

[3] Chashin A. N. Theory of legal systematization: study guide. M.: DiS, 2010. P. 8–12.

[4] *Ibid*, p. 12.

[5] Post-classical theory of law: Monograph / Chestnov I. L. S.-Pb.: Publishing house «Alef-Press», 2012. P. 379–380.

In practice, we are dealing precisely with the elements of system of legislation – normative legal acts, which consist of numerous legal norms. In such circumstances, it is extremely important that this system, as a hierarchically structured set of normative legal acts and its components (legal norms), meets the goals of legal regulation and is able to ensure law and order in the relevant spheres of public life at an appropriate level.

Streamlining (systematization) of current legislation is an important task of state authorities both at the level of rule-making and at the level of law enforcement. At the same time, the content and essence of systematization cannot be reduced only to its implementation in known forms – incorporation, consolidation, codification. Systematization of legislation as a legal process is more complex and staged, various in scope and tasks.

It should be considered as a way of optimizing the legislation, which allows (or, more precisely, implies) the possibility of organizing the body of legislation outside of only these forms. This interpretation of systematization is determined primarily by the goals of systematization, in particular: ensuring the completeness of legislation, removing outdated and ineffective legal norms, identifying and resolving legal conflicts (collisions); identification and elimination of gaps, updating legislation[1].

Thus, there is every reason to consider systematization as a broad process of streamlining of legislation through the introduction of amendments and additions to particular norms, supplementing current normative legal acts with new norms without abolition of these acts, the removal of particular norms, etc. Such activity is covered by the general term «improvement» of legislation. It seems that such an improvement and in particular its updating, completely fits into the idea of streamlining of the legislation, corresponds to its goals.

At the same time, such generalizing (comprehensive) types of systematization as incorporation, consolidation and codification remain essential. Codification plays a special role in systematization.

Codification belongs to the most complex and perfect forms of systematization, which is an activity aimed at radical (external and internal) revision of the current legislation through the preparation and adoption of a new codified act[2].

Although, from the point of view of legal force, the code does not differ from other laws. It cannot be ignored that codified normative acts occupy a special place in the system of legislation.

First of all, the code plays the role of a core element in the system of branch legislation, which also reflects the sys-

[1] Chashin A. N. Theory of legal systematization: study guide. M.: DiS, 2010. P. 25.

[2] Explanatory dictionary on the theory of law / I. A. Ivannikov. Rostov-on-Don: Phoenix, 2006. P. 37.

tem of the corresponding branch of law. Thus, such a codified act can be considered as an additional «identifier» (along with the subject and method) of the independence of the branch of law.

However, this statement will be relevant if certain conditions are met: the codified act mainly includes norms of one branch of law, i.e., those that correspond to the principle of the unity of the subject and the method of legal regulation.

Recently, the process of lawmaking has been covered by a phenomenon that can conditionally be called «codexomania». There are constantly attempts to lobby for the adoption of another code, the relevancy or practical need of which seems quite questionable. For instance, it was repeatedly proposed to adopt the Investment Code, the Innovation Code, the Intellectual Property Code, the Information Code, etc. The list of these acts can be continued. As a rule, the content of these codified acts is formed through the combination of adopted laws, other normative legal acts, supplemented by the new norms. In such circumstances, objectively there is a danger of determining the relationship of such a code with other special laws that contain similar norms. Such a situation causes collisions in legal regulation, provokes legal uncertainty and other legal and technical problems.

It seems appropriate to define the status of the code in the system of current legislation at the normative level. Therefore, perhaps there is a need to clarify the content of Art. 11 of the Draft Law and note that the code is a core act of the branch legislation, which should be developed on the basis of a prepared concept and formed by including in it mainly the norms of one branch of law.

Under that approach, it will be understandable to include part 3 in this article, which provides that in the event that the subject of the right of legislative initiative submitted to the Verkhovna Rada of Ukraine a draft law that regulates social relations differently than the code, it must simultaneously submit draft law on amendments to the code. The submitted draft is considered by the Verkhovna Rada of Ukraine simultaneously with the corresponding draft law on amendments to the code. Such a rule, as a certain safeguard, aimed at ensuring the stability of the legislation and can be considered as an effective legal and technical tool only when the code has a certain substantive advantage over other laws regulating the relevant sphere of social relations. By the way, a similar mechanism has already been used in the legal technique of lawmaking. Indeed, the third paragraph of Part 2 of Art. 4 of the Civil Code of Ukraine[1] contains a similar rule.

In addition, familiarization with the Draft Law gives grounds for the conclusion that it contains extremely impor-

[1] Civil Code of Ukraine: Law of Ukraine of January 16, 2003 No. 435-IV. *Bulletin of the Verkhovna Rada of Ukraine*. 2003. No. 40. Art. 356.

tant and interesting legal innovations related to the development and adoption of the most important normative legal acts.

This, in particular, concerns the provisions of the developments of scientific concepts of the development of legislation as acts of legislative prediction, in which a systematic prediction of the development of legislation, its branches, spheres and directions is carried out on a theoretical and empirical basis (Article 19 of the Draft Law), in particular: Scientific Concept of the Development of the Legislation of Ukraine – a document of a recommendatory nature, in which a systematic prediction of the development of the legislation of Ukraine, its individual branches, spheres and directions is carried out on a theoretical and empirical basis. The drafting of the Scientific Concept of the Development of the Legislation of Ukraine is carried out once in five years by the National Academy of Legal Sciences of Ukraine[1].

It is also possible to positively evaluate the proposal to develop the concepts of certain draft laws (Art. 21 of the Draft Law): The concept of the draft law is developed for draft laws which are the most important in content and significant in scope (draft codes, amended laws, draft laws which are large in content with the expected number of articles not less than one hundred, draft laws aiming to regulate social relations which are of great importance, draft laws that systematize legislation, etc.)[2].

Such a fundamental approach to the formation of both the legislative model of the branch of legislation and the scientific substantiation of its components (separate acts) will certainly contribute to the improvement of the quality of both domestic legislation in general and separate laws in particular.

Therefore, legislation is an important element in the system of means of legal regulation. Its efficiency and effectiveness directly depend on the quality of normative legal acts included in the legislation.

Codified normative acts occupy a special place in the legal system. The code plays the role of a core element in the system of branch legislation, which reflects also the system of the corresponding branch of law.

Taking this into consideration, codification is important not only for the improvement of the legislative regulation of social relations, but also for the development of the entire system of law. Thanks to this way of systematization of legislation, the branch of law is able to fully exist and function.

The regulation of lawmaking activity at the legislative level will play a significant role in solving the problem

[1] Draft Law of Ukraine «On Lawmaking Activity» of June 25, 2021 No. 5707. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72355> (date of access: 10.12.2022).

[2] Draft Law of Ukraine «On Lawmaking Activity» of June 25, 2021 No. 5707. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72355> (date of access: 10.12.2022).

of improving the quality and efficiency of current legislation. It is certain that the development and adoption of such a law requires a coordinated conceptual approach, the development of which will be facilitated by the joint work of parliamentarians with domestic legal scholars.

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THE ROLE AND SIGNIFICANCE OF LEGAL MONITORING AS AN EFFECTIVE TOOL FOR ENSURING THE QUALITY OF THE LEGISLATION OF UKRAINE

Last year, the Verkhovna Rada of Ukraine adopted as a basis the draft Law «On Lawmaking Activity»[1], which sets out interesting innovations within the ongoing processes of updating the current legislation of Ukraine, despite the state of martial law. It should be noted that legislative activity since the time of Ukraine's independence desperately needed comprehensive normative regulation at the level of law, because even today we have to admit the absence of a unified approach to the formation of systemic legislation. The consequence of unsystematic lawmaking, as pointed out by R. O. Stefanchuk, is that the vast majority of draft laws considered by the Verkhovna Rada of Ukraine are mere amendments and additions to the current legislation. Only 12% of draft laws submitted to the Verkhovna Rada become laws, and 80% cannot be recommended for adoption even as a basis. In general, the number of current normative legal acts in Ukraine far exceeded one million[2].

This year's events of the national liberation struggle of our country once

[1] Draft Law of Ukraine «On Lawmaking Activity» of September 7, 2021. 1708-IX. URL: http://w1.c1.rada.gov.ua /pls/zweb2 / webproc4_1?pf3511=72355 (date of access: 15.12.2022).

[2] Stefanchuk R. O. On the principles of legal regulation of lawmaking activity in Ukraine. *Law of Ukraine*. No. 12. 2021. P. 13.

again confirmed the importance of regulation of the fundamental principles of the lawmaking process as the basis of the activity of a modern legal state. This is evidenced by the normative legal acts adopted during the period of martial law, which both in content and in form correspond to the fundamental constitutional principles, recognized world and European standards of orderliness of lawmaking activity, despite the lack of an appropriate possibility of broad public discussion. Therefore, even in the conditions of martial law, it was very important for our country to ensure strict compliance with the general principles aimed at the implementation of the fundamental principles of democracy, rule of law, inviolability of property, etc., when transforming into a military system of the economy. An example of such an unplanned basis for the development of drafts of normative legal acts and their implementation can be the Law of Ukraine «On the Organization of Labor Relations Under the Martial Law», which establishes the peculiarities of the labor relations of employers and employees during the period of martial law[1]. This normative legal act, in a manner different from the Labor Code of Ukraine, defines the peculiarities of conclusion, an amendment, suspension and termination of an employment contract; establishment and accounting of working hours and rest time, payment for this; organization of personnel records management; night work; procedure for granting vacations, etc. Accordingly, the peculiarity of the adoption of this legislative act, as well as other legislative acts adopted after the imposition of martial law (the Law of Ukraine «On the Basic Principles of the Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine», the Law of Ukraine «On Amendments to the Criminal Code of Ukraine regarding the strengthening of responsibility for crimes against the foundations of national security of Ukraine under the conditions of the martial law regime», etc.), lies in lack of a mechanism for a detailed study of the issue, which includes: studying the opinion of participants or potential participants of social relations; analysis of judicial practice, international experience in solving this or a similar issue; study of research materials, statistical data, etc. It is no coincidence that the prerequisite for the creation of normative legal acts is knowledge of real conditions, factors and circumstances of relevant social relations, the legal regulation of which is dictated by the needs of the socio-economic development of the state[2]. In addition, there is no possibility to propose an alternative to the proposed draft law and discuss it after the above analysis.

[1] Law of Ukraine «On the Organization of Labor Relations Under the Martial Law» of March 15, 2022 No. 2136-IX. URL: https://zakon.rada.gov.ua/laws/show/2136–20#Text (date of access: 15.12.2022).

[2] Husarov S. M. Concept and essence of lawmaking in Ukraine. *Legal system: theory and practice*. 2015. No. 2. P. 57.

Accordingly, it is precisely in such a difficult period there is a need more than ever to establish the basic rules of rule-making, the absence of which leads to the complication of legislative activity, its planning and monitoring.

Repeated attempts to regulate the issue of planning lawmaking activity, to ensure proper mechanisms of control over such activity, were faced the legislator's inability to form a politically agreed position («On Normative Legal Acts»[1], «On Laws and Legislative Activity»[2]), which led to fundamental gaps in the field of legislative regulation of lawmaking. Taking this into account, the attempt reflected in the draft Law «On Lawmaking Activity» to establish the binding nature of both planning and conducting activities regarding the systematic review of the current legislation from the point of view of its improvement by analyzing the state of the normative material and generalizing the practice of its application seems appropriate. Such approach fully corresponds to the fundamental principles of systemacity and complexity of lawmaking activity. It is not accidental that the planning of lawmaking activity is considered in legal doctrine as a normatively regulated coordinated activity of state bodies, which is based on the results of predictions and monitoring and contains interconnected and mutually conditioned components[3]. Accordingly, the planning of rule-making activity allows to rationally build a system of normative legal acts through the priority preparation and consideration of basic, system-forming drafts, helps to optimally organize the preparation of normative legal acts, coordinate this activity, eliminate its duplication, strengthen control over the quality and terms of preparation, avoid spontaneity and unsystematic character of lawmaking activity, to increase the discipline of executives[4], provides large-scale work on updating and systematizing legislation, filling gaps in legislative regulation, eliminating the plurality of laws, repealing outdated norms[5].

Taking into account the above, the current legislation should be updated in order to identify various conflicts and gaps, which will allow analyzing possible ways of improving the legislation or, on the contrary, justifying the expediency of abolition of the current nor-

[1] Proposals of the President of Ukraine to the draft Law «On Normative Legal Acts» No. 0923 of February 14, 2000 URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=0923&skl=4> (date of access: 15.12.2022).

[2] Proposals of the President of Ukraine to the draft Law «On Laws and Legislative Activity» No. 0894 of 10 January, 2006. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=12103> (date of access: 12 March 2022).

[3] Kovalskyi V., Kozintsev I. Lawmaking: theoretical and logical foundations. Yurinkom Inter. 2005. P. 38.

[4] Ryndyuk V. Rule-making activity: educational and methodological manual. K.: KNEU, 2009. P. 32.

[5] Dzera O., Milovska N. Planning of lawmaking activity as an important stage of its effective organization. *Law of Ukraine*. 2021. No. 12. P. 84.

mative legal act. As an example, we may refer to the draft Law «On the Peculiarities of Regulation of Entrepreneurial Activities of Certain Types of Legal Entities and Their Associations in the Transitional Period» №6013 of 09.09.2021, in the final and transitional provisions of which the Commercial Code of Ukraine is recognized as having lost its force, considering that its provisions, as stated in the Explanatory Note to the draft Law, mostly do not have a regulatory effect, are declarative in their content, and also contradict other normative legal acts and general principles of civil legislation[1]. In particular, the rule established in Part 1 of Art. 63 of the Commercial Code of Ukraine provides for the existence of collective and mixed forms of ownership. At the same time, neither the Constitution of Ukraine nor let alone the Civil Code of Ukraine provide for such «forms» of ownership. Instead, the legislator established a general rule on the ownership of specific property by both individuals and legal entities under the right of private ownership within the framework of the Constitution of Ukraine and the Civil Code of Ukraine. Moreover, the analysis of other provisions of the Civil and Commercial Codes of Ukraine, as well as scientific discussions that have been ongoing since the very beginning of work on the draft of the Civil Code of Ukraine[2], judicial practice of dispute resolution, allow to make conclusion about the presence of systemic contradictions between the provisions of the above codified acts. We reach a similar conclusion when comparing the provisions of the Civil and Housing Codes of Ukraine, the analysis of which allows us to assert that they regulate the same type of legal relationship (Chapter 2 of the Housing Code and Chapter 59 of the Civil Code), the duplication of normative legal provisions and the declaration of separate authorities without establishing proper mechanisms for their implementation (Art. 9 of the Housing Code), etc.

The above is strengthened by the presence of many subordinate normative legal acts in various spheres of social relations. It should be noted that the effectiveness of the provisions of the subordinate act directly depends on the quality of the legislative act for the specification of which it was adopted. Accordingly, when the subordinate act is issued in violation of the provisions of the law, even if it is aimed at correct-

[1] Draft Law of Ukraine «On the Peculiarities of Regulation of Entrepreneurial Activities of Certain Types of Legal Entities and Their Associations in the Transitional Period» of September 09, 2021 No. 6013 http://w1.c1.rada.gov.ua /pls/zweb2 /webproc4_1?pf3511=72707 (date of access: 15.12.2022).

[2] Pospolitak V. V., Khanyk-Pospolitak R. Yu. Analysis of existing contradictions and inconsistencies between the Civil and Commercial Codes of Ukraine. K.: Referat, 2005. 264 p.; Kuznetsova, N. S., Kot, O. O., Hryniak, A. B., Pleniuk, M. D. Abolition of the Commercial Code of Ukraine: potential consequences and necessary prerequisites. *Journal of the National Academy of Legal Sciences of Ukraine*, 2020. No. 1. P. 100–132.

ing errors and inaccuracies in it, it becomes illegal, and this affects its ineffectiveness[1]. In addition, the regulation of, for example, private law relations does not take place only through multilevel legal norms, since such regulators are principles of law, civil law contracts, customary business practices, judicial practice, and sometimes legal doctrine. Accordingly, these relatively new regulators should also be taken into account in the process of improving the effectiveness of legal regulation of civil relations.

Such an approach will be fully consistent with the principle of expediency and reasonableness in lawmaking activity, which ensures the appropriate hierarchy of regulators and their focus on the detailed implementation of the provisions of the legislation. For example, a significant drawback of a number of normative legal acts is their overly blank character, which is not specified in the acts of special legislation. Often enough, blanket rules are deliberately not specified in order to avoid additional property burdens on the state. The notable example of this is Art. 1177 of the Civil Code of Ukraine, the current version of which made it impossible for victims of a criminal offense to receive compensation from the state. On the one hand, the lack of specification of blanket rules can be attributed to the shortcomings of the legal technique, and on the other hand, to the conceptual problems of rule-making[2]. Under such conditions, it is extremely important that this hierarchically constructed system meets the goals of legal regulation and is able to ensure law and order in the relevant spheres of public life at the appropriate level[3].

A separate practical problem today is the legislative regulation of accounting and state registration of normative legal acts. As confirmation of the above, it should be emphasized that lawmaking activity should be carried out with ensuring of proper awareness of the society regarding its purpose and results, as well as provision of law-enforcement subjects with information on the state of legal regulation of social relations. As noted in this regard in the Explanatory Note to the draft Law «On Lawmaking Activity», it is possible to solve this, in particular, through the promotion and approval of the status of the Unified State Register of Normative Legal Acts[4]. For this purpose, a number of

[1] Onyshchuk I. Monitoring indicators of the effectiveness of legislative acts. *Almanac of Law.* Legal monitoring and legal expertise: issues of theory and practice. Issue 10. K.: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2019. P. 75.

[2] Khomenko M. M. Determination of basic requirements for legal rules in the process of rule design. *Law of Ukraine*. No. 12. 2021. P. 70.

[3] Kuznetsova N. S. Ensuring qualitative systematization of legislation as an important part of lawmaking activity. *Law of Ukraine*. No. 12. 2021. P. 48–49.

[4] Explanatory Note to the draft Law of Ukraine «On Lawmaking Activity» of September 07,2021. No. 1708-IX. URL: http://w1.c1.rada.gov.ua/pls/zweb2 / webproc4_1?pf3511=72355 (date of access: 15.12.2022).

amendments were made to the Procedure for Submitting Normative Legal Acts for the State Registration to Judicial Authorities and Their State Registration, according to which a specialist of the structural division of the state registration of normative legal acts no later than the next working day after the entry of a normative legal act in the State Register informs the structural subdivision, which maintains the Unified State Register of Normative Legal Acts, about the state registration of the normative legal act. In order to include the registered normative legal act in the Unified State Register, the subject of rule-making no later than the next working day after receiving the accompanying letter from the Ministry of Justice about the state registration of the normative legal act provides the structural subdivision that maintains the Unified State Register with a copy of the normative legal act in electronic form, the text of which must be identical to the original of the registered normative legal act, as well as information about the authorized person of the subject of rule-making (name, surname, phone number). The structural subdivision, which maintains the Unified State Register, checks the conformity of the copy of the normative legal act provided by the subject of rule-making with the text of the registered normative legal act placed in the electronic document circulation system of the Ministry of Justice and includes the registered normative legal act in the Unified State Register within 5 working days from the date of receipt of the internal note of the structural subdivision of the state registration of normative legal acts through the electronic document circulation system[1]. At the same time, the analysis of the above-mentioned subordinate act does not allow us to assert the construction of a proper accounting of adopted and current legislative acts in the system of the Ministry of Justice of Ukraine, because it is quite difficult to track the total number of published acts, which leads to a violation of the fundamental principles of transparency and openness of legal information.

In addition, the most common deficiencies in domestic legislation are: 1) inconsistency of the legal norms with the objective patterns of social life; 2) inconsistency of the norms with the socio-legal psychology of the people, social group, etc.; 3) incorrect definition of the purpose of legal regulation; 4) erroneous choice of legal means of achieving of such purpose; 5) insufficient regulation of the conditions of application of the norm; 6) violation of the relationship between the elements of the system of legal regulation, in particular between the norms of different branches of the legislation; 7) internal

[1] Order of the Ministry of Justice of Ukraine «On Improving the Procedure for the State Registration of Normative Legal Acts in Judicial Authorities and Canceling the Decision on the State Registration of Normative Legal Acts" of April 12, 2005. No. 34/5. URL: https://zakon.rada.gov.ua/laws/show/z0381-05#Text (date of access: 16.03.2022).

contradiction of the norm, namely its excessive complexity, incomprehensibility for executives (legal uncertainty), impossibility of application of sanction of the norm[1].

These and other problems indicate the absence of a certain legal monitoring mechanism today, the constituent elements of which are techniques, methods and ways of implementation (analytical generalization, conducting surveys, generalization of appeals, exchange of information between state bodies, analysis of court decisions) of monitoring, as well as the use of its results. The combination of the above elements constitutes the legal technique of legal monitoring, the arsenal of which is significantly different from the methodology of scientific knowledge, since the use of special legal and technical means is aimed at the implementation of the analytical function of legal monitoring – legal expertise and its result – a very specific assessment of the effectiveness of normative and legal acts. Instead, the result of scientific knowledge is the formation of scientific knowledge, which is heuristic and not always unambiguous[2]. At the same time, the «technological» view of the legal monitoring allows to bring the empirical and the logical in scientific studies as close as possible, to cover and connect not only the methods of studying legislation and law enforcement practice, but also organizational, management blocks, its components, institutional, functional and instrumental aspects[3].

At the same time, the main task of research into the problems of legal effectiveness is the preparation of scientifically based recommendations for improving legislation by assessing the social effectiveness of those legal norms that are subject to correction. This reflects the main mission of legal monitoring, because the effectiveness of any legislation includes a wide range of various issues: from forecasting to lawmaking and law enforcement. It is not accidental that the legal literature on this matter emphasizes that the main criterion for the effectiveness of legislation is the achievement of the goal of legal regulation, i.e., its result[4]. Accordingly, the results of legal monitoring provide an opportunity to identify and, if necessary, eliminate deficiencies in the legislation by improving the mechanism of legal regulation, which will contribute to the stability of the legal order. It is not for nothing that the concept of the draft Law "On Lawmaking Activity" emphasizes that as a result of properly organized monitoring of normative legal acts, the issues of the rele-

[1] Muzyka L. A. The concept of civil and legal policy of Ukraine: a monograph. Kyiv: A. V. PALIVODA, 2020. P. 384.

[2] Basics of scientific studies: methodology, organization, presentation of results. Textbook. Publisher: «Hi-Tech Press», 2012. P. 197.

[3] Chernogor N. N. Legal technique of legal monitoring. Doctrinal foundations of legal technique. M.: Jurisprudence, 2010. P. 349.

[4] Strautmanis Ya. Ya. Effectiveness of land legislation. *Soviet state and law.* 1974. No. 12. P. 32.

vance of a normative legal act, its compliance with the general directions of the legal policy of the state, the expediency of making amendments or additions to the current normative acts, or recognition of particular acts as having lost their validity, may be clarified[1].

The change in the paradigm of the binding nature of a monopoly on lawmaking activity led to a rethinking of the role of the scientific and expert community, the importance of discussion and control over this process necessitates a conceptual rethinking of the legal policy of the state. The requirements for the professionality of lawmaking activity determine the need to implement the principle of its scientific support which means that the results of lawmaking activity must take into account the achievements of science in the field in which the legal regulation is carried out, in particular, through the involvement of representatives of scientific institutions and recognized experts in the relevant fields of science in lawmaking activity[2]. It is they who are tasked with transforming the will of the lawmaker into the form of a normative legal act, as well as providing it with verified information that is necessary to resolve questions about the timeliness and relevance of the adoption of a normative legal act, predicting its effect, effectiveness and consequences. Lawmaking should be based on the scientific concept of the development of normative acts, on clear scientific ideas about the future development and state of the legislative framework and about optimal ways of its improvement[3].

It is in process of scientific monitoring of the current legislation imperfection or obsolescence of approaches to the legal regulation of specific legal relations are revealed, which allows to propose a mechanism for their regulation that is improved for modern needs. Relevant proposals for improving the mechanism of legal regulation are supported by scientific knowledge in the form of a hypothesis, a scientific assumption, and a conclusion. It is not for nothing that the legal doctrine emphasizes that the basis of modernization should be scientific justification with the aim of eliminating deformations of the rule-making mechanism, ensuring maximum and objective interaction of all other factors affecting the development of domestic lawmaking[4].

In this regard, the warning of V. Ya. Tatsii deserves attention that reforms that are not ensured by the implementation of a systematized and con-

[1] Concept of the Law of Ukraine On Lawmaking Activity dated September 07, 2021 1708-IX. URL: file:///C:/Users/gab /Downloads/doc_ 550264%20(1).pdf (date of access: 15.12.2022).

[2] Stefanchuk R. O. On the principles of legal regulation of lawmaking activity in Ukraine. *Law of Ukraine*. 2021. No. 12. P. 16.

[3] Udovika L., Ganzenko O. Legal means of lawmaking in the context of Ukraine's integration into the EU. *Entrepreneurship, economy and law*. 2017. No. 10. P. 203.

[4] Shutak I., Onyshchuk I. Legal technique of rule-making in the context of doctrinal views. *Law of Ukraine*. 2021. No. 12. P. 156.

scious legal policy, that are not supported by attempts to connect separate normative acts into a program that works and is consistently implemented, are doomed to failure[1]. In view of this, legal monitoring plays an important role in ensuring the transparency of management activities by informing the population about the state of the domestic legal system, in establishing feedback between lawmaking bodies and society. The public initiatives that are relayed via social networks, with the involvement of various Internet resources, are gaining the most popularity and effectiveness[2].

In this regard, it is worth supporting the classification of participants in lawmaking activity which is provided in the draft Law «On Lawmaking Activity» into:

1) direct subjects of lawmaking activity (the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, ministries and other state bodies which are given lawmaking powers in accordance with the law, the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, ministries of the Autonomous Republic of Crimea, heads of local state administrations, local self-government authorities and professional self-government bodies (self-regulatory), which are given powers of the subjects of lawmaking activity according to the law);

2) subjects of ensuring lawmaking activity (persons participating in the lawmaking process and performing the functions of scientific, expert, advisory, technical and other types of assistance in the lawmaking process);

3) interested parties (individuals and legal entities that will be affected by the adoption (issuance) of a normative legal act).

Accordingly, the subjects of legal monitoring can be both legislative, executive and judicial bodies (especially the Supreme Court and the Constitutional Court of Ukraine) of branches of the government, as well as various expert organizations from among scientific, educational, international and other organizations of the relevant profile. Therefore, an important role in conducting an independent legal expertise of draft laws, legal monitoring of current normative legal acts should be assigned to the National Academy of Legal Sciences of Ukraine, whose statutory tasks are to fulfill the order of state authorities regarding the development of scientific and legal policy principles, monitoring effectiveness of current national legislation and determination of promising areas for its development

[1] V. Ya. Tatsii Problems of formation of legal policy in Ukraine. Selected articles, speeches, interviews / Ed. by O. V. Petryshyn. Kh.: Pravo, 2010. P. 510.

[2] Podorozhna T. S., Biloskurska O. V. Legal monitoring as a means of quality and effectiveness of current legislation. *Almanac of Law.* Legal monitoring and legal expertise: issues of theory and practice. Issue 10. K.: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2019. P. 83.

and improvement, participation in the preparation of draft laws, scientific and expert support for the lawmaking activity of state authorities, study and generalization of mechanisms for the implementation of legislative acts, etc.

Thus, the law enforcement activity of the state authorities as well as the preparation and decision-making in legal cases require the assessment of legal facts and the identification of the legal norms based on the analysis of the current legislation of Ukraine and the practice of its application. All this increases the role of interaction of the state and its bodies and officials with the scientific community. Involvement of scientists in the legal expertise of current normative legal acts for their relevance, compliance with the general directions of the legal policy of the state, feasibility of improvement or recognition as having lost their effect, increases the level of validity, accuracy, professionalism, clarity and completeness of such normative legal acts and solutions. It is not for nothing that legal expertise is defined in the doctrine of law as an independent stage of legal monitoring of lawmaking and law enforcement[1]. Accordingly, the involvement of highly qualified experts in the field of law in the legal expertise of acts of state authorities and local self-government authorities can ensure not only their proper quality and efficiency, but also their positive impact on the political, economic and social processes taking place in the state. It is not for nothing that the procedure for conducting an expertise of normative legal acts includes an assessment of the conceptual foundations of the act, determining its place in the system of normative legal acts, a comparative legal analysis with other acts, its architectonics, etc.

The innovation of the draft Law is the possibility of conducting an «independent expertise» of draft normative legal acts. An example of the involvement of public associations and scientific institutions is the activity of international associations monitoring the observance of human rights, government organizations, national observer organizations, national organizations related to elections. One of the most influential international organizations is ENEMO (European Network of Election Monitoring Organizations). This association unites 18 non-governmental organizations from 16 countries of the former USSR and Eastern Europe and has been conducting large-scale observation of the elections in their countries for many years[2].

As for our country, where the principle of the rule of law is recognized and operates, which requires that the basic rights and freedoms of a person

[1] Rybikova G. V. Principles of organization and conducting legal expertise of normative legal acts. *Legal Bulletin*. Air and space law. 2013. No. 3. P. 29–30.

[2] Borynska O. Monitoring of the election process as a contribution to the development of democracy. *Political management*. No. 1(34). P. 79.

and a citizen be realized based on the harmonization of state administration, peace and harmony in society in accordance with the created legal conditions, today we have to admit the absence of any coherent, orderly, coordinated system of legal monitoring subjects. It seems that the involvement of scientists of the National Academy of Legal Sciences of Ukraine in conducting an independent legal expertise of draft laws and legal monitoring of current normative legal acts will allow to solve a number of tasks related to: 1) determining the priority of adopting normative legal acts; 2) analysis and evaluation of social needs, public interests, which need to be legally regulated; 3) assessment of legal risks, which are a necessary element of lawmaking and law enforcement; 4) development of conceptual foundations for the development of branch legislation of Ukraine; 5) analysis of the current state of legal regulation of relevant social relations with the definition of collisions, gaps, contradictions, outdated norms, etc.; 6) substantiation of mechanisms for solving existing problems, definition of the range of issues that are subject to regulation in the legislation of Ukraine; 7) assessment of compliance of legal regulation of certain social relations with international legal obligations of Ukraine; 8) ensuring legal forecasting of the implementation of normative legal acts adopted by subjects of lawmaking activity; 9) legal and technical assessment of normative legal acts in order to determine the degree of their compliance with the requirements of legal technique as a whole and their separate elements. In addition, the development of the institution of legal monitoring as a scientific, theoretical and practical activity, based on the involvement of leading scientists of the National Academy of Legal Sciences of Ukraine, will allow to increase the quality and effectiveness of such activity, as well as contribute to a scientifically based search for a balance of the interests of an individual, society and the state.

In this regard, it is worth emphasizing that the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine has started the development of the fundamental scientific topic on the problems of lawmaking in Ukraine since January 1, 2022. Within the framework of this topic, scientists are faced with a number of tasks related to: revealing the basic principles of the formation of the legislative system as a result of the lawmaking process, determining the relationship between normative legal acts and other legal acts, clarifying the problematic aspects of normative design as a tool for ensuring the systemacity of legislation and the regulatory capacity of normative legal acts, establishing the role of legal monitoring in ensuring the quality and efficiency of lawmaking process, highlighting the peculiarities of legal expertise and discussion of drafts of normative legal acts, etc. Moreover, work is carried out separately to ensure scien-

tific and legal expertise of normative legal acts, regarding the priority of adoption of normative legal acts, development of concepts of normative legal acts, legal forecasting of trends in the development of the modern legal system of Ukraine, increasing the validity of legal decisions based on the assessment of legal risks, assessment of compliance of legal regulation of certain social relations with Ukraine's international legal obligations at the request of a state authority, preparation of scientific and expert opinions on the practice of application of branch legislation, conducting scientific and legal expertise of the quality of prepared drafts of normative legal acts, etc.

For example, lawmaking work with some «sensitive» issues for society has its own characteristics. For instance, O. V. Kokhanovska refers to such «sensitive» issues as the sphere of information, assisted reproductive techniques, genetic engineering, biometric identification of an individual, in which there are increasing risks of interference in the personal life of a natural person and the need for their minimization. Lawmaking work is aimed at: weakening of such negative effects on life and personal sphere of an individual as eugenics, the birth of genetically identical persons, the transformation of genes, except for those that have a therapeutic effect through their prohibition; establishment at the level of the Civil Code of Ukraine of a number of reproductive rights of an individual regarding reproductive choice; reproductive health; information about reproductive rights; privacy of exercise and protection of reproductive rights etc. with the definition of the conditions and procedure for their application in the special law. At the same time, unsystematic lawmaking (*without proper legal monitoring* – emphasis added – *A. H.*) in the field of personal non-property rights can lead to irreparable irreversible consequences in the posthuman era[1].

The emphasis on the existing need to monitor the current legislation by involving the scientific community is also putted by A. Ryshelyuk and I. Zub, according to whom checking the content of the legislative act for compliance with current legal norms is a fairly standard part of legal work during legal monitoring. It is more difficult, unusual and ambiguous to evaluate the content of the draft law in order to recognize it as positive, negative or neutral. In this part, Ukrainian legal (and not only legal) science can currently offer practitioners only weak and very vague guidelines that do not contain clear evaluation criteria. In particular, in cases where the requirements for the quality of the law are indicated as «correctness» of legislative provisions, their «compliance with the nature of social relations, the state of development of society», «legal and social efficiency»,

[1] Kokhanovska O. Lawmaking in the field of personal non-property rights under the conditions of post-humanity. *Law of Ukraine*. 2021. No. 12. P. 190.

«compliance of the results with the set goal», it seems that we are talking about the characteristics of the content of a well-prepared law, which can be also considered as criteria for its evaluation and for evaluation of the draft law. However, it is worth asking the question: do these requirements provide an opportunity for a clear answer to the question about the feasibility of adopting a particular draft law? It is unlikely that the answer to this question will be positive. The above formulations are rather requirements for the content of legislation in general (precisely current legislation), rather than guidelines for the analysis of the provisions of specific draft law that is subject to evaluation[1].

Given the fact that the objects of legal monitoring are mainly normative legal acts, their structural parts, particular articles or norms of law, accordingly, the result of such activity should be aimed at improving the mechanism of legal regulation of social relations by creating an effective system of feedback communication between subject of rule-making activity and law enforcer. Whereas in the absence of an effective feedback system, it is impossible to point out the normative aspect of regulatory influence on social relations and to determine the criteria for evaluating the effectiveness of legal influence. Considering this, within the limits of Art. 63 of the draft Law «On Law-Making Activity» it is necessary to provide for the mechanism of such feedback by imposing on the subject of lawmaking activity or the central executive body, which ensures the formation of state policy in the relevant field, the obligation not only to report on the results of legal monitoring of normative legal acts, but also the development of additional normative legal acts in response to monitoring and evaluation data. Thus, while being generally supportive for the approach established in Art. 63 «Use of the results of legal monitoring» of the draft Law «On Lawmaking Activity» as regards periodic reporting by the subject of lawmaking activity or the central executive body on the effectiveness of a normative legal act, which has been in effect for at least one year at the time of monitoring, the corresponding obligation to correct the identified violations by correcting a particular normative legal act that has become the object of monitoring, its abolition or the development of a new one, needs to be established.

In addition, special emphasis should be placed on the distinction in Art. 65 of the draft Law of the mechanism of legal monitoring based on the results of the generalization of judicial practice and the analysis of judicial statistics. It is not for nothing that proposals to empower higher judicial bodies to carry out legal monitoring on a permanent basis are made in the legal doctrine[2]. Such

[1] Ryshelyuk A., Zub I. Criteria for evaluating the content of the draft law. *Law of Ukraine*. 2021. No. 12. P. 95.

[2] Podorozhna T. S., Biloskurska O. V. Legal monitoring as a means of quality and effective-

activity includes work on checking legal acts or particular legal norms for their compliance with normative acts of higher legal force, general principles of legislation and fundamental principles of law. Considering this, we note the fact that such proposals have been taken into account and the right of higher judicial bodies to conduct monitoring studies and send their results to the subject of lawmaking activity with proposals on the need to make amendments or terminate the effect of normative legal acts has been established at the legislative level. It should be noted right away that the object of legal monitoring by higher judicial bodies, may also be court decisions in specific cases, in addition to normative legal acts.

The search for an answer to the question of the perspective of establishing the mechanism of judicial monitoring of the current legislation lies in clarifying the specifics of such activity, which is reflected in the verification of the legality of the normative legal act or its particular norm. The procedure of such verification is reflected in the verification of: 1) its content; 2) competencies of the state authority or official who adopted the normative legal act; 3) the prescribed form and procedure for adoption of the normative legal act[1].

It seems that the establishment of this function of the judiciary in the provisions of the Law of Ukraine «On Lawmaking Activity» will allow to assert the possibility of maintaining a balance between the legislative and executive branches of the government in the spheres of lawmaking and law enforcement. Since the adoption of normative legal acts is an activity of legislative and executive authorities, and in this respect this activity is the object of monitoring by the judiciary, accordingly, judicial monitoring of the current legislation is an effective form of identifying and eliminating made contradictions, duplications, etc. When checking legal provisions in the process of law enforcement, the court identifies the presence or absence of contradictions between them, and then overcomes the contradiction by issuing a court decision within the framework of specific case, by refusing to apply the disputed norm. Proceeding from the above, empowering the judicial branch of power with the function of control in the field of lawmaking is aimed at the implementation of the human rights function, since it allows quickly and effectively neutralize the effect of unlawful legal acts by recognizing them as illegal.

It is not for nothing that it is proposed to distinguish between direct and indirect methods of judicial control in the legal literature on this matter[2], where

ness of current legislation. *Almanac of Law.* Legal monitoring and legal expertise: issues of theory and practice. Issue 10. K.: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2019. P. 84.

[1] Nikitin S. V. Judicial control over normative legal acts in civil and arbitration proceedings: monograph. M.: RAP, 2010. M.: Wolters Kluver, 2010. P. 14.

[2] Nikitin S. V. Judicial control over normative

the direct method of control reflects the judicial review of the legality of the normative legal act within the framework of consideration of the case of declaring such an act illegal and its abolition or, on the contrary, upholding its legal force. Instead, the indirect method of judicial control is reflected in the resolution of a dispute that arose outside of the review of particular normative legal act, when, for example, the court deliberately does not use a more specific legal norm that regulates social relations but contradicts the norm of higher legal force. The court decision in the described circumstances eliminates the effect of such a norm by not applying it to specific legal relations. Accordingly, when resolving a specific dispute, the task of the court will not be merely to choose the lesser of «two evils», but to provide an evaluation of the legal norm through using of elements of legal monitoring and to refuse to apply the rule established in such norm in case of recognition of its illegality. An example of this can be the legal position reflected in the resolution of the Grand Chamber of the Supreme Court, according to which the norm of Art. 334 of the Civil Code of Ukraine prevails over the special norm of the Law of Ukraine «On State Registration of Property Rights to Immovable Property and Encumbrances», basing on the provision of Art. 4 of the Civil Code of Ukraine on the priority of the norms of this code over the norms of other laws, based on the fact that special norms of the law may contain clarifying provisions, but cannot directly contradict the provisions of the Civil Code of Ukraine[1].

Therefore, we consider it expedient to support the proposal to establish the right of the Supreme Court to appeal to the Verkhovna Rada of Ukraine, the President of Ukraine with applications regarding the need to amend the legislation of Ukraine, reflected in Art. 65 of the draft Law «On Lawmaking Activity». This rule once again confirms the statement that the reform of the legal system directly depends on the modernization of its directions, such as legislative, executive and judicial. The mentioned directions are interrelated, because judicial reform is impossible without corresponding changes in legislation in the field of judiciary and judicial procedure. Taking this into account, by establishing the mechanism of legal monitoring based on the results of the generalization of judicial practice and the analysis of judicial statistics in Art. 65 of the draft Law «On Lawmaking Activity», the legal status of judicial bodies as subjects of legal monitoring from the perspective of not the usual law-enforcement, but lawmaking powers also requires a comprehensive analysis.

legal acts in civil and arbitration proceedings: monograph. M.: RAP, 2010. M.: Wolters Kluver, 2010. P. 26–27.

[1] Resolution of the Grand Chamber of the Supreme Court of June 22, 2021 in case No. 334/3161/17. URL: https://verdictum.ligazakon.net/document/98483113 (date of access: 15.12.2022).

In view of the foregoing, we may state that Articles 61–65 of the draft Law «On Lawmaking Activity» relating to legal monitoring demonstrate the formalization of the institution of legal monitoring, its structure and content at the national level. The analyzed draft Law establishes general principles and universal methodological bases for the implementation of legal monitoring, which can be applied both to the sphere of lawmaking and to the sphere of law enforcement, the basis of which is the principle of supremacy of the Constitution of Ukraine.

At the same time, having made an attempt to formalize the institution of legal monitoring at the legislative level by establishing the methods of its implementation, the use of its results, the peculiarities of monitoring of normative legal acts, including based on the results of the generalization of judicial practice and judicial statistics, it is advisable to establish the methodology of monitoring of lawmaking and law enforcement which will reflect the system of criteria for the effectiveness of legislation during its implementation, the key ones of which are the purpose of adopting a normative legal act and the effectiveness of the mechanism of its regulatory influence on relevant legal relations. In this regard, it is worth emphasizing that these two criteria are crucial in most EU member states. It seems that such approach to establishment of the legal monitoring methodology at the legislative level will allow to identify common typical mistakes in the development of a draft normative legal act, to test in practice the effectiveness of legislation on a limited territory of the state or in relation to small range of subjects, to determine the priority tasks of the systematic optimization of the regulation of a specific sphere of social relations.

In this regard, the experience of foreign countries on the development of appropriate computer program, the function of which is to determine the quality of legislation by comparing the content of normative legal acts with each other and using it in practice, deserves attention. For example, a norm-design system called «SOLON» is being developed at the Institute of Social Law in Belgium at the request of the Government aiming to determine the quality of legislation, which includes material (content of normative legal acts) and formal (structure, way to apply, etc.) criteria. Moreover, similar systems are already in use in the Kingdom of the Netherlands (LEPA, OBW), in the Italian Republic (Lexidit, Lexeditior IRI_AI, Arianna, Norma). In this direction it is even proposed to separate out the relevant science – «legimatics» regarding examination and the study of the possibilities of computer technology in the field of design of norms[1].

[1] Onishchenko N. M. Legal monitoring: from theory to practice. *Almanac of Law*. Legal monitoring and legal expertise: issues of theory and practice. Issue 10. K.: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2019. P. 24.

In Ukraine, the attempt to introduce an updating information system for monitoring land relations as a mechanism for fighting corruption in this area deserves attention[1]. It is the unification in one system of all information and data on land relations that will come from the State Fiscal Service of Ukraine, the State Judicial Administration of Ukraine, the State Forestry Service of Ukraine, the State GeoCadastre of Ukraine, etc., which will contribute to the search and elimination of problematic issues, forecasting and modeling of the development of legislation in this field. The lack of such generalized data in open access is one of the reasons for the inability of the Ukrainian economy to use the potential of land resources to the full extent, it gives rise to political speculations about the necessity, state and directions of land reform, and also contributes to the concealment of mistakes and acts of corruption in the activities of authorities endowed with land competence. Therefore, the availability of such data for the general public is the basis for increasing the level of transparency of the land sector and overcoming land corruption[2]. Accordingly, the information obtained as a result of legal monitoring should be stored in databases and be available to everyone who participates in such legal relations. At the same time, the legal monitoring process itself should be considered as an information processing system in the field of lawmaking and law enforcement processes.

Therefore, the establishment of the institution of legal monitoring at the legislative level allows to form legal foundations for the systematic, comprehensive work of subjects of lawmaking activity, aimed at monitoring, analysis and evaluation of the legislation during its implementation in order to improve and forecast the development. The establishment of the institution of legal monitoring is aimed both at improving the legal system in general and its constituent elements. The information collected as a result of its implementation will allow to form and implement a well-founded, effective and purposeful civil-law[3], criminal-law[4], etc. policy at the national level, the understanding of which is revealed primarily through a proper analysis of law enforcement activity.

Bearing this in mind, a systematic and comprehensive analysis of law-

[1] Order of the Ministry of Agrarian Policy and Food of Ukraine of June 19, 2015 No. 231 «On ensuring effective implementation of the project "Supporting reforms in agriculture and land relations in Ukraine» (expired). URL: http://www.kse.org.ua/uk/research-policy/land/about (date of access: 15.12.2022).

[2] Kulynych P. F. Monitoring of land relations in the system of legal monitoring: concept, formation, prospects. *Almanac of Law*. Legal monitoring and legal expertise: issues of theory and practice. Issue 10. K.: V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 2019. P. 52–53.

[3] Muzyka L. A. The concept of civil and legal policy of Ukraine: a monograph. Kyiv: A. V. PALIVODA, 2020. 504 p.

[4] Fris P. L. Criminal and legal policy of the Ukrainian state: theoretical, historical and legal problems. K.: Atika, 2005. 332 p.

making and law enforcement activities includes various stages, which are proposed to be defined as follows: 1) the preparatory stage – involves setting and specifying its purpose and tasks, the circle of subjects, objects and directions of study; 2) the stage of collection of information – is carried out with the aim of summarizing the initial data regarding the object of study; 3) the stage of expertise of normative legal acts for compliance with the provisions of the Constitution of Ukraine and other normative legal acts; 4) the stage of evaluation of the effectiveness of normative legal acts (legal norms); 5) the stage of forecasting the need for legal regulation; 6) the final stage of legal monitoring, within which conclusions are formulated about the quality, gaps and conflicts of normative legal acts[1]. The content of these stages directly depends on the type of monitoring, its subject and object composition.

It seems that the given plan of action during legal monitoring can be used in relation to various objects of monitoring and its corresponding tasks (from the assessment of the effectiveness of normative legal acts to the assessment of the social benefit of the results achieved in connection with their adoption). At the same time, at all stages of legal monitoring, it should be taken into account that, within the limits of substantive content, legal norms should cover only the actually existing possibilities and should not be aimed at regulating relations that go beyond the boundaries of factual reality. In other words, lawmaking activity must comply with the principle of expediency and reasonableness, according to which the adoption of a normative legal act is possible based on the objective necessity of legal regulation of the relevant relations.

One example of the above is the legal provision provided in Part 6 of Art. 762 «Fee for hire (lease) of property» of the Civil Code of Ukraine, pursuant to which the leasee is exempt from payment for the entire time during which the property could not be used by him due to circumstances for which he is not responsible. Proceeding from this rule, it is quite logical to conclude that it is the act on impossibility of using the leased property drawn up by the parties to the hire (lease) contract or the court's decision to this effect that constitute grounds for exemption of the leasee from payment for possession and use of the property. Accordingly, the legislator's attempt to specify all possible grounds for such exemption from payment under the contract would be aimed at overloading the legal norm and would indicate a kind of departure from social reality.

Therefore, the legal policy of the state plays an important role in the formation and application of legislation in practice. At the same time, without ap-

[1] Onyshchuk I. I. Technological algorithm of legal monitoring. *Scientific Bulletin of Kherson State University*. Series «Legal Sciences». 2014. Issue 2. Vol. 1. P. 111–112.

propriate legal monitoring of lawmaking and law enforcement activities as a systematic, complex activity aimed at monitoring, analysis and evaluation of the legislation with the aim of its improvement and forecasting, it is impossible to say about the formation of scientifically based legal policy of the state, whose normative regulators are aimed at establishment of the concept of human-centrism, when interests of an individual are of the highest value even in times of existing external challenges and threats. Moreover, the above-mentioned human-centered concept of lawmaking requires the involvement of an individual as the core of civil society in lawmaking activities by ensuring the opportunity to participate in discussions of draft normative legal acts and submit proposals. Considering this, legal monitoring is a promising tool for the formation of such a legal policy that would correspond to the political, economic and social realities of the development of civil society.

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HE TASKS OF SCIENTIFIC AND LEGAL EXPERTISE AND ITS IMPACT ON THE DEVELOPMENT AND QUALITY OF LEGISLATION

The expertise of normative legal acts and primarily draft laws of Ukraine, is one of the most important components of effective lawmaking activity, a guarantee of its effectiveness.

Properly organized and professionally conducted expertise at the stage of preparation and discussion of a normative legal act not only allows to ensure the proper level of its preparation, but also contributes to the creation of an interconnected and mutually coordinated system of legal acts, to identify even at the stage of passing the draft law through the Verkhovna Rada of Ukraine its shortcomings that can minimize the positive effect of the adoption of a normative legal act or significantly reduce its regulatory impact.

At the end of 2021, the Verkhovna Rada of Ukraine adopted as a basis the draft Law «On Lawmaking Activity» (registration number 5707 of June 25, 2021)[1] (hereinafter – the Draft Law on Lawmaking). The development and approval of this draft law in the first reading of actualized the discussions around the concept, tasks and in general the role of scientific and legal expertise, in particular its impact on the development and quality of legislation.

Russia's full-scale military aggression against Ukraine, which began on February 24, 2022, once again con-

[1] Explanatory Note to the Draft Law of Ukraine «On Lawmaking Activity» of September 7, 2021 No. 1708-IX. URL: http://w1.c1.rada.gov.ua/pls/zweb2 /webproc4_1?pf3511=72355 (date of access: 14.12.2022).

firmed the importance of the regulation of the fundamental principles of lawmaking activity as the basis for the functioning of a modern legal state. The above-mentioned is confirmed by normative legal acts adopted in the difficult conditions of martial law, which reflect the priority for Ukraine of the safety of its citizens and the restoration of the territorial integrity of the state, which corresponds to the fundamental constitutional principles as well as world and European standards of lawmaking activity.

The main directions and priorities of lawmaking are also determined by modern conditions and objective needs of legal regulation to adapt the domestic legislation to the legislation of the European Union (hereinafter – the EU), which is due to granting Ukraine the status of a candidate for EU membership based on the decision of the European Council of June 23, 2022. The result of the appropriate adaptation should be ensuring the rule of law and the legal nature of the legislation, an important prerequisite for the adoption of which should be the conduct of a scientific and legal expertise at the stage of preparation and discussion of the draft law.

Conducting scientific and legal expertise in the modern lawmaking process is one of the most urgent problems actively discussed in legal science and lawmaking activity. It is the scientifically based approach to expert activity in lawmaking that ensures the quality of the amount of normative legal acts adopted by the Verkhovna Rada of Ukraine and other state bodies within their powers.

The issues relating to lawmaking, creation of a legal norm as such, the role and significance of expert activity are actively discussed in legal literature by well-known scholars in the field of legal theory, in particular, O. V. Petryshyn, O. V. Skrypniuk, N. M. Onishchenko, V. M. Kosovych, Yu. O. Tikhomirov, R. K. Sarpekov, and others.

Expertise (*in French expertise*, *in Latin expertus* – experienced, tested) in the literature is defined as a research, check, analytical study, quantitative or qualitative assessment by a highly qualified specialist, institution, organization of a certain issue, phenomenon, process, subject, etc., which require special knowledge in relevant sphere of social activity. The implementation of expert activity is based on legally established principles, the main of which are the competence, independence and objectivity of the persons conducting the expertise; compliance of their actions with the current legislation; a comprehensive approach to the study of the object of examination based on the latest knowledge; verification of compliance with norms and rules of technical and environmental safety, requirements of standards and regulations, international agreements; consideration of public opinion regarding the object of examination; responsibility for the reliability and validity of expert opinions[1].

[1] Legal encyclopedia: in 6 volumes / ed. col.: Yu. S. Shemshuchenko (resp. ed.) and others. K.:

The principles of legal expertise of normative legal acts and their drafts are considered through the prism of an activity-based approach in terms of the organization and conduct of legal expertise as a system of interrelated basic provisions that reveal the content of the study of current normative legal acts and their drafts, which ensure the achievement of the goals and tasks set before legal expertise and determine the essence, characteristics, direction of this activity[1].

Scientific and legal expertise is one of the areas of scientific and scientific-technical activities.

Thus, according to Article 62 of the Law of Ukraine «On Scientific and Scientific-Technical Activities» of November 26, 2015 No. 848-VIII[2], scientific and scientific-technical expertise is an integral element of the state regulation and management in the field of scientific and scientific-technical activities and is carried out in accordance with the Law of Ukraine «On Scientific and Scientific-Technical Expertise» of February 10, 1995 No. 51/95-VR[3] (hereinafter – Law on Expertise).

According to Article 1 of the Law on Expertise, scientific and scientific-technical expertise is an activity the purpose of which is study, verification, analysis and assessment of the scientific-technical level of objects of expertise and the preparation of substantiated conclusions to make decisions regarding such objects.

As a rule, a scientific and legal expertise is carried out in relation to:

– conflicting issues of the application of national legislation and international law;

– analogy of the application of legislation and analogy of the application of law;

– particular issues of law enforcement practice;

– interpretation of legislation;

– draft international agreements;

– draft normative legal acts, etc.

In other words, scientific and legal expertise may relate not only to the stage of implementation of law, but also to the stage of lawmaking.

In recent history, the legal expertise of draft laws as a tool of lawmaking activity began to be used by M. M. Speransky, under whose leadership the Complete Collection of Laws of the Russian Empire in 45 volumes and the

Ukrainian encyclopedia named after M. P. Bazhan, 1998. Vol. 2: D – Y. 744 p. URL: https://cyclop.com.ua/content/view/1066/58/ 1/8/#12938 (date of access: 14.12.2022).

[1] Butenko V. O. Problems and main directions of the development of legal expertise of normative legal acts of Ukraine. *Problems of legality.* 2010. No. 110. P. 222.

[2] Law of Ukraine «On Scientific and Scientific-Technical Activities» of November 26, 2015 No. 848-VIII URL: https://zakon.rada.gov.ua/laws/show/848–19#Text (date of access: 14.12.2022).

[3] Law of Ukraine «On Scientific and Scientific-Technical Expertise» of February 10, 1995 No. 51/95-VR. URL: https://zakon.rada.gov.ua/laws/show/848–19#Text (date of access: 14.12.2022).

Set of Laws of the Russian Empire in 15 volumes were prepared.

Expertise is of particular importance today, when the adoption of effective, legally correct acts, the accuracy and precision of legal formulations and definitions very often become a determining factor in the formation of correct vectors of the development of our state. The world experience allows to assert that the involvement of experts in the preparation of normative legal acts can significantly improve the quality of legislative material.

In general, considerable attention is paid to the preparation of draft normative legal acts, improvement of the procedure for their review and adoption in democratic countries. Thus, the principle of the participation of all subjects interested in policy making with quality assurance at all stages, including the involvement of experts, starting with the evaluation of the legislative proposal for compliance with the necessary requirements, is the basis for the legislative policy of the EU.

According to the scientists, the question about the quality of the draft laws of the EU is essential since it affects both the ability of member states to implement the law of the EU and the effectiveness of the Community legislation. The experts help identify alternatives, prevent the occurrence or aggravation of problems, assess internal and external impacts[1].

The EU pays considerable attention to the quality of the preparation of normative legal acts, and the improvement of legal regulation is a permanent component of the overall management strategy. In particular, it was recognized at the highest level that the acts of the Community should be clear and simple, based on certain legislative principles, rules for the application of legal techniques in the drafting of normative legal acts were developed in order to make the legislation of the EU understandable and effective in application[2]. At the same time, the requirements ensuring the quality of acts are recognized as: clarity, unambiguity, minimization of abbreviations, absence of jargon expressions and too long phrases, unclear references to other texts, expressions that make it difficult to read[3]. Compliance with these requirements is the subject of legal expertise conducted by the department of the European Commission.

The European Commission issues acts aimed at constant improvement of the quality, efficiency, simplification of normative legal acts and ensuring the mechanism of their implementation, forming a comprehensive systemic ap-

[1] Theory and practice of European governance: [handbook] / L. L. Prokopenko, O. M. Rudik, I. D. Shumlyaeva, N. M. Rudik. D.: DRIDU NADU, 2009. P. 151.

[2] Joint Practical Guide for persons involved in the drafting of European Union legislation. URL: http://eur-lex.europa.eu/content/techleg/KB0213228ENN.pdf (date of access: 14.12.2022).

[3] Sereda T. M. Problems of adaptation of the legislation of Ukraine to the legislation of the European Union. *Bulletin of the National Academy of Internal Affairs*. 2013. Issue 5. P. 5.

proach to lawmaking in the EU, including ensuring the participation of a wide range of experts in this process[1]. In particular, the European Parliament, the Council and the Commission of the European Union adopted the Interinstitutional Agreement on Better Law-Making, which, among other things, provides for ensuring the quality of legal regulation by conducting consultative procedures, a clearer assessment of the regulatory impact of acts (before and after their publication)[2].

Leading scientists, experts from governing bodies, external expert resources for the government can act as experts in the EU. At the same time, the expert services can be requested both in case of need, and experts can act on their own initiative; expert opinions can also be collected through the publication of advisory documents, at seminars, hearings, conferences, round tables of experts[3].

Specialists of information and analytical institutions are involved in expert activity in the field of rule-making in Anglo-American countries and, in particular, in the USA. Since 1970, the US Congress has created the Congressional Research Service, which had been assigned with research and analytical work that directly assists the Congress in the legislative process[4].

The important characteristic of the Congressional Research Service is that it is not part of the executive power system and provides the Congress with its own independent expert studies of existing laws and programs, analysis of alternative solutions[5].

Involvement of experts in the development of draft laws is a common practice in the USA. At the same time, the principle of constant monitoring of the judicial practice of the application of particular norm and, if necessary, the correction of the norms are applied. The latter is implemented through the interaction of the legislative and judicial bodies of the USA aiming at consistent prompt amendments to the legislation based on the analysis of judicial precedents and the identification of the actual enforcement of particular norms by individuals, legal entities and courts. The analysis of the possibility of distorted interpretation of the law by courts and legislative elimination of such possibilities are also applied[6].

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[1] Hladkova T. L. Problems of the legislative process in the European Union. *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*. 2010. No. 1. P. 16.

[2] Honcharuk P. S. International experience of expert support for the preparation of draft legislative acts. *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*. 2010. No. 1. P. 20–27.

[3] Theory and practice of European governance: [handbook] / L. L. Prokopenko, O. M. Rudik, I. D. Shumlyaeva, N. M. Rudik. D.: DRIDU NADU, 2009. P. 151.

[4] Antoshchuk L. D. Lawmaking: organization of work of parliaments (world experience). K.: «Zapovit», 2007. P. 65.

[5] Antoshchuk L. D. Lawmaking: organization of work of parliaments (world experience). K.: «Zapovit», 2007. P. 68.

[6] Zakrevska Ye. Comparative analysis of Ukrainian anti-discrimination legislation and

Lawmaking activity in the USA is distinguished by American pragmatism, which is based on the use of practical experience, i.e., giving priority to judicial practice over other sources of law[1], while legislation is also of considerable importance in the legal system of the USA.

As for Canada's experience in lawmaking, it is worth paying attention to the fact that it is characterized by a high level of critical attitude to the draft law. Canada's legal expertise relates to the content, form, and language of the legislation and is conducted at all stages of the preparation of the draft law by various entities, mainly lawyers of the ministry that developed the draft and legal advisors of the Department of Justice, in particular, the legislative expertise department of the Office of Legislative Services. At the same time, the Department of Justice Canada advises the initiating ministry on the legal issues underlying the draft law. The legal services of the Department of Justice are drafting the law in accordance with the instructions of the initiating ministry. Thus, it has the possibility of expert control over compliance of the draft law with legal requirements[2].

The following types of expertise of draft normative acts are known in the Ukrainian lawmaking process: as for draft laws of Ukraine – by the Main Scientific and Expert Department of the Apparatus of the Verkhovna Rada of Ukraine; as for resolutions of the Cabinet of Ministers of Ukraine and ministries and agencies – by the Ministry of Justice of Ukraine and the Government Office for Coordination of European and Euro-Atlantic Integration (regarding compliance of the act of the Cabinet of Ministers of Ukraine with Ukraine's obligations in the field of European integration, including international law and EU law (*acquis communautaire*); as for draft decrees of the President of Ukraine – by the Department of Legal Policy.

As for the expertise of draft laws, it is worth noting the following.

The expertise of draft laws is mentioned in several articles of the Rules of Procedure of the Verkhovna Rada of Ukraine[3].

Thus, in particular, Article 93 of the Rules stipulates that each draft law is sent to the committee which, according to the committees' responsibilities, is determined as the main committee for

Canadian legislation, as well as the US legislation. URL: http://noborders.org.ua/docs/analityka/porivnyalnyj-analiz-ukrajinskohozakonodavstva-z-protydiji-dyskryminatsiji-ta-kanadaskoho-zakonodavstva-a-takozh-zakonodavstva-ssha-1/ (date of access: 14.12.2022).

[1] Kravchenko S. S. Legal aspects of American pragmatism and the possibility of their introduction into Ukrainian legislation. *Law Review of Kyiv University of Law*. 2011. No. 1. P. 21.

[2] Bogachova O. V. Legislative process of foreign countries / O. V. Bogachova, O. V. Zaichuk, O. L. Kopylenko. K.: Referat, 2006. P. 305.

[3] Law of Ukraine «On the Rules of Procedure of the Verkhovna Rada» of February 10, 2010 No. 1861-VI. URL: https://zakon.rada.gov.ua/laws/show/1861–17#Text (date of access: 14.12.2022).

the preparation and preliminary consideration of the draft law, the draft another act, as well as to the committee which is responsible for budget issues, for conducting *expertise on its impact on budget indicators and compliance with the laws regulating budgetary relations*, to the committee responsible for the fight against corruption, for the preparation of *the expert opinion on its compliance with the requirements of anti-corruption legislation*, and to the committee responsible for *evaluation of the compliance of draft laws with international legal obligations of Ukraine in the field of European integration for the preparation of an expert opinion*. Each draft law is sent to the Cabinet of Ministers of Ukraine by the committee responsible for budget issues no later than within three days for conducting *expertise on its impact on budget indicators and compliance with the laws regulating budgetary relations*.

In accordance with Article 103 of the Regulations of the Verkhovna Rada of Ukraine, at the instruction of the Chairman of the Verkhovna Rada of Ukraine or the First Deputy Chairman of the Verkhovna Rada of Ukraine or the Deputy Chairman of the Verkhovna Rada of Ukraine in accordance with the division of responsibilities, or by decision of the main committee, *the draft law is sent for scientific, legal or other expertise, information or scientific study; at the same time, the subject and purpose of the expertise, search, study must be clearly defined*.

The draft law registered and included in the agenda of the session when preparing for the first reading is mandatorily sent for scientific expertise, and when preparing for all subsequent readings – for legal expertise and editorial processing to the relevant structural divisions of the Apparatus of the Verkhovna Rada. The final legal expertise and editorial processing are carried out after the adoption of the act of the Verkhovna Rada as a whole.

The registered draft laws which are of systemic nature for certain branches of legislation and the need for scientific processing of which was established by the subject committee during the preparation for the first reading, are sent to the National Academy of Sciences of Ukraine for expert opinions. Some draft laws can also be sent to the Cabinet of Ministers of Ukraine, relevant ministries, other state bodies, institutions and organizations or individual specialists for expert opinions.

Thus, as it appears from the provisions of the Rules of Procedure of the Verkhovna Rada of Ukraine, the legislator provided for *scientific, legal and other expertise, conducting informational or scientific study* as regards expertise of draft laws.

In our opinion, the wording proposed in the Rules is not optimal, as it does not provide, in terms of content, the specification of the types of studies that should be conducted at the stage of preparation and passage of the draft law in the Verkhovna Rada of Ukraine.

Moreover, the terms expertise and study are being conflated.

What types of expertise of draft laws exist in Ukraine as of today?

Considerable emphasis on the issue of differentiation of expertise of draft laws is placed in scientific literature. For example, N. S. Pogrebnyak, having researched this issue, distinguishes state, public and other (international) expertise (depending on the performing or initiating subjects), preliminary, primary, repeated, additional and control expertise (depending on the purpose), environmental, economic, legal, technical, philological, financial, special (scientific), socio-psychological, linguistic, criminological (depending on the branch (sub-branch) of knowledge). In addition, without identifying a certain criterion of differentiation, the scientist emphasizes that there are other types of expertise such as gender, sociological, hermeneutic, ethnocultural, public and monitoring expertise[1].

Several practical questions logically follow from all this variety of expertise on draft legislative acts.

First, how are the concepts of «expertise», «scientific expertise» and «legal expertise» connected?

It is quite clear that the concept of expertise, including expertise of draft laws, is generic in relation to any type of expertise that is carried out with the texts of draft laws.

Apparently, the term «scientific expertise» includes a number of types of expertise that can be carried out at the stage of consideration of draft laws depending on the field of knowledge: legal expertise, economic, financial, technical, environmental, sociological, etc. A similar position in science is supported by H. V. Rybikova[2] and Ye. S. Nazimko[3].

Whereas, the concept of «legal expertise», which may be considered as synonymous with the term «juridical expertise» with some reservations, organically includes various types of expertise in separate fields of legal science, in particular, civil-law expertise, constitutional-law expertise, criminal-law expertise, etc. At the same time, in practice, and also obviously in view of the provisions of the Rules of Procedure of the Verkhovna Rada of Ukraine, as a rule, a juridical or scientific-legal expertise is appointed in relation to draft laws that are submitted or considered in the parliament – without specifying the direction of legal science, according to which the examination should be carried out, which is, in our opinion, completely justified decision.

[1] Pogrebnyak N. S. Expertise in the field of lawmaking: on the example of the activity of the Apparatus of the Verkhovna Rada of Ukraine (theoretical aspect). *State construction and local self-government*. 2016. No. 31. P. 41–42.

[2] Rybikova H. V. Legal expertise of normative legal acts as a legal category and scientific doctrine. *Legal Bulletin*. 2013. No. 4. P. 28–32.

[3] Nazimko Ye. S. Legal expertise as a means of overcoming errors in determining the degree of punishment in criminal sanctions. *Legal Ukraine*. 2012. No. 2. P. 109–113.

Another issue that is closely related to the expertise of draft laws is the question about the entity entrusted with the expertise. The circle of such subjects can be conditionally divided into two large groups – subjects performing internal expertise and subjects performing external expertise.

As regards work with draft legislative acts, the first group should include, first of all, the Chief Scientific and Expert Department of the Apparatus of the Verkhovna Rada of Ukraine, the main tasks of which are to conduct a scientific expertise of draft laws, evaluate their conceptual level and the socio-economic and political consequences of their adoption, compliance with the Constitution of Ukraine, preparation of scientifically based expert opinions on draft laws for decision-making by the Verkhovna Rada of Ukraine. It is also worth noting the expert work with the texts of draft laws, which is carried out by specialists of the executive authorities – the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Education and Science of Ukraine, the National Commission on Securities and Stock Market, the Antimonopoly Committee of Ukraine, etc.

The independence of the expert, along with his professionalism, is one of the necessary requirements on which the institution of expertise is based, exists and will develop. But can the conclusions of the mentioned state institutions be considered independent? As N. S. Pogrebnyak rightly points out, the question of objectivity of particular departments of the Apparatus in respect of the preparation of the conclusion of the legal expertise objectively exists. This is because the independence of the expert excludes the possibility of his connection with the subject of the adoption of the normative legal act. The Apparatus is a structural division of the Verkhovna Rada, formed in accordance with its will (its head is elected by the legislative body; staff and structure are also approved by the parliament). Therefore, it may cause a certain interest in making decisions of a political nature. All these arguments apply fully to the legal services of other state authorities.

The need to ensure the independence of experts during the expertise of normative legal acts is not an exclusive problem of our state. Moreover, the analysis of foreign experience provides an opportunity to make the right decisions and enshrine them in the Draft Law on Lawmaking already today, at the stage of formation of general approaches to conducting expertise of draft legislative acts. For example, in the USA, the nonpartisan Congressional Research Service employs experts who specialize in various areas of legislative activity, including domestic, economic, international, legal, and scientific issues. The Law Commission in Great Britain – an advisory non-departmental body operating under the auspices of the Ministry of Justice, is com-

posed of experienced judges, barristers (attorneys), lawyers and law professors. In France, the Council of State, without participation of which no draft law may be adopted, includes about three hundred well-known lawyers[1].

In our opinion, to a certain extent, the functions of such an advisory body could be performed by the Scientific Advisory Council under the Chairman of the Verkhovna Rada of Ukraine, which was created by the Order of the Chairman of the Verkhovna Rada of Ukraine «On the Scientific Advisory Council under the Chairman of the Verkhovna Rada of Ukraine» of December 30, 2021 No. 502[2]. According to paragraph 6 of the Regulation on the Scientific Advisory Council under the Chairman of the Verkhovna Rada of Ukraine, the main tasks of the Scientific Advisory Council are:

1) preparation of proposals for the development of priority areas of activity of the Verkhovna Rada of Ukraine;

2) study of problematic issues regarding the application of legal norms that arise during the implementation of normative legal acts adopted by the Verkhovna Rada of Ukraine;

3) scientific support of draft law work.

As for the support of draft law work, we believe that entrusting the members of the SAC under the Chairman of the Verkhovna Rada of Ukraine with the obligation of conducting a legal expertise of draft laws (at least the «monopolization» of such competence) will be unjustified. It would be much more effective to use the SAC under the Chairman of the Verkhovna Rada of Ukraine as a platform for discussion of the important legislative initiatives, as well as scientific and legal conclusions regarding such draft laws prepared by specialized state and independent institutions.

Regarding the preparation of independent external expertise, based on Part 3 of Article 103 of the Rules of Procedure of the Verkhovna Rada of Ukraine, the subjects of such examinations may be the National Academy of Sciences of Ukraine, as well as other institutions (in particular, branch academies of sciences) or individual specialists.

The European Commission for Democracy through Law (the Venice Commission)[3] holds a special place among the subjects of legal examination of normative legal acts. The char-

[1] Sarpekov R. K. On the role of the institution of scientific expertise in improving the efficiency of rule-making activity and the prospects for its development. *Bulletin of the Institute of Legislation of the Republic of Kazakhstan*. 2018. No. 4 (53). P.23–24.

[2] Order of the Chairman of the Verkhovna Rada of Ukraine «On the Scientific Advisory Council under the Chairman of the Verkhovna Rada of Ukraine» of December 30, 2021 No. 502. URL: https://zakon.rada.gov.ua/laws/show/502/21-%D1% 80%D0%B3#Text (date of access: 14.12.2022).

[3] The European Commission for Democracy through Law. URL: https://mfa.gov.ua/mizhnarodni-vidnosini/rada-yevropi/yevropejska-komisiya-za-demokratiyu-cherez-pravo (date of access: 14.12.2022).

acteristics of the legal expertise it conducts are:

– it is type of international external expertise;

– the specifics of the object – laws and draft laws of the member states of the European Commission for Democracy through Law, which relate to the problems of constitutional law, including election standards, minority rights, etc. for compliance with European standards;

– the specifics of the customer of the expertise which is the interested state or another state as agreed by the country that accepts the document, as well as the Parliamentary Assembly of the Council of Europe;

– the nature of the conclusion (the conclusions of the Commission are widely used by the PACE as they reflect European standards in the sphere of democracy and should be perceived as the result of a peculiar study conducted by professional lawyers from different countries)[1].

For instance, the European Commission for Democracy through Law carried out a significant number of examinations of Ukrainian draft laws on the judiciary, the prosecutor's office, language policy, the organization of executive authorities, election legislation, etc. The significance of the conclusions of the Comission lies in the fact that they become a reference point for prospective changes to the current legislation, taking into account European standards for the protection of human rights.

The legislation of Ukraine does not contain relevant provisions regarding the procedure of conducting «external» examinations of draft legislative acts. However, scientists have paid enough attention to this issue. For example, N. V. Filyk and H. V. Rybikova believe that the process of conducting an expertise of normative legal acts itself can be divided into the following stages: conceptual evaluation, systemic legal evaluation, comparative legal evaluation, technical legal evaluation, drawing up expert opinion. In addition, the authors consider it necessary to add to these stages also the verification of the object of expertise using the hermeneutic method for compliance with the «will of the legislator» or, in the terminology of O. F. Cherdantsev, «the true content of the legal norm», which requires, if necessary, expert consultations with the lawmaker to determine or clarify such content[2].

In this context, it is appropriate to analyze the provisions of the Draft Law on Lawmaking, because it is this normative act that *de lege ferenda* establishes the main approaches to conducting an expertise in the process of lawmaking.

As indicated in the Explanatory Note to this Draft Law, lawmaking activity as

[1] Radeiko R. Types examination of bills in the legislative process. URL: https://science.lpnu.ua/sites/default/files/journal-paper/2017/aug/5637/vnulpurn201685517.pdf (date of access: 14.12.2022).

[2] Filyk N. V., Rybikova G. V. The legal expertise procedure of legal acts in Ukraine. *Legal Bulletin*. 2017. No. 2 (43). P. 60–61.

one of the main functions of public authorities desperately needed comprehensive normative regulation at the level of law since Ukraine's independence. Repeated unsuccessful attempts to adopt a law on normative legal acts, attempts to regulate the issue of planning lawmaking activity, to ensure proper mechanisms of control over such activity were faced the legislator's inability to form a politically agreed position, which led to fundamental gaps in the field of legislative regulation of lawmaking[1].

Article 38 of the Draft Law on Lawmaking is devoted to the issue of the expertise of draft laws, Part 1 of which establishes the rule on the binding nature of legal (juridical) expertise of drafts of normative legal acts carried out by subjects which ensure lawmaking activity as prescribed by law.

The types of expertise of drafts of normative legal acts are also established at the level of this Draft Law. These are, in particular, the following types of expertise:

1) for compliance with Ukraine's obligations in the field of European integration and the EU law (EU acquis);

2) for compliance with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms with Protocols and the practice of the European Court of Human Rights;

3) anti-corruption;

4) financial and economic;

5) ecological;

6) digital;

7) anti-discriminatory;

8) gender and legal;

9) regarding the impact on budget indicators and compliance with the laws regulating budget relations;

10) regarding the impact on indicators of economic and social development and compliance with Ukraine's obligations under the Agreement establishing the World Trade Organization;

11) for compliance with the principles of state policy in the field of scientific and scientific-technical activities.

It should be noted that the list of such examinations is not exhaustive.

As for carrying out the expertise of normative legal acts for compliance with Ukraine's obligations in the field of European integration and the EU law (EU acquis), it should be noted that the List of acts of the EU to be implemented is defined in accordance with the Action Plan on the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their member states, of the other part, approved by Resolution of the Cabinet of Ministers of Ukraine of October 25, 2017 No. 1106[2]. Thus, for example, the following

[1] Explanatory Note to the Draft Law of Ukraine «On Lawmaking Activity» of September 7, 2021 No. 1708-IX. URL: http://w1.c1.rada.gov.ua/pls/zweb2 /webproc4_1?pf3511=72355 (date of access: 14.12.2022).

[2] The Action Plan on the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their member states, of the other part, approved by

acts should be implemented in the field of consumer protection:

– 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council;

– Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

– 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 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts;

– Directive 2009/22/EC on injunctions for the protection of consumers' interests;

– Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

– Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;

– 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.

At the same time, the main task within the framework of the implementation of relevant EU directives and regulations is the development and introduction of amendments to the Law of Ukraine «On the Protection of Consumer Rights». As part of this task, draft Law of Ukraine «On the Protection of Consumer Rights» (reg. No. 6134 of October 5, 2021), draft Law of Ukraine "On Amendments to the Law «On Tourism» and some other legislative acts on the main principles of the development of tourism" (reg. No. 4162 of September 29, 2020) have been drafted, the provisions of which are definitely subject to analysis through conducting scientific-legal expertise.

The innovation of the Draft Law on Lawmaking is the provision of Part 4 of Article 38, which introduces the concept of «independent expertise» in relation to drafts of normative legal acts, which is carried out by independent experts in the field of law with the aim of evaluation of drafts of normative legal acts for their compliance with a particular legal quality criterion and the result of which is a reasoned expert opinion.

Such expertise may be carried out by expert organizations from among

Resolution of the Cabinet of Ministers of Ukraine of October 25, 2017 No. 1106. URL: https://zakon.rada.gov.ua/laws/show/1106–2017-п#Text (date of access: 14.12.2022).

scientific, educational, international and other organizations of the relevant profile, experts from among scientists and specialists. At the same time, the National Academy of Legal Sciences of Ukraine is identified as the main expert institution for conducting independent legal (juridical) expertise of draft laws, which, in our opinion, is entirely justified. It is because, as of today, the National Academy of Legal Sciences of Ukraine and scientific institutions under the auspices of this branch academy have the necessary scientific potential and capacities to perform the relevant expert functions regarding draft legislative acts.

In this context, it should be noted that under the conditions of martial law in Ukraine, starting from February 24, 2022, scientists of the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine conducted several stages of analytical research of laws and draft laws registered in the Verkhovna Rada of Ukraine aimed at regulating important areas of social relations[1]. Based on relevant analytical studies, a number of scientific and legal conclusions on draft laws have been prepared. Thus, in particular, analyzing the Resolution of the Verkhovna Rada of Ukraine of April 1, 2022 No. 2185-IX, by which the draft Law of Ukraine «On compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation» was adopted as a basis, scientists of the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine concluded about the potential ability of the compensation algorithm established by this draft Law to ensure the effective restoration of property rights of persons who lost residential property as a result of Russia's military aggression. It is regardless of the model for compensation for harm proposed by the draft Law, which is not typical for civil legislation, because on the one hand, it is about the implementation of positive obligations of the state of Ukraine, on the other – about the «classic» tort model for compensation for unlawfully caused harm. At the same time, it was established that the regulation of compensation relations should be done at the level of a special law, and not at the level of the main act of civil legislation – the Civil Code of Ukraine, since it is about specific cases of compensation for harm under extrajudicial procedure, as well as the temporary nature of the compensation mechanisms provided for in the draft Law was predicted (given the temporary nature of martial law)[2].

In turn, when analyzing the Resolution of the Verkhovna Rada of Ukraine

[1] Analytical study of acts of the Verkhovna Rada of Ukraine adopted after the introduction of martial law in Ukraine. Odesa: Helvetica Publishing House, 2022. 100 p.

[2] Analytical study of acts of the Verkhovna Rada of Ukraine adopted after the introduction of martial law in Ukraine. Odesa: Helvetica Publishing House, 2022. P. 6.

of April 14, 2022 No. 2202-IX, by which the draft Law of Ukraine «On State Registration of Human Genomic Information» was adopted as a basis, scientists of the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine prepared a scientific-legal opinion on extreme importance of ensuring proper legal regulation of relations on the processing and state registration of human genomic information in conditions of martial law in Ukraine and a significant number of victims of Russian aggression. At the same time, it was established that this draft Law has a few inaccuracies. In particular, the content of Article 6 «Voluntary state registration of genomic information» needs to be improved since it does not take into account the provisions of the civil and family legislation of Ukraine regarding the amount of civil capacity of minors and juveniles, partially incapable persons and the identification of the circle of persons who are their legal representatives[1].

It is considered that the Draft Law on Lawmaking should provide criteria or provide certain «filters» that will allow the effective use of the institution of independent expertise in lawmaking activities since not every draft law must pass an independent expertise.

We also believe that it would be expedient to establish certain requirements or more precisely, recommendations regarding the procedure for conducting independent expertise at the level of a law or a subordinate normative legal act.

In particular, an expert opinion based on the results of an independent expertise must necessarily contains the following elements:

– conceptual evaluation of the draft legislative act, in particular definition of the typical characteristics of the act;

– determination of the degree of consideration of the practice of normative regulation of this or a similar sphere of social relations;

– system-legal evaluation, in particular the establishment of all meaningful connections of the provisions of the draft with the norms contained in other normative legal acts;

– legal and technical evaluation, in particular determination of the degree of compliance of the draft normative legal act as a whole and its separate elements (legal institutions, groups of norms, separate norms, definitions) with the requirements of legal technique;

– generalization of separate assessments and drawing a general conclusion regarding the further passage of the draft normative legal act (expert opinion).

Thus, the proposed establishment of generalized approaches to the implementation of independent legal expertise in lawmaking will allow to significantly increase the quality and efficiency of the legislative activity of the

[1] Analytical study of acts of the Verkhovna Rada of Ukraine adopted after the introduction of martial law in Ukraine. Odesa: Helvetica Publishing House, 2022. P. 9.

Verkhovna Rada of Ukraine, which in turn will inevitably strengthen the role of the legal profession in the modern Ukrainian state.

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CONSTITUTIONAL RIGHT AND DUTY TO DEFEND UKRAINE IN THE CONTEXT OF THE RUSSIAN-UKRAINIAN WAR

Summary. *The analysis of the essence of constitutional right and duty to defend Ukraine in the context of the Russian-Ukrainian war is performed, also it was determined its content and features of implementation to ensure effective national resistance, as well as substantiated priority areas for improving the constitutional regulation of the right and duty to defend Ukraine. Constitutional and legal consolidation of the essence and guarantees of realization of the right and duty to defend Ukraine, which is the basis of the organization of the Defense Forces of Ukraine and national resistance, has conceptual significance for ensuring the military security and sovereignty of Ukraine.*

It has been established that in the conditions of the Russian-Ukrainian war the exposition in the Constitution of Ukraine of the duty of Ukrainian citizens to defend the Fatherland, given broader legislation and de facto legal relations in this area, is too limited and insufficient for the maximum involvement of the entire Ukrainian people in the defense of Ukraine. Today, in the interests of broad people's participation in national resistance, effective repulse and deterrence of Russia's armed aggression, the content of the right and duty to defend Ukraine is the right and duty of Ukrainian citizens to serve in the military, their right to participate in voluntary formations of territorial communities. It is also the right of foreigners and stateless persons to perform military service, the right of civilians to individual armed resistance and participation in the resistance movement.

It has been substantiated that one of the measures to increase the state's defense capabilities in the Russian-Ukrainian war should be: detailing the content, forms and legal limits of the right and duty to defend Ukraine, in particular through participation in the resistance movement; ensuring effective observance of the rights of conscripts and responsibility for evasion of military service. In addition, it is a concretization of guarantees and procedures for mobilization of citizens, including voluntary despite the existing right to deferment; granting foreigners and stateless persons the right to serve in the reserve, the right to join voluntary formations of territorial communities.

In order to improve the legal basis for the defense of Ukraine from armed aggression, it's proposed to set out Article 65 of the Constitution of Ukraine in the following wording: "Article 65. Defense of the sovereignty of Ukraine, in particular its independence and territorial integrity, is the duty, and in the cases defined by law, the right of citizens of Ukraine. Foreigners and stateless persons have the right to participate in the defense of the sovereignty of Ukraine. Citizens of Ukraine perform military or alternative (non-military) service in accordance with the law"

Keywords: *Constitution of Ukraine, right, duty, defense of Ukraine, military service, Russian-Ukrainian war*

Problem statement. The ongoing armed aggression of the Russian Federation against Ukraine since 2014, in particular the full-scale invasion of Ukraine by Russia in 2022, has actualized the development of the legal bases for ensuring Ukraine's military security, sovereignty and territorial integrity. At the same time, the initial, conceptual significance for the legal regulation of relations in this area is the question of the essence and normative detailing of the content of the constitutional right and the duty to protect Ukraine, which is directly embodied in the corresponding model of the organization of the Defense Forces and national resistance. Along with that, taking into account the limitations of the constitutional regulation of the duty (but not the right) to defend the Motherland, which acquires a renewed legislative content in the context of the Russian-Ukrainian war, there is currently no coherent, agreed definition of the legal nature, subjects and forms of realization of the right and duties to protect Ukraine. In view of this, in the context of ensuring effective national resistance with simultaneous observance of the constitutional rights and freedoms, we consider relevant the issues of the constitutional right and duty to defend Ukraine in the conditions of full-scale armed aggression of Russia against Ukraine.

Analysis of recent research and publications. For the most part, the issues of the constitutional right and the duty to defend Ukraine haven`t been considered substantively. At the same time, it should be noted the comparative legal analysis of Yu. V. Kyrychenko of the constitutional practice of regulating the duty to protect the Motherland in

European countries [1], although the obtained results today already require some clarification and updating, in particular, taking into account changes in the constitutional and legal regulation of Ukraine. In addition, such scientists as E. I. Grihorenko [2], V. V. Knysh [3], I. F. Korzh [4], L. P. Medvid [5], A. V. Ponomarenko [6] and others highlighted the narrower issues of fulfilling the duty to protect Ukraine through the fulfillment of military duty and military service by citizens. Along with that, such scientific papers reflect only certain aspects of the implementation of the constitutional duty (but not the right) by the citizens of Ukraine to defend Ukraine, without comprehensively characterizing the modern features of the organization of national resistance within the framework of Russia's ongoing armed aggression against Ukraine.

That is why the **purpose of the article** is an in-depth analysis of the essence of constitutional right and the duty to defend Ukraine in the context of the Russian-Ukrainian war, determination of its content and specifics of implementation for ensuring effective national resistance, as well as substantiation of priority directions for improving constitutional and legal regulation.

The main research material. Protection of the sovereignty and territorial integrity of Ukraine in accordance with Part 1 of Article 17 of the Constitution of Ukraine is the responsibility of the entire Ukrainian people. After all, as follows from Part 1 of Article 29 of the Universal Declaration of Human Rights of December 10, 1948 and Article 23 of the Constitution of Ukraine, every person has obligations to society, the fulfillment of which is ensured by the state. The constitutional definition of the protection of the sovereignty of Ukraine as the cause of the entire Ukrainian people primarily reflects the importance and necessity of national resistance and participation in it (in various forms and at various levels) of the entire Ukrainian people. However, at the same time, it isn't reduced only to the obligation to defend Ukraine, providing, for example, the right to do so, the obligation to observe the measures of the legal regime of martial law, etc.

Today, the current constitutional regulation defines "protection of the Motherland, independence and territorial integrity of Ukraine" purely as a duty of citizens of Ukraine (Part 1 of Article 65 of the Constitution of Ukraine of June 28, 1996 [7]). In the constitutions of a number of European countries, the obligation to defend the Motherland isn't directly enshrined (Latvia, Germany, France, etc.). Despite this, we believe that in the context of the ongoing Russian-Ukrainian war, the abovementioned constitutional norm needs not only disclosure and a certain expansion of its content in view of the current challenges to Ukraine's national security, but also clarification of its wording.

Thus, the wording of this constitutional obligation contains such a term as "Motherland", which doesn't have

a clear, unambiguous legal definition. In the general lexical sense, "Motherland" can be defined as "Homeland, native land" [8, p. 690], and in turn "Homeland" as "the country in relation to the people who were born in it and are its citizens; motherland" [8, p. 112]. Such terminological ambiguity doesn't preclude a false perception of the Fatherland/Motherland as the country (or even just the region) of a person's place of birth/origin or citizenship. Moreover, this, as a result, distorts citizens' understanding of their duty to protect the "Motherland". Therefore, in this context, it's considered more justified to talk about the constitutional duty to protect not the "Motherland", but rather "Ukraine" as a sovereign and independent, democratic, social, legal state. Close to this is the position of Yu. V. Kyrychenko, who, in view of foreign constitutional practice, suggests using the term "national defense" in Ukraine [1, p. 86]. The above is indeed consistent with the lack of a single approach to the formulation of the stated duty in European countries. Such an approach can be defined as the protection of the Fatherland/Motherland (Part 1 of Article 85 of the Constitution of Poland of April 2, 1997), defense of the Republic (Article 139 of the Constitution of Lithuania of October 25, 1992) or defense of the country (Article 81 of the Constitution of Denmark of June 05, 1953, etc.).

Characterizing the content of the duty to defend Ukraine, one cannot agree with the current textual distinction between the duty to defend the Motherland and the duty to defend the independence and territorial integrity of Ukraine. At the same time, a slightly different wording is laid out in Part 1 of Article 17 of the Constitution of Ukraine, which entrusts the state and the Ukrainian people with the protection of "sovereignty and territorial integrity". In a number of other norms of the Constitution of Ukraine, the concepts of sovereignty, independence and territorial integrity are also demarcated (Article 1, Part 2 of Article 17, Part 1 of Article 37, Part 2 of Article 79, Part 2 of Article 102, Part 4 of Article 104). However, as follows from Article 2 of the Constitution of Ukraine, the sovereignty of Ukraine, extending over its entire territory, is inextricably linked to the integrity and inviolability of the territory of Ukraine within its existing state border.

According to the Declaration on State Sovereignty of Ukraine of July 16, 1990, state sovereignty defines as supremacy, independence, completeness and indivisibility of state power within its territory, independence and equality in external relations. A similar approach is outlined in the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975, in which the concept of state sovereignty includes legal equality, territorial integrity, freedom and political independence. Considering the above, state sovereignty in this case is the most inte-

grative category, meaningfully covering both the external independence of the state and its territorial integrity. Moreover, the sovereignty of Ukraine as the object of Russia's armed aggression is directly mentioned in the preamble of the Law of Ukraine of March 3, 2022 No. 2114-IX. Accordingly, in our opinion, the right and duty to protect Ukraine should primarily include the protection of its "sovereignty, in particular independence and territorial integrity". A similar approach is reflected, for example, in Part 1 of Article 97 of the Constitution of the Netherlands of February 17, 1983, which establishes the obligation to protect the independence of the state and its territorial integrity. In addition, in Part 1 of Article 65 of the Constitution of Ukraine, it`s expedient to distinguish the meaningfully different duty of citizens of Ukraine to protect the Motherland and the duty to respect its state symbols (which should be extended to all those who are in the territory of Ukraine, and laid out a separate constitutional norm).

The protection of Ukraine precisely as a constitutional political duty of citizens (which is also their moral duty, a "matter of honor") is an unconditional requirement for them to take appropriate actions regarding the defense of Ukraine, the protection of its state sovereignty, the constitutional system and the rights of citizens. As noted by Yu. V. Kyrychenko, the "obligation to perform military service" isn't a separate constitutional obligation [1, p. 85], but a derivative of the constitutional obligation of citizens to defend Ukraine, especially, that mandatory military service remains insufficiently defined in the Constitution of Ukraine. As also emphasized by E. I. Hryhorenko, the protection of the Motherland and military service are indeed interrelated, but they are essentially different constitutional duties [2, p. 4]. After all, the duty to protect the Motherland is primary, and military service is the main means of fulfilling this duty [3, p. 15]. By the way, Part 2 of Article 65 of the Constitution of Ukraine also somewhat incorrectly refers to "perform", and not to the honorable in its essence completion of military service by citizens of Ukraine.

The fulfillment of military duty by citizens of Ukraine as a form of fulfilling their duty to defend Ukraine is directly provided for in Part 1, 2 of Article 1 of the Law of Ukraine of March 25, 1992 No. 2232-XII [9]. In particular, it refers to mandatory military service, service in the military reserve and performance of military duty in the reserve by citizens of Ukraine (male – suitable in terms of health and age, and female – with appropriate professional training). A clear example of the duty to defend Ukraine is the compulsory enlistment in a special period for service in the military operational reserve of persons fit for service who were released from military service (Part 1 of Article 26–2 of the Law of Ukraine of March 25, 1992 No. 2232-XII). Instead, after the end of the special period, Part 3 of Article 26–2

of this Law of Ukraine essentially provides for the transformation of service in the military reserve, as one of the forms of fulfilling the military duty to protect Ukraine, from an obligation to a right of citizens of Ukraine.

In addition, in a number of cases, citizens of Ukraine have the right to postpone conscription or they can be exempted from conscription for military service at their own will. For example, according to Part 2, 3, 5 of Article 17 and Part 1 of Article 18 of the Law of Ukraine of March 25, 1992 No. 2232-XII, this is a postponement of the conscription to relevant family circumstances, exemption from the conscription if own father or mother, brother or sister died during military service, etc. We believe that in such a case, participation in the defense of Ukraine by providing conscript military service (however, as well as acceptance into military service under a contract), having an exclusively voluntary nature, should be considered as a right and not a duty of a citizen of Ukraine. At the same time, according to the definition of the Second Senate of the Constitutional Court of Ukraine (Paragraph 2.1 of the motivational part of the Decision of April 25, 2019 No. 1-p(II)/2019 [10]) "any form of military service is the duty of citizens of Ukraine to protect the state". We can agree with the above, bearing in mind, that the direct completion of military service by a person (voluntarily or by conscription) inevitably presupposes his fulfillment of the duty to protect Ukraine.

Another form of military service, which is especially relevant in the context of Russia's armed aggression against Ukraine, is the conscription of Ukrainian citizens for military service during mobilization. As you know, six waves of mobilization were carried out during 2014–2015, and due to the full-scale invasion of Ukraine by Russia in 2022, the Decree of the President of Ukraine of February 24, 2022 No. 69/2022 announced a general mobilization. In general, the conscription of Ukrainian citizens for military service during mobilization is one of the key part of the constitutional duty of citizens to protect Ukraine, directly related to its defense, repulsion and deterrence of armed aggression.

At the same time, Article 23 of the Law of Ukraine dated October 21, 1993 No. 3543-XII [11] establishes a number of grounds for postponement of conscription for military service during mobilization (reserved persons, persons with three or more dependent children, people's deputies of Ukraine, students, teachers and scientists, etc.). With some exceptions, such postponement of conscription for military service during mobilization is temporary and doesn't relieve a person of the general duty to defend Ukraine. On the other hand, currently, various categories of persons who have the right to a postponement from conscription for military service during mobilization are given the opportunity to be conscripted for military service upon their consent. In this case,

it's also about the right of a citizen to defend Ukraine, which isn't required by the state.

It should be noted that the relevant legislative changes, which allowed persons to be mobilized for military service despite their right to postponement, were introduced only after the start of the Russian-Ukrainian war by Laws of Ukraine of March 18, 2015 No. 259-VIII, of May 31, 2016 No. 1387-VIII and of March 15, 2022 No. 2122-IX. By the way, amendments to the Law of Ukraine of October 21, 1993 No. 3543-XII changed the numbering of the parts of its Article 23, which wasn't taken into account in the norm according to which the some persons may be called up for military service with their consent. The specified technical and legal deficiency formally blocked the previously existing guarantees of citizens' voluntary exercise of the right to defend Ukraine, which doesn't correspond to the interests of effective national resistance to the Russia's full-scale invasion of Ukraine ongoing since February 24, 2022.

In addition, there is quite debatable the formal non-extension of the guaranteed in Part 4 of Article 23 of the Law of Ukraine of October 21, 1993 No. 3543-XII possibility of mobilization with their own consent to the relevant students, teaching staff, and scientists. Depriving such persons not only of the duty, but also of the right to defend Ukraine, actually violates the constitutional principle of equal citizen`s rights and freedoms and ultimately negatively affects the state's ability to effectively defend itself.

Thus, despite the generality of the constitutional duty to protect the Motherland for all citizens of Ukraine, today an exception is established for a number of categories of citizens of Ukraine who in reality are not obliged by the state (while retaining the right) to be involved in the existing organizational and legal mechanisms defense of Ukraine. Agreeing with the military, organizational, political, and socio-economic justification of such a limitation of the duty to defend Ukraine, the above conditions the need to bring the current constitutional regulation into compliance with actual legal relations. In particular, it should clarify in the Constitution of Ukraine that the protection of Ukraine's sovereignty, in particular its independence and territorial integrity, is a duty, and in cases specified by law, a right of Ukrainian citizens. A similar position is taken by E. I. Hryhorenko [2, p. 14], proposing to enshrine in the Constitution of Ukraine that "the protection of the Motherland is the right and sacred duty of the citizens of Ukraine". This approach has already been used in the Constitution of Spain of December 27, 1978, the Constitution of Lithuania of October 25, 1992, the Constitution of Romania of November 21, 1991 and the constitutions of some other European countries, which directly enshrine both the duty and the right of citizens to defend the Motherland.

Important component of the duty to protect Ukraine is the appropriate provision by the state of its fulfillment. In this regard, it should be noted the establishment of responsibility for violation of the rules of military accounting, legislation on defense and mobilization (Code of Ukraine on Administrative Offenses of December 7, 1984) and for evasion of conscription for military service and from educational (special) meetings (Criminal Code of Ukraine of April 5, 2001). At the same time, let us emphasize that control over the proper fulfillment of the duty to protect Ukraine and bring to justice persons who evade its fulfillment depends on law enforcement agencies and courts, whose activities are significantly complicated in the conditions of a full-scale Russian-Ukrainian war.

In addition, by the draft law of April 8, 2022 No. 7265 was suggested to establish the obligation of persons subject to mobilization to return to Ukraine and criminal liability for such non-return. In general, this is aimed at ensuring that citizens fulfill their duty to defend Ukraine and encouraging the return of a certain part of conscripts (who may not actually be mobilized later, which will nullify the meaning of their return). At the same time, it's expected to a greater extent that it will encourage such persons to stay abroad forever, which will have significant negative demographic and socio-economic consequences for Ukraine.

As you know, in accordance with the Law of Ukraine of October 6, 2015 No. 716-VIII [12], military service doesn't apply to foreigners and stateless persons, but they have the right to voluntarily (under contract) undergo military service in the Armed Forces of Ukraine. Today, this legal institution is sufficiently developed at the legislative and sub-legal levels, and the existing wide practice of recruiting foreigners and stateless persons to military service determines their significant contribution to strengthening the state's defense capabilities in the conditions of Russia's ongoing armed aggression. It could also be expedient to grant foreigners and stateless persons the right to perform military service in the reserve, as, for example, it was proposed by the draft law of March 30, 2022 No. 7230. In view of this, we consider it appropriate to constitutionally recognize and regulate the right of foreigners and stateless persons residing in Ukraine on legal grounds to participate in the protection of Ukraine's sovereignty. In this context, it would be more appropriate to talk about their protection of Ukraine, not the Motherland (which is mentioned in Part 1 of Article 65 of the current Constitution of Ukraine), which is more identified with the country of citizenship.

According to Part 2 of Article 17 of the Constitution of Ukraine, the defense of Ukraine and the protection of its sovereignty are entrusted to the Armed Forces of Ukraine, which primarily reflects their leading role in the defense of the state, but doesn't exclude other

forms and means of citizens exercising their right and duty to defend Ukraine. Thus, already during the full-scale invasion of Russia into Ukraine, the important Law of Ukraine of March 3, 2022 No. 2114-IX [13] was passed, aimed at ensuring the participation of civilians in the defense of Ukraine. Its essence is to grant all civilian citizens of Ukraine, as well as foreigners and stateless persons, the right to obtain and use (including completely independently according to the Resolution of the Cabinet of Ministers of Ukraine of April 15, 2022 No. 448) firearms for repulse and deterring Russia's armed aggression during the martial law. At the same time, we note the insufficient correctness of the reference in the preamble of this Law of Ukraine to the constitutional duty of Ukrainian citizens to protect the Motherland, since the subject of its regulation actually concerns the right to protect Ukraine both by its citizens and by foreigners and stateless persons.

One way or another, the above-mentioned bases of the Law of Ukraine of March 3, 2022 No. 2114-IX significantly expand the understanding of the right to defend Ukraine, which can be exercised by any person (without age, health restrictions, etc.) without formal affiliation to the structures of the Armed Forces of Ukraine or other military formations. However, since today we are talking about comprehensive national resistance to Russia's armed aggression, we believe this Law of Ukraine should specifically cover not only firearms, but also any other forms and means (cold weapon, explosives, etc.) that can be legitimately used by the civilians against armed aggressors. Accordingly, the same should apply to the exemption of civilians from liability not only for the use of firearms (according to Article 5 of the Law of Ukraine of March 3, 2022 No. 2114-IX), but also for any other harm to armed aggressors, if it doesn't violate the norms of international humanitarian law.

The specified gap was soon eliminated by the Law of Ukraine of March 15, 2022 No. 2124-IX [14], which regulates the same issues in a more complete and detailed manner. In particular, this Law of Ukraine established combat immunity and excluded criminal liability of any (not only civilian) person for use of weapons and explosives against armed aggressors, as well as for other actions that caused damage to life or the health of such persons, in the absence of violations of the laws and customs of war. At the same time, the specified actions, if they clearly don't correspond to the aggression`s danger or the situation of repulsion, weren't necessary to achieve a significant socially useful goal in a specific situation, aren't considered the fulfillment of the duty to protect the Motherland. The establishment of similar legal boundaries for the exercise of the right and duty to protect Ukraine is currently really important and justified. However, it should also be noted that, from a practical point of view, in the conditions of martial law

and ongoing intensive hostilities, there is difficult the proper legal qualification of proportionality and adequacy of acts committed massively against armed aggressors.

On the positive side, we should note that the Law of Ukraine of March 15, 2022 No. 2124-IX for the first time clearly established the absolute right (and not the duty) of every person (not only citizens of Ukraine) to protect the Motherland, regardless of the possibility of avoiding combat or causing harm. Since according to Part 2 of Article 3 of the Constitution of Ukraine, human rights must determine the content and direction of the state's activities, the further development of the basic human right to protect Ukraine requires both an appropriate constitutional regulation and a more orderly legislative detailing of its content, forms and guarantees.

The organization and realization of national resistance, provided for by the Law of Ukraine of July 16, 2021 No. 1702-IX [15], is of great importance for ensuring the defense of Ukraine, its military security and repelling aggression. The peculiarity of this approach to the organization of the national resistance is the maximum possible involvement of citizens in the defense of Ukraine as part of various peculiar components of the national resistance. Thus, the joining of citizens of Ukraine to the Territorial Defense Forces (on contract, conscription and from the territorial reserve), which are an integral part of the Armed Forces of Ukraine, can be a form of exercising their right or obligation to protect Ukraine. The current legislation also doesn't directly prohibit the inclusion into the Territorial Defense Forces foreigners and stateless persons who have a general right to defend Ukraine in the Armed Forces of Ukraine, which at the same time should receive more specific legislative regulation.

At the same time, according to the draft law of March 27, 2022 No. 7217, citizens must enroll in the Territorial Defense Forces and voluntary formations of territorial communities either directly in the areas of hostilities or at the place of their home registration. In our opinion, in the conditions of a full-scale Russian-Ukrainian war, we cannot unequivocally agree with such link of the possibility for a citizen to exercise his right to defend Ukraine with the place of his home registration, because it often may not coincide with the actual place of residence (for example, internally displaced persons).

The possibility of forming voluntary formations of the territorial community is quite innovative for Ukraine. Their activities, on the one hand, are managed and controlled by the command of the relevant Territorial Defense Forces, and, on the other hand, allow Ukrainian citizens to voluntarily participate in the defense of Ukraine within the territory of their territorial community. This creates conditions for citizens to exercise their right to defend Ukraine more widely through local, actually auxiliary,

paramilitary units of national resistance. However, the possibility of unilaterally terminating the contract of a territorial defense volunteer only at his request is quite debatable (Resolution of the Cabinet of Ministers of Ukraine of December 29, 2021 No. 1449). After all, this causes the volunteer's rights to prevail over his constitutional duty to defend Ukraine, which in the realities of the Russian-Ukrainian war can reduce the capacity and coherence of such volunteer formations. The same generally applies to foreigners and stateless persons, who, according to the Law of Ukraine of April 14, 2022 No. 2197-IX, may terminate the military service contract at their own will. Because despite the initially greater freedom of foreigners in exercising their right to defend Ukraine, their signing a contract transforms this right into an obligation that should be valid throughout the entire term of such a contract.

In addition, attention is drawn to the incorrectness of the definition "volunteer of the Territorial Defense Forces of the Armed Forces of Ukraine" set out in Part 1 of Article 1 of the Law of Ukraine of July 16, 2021 No. 1702-IX (in other norms of this Law of Ukraine in parallel another term "territorial defense volunteer" is used). Thus, according to the specified legislative definition, a volunteer of the Territorial Defense Forces of the Armed Forces of Ukraine can be not only a citizen of Ukraine, but also "a foreigner or a stateless person who has been in Ukraine legally for the past five years…". In fact, in accordance with Part 1 of Article 1, Part 3 of Article 9 of the Law of Ukraine of July 16, 2021 No. 1702-IX and Part 16 of the Regulation on the Voluntary Formation of Territorial Communities of December 29, 2021, they are formed purely from citizens of Ukraine. At the same time, according to Part 2 of Article 8 of the Law of Ukraine of July 16, 2021 No. 1702-IX, such voluntary formations are formed taking into account the resource and human capabilities of the respective territorial communities. Therefore, in our opinion, in order to increase the defense capability of the state and ensure comprehensive defense of Ukraine, and in view of other existing forms of participation of foreigners and stateless persons in the defense of Ukraine, it may be appropriate to grant them the right to join voluntary formations of territorial communities. For example, this may be if they have been in Ukraine legally for the past five years (i.e. their integration into society and the relevant territorial communities).

Another component of the national resistance, the resistance movement, currently remains insufficiently regulated, in particular the basis of its staffing. At the same time, since "individuals" are voluntary involved in the performance tasks of the resistance movement (Part 1 of Article 1 of the Law of Ukraine of July 16, 2021 No. 1702-IX), participation in the resistance movement can be considered as a peculiar form of realization by Ukrainian

citizens and foreigners of their right to defend Ukraine.

We also emphasize that in the context of Part 6 of Article 17 of the Constitution of Ukraine, the right and duty to defend Ukraine cannot be realized by participating in armed formations not provided for by law. And the labor obligation established in Part 1 of Article 8 of the Law of Ukraine of May 12, 2015 No. 389-VIII, which consists in the involvement of citizens, regardless of their consent, to certain defense and other socially useful works, isn't as a form of fulfilling the duty to defend Ukraine, although it contributes to its defense.

Conclusions. In the conditions of the Russian-Ukrainian war, laid out in the Constitution of Ukraine the general duty of Ukrainian citizens to defend the Motherland, taking into account the broader legislative regulation and actual legal relations in this area, is too limited and insufficient for the maximum involvement of the entire Ukrainian people in the defense of Ukraine. Today, in the interest of broad people`s participation in the national resistance, effective repulsion of Russia's armed aggression, the content of the right and duty to defend Ukraine includes the right and duty of Ukrainian citizens to undergo military service, their right to participate in voluntary formations of territorial communities. In addition, it includes the right of foreigners and stateless persons to undergo military service, as well as the right of civilians to individual armed resistance and participation in the resistance movement.

One of the measures to increase the defense capability of the state in the Russian-Ukrainian war should be: detailing the content, forms and legal boundaries of the exercise of the right and duty to defend Ukraine, in particular by participating in the resistance movement; ensuring real observance of the rights of conscripts and responsibility for evasion of military service. It's also a clarification of the guarantees and procedure for the mobilization of citizens, including voluntary mobilization despite the existing right to postponement; giving foreigners and stateless persons the right to military service in the reserve, the right to join voluntary formations of territorial communities.

For improving the legal basis for the defense of Ukraine against armed aggression, we propose to amend Article 65 of the Constitution of Ukraine in the following version:

"Article 65. Defense of the sovereignty of Ukraine, in particular its independence and territorial integrity, is the duty, and in the cases defined by law, the right of citizens of Ukraine. Foreigners and stateless persons have the right to participate in the defense of the sovereignty of Ukraine.

Citizens of Ukraine perform military or alternative (non-military) service in accordance with the law."

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THE METHODOLOGY OF THE LEGAL STUDY OF RUSSIAN AGGRESSION AS A CIVILIZATIONAL CONFLICT

Muscovites are evil people, they do evil to you.
Taras SHEVCHENKO

Abstract. *The next attack of Moscow rulers and their servile subordinates on the Ukrainian lands requires understanding of not only the current issues of political mutual existence but also understanding of the worldview foundations of societies and ethnic groups, which were formed in rather different conditions. Therefore, the option of the methodological approach to clarifying the boundaries of mutual understanding has been offered, which is based on cultural and civilizational fundamental foundations and is not overloaded by the general historical experience of inequality on a national basis. In relation to Ukraine and Ukrainians, this is especially acute, although the aggressiveness of these "people of the past" natural for representatives of the imperial type of thinking is demonstrated to other peoples and states that have achieved a higher level of cultural development. Their own achievements are used for attacks on such cultural peoples, pri-*

marily in the fields of modern technologies which is the result of the possibility of the free development of these peoples. This part of legal awareness in the historical consciousness of the representatives of civilizations of different levels of development becomes decisive for the future, since the cultural, that is, the human component itself in the structure of the person is perceived through the idea of human rights. This idea, formulated in the rational form in Western culture, is essentially a concentration of the existential idea of Christianity which is actually perverted in the dogmatic version of the orthodox branch of the Eastern Christian Church. Hence this other world of "people of the past" ("russian world"), which is the coordinates of modernity is actually criminal and demonstrates its animal foundations through animal forms of aggressiveness. Consent with this, and even more so support of such a worldview position by the part of the population of Ukraine is a rudiment of the Soviet and imperial times of political and legal embodiment of the cultural primitivism of the eastern despotism.

Therefore, the issues of the methodology for understanding of modern events seem to be decisive, since everyone else becomes derived from them. Hence, the issue of the need to break with "people of the past" reaches an existential level for Ukrainians as a Shakespearean (Hamlet) question: "To be or not to be?!"

Keywords*: methodology, human rights, legal consciousness, historical consciousness, cultural approach, anthropological approach, culture, «people of the past», aggression*

Formulation of the problem. The process of intensive rethinking of many worldview guidelines in the domestic society requires not only the reliance of thinking on facts as obvious, which can satisfy a mostly undemanding view at the level of everyday consciousness, which is satisfied by illustrative concretization and figurative narratives but also on their foundations. The latter is already a direct appeal to methods of generalizing experience and knowledge, which are more adequate, and therefore effective in relation to the relevant objects. In other words, the question of methodology, which shapes the worldview of any person, is a kind of tool, the awareness of which does not depend on the person himself in the sense of their necessity and (self-)understanding of this necessity. This is if we put the problem in the broadest form.

Further, the statement of the problem needs clarification in the form of its specification in relation to what is known or what is considered known (that is, obvious or understandable). It is about interpretation, which, however, is also the result of primarily methodological efforts: both reasoning and subsequent actions. The worldview level requires interpretations that must correspond to the way of thinking that is formed by a number of factors. Among them, let's pay attention first of all to what is usually formulated as historical consciousness. When it comes to the population of Russia, we can state the enormous pressure of the Soviet past

and previous times (both extremely mythologized, i.e. primitive), which allows us to define this type of sociality as a rather specific social association of "people of the past", including an immersion of such historical consciousness in the images and partially concepts of distant (sometimes very distant) times from us. Remote both chronologically and axiologically. Then the bearers of these worldview landmarks restore the corresponding value orientations, which is a specific case (aggression) demonstrates such a thin "cultural layer" of their consciousness, including its legal and historical components, that it cannot hide the barbaric, and often simply animal foundations of those actions, that the whole world is watching them today on the territory of our Motherland.

However, as in the previous works of the authors of this text, which analyzed the grounds of criminal responsibility for the propaganda of communist and national socialist (Nazi) totalitarian regimes [1] and emphasized the fascist basis of the modern Russian variant of neo-Nazism [2], it was actually emphasized that a more important problem there is a dominance of such consciousness not only among our outspoken enemies but also among a fairly significant number of the population of Ukraine, which poses a huge danger to both the statehood of Ukraine and the very existence of Ukrainians. This position denies our right to exist as a political nation. Here we immediately recall the first in history formulation of the idea of inalienable human rights, given to the world by Benedict Spinoza: and the first of these rights is the "right to existence and activity" [3, p. 283–347]. This is how we find ourselves in the legal plane in the most dramatic version of the existential dimension. Shakespeare's ontological and existential question of Hamlet "To be or not to be?" – this is about us today. And even the most famous examples of mass collaborationism, such as in Austria in 1938 or France in 1940, cannot even come close here in their existential drama (that is, as a matter of life and death), since we belong to the world of culture ("the civilized world", "free world") is still very indirect, in contrast to the mentioned countries, where in the middle of the 20th century there were stable and highly developed legal systems, not to mention the general level of education and culture. Therefore, the "fifth column" of people in our country who think in terms of the past, and the brutal past – Soviet-totalitarian and imperial-despotic – is a direct threat to those human rights that the mentioned B. Spinoza, and then other outstanding thinkers of mankind formulated back in the 17th and 18th centuries. That is a threat to the life of a free person.

Analysis of recent research and publications. According to the stated topic, the following can be said. The first is the issue of war and peace. They were the subject of scientific interest of the authors of these lines [4], and in

various fields of scientific knowledge, including jurisprudence (starting with H. Grotius), the literature is limitless. The second is the mentioned issue of historical consciousness, which also has many options for coverage, but the formulation of the topic of this investigation concretizes it in the categories of phenomenological and cultural methods, first of all.

In the most famous of these options, starting with I. Kant and G. Hegel are convinced of the exceptionality of freedom as an imperative of human development, and in the 20th century, we have tangents to the right of research of E. Husserl and his followers, including his son G. Husserl, who was a philosopher of law, as well as cultural scientists: O. Spengler, J. Heusing and many others who were inspired by their scientific work. We also have a whole worldview direction – dystopias and, later, anti-totalitarian philosophical, legal and political literature. Domestic thinkers did not stand aside either, we have fighters against the criminal communist regime and extraordinary scientists who, under conditions of restrictions of all kinds and types, tried to preserve positions of human dignity and the remains of the world and national humanistic culture. These ideas were reflected not in Moscow textbooks on the "theory of the state and law", but in the works of L. Lukyanenko and V. Chornovol, the domestic philosophical anthropology and philosophy of culture of V. Lisovoy, M. Popovych and others who defended those rights man, about whom B. Spinoza began to speak – in rational philosophy, and even earlier – the founders of Christianity in the version of existential wisdom in proving the superiority of the human over the animal.

However, the furious opposition of the "people of the past" (today they can be called "Soviet people", who were specified logically and organizationally in the concept of "russian world") in their declared orientation towards the essentially barbaric principle of the right of force, which was embodied in another Russian-Ukrainian war – and this is the third, it provides not only new worldview perspectives in the understanding of modern problems, and precisely in the direction specified in this text, as in I. Rushchenko [5], but also incredibly actualizes the issue of historical consciousness as a subject of research in the specified perspective of methodological coverage, in particular, the basis of the phenomenon defined in our legislation as "collaborationism" [6]. And here only the ascertainment of conformity/non-conformity of certain actions defined (not always in the European tradition, and not always successfully) in the current documents seems clearly insufficient and requires a more adequate to life itself, i.e. a more complex, and therefore methodologically accurate examination (in particular, there are some questions, relating to educational activities, especially in Article 111–1 of the Criminal Code of Ukraine [7], etc.). It is hoped that the

proposed approach will provide somewhat more opportunities for scientific commenting on current legislation, as well as in law-making, management and educational activities, including de-occupied territories.

Formulation of goals. The purpose of the article is to determine the cultural-historical foundations of that form of legal consciousness that the Russian aggressor demonstrates today and which, at the same time, is not condemned by a certain number of Ukrainian citizens, despite its frank orientation towards primitive hard power. The special meaning of the category "culture", which is proposed to be understood as fundamental in the process of understanding and interpreting the causes and events of the Russian-Ukrainian war, lies in the meta-categorical status of the specified category, which in the legal field provides additional opportunities for synthesizing direction for more methodologically adequate (closer to the real state things) conclusions.

Presenting the main material. The extraordinary events of 2022 require a rethinking of the current situation, not only from 2014 but also in general, regarding the relationships of those types of sociality that have developed within the framework of the interaction of Ukrainian and Russian ethnic groups (and communities in general). The core problem was formulated and somewhat schematically covered in the above-mentioned articles, where the authors insisted on the scientific – jurisprudential – component of its formulation. But the main general issue should be considered addressing the problems of methodological rank and character, which to a large extent determined the philosophical and legal angle of reasoning within the isolated range of tasks of these studies. Of course, taking into account the extremely high existential tension in the current situation, the tasks should be added and specified, which is also required by the worldview context and direction of the development of domestic jurisprudence. Therefore, some theses of this text will sometimes be repeated along with the development of arguments in support of them or ambiguity in the discussion. And the "methodological line", as per the conviction of the authors of these lines, should be present constantly since it is proposed to understand both the deep foundations of the processes taking place and the grounds for decision-making, which largely determine the course of events that make up the current processes.

Let's try to express the last opinion more concretely. The rethinking and functional translation of issues of interaction and ways of sharing one's ideas about the world from the plane and, accordingly, the sociological methodology to the plane and methodology of the anthropological variety made a significant part of the world of people more humanitarian-oriented (in the broadest sense of the concept of humanitarian). Achievements in the moral (moral-ethical) and legal (political-legal) spheres

appear instrumentally most influential and expressive. Influence and instrumental expressiveness can be interpreted as a basis or a set of grounds, the external manifestation of which was embodied, in particular, in the ideas of inalienable human rights and the legal (legal and social) state. However, the deep foundations are not so externally formalized (it should be added: and quite widely recognized) ideas and corresponding signs. The foundations of their recognition/non-recognition (acceptance/non-acceptance, acceptance/rejection) are very complex and often synthesized in an unknown and incomprehensible way, ideas, beliefs and ideas that form the specified methods of interaction and mutual exchange. This is why communicative philosophy with an emphasis on the rational component, phenomenology with colorful ramifications, including the existential philosophy of law, as well as structuralism with its linguistic core and, speaking metaphorically, the obligatory cultural coloring and understanding of the huge logical and constructive meaning of language, acquired such great praxeological importance. "Anthropos" tries not only to understand itself but also to find ways of realizing its uniqueness beyond the purely biological embodiment of corporeality and the corresponding needs rooted in it. The latter allows us to insist on the need to go beyond these limits, that is, to the sphere of what in the history of thought has received the name – definition – as "culture", where consciousness (the spiritual component of a person) is of leading importance.

In the perspective indicated in the title of this text, it makes sense to remind about the different meanings (in varying degrees of correspondence) of the concepts of "education" and "professional training", if we are talking about an appeal to the reader, to whom the question of significance and even determinability should be understandable and acceptable issues of the methodological level. It should also be taken into account, and also meaningfully, the incredible degree of influence of artificially created and ideologically oriented mythology (Soviet-Russian), where elements of inauthenticity prevail over factuality, interpreted in any way. Since we are talking mainly about the methods of domination, including its organizational and regulatory components, in the view of sociality we single out the legal (political-legal) core – hence it's meaning. This needs to be concretized by the unreliability of what is considered knowledge, but confidence in its quality or authenticity may be questionable. The history of Ukraine, especially in the matter of interaction with neighbouring humanity, which constitutes (in their own interpretation) the Russian ethnos, really needs a so-called "unsullied" view, which adds significance to the formulation of the given question.

But the historical explorations and conclusions of many domestic thinkers, including very extraordinary ones, must be accepted or not accepted, but in any

case, in the mode of appeal to the events of today, they cannot be ignored. To the plots and isolated problems considered in the previously mentioned articles, we should add, as it turns out, the correct opinion of the outstanding Ukrainian scholar Yuriy Shevelyov about the "three terrible enemies of the Ukrainian revival" who "live even today" [8, p. 17], which are also called "the three deadly sins (as well as troubles) of Ukraine." These are "moscow" or "russia", "Kochubeivshchyna complex" or "kochubeivshchyna" and "Ukrainian provincialism" or simply "provincialism" [9, p. 5–7]. All these three positions for the understanding of history, including the present, have a huge cultural colour in the issue of methodological approach to issues of legal content and state formalization. Unfortunately, they also remain extremely relevant and have even taken on some new, sharper forms.

Yu. Shevelyov provides a more methodologically saturated explanation of the processes of intensive moscow-(then st. petersburg-) russian communication (today the definition in terms of "russian-Ukrainian" is more influential) after the well-known (as it turned out, here we still need to put a question mark: whether all known?) events in Pereyaslav at the beginning of 1654 than, say, Ivan Ogienko, another outstanding historian [10]. In the latter, the material, which is extremely rich in fact, provides many very interesting examples of the influence of russia, that is, the Kyiv-Volyn region, as well as the Galician territories, on the development, primarily cultural, of representatives of the northeastern lands, whose population was organized according to the model of the Golden Horde – a great Asian-despotic state type, and which, for example, will be freed from vassal dependence on the Crimean Khanate only half a century after Pereyaslav. Shevelyov presents an interpretation of the Ukrainian cultural attack on russia and the defeat in this process due to the military and political (again: hard power) superiority of the center of gravity chosen by B. Khmelnytskyi and his circle. "Faith" (church-religious orientation), where the cultural superiority of Kyiv was very significant, did not defeat the "power" (military and generally political-authority), which turned out to be more significant. In addition, the heterogeneity and, accordingly, inconsistency, etc. of this governing circle itself, where the majority eventually submitted to both the power and other qualities of the suzerain that accompanied this power, was embodied in that "kochubeivshchyna", according to Shevelev, or in "seekers of nobility ", if according to another well-known historian of Ukraine D. Doroshenko [11, p. 269–271].

The assessment of oneself as inferior in the cultural sense was the result of submission to the named force[1]. How it happened concretely and historically and was embodied – there are quite a lot of testimonies and scientific descrip-

tions, both in Ukraine and in russia. We have a whole series of documents, including those known to every schoolchild (such as the Emsk decree, etc.), as well as many little-known or even unknown in the organization, control and regulation of life in the "Little russian lands" by the empire, which also formed a corresponding complex of inferiority[2]. Separately, this also applies to language, since it is the carrier of the cultural foundations of the existence of any people, that is why the "language" of the colonizers, and in fact constantly mentally subordinated to the authorities, was so intensively implemented, squeezing out the language of free people, proving the effectiveness of the cultural toolkit of political pressure, which was then formalized and in the field of legislation: consolidation in the case of the 18th century, collectivization in the case of the 20th century, etc. Both Catherine and her followers, and Stalin were always harassed by their Beardless Women and Skrypniks, which ended with the liquidation of either the Lithuanian statutes (Mykola I) or the legally formalized aspirations for freedom, which were the achievements of the half-century period after the so-called "bourgeois reforms" (Lenin) [1] after the crushing defeats of the russian Empire in the Crimean and then the Japanese wars. We can also mention the Afghan war, which also had huge consequences in the organization of legal existence: the destruction of the huge Moscow empire, the restoration of which was again demanded by the representatives of its most influential remnants that remained. And the bunch of modern beardless men and violinists, kochubey and shcherbytskyi, although significantly reduced, remains too influential on our territory.

To explain the extent of the mentioned threat in more detail, let's give an example of another direction: the resistance of "people of the past" to modern legal ideas, in particular, ideas of human rights. The issue of the internal threat is not just a matter of principle, but also one that has quite a strong justification today. It is, in particular, about the following aspect of the essentially criminal activity of communities that are more primitive in terms of cultural development: the effective criminal use of the achievements of Western culture ("the free world") in the field of modern technologies, based on the principles of networking, by terrorist groups such as hierarchically structured jihadist groups or then the same primitive governments like the russian one1To explain the extent of the mentioned threat in more detail, let's give an example of another direction: the resistance of "people of the past" to modern legal ideas, in particular, ideas of human rights. The issue of the internal threat is not just a matter of principle, but also one that has quite a strong justification today. It is, in particular, about the following aspect of the essentially criminal activity of communities that are more primitive in terms of cultural development: the ef-

fective criminal use of the achievements of Western culture ("the free world") in the field of modern technologies, based on the principles of networking, by terrorist groups such as hierarchically structured jihadist groups or then the same primitive governments like the russian one[1]. This, in particular, is stated in a fundamental study of the interaction of network and hierarchical systems of interconnection, recently carried out by the most famous and most influential historian in the modern world, N. Ferguson, where he summarizes a huge mass of information as follows: "Russian hackers and trolls pose the same danger to the American democracy, which the Jesuits once did to the English Reformation: this is an internal threat, sponsored from the outside" [12, p. 448].

In general, methodologically, this is characterized as such that, at the anthropological level, all spheres of the existence of such a community are not only based on this still essentially the animal principle of understanding law, that is, the ability to impose one's will on others (hierarchy built on the power of rulers), as the rights of power (even using their own achievements), but also obey only it and from the outside, that is, another force. The latter anthropologically shows submission to the natural (in the sense of animal) principles of understanding human interaction, which today is clearly criminal, as it has been taken beyond its limits by human culture. In general, culturally, this demonstrates the advantage of understanding law as the embodiment of the principles of Reason (the unity of the intellectual and moral – according to the European tradition), which is primarily concentrated on the concept of human rights, and not only in specific technologies. We can also add a pedagogical aspect, and in general, a worldview: a demonstration of the superiority of education over purely professional training, since the first forms a citizen as a free person-personality, and the second – a person who is indifferent, at best, and aggressive, at worst, because from the animal nature will never allow the essence of an uncultured (that is, unimproved) person to emerge, as Aristotle showed. This is another argument in favour of the need for a culturally based approach to understanding a person (or, what is the same, the superiority of the cultural method compared to the anthropological one). In the legal sense, this is concentrated on the idea of inalienable human rights. Therefore, legal consciousness is in this aspect a part of historical consciousness, being in a certain dependence on it as a degree of education. In the worldview-pedagogical sense, this shows the superiority and, accordingly, the human (humanistic) perspective of education over purely professional training, since only in the first case it is about creativity that is morally grounded, directed at the person himself (and every) person, which combines the entire complex of ideas of human rights

with the context of its cultural development.

It is also proposed to understand the rather widespread definition of this war as a civilizational conflict, which even deepens the well-known concept of S. Huntington [13, p. 165–168], since he wrote about it – this conflict – several decades ago, but for Ukraine, he drew a "contact line" along the border between the Catholic world and the Orthodox world. As we can see, other components, primarily legal or political-legal, should be added to such cultural interpretations of civilization. That is, the axiological principles appear to be deeper, and religion, as a means of worldview connection at the existential level, has a normalizing and regulatory influence both within the limits of improved ways of human existence (which allows synthesizing the cultural method as an explanatory principle) and to a large extent beyond it (anthropological method as an explanatory principle). The animal savagery of the occupiers as the embodiment of the value guidelines of the Middle Ages in the dogmas of the prevailing orthodox version of Christianity openly demonstrates the rejection of its culturally more developed version with an appeal to rational principles (Reason), which is embodied primarily in the purely human – as the cultural – idea of human rights. That is, the indicated "line of collision" as the embodiment of worldview guidelines, as demonstrated today on the territory of the Russian land (Ukrainian territory), that the imperative of law becomes an overriding component of a person's cultural orientation. This again emphasizes the importance of the cultural approach as a research method, adding to the understanding of the concept of "religion" and the meaning of "cultural system" [14].

The following considerations can be offered as **conclusions**.

1. Worldview embodiments of the form and level of legal awareness that the russian aggressor demonstrates today are cultural and historical principles based on simplified (primitized) ways of understanding law as exclusively a force, which allows defining the population of russia as "people of the past" because in the specified situation the state of historical consciousness is decisive.

2. The situation when the specified understanding of the law is not condemned by a certain number of Ukrainian citizens, despite its frank orientation towards primitive hard power, has the same cultural and historical sources, which are reinforced by the artificially ideologically concentrated worldview of the communitarian (communist) variety in the 19th and 20th centuries, and this makes it possible to strengthen the specification of representatives of this type of consciousness as "Soviet man".

3. Aggression and the desire to subjugate others is natural for such civilizations as representatives of cultural communities where an irrational-mythолог-

ical type of thinking prevails and there is no desire for freedom and other values that are concentrated in the concept of human rights.

4. Since the aggressive actions of the "people of the past" ("the russian world") are aimed at the destruction of the meanings associated with the concept of "Ukrainian" and the displacement of the bearers of these meanings with the internationally recognized territory of the state of Ukraine, the mythologized narratives of the historical consciousness of the russian population should be considered updated to the extent destruction of legal consciousness from the point of view of modern international law and relevant standards of human rights.

5. In such conditions, in order to understand the existing situation, it seems more fruitful to use the cultural approach in jurisprudence as the one that synthesizes the methodology instrumentally more reliably than the anthropological approach, since it more adequately distinguishes the civilizational (cultural-civilizational) principles of human thinking and actions of the 21st century.

6. It also seems appropriate to strengthen the educational (general humanitarian, civic) component in the process of training modern Ukrainian lawyers and law enforcement officers as the embodiment of a cultural approach and relevant methods in curricula and the teaching (educational) process as a whole, where special attention should be paid to the formation of adequate historical minds of higher education seekers.

In the future, it looks promising to study the issues of the interaction of the religious foundations of culture as the embodiment of historical consciousness with the peculiarities of legal consciousness, primarily based on the personified ideas of human rights, which are the achievement of humanistic thought, which was especially concentrated in the European philosophical and legal and then in the jurisprudential thought of the New Age. Its further development can be considered as the process of liberating humanity from slavish dependence and understanding law exclusively as a force. Thus, russian aggression is one of the manifestations of the efforts of representatives of simpler (primitive) cultures and civilizational associations to resist the saturation of law with Reason, that is, effective intelligence and humanistic morality. That is, it is a resistance to the human – cultural – in a person, including the denial of his natural rights, even those already legally formalized.

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THE ORETICAL FOUNDAMENTALS AND PRIORITIES OF DEVELOPMENT OF THE NATIONAL SECURITY LAW

Summary. *Study focuses on the fact that under conditions of war, global transformations and crisis processes in the system of international security, national security law along with military and international security laws, fulfills actual*

tasks related to legal provision of the security of human being and citizen, society and the state and international law and is an extremely important area of legal science development. Study describes regularities and features, essential and meaningful characteristics, signs, principles and functions that make up the system of knowledge on national security law, as well as priority areas of national security law development and relevant fundamental and applied studies. We should note that the priorities for the further development of national security law are resulted from application of a complex of research, organizational and educational activities. In particular, it concerns the introduction of appropriate scientific specialty and educational specialization related to training of specialists for security and defense sectors of Ukraine. In general, the study is based on materials related to public relations in national security sector, scientific developments of Ukrainian and international scientists, national legislation and relevant norms of international law

Keywords: *national security law, theoretical bases of national security law, legal support system of national security, development priorities*

1. INTRODUCTION

In modern world all aspects that ensure the very safety of human life, society's and state's existence and development are extremely important. It is an essential characteristic of national security both as a protection from potential and real threats and coordinated activities aimed at achieving of social state under which security values are of particular importance.

Addressing to axiological foundations of national security [1, p. 248–394] proves the need in determining of legal content of national security, its international legal dimension, establishing of close and inseparable links between the law of national security and international security, international legal system influence on the formation of national security law.

International legal system contains basic principles identified by international acts/docs. They bring the states closer to requirements of law in order to prevent the use of force, avoid aggression and prevent armed conflicts and human rights violation. World legal order and international security system are facing threat of destruction because of constant world instability. Search for solution to many international and national challenges related to armed conflicts, massive violations of human rights and freedoms is difficult. Under these processes, law, international and national security guarantees the state stability. In fact, they are indivisible and form the social basis for national security law.

An important aspect in understanding of national security law is the multi-

faceted nature of its role in strategic communications [2], where the state combines its efforts with other social entities in order to achieve certain strategic goals and solve security tasks important for human being and society as a whole. Strategic communications become successful and achieve their goal not only due to the agreement of goals and objectives between all participants of such communications, but also due to legitimacy of activities, primarily of state security and defense sector, which must comply with the standards and principles of national security law.

At the same time, applied issues of legal provision of the security and defense sector [3, p. 480–534], determination of the status nature of security forces and defense forces and systemic legal influence on their powers to ensure national security, affirmation of the principle of the rule of law [4] in normative, institutional components and in the functional purpose of the security and defense sector remain actual. National security law demonstrates its peculiarities in a system of national law and reveals general patterns while having characteristics of independent branch of law, which is confirmed by relevant legal regime [5]. Provision of safe conditions for human being as well as ensuring of the right for security as both an absolute right and subjective right within concrete legal relations in national security sector is another actual and not less important problem, solved by national security law of Ukraine with its own means and resources. Human subjectivity issue in national security law is of general importance for legal science. It reveals legal nature of person in relations with the state and civil society.

Study is aimed at highlighting the theoretical bases of national security law, as a system of knowledge about the regularities and peculiarities of this field of law; search for ways to solve applied problems of national security law and its role in ensuring national, regional and international security [6]; consideration of topical issues of the organization of scientific research in the field of national security law, the formation of a relevant scientific specialty [7] and an educational discipline for training the specialists for security and defense sector; as well as ensuring the effectiveness of legislative regulation of the activities of security and defense sector subjects [8] in the context of European and Euro-Atlantic integration of Ukraine.

Legal science contains numerous developments related to national security (V. Bachynin, V. Belevtseva, O. Danilyan, O. Dzoban, S. Maksimov, I. Tikhonenko, etc.); ensuring national security by means and resources of various fields of law (V. Antonov, O. Baranov, K. Belyakov, V. Borisov, O. Dovgan, O. Zolotar, M. Karchevskyi, D. Mykhaylenko, V. Nastyuk, N. Savinova, M. Strelbytskyi, E. Streltsov, T. Tkachuk, P. Fries, O. Chuvakov and others); general theoretical problems in the con-

text of national security (P. Westerman, A. Gromytsaris, S. Holovaty, R. Dvorkin, L. Dugi, R. Yering, L. Zamorska, M. Kozyubra, A. Kryzhanovskyi, L. Luts, V. Nersesyants, Y. Oborotov, N. Onishchenko, R. Pound, O. Petryshyn, S. Pogrebnyak, A. Polyakov, P. Rabinovych, O. Rudneva, B. Tamanaga, S. Udartsev, K. Feddeler, G. Hart, V. Chetvernin, Y. Shemshuchenko, P. Shlag, O. Yushchyk, O. Yarmysh and others); specific legal problems of national security law (S. Dykus, I. Doronin, D. Mur, G. Novytskyi, V. Raigorodskyi, S. Chapchikov and others).

However, the state of national security law researches indicates the need in theoretical generalization of scientific developments, definition of branch features of national security law of Ukraine, its meaningful characteristics and peculiarities of operation undercurrent conditions. Such theoretical generalizations, while having significant scientific potential, are carried out by general theoretical jurisprudence, as well as within the specialization of legal science, a separate scientific field, i.e. the national securitylaw. Thus, theoretical bases of national security law determine a certain direction of modern legal sciencedevelopment, starting from understanding the doctrinal features of national security law to the formation of a system of sectors knowledge and principles, determining the specifics of activitiesunder conditions of a globalized world, which has applied significance for ensuring national security.

2. MATERIAL SAND METHODS

To achieve the overall goal of the study, empirical materials related to public relations, social communications in the sphere of national security, legislation related to national security and defense of Ukraine, international legal acts, analytical and review materials, scientific findings of national and international experts were used. Study successively reveals national security bases, identifies the priorities for countering threatsand focuses attention on new qualities of state sovereignty as a central national security issue, which is reflected in a law. Social communications related to national security determine the need in legal influence, need in applying legal means in accordance with the aim of such social communications, which results in the formation of appropriate legal regime of national security and determines the ontological characteristics of national security law.

At the same time, epistemological grounding of research's methodology related to national security law involves identifying of appropriate scientific approaches. For this purpose, significant methodological potential of interdisciplinary scientific approach, as well as philosophical views, political, sociological and legal knowledge about law and the state and their interaction, was used. To reveal the legal content and form of national security as system integrity, peculiarities of branch and applied scientific developments were used. While studying systemic features and charac-

teristics of national security law, systemic and institutional and functional approaches were applied. Scientific development of national security law as integrity is based on holistic approach possibilities and focused on the integrity of national security system. While identifying axiological characteristics of national security law, axiological approach to value-normative legal understanding and formation of appropriate epistemological research platform was used. Non-linear features of national security law, as a non-linear system, were investigated with the use of synergistic approach and rhizome paradigm. Such an approach made it possible to reveal the peculiarities of self-support system of national security law, which is manifested in the interaction of law, state, and civil society under indispensable condition of recognizing and ensuring human subjectivity.

Dialectical, formal-logical, historical-legal, comparative-analytical, sociological methods as well as methods of structural analysis, legal modeling, forecasting and others were used during the study. In particular, dialectical method contributed to solve the issue of conceptualization of national security law, identifying its principles and functions on the basis of objectivity, interconnection and interaction with other components of national legal system and international law. Historical and legal method was used to develop the problem related to formation of the theory of national security law, its further development, identification of problems of scientific reflection of the legal content of national security and their solution by modern legal science. The formal-logical method made it possible to determine the features of national security law, its substantive peculiarities and categorical apparatus inherent in this field of law. Comparative and legal method was applied to establish the unity and interaction between national security and military laws, national and international security laws. Structural analysis method highlights regularities and peculiarities of the structure of national security law, determines its network character, horizontal interaction in the context of national security types that form the unity and integrity of national security law. Sociological and statistical methods were used both autonomously and in interaction with dialectical method to assess the importance of national security interests as objects of national security law. Legal modeling method was used for variable assessment of possible scenarios of intrabranch formations of national security law, its operation under condition of special regimes, use of means and resources of international security law to solve tasks related to coping with potential and real threats to national security. Forecasting method was applied to identify the prospects for national security law development and its operation under condition of global transformations, institutional influence on national legal system during the processes of le-

gal acculturation, effectiveness and necessity of legal reception as well as consequences of such processes for legal security ensuring.

2. RESULTS AND DISCUSSIONS

The doctrine of national security law of Ukraine goes through a rather complicated way of formation and development under conditions of the formation of paradigms of modern law and the state and taking into account the achievements of philosophical, historical, sociological, political and other branches of science and concerns scientific development and study of the entire complex palette of theoretical and applied aspects of this complex for jurisprudence issue by branch legal sciences, which allows to reach the conceptual level of its solution [9, p. 11–29].

Formation of the doctrine of national security law takes place under condition of regulatory and institutional definition of activities related to national security provision and national interests' protection [9, p. 326–327]. Grounding on worldview understanding of national security and its essential and meaningful characteristics, legal science focuses on research areas necessary for ensuring national security and related to its constitutional and legal nature [3],administration in the field of national security [10],criminal and legal issues of national security provision [11], peculiarities of national security provision in information sphere [12] as well as other national security spheres, including military security [13].

Conceptualization of national security law of Ukraine [5] consists in the awareness of the empirical basis of national security followed by its ontological understanding in legal dimension and on the basis of appropriate methodological principles and is aimed at forming the appropriate concept.Empirical basis of national security law is a set of all factors that ensure the safety of a person, society and state, i.e.: social relations, social communications in the field of national security, constitutional provisions and legal norms related to legal status of subjects of security and defense sector and organization of activities in sphere of national security, international relations in international securitysystem. The formation of national security law is focused on application of certain model of national security, taking into account the peculiarities of national legal system, as well as economic, political, cultural, military, informational, man-made and other characteristics of society. At the same time, USA model of national security and national security law [14], with the use of relevant standards of EU and NATO member states, deserves attention.

The concept of national security law of Ukraine is based on security culture, which in the legal framework is considered as a legal strategic culture and serves as the basis for legal strategic thinking, in particular, awareness of es-

sential characteristics of national security, its purpose and adoption of relevant management decisions [15]. Legal strategic culture and legal strategic thinking are characterized as competent and professional, which must meet the requirements of activities in the field of national security.

At the same time, national security law consolidates the activities of the state, civil society and citizens to ensure national security and operates in all social areas related to national security provision. However, the most important for its subject area are safe human living conditions, sovereignty, territorial integrity and constitutional system of the state [16].

Formation of national security law on Ukraine is influenced by international legal system and international security law. Main international law principles – non-use of force or threat of force; peaceful settlement of international disputes; non-interference; cooperation; equality and self-determination of nations/states; sovereign equality of states; consciousness fulfillment of obligations under international law; territorial integrity; respect for human rights; borders' inviolability – determine national security principles and have organizational influence on national security law. Under conditions of crisis of international security system, national security law coordinates its normative legal provisions and institutional activities with international law [17], confirms its own social value as a regulator of public relations, strategic communications for the protection of national interests under conditions of fulfillment of state international obligations, ensuring the protection of human rights and fundamental freedoms.

National security law establishes the legal content and legal form of national security and affirms the integrity of national security in all its varieties, sets legal normativity, general obligation of social requirements and provisions on national security issues, defines and ensures the national interestsprotection. National security law is closely connected with legal order [18], which is essentially combined with the status of national security. Therefore, national security law is dependent on the legal order and affects the legal order as a result of the formation of legal infrastructure and legal support for the protection of national interests.

The very concept of national security law of Ukraine has its axiological basis, which contains a significant number of the most important interests and values for society and human being, the achievement of which brings social existence to a level available to meet individual and group needs due to the need in sustainable development. Axiology of national security [1, p. 250–304] looks multifaceted, goes from one quality of human existence and society to another, combines values of spiritual and material origin, unfolds from individual characteristics to general ones, demonstrating the presence in the cen-

ter of the valuable reality of a person and his/her needs.

The legal regime of national security law reveals special characteristics, contains a subject (social relations and social communications between subjects in the field of national security), a method, which is a set of imperative means and methods of legal influence (legal regulations) on certain social relations and social communications, as well as the goal of ensuring national security, which is specified depending on the sphere and safe conditions of human, society and the state activities [9, p. 93–94].

Legal regime of national security is characterized by fairly strict rules for regulating social relations, which provides an imperative method of legal regulation. Such a legal regime can acquire special features of an emergency regime or a martial law regime, which, in particular, characterizes its exclusive public-legal nature, focused on general interests'protection.

Grounding on legal regulation subject and goal (legal influence), national security law consolidates relevant normative legal prescriptions of constitutional law, administrative, criminal, informational, environmental and other branches of law related to the legal provision of national security and reaches the systematic level that allows effective and successfully ensuring of operation of the law in national security field.

National security law origins from constitutional law and the most stable are the connections between national security and military laws, where the commonality of objects and subjects, the unity of legal regime regarding the provision of military security, protection of sovereignty and territorial integrity force to combine scientific developments and law enforcement practice [7].

Definitions within legal system and disclosure of peculiarities of national security law become possible on the basis of value-normative understanding of law [19], due to which it is obvious that the state is dependent on the law and ensures its effect with the use of appropriate mechanisms, the legitimacy of which is obtained in law as in value – regulatory system.

Legal normativity, in turn, demonstrates the general obligation of legal prescriptions, provided by the possibility of legitimate coercion, which provides grounds for validity of law. Sociological [20] and needs [21] approaches to understanding of law, as well as communicative theory of law [22] are important for substantiating the concept of national security law.

National security law has clear characteristics of a non-linear system [23], which is evident in its interaction with adjacent branches of national legal system and international law. Formation of national security law in the system of national law is a result of linear and non-linear processes, where main norms do not have a pre-programmed form and content and are ascertained basing

on general need in formation of legal norms during specific social communications. At the same time, social and moral-ethical, value standards undergo reflection during combined interaction of social subjects, when consciousness perceives and reflects specified standards precisely as legal norms and universally binding behavior rules [24].

The concept of national security law of Ukraine is based on general characteristics of law as a social phenomenon [25], which reveal its social, value-normative, need-based, communicative and other characteristics, as well as focuses on the specifics of the subject security sphere. National security law is a branch of law, a value-normative system of generally recognized and publicly defined statuses, behavior and communications rules defined within national legal system and aimed at ensuring safe living conditions for human being, society and the state.

The subjects of national security law of Ukraine, which are the state, society and human being, are socially individualized and specified in accordance with the peculiarities of communications in national security sphere. National security law considers a human being as the most important subject of law [26], whose subjectivity is justified by legal nature and directly depends on the possibilities of national security provision. In view of this, the most important right of human being existence – the right for life – actually proclaims basic idea of national security in its anthropological meaning.

National security law of Ukraine has its own objects – certain tangible and intangible benefits, like national interests, assets, needs and values of human being, society and the state in national security sphere – from state and military to economic, informational, man-made security, etc. Within national security law, national interests [27] acquire general significance for society, individual and collective subjects, as they are law-oriented, protected or ensured by law and are public interests protected by law.

The unity of the objects of national security law is based on a common goal, which is national security. Concretization of objects in certain types of national security is a confirmation of integrity, which conditions the integrity of national security law. The objects of national security law form the corresponding systemic multiplicity of national interests, i.e. vital interests of human being, society and the state. Their implementation ensures safe living conditions and the well-being of citizens, sovereign existence of the state and society, as well as democratic development of state organization of society.

Main objects of national security law are as following: human being living in a social space, his/her physical existence and well-being. Under these circumstances, human-centeredness of law finds its confirmation and is revealed in national security law. Other

important national interests, in particular, sovereignty and territorial integrity of the state, relate to the spatial conditions of human and social life.

National security law of Ukraine as an independent branch of law is based on relevant principles. These are: basic, original ideas and provisions that determine the essence and content of the impact of the law on ensuring national security. Main principles of national security law include the following: the rule of law; legality; protection and guarantee of human rights and freedoms in accordance with the requirements of the Convention on the Protection of Human Rights and Fundamental Freedoms and practices of the European Court on Human Rights; the priority of protecting national interests of general importance to society and the state; compliance of branch norms and prescriptions with the requirements of international law and international agreements in which the state takes part. The functions of national security law of Ukraine specify the functions of national law [28] in its interaction with international law in national security sphere and cover all areas of national security provision and national interests' protection. Therefore, functions of national security law include regulatory, protective, informational, preventive, prognostic, as well as the function of legal support of national security. Taking into account scientific views on the pragmatic nature of the paradigm of the functions of law and their relevance for influencing social relations, other functions of national security law are possible [9, p. 79–92].

The function of legal protection of national security is of particular importance under current conditions. At the same time, legal security establishment isrelevant for national legal system, which should be carried out through legal regime that has resources, methods and means of influence based on the rule of law on all components of the national legal system in order to ensure their compliance with national culture, traditions, national identity, national needs, assets and interests.

National security law as a non-linear system in its structure reflects the content of this branch of law. The structure of national security law results from the specification of the legal regime, where the subject (public relations and social communications in national security sphere), as well as the specified goal of legal influence on such public relations and social communications are the determinants.

Under such circumstances, the structuring of national security law reflects its specialization and occurs in a horizontal combination, in interaction of institutional regulatory and legal communities, oriented on static branch characteristics (systemic groups of legal norms and its dynamic characteristics), resulted from such groups of legal norms as statuses and legal communications [9, p. 333–334]. The structure of national security law of Ukraine is

a certain network of normative-legal, institutional formations, oriented horizontally in the national legal system, interdependent and connected by functional ties related to legal support of corresponding type of national security, including international law.

National security law unites the following (but not exclusively) interdisciplinary system formations: information securitylaw, law of state security, law of ecological and man-made security, economic security law, military security law, etc. The structure of national security law is a dynamic one, while the interaction of intra-branch entities is subjecting to constant changes in accordance with peculiarities, status basis and social communications of national security law.

National security law of Ukraine also reveals its essential features in the system of strategic communications [29], which are of particular importance in the field of national security and defense in the context of the Euro-Atlantic integration of Ukraine. Strategic communications ensure cooperation of state institutions, society and citizens while solving security issues and have the appropriate legal content. Application of national security law while solving of social conflicts make it possible to coordinate and synchronize the activities of security sector subjects, in particular, in a way that is legal and necessary for security protection, coercion in the interests of achieving a general compromise.

Legal strategic communications in national security sphere are carried out taking into account national interests; national security law aligns the interests of individuals and individual social entities with national interests. That is why national security law effectively affects the alignment of group interests with national interests, and in the case of a socially recognized and normatively reinforced need for the development of corporate interests, national security law brings them to the level that ensures national security [9, p. 336–338] .

At the same time, national security law of Ukraine primarily ensures the subjectivity of a human being in national security sphere and forms a legal barrier for possible threats to his/her life [30]. Subjective rights, freedoms, legal interests and legal obligations, as indispensable characteristics of human subjectivity are directly dependent on the solution of security issues and, at the same time, are determined by the level of human life security and national interests' protection.

Among basic human rights in the context of ensuring national security of human being's subjectivity is the right for security [31], which has the characteristics of an absolute right and, at the same time, is a subjective right in specific legal relations in national security sphere. The right for security in the concept of human subjectivity has an axiomatic value as the initial formula of human-centered legal reality. At the same time, human right for security

forms a corresponding institution of national security law.

Normative and value prescriptions of national security law are implemented in social practice by the state and society, which are the active subjects of national security law.

State subjectivity in legal relations and strategic communications is enshrined in the norms of the Constitution and specified in the legislation that defines tasks, functions and powers of state institutions in national security sphere. Such institution sestablish state security and defense sector, have legal status determined by law and operate in accordance with it and within the limits of their competence.

The subjectivity of society in legal relations and strategic communications in national security sphere is implemented through certain civil society institutions. These institutions, in accordance with legislation and their statutory provisions, ensure democratic civilian control over security and defense sector and can take part in strategic communications, carry out analytical, forecasting and other activities to solve systemic challengesrelated to national security.

Under current conditions of globalization, national security law also becomes the basis for legal security of the society and the state, which consists of implementation of the rule of law in national legal system and the development of legal state. Under these circumstances, the objective of national security law is actualized in the direction of ensuring legal security, i.e., the protection of national legal system from negative factors of regulatory and institutional origin, which objectively accompany global changes in the world order [9, p. 249–251]. Simultaneously, national security law acquires qualitatively new characteristics, forming a system of legal protection of national security. In this system, regulatory, institutional and organizational components are formed under the influence of national security law [9, p. 252–285].

Regulatory and legal basis of the system of legal support of national security consists of corresponding constitutional norms, national legislation and norms of international law. Its institutional component presupposes the activities of special services and law enforcement agencies, prosecutor's offices and justice as well as other subjects of security and defense sector. Development of the system of training the specialists for subjects of security and defense sector, formation of a competent legal culture [32] and conscious attitude of citizens to national security as a vital basis for the existence of society and the state are essential for organizational component of the system of legal support of national security.

In this regard, it should be noted that within recent years in Ukraine and the world as a whole, the concept of "hybrid war"[33] has become widespread. It has gone beyond the Russian-Ukrainian armed conflict, and a number of

countries in the world have actually become participants of this confrontation while using information, economic, energy, military and other components.

According to a number of experts and scientists views, one of the prerequisites for this, was the creation of the so-called "security zone of Russian Federation" ("managed/regulated conflict zones") on the territory of the former union republics, which were on the way of building the sovereign states. In particular, since the end of 20th century and with direct participation or support of the Russian Federation, long-term military and political conflicts were launched on the territory of Azerbaijan, Armenia, Georgia, Moldova, Tajikistan, and now – in Ukraine. Russian Federationalso attempted to intervene in internal affairs of Baltic countries, which have managed to secure their peoples due to acquisition of membership in EU and NATO.

After adoption of the Law "On National Security of Ukraine" in 2018, the process of establishing of a new model of security and defense sector of Ukraine was launched. It includes following main components: 1) system of management and democratic control; 2) security forces; 3) defense forces; 4) defense-industrial complex. To compare, we shall note thatarticle 17 of the Constitution of Ukraine presupposes the following spheres of ensuring national security: 1) protection of the sovereignty and territorial integrity of Ukraine; 2) ensuring economic security; 3) ensuring information security; 4) defense of Ukraine (ensuring military security); 5) ensuring state security; 6) protection of the state border.

At the same time, in 2018, grounding on proposals submitted by scientists of the Section of National Security Law and Military Law of the National Academy of Legal Sciences of Ukraine, the Research Institute for Informatics and Law of the National Academy of Legal Sciences of Ukraine (now the State Scientific Institution "Institute of Information, Security and Law of the National Academy of Legal Sciences of Ukraine") and the Military Institute of Kyiv National University named after Taras Shevchenko, the list of subject areas for research within specialty 081 – "Law", was developed and approved by the Ministry of Education and Science of Ukraine (the order dated of 28.12.2018 No. 1477). It introduced a new area – "National security law; military law". In 2019 new educational specializations "national security law" and "military law" were launched in higher institutions.

Specialization's formula *"national security; military law"* according to above order of the Ministry of Education and Science of Ukraine was proposed in the following version: *"Studieson social relations in national security and defense sphere, as one of main functions of the state; legal foundations of state sovereignty, constitutional system, territorial integrity and inviolability of Ukraine's borders, legal support*

to state and military security and borders' security; *systems and state-legal mechanisms for ensuring national security and defense of Ukraine; legal regulation of the activities carried out by the subjects of security and protection sector, military law enforcement bodies and military justice bodies; legal issues related to implementing the standards of European Union and North Atlantic Treaty Organization member-states into the legislation of Ukraine".*

Taking into account the above as well as other transformational processes that take place in Ukraine and the world as a whole, within 2018–2021, scientists of mentioned and other institutions of Ukraine with participation of security and defense sector expertsand representatives of a number of EU and NATO member-countries worked out actual problems related to national security provision and international legal order, and priority areas for legal sciencedevelopment in this sphere were proposed.

Grounding on the reviewed and other scientific achievements [7, 9, 34, 35], the General Assembly of the National Academy of Legal Sciences of Ukraine in March 2021 approved the Development Strategy of the National Academy of Legal Sciences of Ukraine for 2021–2025 (*it determines priority areas, tasks and principles for further legal science development, scientific support to modernization of state-legal relations in Ukraine, promoting the development of population's legal culture*). The Strategy includes a separate section "Legal support to national security and defense spheres". Subsequent events related to large-scale war launched by Russian Federation against Ukraine confirmed the validity of the defined priorities for the development of national security law and military law. However, this issue requires a separate consideration.

CONCLUSIONS

Consideration of theoretical bases and priority areas of national security law development makes it possible to come to following basic conclusions and proposals:

1) National security law forms an independent branch within national legal system that regulates public relations in the sphere of national security of Ukraine. Its regularities and peculiarities, essential and meaningful characteristics, features, principles and functions form a system of knowledge on national security law.

2) National security law identifies the objects for protection, i.e. national interests and the system of subjects of security and defense sector. Applied meaning of national security law concerns the formation of a system of legal protection of national security, which includes regulatory, institutional and organizational components. National security law is also the basis for the formation of appropriate strategic thinking and legal culture, as indispensable organizational components of the system of legal support of national security.

3) Under conditions of war, global transformations and crisis processes in international security system, national security law, together with military law and international security law, fulfills actual tasks related to legal security provision of a human being and a citizen, society and the state and the international legal order at national, regional (sub-regional) level and international levels and appears to be an extremely important area for legal science development.

4) Formation and development of national security law in Ukraine is carried out while considering the introduced model of national security, the peculiarities of the legal system and the system of state government, national historical and cultural values, as well as political, informational, economic, military and other factors. At the same time, USA national security model and national security law and relevant standards of EU and NATO member-states deserve consideration.

5) Legal support to the strategic communications system and the system of democratic civilian control over security and defense sector, while considering the experience and standards of EU and NATO member-states, also becomes an extremely relevant area for the development of national security and military law within the context of European and Euro-Atlantic integration of Ukraine.

6) Identifying of the priority directions for development of national security law and relevant fundamental and applied studies is an obligatory prerequisite for effective implementation of its functions and public functions in the interests of ensuring the security of human being, society, state and international community. Within the medium-term period, the indicated studies can be based on relevant areas/ob jectivesidentified by the Development Strategy of the National Academy of Legal Sciences of Ukraine for 2021–2025, in particular:

− theoretical and legal bases for ensuring national, informational and cybernetic security, protection of sovereignty, constitutional order, territorial integrity of Ukraine, human and citizen rights and security;

− legal bases for formation and implementation of state policy on national security and defenseissues, development of national security system, reform and development of subjects of security and defense sectors and defense-industrial complex in the context of the Euro-Atlantic integration of Ukraine;

− theoretical bases for the development of national security law, international security law and military law; methodological and applied bases for the development of legislation on national security and defense, legal support to organization and operation of security sector entities, functioning of non-state security sector entities as a component of national security system of Ukraine;

– legal bases for ensuring national security in external and internal political spheres, in the sphere of state security, in the military sphere and in the sphere of state border security; modernization of legal policy of Ukraine related to economic, energy and environmental security strategies under conditions of global and regional transformations;

– problems of combating terrorism, cyber and organized crime and corruption, combating crimes against national security bases, against peace and security of humanity and international legal order; legislative provision of operational-search, intelligence and counterintelligence activities;

– actual issues related to information security of Ukraine provision as one of main state functions; legal and organizational bases for ensuring of cyber security, combating cybercrimes, cyberespionage and cyberterrorism;

– legal support to personal data protection, information with limited access, technical protection of information, prevention and countermeasures against negative information impacts and information technologies impacts that harm the human being, the society, the state and the international legal order;

– legal aspects of the formation and development of democratic control over state and non-state subjects of security and defense sectors; organizational and legal bases for civil-military cooperation, formation and development of the system of strategic communications within security and defense sectors and Euro-Atlantic integration of Ukraine;

– legalissues related to formation and development of regional (sub-regional) and international security systems, international cooperation in the area and harmonization of national legislation with norms of international law, EU legislation and NATO standards in the field of security and defense.

RECOMMENDATIONS

The study is of exceptional importance for further scientific developments in the field of national security law, as a value-normative system of statuses, behavior and communication rules, which are publicly identified and legitimized in national legal system to ensure safe living conditions for human being, existence and development of the society and the state. National security law identifies national interests based on national values, heritage, traditions, culture, which are consistent with the values of democratic development of the society and are must for national security provision. National security law shall coordinate and synchronize strategic communications between the state and the society under absolute precondition of ensuring human being security within such communications. Social value of national security law concerns, first of all, legal security provision, identifying and implementing the conditions for safe functioning of national legal system, first of all, its institutional

component. The expansion of the subject area of national security law should be aimed at establishing and achieving of qualitative indicators of legal support to all components of national security system, structuring its specific characteristics, levels(from national to international), entering the legal system of collective international security on the basis of international principles and standards, which form such a security system.

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RELATIVE HUMAN RIGHTS IN THE CONDITIONS OF SPECIAL LEGAL REGIMES

Abstract. *The article examines the human rights that may be limited in conditions of emergency and martial law, which is relevant in modern conditions, based on the presence of local military conflicts, states of emergency or the possibility of their existence in many countries. The purpose of the work is to clarify the main features of different types of human rights that are subject to restrictions in special legal situations, highlight the specific violations by public authorities and local governments in the application of certain types of restrictions. To achieve this goal, the work uses a system of methods of scientific knowledge, including general, private, and special legal. The practical value of the study lies in the implementation of classifications of human rights on the criterion of the possibility of their restriction in the context of special legal regimes. Thus, during the operation of special legal regimes, the following human and civil rights may be temporar-*

ily restricted: the right to liberty and security of person, the right to housing, the right to privacy, the right to private and family life, freedom of movement, freedom of thought, freedom to freely express one's views and beliefs, the right to participate in referendums, the right to vote and to be elected, the right to peaceful assembly, the right to property, the right to work and freedom of entrepreneurial activity, the right to education, the right to personal data protection. It is concluded that in the conditions of special legal regimes there is a large number of human rights, which are relations, not absolute, and may be limited by the state and its bodies, local authorities. However, in order for such restrictions to be lawful, consistent with the rule of law, and recognized as admissible, they must meet certain criteria: they must be provided for by law; should not affect the basic content of the law; must be dimensional to the goal (principle of proportionality); be carried out for lawful purposes, the list of which is exhaustive and not subject to expansion

Keywords: *legal regme, restriction of rights, right to personal inviolability, freedom of movement, right to housing, freedom of religion*

INTRODUCTION

In modern society, there are many factors and criteria by which members of society differ and, as a result, distance themselves from each other. However, the challenges of nature in the form of insurmountable catastrophes (fires, floods, global warming, environmental threats, pandemics, etc.) and artificial threats to humanity (military conflicts, riots, man-made disasters, weapons of mass impression, etc.) forces humanity to seek unifying tools for the common good and world peace. Human rights are becoming such a unifying tool today. Those rights that everyone would have, being in a state of state, were called natural. These rights are not limited by anything and are the same for everyone. In the transition to civil status, people, mutually (by agreement) renouncing a number of their natural rights, pass on the benefits of their use to the whole society. These include rights, the exercise of which, even in the natural state, is not entirely in the power of man. These are mainly rights related to security and protection.

If possible, legitimate restrictions on human rights are divided into absolute and relative. Absolutes are not subject to restrictions under any circumstances (the right not to be held in slavery, the right not to be subjected to torture, other ill-treatment or punishment, the right not to be held responsible for acts not considered a crime at the time). Relative rights may be restricted if such restrictions are required by law, are necessary in a democratic society, and pursue a legitimate aim (protection of state security, public order, health, morals, rights and freedoms of others). Moreover, the proportionality of the restriction of the right must be ensured [1, p. 303]. This classification is largely conditioned upon the problem of legal understanding, which is the dispute between legal positivism and natural law. In general, the discussion has not yet

found its logical conclusion, because neither positivism nor natural law can fully embrace the idea of justice. Modern legal science is in constant search of an internally consistent concept of legal understanding, which has an integrative effect, capable of understanding the true essence of law. Integration jurisprudence can play such a role, as it has room for the conceptual positions of each of the known types of legal understanding. It creates a unique field for scientific dialogue, where the fierce conflict of supporters of different types of understanding of law is overcome and a tolerant environment is formed to defend their positions on the essence of law. Based on the integrative approach, we will try to find an answer to the question of which human rights may be limited in conditions of special legal status, and which – not.

Restriction of human freedom occurs under such conditions as violation of individual rights or arbitrariness in relation to others, ensuring the protection of society, the implementation of the preventive function of the state [2, p. 2452]. All these restrictions are clearly regulated at the level of legislation and cannot go beyond the established limits. In this context, special attention should be paid to the category of freedom. The value of freedom in its various manifestations is one of the most important determinants of human existence. However, the path to freedom is not the path to permissiveness. Each of the concepts differently assessed the role of the state in ensuring the functioning of society, but it is based on the idea of freedom as one of the most important values of the individual. Therefore, freedom should be understood not only as an abstract social value, but as a property of social relations, the legal order of which provides that the benefit of freedom for man – is not only his rights but also certain duties and responsibilities to others, society and state.

Legal restriction of freedom is defined as a deviation from the principles of legal equality by narrowing the scope of rights and freedoms or expanding the scope of responsibilities of a particular person. In addition, the need for such restrictions cannot be denied, but their scope and validity need attention. Given that state and municipal authorities use discretionary powers to restrict relative human rights in special legal regimes, the relevance of the study of restrictions on human rights in martial law and emergency situations is beyond doubt. In Ukraine, the regulation of public relations arising in connection with emergencies has become particularly important after the emergence of a military conflict on the territory of Ukraine and the spread of the severe acute respiratory syndrome-2 virus (SARS-CoV-2) [1, p. 176]. The study of restrictions on human rights and freedoms is an extremely relevant, necessary and important topic, conditioned upon the practical aspect of coexistence of members of society within the state

and the global space, when it is necessary to determine how to ensure order in society and which rights can be restricted and which can not. Some aspects of the relativity of human rights became the subject of research O. Petryshyn [1, p. 303], S. Slyvka [4, p. 144], O. Bukhanevych and others. [5], N. Alivizatos [6], R. Ahdar [7], M. Stenlund [8], T. Berners-Lee and M. Fichetti [9], A. Kolganov [10, p. 442], B. Artiukh [11, p. 54] and in other international sources [12].

The purpose of the study is to classify human rights that are subject to restrictions in special legal conditions, to clarify the main features of each of their types, highlight the specific violations by public authorities and local governments in applying certain types of restrictions.

1. MATERIALS AND METHODS

To carry out the study, a system of methods of scientific cognition was applied, namely general scientific (analysis, synthesis), particular methods of scientific cognition used in the branches of many sciences (comparative analysis, quantitative and qualitative analysis, approximation), including special legal methods (formal legal, comparative legal). The authors of this study applied the general philosophical (universal) method of cognition at all stages of the cognitive process. The method of analysis revealed the characteristics and studied some features of the restriction of the right to liberty and security of person, the right to freedom of movement, freedom of expression, the right to housing, the right to personal data protection, the right to education, freedom of religion, access to the Internet. Comparative analysis provided an opportunity to identify different approaches to the procedure for determining the scope of restrictions on human and civil rights and freedoms under special regimes stipulated in the constitutions of foreign states. According to the method of generalization, the classification of human rights restrictions in the conditions of special regimes has been formed.

The method of deduction allowed drawing a general conclusion from the doctrinal views of scholars on the characteristics of restrictions on certain types of human rights (rights to liberty and security of person, rights to freedom of movement, freedom of expression, rights to housing, rights to personal data protection, rights to education, freedom of religion, access to the Internet) in emergencies and martial law. The inductive method of cognition provided an opportunity to obtain a general conclusion about the characteristics of various types of restrictions on relative human rights in emergencies and martial law.

The article also used special legal methods, including formal-legal and system-structural, which were used in the development and study of the terminological apparatus of this issue, namely in clarifying and disclosing the features of legal instruments used to estab-

lish law and order under time of special legal regimes and characteristic features of restriction of the right to liberty and security of person. The normative base for this study includes normative legal acts of Ukraine and foreign states, decisions of the European Court of Human Rights, in particular: Code of Ukraine on Administrative Offenses of December 7, 1984 [13], Law of Ukraine "On Police" of October 11, 2011 ([14], Law of Ukraine "On the National Police" of July 2, 2015 [15], Decision of the Constitutional Court of Ukraine on the constitutionality of Article 263 of the Code of Administrative Offenses and paragraph 5 of Part 1 of Article 11 of the Law of Ukraine "On Police" of 11 October 2011 No. 10-rp/2011 [16], Decree of the President of Ukraine No. 393 of 26 November 2018 "On the Imposition of Martial Law in Ukraine" [17], Decision of the Grand Chamber of the Constitutional Court of Ukraine of 23 November 2017 No. 1-r/2017 [18], Judgment of the Constitutional Court of Ukraine of 13 June 2019 No. 4-r/2019 [19], Judgment of the European Court of Human Rights in the case of Lawless v. Ireland (1960) [20], Convention on the Protection of Human Rights and Fundamental Freedoms [21], Judgment of the European Court of Human Rights in Austin and Others v. the United Kingdom [22], Judgment of the European Court of Human Rights in Dogan and Others v. Turkey of 29 June 2004 [23], Resolution of the Cabinet of Ministers of Ukraine No. 211 of March 11, 2020 "On Prevention of the Spread of Acute Respiratory Disease COVID-19 caused by coronavirus SARS-CoV-2" [24], Criminal Code of Ukraine of April 5, 2001 [25], Judgment of the European Court of Human Rights in Mokuti v. Lithuania of 27 February 2018 [26], Judgment of the Constitutional Court of Latvia of 17 October 2005 in No. 2005-07-01 [27], Law of the Republic of Latvia "On State Secrets" of 17 October 1996 [28], Constitution of the Republic of Latvia [29], Law of the Federal Republic of Germany on the Conditions and Procedure for Inspections of the Federal Security Inspectorate [30], NATO Personnel Security Directive No. AC/35-D/2000 of 7 January 2013 [31], Judgment of the European Court of Human Rights "Golder v. the United Kingdom" [32].

2. RESULTS AND DISCUSSION

Human rights are a fundamental and fundamental phenomenon, their detailed study is needed to understand the essence of legal science. However, it is not only legal professionals who need to be aware of the importance and relevance of this phenomenon. Everyone should know and be able to exercise their rights. In democracies, the level of human rights is an indicator of the implementation of the principles of the rule of law, constitutionality and the rule of law. Constitutionally enshrined human rights and the means provided by the Basic Law for their protection are important components of a demo-

cratic state governed by the rule of law. At first glance, these rights belong to everyone from birth, they can not be taken away, transferred to another person. But on the other hand, the level of development of modern society, medicine, human consciousness may call into question the categorical nature of the first thesis.

2.1. The right to liberty and security of person

The right to liberty and security of person means the possibility of doing things that do not contradict the law and do not violate certain rules established in society. In the Decision of the Constitutional Court of Ukraine on the constitutionality of Article 263 of the Code of Administrative Offenses of December 7, 1984 [13] and paragraph 5 of the first part of Article 11 of the Law of Ukraine "On Police" of October 11, 2011 No. 10-rp/2011 [14] (the latter is currently repealed under the Law of Ukraine "On the National Police" of July 2, 2015 [15]), the court noted that the right to personal integrity is one of the defining and fundamental rights. However, it is a relationship and may be limited on the grounds and in accordance with the procedure clearly defined in law [16].

There is no doubt that freedom is based on the mutual responsibility of both man and state. The dialectical connection between necessity and freedom, their unity and opposite is traced. The state, protecting the law, thus protects human freedom. The responsibility of citizens lies in the freedom to choose behaviour, to make decisions, aware of the consequences of their actions. Freedom cannot be absolute and unlimited. Any legal norm defines the limits of human freedom, giving him the opportunity to choose a model of their behavior. In this regard, the law is not related to freedom in general, but to its specific degree, which exists within a society, according to which the law sometimes restricts the freedom of the individual.

Most scholars seek to find a positive meaning and an objective need to restrict freedom through legal means, because without this freedom can turn into arbitrariness, because there will be no legal limit to protect the freedom of others. S. Slivka, in general, does not object to the need to restrict freedom, calls for caution in this matter. This is conditioned upon the prevention of violence and aggression as a consequence of excessive oppression of individual freedom, because a reasonable person does not need external restrictions imposed by government agencies and officials [4, p. 144]. Probably, it is a question of sufficiency of internal restrictions of the reasonable person for a choice of a positive and useful model of behaviour. Thus, human freedom is not all-encompassing, it has certain restrictions, which are regulated by law and must be legitimate. Arbitrary restriction of human freedom is unacceptable. The legal regime of state of emergency and martial law significantly affects the realiza-

tion of human freedom. Restrictions in these periods are primarily conditioned upon the need to protect the life and health of the individual, the humane values of society.

In the modern conditions of civilization development, the introduction of the principle of humanism in all spheres of social life, the restriction of human and civil rights and freedoms must be reasonable and proportionate. Restrictions related to the conduct of special legal regimes should not be excessive and such that are imposed in violation of procedural order [5, p. 55]. It should be remembered that the restriction of rights is not the only legal instrument used to establish law and order during special legal regimes. In general, there are three such tools:

1. Exceptions to human rights that exclude certain actions taken under special legal regimes. For example, the prohibition of forced labor does not apply to service required in the event of a natural disaster that threatens human life or the well-being of society.

2. The actual restriction of human rights – measures imposed on non-absolute human rights (the right to freedom of expression, the right to freedom of association or the right to privacy and family life). These restrictions are always subject to a three-level test: legality, legitimacy and necessity.

Restrictions on human rights should be distinguished from exclusion from the rules. For example, the prohibition of forced or compulsory labor implies that the worker should not be enslaved or enslaved, nor should he or she be involved in forced or compulsory labor. However, the term "forced or compulsory labor" does not include, in particular, any compulsory service in cases of emergency or natural disasters that threaten the life or well-being of society. In this case, it is not a question of restricting the right to prohibit forced or compulsory labour, but of excluding from the term a certain kind of legal relationship.

3. Deviation from rights – suspension for a certain period of time of guarantees of certain human rights and freedoms.

The category of restriction of human rights cannot be identified, considered as a part or, conversely, a generalised concept of the category of deviation from rights, because these terms reflect various legal phenomena of objective reality. When restricting rights, it is a question of temporarily narrowing the limits of realisation of one or another right to achieve the necessary goal of the law. Withdrawal from rights refers to the absolute impossibility of guaranteeing and ensuring human rights by state/municipal bodies to any extent in a certain territory.

Thus, according to paragraph 3 of the Decree of the President of Ukraine No. 393 of November 26, 2018 "On the Imposition of Martial Law in Ukraine" [17] in connection with the imposition of martial law in Ukraine may temporarily restrict such human

rights as: the right to housing, the right privacy, the right to privacy and family life, freedom of movement, freedom of thought, freedom to express one's views and beliefs, the right to participate in referendums, the right to vote and to stand for election, the right to peaceful assembly, the right to property, the right to work and freedom of entrepreneurial activity, the right to education. The issue of restriction of the right to personal inviolability is considered in detail in the acts of interpretation of the Constitutional Court of Ukraine. In particular, the Decision of the Constitutional Court of Ukraine of November 23, 2017 No. 1-r/2017 [18] emphasises that:

1) the right to liberty and security of person is relative and is subject to restriction on the grounds and in the manner prescribed by current legislation of Ukraine;

2) such restrictions must be implemented in accordance with the guarantees of human rights protection;

3) the right to personal integrity is subject to protection against arbitrary restrictions through judicial review;

4) the restriction of the right to personal inviolability must be made on the basis of a court decision adopted in accordance with the procedure provided by current legislation.

In the Decision of the Constitutional Court of Ukraine of June 13, 2019 №4-r/2019 [19] we find two more characteristic features of the restriction of the right to personal inviolability:

5) such restriction must comply with the principles of justice, equality, proportionality and ensure a balance of interests of the individual and society;

6) the restriction must take into account the provisions of international law and the doctrine of the European Court of Human Rights.

The right to personal liberty and security is revealed in the judgment of the European Court of Human Rights in the case of Lawless v. Ireland (1960) [20]. This act was the first court decision to interpret restrictions on human rights to personal liberty and inviolability in special conditions. The historical precondition for this decision was the existence in the Republic of Ireland of the Irish Republican Army (IRA), a paramilitary organisation whose members are united by the idea of irredentism through Irish Republicanism, which is the independence of Ireland from the British state, law and order. The case concerned the applicant's belonging or non-belonging to the said group, whose activities endangered the statehood, life and health of the country's citizens. During the proceedings before the European Court of Human Rights, the applicant's involvement in the IPA was confirmed.

The Court found that the military and underground nature of the IRA, as well as the fear they instilled in the population, the fact that they operated mainly in Northern Ireland outside the Irish Government's jurisdiction and the serious consequences for the general population required special rules of law.

and emergency provisions. Moreover, the country's exceptional laws were accompanied by guarantees of prevention of abuse in the form of administrative detention: constant parliamentary scrutiny, the establishment of a special commission of three experts, and, finally, the existence of a guarantee of public release. government of Ireland, and the legal obligation of the state to release all persons who have promised to respect the Constitution and laws of the country and not engage in illegal activities that are contrary to the legal provisions of the state of emergency.

In view of the above, although the applicant's detention without trial was not legally substantiated in Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms [21], it found its source in the right of derogation, which was duly exercised by the Government of Ireland and did not constitute a violation of the Convention.

We see that the right to personal integrity can be limited in special regimes only to those actions that may put him or others at risk. Such freedom is not revoked or revoked, but is limited only for a certain time, for example, during curfew.

2.2. The right to freedom of movement

The right to freedom of movement is restricted during quarantine in order to keep infected and/or potentially infected persons in a separate territory from other members of society. Certain regions, oblasts, cities, towns may be closed for entry and exit. Some diseases, such as COVID-19, pose a particular threat to certain categories of people (e.g., the elderly), so the right to freedom of movement may be restricted to isolate this category of people from the potentially infected. For example, in the Kingdom of Norway, to combat viral infection, public authorities have banned the use of country houses located in villages, in which a person does not live or is not permanently registered [6].

In some cases, the right to freedom of movement may be restricted not in conditions of martial law and state of emergency, but in terms of the need to maintain law and order, prevent harm to life, health, property, public safety. These restrictions have been the subject of proceedings before the European Court of Human Rights in the case of Austin and Others v. The United Kingdom [22]. The case dealt with the legal relationship that took place in London in 2001 during demonstrations in which a large number of participants took part. Intelligence told police there was a risk of injury and death, property damage. In order to save people's lives and health, to prevent damage to property, law enforcement agencies established a solid border, which limited the right of movement of citizens and people, as no one was able to leave the scene.

It is important to understand the nature of the restriction of the law in the context of mass demonstrations and the maintenance of law and order to differ-

entiate between measures of restriction and deprivation of freedom of movement. The case of Austin and Others v. The United Kingdom concerned the restriction of human liberty, and the difference between the applicants, which was that one of the applicants was a demonstrator and the others were passers-by, was irrelevant in establishing the lawfulness of such a restriction. In this case, the court ruled that there was no illegal restriction on a person's freedom of movement, as a solid border had been set to keep people in the crowd and endanger their lives and health, and tougher deterrence could lead to a risk of injury. Given the circumstances of the case, the police had no alternative to prevent the risk of injury to protesters or damage to property, other than establishing a solid border. Its establishment was the smallest but effective means of interfering with the rights of movement of the individual.

2.3. The right to freedom of expression

Under special legal regimes, there are sometimes grounds for restricting freedom of expression. In particular, it is about spreading false information about the real state of affairs through social networks. Individuals commit offenses in order to create panic among the population (for example, false information about the planting of explosives). Such an act is punishable and may even, in some cases, be classified as terrorism. In this case, there is a right to require providers to remove false information and restrict access to such information. However, on the other hand, such powers can be abused by authoritarian and totalitarian governments in non-democratic countries in order to retain power. An example is the disconnection of the Internet in the Republic of Belarus during the presidential election in 2021.

However, the legal restriction of freedom of expression in emergencies and martial law must have its limits and not apply to all without exception, as citizens must remain levers of influence on the executive branch with discretionary powers. Collecting, disseminating and freely discussing information on existing threats, analysing expert opinions on coping strategies, and having a free "market for ideas" can help eliminate the negative effects of special situations. True messages about all the circumstances of the situation help members of society to make their own decisions and choose a model of behaviour. Therefore, the right to information should be ensured by the positive responsibilities of the state by creating back-up opportunities to obtain information in emergencies (eg, arranging and maintaining radio communications). In addition, countering false information and news is possible only by disseminating reliable and objective information that will prevent the spread of panic in society.

2.4. The right to housing

The right to housing may also be subject to restrictions under special legal

regimes, for example, in the event of unforeseen man-made circumstances, a person may be forcibly evacuated. In this case, the state should provide other housing for such persons. Ownership of the home from which the person was evacuated does not end. State or municipal authorities may use the land of the community and legal entities to provide accommodation for evacuees in connection with an emergency, to organise temporary hospitals, etc.

It may be necessary to temporarily withdraw basic resources and stop exporting/importing goods. Discretionary powers may also include the closure of privately owned facilities (shopping malls, sports facilities) to prevent the massive outbreak of disease that has been observed in almost every country in 2020 to combat the COVID-19 pandemic. For example, in the United States, the Department of Defense on behalf of the President may carry out work to eliminate the consequences of emergencies, take measures to save lives and property of citizens [6].

An example of the restriction of the right to housing during special legal regimes is the case of the European Court of Human Rights "Dogan and Others v. Turkey" of 29 June 2004 [23]. The applicants also lived in a village in Turkey, which had a special legal regime. They owned houses and land, raised sheep and goats, and engaged in beekeeping. The main problem of the district was the conflict between paramilitary law enforcement agencies and the local population, which intended to create autonomy. Dogan and the other applicants were evicted from their homes without their consent. Their homes were deliberately destroyed by security forces. Current Turkish law stipulates that the governor of a region in a state of emergency cannot be held legally liable for such decisions. Moreover, such a decision cannot be appealed in court.

Here we return to the discretionary powers of the state administration of the region in which the state of emergency was in force, as it was endowed with special powers conditioned upon the need to maintain the safety of life and health of people in a state of emergency. Of course, a provision that precludes judicial review of acts issued by the governor of a state of emergency cannot be compared to the concept of the rule of law. The system of public administration in the event of a state of emergency is not arbitrary and can not but be subject to judicial review. Individual and regulatory acts issued by competent authorities during a state of emergency should be subject to judicial review. Violations of this principle are excluded in countries with democratic regimes based on freedom.

In many cases of restrictions on the right to housing due to emergencies or martial law, administrative courts award compensation for not being able to access their property due to insecurity in the region. It is worth mentioning the doctrine of "social risk", which does not require a causal link between the

harmfulness of actions and damages, and stipulates that the damage caused by terrorism must be common to society as a whole in accordance with the principles of "justice" and "social" states. Damage in such cases is paid for as a result of the authorities being held accountable for failing to prevent terrorist incidents and maintain security.

Ensuring property rights includes three different aspects:

1. The first is general in nature and establishes the principle of peaceful use of property.

2. The second aspect covers deprivation of property and makes its possibility conditional on certain conditions.

3. The third recognizes that states have the right, inter alia, to control the use of property in accordance with the common interest.

However, all three aspects are not separate from each other and in this sense the second and third aspects relate to specific cases of interference with the right to peaceful possession of property. Therefore, they must be interpreted in the light of the general first aspect. Speaking about the fact that the right to housing is not absolute, it is necessary to consider the circumstances of a particular situation, which necessitates the imposition of a state of emergency. Very often, events are characterised by brutal confrontations between state security forces and members of paramilitary groups, leading to double violence caused by the actions of both sides of the conflict. In such circumstances, some people are forced to leave their homes on their own, while others are forcibly evicted by the authorities to ensure the safety of the region's population. At the same time, cases when security forces deliberately destroy the houses and property of citizens, depriving them of their livelihood, do not indicate the relativity of the right to housing, but a violation of the right to peaceful possession of their property.

2.5. The right to protection of personal data

The right to protection of personal data in the context of the use and use of metadata in order to monitor the location of potential suspects, patients with pandemic diseases, etc. is also subject to restrictions. In this context, the protection of personal data cannot be higher in the value system than saving lives. To ensure that the right to data protection is respected, owners must be informed about the processing of personal data. When data is consolidated and separated from identifiable information, there is no restriction on the right to protection of personal data. However, the use of metadata at the personal level, such as the use of metadata to detain quarantine/isolation offenders, restricts the right to protection of personal data, in which case such restrictions should be necessary for society, as clearly defined in national law. goals.

For example, according to the Resolution of the Cabinet of Ministers of Ukraine No. 211 of March 11, 2020

"On Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2" [24] persons crossing the state border of Ukraine may choose, in particular, fourteen-day self-isolation at the place of residence using the application "Action at home", which confirms the place of self-isolation with the definition of geolocation. The person must confirm the decision to choose this model of behavior during the passport control – by stating his phone number and address of the place of self-isolation.

Self-isolation is monitored by checking the compliance of the photo of the person's face with the reference photo taken during the installation of the mobile application, and the geolocation of the mobile phone at the time of photography. This control is carried out by artificial intelligence. The location of the person is recorded only at the time of photo confirmation. Verification is considered unsuccessful after 5 warnings, after which the application sends a message to the police. Police officers check information about self-isolation during a personal visit. If a person commits an offense, he or she is subject to administrative (Article 44–3 of the Code of Administrative Offenses of Ukraine [13]) or criminal liability (Article 325 of the Criminal Code of Ukraine [25]).

2.6. Freedom of religion

The state and municipal authorities of the countries may also decide to restrict freedom of religion in conditions of martial law and emergencies by banning religious rites or establishing additional conditions for their implementation. Freedom of religion is not absolute. The right to freedom of religion and belief may, if necessary, be restricted in the interests of public security, public order, health and morals, or the protection of the rights and freedoms of others. Modern democratic legal order is based on the fact that religious organisations of any type exist in a certain legal field and are obliged to obey current laws. Religious freedom is a complex and multifaceted category that encompasses the internal aspect of freedom of religion (*forum internum*). This right protects the freedom to hold one's own convictions, the freedom to have or not to have religious beliefs and the freedom to change them. Internal freedom is inextricably linked to the right to express one's religion (*forum externum*). It is the freedom to carry out religious activities without hindrance.

At first glance, it may seem that only the external aspect of freedom of thought, opinion, religion is subject to restriction, but a more detailed analysis may lead to other conclusions. The terms *forum externum* and *forum internum* are commonly used in discussions of human rights related to the right to freedom of thought, conscience, religion and belief [7]. The dichotomy associated with discussions on the right to freedom of thought, opinion, religion and expression is explained by the divi-

sion between external and internal rights. Human rights theory in general conceptualises freedom of thought, conscience, religion and belief, and freedom of expression, offering absolute protection in the so-called *forum internum*. At the very least, it means the right to keep thoughts in one's mind, whatever they may be, no matter how others may relate to them.

However, if we take this position, it will mean that there is an absolute right to adhere to psychotic illusions [8]. This finding is ethically problematic in terms of psychiatric treatment and the rights of people with psychosis. In life, there may be a situation where the absoluteness of the *forum internum* is not necessarily correct. To confirm this, we can consider the current discussions in the field of human rights theory and political philosophy, which analyze psychotic illusions and ways to justify involuntary treatment. However, despite these arguments, in most cases the freedom of *forum internum* should be conceptualised as a negative freedom. And if *the forum internum* includes the right to certain inner possibilities, this right should remain with people with psychotic delusions. For example, in the case of the European Court of Human Rights Mokuti v. Lithuania of 27 February 2018 No. 66490/09 [26] the court ruled that there had been an interference with the applicant's right to respect for her religion when psychiatrists tried to correct the patient's religious beliefs. The case focuses on religious beliefs that are generally accepted in the society of the country (adherence to Catholicism), and not on the personal beliefs of a sick person, which are considered delusional. Thus, the question arises as to whether delusions or thoughts are protected from psychiatric intervention, and to what extent is such protection guaranteed if we consider that the purpose of psychiatric care is to treat a patient with a psychotic disorder and that such delusions or thoughts are understood as symptoms. It cannot be said that some human rights do not apply to patients with psychosis. Instead, the possibility of restricting *forum externum* rights in certain situations and limiting interference with *forum internum* rights, even during involuntary treatment, should be discussed.

In democratic societies where several religions coexist for the same population, it may be necessary to restrict freedom of thought, conscience and religion to reconcile the interests of different groups and ensure the observance of each other's beliefs. In this case, the state acts as a neutral and impartial organizer of the coexistence of different religions and beliefs. This function of the state should promote the establishment of the rule of law, religious harmony and tolerance in the societies of democratic countries. The duty of the state to neutrality and impartiality is incompatible with any action of the authorities to assess the legitimacy of religious beliefs or ways of expressing these beliefs. The state, exercising its

discretion, is limited by law and its fundamental principles and must convincingly prove good reasons that justify any interference with individual freedom. Such activities of the state should be carried out under the supervision of independent and impartial courts.

2.7. The right to access the Internet

The right of the fourth generation today is the right to access the Internet, which may also be limited in emergencies. Given today's conditions, the Internet plays an important role in everyone's life, is an everyday part of it. The inventor of the World Wide Web T. Berners-Lee emphasizes: "The most common goal of the Web is to support and improve our existence in the world…" [9, p. 107]. At present, the Internet provides citizens with the necessary mechanisms to participate in the activities of public authorities, discuss political issues and issues of common interest.

Unfortunately, in today's world there are cases of illegal restrictions on Internet access, thus distracting people from the opportunity to inform and be informed. For example, during the presidential election in Belarus on August 9, 2020, the Internet was completely disconnected for several days [10, p. 442]. The declared purpose of the restriction of power was to ensure the non-interference of external forces in the elections [11, p. 54]. Although the actual goal was to limit the interference of civil society institutions in the impartial elections of the President. On December 20, 2019, in New Delhi, India, amid mass protests, Internet services were shut down, limiting the ability to exchange voice and text messages. It happened with the help of local police. Local, regional and national authorities regularly disconnect the Internet in India during riots: according to the Software Freedom Law Center, a digital data protection group, in 2019 there were 96 such disconnections [12].

Such actions of the authorities of a number of countries of the modern world testify to the application of imperative methods of the right to access the Internet, which leads to the inability of man to communicate with the outside world. This indicates the use of discretionary powers of the government contrary to the principle of the rule of law, without respect for the balance of public and private interests. However, when referring the right to access the Internet to fundamental rights, it should be understood that it is subject to restrictions, i.e. not absolute. The exercise of the right to access the Internet is subject to duties and responsibilities and may be subject to limitations or sanctions established by law and necessary in a democratic society in the interests of national security, territorial integrity or public security, to prevent riots or crimes, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential information, or to maintain the authority and impartiality of the court. Thus, in conditions of martial law or

state of emergency, certain restrictions on Internet access rights may be imposed.

2.8. Restrictions on rights that apply only to certain subjects of law or special restrictions

It should be recalled that in addition to the general restrictions on human and civil rights and freedoms, in the context of special legal regimes, there may be special restrictions on the rights that apply only to certain subjects of law. Here is an example of the legal relationship set out in the Judgment of the Constitutional Court of Latvia of 17 October 2005 in the case No. 2005-07-01 [27]. Pursuant to Articles 9–11 of the Law of the Republic of Latvia "On State Secrets" of 17 October 1996 [28], the law allows access to state secrets only to persons who, in accordance with their official duties or specific tasks, are required to perform work related to use or protection of state secrets and who have received special permits. Verification of persons for access to classified information of foreign and international organisations and their institutions is carried out by the National Security Office of the Republic of Latvia. The procedure and term of the inspection shall be determined by the Director of the Bureau for the Protection of the Constitution. The decision of the Director of the Office for the Protection of the Constitution on access to classified information of foreign and international organisations and their institutions is final and cannot be appealed. In his constitutional complaint, Guido Ivanovs (the applicant) asked to assess whether the impugned norm prohibiting appeals against the decision of the Director of the Bureau contradicts Article 92 of the Constitution of the Republic of Latvia, which enshrines the right to a fair trial [29].

It should be noted that the state has exclusive rights to objects of state secret and they are under special state protection to avoid harm to national security. The status of a state secret is fully covered by classified information of NATO, the EU, foreign and international organisations and institutions. In the interests of national security, access to state secrets is not guaranteed to everyone. To obtain a special permit for access to state secrets, a person must meet the requirements established by law.

Since joining NATO, Latvia has committed itself to protecting restricted, confidential, secret and top-secret information in accordance with NATO's standards for the protection of classified information. Access to any classified information is a special privilege granted to a person after the standard verification procedure. Access is provided only for certain types and amounts of information required for the performance of professional duties. For example, the Law of the Federal Republic of Germany on the Conditions and Procedure for Inspections by the Federal Security Inspectorate [30] stipulates that the person whose case is being considered may

be present at a hearing with a lawyer. The hearing shall be conducted in such a way as to ensure both the protection of the sources of information and the protection of the legitimate interests of the person to be audited. A hearing shall not be held if it could cause significant harm to the security of the federation or the state, in particular during the investigation by the federal intelligence service.

The NATO Personnel Security Directive No. AC/35-D/2000 of 7 January 2013 [31] obliges NATO or a competent national authority to evaluate all available information to decide whether to issue a certificate to the person being audited. The Directive, in particular, emphasises that the mere indication of a potential impact should not be a reason for refusing to issue a certificate. However, the degree of risk must be assessed individually to decide whether a certificate can be issued. The aim of the legislator in protecting the provisions of Articles 9–11 of the Law of the Republic of Latvia "On State Secrets" of 17 October 1996 was to protect not only the interests of the state and public security, but also other NATO member states in this field. The European Court of Human Rights has recognized in a number of its rulings that the protection of national security is a legitimate aim that may restrict a person's right to go to court. Therefore, a person's right to go to court is not absolute and may be limited.

The right to a fair trial has both substantive and procedural aspects. This means that everyone has the right not only to a fair trial but also to access to justice. Substantive and procedural aspects are inextricably linked: insignificant justice of the court, if the existence of the court was not ensured, and vice versa. Thus, in the judgment of the European Court of Human Rights "Golder v. The United Kingdom" [32], the court was called upon to resolve two issues arising from the facts of the case:

1) Is Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [21] limited to the right to a fair trial in ongoing trials, or does it further provide the right of access to a court for anyone wishing to bring an action?

2) Are there any indirect restrictions on the right of access to court?

Answering the first question, the court concluded that the right of access to court is a component of a fair trial along with an impartial court, reasonable time, presumption of innocence. These constituent elements are different, but are the result of the same basic idea of a fair trial, and, taken together, constitute a single right. Explaining the content of the article, the court applied the principle of unity and integration, setting different elements on one plane. The terms of the article, taken in their context, give reason to believe that the right of access to court is included in the number of guarantees set out in the article. Attributing Article 6 exclusively to legal relations beginning after a court case, literally understanding the text of

the article, can lead to state arbitrariness, when public authorities abolish courts altogether or refer cases to the jurisdiction of state bodies dependent on the government. It seems illogical and absurd that Article 6 of the Convention describes in detail the procedural guarantees provided to the parties to the proceedings, while not protecting what in itself actually allows the use of such guarantees, i.e. access to justice. The fairness, publicity and efficiency of the trial are of no value if the trial is not conducted.

However, in exercising the right of access to court, there are justified restrictions due to certain legal circumstances, as the right of access to court is not absolute. In addition to the limits set by the very content of any right, there is room for restrictions that are allowed indirectly. The right of access to court, by its very nature, requires such regulation by the state, which may vary in time and place depending on the needs and resources of society and individuals. It goes without saying that such regulation should never harm the essence of the right of access to court and should not contradict other rights guaranteed by the state.

CONCLUSIONS

In general, we see that in the context of special legal regimes there are a large number of human rights that are relative, not absolute and may be limited the state and its bodies, local authorities. During the operation of special legal regimes, such human and civil rights may be temporarily restricted, such as: the right to liberty and security of person, the right to housing, the right to privacy, the right to privacy and family life, freedom of movement, freedom of thought, freedom of liberty. expression of their views and beliefs, the right to participate in referendums, the right to vote and to be elected, the right to peaceful assembly, the right to property, the right to work and freedom of entrepreneurial activity, the right to education, the right to personal data protection.

However, in order for such restrictions to be lawful, consistent with the rule of law and recognized as admissible, they must meet certain criteria: they must be provided for by law; should not affect the basic content of the law; must be dimensional to the goal (principle of proportionality); be carried out for legitimate purposes, the list of which is exhaustive and not subject to expansion, to be necessary in a democratic society. In a state of war or emergency, human rights may be restricted in the interests of public order, public health and morals, or the protection of the rights and freedoms of others. In some cases, the exercise of a right may be restricted not only to ensure public order, but also for the safety of the person whose rights are being restricted (paternalistic approach to restriction of liberty).

Restrictions on rights are not the only legal instrument used to establish law and order during special legal re-

gimes. In addition, exceptions to human rights may be used, which exclude from the sphere of human rights certain actions taken during the operation of special legal regimes and derogations from rights – the suspension of certain human rights and freedoms for a certain period.

Today, the European Court of Human Rights makes a great contribution to the protection and guarantee of human rights in the face of their restriction, checking each time for compliance with the values of law specific restrictions in European countries in martial law and state of emergency, while forming a separate doctrine of restrictions on human rights in special legal regimes.

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APPLICATION OF THE PRINCIPLE OF THE RULE OF LAW INTERNATIONAL AND NATIONAL COURTS

Abstract. *The article considers the peculiarities of applying the principle of the rule of law by international and national courts. It is determined that the concept of a democratic state governed by the rule of law in Ukraine remains a leading research topic among domestic scientists – philosophers, sociologists, jurists, political scientists, managers, etc., as well as for its implementation by public authorities, taking into account the positive experience of other countries. It is emphasised that forming such a model of the state, which would function based on the rule of law – is a complex and long-term phenomenon. It is emphasised that the analysis of the decisions of the ECHR, the Constitutional Court of Ukraine and the Supreme Court shows that, at present, judges are actively applying the principle of the rule of law in practice. Perspective directions in ensuring the principle of the rule of law are identified*

Keywords: *the principle rule of law, legality, judiciary, justice, European Court of Human Rights, Constitutional Court of Ukraine, Supreme Court*

Formulation of the problem. The functioning of modern democracies is based on the principles of law, the primary role of which undoubtedly plays

the principle of the rule of law. The priority component of legal transformations is to ensure the activities of public authorities and local governments are in accordance with the rule of law. After all, the high level of its integration into state activities affects the state of ensuring human rights, freedoms and legitimate interests, fair justice, overcoming corruption and so on. All these and many other indicators, in general, determine the state of development of democracy in the state. However, forming such a state model is a complex and long-term phenomenon that requires systematic, gradual, meaningful modernisation of political, legal, socio-economic, and cultural nature.

A significant problem in this area is the periodic imitation by government institutions of applying this principle and its functioning in accordance with its requirements. Therefore, the study of the rule of law, which underlies the concept of the rule of law in Ukraine and, among other things, is provided by the judiciary, remains one of the most relevant topics for researchers in philosophy, sociology, and law and more.

The state of elaboration of the problem. The rule of law has been studied in the works of many domestic scholars in various fields: the rule of law in the legal systems of the world, the conceptual foundations of the rule of law, the implementation of the rule of law in various fields of law, ways to improve the rule of law in Ukraine and many etc. The fundamental contribution to the study of multiple aspects of the principle of the rule of law was made by such lawyers as T. Bagriy, Y. Bytyak, S. Bobrovnyk, J. Waldron, P. Gauder, S. Golovaty, R. Dvorkin, V. Campo, M. Kelman, M. Kozyubra, A. Kolodiy, V. Kopeychikov, O. Kopylenko, V. Kostytsky, M. Kostytsky, V. Kravchenko, V. Pogorilko, S. Pogrebnyak, D. Savenko, M. Sambor, A. Selivanov, S. Seryogin, V. Sirenko, Y. Todyka, M. Tsvik, O. Uvarova, S. Shevchuk, Yu. Shemshuchenko and others. Despite the highly close attention of researchers to this topic, the issue of the rule of law over time only becomes more relevant and promising for research, which is certainly justified by the current global crisis and local problems inherent in different countries.

Let's talk about the democratic vector of development of the Ukrainian state. Implementing the rule of law in public authorities and cooperation with a civil society based on the rule of law is now of paramount importance. It, therefore, requires further comprehensive consideration, including applying the rule of rights in the practice of national and international judges. The principle of the rule of law in judicial practice was studied by V. Averyanov, Y. Baulin, T. Bingham, L. Bogachova, I. Galashin, V. Gorodovenko, A. Grubinko, V. Klyuchkovich, M. Kozyubra, A. Korshun, V. Lemak, K. Lisetska, O. Makarenkov, J. Melnyk-Tomenko, I. Novitsky, O. Petryshyn, N. Pisaren-

ko, P. Rabinovych and others. Given the leading role of the judiciary in ensuring human rights, the study of this area is especially relevant at the present stage of the development of the Ukrainian state.

The purpose of the article. The article aims to determine the peculiarities of applying the principle of the rule of law in international and national judicial practice and to identify areas for improving the implementation of this principle by Ukrainian courts.

Presenting main material. The idea of the rule of law originated in the works of Plato, Aristotle, Socrates, Cicero, and others – whose philosophical views became the basis for its modern formation as a fundamental principle of law.

In contrast to lawlessness, thinkers sought to give advice on the management of the policy in such a way that the justice and happiness of the people were fundamental in building social relations. The unity of views of ancient philosophers is determined by the fact that the basis of a happy life for citizens is the rule of reasonable laws, the main principle of which is justice (Шевченко, 2020: 8). Historians of law characterise the Middle Ages as a period in which the basis for the functioning of the state was a compromise between the king and the people, according to which the king undertook not to allow lawlessness.

XVIII–XIX centuries were marked by the emergence in the European cultural and legal space of the rule of law as a principle that has spread and continues to be integrated into the legal systems of different countries and rooted in the socio-political processes of states. Today, for every democratic, social, and legal state, the principle of the rule of law is a fundamental component of its functioning. This principle plays a particularly important role in forming relations: the state-society – citizen. Quite often, the judiciary ensures this model's effectiveness and fairness.

The modern understanding of the concept of «the rule of law» was introduced by the British constitutionalist Albert Venn Daisy in his work «Introduction to the doctrine of the law of the constitution» (1885). The scientist believed that there were two principles inherent in the British Constitution. The first basic principle is the sovereignty (supremacy) of the parliament (thus, the notion of representative power as the main characteristic of a democratic state was enshrined). The second principle that restrained the first (but in the context of the United Kingdom could not prevail over the first) was the rule of law (Європейська комісія «За демократію через право», 2011; Beschastnyi, Shkliar, Fomenko, Obushenko, Nalyvaiko, 2019). Among many other thinkers, a vital contribution to the modern understanding of the concept of the rule of law was made by the founder of the doctrine of the rule of law, Immanuel Kant.

Later, the concept of «the rule of law» was reflected in many doctrinal

sources and regulations, including international human rights instruments, including the Convention for the Protection of Human Rights and Fundamental Freedoms.

In conditions of high dynamics of society, there are new principles of life, which must be subject to legal regulation and be regulated by the rule of law (Богачова, Сліпачик, Никонюк, 2021: 25; Bobrovnyk, Didych, Shevchenko, 2019). According to T. Bingham, the core of the rule of law is that all persons (both public and private) and government in the state should be bound by laws that are openly proclaimed, future-oriented and applicable in the courts (Писаренко, 2019: 58). It is important to emphasise that the concept of « the rule of law «has various interpretations. But it should be distinguished from a purely formal concept, according to which any action of a public official authorised by law must meet the requirements of the law. Over time, the essence of the rule of law in some countries has been distorted to such an extent that it is presented either as the equivalent of «the rule of law» or «rule of law» or even «law as a set of rules». Such interpretations made possible authoritarian actions on the part of the authorities, and such interpretations do not reflect the modern essence of the rule of law (Головатий, 2006: 121). After all, the principle of the rule of law is a phenomenon that includes many different components. The leading role belongs to the Constitution (the rule of the Constitution), which ensures modern law and order.

Ensuring the rule of law The Constitution is one of the fundamental components of the rule of law and its effective integration into all spheres of state functioning. Having passed a long historical path of origin and development, the formation of a modern understanding of the principle of the rule of law in the legal science of Ukraine began after the adoption of the Basic Law of 1996 and the regulation of Art. 8, which states: the principle of the rule of law is recognised and operates in Ukraine.

For the national legal system of Ukraine, the principle of the rule of law is inseparable from the Constitution of Ukraine. This explains why the specification of the principle of the rule of law in Art. 8 of the Constitution is to proclaim the supreme legal force of the Constitution and to characterise its norms as having direct effect. Given the above, the verification of any norms or actions on their compliance with human rights is carried out by their comparative analysis with the provisions of the Constitution, and the direct effect of constitutional norms is the basis of the most accessible to citizens judicial protection of their violated rights (Хаустова, 2013; Ivanii, Kuchuk, Orlova, 2020). Today, courts at various levels actively apply the rule of law in practice. In this regard, it is important to refer to the European Court of Human Rights (ECtHR) case law and national case law.

The analysis of the CAS of Ukraine shows that the principle of the rule of law is a set of guidelines and requirements for administrative proceedings. The European Court of Human Rights formulated these rules and requirements, including the principle of access to justice, legality, legal certainty, prohibition of arbitrariness, respect for human rights, non-discrimination and equality before the law and the courts etc. As J. Melnyk-Tomenko rightly points out, the principle of the rule of law is not limited to the above requirements and characteristics as the European Court of Human Rights in resolving specific cases (including is Ukraine) systematically enriches its importance with new permanent features and conditions of compliance (Мельник-Томенко, 2019: 88; Козинець, Мишаста, 2021: 238).

Thus, in the decision of the European Court of Human Rights in Shchokin v. Ukraine on 3 October 2013, the principle of the rule of law was considered in the context of the quality of legislation that proportionally affects the state of human and civil rights and freedoms. The decision states that the rule of law, one of the fundamental principles of a democratic society, is inherent in all articles of the Convention (art. 50); how national legislation is interpreted and applied must correspond to the «quality of the law», requiring it to be accessible to interested parties, clear and predictable in its application (paragraph 51); the lack of the necessary clarity and precision in national law, which provided for different interpretations…, violates the "quality of law" requirement of the Convention and does not provide adequate protection against arbitrary interference by public authorities with the applicant's property rights (para. 56) (Рішення ЄСПЛ у справі «Щокін проти України», 2013).

Paragraph 55 of the judgment of the European Court of Human Rights in Class and Others v. Germany of 6 September 1978 states that the rule of law implies, among other things, that interference by the executive in human rights must be subject to effective supervision which the judiciary should provide. At the very least, judicial oversight should best ensure independence, impartiality and due process. The Court considers that in an area that provides, in some cases, such great opportunities for abuse that could have detrimental consequences for a democratic society as a whole, in principle, it is appropriate to entrust the supervisory function to judges (paragraph 56 § 2). The same thesis is stated in the decision in the case of Volokh v. Ukraine. In Brown and Others v. The United Kingdom and Altai v. Turkey, the Court noted that, by the rule of law, judicial review of the government is one of the fundamental principles of a democratic society (Ухвала, 2022). Thus, the European Court of Human Rights, considering cases and applying the principle of the rule of law, pays significant attention to control to express the principle under

study. The rule of law, democracy and human rights are the elements that laid the foundation for the Council of Europe and are now effectively defended, including the rights and freedoms of many people, through the European Court of Human Rights.

It should be noted that the principle of the rule of law is one of the most frequently mentioned legal phenomena in the practice of the Constitutional Court of Ukraine. Thus, in the decision of November 2 №15-rp / 2004 in the case of a milder sentence imposed by the court, it was emphasised that the rule of law is the rule of law in society. The rule of law requires the state to implement it in law-making and law enforcement activities, in particular in laws, which in their content should be permeated primarily by the ideas of social justice, freedom, equality, etc. (Рішення КСУ, 2004). In the decision of March 2, 2015 №213-VIII, it is determined that, given the content of Art. 8 of the Constitution of Ukraine, developing the practice of the Constitutional Court of Ukraine, the rule of law should be understood, in particular, as a mechanism to ensure control over the use of state power and protect people from arbitrary actions of state power. The rule of law as a normative ideal and as a universal and integral principle of law must be considered, including in the context of its fundamental components, such as the principle of legality, the principle of separation of powers, the principle of people's sovereignty, the principle of democracy, the principle of legal certainty (Рішення КСУ, 2015). Therefore, the principle of the rule of law is the primary system-forming phenomenon that unites the fundamental principles according to which the modern rule of law must function.

In another judgment in its constitutional complaint of 18 June 2020 №213-VIII, the Court emphasised that the rule of law (law) as an integral part of the value system underlying modern European law is one of the triad of principles of the common heritage of European nations. nations along with its components such as true democracy and human rights. <…> The Ukrainian formula of rule of law as the basis of the national constitutional order is two-fold: according to the first component «the rule of law in Ukraine is recognized», according to the second – «the rule of law in Ukraine acts» (Рішення КСУ, 2020). It is worth noting that this is one of the first decisions of the Constitutional Court of Ukraine, where, along with the concept of the rule of law, the term «the rule of law» is used as its analogue. This innovation was introduced as a legal term by S. Holovaty (now a judge of the CCU) in his fundamental monographic study «The Rule of Law: in 3 books» (2006). And if the need for the term « the rule of law» was first debated, its use in judicial practice is now evidence of the adoption of this term by the scientific community and the authorities (Наливайко, Чепік-Трегубенко, 2020).

As for the activities of the Supreme Court and other courts of the judiciary in Ukraine, the following example should be given. The Supreme Court ruling of May 16, 2018, contains a legal position on the protection of bona fide mortgagees: "Good faith (paragraph 6 of Article 3 of the Civil Code) is a certain standard of conduct characterised by honesty, openness and respect for the interests of the other party The bank, as a bona fide mortgagee, who relied on the data of the register of real estate rights, that PERSON_9 was the sole owner of a residential building, and therefore entered into a mortgage agreement. In such a situation, the refusal to satisfy the claim for foreclosure on the mortgage is contrary to the protection of the interests of a bona fide mortgagee» (Постанова ВСУ, 2018). Therefore, in the given legal position of the court, good faith is considered an element of the principle of the rule of law.

The rule of law is a dynamic phenomenon modified under the influence of new social ideas. At the same time, legal standards in human rights and freedoms are being updated. International and national courts significantly contribute in this direction, applying the rule of law. The rule of law is an interaction model between society and the state.

Conclusions. Thus, summing up, it should be noted the following.

1. The concept of a democratic state governed by the rule of law in Ukraine remains a leading research topic among domestic scholars – philosophers, sociologists, jurists, political scientists, managers, etc., as well as for the implementation of its central ideas by public authorities, taking into account the positive experience of other countries. In the system of general principles of law, the principle of the rule of law has a leading, integral, system-forming significance for the development of the rule of law and civil society. The study of the genesis of the rule of law in the global sense gives grounds to talk about the origin of his ideas in antiquity (the basic concepts of this period remain relevant today for the world). Still, in Ukraine, it began to take shape since independence after the Basic Law. It became a critical stage in determining the vector of development of our state. Further doctrinal development of the rule of law to effectively implement it in various spheres of state activity is a priority in scientific and practical areas of today, among such sites – mechanisms for effective implementation of the rule of law in all spheres of state and public activity. Forms and methods of implementing the principle of the rule of law create a lack of stability in state-building, law-making and law enforcement processes.

2. The formation of such a state model, which would function based on the rule of law – is a complex and long-term phenomenon that requires systematic, consistent, meaningful political and legal, socio-economic, spiritual and cultural modernisation. In this context,

the rule of law should, above all, be seen as a way of interaction between man, civil society and the state. The rule of law is a dynamic phenomenon; filled with ideas of justice, virtue, reasonableness, and equality before the law. In the system of general principles of law, the principle of the rule of law has a leading, integral, system-forming significance for the development of the rule of law and civil society. The use of the rule of law in the practice of international and national courts aims to promote human rights and freedoms, which also plays a vital role in ensuring public confidence in the courts.

3. The principle of the rule of law is the fundamental basis of the legal (in particular, judicial) process in any democratic state, according to which the courts assume that law is «above» the law and thus the state is «bound» by law, state power is limited exclusively by law; man is the highest social value. According to the analysis of the decisions of the European Court of Human Rights, the Constitutional Court of Ukraine and the Supreme Court, judges are currently actively applying the principle of the rule of law in practice. It is essential that more and more often in national practice, it is not just a formal reference to this principle but a detailed analysis of the case due to its various requirements. Promising areas for theory and practice in ensuring the rule of law are developing mechanisms to improve the quality of laws, raising the level of professional and public legal awareness, further active development of civil society in Ukraine, etc. Since the rule of law contains cultural, ethical, political, and legal aspects, a separate complex area to ensure the quality of the rule of law in the judiciary is the further implementation of judicial reform, one of the fundamental principles which should be the formation of the judiciary exclusively from professional, independent, highly moral in the field of law.

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MODERN ONTOLOGY: REFLECTION ON THE CONTINUITY OF CYBERSPACE AND VIRTUAL REALITY

Abstract. *The article demonstrates that information and communication technologies, which are actively implemented in modern life, have no analogues in the past. Reality, characterized by the concept of "cyberspace", has become one of the main factors of socio-cultural reality, a special living environment with which all spheres of public life are connected − economic, social, political, spiritual. Modernity is characterized by the emergence of electronic virtual reality, which significantly changes the language, bringing in new elements of communication. Today, the Internet in some way is a global information space that unites all existing telecommunications and information networks. It is stated that the formation of global information networks has become a direct consequence*

of computer technology, so the global information space is primarily cybernetic (computer) in nature. The question is raised about the spatial and temporal characteristics of virtual reality and their ontological substantiation, because cyberspace presupposes the existence of a certain world, characterized by the length and metrics represented in consciousness. The thesis about the sociality of cyberspace is substantiated. It is shown that cyberspace is artificially maintained and developed by real space, so it is concluded that it is impossible and inexpedient to study it as an independent phenomenon

Keywords: *cyberspace; virtual reality; information processes; Internet space; computer technologies*

Introduction

The information and communication technologies that have no analogues in the past are actively introduced in the life of a modern man. Their development provoked the introduction into scientific discourse of the concepts of "cyberspace", "virtual reality", "network society". Today we can safely say about the symbiotic coexistence of man and technology. This phenomenon was first noted in Joseph Licklider's article "Man-Computer Symbiosis" [1], which describes the cooperative interaction between the man and computer, where machine intelligence played a significant role in expanding and intensifying the human mind. Half a century later, the predicted computer-human symbiosis became a fait accompli. As V. melin rightly states in this context, "high-tech mediums imperceptibly and softly envelop us, intertwine with everyday life, expand organisms, become flesh, blood and nerves. By merging with technology, a man finds himself on the verge of becoming a cyborg" [2, 62–70].

Reality, denoted by the concept of "cyberspace", has become one of the main factors of social and cultural environment, a special living environment with which all spheres of public life are connected − economic, social, political, spiritual. In addition, the emergence of cyberspace has contributed to the formation of a global information space, the formation of a "network society", the basis of which is the generation, processing, transmission and updating of the information social and cultural field. Cyberspace mediates the communication of a modern man, affects his daily experience and behaviour. The importance of cyberspace for modern civilization intensifies its study as a social and cultural factor influencing the formation of a network society.

Despite the huge number of scientific works devoted to virtual reality, cyberspace and virtualization of society, in the modern scientific literature there is no generally accepted approach to cyberspace as a factor contributing to the formation of a modern network society [3, 310–322; 4, 217–226; 5, 6–74; 6, 824–838; 7, 382–399; 8, 100–103; 9, 426–432; 10, 138–152]. The presence of different, sometimes contradictory,

views on the essence of these phenomena only exacerbate this uncertain situation. The variety of interpretations and approaches to defining the concepts of "cyberspace", "virtual reality", "network society" dictates the need for philosophical research on the phenomenon of cyberspace. Therefore, the aim of the article is to try to comprehend cyberspace, its connection with virtual reality, their philosophical justification in the most general terms.

Methodology

The methodology of the research of cyberspace and virtual reality in the context of the dynamics of the information society development involves the consistent application of general scientific, philosophical and special methods and approaches. This sequence allows achieving the above aim.

At the first stage, a comparative analysis of the most significant scientific publications was carried out, which relate to various aspects of the dynamics of the information society, understanding the nature and features of virtual reality and cyberspace in the latest social and cultural conditions, etc. Special attention has been paid to the coverage of information processes and features of the application of the latest information technologies in social reality.

At the second stage, the relationship between cyberspace and virtual reality was directly studied. The application of the system approach allowed to investigate the contradiction of such interrelation as a consequence of the growing interaction between man and complex technical systems. Analytical and synthetic method, as well as methods of comparison and analogy provided an opportunity to compare theoretical and methodological concepts of understanding the essence of the development of the information society, as well as to identify features of certain aspects of virtualization in this context. A logical addition to the previous approaches and methods was functional approach, which allowed to characterize the features of various forms of virtual reality and to conclude that cyberspace has special characteristics: integration of hypertext and hyperreality, which expands human capabilities.

At the final stage, in substantiating the prospects for the development of virtualization processes in the information society, the methods of all three levels were comprehensively applied, resulting in generalized arguments in favour of the authors' hypothesis that virtual reality should be considered an integral part of culture.

Based on the complementarity of various methods, there are the reasons to conclude that new forms of virtual reality and cyberspace should be considered multifaceted and ambiguous: on the one hand, they are a continuation and new dimension of traditionally formed social processes, and on the other hand, they are sociocultural and technological innovations which are able to influence in a new way the quality of

life of the individual, the functionality and dynamics of development of society and its institutions. In addition, it was concluded that cyberspace is becoming an infrastructure technology that covers almost all areas of human life in a network society, and virtual reality in cyberspace is characterized by a pronounced instrumental nature, interactivity, modification of spatio-temporal characteristics.

The results and discussion

In recent years, the development of information technology has allowed to create technical and psychological phenomena, which in the popular and scientific literature are called "cyberspace". In the world Humanities literature, the term "virtual reality" is usually used in a broad and narrow sense of the word. In the first sense, the virtual is identified with the realm of the imaginary. In the second sense, the virtual is connected with the world, modeled by technical means, first of all, computers. Usually, virtual reality created with the help of computer technology is called cyberspace.

The development of programming techniques, the rapid growth of the productivity of semiconductor chips, the development of special means of transmitting information to humans, as well as the feedback – all this has created a new quality of perception and experience. The external effect was that the person got into a world very similar to the real one, or premeditated, written by a programmer. The most impressive achievement of the new information technology, of course, is the opportunity for a person who has entered the virtual world not only to observe and experience, but also to act independently. A person earlier could get into the world of virtual reality, for example, by immersing him/herself in contemplation of a picture, a movie or just excitedly reading a book. However, in all such cases, a person's activity was limited by the position as a spectator or reader; he/she him/herself could not join the action as an active character. Subsequently, there is an expansion of the notion of virtual reality.

Modernity is characterized by the emergence of electronic virtual reality, which significantly changes the language, bringing new elements of communication: semiotic elements, similar to hieroglyphs. Visualization of electronic text occurs due to its saturation with iconic components (for example, "smilies"), hyperlinks, "materialized" connotations [11].

The phenomenon of the Internet emergence can be seen as a consequence of the scientific and technological revolution, which along with biological (humanity has learned to read, write and create genetic information, thus putting biological evolution under control and actually appropriating the functions of the Creator), has had a tremendous impact on the modern world community development. The possibility of obtaining data as close as possible

to reality about the object, which together constitute its image, has become a qualitatively new aspect of informatization of society.

Proceeding from the fact that any operation on information is called an information process we note that any information process involves several components: first, input information, i.e. information that the system perceives from the environment or uses it; second, the system; third, output information.

Considering society as an open information system, the elements of which are people, information processes can be divided into internal (thinking) and external (communication).

Virtualization, on the one hand, is an external process (replacement of information in any form by means of information technologies, structuring and transformation of images when using communication networks); on the other hand, it is an internal process, as the perception of the received image depends only on the person extracting information from it. The results of the virtualization process are ever-changing cyberspace.

The term "cyberspace" to describe the entire body of information contained in computer networks was firstly used by William Gibson in his novel *Neuromancer* [12]. This term quite accurately reflects the possibility of perception of computers and their networks as a special "psychological space". For people who actively work with computers, write e-mails, play games, simultaneously communicate with people on different continents it is difficult not to imagine all this as a special space where they get with the help of their computer.

The creators of interactive services for users contribute to the creation of this image, calling certain parts of their products "worlds", "rooms", "territories". These factors and the involvement in the Internet traveling from one site to another cause people to perceive computers as an extension of their identity in a space that reflects their tastes and interests.

In terms of psychoanalysis, computers and cyberspace can be considered as a type of "transitional space" that expands the inner mental world of man. This state can be so fascinating that sometimes there is dissolution of one's own "self" and identification, for example, with the personality of the character of the game that takes place on the screen. When cyberspace is perceived as an extension of the mind, the intermediate space between the "self" and others is a wide open door for all sorts of fantasies and transference reactions that can be projected onto that space. If earlier the result of the process of virtualization were art worlds, now the result is virtual reality, built with the help of new computer methods and technologies, depending on their further development.

Some authors [13, 19–22] attribute the emergence of cyberspace to the end of the XIX century, linking it with the

development of electrical and radio communications. There is a special point of view, whose supporters believe that cyberspace has always existed, but not in an updated form, and became available to man (open to him) only with the invention of telephone communication.

According to some Ukrainian researchers [14, 188–192; 15, 42–47; 16, 399–403], cyberspace, especially the Internet, can generally be considered as the cybernetic equivalent of an ecosystem. The latter statement could be fully accepted if cyberspace and real space existed separately from each other. But, as rightly pointed out by S. Hutornoy, "… cyberspace at present is no more than the information projection of the real world and its development is a consequence of the development of real social and economic systems of the global world" [17].

Today, the Internet is to some extent a global information space that exists, and at the same time does not exist uniting all existing telecommunications and information networks. The formation of global information networks has become a direct consequence of computer technology, so the global information space is primarily cybernetic (computer) in nature. In recent scientific publications of Ukrainian researchers, the term "cyberspace" is mainly used to denote the totality of all electronic systems, i.e. in fact to denote the global information volume [18, 181–186; 19, 174–184; 20, 426–432]. In its content, this concept coincides with the concept of "Internet space" used in the broadest sense of the word.

The analysis of cyberspace raises the question of the spatiotemporal characteristics of virtual reality and their ontological justification, as cyberspace presupposes the existence of a certain world characterized by length and metrics (a way of measuring the distance in space between components of processes or phenomena) represented in consciousness. Thus, new areas of knowledge appear, such as "cybergeography".

It is possible that in the minds of different people, cyberspace is represented differently. The main feature of cyberspace is that distance in the traditional sense of the word has mo meaning to it; the traditional notion of time also changes significantly [21, 163–170]. "Virtualization of human life and society characterizes a fundamentally new type of symbolic existence of man, society, culture. Instantly overcoming distances with the help of supernova telecommunications and high-speed vehicles allows organizations and individuals to spend time together without direct spatial convergence, which includes them in plastic multidimensional structures that smoothly transit into existing and constantly updated networks. Time is largely destroyed by the instantaneous connection between computers, the levers of public life that were effective a few years ago are no longer effective today. Changes in time limits, the emergence of timeless con-

cepts in the information age are also associated with the latest reproductive technologies of human body, including through cloning. All these phenomena can be regarded as virtualization deformations of the essence of the space-time continuum in the information age and as cardinal transformations of its understanding" [22, 118–126].

Two approaches to determining distance in cyberspace have been described in the Ukrainian scientific literature [23, 119–126; 24, 124–132; 25; 26, 382–399]. The connection time between two computers can be considered the first method of determining the distance. The second approach is "information connectivity theory", as all information servers are connected to each other by numerous information links. Hyperlinks provide information unity of the Internet. The distance in this case is the average number of links that are needed to reach a particular site. But the main characteristic of cyberspace is not the length, but connectivity and content completeness, i.e. the reflection of all positions and points of view.

Cyberspace is social because it is filled with people, more precisely, images of people generated by texts, video and audio information, images. The study of cyberspace as a social space, on the one hand, implies the analysis of the content, therefore, work with hypertext; on the other hand, the study of hypertext is the study of the relationship between cyberspace and reality. The main information process that connects reality and cyberspace is the process of changing information through hypertext − a form of presenting information on the Internet. This form involves the presence of text, images, audio information, hyperlinks in a single language, creation of web-documents (html − Hypertext Markup Language). If before, without knowledge, it was impossible to imagine writing such documents, now the presence of a huge number of programs – web-editors – has made it easy for any user, not just for professionals. Accessibility has allowed accelerating the growth rate of the number of personal web-resources, where people are not represented in all their subjectivity, but reduced: as a set of texts produced by themselves (or other people about them), saturated with additional elements. In the view to the above, it is erroneous to consider cyberspace (and, consequently, the Internet) as an independent phenomenon. It is the product of the work of a huge number of people, managed and controlled. Moreover, hypertext, like any text, can be considered as an objectified (but indirect) reflection of the interests of the parties involved in the communication process.

In the context of this article, the question of the relationship between artificial (cyberspace) and real is interesting. There are two extreme points of view. The first is: cyberspace is a completely independent phenomenon, i.e. it can exist independently of real space [27]. According to this point of view,

the Internet has the properties of the system, i.e. it is characterized by integrity and unity, complexity and self-referentiality. From the standpoint of the methodology of synergetics and quantum mechanics, the Internet is a complex self-organized self-referential communication system that has emergent properties [28]. Representatives of another point of view believe that cyberspace is only an information projection of the activities of real space structures [29; 30, 8–22; 31; 32].

It seems that the second position is more reasonable, although in cyberspace there are a number of objects that have no analogues in the real world. However, cyberspace is artificially maintained and developed by real space, so it is not possible to talk about it as an independent phenomenon. Thus, J. Baudrillard notes that "human, too human and functional, too functional interact closely: when the human world is imbued with technical expediency, then the technology itself is necessarily imbued with human expediency − for good and evil" [33].

The relationship between reality and cyberspace is extremely close, and if cyberspace cannot exist without real people, then people can do without cyberspace. The computer is created by man, and man does not become a machine, and the machine acts as his tool.

In the last decades of the XX century, thanks to the development of information technologies, a new form of virtual reality generated by the global Internet appeared. The main problem that arises in the reflection on this type of virtual reality – cyberspace – is the question of the features of this reality and its ontological status. This kind of being synthesizes the properties of many others. For example, virtual reality has a number of properties of objective-ideal existence, because its actual existence is possible only through computer systems, in which the laws of logic play a paramount role. At the same time, it has the properties of subjective-ideal being, because its parameters can change at the will and desire of the subject, not to mention that its actualization, i.e. the existing being for the subject is determined by it.

Cyberspace, along with the properties of ideal being in virtual reality, reproduces the properties of material being: the influence of virtual being on the human senses is almost identical to the influence of real material objects. Science is still far from any definitive conclusions, but one thing is for sure that virtual reality does not have its own essence, even at least in terms of independence from other forms of existence. Its existence is the result of complementarity and interaction of material and ideal forms of existence.

A new understanding of anthropocentrism in combination with modern views on development has been embodied in the theory of sustainable development, the core of which is the idea of coevolution of nature and society. The essence of the latter is to determine the

parameters and mechanisms of development of human civilization in accordance with the fundamental laws of nature. At the same time, the fact should be taken into account that not only the phenomenon develops, but also the essence underlying it. For example, today it is stated that the period of formation and development of post-industrial society is characterized by intensive exchange between people not of matter and energy, but of information, which becomes the main object of human activity. Substance and energy become means of operating information. If we take into account the trend of information technology − reducing material and energy costs for production − we can predict the expansion of virtual reality. From this we can conclude that virtual reality is a consequence of the coevolution of nature and society, natural and artificial, material and ideal, and finally, objective and subjective.

The concept of cyberspace in modern publications is used to denote the set of spaces of all electronic systems, i.e. in fact, to denote the global information space or, at least, its main (currently) computer part. With the development of global computer networks and the penetration of digital technologies in all spheres of society, there is an expansion of the use of the term "cyberspace" through the introduction of a new concept of "cybergeography" [34, 426–431; 35, 57–61]. The subject of research in modern cybergeography is the study of territorial and organizational structure of cyberspace. Currently, most research on cybergeography abroad is carried out mainly in English-speaking countries, primarily in the United Kingdom and the United States. In addition, some work is carried out in Germany, Ireland, Italy, France and New Zealand. Despite more than a decade of history in the development of cybergeography in the West, it has not yet been formed as a single research direction. Due to the fact that cybergeography first was an attempt to study the information spaces of individual computers and then small computer networks, cybergeography is now often understood in a narrow sense − as a field of geography that studies the internal structure of virtual spaces of computer networks and (at best) their impact on other social and economic systems.

It is difficult to predict what cyberspace may become in the near future, as the forms of manifestation of cyberspace, its impact and interaction with social territorial systems may change significantly with the development of computer and information technology.

The structure of information space coincides with the territorial structure of real space only in that most objects of cyberspace are information projection of the same objects in real space. In general, the concept of cyberspace structure, although based on real space objects, is different from the usual understanding of it in geography, at least because it is impossible to measure the distance between objects in cyberspace

in ordinary units of distance – meters or kilometers. It is possible, of course, to measure the physical distance between individual computers, but it only makes sense to find out how many meters of wire are needed to connect these computers.

The way to measure the distance in cyberspace can be considered online time between two objects of cyberspace [36, 97–98; 37]. This is the opinion of researchers – cybergeographers. Some foreign authors use this approach to create three-dimensional tree-like maps of cyberspace. Creating such maps is tantamount to mapping the earth's surface based on not geographic coordinates, but, for exmple, on isochrones (lines that connect the points of simultaneity of a phenomenon, event), transport accessibility from any particular centre, which for cyberspace is currently actually Silicon Valley in California.

Not only the spatial characteristics of virtual reality in its computer-technical form are of interest to researchers, but also its temporal forms of existence. It is known that the term "virtual reality" owes its birth to the Web, introduced in 1989 by Jaron Lanier, one of the leading experts in the field of computer technology. In one interview, he defined the essence of virtual reality created by new technologies, "We are talking about a technique by which people, through computer intervention, synthesize a common reality. It takes our relationship with the physical world to a new level …" [38]. In this context, virtual reality refers to techniques that allow a person to integrate into a computer- generated developing environment, in contrast to a pure computer simulation, in which there is no such integration, or, in other words, immersion.

Virtual reality means that the real is replaced by an artificial world from a computer: a person can plunge into this new reality as if it were real. In contrast to animation, everything here happens in real time, i.e. each reaction is instantly displayed in cyberspace. The technique of virtual reality corresponds to many human feelings − sight, hearing, touch and possibly smell. The virtual environment as an interface corresponds to the intuitive understanding of a person to a much greater extent than previously established ways of communicating with a computer through menus, windows or the mouse. One of the most important characteristics of virtual reality is real time (this is its difference from cyberspace). Thanks to the concept of "real time", virtual worlds give the impression of real worlds: as a result of user actions, they change almost instantly, so that the user in the virtual world feels a sense of penetration into this world (Walk-Through-Effect).

Quite interesting in the context of this article is the question of spatio-temporal properties of virtual reality created by cyberspace. It should be noted that a more or less complete list of characteristics of virtual reality refers to a certain ideal model, to very complex

virtual environments. However, the tendencies of formation of virtual reality as changes of paradigms of interaction of the person and the computer, that is, paradigms of interfaces are fixed in them. Virtual environments, implemented in practice today, do not meet all of these criteria, and even then, only in the tendency.

A. Byul names the following spatio-temporal properties of virtual reality created by cyberspace [39]:

• immersion: the user is immersed in a computer-generated changing environment, as if he enters the space behind the screen;

• multidimensionality: computer-generated two- and three-dimensional space in which the user is immersed;

• multisensory: the ability for the user to perceive this reality simultaneously through several senses (sight, hearing, smell, touch, etc.);

• real time: user actions correlate with the change of environment immediately, without any time delay;

• adequacy: the user of the environment created by the computer perceives the images adequate to his actions;

• interaction: the user can actually interact with this environment – change, move objects, etc.;

• permeability: in cyberspace, the user can move back and forth, look right and left. If there are several levels in this space, he can move up and down;

• reality effect: the virtual environment is programmed in such a way that the user has a sense of its reality;

• effect of many users: in the environment created by the computer the user can interact with other users, solve common problems, etc.

Many researchers link the virtual reality feature generated by the Internet to a combination of hypertext and hyperreality. It should be noted that in this context, the concept of "hyperreality" differs from its postmodernist interpretation as a simulated reality, free from cognitive meaning and one that turned out to be more real than reality itself [40].

For N. Terashima, J. Tiffin, hyperreality is, first of all, a technological metaconcept [41]. Hyperreality means a reality in which there are special dimensions of virtual reality along with normal physical reality. But this is not just a complement to another opportunity. For humanity, this will be a fundamental reworking of its perception of reality and the world in which it lives. Thus, according to Terashima and Tiffin, hyperreality arises precisely due to the "seamless" mixing of virtual reality with physical reality, artificial intelligence and human intelligence. It is something more than the sum of physical and virtual reality; it is based on a systematic interactivity between two components of reality.

The relationship between physical reality and virtual reality in hyperreality is achieved through the use of computers and telecommunications in the transmission of 3D images from one place to another. 3D images can later

become part of real things and interact synchronously with virtual ones. This allows creating the illusion of full physical presence at a given time. Real and unreal objects are placed in the same place in order to create an area called the hyperworld. In it, imaginary, real and artificial life forms, real and artificial objects that came from different parts to one place thanks to information technology, can act and exist together.

N. Terashima, emphasizing the special features of hyperreality, notes that communication in the field of joint action will be conducted through words and gestures and over time through touch and movement. Domain knowledge supports a field of joint action to allow participants to perform joint tasks [41]. The field of joint actions is a place of interactivity of the present participants, both real and virtual, for solving joint tasks.

Of course, the realization of hyperreality as an infrastructure technology is a matter of the future, when digital information paths will provide megabandwidth with and without wires.

According to J. Tiffin, hyperreality lies somewhere between the media and the Internet [41]. The key difference between the Internet and the media is the contrast between the linearity of the media, in which the message has a beginning, continuation and end, and the hypertextuality of the Internet, in which you can move from one text to another. Hyperreality makes it possible to move from one field of joint action to another, like switching television programs or flipping through newspaper pages.

The hypertextuality of the Internet allows moving with the content. The user can make logical connections and search for similar meanings on other websites. "… Hyperreality, on the contrary, is synchronous in nature. Participants in a common field of action gather together to act purposefully in real time" [41]. J. Tiffin believes that nanotechnology, artificial intelligence can have a significant impact on the development of hyperreality: to recognize language, language syntax and images. Computers began to learn to see, hear and speak and are slowly becoming experts in solving certain problems.

Thus, the most complex of modern virtual realities, computer technical, contributes to a certain (synthesis of hyperreality and hypertext) reality expansion. In addition, the spatio-temporal parameters of computer-technical virtual reality differ in the "loss of time effect", diversity of spatio- temporal flows, their multidimensionality, reversibility and discreteness. We are not talking about the complete replacement of real material reality with virtual reality, as only some of its characteristics are modeled (for example, a user can take objects, rearrange them, observe them from any side in a computer-created world). Thanks to virtual reality techniques, complex data entered into a computer become visible, i.e. receive the spatial form and properties of reality. For example, in computed tomogra-

phy, measured data that is invisible, i.e. has no visually perceptible characteristics, is converted by a computer into a visual model. With the help of computer modeling (simulation) there is a complex subject that can be studied in a new and more complete way and understood, as it becomes available for studying from different angles. However, it is clear that this is not a full-fledged virtual reality, which meets its definition (in tomography, for example, the researcher can not enter the brain and feel its texture).

At present, we have only an approximation to virtual reality, which meets all its characteristics, which, even in an incompletely deployed form, has a tremendous impact on man and society. In addition, the following should be noted. Some researchers, in the spirit of postmodern methodology, identify virtual reality generated by electronic technology with a "plausible world" similar to actual reality, but in fact its simulation. It seems that cyberspace is a world of simulacra. In fact, cyberspace is perceived as a virtual reality that involves remote communication and the transmission of information mediated by computers. Cyberspace cannot be reduced to the world of simulacra and that's why. Cyberspace is a communication system that includes various activities from advertising, publishing magazines, newspapers, distance education to sales in online stores. It is an "augmented reality" that expands human capabilities that lead to the formation of hyperreality, becoming an infrastructure technology that covers practically all areas of human life: from home care and older generation care in an aging society to automotive design, global education, games and recreation [41].

Thus, it is possible to create hyperclinics in which the doctor and the patient are in different places and to provide medical services at a distance. Probable are visits to virtual art galleries or museums; on-demand production, when the buyer chooses the design of a certain product, communicating with the designer, which is generated by a computer and programmed to communicate with the buyer. This is possible in the field of joint action, in which the buyer and the image of the designer have common knowledge about the product and its parameters. To facilitate the task, the buyer can create a 3D model of the product and view it from all sides, and after all the wishes are taken into account, the design solution will be sent to the production shop. In this way you can buy furniture and create an apartment design, travel and get an education.

In cyberspace, virtual reality has a pronounced instrumental nature: the ability to sell via the Internet, conduct financial transactions, play on the stock exchange and more. In addition, cyberspace has a huge potential for active use of technical virtual reality in the modernization of education, science, creates opportunities for social activity of people with disabilities and more.

That is why, we can agree with the conclusion of E. Taratuta that "… the Internet as a means of production and reproduction of signs and meanings may generate fewer simulacra than previous media …" [42].

Cyberspace is used less to construct simulacra than, for example, telecommunications, because communication on the Internet is mainly through a text environment that is alien to simulation. The peculiarities of creating virtual reality with the help of cyberspace are manifested in the fact that it provides great opportunities to influence actual reality through the expansion of the space of freedom. In our opinion, it is impossible to assess freedom in the XXI century so categorically negatively as the freedom of a man who "freed himself from duty, faith, tradition, roots, which did not give, as it seemed to him, freedom and flight, which turned out to be an 'absurd hero', free but not valuable to anyone" [43].

On the contrary, due to cyberspace there are rapid changes in public consciousness and moods of people, accelerating social transformations in society. Freedom of information, "digital libertarianism" [44, 69–80; 45, 235–243] faces the problem of censorship in cyberspace. Controlling the dissemination or complete banning of any information that can be published or downloaded from the World Wide Web is precisely in this context has the meaning of Internet censorship, which is technically possible within a single state. In China, for example, a special server (firewall) is used, which is installed on the Internet channel between users and the Internet service provider and deals with the filtering of information transmitted over the channel. Firewall is used by providers to protect against viruses and hackers, but is also used to block access to certain sites [46]. The activities of "digital dissidents" in providing "unfiltered" Internet access in China are severely curtailed. "Thematic filtering" is probably necessary because it eliminates information with elements of pornography, violence, and so on. This is done by many commercial companies, hence the importance of developing law and governance structures in cyberspace in order to block access to sites that contain information that is contrary to national law or morality. At the same time, we emphasize that the boundaries of cyberspace are blurred. If any information is prohibited in one country, users may use the information hosted on servers in another country where the information is not against the law.

Of course, there are general problems in cyberspace that were unlikely in the pre-computer revolution: cyberhumiliation, cyberbullying, and cyberharrassement, which lead to mental breakdowns; availability of pornography, pedophilia; other forms of computer dependence: the possibility of using personal data, invasion of the private sphere, etc. Some researchers believe that with the appearance of cyberspace, the human right to privacy is lost, be-

cause the information stored in the database can always be used for other purposes. Moreover, the proliferation of personal computers, which are not subject to centralized control, results in hackers and insiders gaining access to classified information.

The list of hacks includes computer networks of large banks, theft of files with valid credit card numbers, etc. Disinformation is carried out through cyberspace, thus new ethical and legal problems arise. And this has become so relevant that the problems of international Internet governance are discussed at the highest level [47]. The Internet is a "big street" the rules of conduct on which must be explained and followed.

There are other issues: the possibility of outsiders to access to classified information; protection of intellectual property (ideas) from theft; false advertising, etc. Hence there is the need to filter information. On the other hand, creating a VPN (Virtual Private Network) will help to achieve anonymity by having complete encryption from client to server.

It is almost impossible for any structure or state to fully control the World Wide Web. Bill Gates states that he sees no danger to the world at large if anyone tries to restrict the free dissemination of information through the Web. It is impossible to control the Internet. For most people, Google, Facebook, GPS are not control and monitoring systems, but available tools that help to work and live effectively.

Conclusions

Virtual reality is the result of the interaction of the objective and the subjective, it has the status of a random being, which is not fixed or not fully rooted in the social. Virtual reality is another reality, different from the main one, the boundaries of which are conditional; it is connected with freedom in various forms of its manifestation. In modern ontologies, it acquires a different meaning as something super-empirical, associated with artificially created technical means. There are different forms of manifestation of virtual reality, but they all come down to man, so it is advisable to consider virtual reality in a broad sense − as an integral part of culture.

Cyberspace has special characteristics: a combination of hypertext and hyperreality, which expands human capabilities. It is becoming an infrastructure technology that covers almost all areas of human life of a networked society. In cyberspace, virtual reality is characterized by a pronounced instrumental nature, interactivity, modification of spatio-temporal characteristics.

The need of man for freedom and the need for social interaction are inseparable from each other, are constant conditions of human existence and modern technological communications only help in this. Thanks to them, unprecedented opportunities for group interaction appeared. There are increasing communication tools that create a collective mind, "flowing planetary intelligence" [48] capable of rapid mobiliza-

tion, the functioning of which is diverse and unpredictable. There is an increase in the value of solidarity, mutual assistance (growth of the volunteer movement, selfless work for the benefit of society, an analogue of Soviet subbotniks, increasing the movement of international voluntary assistance), i.e. "social capital" (F. Fukuyama).

Virtual reality, formed by new information technologies, has contributed to the creation of a networked society, and the existence of cyberspace is its basis, which affects all spheres of public life.

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EU COVID-19 – A WINDOW INTO THE FUTURE: SCENARIOS FOR LEGAL EVOLUTION

It is often said that prediction is very difficult, especially about the future.[1] EU has been concentrated on the climate change for many years. However, changing a composition of primary energy source across the block would require trillions of Euro in investment and would like take many decades to implement. Then, the "force of randomness" showed its eternal force and brought the COVID-19 pandemic into the political and legal discourse across the world and within the EU.

The energy transition is not within the scope of this essay. But it is worthwhile to mention that, so far, in spite of decades of trying to find an alternative, fossil fuels still dominate as a source of primary energy worldwide and within the EU because of the astronomical cost and time required to transition to any known alternative. The COVID-19, unlike the energy transition, is an ongoing affair which has a dramatic effect on the operation of the EU common market and businesses across the members of the block already and these effects are likely to stay with us in the foreseeable future.

For about a century a combination of widely available antibiotics and sheer luck kept the EU and the rest of the industrialized West away from another global pandemic but, from the historical point of view, it was an exceptionally unusual period in our history.

Historic pandemics of antiquity and medieval times shaped the destiny of human civilization since the beginning

[1] The statement is often attributed to Niels Bohr who attributed the saying to Robert Storm Petersen (1882-1949). However, the original author of the statement is remain unknown

of the Neolithic Agricultural Revolution which started roughly ten thousand years ago.

In 430 BCE, during the second year of the Peloponnesian War between Athens and Sparta, an outbreak of plague erupted in Athens. The epidemic came from Africa via the city's port of Piraeus and killed around 30% of the population of Athens including the great Athenian general and statesman Pericles, his wife and two sons. Eventually, it weakened the Athenian Democracy and contributed to its demise.[1]

Numerous pandemics of various sizes were a fact of life in Europe for centuries and, in that respect, the 20th century was not any different from previous historical periods. Children born in the late 1800th lacked immunity to the virus of influenza which hit the world in 1918. The Spanish Flu of 1918 infected an estimated 1/3 of then population of the world or 500 million people and killed an estimated 50 million worldwide – 3.3% of the global population – before eventually dying out on its own.[2]

Seasonal flu strains may enjoy decades of dominance in the human population. These long periods often end with outbreaks of new varieties such as the 2009 H1N1 flu pandemic which may have killed an estimated 284,000 people worldwide but did not lead to a global shutdown unlike the COVID-19 pandemic.[3]

A single human death is a tragedy. However, statistically, so far, the COVID-19 pandemic caused 4,929,623 deaths (62,097 in Europe) worldwide as of October 20, 2021 or 0.062% of the current living population of the planet.[4] However, the economic and social cost of the COVID-19 pandemic in the EU and elsewhere is astronomical and already comparable to a recession caused by WWII.[5] Reasons for such a dramatic effect are multiple and are still not fully understood. At this point of the ongoing COVID-19 pandemic, it appears, the EU and the rest of the industrialized West had too much belief in its control of the natural world. After all, according to the current climate-related discourse, the Man is about to destroy the life on the planet by using too much fossil fuels and replacing a biologically diverse life with its livestock and cities.

[1] Kelaidis K., What the Great Plague of Athens Can Teach Us Now, the Atlantic, Mar 23, 2020, https://www.theatlantic.com/ideas/archive/2020/03/great-plague-athens-has-eerie-parallels-today/608545/

[2] US Centers for Disease Control and Prevention, 1918 Pandemic, retrieved on Otc 20, 2021, https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html

[3] Vergano D., Mystery of 1918 Flu That Killed 50 Million Solved?, National Geographic, Apr 29, 2014, https://www.nationalgeographic.com/science/article/140428–1918-flu-avian-swine-science-health-science

[4] Coronavirus Cases as of Oct 20, 2021, Worldometer, https://www.worldometers.info/coronavirus/

[5] Yeyati E., Filippini F., Pandemic divergence: The social and economic costs of Covid-19, May 21, 2021, https://voxeu.org/article/social-and-economic-costs-covid-19

As always in any politicized use of scientific conjectures and a multitude facts, the truth is somewhat more complex. The only highly dangerous viral disease which has been been successfully eliminated through worldwide immunization by 1977 was smallpox, a cause of numerous major epidemics in the past.[1] The problem of the spread of dangerous infections, whether viral or bacterial, is neither new nor limited to COVID-19. In fact, all of the historically dangerous infections (other than smallpox, perhaps) such as the black plague, tuberculosis and other infections still exist. Some of them evolved the antibiotic resistance. The COVID-19 is not even the most dangerous virus known to our medical profession. Our scientists do not and cannot even aware of all potentially dangerous viruses and bacteria which may spread in densely but sanitation and healthcare challenged jurisdictions.

The COVID-19 pandemic was an unexpected crisis which only underlined a spread of unwanted bacteria and viruses across the planet. Since April 2020, EU officials have been stating that "no one is safe until all safe" and promising to create a truly global public good as a champion of "vaccine equity". At the same time, the EU continuously blocked initiatives aimed at helping other countries produce their own vaccines and refused to recognize the WHO approved vaccines produced at lower- and middle- income countries outside the EU. On the one hand, the EU is one of the main financial supporters of COVAX, the global COVID procurement and distribution mechanism. On the other hand, the EU pre-booked 4.5 billion doses for its 450 million population (10 doses per resident) while COVAX distributed only 250 million vaccines to low- and middle-income countries worldwide. The EU, famously, is one of the main opponents of the TRIPS waver, a proposal at the WTO to allow countries to lift certain IP rights to produce COVID-19 vaccines worldwide. In fact, the EU seems to prioritize the interests of its own pharmaceutical industry over global medical needs caused by the pandemic. As a result an overwhelming majority of population of lower- and middle-income countries remains unvaccinated allowing new variants of the virus to emerge which eventually spread to the EU and the rest of the planet.[2]

The EU aspirational slogan "no one is safe until all safe" and a promise to create a global public good as a champion of "vaccine equity" can be applied to any number of infections which are historically and statistically much more dangerous than COVID-19 virus such as malaria, tuberculosis, the black

[1] Bradford A., Smallpox: The World's First Eradicated Disease, Livescience, Apr 24, 2019, https://www.livescience.com/65304-smallpox.html

[2] Medicines Sans Frontiers, European Union: more empty promises about global COVID-19 vaccine equity, Sap 15, 2021, https://www.msf.org/european-union-more-empty-promises-about-global-covid-19-vaccine-equity

plague and other. Reaching this aspirational goal would be especially important toward the elimination of the vaccine and medication resistant variants of various infections which were inevitably created as a direct result of the use and, often, misuse of antibacterial and antiviral agents.

As of September 2021, only 1.1% of population in low-income countries received at least one does of COVID-19 vaccine making it difficult to see how EU's stated strategy of "no one is safe until we all safe" can be implemented anytime in the foreseeable future. [1] Across the EU, the vaccination statistics are no uniform from 20.85% in Bulgaria to 79.74% in Spain (October 2022).[2] According to the same source, in Bucharest, close to 100% of COVID patents in hospitals are unvaccinated. Therefore, in spite of EU's stated global anti-COVID policy of "no one is safe until we all safe", it is not clear whether the block has a realistic chance of reaching this goal whether applied to COVID-19 or any other infection.

Historically, in the antiquity and in the Middle Ages, to a large degree, European city-states functioned as an assembly of self-sufficient units. Travel among these units was relatively limited and, in principle, there was a possibility to isolate them from each other. However, the knowledge about the origin of infections was at a rudimentary level and infections were attributed to random causes and a complete quarantine was never implemented or, perhaps, even in those distant days of the past, it was impossible. Contemporary industrialized economies are based on services. The EU common market has freedom of movement of its citizens as one of its key components. Large segments of economies of the block members have been severely affected by a restriction of travel across the EU and its borders. Based on the immediate economic affect, these regulations are extremely important for business across the EU and became an unexpected addition to pre-existent business law.

The division of competences between the EU and its member states is summarized at the start of the TFEU, which came into force in 2009.[3] When it comes to pandemics, the only area of shared competence between the EU and the members is "common safety concerns in public health matters"(Art. 4k); for the wider objective of the protection and improvement of human health (Art. 168). Article 168 of the TFEU specified

[1] Medicines Sans Frontiers, European Union: more empty promises about global COVID-19 vaccine equity, Sap 15, 2021, https://www.msf.org/european-union-more-empty-promises-about-global-covid-19-vaccine-equity

[2] McGrath S., Anti-vaxxers in eastern Europe risk entire Continent' sefforts to end pandemic, The Sydney Morning herald, Sep 29, 2021, https://www.smh.com.au/world/europe/anti-vaxxers-in-eastern-europe-risk-entire-continent-s-efforts-to-end-pandemic-20210929-p58vl6.html

[3] Treaty on the Functioning of the European Union, EUR-Lex, Oct 26, 2012, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

that the EU shall complement national policies in the area of public health, encourage cooperation between its member and, if necessary, support their action: "Member States shall, in liaison with the Commission, coordinate among themselves their policies and programs in the areas referred to in paragraph 1(of Article 168). The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organization of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed… The Union and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of public health" and *"complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health"*.

Article 168 of the TFEU is the main article on the subject of health which is a responsibility of national health services. The powers given to the EU to achieve these public health objectives are very limited. The only area where binding legislation is called for covers concerns of quality and safety standards for substances of human origin, blood and blood derivatives (Art. 168(4). At the same time, Article 168(5) mentions specifically that the "*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonization of the laws and regulations of the Member States"*.

The COVID-19 epidemic caused governments of the block to impose a variety of measures to fight the spread of the disease. Without pointing a finger at any particular EU member as it is unimportant for this essay it worth to mention that in the early days of the pandemic some governments' objective was not the protection of public health; rather, it was the prevention of public concern so as to avoid economic disruption. Travel restrictions and

other measures to limit social interactions were not imposed as soon as possible even if this would have caused a more extensive level of economic losses. The overriding objective was avoiding any economic harm. Once this objective became politically untenable, the new objective became creating collective or "herd immunity". This objective also produced a significant backlash, as the voting public began to realize that this would result in a total disruption of their daily routines and, in some countries, cause many deaths among the elderly and vulnerable. In general, the governments did not take serious measures to fight the epidemic until Spring 2020. Some governments have adopted relatively relaxed measures or adopted strict measures late, while some have been more proactive and implemented restrictions early on. There was a scramble over protective masks and vaccines. Eventually, as mask and vaccine production ramped up, the scramble subsided and went away.

No two governments were exactly the same. As the crisis unfolded, however, it became clear that the preparations were inadequate at various levels – there were insufficient testing, tracing and monitoring capabilities, there were not enough masks and protective clothing and equipment, the capacity of hospitals and intensive care units appeared to be inadequate, there was no system in place for the distribution of COVID-19 patients across hospitals and there was no system for population measurement of body temperature. For comparison, Vietnam which has a common border with China demonstrated a high level of readiness to a new infection and reacted to another pathogen coming from China with a lightning reaction and utmost coordination.[1] Vietnam achieved one of the lowest number of fatalities caused by COVID and can serve as an example for the EU, all of its members and any other government.

So far, after several months of negotiations which help the virus to spread widely all over the block, the EU developed he EU Digital COVID Certificate as a pre-condition for free movement across the EU.[2] At the moment, only EU citizens and legal residents may get the EU Digital COVID Certificate.

Vaccine passports have been used in various countries across the EU in an attempt to cut Covid infections. France, one of the most populous members of the EU, introduced its vaccine passport on August 9, 2021. According to the passport mandate, a recent negative test or a proof of vaccination is now required to enter public spaces, including restaurants, shopping malls and the like

[1] Jones A., Coronavirus: How 'overreaction' made Vietnam a virus success, BBC News, May 15, 2020, https://www.bbc.com/news/world-asia-52628283

[2] European Commission, EU Digital COVID Certificate, Retrieved on Oct 20, 2021, https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_en#what-is-the-eu-digital-covid-certificate

plus trains or planes.[1] A somewhat different approach has been chosen by Austria which became the first EU member to make vaccination against COVID-19 compulsory from February 1, 2021. In addition to making vaccination mandatory, Austria declared a full lockdown for the whole population for twenty days which will remain in place for the unvaccinated after the broader lockdown ends.[2] Explained by the Austrian Chancellor, the drastic new vaccination policy wan not designed to punish those who aren't vaccinated but it was meant to prevent those who have been vaccinated from being held hostage by unvaccinated minority while doing otherwise would have failed to address the fact that the growing pressure on the country's hospitals which has been largely created by unvaccinated patients.[3] Under the vaccine passport approach represented by France, those who are unvaccinated can still access public spaces if they can produce a proof of having recently recovered from Covid-19 or a recent negative Covid-19 test while under the Austrian mandatory vaccination system only those who were vaccinated and those who recently recovered from Covid-19 cab enter public spaces subject to legal repercussions if they refuse to get vaccinated. Since Austria declared its new vaccination regime a number of its neighbors – Germany, the Czech Republic and Slovakia – announced that they will introduce tighter restrictions on the unvaccinated.[4] As of November 17, 2021 a percentage of fully vaccinated reached 69.5% in France while it stood at somewhat lower 66.1% in Austria while reaching 68.4% in Germany and 72.2% in Italy.[5] In other words, even though the percentage of vaccinated in Austria was somewhat lower than in some other major EU countries, the difference was not that large. In comparison, as of November 17, 2021, only 34.6% of Romanians and 22.8% of Bulgarians have been fully vaccinated. We are still in the middle of the Co-

[1] Young L., COVID-19 cases down after France introduced its vaccine passport – will the same happen in Canada?, Global News, Sep. 2, 2021, https://globalnews.ca/news/8162976/france-vaccine-passport-cases-covid/

[2] Hart R., 'We Have to Face Reality': Austria Announces Nationwide Vaccine Mandate, Full-Scale Covid-19 Lockdown, Forbes, Nov. 19, 2021, https://www.forbes.com/sites/roberthart/2021/11/19/we-have-to-face-reality-austria-announces-nationwide-vaccine-mandate-full-scale-covid-19-lockdown/?sh=23e33224388b

[3] Serhan Y., The New Pandemic Division Tearing Europe Apart, The Stlantic, Nov. 20, 2021, https://www.theatlantic.com/international/archive/2021/11/europe-unvaccinated-lockdowns/620747/

[4] Lopatka J., Hovet J., Czech Republic and Slovakia tighten COVID-19 curbs for unvaccinated, Reuters, Nov. 18, 2021, https://www.reuters.com/world/europe/czech-govt-bars-unvaccinated-restaurants-services-covid-cases-jump-2021–1118/?taid=619688e9f8fc350001fa45c4&utm_campaign=trueAnthem:+Trending+Content&utm_medium=trueAnthem&utm_source=twitter

[5] Harris C., COVID vaccine: Who in Europe is leading the race to herd immunity?, Euronews, Nov. 11, 2021, https://www.euronews.com/2021/11/17/covid-19-vaccinations-in-europe-which-countries-are-leading-the-way

vid pandemic and, most likely, the percentage of the fully vaccinated is only one of several metrics which determine the gravity of the pandemic in a particular country while having mandatory vaccination vis-a-vis the vaccination passport regime may or may help to tackle the pandemic in the long run. At this point of time, it appears that vaccination mitigates the effects of COVID while being 91% effective at preventing infections among fully vaccinated.[1]

In the Middle Ages and in the Antiquity, the global population was quite small and dispersed which helped to slow down pandemics or even stop them (or they stopped themselves). As the population is approaching eight Billion and may reach a nine billion mark by 2050, we cannot rely on our immune system's natural ability to develop immunity to a novel infection as it may spread too fast for our society to subdue it.

The issue of allowing only a "safe" person to enter the EU, a country or a business is likely to emerge a follow-up after the COVID-19 pandemic which, to be honest, may never end completely. After all, each and every year we get another version of influenza and a new vaccine.

However, obviously, this is a start of a process of movement toward a standard universal digital "potential carrier of a dangerous microorganism" card. What is more important? Having a visa or right to travel? Or potentially carrying something which may start another pandemic or render a few effective antibiotics ineffective and, as a result, making surgical procedures and other medical treatments impossible? Of course, the latter.

States may legitimately restrict particular fundamental principles or freedoms by way of exceptional measures in order to protect human life and health, on condition that such measures are limited to what is strictly necessary and proportionate, are temporary solely for the duration of the crisis and its immediate aftermath and subject to regular scrutiny by Parliaments and the courts.

Given a choice, which approach to a new pathogen a reasonable voter would prefer? A long deliberation of various pros and cons of restricting the right to travel or the right to social interaction as soon as possible even this may prove to be unjustified but may save thousands of lives or a slow deliberate process of following various protections of the freedom of movement safeguards? In the first case, business are likely to suffer higher losses while in the second case any new dangerous infection is guaranteed to grow into a new pandemic.

We know that visiting certain jurisdictions is a virtually guaranteed way of brining dangerous bacteria and viruses back to a much safer jurisdiction. If so, why do we still allow tourists to come

[1] Crist C., Study: Those Vaccinated Who Get COVID Carry Less Virus, Jul 2, 2021, WebMD, https://www.webmd.com/vaccines/covid-19-vaccine/news/20210702/study-says-vaccinated-people-who-get-covid-carry-less-virus

back from those parts of the world without a mandatory quarantine? Obviously, the introduction of the mandatory quarantine for any visitor coming pack from certain jurisdiction would restrict tourism and damage business interaction with these jurisdictions.

Social responsibility means that businesses, in addition to maximizing shareholder value, should act in a manner that benefits society. Socially responsible companies should adopt policies that promote the well-being of society and the environment while lessening negative impacts on them.

Perhaps, any business sending EU tourists to less than sanitary safe parts of the world should give them a sufficient warning or even suspend certain directions for their business in order to prevent a spread of dangerous infections and microorganisms in the EU…

On the one hand, the COVID-19 crisis does not justify any kind of discrimination based on nationality or any of the other criteria and in the situations recognised as unacceptable under anti-discrimination laws in Europe. On the other hand, if we know that a single unvaccinated individual coming legally or illegally from certain parts of the world or one of the EU countries may cause another pandemic, should her freedom of travel right override safety of the resident population?

Any measures taken by States as a response to the COVID-19 crisis must be applied in a non-discriminatory manner and scrutinised for any unintended discriminatory effects. Outside the EU, in Singapore has one of the highest vaccination rates of 85% of the population. During the pandemic, Singapore's government has been covering the medical bills of the Covid-19 patients. However, as the share of full vaccinated residents grew to an obviously high figure, the government noticed that the unvaccinated started being a sizeable majority of those who required expensive long-term inpatient care and, therefore, placing a disproportional strain on the Singapore healthcare system. Then, based on this observation, from December 8, 2021 the government of Singapore made a decision to charge a full cost of the Covid-19 treatment to those who decided to remain unvaccinated by their own choice or without a valid medical justification.[1] Austria became the first EU country to treat the Covid-19 vaccination as a legal obligation. Faced by another wave of Covid, some of the EU members may look at Singapore for a novel way of forcing the unvaccinated by choice to get vaccinated as well.

Borders within the EU should as far as possible remain open for Union citizens and their family members, and every EU Member State must allow its own residents to enter, irrespective of nationality, and should facilitate transit

[1] Treisman R., Singapore will stop covering the medical bills of invaccinated COVID-19 patients, NPR, Nov. 9, 2021, https://www.npr.org/sections/coronavirus-live-updates/2021/11/09/1053889069/singapore-medical-bills-covid-19-patients-unvaccinated-by-choice

of individuals returning to their homes. Schengen principles as well as bilateral and multilateral agreements should remain in place also for States that are non-EU Member States, but which are party to those agreements.

The movement of people across within the EU is one of the fundamental achievement and benefits of the Union but given what we know about the ongoing pandemic, most likely, this essential achievement is likely to be curtained in the forseable future. In theory, a complete closing of the borders for individuals enjoying freedom of movement should generally be considered a disproportionate response where less intrusive measures, such as quarantine and testing, are feasible.

National healthcare systems are not the same across the EU and the EU has a very limited way to get directly involved in their unification. For decades, the EU has been actively involved in making economies of its members as climate friendly as possible while national healthcare systems remained outside its primary focus. The climate change and a widely discussed elsewhere energy transition is a long-term process whose outcome is by no means obvious but outside this essay while the COVID-19 pandemic is an immediate concern which has a potential of overwhelming any other deliberations inside the EU. Aside from the cost of the pandemic which is already astronomically high and growing, a number of important legal issues emerged already.

1. A situation with the effectiveness of new vaccines and their long-term effects is somewhat similar to the validity of the long-term climate models where their always a degree of uncertainty attached to any conclusion. A certain percentage of residents of any country would remain hesitant to get a novel vaccination or even prepared to take their chances without getting vaccinated. What is a limit of state power when it comes to convincing the unvaccinated by choice to get a vaccination and is it permissible to push the unvaccinated to the brink of society by effectively banning them from any public space?

2. No two countries in the EU or worldwide are exactly the same when it comes to tackling the pandemic. A simple way of comparing two countries would be to look at their respective shares of fully vaccinated residents. Some of the EU members have reasonably high vaccination rates at more than 70% while a few members are still at around 30% facing unmitigated crisis within their healthcare systems. Should the EU interfere and stimulate the outsiders to work more actively to having their residents vaccinated? What is an optimal number? As close to 100% as possible?

3. Travel within and outside the EU. Based on a number of new Covid-19 infections, US CDC recently added Germany, Denmark and the Netherlands to a list of “Level 4” destinations advising US residents to avoid traveling to these

countries.[1] US CDC classifies destinations based on a number of new Covid-19 cases per 100,000 people over the last 28 days. Based on this metric, for example, India whose number of the unvaccinated exceeds a total population of the EU, is categorized as a Level 1 low risk destination.[2] While the US CDC issues its travel advice it does ban travelling to various destination which is a completely different approach from making it a legal mandatory requirement to get a vaccination.

4. Data reliability across jurisdictions. According to the US CDC classification, when it comes to COVID-19, India is safer than Germany, Denmark and the Netherlands which is a paradox as India is a low income country with problematic health care system in comparison with some of the wealthiest countries in the EU. One of the advantages of the information revolution of the Internet is an ability to search multiple sources of information in real time. A quick search revealed that a number of sources which investigated how statistics work in India learned that its official statistics massively underreport all infectious diseases such as malaria and other as well as both births and death including those from COVID-19.[3] According to the WHO some 40% of the global population and living almost entirely in developing nations lack basic sanitation facilities.[4] If billions live in the unsanitary circumstances mostly outside the industrialized world and there are reasons to doubt official health related data coming from some of the most populous jurisdictions on the planet, then, a global reliance of the WHO and UN style mechanisms for the safety of their nations is clearly due for re-examination.

5. The European Court of Justice has recently rejected two complaints against mandatory Covid-19 vaccinations, one behalf of full-time voluntary members of the French Department of Fire and Emergency Services and the other one from a group of Greek health professionals. The French applicants argued that the requirement to be fully vaccinated breached both their right to life and their right to respect for family and private life (under articles 2 and 8, respectively, of the European Convention on Human Rights. The Greek applicants alleged that the vaccine mandate was contrary to the right to life, the right to respect for private and family life, the prohibition of inhumane and

[1] Fox A., CDC Adds Germany, Denmark to Highest Travel Warning Level As Europe's COVID-19 Cases Continue to Rise, Travel+Leisure, Nov. 23, 2021, https://www.travelandleisure.com/travel-news/more-european-countries-germany-denmark-level-4-cdc-travel-warning

[2] CDC, COVID-19 Travel Recommendations by Destination, Nov. 22, 2021, https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html

[3] Chotiner I., India's Uncountered Covid-19 Deaths, The New Yorker, Apr. 27, 2021, https://www.newyorker.com/news/q-and-a/indias-uncounted-covid-19-deaths

[4] Biswas S., Coronovirus: Are Indians more immune to Covid-19, BBC News, Nov., 2, 2021, https://www.bbc.com/news/world-asia-india-54730290

degrading treatment, the prohibition of slavery and forced labour, the right to liberty, the right to a fair hearing, and the prohibition of discrimination under articles 2, 8, 3, 4, 5, 6, and 14, respectively, of the European Convention on Human Rights. The Court rejected both applications stating that it can grant requests for interim measures only if the applicants would otherwise face a real risk of irreversible harm. In other words, the applicants failed to demonstrate that a mandatory vaccination puts them in a real danger. In one of the earlier cases, the Court acknowledged, that while a vaccine mandate is in infringement of one's private life, it was justified for the protection of public health.[1]

Conclusion

The EU worked hard to expand its jurisdiction to cover environmental and energy matters while health care remained predominantly with jurisdictions of member-states. The future of the EU wide energy transition encapsulated in the EU Green Deal is a highly uncertain matter whose future evolution is unknown. In the meantime, the outcome of the ongoing Covid-19 pandemic is pressing matter which is not going away in the nearest future if ever…

The future is unwritten. If the EU wants to have a say in the future of the world beyond its shrinking share of the global economy and a small share of the world's population it has to offer a "unity of action" in addition to an array of aspirational goals.

Any major pandemic, would require a unified well-organized response of the EU members. Such a response would have to be "pre-negotiated" as there is no time for negotiations once a new pandemic has been identified. At the same time, for decades prior to the COVID-19 pandemic, we experienced a show but inexorable spread of antibiotic resistant bacteria and novel viral infections due to the ease of travel across the borders.

There are a number of aspects of the EU business law which would have to accomodate the ongoing loss of antibiotic effectiveness, the spread of new infections from certain parts of the world and a need to monitor border crossings between the regions with various state health care within the EU. A number of businesses such as hospitality and tourism which are responsible for a very large number of jobs across the EU would have face its social and, very likely, legal responsibility for a "full cost" of their activities such as a potential spread of novel and evolved pathogens. In theory, they are subject to various sanitary norms already but these requirement, even if followed by the book, were completely inadequate for the spread of COVID and other infections.

The COVID-19 epidemic caused governments in Europe to impose a variety of measures to fight the spread of

[1] Owens R., European Court of Human Rights Rejects Requests to Suspend Mandatory Covid-19 Vaccinations, Human Rights Pulse, Nov. 4, 2021, https://www.humanrightspulse.com/mastercontentblog/european-court-of-human-rights-rejects-requests-to-suspend-mandatory-covid-19-vaccinations

the disease. Some governments have adopted relatively relaxed measures or adopted strict measures late, while some have been more proactive and implemented restrictions early on. Eventually all the government were forced to adopt its version of restriction on the freedom of movements across the border and social interaction while a number of fatalities mounted. Had they worked quickly from a pre-agreed plan they would have limited effects of the pandemic from an early stage. Therefore, a concern over economic losses has to come secondary over the concern over public health and safety.

ABSTRACT

T*he EU competence in the area of health care has been limited and concentrated primarily in the area of pubic health orienting EU action in this area towards population-level measures and away from the involvement in the national health care services.*

The ongoing COVID-19 pandemic caused an enormous disruption to the operation of the EU-wide economy whose effects are likely to be felt for many years in the future.

From the one perspective, the COVID-19 pandemic has been a completely unexpected event. From the other perspective, pandemics were a usual occurrence throughout the human history.

The gravity of the COVID pandemic across the EU warrants a unified anti-fragility campaign across the EU and its trading partners which may require adding a whole new public health care layer to the EU common market infrastructure possibly based on the extended version of the EU Digital COVID certificate

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LEGAL STATUS OF THE UNION REPUBLICS DURING THE REBUILDING (1985-1991)

Abstract. *The relevance of the topic of the article is determined by the very specific features of coexistence and interaction of central and local authorities, which is expressed in the objective need to find in each case effective mechanisms for balancing and reconciling their interests. The purpose of the article is to study the complex and contradictory processes of the rebuilding period in the USSR, related to the implementation of administrative reform by M. S. Horbachov, in particular, such an important component as the separation of powers between the union and republican bodies of state power and administration. With the use of formal-legal, logical-legal and historical-genetic methods, thor-*

ough conclusions are made about the reasons for the failure of M. S. Horbachov in the separation of powers between the center and the seats. Based on the application of the comparative historical and legal method, the peculiarities of administrative reform in some Soviet republics are singled out. The activities of the ruling elite of the USSR aimed at transforming the state mechanism through the redistribution of powers between the union and republican authorities are gradually analysed with the involvement of normative and legal material. The concrete steps of the union republics to declare their sovereignty in the conditions of deteriorating domestic political situation in the USSR are considered. The process of preparation for the adoption by the Soviet republics of the new Union Treaty as a way of overcoming the crisis that engulfed the USSR at the end of the perestroika M. S. Horbachov. The practical value of scientific work is manifested in the following provisions: decentralisation processes through the redistribution of powers between central and local authorities should be comprehensive, well-planned and conducted based on scientifically developed models; professionalism and general competence of elites become a critical factor in the context of large-scale managerial reforms; the category of time is the most important resource during the state and legal transformations in the conditions of intensive technological development

Keywords: *USSR, rebuilding period, administrative reform, M. S. Horbachov, delimitation of powers, the Ukrainian SSR, the Baltic republics, the Union Treaty*

INTRODUCTION

In the early 1980s, the discrepancy between the governing contour of the USSR, which had been formed in the 1930s in the mode of mobilising socio-economic development, and the socio-political relations that had developed in the country became objective. Problems were added by the scientific and industrial base, which became much more difficult in conditions of constant competition with the bloc of Western countries. Despite the fact that a full-fledged transition to a new technological system in the USSR did not take place, however, the emergence of new sectors of the economy with sophisticated innovative production technologies required a corresponding complication of the mechanism of state power and renewal of the ruling elite. The situation was exacerbated by the fact that the world was entering a new phase of technological development, and therefore there was critically little time for administrative reform in the USSR. The arrival of M. S. Horbachov to power in 1985, in addition to the internal party hardware struggle, was conditioned by these challenges of the time, becoming a symbol of the necessary changes that are long overdue.

The main chronic problem of the USSR, which hindered the harmonisation of the governing and controlled circuits, was the excessive centralisation of all power functions and powers. The immediate negative consequences of the huge concentration of power in a single command center were: the growth of the bureaucracy, the deterioration of basic economic indicators and

slowing economic growth, the general imbalance of the economy, the degradation of production assets and others. Under such conditions, the goal of the planned transformations was to preserve the Soviet system as a whole by modernising and liberalising those of its elements that had long since ceased to meet modern requirements. M. S. Horbachov and his associates were the first generation of politicians who were not directly associated with the Stalinist regime, and therefore in this regard could be the initiators of the implementation and successful completion of all necessary reforms in the USSR. To achieve their goals MS Horbachov chose a new, democratic style of leadership, based on two new principles: "publicity" and "broad democracy".

It is noteworthy that from the very beginning of the reforms M. S. Horbachov faced fierce resistance from the party apparatus, which, seeing the policy of "rebuilding" as a threat to their interests, began to actively oppose it. The policy of publicity and democratisation also quickly spiraled out of control. The development of political pluralism led to the spread of multipartyism in the Soviet republics and the rapid displacement of the CPSU monopoly in the political sphere. The growth of political activity of the population led to a pronounced polarisation in the ideological sphere and seriously destabilised society. Subsequently, these negative phenomena and processes acquired their own dynamics, proving the inability of the new government to cope with the crisis that began to unfold in all spheres of socio-economic and political life. The immediate consequence of this was the rapid collapse of the USSR and the declaration of independence of the former Soviet republics. Describing the dramatic processes that unfolded in the 80–90's of XX century on the Eurasian continent, Z. Bzhezinskii quite aptly noted that "like many previous empires, the Soviet Union eventually exploded from within and split into pieces, falling victim not so much to direct military defeat as to a process of disintegration accelerated by economic and social problems. The collapse at the end of 1991 of the world's largest state contributed to the formation of a "black hole" in the heart of Eurasia. It was as if the central and geopolitically important part of the land were erased from the map of the Earth" [1].

Given all the above, it is clear that the problem of separation of powers between central and local government is extremely relevant. The pronounced bias in one direction or another is fraught with excessive centralisation with the blocking of local political life and further stagnation of economic activity, and pronounced centrifugal processes with the progressive disintegration of a single state body. Creating an effective system of balancing and reconciling the interests of the center and places is a non-trivial matter and depends on many factors – which is why

scientific research in this area will always be very relevant. Interestingly, the issue of delimitation of powers between the USSR and the Union republics during the rebuilding period has repeatedly been the subject of attention of foreign and domestic experts in the field of history of state and law. Thus, changes in the legal status of the union republics and their highest authorities were considered by such domestic scholars as V. Honcharenko [2] and A. Omarova [3]. The problem of forming a general balance in the construction of state power was dealt with by O. Skrypniuk [4]. The issues of decentralisation of the administrative-territorial system in the conditions of the constitutional process in modern Ukraine were well covered by Yu. Shemshuchenko [5] and others. Foreign scientists, such as L. Holmes [6], S. Grybkauskas [7], R. Ruutsoo [8], R. Vebra [9] and others, studied the issues of democratic processes that took place in the USSR during the perestroika, as well as the issues of Soviet federalism and its transformation.

Given the wide use of the comparative historical and legal method in the article, we must also mention the work of those modern scholars who, although engaged in scientific research in another area, nevertheless provided greater concretization and adaptation of general scientific comparative method to the needs of historical legal science. The results of their comparative scientific work were used in writing this article. Among the mentioned works, in particular, we can name the research of R. Kazak [10], D. Lukianov, H. Ponomariova and A. Tahiiev [11], D. Lukianov, V. Steshenko and H. Ponomariova [12], V. Ermolaev [13], O. Lutsenko [14], R. Shapoval, Yu. Bytiak, N. Khrystynchenko and Kh. Solntseva [15], Yu. Vystavna, M. Cherkashyna and M. van der Valk [16] and so on.

The purpose of this scientific article is to study, with a careful analysis of the relevant legal framework, the attempts of the ruling elite of the USSR in the second half of the 80's of XX century to carry out the muchneeded administrative reform by separating the powers between the allied and republican bodies of state power and administration.

1. MATERIALS AND METHODS

The scientific novelty of the article lies in the analysis and generalization of normative and legal material, which was the basis for the redistribution of powers between the central and republican authorities of the USSR during the perestroika period. The practical value of the study is manifested in a number of provisions that are critical during such state and legal transformations, the content of which is disclosed in the final conclusions.

In the course of scientific research, a number of special scientific methods were used, in particular, formal-legal, logical-legal, historical-genetic and comparative historical-legal. The complex application of these means of scientific knowledge in accordance with

the research task allowed to obtain results with a high degree of reliability and to carry out the necessary theoretical generalization.

The use of the formal-legal method made it possible to analytically study the legal framework laid down by the party nomenclature of the USSR, headed by M. S. Horbachov as the basis for the implementation of the necessary transformations associated with the distribution of power between the center and the Soviet republics. Thanks to this tool, it became possible not only to study the relevant Soviet legislation in general, but also to interpret its specific legal requirements, which allowed at a higher research level to clarify the specifics of state and legal changes during the perestroika period. Purposeful application of the logical-legal method based on forms of thinking and the laws of formal logic, helped to obtain reliable and meaningful conclusions in the analysis and further explanation of those rules of law governing the redistribution of powers between the USSR and the Union Republics. In addition, the logical analysis of the content of historical and legal norms allowed to establish the scope of their content, and to identify the real motivation of the union and republican legislative bodies. The importance of the logical-legal method is manifested in the fact that its use allows to restore and reconstruct state and legal phenomena and processes without violating the structure that is inherent in them.

With the help of the historical-genetic method, the causal relations and regularities that accompany the processes of reforming the administrative apparatus of supercentralised state formations were reflected. The value of the historical-genetic method is manifested in the selection and fixation of specific historical states of the studied object with their subsequent reproduction as certain structures. Separation conditioned upon its use of historically consistent stages of transformation of the USSR state mechanism during the rebuilding period allowed to fully restore the complex and controversial process of separation of powers in this country in the second half of the 80s of XX century.

Generalisation of the results of the study became possible through the use of comparative historical and legal method. Since the contradictory processes of decentralisation initiated by M. S. Horbachov, received their significant specificity in each of the Soviet republics, then, accordingly, their comparison allowed to achieve greater concretization of the identified patterns, and to record objective significant links between related state and legal phenomena and processes. The transition from the empirical to the theoretical stage of the study with its generality, abstractness and systematicity was also due to the use of a comparative approach. In general, the comparative historical and legal method occupies a special place among other means of scientific knowl-

edge. This is primarily conditioned upon the specific features of the subject of historical and legal science, which inextricably includes the historical perspective with its retrospective and legal, which consists in the formalisation of legal dogma.

In this context, it should be noted two aspects of the comparative historical and legal study of state and legal phenomena, which have become quite relevant during our research. First, the special cognitive role of such a study is conditioned upon the fact that it involves the consideration of phenomena in their development and the disclosure of their diverse properties in the process of this development. And, secondly, the advantages of applying the comparative historical and legal method are the breadth of coverage of the studied phenomena. Explained by the fact that this tool of scientific knowledge involves the parallel study of at least two phenomena or processes, the researcher gets a very unique opportunity to trace the complex nature of their relationship both with each other and with other phenomena and processes. The consequence of this is to minimise the risk of interpreting the studied state and legal objects as isolated and completely isolated manifestations of historical and legal reality.

2. RESULTS AND DISCUSSION

2.1. Implementation of administrative reform in the USSR in the conditions of rebuilding

Rebuilding put on the agenda the issue of radical reform of the existing national-state system of the USSR, including such an important component as the division of powers between the USSR and the union republics. And this is quite natural. At the same time, it is impossible not to agree with V. A. Mikhalevych, who argues that "the key issue of any federation is the question of the separation of powers between the federation and the subjects of the federation" [17]. At the legislative level, this issue has been most active since the beginning of 1989. Thus, on March 13, 1989, the Presidium of the Supreme Soviet of the USSR adopted aresolution "On the Draft General Principles of Restructuring the Management of the Economic and Social Sphere in the Union Republics on the Basis of Expanding Their Sovereign Rights, Self-Government, and Self-Financing" No. 10210-XI. And on April 11, 1989, the Presidium of the Supreme Soviet of the USSR heard information from a working group of deputies on the implementation of the order of the Supreme Soviet of the USSR related to the preparation of a proposal to delimit the competence of the USSR and republics and adopted the relevant resolution No. 10292-XI. This working group was formed by the Presidium of the Supreme Soviet of the USSR on December 28, 1988. As a result, the Presidium in its resolution "On the Establishment of a Working Group of Deputies of the Supreme Soviet of the USSR to Prepare Proposals for De-

limitation of Jurisdiction of the USSR and Republics" No. 9968-XI decided to submit proposals to the working group of the USSR and interethnic relations. In this approach, T. Remington considered the possibility of eliminating tensions between nationalities as a result of "a new balance between the respective powers of the republics that are part of the federal center" [18].

On May 25-June 9, 1989, the first Congress of People's Deputies of the USSR took place in the Kremlin Palace of Congresses in Moscow. This new highest body of power was provided by the Constitution of the USSR in 1977 in the wording of the Law of the USSR of December 1, 1988. The Congress, in particular, elected the Supreme Soviet of the USSR, and its chairman – M. S. Horbachov, who at that time also held the post of General Secretary of the CPSU Central Committee. The Congress also established a Constitutional Commission to prepare a new Constitution of the USSR [19]. The deputies of the Congress heard and discussed the report of M. S. Horbachov "On the main directions of domestic and foreign policy of the USSR". Resolution No. 39-I, adopted on this issue, did not ignore the issue of the federal system of the USSR. The Congress recognised the need for strict observance and significant expansion of the rights of the union republics. The resolution also stressed that the constitutional provision, according to which the competence of the USSR is to establish the foundations and general principles of law, and the adoption of laws of direct effect is the prerogative of the republics, must be observed as one of the basic principles of the federal state. The resolution of the Supreme Soviet of the USSR "On the organisation of work on the implementation of instructions given to the Verkhovna Rada by the Congress of People's Deputies of the USSR" of July 24, 1989 No. 257-I contained a paragraph according to which the Council of Nationalities of the Supreme Soviet proposals for a clearer delimitation of the competence of the USSR and the union republics, based on the fact that the union republic independently exercises state power on its territory, resolves all issues that are not transferred to the USSR.

While at the union level they continued to study the question of delimitation of powers between the USSR and the union republics and thus leave intact the full power of the union center, in the country some union republics began to expand their powers independently, regardless of it. Thus, the Decree of the Presidium of the Supreme Soviet of the USSR "On Inconsistency of Certain Provisions of the Law of the Estonian SSR "On Amendments to the Constitution (Basic Law) of the Estonian SSR" and the Law of the Estonian SSR "On Elections to Local Councils of People's Deputies of the Estonian SSR" of August 16, 1989 No. 399-I declared inconsistent with the Constitution of the USSR and the international legal obli-

gations of the USSR the provisions of these laws on the residency requirement for participation in elections and elections to the Soviets of People's Deputies, including restrictions on military participation in elections. It should be noted that the Presidium of the Supreme Soviet of the USSR also accused the Estonian SSR of violating human rights enshrined in international legal acts ratified by the USSR, including the International Covenant on Civil and Political Rights, which provides that every citizen should have the right and the opportunity, without any discrimination and without undue restrictions, to vote and to be elected in genuine periodic elections which shall be by universal suffrage and shall be held by secret ballot and guarantee the free expression of the will of the electorate. It is believed that the Estonian SSR's accusations of human rights abuses were intended to discredit the Baltic republic before the international community and thus warn it against further constitutional action contrary to Union law.

At the same time, it became clear that to leave without motion the question of rational separation of powers between the USSR and the union republics was no longer possible. At the same time, we must agree with the opinion of R. Dorff, who emphasised that without a willingness to negotiate and compromise, and a desire for open negotiation and a desire for adaptation, it may not be possible to achieve true federalism or even maintain it incompletely [20]. One of the first steps towards increasing the role and legal status of the union republics was the Law of the USSR "On the Economic Independence of the Lithuanian SSR, the Latvian SSR and the Estonian SSR" No. 232-I adopted on November 27, 1989. However, if you carefully analyse the content of this law, it becomes clear that the declared "independence" of the union republics was quite limited, as it had to be carried out without departing from the Constitution of the USSR. The word "USSR" appears in most articles of this Law.

The question of the division of powers between the USSR and the union republics was in the field of view of the Second Congress of People's Deputies of the USSR, which began its work in Moscow on December 12, 1989. Thus, the resolution adopted by the Congress on December 19, 1989 "On Instructions to the Supreme Soviet of the USSR and the Constitutional Commission on Certain Issues" instructed the Supreme Soviet of the USSR to accelerate the adoption of the law "Separation of Powers between the USSR and the Union Republics" No. 951-I.

On March 12–15, 1990, the Extraordinary Third Congress of People's Deputies of the USSR was held in Moscow. After a sharp, intense discussion on the introduction of the post of President of the USSR in the USSR, the deputies of the Congress adopted the Law of the USSR "On the Establishment of the Post of the President of the USSR and Amendments to the Constitution (Basic

Law) of the USSR" No. 1360-I on March 14, 1990. The law provided for the establishment of the post of President of the USSR and established the provisions on the absence of changes in the legal status and competence of the Union and Autonomous Republics, enshrined in the constitutions of the Union and Autonomous Republics and the USSR Constitution. Thus, the law, so to speak, preserved the existing legal status of the union republics, which fully suited the union center and provided it with the supremacy of power in the USSR. However, this state of affairs did not suit some union republics. This is evidenced by the decision of the Verkhovna Rada of the Lithuanian SSR "On the Restoration of Independence of the Lithuanian State" No. I-12, which announced March 10–12, 1990 on the restoration of independence of the Lithuanian state, repeal of the Constitution of the Lithuanian SSR and the Constitution of the USSR. This decision of the Supreme Soviet of the Lithuanian SSR on the part of the union center was quite operative. Thus, on March 15, 1990, the Extraordinary Third Congress of People's Deputies of the USSR adopted a resolution "In connection with the decision of the Supreme Soviet of the Lithuanian SSR of March 10–12, 1990" No. 1366-I, which, in particular, stated that the Congress considers these unilateral decisions of the Verkhovna Rada of the Lithuanian SSR to be without legal force, contrary to Articles 74 and 75 of the Constitution of the USSR, and therefore invalid. In addition, the Congress recognised that, in accordance with these articles of the Union Constitution, the sovereignty and validity of the USSR Constitution continued to extend to the territory of Lithuania as the Union Soviet Socialist Republic.

The analysed resolution also instructed to ensure the protection of the legal rights of every person living in Lithuania, and the observance of the rights and interests of the USSR and the union republics in the territory of the Lithuanian SSR. This resolution contained another provision that was of a cautionary nature not only for the Lithuanian SSR but also for other union republics. This provision enshrined that, having the constitutional right to self-determination, the union republic, however, can not, both when entering and leaving the federation, ignore the political, socio-economic, territorial and other problems that arise. However, the Resolution of the Congress of People's Deputies of the USSR of March 15, 1990 did not stop the leadership of the Lithuanian SSR from actions that, according to the union bodies, went beyond the powers of this union republic. This was stated in the Decree of the President of the USSR "On Additional Measures to Ensure the Rights of Soviet Citizens and Protect the Sovereignty of the USSR in the Lithuanian SSR" of March 21, 1990 No. 3 and in the Resolution of the Supreme Soviet of the USSR "On Legal Status People's Depu-

ties of the USSR from Lithuania" of March 26, 1990 No. 1383-I.

The USSR Law "On the Establishment of the Post of the President of the USSR and Amendments to the Constitution (Basic Law) of the USSR" of March 14, 1990 No. 1360-I excluded from the preamble of the USSR Constitution provisions on the leading role of the Communist Party. Instead, the new provision of Art. 6 stipulates that the Communist Party of the Soviet Union, other political parties, including trade unions, youth, other public organisations and mass movements through their representatives elected to the Soviets of People's Deputies and in other forms participate in Soviet policy-making, government and public affairs. Thus, the long-standing monopoly of the CPSU on power in the USSR was destroyed, which could not but weaken the influence of the union center on the union republics. Dzh. Bleni and M. Hfoler emphasise that some scholars have pointed to "Horbachov's weakening of the Communist Party as a key cause of the collapse of the USSR". This law supplemented the Constitution of the USSR with a new chapter 15–1 "President of the USSR". Extraordinary Third Congress of People's Deputies of the USSR elected President of the USSR M. S. Horbachov.

One of the first Union legislative acts, which brought some clarity to the issue of delimitation of powers between the USSR and the Union republics, was adopted by the Supreme Soviet of the USSR on April 10, 1990. The Law of the USSR "On the Fundamentals of Economic Relations of the USSR, Union and Autonomous Republics" No. 1421-I, which came into force only on January 1, 1991. The preamble to the Law declared that it was based on the principles of federalism, economic independence and mutual responsibility of the USSR, union and autonomous republics, and stated that the law delimits the powers of the USSR and republics in the economic sphere. A careful analysis of the content of this law gives grounds to assert that the USSR retained much broader powers in the economic sphere than those assigned to the union republics. Analysing the content of the law of April 10, 1990 and some other union laws, G. Gleason argued that these regulations "caused public discontent because people began to perceive them as nothing more than a bureaucratic maneuver before the impending crisis" [22].

The statement of N. Lynn and A. Novikov that "the rights of the union and autonomous republics were subject to the national interests of the USSR" is quite correct [23]. The next step on the way to legislative regulation of the division of powers between the USSR and the union republics was the adoption of the Law of the USSR "On the Delimitation of Powers Between the USSR and the Subjects of the Federation" for No. 1450-I by the Supreme Soviet of the USSR on April 26, 1990. This law was constitutional in nature. Thus, in

Part 1 of Art. 1 of the Law enshrined that the USSR is a sovereign socialist state, and it has powers that the subjects of the federation jointly attributed to the jurisdiction of the USSR.

The second part of Article 1 of the Law defines the union republics as sovereign Soviet states that voluntarily, based on free self-determination of peoples and equality, united in the USSR. It was emphasised that the union republics had all the power in their territory outside the powers delegated by them to the USSR. The law also stated that the territory of the union republic could not be changed without its consent. The law delimited the powers between the USSR and the union republics, first of all, assigning to the exclusive jurisdiction of the USSR in the person of its highest bodies of state power and administration the most important issues of state, socio-economic construction, issues of national defense, foreign policy and the conclusion of international treaties of the USSR, representation in international relations. The law was not limited to the list of exclusive powers of the USSR. Article 8 of the Law defined the powers of the highest bodies of state power and administration of the USSR in the sphere of joint jurisdiction of the USSR and the union republics. The Law also included in this area a rather large list of issues of state, economic, socio-cultural construction, in the solution of which the decisive role belonged to the union bodies, as they had the right of, using the terminology of the Law, "establishing the foundations", "establishing general principles", "establishing legal bases", "establishing general order", etc. in the exercise of powers in the sphere of joint jurisdiction of the USSR and the union republics.

Thus, the content of the articles of the Law on the exclusive powers of the USSR and its powers in the field of joint jurisdiction with the union republics allows us to conclude that the USSR Law "On the Delimitation of Powers Between the USSR and the Federation" of April 26, 1990 for No. 1450-I, delimiting these powers, gave the union center ample opportunities to govern the country. Therefore, the Law does not accidentally lack a list of powers of the union republics. As rightly noted by I. Isaev and N. Kuvyrchenkov, functions that were not included in the exhaustive list of exclusive powers of the Union only "presumed to be assigned to the Union Republic" [24]. If the Union Republic dared to resolve an issue independently, regardless of the powers of the USSR, such a decision was blocked by Article 11 of the Law, as according to it, in case of conflict with the Constitution of the USSR, the Constitution of the USSR and in case of conflict bodies of state power of the union republics of the Constitution of the USSR, laws of the USSR and other acts of the highest bodies of state power of the USSR were acts issued by the relevant bodies of the USSR. Analysis of the content of the USSR Law of April 26, 1990 gives grounds to assert that the transforma-

tion of the USSR into a true federal state he did not provide, but, on the contrary, contributed to maintaining the status of a centralized state in the USSR.

2.2. Sovereignty Parade

The Union Republics, having lost hope of obtaining the consent of the Union Center to expand their powers, took decisive steps to fill their sovereignty with real meaning by adopting the Declaration of State Sovereignty. Thus, on June 12, 1990, the Supreme Soviet of the RSFSR adopted the Declaration of State Sovereignty of the RSFSR. The Declaration of State Sovereignty was adopted on July 16, 1990 by the Verkhovna Rada of the Ukrainian SSR. It proclaimed the supremacy, independence, completeness and indivisibility of Ukraine's power on its territory, which meant giving the republic a high level of sovereignty. At the same time, it should be noted that the Declaration did not proclaim the independence of the USSR and its withdrawal from the USSR. This feature of the Declaration draws the attention of Yu. Shemshuchenko and O. Skrypniuk, noting that "the Declaration adopted in the conditions of the USSR was affected by its compromise nature: it significantly limited the power of the union state, but did not abolish it" [25]. L. Kryvenko noted that, unlike the Russian Declaration, the Declaration of State Sovereignty of Ukraine did not speak of the supremacy of all-Union laws in the republic [26]. The adoption by the republics of acts of state sovereignty, which lasted from November 1989 to December 1990, V. Vasylenko considers the "war of sovereignty" of the union republics with the sovereignty of the USSR [27].

The Declarations adopted by the union republics did not go unnoticed by the union bodies. T. Raun notes that the Declaration of Sovereignty adopted by the Supreme Soviet of the Estonian SSR in November 1988 "was immediately condemned by Moscow" [28]. The issue "On the practice of the highest bodies of state power in the light of the Declarations of State Sovereignty and Independence adopted by the republics" was included in the agenda of the fourth session of the Supreme Soviet of the USSR No. 1657-I, which began work in Moscow in the Kremlin on September 10, 1990. These Declarations were also discussed in the Law of the USSR "On Ensuring the Effect of Laws and Other Acts of Legislation of the USSR" No. 1748-I adopted by session of the Supreme Soviet of the USSR on October 24, 1990. Thus, in the preamble of the Law it was stated that the legislative activity of the highest state authorities of the union republics on the basis of the adopted Declarations of State Sovereignty strengthens the political and economic independence of the republics, fills their sovereignty with real meaning. At the same time, the preamble provided detailed information on cases of refusal of state bodies of the union republics to implement all-Union laws and other acts of the highest bod-

ies of state power and administration of the USSR, issued within their competence. The law contained rules designed to regulate the relationship between the union and the republican highest bodies of state power and administration in order to prevent the so-called "war of laws", which began to flare up between these bodies. B. Ebzeev, noting the provisions of the Declarations of State Sovereignty that the union republics had the right to nullify the acts of the USSR on its territory, concluded that this undermined the federal basis of the USSR, which in this case is transformed from a state-legal union into an international legal association [29].

2.3. Coup d'etat and the collapse of the USSR

The USSR Law "On Ensuring the Effect of Laws and Other Acts of Legislation of the USSR" of October 24, 1990 No. 1748-I emphasised that it contained resolutions in force until the conclusion of a new Union Treaty. The fact is that the Union leadership understood that it would no longer be possible to preserve the USSR in its current status. Therefore, it was proposed to develop a draft of a new Union Treaty, which would harmonise the relationship between the union center and the subjects of the union state on the basis of proper separation of powers between them. At that time, the thesis that the Union Treaty "allows to optimally solve an important and at the same time complex problem – the division of competence between the republics of the union and the union, to consider the specific interests of each participant and the general" [30].

The signing ceremony of the Union Treaty was scheduled for August 20, 1991. But it did not happen, because on August 19 this year there was an attempted coup in the USSR. The establishment of the State Committee for Emergency Situations in the USSR (SCES) was announced. And although the coup attempt failed, it had a number of consequences. According to V. Rzhevskii, "the events of August (1991) allowed to recognise the full, uncut, without any palliatives independence of the republics, which was tantamount to the final verdict of the Soviet federation" [31]. According to H. Hill, an attempted coup in Moscow in August 1991 meant that the concept of the USSR could no longer be maintained.

Another consequence of the attempted coup d'etat in the USSR in August 1991 was that "trust in the Union Center fell to almost zero." Some researchers attribute the collapse of the USSR to the coup. Yes, V. Lytvyn notes that "between the coup of close associates of M. S. Horbachov and the collapse of the Soviet Union into 15 independent states, there is a direct and immediate connection" [34]. T. Roun adheres to the same standpoint, who believes that "the failed coup significantly accelerated the decentralization of the Soviet Union and indeed its collapse." A. Senn states that "in late sum-

mer 1991, the empire disintegrated from the center" [35]. The conclusion of I. Usenko that the direct political consequence of the creation of the SCNS was the failure to sign the Union Treaty is quite well-founded [36]. That is why the Constitution of the USSR and other union laws, which determined the division of powers between the union center and the republics, continued to operate formally.

The top leadership of the USSR made every effort to preserve itself. Thus, one of the means to achieve this goal was the USSR Law "On Bodies of State Power and Administration of the USSR in Transition" of September 5, 1991 No. 2392-I, adopted by the Extraordinary Fifth Congress of People's Deputies of the USSR. This law determined that in the transitional period the highest representative body of power of the USSR was the Supreme Soviet of the USSR, which consisted of two independent chambers: the Council of Republics and the Council of the Union. The State Council of the USSR was formed, which was formed on an interrepublican basis for the coordinated solution of issues of domestic and foreign policy that affected the common interests of the republics. The State Council of the USSR consisted of the President of the USSR and the highest officials of the union republics, named in the Constitution of the USSR. The law literally defined the powers of these bodies in a few words and did not say anything about the division of powers between the Union and the republics that were still part of it.

However, the development and activities of the new highest union authorities did not stop the process of disintegration of the USSR, which resulted in the removal from the agenda of the division of powers between the Union represented by its highest authorities and subjects of the union state, which ceased to exist. The beginning of the process of disintegration of the USSR, for example, is clearly evidenced by the approval on August 24, 1991 by an extraordinary session of the Verkhovna Rada of the Ukrainian SSR Resolution "On Proclamation of Independence of Ukraine" of August 24, 1991 No. 1427-XII, which solemnly proclaimed the independence and creation of an independent Ukrainian state. On December 7–8, 1991, the heads of the three sovereign states – the Presidents of the RSFSR and Ukraine, the Chairman of the Verkhovna Rada of the Republic of Belarus – signed the Agreement on the Establishment of the Commonwealth of Independent States (CIS), which provided for the dissolution of the USSR, the termination of the laws of the USSR, the liquidation of its state bodies and the ratification of this document by the Supreme Soviets of these states [37].

CONCLUSIONS

Summing up the study of regulatory and legal support for the reform of the state mechanism of the USSR, initiated

by M. S. Horbachov, several important conclusions can be drawn.

1. The transition of any complex system from one phase state to another is necessarily combined with the quantitative and qualitative growth of entropic processes within it, or, in other words, with a rapid increase in the disorder of its internal elements. The Soviet Union of the era of M. S. Horbachov, no doubt, was such a complex multidimensional socio-economic and political system, and, therefore, the reform was to be based on a number of models that would provide different scenarios. As can be seen from the analysis, most likely, this was not done. Inconsistent actions of the authorities led by M. S. Horbachov, when the domestic political situation in the USSR began to develop in a negative scenario, indicate a lack of appropriate modeling and forecasting of related social and political processes in preparation for the reform of the mechanism of state power.

2. As follows from the historical and legal analysis of the attempt of M. S. Horbachov to differentiate the powers of allied and republican authorities in the second half of the 80's of XX century, a critical factor in such transformations is time. And given the extremely rapid technological development of modern civilisation, time is also becoming the most valuable resource. It is safe to say (of course, with some caveats) that M. S. Horbachov could not use this resource. And, as you know, the right decision made late is not the right decision. The loss of M. S. Horbachov time in the process of transforming the cumbersome and archaic Soviet state and legal system into a more democratic, and therefore more adequate to external and internal challenges, functioning quickly led to the loss of his initiative, which intercepted other actors of those dramatic events.

3. Evaluating the attempt of M. S. Horbachov to redistribute power between the central and republican authorities, it should be noted that in itself it should be perceived unequivocally positively. Successful implementation of the reform was guaranteed to be a powerful impetus to the social, economic and political recovery of the national republics, and thus the renewal of the entire Soviet statehood. However, the paradox of the transformation of the era of rebuilding is precisely that the failure of M. S. Horbachov turned for each of the Soviet republics, including Ukraine, a historic chance to build a truly sovereign, independent, democratic, social and legal state outside of any federation.

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CONCEPTUALISATION OF THE CHURCH LEGAL ORDER IN THE MODERN STATE

Abstract. *The article analyses the church legal order as a component of the general social legal order. It is determined that the unique nature of ecclesiastical law and ecclesiastical legal order is the basis for a new reading of the problem of the relationship between the spiritual and legal principles of society. With the help of a set of modern methodological approaches, the Holy Scriptures and Holy Tradition, codes of canons and social concepts of the Orthodox and Catholic Churches, works of theologians, national legislation and international legal acts, sociological data, press materials are analyzed. The ecclesiastical legal order, and the general social one, is combined with spirituality in that the sphere of the spiritual includes all the intellectual and moral forces of man, his desire for freedom and order. Comprehending the spiritual origins of law and the legal order, the authors assume that they are, above all, spiritual value. The functioning of the church legal order is an argument in opposition to those doctrinal positions that derive the legal order from the law and legality, and emphasises the appeal to the law as its real and reliable basis. Therefore, the concepts of legal order and church legal order are correlated as interrelated, but at the same time different phenomena. Legal regulation of church relations has a dual nature. It is carried out both by legal acts of the church and by the legislation of the state. Such a double dependence creates a vulnerability of the church legal order to the nature and quality of secular law. The subjective structure of the*

church legal order is also ambivalent. In Ukraine, as in a multi-confessional society, a separate (autonomous) church legal order is inherent in each denomination. Relationships, differences between denominations, interaction or contradictions between them in one way or another affect the state of the church legal order in society, including – the general legal order

Keywords: *international legal order, church legal order, church, canon law, church law, spirituality*

INTRODUCTION

The stable life of society, organised on the principle of the rule of law, is a goal for a modern state organisation and a reference point for the development of the legal system. In the legal dimension, such an organisation of public life can be called a legal order. The objective content of the legal order is set by the whole system of social relations, the system of values of society, which, refracted through the law, become legal values. In turn, the spiritual origins of the legal order lie not only in purely legal matters, but also in other socially supported social regulators and values. Among them, religion and related phenomena, processes and relations continue to play an important role. In Ukrainian society, the church traditionally retains a high authority: according to the latest sociological research, 64% of Ukrainian citizens trust it [1]. Therefore, adherence to religious norms and norms of church law plays a significant role in shaping the legal order in Ukraine. The ecclesiastical legal order arises and functions within the framework of the general social (national) legal order, and, consequently, receives from it defining features and characteristics. The development of the legal system in the Ukrainian lands, as well as in other regions of Europe, is integral to ecclesiastical law. If the legal norms based on customs differed significantly in different regions, the norms of ecclesiastical law were the same everywhere, which laid the foundation for the development of a single legal system with common ideas about the legal order.

At the same time, the fact of the church legal order illustrates the diversity of manifestations of the legal life of society, allows the understanding of law beyond its positivist vision, characterises the legal system of modern society as a complex, multilevel phenomenon. The functioning of the ecclesiastical legal order is an argument in opposition to those doctrinal positions that derive the legal order exclusively from law and legality, and emphasizes the appeal to law as its real and reliable basis. Therefore, it is important to correctly correlate these interconnected, but also different phenomena – the legal order and the church legal order.

The topic of the article stated by the authors corresponds to several categories of jurisprudence, namely such as: formal and informal legal order, reli-

gious legal system, church law. Research on these categories of jurisprudence in recent years has to some extent addressed the issue of ecclesiastical law. In the monograph "The Catholic Church and International Law" [2] proves that the Catholic Church, as a social structure and a special legal order, plays an important role in international law. In particular, he highlighted the legal nature of the Catholic Church and its international legal doctrine, the activities of Catholicism in the international arena and its impact on the development of international law and international relations. However, the issue of canon law and order in the monograph is devoted to relatively modest attention [2]. About canon law as a separate legal order, correlated with international public law, and church law as a legal order, correlated with state law, writes V. Lastovskyi [3, p. 150]. However, these works give the impression that their authors identify the concept of legal system and legal order.

The dissertation of O. Melnychuk does not directly analyse the phenomenon of church law, but the author draws an important conclusion about the most favourable model of state-confessional relations, which will not have a devastating effect on national cultures, and at the same time will ensure the individual's right to freedom of religion, namely, the model of autonomy of the state and the church, where the church by its status is an institution of civil society [4]. The rule of law as a component of the religious legal system is to some extent covered by D. Lukianov in his monograph, however, outside the study of this scholar remained specific features of church law and order [5]. It is worth noting that in more than 60 dissertations defended during the independence of Ukraine on church law, church-state relations, etc. [6], the question of the essence, components or features of the church legal order was not raised.

Canon law in most European countries is an integral part of the European legal order. At the same time, the concept of the legal order in the Western legal tradition is somewhat different from that in the national legal doctrine. It is often narrowed down to a set of legal guidelines in force in a given society, or to an analysis of the sources of law. In particular, this is how the church law is represented by C. Gallagher, who studies the doctrinal foundations of the church law on the example of Rome and Byzantium [7]. The historical and legal context of the role of the Roman Catholic Church in the formation of the rule of law based on the rule of law is studied by Ch. North, C. Gwin [8, p. 127]. The question of the limits of the church's intervention in the formation of normative bases of the legal order, in particular, in lawmaking and precedent lawmaking [9], remains debatable. However, in general, the problem of determining the nature, foundations and features of the church legal order in foreign jurisprudence was not raised. In the situation of the existence of church

schism in the Orthodox Church in Ukraine, the issue of the church legal order becomes especially important.

The purpose of this article is to define origins, nature and manifestations (signs) of the church legal order – determined the complex nature of the research methodology.

1. MATERIALS AND METHODS

The ecclesiastical legal order, like the general social one, must be based on the pluralism of legal sources, first of all on those that have their origins in natural law, on the standards of human rights and freedoms recognised by the civilized world. Therefore, the source of the research presented in this article was the Holy Scriptures and Holy Tradition, codes of canons and social concepts of the Orthodox and Catholic Churches [10], works of theologians, national legislation and international legal acts, sociological data, press materials.

The methodological basis of the study is a combination of classical (historical, formal-legal, comparative-legal, theological-philosophical methods) and modern (phenomenological, anthropological and synergetic approaches and hermeneutic, statistical and systemic methods) methodology. Understanding the church legal order in Ukraine, a phenomenon that has deep socio-cultural and historical origins, requires reference to its historical roots, which leads to the use of the historical method, which uses the techniques of retrospection, historical comparison, historical analogy, historical typing and historical periodisation. The formal-legal method is necessary to clarify the provisions of national law and international law, and also allows to clarify the content of ecclesiastical law, as the basis of ecclesiastical law, in particular, the Code of Canon Law of the Latin Church in 1983, Books of the Rules of the Holy Apostles, the Holy Ecumenical and Local Councils, and the Holy Fathers, including concordats and other international treaties concluded in the interests of the church.

The comparative law method was used to identify common and different in understanding the legal order in the doctrines of different Christian churches. The axiological approach was useful for understanding the values and social significance of the church legal order. The hermeneutic method is an assistant in clarifying the content of ecclesiastical and legal guidelines in their historical and modern context for understanding both ecclesiastical and public legal order. In addition, to clarify the content of the provisions of ecclesiastical law used the method of exegesis, used in the interpretation of Scripture, reference to the works of the holy fathers. The phenomenological approach unfolds the legal order as a specific legal reality, the form of existence of which is characterised by the overflow of the legal order (system of established in society, dominant legal relations) in the public consciousness.

Anthropological approach puts the subject of law at the center of legal de-

velopment and is the basis for the formation of modern legal order. Synergetic approach was useful for characterising the self-organising nature of the legal order as a socio-legal system. It is the synergetic projection of the legal order that is able to reveal its new substantive aspects, which can thoroughly update the modern theory of the legal order, including the ecclesiastical one. The use of methods of analysis and synthesis allowed analysing the theological and legal nature of the church. Theological and philosophical method has opened up the possibility of analyzing the social teachings of the Catholic and Orthodox Churches, which are the substantive basis of the Church's activities in the international arena and its doctrinal approaches in international law, which means and regulates relations between participants in international communication. Within the framework of the theological and philosophical method, the principles of building an international order on the basis of natural international law and ethical guidelines of Christian churches are also considered. The systematic method was used in the study of the peculiarities of the status of Christian churches in international law. The statistical method was used to generalise the processes associated with the existence of the church legal order, to illustrate the facts of international treaties, the participation of representatives of Christian churches in international organizations, the peaceful settlement of international disputes and interreligious dialogue.

2. RESULTS AND DISCUSSION

2.1. Category of church law and order in the context of law and order

The ecclesiastical legal order, as a component of the general legal order, is a necessary precondition and a real legal background for the civilised functioning and development of human society. Like the whole order in society, the legal order is not only proper or possible, but most importantly – the actual quality of everyday legal life of society. The factuality (i.e. the presence here and now) of the legal order is evidence of the implementation in real life of the categorical legal imperative of Kant, according to which "it is necessary to act so that the free expression of your will is compatible with the freedom of everyone in accordance with universal law." (Since I have deprived the will of every impulse that could arise for it from obeying some law, nothing is left but the conformity of actions such as with universal law, w which alone is to serve the will as its principle, that is, I ought never to act except in such a way that I could also will that my maxim should become a universal law) [11, p. 14–15]. As established in the coordinates of law order, security and predictability of social life of individuals, social groups and society as a whole, the legal order is an important social and personal need, and hence value. In the conditions of correlation of human existence in the coordinates of the proper and the existing, the legal order unfolds from the proper (law) to such a real being, which

is real, embodied in the dominant human societal law-abiding behavior, and constitutes a certain, law-based system of social life. "Law and order – says Yu. Oborotov – acts as a semantic purpose of law, which is achieved by ensuring the stability of human existence" [12, p. 6]. As a real state of the legal order achieved by the society of its vital activity, the legal order permeates all its spheres, reveals the most important aspects of the influence of law on social life. It is through the legal order is the interaction of law and other spheres of public life – economic, social, political, and even spiritual. Being constantly under pressure from these areas, the legal order, due to the recurrence of certain models of human behavior, transforms single and to some extent random lawful behavioral acts in the established matter of social interaction on a legal basis. Thus, the legal order is formed under the influence of all components of public life, as a point of intersection of legal interests of social communities, individuals and other various subjects of law, as a result of interaction of different types of legal behavior and relations of participants.

The modern legal order is a complex structured, multilevel, infrastructurally branched socio-legal phenomenon. It covers all aspects of the legal life of society, consolidating its fragmented parts and aspects into a relatively unified and holistic picture of the structure and functioning of the legal sphere. The legal order manifests itself in the coordinates of the state (national legal order), as well as at the interstate level – integrative and international legal order. In modern conditions, the interaction, flow, and even combination of these legal orders is increasingly manifesting itself. The national legal order is closely related to the legal and institutional infrastructure of a particular state-organised society, and reflects the historical and social features of its legal development.

The state of the legal order serves as a certain background, or "legal climate", in which the life of individuals and society as a whole takes place. Lack of proper legal order, chaos and the dominance of various manifestations of disorder have a destructive effect on life, consciousness, and even human health. Therefore, because in the period of wars, interethnic conflicts or other social disturbances, the established order of society suffers, the quality of life achieved by society decreases sharply, and the spiritual sphere of life suffers. Negative results can affect the minds of several generations of people, and overcoming them takes many decades. Therefore, the legal order with good reason can be attributed to the phenomena that are vital to man and society. This means that the legal order is related to the vitality of man, as a set of innate qualities and abilities that ensure his life in nature. Taken in the vital dimension, man acts as a living, corporeal being, as an organism under the rule of natural laws and subject to the mecha-

nisms of biological determination. As an individual, i.e. as an indivisible part of nature, man does not have freedom in the socio-ethical sense, but depends entirely on the requirements of natural necessity, which affects the natural processes occurring in the body and human consciousness [13]. In this sense, natural processes are the most powerful determinants of the organisation of human life and society, including in the legal sphere. Therefore, law and the legal order will be perceived by man as necessary when they are defined as "natural", i.e. those that do not contradict the natural imperatives of human existence. It is in this capacity that the legal order becomes relevant to the functioning of the spiritual sphere. According to the apt remark of I. Ilyina, the legal order embodies "law in its main essence, and is necessary for man the image of his spiritual life on earth, or otherwise: it is a necessary form of" meeting "the supreme good and the human soul" [14, p. 232]. And it is clear that such a search for the spirit of all and for all forces the will to focus with special force on creating a general and legal order [14, p. 236]. Progress, human approach to law and free existence in its parameters are not a one-time act: "It is possible for an animal to completely renounce the law; it will carry out the triumph of naive power. It is impossible for a person as a creator of the economy to live outside the law, but it is possible to limit one superficial appearance of law, one scheme of law, cultivating and applying bad and unjust "positive norms". Only a person as a creator of spiritual life has access to normal legal consciousness, only he is given the search and finding the right law, because only he is open to the purpose of law and its living source [14, p. 236].

2.2. The spiritual nature of the church law and order

The ecclesiastical legal order, and the general social one, is combined with spirituality in that the sphere of the spiritual includes all the intellectual and moral forces of man, his desire for freedom and order. Comprehending the spiritual origins of law and order, we must proceed from the fact that they are, above all, spiritual value. And although the material form (texts of laws, constitutions, other legal acts – what is called "letters of the law") the existence of law is an important feature of it, no less important is what constitutes the "spirit of law" – all that does not always have textual-material embodiment, but, thanks to the expression of the ideals of goodness and justice serves as a reliable means of distinguishing between right and wrong. Similarly, according to Maximus the Confessor, the ideals of the righteous life of man, created in the image and likeness of God, are articulated in commandments, rules and laws. They are not imposed by some foreign force, external to humanity [15, p. 42, 52].

From this will receive the spiritual origins of law and the legal order –

those interrelated moral principles on which the law is based, and according to which the legal order is formed. Therefore, the preservation and maintenance of the rule of law does not violate the autonomy of the individual: fulfilling the requirements of the law, he does not force himself and is not afraid of coercion, because she seeks the same goal, which serves the law. The issue of the spiritual in relation to law is unfolding and deepening in the context of understanding the unique nature of ecclesiastical law and ecclesiastical legal order. The church as a social institution is a subject of legal life in various forms and manifestations. As noted by L. Skene and M. Parker, the role of the church, for example, in the development of law is manifested in the fact that some politicians vote for a bill according to their religious preferences, or the church acts as a lobbyist for certain bills, or even interferes in the judiciary [9, p. 215]. And the limits of such interference are quite sensitive matter. An example of this is the reaction of Polish society to recent changes in abortion legislation, which were introduced under pressure from the Catholic Church [16].

Functioning in the coordinates of secular law gives rise to a wide range of legal relations of the church, its components with state institutions in the public law sphere, as well as with other subjects of law – in private law. The nature of the ecclesiastical legal order derives from the uniqueness of ecclesiastical law – its special subject, which does not coincide with the subject of national law, inherent in ecclesiastical law extraterritoriality of legal regulation. Another "ordering" feature of church law – the specific methods of rule-making and the nature of the impact of its rules on social relations in order to streamline them. Internal ecclesiastical law, and the legal order created under its influence, do not have a close relationship with state power, as is inherent in secular law. However, the church legal order is an integral part of the general legal order, and if internal relations and processes in it do not conflict with secular law, the state does not interfere in this area.

The status of ecclesiastical law has another aspect that manifests itself not only in terms of influence on the church, but also on the general legal order. This is a phenomenon called "external" ecclesiastical law. History has known that the church was outlawed, as was the case in ancient Rome under Emperor Nero or in communist Albania under the 1976 Constitution. However, the norm was the existence of religion in the legal field, which was formed by state legislation, which enshrined the legal status of the church in society. The legal order both in society and within the church largely depends on the extent to which state legislation accurately and adequately regulates the church's relations with the state and society. This is evidenced by the legislative experience of post-Soviet countries, which

were forced to start a "new page" in relations between the state and the church after their independence. Different, rather different vectors of creating a normative-legal basis for the functioning of denominations were reflected here: if in the former Baltic Republic the legislative models that existed there before the Soviet annexation were used, in Ukraine the legislator focused on the USSR law. "On Freedom of Conscience and Religious Organisations" [17]. Such different starting positions largely determined the nature and content of the legal consolidation of the legal status of the church, its functions in society and the specific features of its relations with the state.

Interestingly, the legislation of Ukraine has not used the term "church" for a long time, giving different meanings to religious communities. The peculiarities of the attitude to the church in the conditions of sovereign Ukraine had the specificity that the negative consequences of the religious (more precisely – anti-religious) policy of the Soviet period acquired special significance here. The specificity of the legislation of Ukraine is manifested in the fact that the state registration of the statutes of religious associations in general (churches, dioceses) is not provided. Certain rights of churches are ensured by the registration of the statutes of their centers (metropolitanates, diocesan administrations, consistories, centers). The current model of state-church relations in Ukraine demonstrates the weakness of the power vertical, and the concentration of powers to regulate the religious sphere in the hands of local administrations has identified marked regionalism in the development of relations between government and religious denominations, which also manifests itself in different ways through the state of the legal order in this area.

2.3. The ratio of ecclesiastical and secular law

The problem of the relationship and interaction of ecclesiastical and secular law is of great importance in the context of the formation of the legal order in society. The situation in this area cannot yet be described as optimal. The shortcomings of secular law do not contribute to the optimal organization of social relations in the functioning of the church, and, consequently, affect the state of law and order in society as a whole and in the church-legal sphere. With regard to lawmaking in the religious sphere, the following should be emphasized: this activity requires not only high professional and legal competence, "jewelry" use of legal techniques and technologies, but also deep knowledge of the religious situation, as well as wisdom and tolerance. The principle of "do no harm" by analogy with medicine is just as important in the extremely sensitive area, which is the religious and ecclesiastical sphere.

The specificity of the church legal order is determined by the following: the church as a special social organism

is a complex structural entity consisting of believers, church ministers, its self-government and administration, and therefore seeks internal unity, integrity and order. Church law as a set of norms and rules aims to ensure these characteristics of church life. The internal legal order in the church is legal in nature and ecclesiastical in form. The church legal order is a multilevel, multi-element development that combines legal orders in parishes, monasteries, fraternities, sororities, and spiritual educational institutions. The primary creator and bearer of the church legal order is a parishioner (believer), including a clergyman – a minister of the church. Church law in Ukraine is a long-term factor in state-and-law-making, and the church itself is an important subject in the development of original cultural and spiritual foundations of consciousness and existence of Ukrainian society. In the orbit of ecclesiastical law there are a large number of organizations, institutions, individuals who in one way or another influence the state of the legal order in a particular territory of the country or region. But ecclesiastical law also applies extraterritorially. The canonical territory of the church often goes beyond the territory of the country, which also characterises both the configuration and features of the functioning of the church legal order.

Speaking of the legal order, it should be considered from a teleological standpoint. And here the whole church and secular authorities diverge. The main goal of the church is not to achieve social justice, but to warn people about divine justice. The purpose of the church is not to call for righteousness, but to tell of the divine righteousness of Jesus Christ, not to point out who to choose in elections, but to point out the One who chose many for eternal life. An important feature of the ecclesiastical legal order is that the norms and principles of ecclesiastical law are moral and imperative, and can not, as is typical of legal precepts, be provided by physical coercion or means of economic (fines, etc.) coercion. Observance of the norms of church law is ensured by their authority, and by moral and spiritual means. Nevertheless, being a law in the true sense, ecclesiastical law is a system-forming factor both in relation to the ecclesiastical and in relation to the general legal order. As a special independent system of law that is different from the law of the world and is not related to it, church law has its own structure. To characterise the ecclesiastical legal order, the division of ecclesiastical law into internal and external ecclesiastical law is decisive.

For the development of the legal order – both ecclesiastical and public, it is important that ecclesiastical and secular law have a significant common history: they exist as organic components of mononorms in pre-state society. Further distinction and transformation of each type of social norms has its own special trajectory, which is determined by their specific nature, purpose and functional

characteristics. However, this "primordial", "genetic" connection of religious and legal norms is crucial in understanding the ordering of public life, including modern. For secular law, and thus to achieve the desired level of general legal order, of great importance is preserved by ecclesiastical law, its close connection with moral and spiritual values and norms. This feature of ecclesiastical law should be used as a potential for law enforcement influence on public life. A striking example of the "integrative" nature of religious norms are the Ten Commandments, which combine "religious imperatives", "moral imperatives" and the most important imperatives of law.

Extremely interesting in terms of the peculiarities of the influence of ecclesiastical law on the development of ecclesiastical legal order are the ways of formulating (legal technique) legal prescriptions in ecclesiastical law. This is in line with the essence of the church as a union based on religious faith and sustained by the power of persuasion. Church laws are usually drafted and formulated not so much in the imperative tone of secular laws as in the form of rules that persuade and instruct, that is, affect the will through conscience. This way of formulating church law corresponds to the unique sanctions used here, which threaten the offender – the wrath of God, heavenly punishment or disciplinary punishment imposed by the church itself (excommunication from its community).

2.4. Church law as a component of public law

To understand the nature and complex structure of the ecclesiastical legal order, it is necessary to proceed from the classification of the right to civil (secular) and ecclesiastical (canonical) formed in the Middle Ages. At the same time, church law itself, depending on the source, is divided into Divine law, based on a clearly expressed Divine will, and positive, or ecclesiastical, law in the narrow sense of the word, based on legislative acts of the Church itself. In addition, depending on whether the law regulates the internal life of the Church or its relations with other social and political entities, distinguish between internal and external ecclesiastical law. The division of ecclesiastical law into written (written by the legislature) and customary (unwritten, which is preserved by tradition and custom) is used. Finally, ecclesiastical law is divided into general law, which includes laws binding on the World Church, and private law, which constitutes legislation that applies to individual local churches. These components of church law are likely to be reflected in the structure of church law.

Thus, the church legal order, which arises and operates in society, is an integral element, part of the general (national) legal order. As a component of the general legal order, the church legal order bears the imprint of history, culture, morals, customs and traditions of a particular society. This becomes obvi-

ous when comparing the realities of Ukraine and its immediate surroundings. On the other hand, the peculiarities of the development of church life in Ukraine in the absence of national statehood for a long time also left its mark on its configuration. And despite the fact that polyconfessional Ukraine in modern conditions sometimes leads to social tensions and conflicts, such a model of institutionalisation of the church system is one of the safeguards against the spread of totalitarianism and autocratic political and legal regime in government.

The ecclesiastical legal order receives the distinction of sacredness, which comes from all the specifics of the church life of clergy and the community of believers, internal and external relations in the church, the specific features of legal regulation and others. For example, the special composition of the subjects of ecclesiastical law and legal order, their unique legal status is brightly colored by the fact that obtaining ecclesiastical legal personality is preceded by the performance of certain religious sacraments (baptism, anointing, ordination). These sacraments, conditioned upon their special procedure and design, are deeply engraved in a person's mind, and significantly affect his future life and behaviour. Therefore, all relations between the subjects of ecclesiastical law, not only within the church life, but also outside it, are marked by these features of attachment to the religious community. The presence in the minds of religious beliefs and knowledge, which modifies communications and relations between participants in church relations, affects the meaningful behavior, and as a result – the formation of both ecclesiastical and secular legal order. The sacredness of religious sacraments has a dual nature – on the one hand, they belong to dogmatic theology, and on the other hand, the procedure for their implementation belongs to church law, has a legal nature, and, embodied in the lawful conduct of church life, is already an element of church legal order.

CONCLUSIONS

Thus, the church legal order has the following characteristics and features that distinguish it from other types of legal order:

1. Legal regulation of church relations has a dual nature. It is carried out both by legal acts of the church and by the legislation of the state. Such double dependence creates vulnerability of the church legal order to the nature and quality of secular legislation, and sometimes leads to aggravation of conflicts in relations between denominations. This requires a special sensitivity of the "secular" legislator to the processes that are developing in the church life of the country.

2. Another feature is the partial influence of the state and its law enforcement institutions on the formation and maintenance of the church legal order. The main burden of ensuring the

church's legal order is borne by the institutions of the church – its bodies, clergy, the community of believers and others. The role of state institutions in ensuring the rule of law is manifested in the external relations of the church with society, as well as in the observance by believers of the laws of the country.

3. The subjective structure of the church legal order is ambivalent. As noted, the subjects of ecclesiastical law are believers, church ministers, its officials and church self-government bodies. On the one hand, these are, as a rule, citizens of Ukraine who must observe secular law, and thus create a general legal order. On the other hand, a significant part of their lives takes place in the field of functioning of church law, i.e. against the background of the church legal order. Thus, those social roles that carry certain social strata, manifest themselves in the various legal orders that they create at this time.

4. The subjective composition of the church legal order forms its horizontal-vertical structure. "Horizontally" the church legal order is a set of legal orders of its bearers – believers, ministers, hierarchs of self-government bodies and other structural entities. The prevailing opinion in the literature is that ecclesiastical law, in contrast to public law, is not territorial but personal. At the same time, the legal order has a certain connection to the territory – the boundaries of the church community, the diocese, etc.

5. The lawful behaviour of the subjects of ecclesiastical legal relations is of a dual nature for the ecclesiastical legal order: observance and execution of secular law by believers and clergy are a factor in maintaining both the general legal and ecclesiastical legal order. On the other hand, the "secular" offenses of the faithful have a negative impact on both the state of public law and the church.

In Ukraine, as in a multi-confessional society, a separate (autonomous) church legal order is inherent in each denomination. Relationships, differences between denominations, interaction or contradictions between them in one way or another affect the state of the ecclesiastical legal order in society, as well as – the general legal order in general.

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GENERAL TYPE OF LEGAL REGULATION AND PRACTICE OF THE SUPREME COURT IN UKRAINE: FEATURES OF OBJECTIFICATION

Abstract. *The article presents possible forms of realisation of human freedom in its relations with the state, in particular, through legal regulation of the general permit type. The purpose of the article is to study this type of regulation based on the case law of the Supreme Court in Ukraine, as one of the most effective bodies in ensuring proper balance of interests of the individual and the state, which forms the methodological basis of human rights protection mechanism. The methodological approaches used are anthroposocial – to establish the essential basis of general regulatory regulation, which is associated with self-expression of the individual within the existing legal order, and axiological – to ensure the value nature of law. The general permissive basis of interaction between a person and the state has been identified, which is conditioned by the legislative consolidation of their relations under the scheme "everything that is not prohibited by law is allowed". This general*

permitting basis was analysed on the basis of acts of the Supreme Court, which allowed to identify direct and indirect objectification of general permits as the basis of the studied type of regulation. It is proposed to link direct objectification with the fixation in the decisions of the Supreme Court of the full permit structure ("everything is possible except") or its elements – the main limiters of the general permit (legal prohibitions and legal obligations). It is established that the function of the objectifier of general permission is performed by special legal permits, which are addressed to individuals and are reflected in the concepts of "subjective right" and "legitimate interest". Indirect objectification is stated through special permits, which are reflected in the construction "allowed directly provided by law." In this aspect, the issue of state discretion was further developed

Keywords: *legal permits, legal prohibitions, legal obligations, legitimate interests, discretion, Supreme Court*

INTRODUCTION

The phenomenon of common life of people continues to excite scientists in various fields of knowledge to this day. Such coexistence, according to Aleida Asman, is fragile, constantly balancing on the brink of disaster, carefully drawn red lines washed away by waves of violence, and therefore need to work thoughtfully and carefully with ethical principles, seeking the initial support that will serve to build human relationships [1, p. 4]. According to the practice of the European Commission for Democracy through Law (Venice Commission), the legal field (and not only) as such a fulcrum currently considers human dignity [2] and human rights and freedoms, which allows building relationships between participants in public life as free and equal subjects, to provide them with a proper standard of living [3; 4], and also determines the scheme of relations between man and the state. This scheme is constantly in the field of view of legal science and practice and is studied mainly in two directions.

The first concerns the freedom of the individual and related social mechanisms, such as civil society, socially oriented economy, human rights and their limits [5–7].

The second is devoted to the restriction of such freedom, in connection with which the problem of the limits of state power, the possibilities of its discretion (discretionary powers) is constantly discussed [8–10]. In particular, as German lawyers point out, the discretionary powers of the administration are as important in German law as in common law or in any legal system today, and are no longer considered incompatible with the notion of a just society. In their view, on the contrary, there is a growing awareness that such powers are necessary to achieve a just social order and turn the rule of law into a positive reality, although this does not mean that administrative bodies should have unlimited or unnecessary discre-

tion and that the administration should be free from all restrictions on the exercise of such powers [11].

The scientific literature also shows that the courts have a leading role in this area, in particular: "autonomy of judges" is called "the main means of protection against poor law or erroneous legislation" [12, p. 52], and judicial control over the exercise of discretion by other bodies is considered the most effective guarantee against an unreasonable decision (i.e. a decision in which the person making it is dishonest, arbitrary, improper, based on irrelevant facts, used its discretionary powers) [13].

The above testifies to the constant search for optimal principles of interaction between the individual and the state. It should be noted that within the Romano-Germanic legal family such interaction (cooperation) was justified from the standpoint of the general type of legal regulation, given the reception of the Roman model of law, in which the legal status of the individual was determined by "everyone's natural ability to do he needs it, if it is not prohibited by force or law" [14, p. 311]. The essence of such regulation is manifested in ensuring the maximum freedom of the individual within the existing legal order, which, in turn, will serve the progress of democracy. As rightly noted by F. Fucuiama, the success of democracy depends not on the optimisation of its ideals, but on the balance – between individual freedom and effective, legitimate state power and legal institutions [15, p. 55].

The question of general legal regulation rose mainly in the context of the corresponding principle of law of the same name, especially in the 90s of XX century, in the transition of post-Soviet states from command-administrative, authoritarian-volitional methods of government to democratic mechanisms of government, from planned economy to market relations, when the institution of private property, personal initiative of citizens and their responsibility for their own destiny and well-being began to acquire leading importance in the worldview scale of values. First of all, socio-economic human rights have acquired a new color. At the same time, there were some reservations about possible "permissiveness", which would lead to this principle in the weakening of economic, political, spiritual foundations of society and the state, and therefore this principle was not considered universal and fundamental, applicable to all cases of legal life [16; 17]. In this regard, the study of issues of general licensing by type of legal regulation has not received its proper further development.

However, today the active assertion of the rule of law as the rule of natural human rights, the rule of law, i.e. the law that meets the ideals of freedom, social justice and equality as a prohibition of state arbitrariness, the study of this type of regulation becomes very relevant [18]. Since the courts are the most effective bodies in the field of ensuring the proper balance of interests of

the individual and the Ukrainian state, whose mission is to ensure respect for constitutional human rights and freedoms [19], such regulation, appropriate social communication in view of the European and Euro-Atlantic course of Ukraine, especially since the model law-abiding and law-enforcement practice of the highest judicial body acquires a source status in Ukraine.

The purpose of the article is to search for legal tools for the implementation of the main achievements of natural law in Ukraine, in particular the study of the permissive provision of human rights standards in the jurisdictional practice of the Supreme Court.

1. MATERIALS AND METHODS

The methodological basis of the study is a system of scientific approaches and methods of cognition. Among the research approaches used: *axiological* – to ensure the value nature of law, as a normative expression and regulator of individual freedom, free will in the framework of social communication; *anthroposocial* – to establish the essential basis of the studied type of regulation, which is associated with ensuring the maximum possible realization of individual freedom within the existing legal order, *dialectical* – to identify the general basis of interaction between person and state, clarify the substantive characteristics of general type of legal regulation.

Among the methods of cognition used *general and special-scientific.* From a number of general scientific it is possible to allocate: *structural-functional method* by means of which possible communications of the basic ways of legal regulation in the course of development of the general permission as a legal design were found out; *descriptive method,* which directed the research in the direction of identifying the characteristics, immanent properties of the studied type of legal regulation and the main components of the general design, i.e. legal prohibitions, legal obligations and legal permits, their specificity conditioned upon classification varieties, for further generalisation, and this, in turn, contributed to the presentation of research results in a clearly defined logical sequence; *methods of qualitative and quantitative analysis,* which allowed to form an idea of the content and scope of the general permit as the basis of the relevant type of regulation, determined by the content and scope of relevant legal prohibitions, legal obligations and legal permits, to determine the limits of state discretion and freedom individual, private person, to characterise the relationship between subjective law and legally protected interest; *the method of synthesis* allowed solving the research tasks conditioned upon its application to primary sources, materials of international and Ukrainian normative and judicial practice on important socially resonant issues related to human rights protection, laid the foundation for activation in legal material; *the method of classification* facilitated the

differentiation of special permits according to their addressees and functions for the implementation of legal regulation of the general permit type, as well as allowed distinguishing between direct and indirect forms of positivization of such regulation; *socio-deterministic method* has identified causal links between two types of legal regulation – general and special, and thus – between general legal permits and special legal permits, as the main pillars of these types of regulation, served to justify the discretion of other government agencies and subjects of power; *concrete-historical method* allowed to trace the evolution of philosophical and legal interpretation and normative recognition of general legal regulation; *The method of factor analysis* prompted a multifaceted study of possible options for direct and indirect forms of objectification of general permits, taking into account all conditions and means for formalizing such permits, which corresponds to the humanistic orientation of law, its essential orientation.

As special-scientific methods are used: *formal-legal method*, which was used to demonstrate the content and form of the subject, possible ways and specifics of expression of permissive legal phenomena in the national legislation of Ukraine, law enforcement and law enforcement activities of the highest judicial body of Ukraine; *comparative law,* which allowed comparing the legal regulation of certain aspects of the subject at international and national law levels, in particular in view of the jurisdictional practice of the European Court of Human Rights, the Supreme Court of Ukraine, the Constitutional Court of Ukraine, people in Ukraine to their international legal, including European standards, namely, in the field of implementation of the right to housing, the rights of road users, guaranteeing protection from arbitrariness of the state, working to strengthen general legal regulation in the relevant area of public relations. The applied methods allowed obtaining reliable and reasonable conclusions and results.

2. RESULTS AND DISCUSSION

2.1. General permissive basis of interaction between the individual and the state

The general permissive type of legal regulation is traditionally defined by the formula "*a person is allowed everything that is not prohibited by law*". It was declared in the French Declaration of the Rights of Man and of the Citizen (Articles 4, 5), through the normative definition of freedom and its limits [20]. Subsequently, in the philosophical and legal doctrine, this idea-principle was substantiated in the context of solving the problem of the limits of state power. Such borders, as the representatives of liberalism emphasised, can be conditioned only by the need "to protect citizens from internal and external enemies", "and no other goal should violate the freedoms of citizens" [21, p. 49].

With the development of the institute of human rights, the effect of the general permissive principle has shifted to the plane of "restriction of law", in particular its legality, legitimacy, proportionality, the need for a democratic society. The above mostly reflects the content of general permits new structure provided by the relevant type of legal regulation. However, a more detailed study of the legal scheme of interaction between the individual and the state (on the example of Ukraine) allows tracing other manifestations of this type of regulation. Such a scheme is represented by traditional postulates for democratic societies.

1. Man, his life and health, honor and dignity, inviolability and security are recognised as the highest social value (Article 3) [22], which provides for the joint duty of the state and its citizens to show the necessary respect for each person [23]. At the same time, a person's *life is* associated with the right to protect him from unlawful encroachments (Article 27) [22] *by any means not prohibited by law* (Article 281) [24]; b) *the prohibition of "arbitrary* deprivation of life" (Article 27) [22], *the prohibition of "satisfying the request* of an individual to terminate his life" (Article 3) [24], the abolition of the death penalty [25; 26], and thus – b) with the right to human dignity ("the right to life and the right to human dignity determine the possibility of realisation of all other human rights and can be neither restricted nor abolished" (paragraph 6) [27]); d) with the duty of courts in cases of crimes against life and health of a person "to establish the guilt of defendants and assign them the *necessary and sufficient* punishment for their correction and prevention of new crimes" [28] – which traces the consistent assertion of absolute value prohibition of discretion to terminate it.

Health is defined in the broadest sense as a state of complete physical, mental and social well-being [29]. Understanding *of dignity* is explained by the recognition of the nature of the individual as a unique biopsychosocial value, and *honor* – a positive social assessment of the person in the eyes of others, based on the conformity of his actions to conventional notions of good and evil [30]. *The inviolability of the person* is identified primarily with the right to liberty and security of person (Article 29) [22], which allows stating one of the options for a narrow understanding of freedom in the legislation of Ukraine. The security of a *person* is the state of his protection from the risk of harm) [31]. At the same time, they discuss the *security of freedom and human development* [32, p. 34], which becomes methodologically decisive for the construction of "national interests of Ukraine" [33].

2. Human and civil rights and freedoms are the main criteria of the state, which determine the content of laws and other regulations (paragraph 1) [34]. The *openness* of the constitutional list of rights and freedoms and

the prohibition of reducing their content and scope are sanctioned (Article 22) [22].

3. Man and the state are responsible to each other, which is *concretised* by the positive and negative responsibilities of the state [35], and the responsibilities of each person to society [36].

4. The basic principles of domestic policy of the state, among others, include: freedom and creative self-realization [37]. At the same time, constitutional practice declares a broad understanding of freedom as an inalienable and inalienable constitutional human right, which provides the opportunity to choose their behaviour for free and comprehensive development, act independently according to their own decisions and intentions, set priorities, do everything not prohibited by law, which also means that a person is free in his activities from outside interference, except for restrictions imposed by law [38].

As can be seen from the analysis of Ukrainian legislation, freedom in this – broad – sense is guaranteed, and therefore – and indirectly objectified by the tasks, principles and basic institutions of various branches of law, for example:

– *civil* – through *inadmissibility of arbitrary interference* in the sphere of personal life, *deprivation* of property rights, except in cases provided by the legislation of Ukraine; *freedom* of contract, business activities *that are not prohibited by law*; judicial protection of civil *rights and interests* (Article 3) [24];

– *family* – through the regulation of family relations *only insofar as it is permissible and possible in* terms of the interests of their participants and society, *considering* the right to privacy of their participants, their right to personal liberty and inadmissibility of arbitrary interference in family life, based on of justice, good faith and reasonableness, in accordance with the moral principles of society [39], associated with the rules of conduct established in society based on traditional spiritual and cultural values, ideas of goodness, honor, dignity, civic duty, conscience, justice [40].

5. The rule of law is based on the principles according to which no one can be forced to do what is not provided by law (Article 19) [22].

These guidelines for social interaction are aimed at maximizing the freedom of the individual, in particular in its relations with the state. As you can see, this is achieved through objectification:

1) appropriate behavioral model: "everything is possible, not prohibited by law";

2) legal tools for its provision. For the state, these are various "deterrents" from interfering with a person's freedom, for a person, these are both appropriate opportunities and appropriate restrictions on freedom. In both cases, they are reflected through the main methods of legal regulation. Since *its general permit type is* defined as one *that is based on a combination of general legal permission in the form of rec-*

ognition of the right with the establishment of certain restrictions (exceptions) through legal prohibitions [41, p. 140; 42, p. 99], then, accordingly, we will consider legal permits and legal prohibitions as the main legal means of mediating general permissive behaviour. However, only the analysis of legislation in combination with the practice of its interpretation and application from a given angle allows you to comprehensively track how the general permit is formed, which is the basis of this type of regulation, identify possible options for its reflection in legal material identifies possible forms of *objectification of general resolution – direct and indirect.*

We substantiate this with specific examples. The permissive ideology was declared in the Resolution of the Plenum of the Supreme Court of Ukraine "On the Application of the Constitution of Ukraine in the Administration of Justice" [34]. The Resolution emphasised the establishment of the principle of the rule of law proclaimed by the Constitution of Ukraine, and the constitutional rights and freedoms of man and citizen were recognised as directly applicable, determining the content and direction of legislative and executive bodies, local governments and protection of justice. Also, the focus of judicial activity on the protection of constitutional rights and freedoms *from any encroachment* through timely and quality consideration of specific cases, the inexhaustibility of the constitutional list of rights and freedoms (paragraph 1) [34]. Thus, the recognition of the *originality* of constitutional rights and freedoms of man and citizen in Ukraine (in particular, as a guide and limiter of the legislature), *openness of their list and* guarantee by the court from *any encroachment* is fully consistent with the permissive idea.

Analysis of the activities of the Supreme Court in the judicial system of Ukraine after the reform of 2016 allows stating the consistent implementation of the outlined legal values. Thus, in the decisions of the Supreme Court it is possible to trace the direct use of the general permissive construction – directly or indirectly.

2.2. "Everything is allowed, except" as a model of direct embodiment of the general permit design

"Everything is allowed, except" as a model of direct implementation of the general permit structure in the practice of the Supreme Court in Ukraine: 1) is associated with the degree of formalisation of law "if not provided, then…", "in all cases unless otherwise specified" etc); 2) used when it comes to the realisation of individual rights, features of contractual regulation, the separation of private and public interest.

First of all, it concerns the issue *of appealing in court against decisions, actions or omissions of public authorities, their officials and officials.* Thus, in accordance with Part 3 of Article 392 of the Code of Criminal Procedure of Ukraine, decisions of the investigating

judge may be appealed in the cases provided for by this Code. There are no appeals against the decision of the investigating judge to grant permission for an unscheduled inspection. However, based on the conclusion of the Constitutional Court of Ukraine that an appeal against a court decision *is possible in all cases, except when the law prohibits such an appeal* (paragraph 2, item 3.2 [43]), the Supreme Court ruled that the appellate courts are obliged to open appellate proceedings on appeals against the above-mentioned decisions of investigative judges [44].

This Resolution is important in view of the coherence of the positions of the Supreme Court and the Constitutional Court of Ukraine, and even more so in terms of strengthening the guarantee of implementation of decisions of the body of constitutional jurisdiction. It is a question of criminal punishment for intentional non-fulfillment or non-observance by the official of acts of the Constitutional Court of Ukraine (art. 382) [45]; proclamation by the Constitutional Court of Ukraine of its legal positions as direct regulators of public relations [46].

Another example of the general permissive right to appeal is the position of the Supreme Court, according to which "any member of the territorial community whose rights have been violated has the right to appeal the relevant action or decision of the subject of power in court, as violation of local rights self-government inevitably leads to a violation of the rights of every resident of the municipality" [47].

A similar (permissive) approach is used to guarantee *access to justice*. In clarifying the issue of the credentials of the representative of the candidate for President of Ukraine, it was noted that "*it is necessary to avoid too formal attitude to the requirements of the law*, *as access to justice must be* not only factual *but also real*", and the supra-world formalism under the hour of decision nutrition should accept the call to declare abo complaint violations of the right to a fair judge's defense [48].

We trace the general permit construction in the Resolutions of the Grand Chamber on:

1) *realisation of the right to professional legal assistance.* It is noted that the inclusion in the costs of legal aid services for the preparation and submission of documents *not expressly provided by the* Civil Procedure Code of Ukraine*, does not indicate* an artificial increase in the work of a lawyer by submitting such documents. Based on the circumstances of the case, the lawyer independently determines the strategy of protection of the interests of his client and the algorithm of actions to meet the requirements of the latter and his best protection [49];

2) *application of contractual regulation:* provided that if the law and the contract regulate differently the issue of foreclosure on the subject of the mortgage, *the requirements of the contract apply, if such do not contradict*

the law or are not prohibited by law [44];

3) *jurisdiction of the dispute:* determined based on Art. 19 of the Civil Procedure Code of Ukraine criteria for delimitation of cases, the Grand Chamber summarised that in civil proceedings *can be considered any case in which at least one party is a natural person, if their decision is not attributed to other types of proceedings* [50].

In the context of the case under investigation, it is important for the European Court of Human Rights to conclude that proceedings classified as part of "public law" under national law may fall within the "civil" part of Article 6 if the outcome of the case is decisive for private rights and responsibilities when it comes to, for example, the sale of land, the management of a private clinic, property interests, the granting of administrative permission in terms of professional practice or a license to serve alcoholic beverages [51–53]. And more and more state intervention in the sphere of everyday life, for example, in the field of social protection, requires the European Court of Human Rights to analyse the characteristics of public and private law before concluding a classification of the claimed right as "civil" [54–56].

2.3. Legal prohibitions and legal obligations as a means of direct objectification of the general permit type of legal regulation

Legal prohibitions are passive legal obligations that are implemented in the form of compliance with relevant legal norms [42, p. 99]. As exceptions to the general permit, such prohibitions define the scope of legal freedom of the individual, serve as "building material" of the general permit type of legal regulation. The study of the nature of such legal prohibitions on the materials of the practice of their interpretation and application by the Supreme Court allows tracing the effect of the whole mechanism of general legal regulation, and hence – the specific features of its external consolidation. Here it is necessary to consider a number of factors determining the following study: 1) the sources of prohibitions, which are only prohibitive rules of law; 2) features of dissemination interpretation; 3) the task of the court in Ukraine.

First of all, we should pay attention to the example of the Supreme Court's *approval of* a *legal ban* (as a general restriction): "It's more than the fence of the subject of the state at the night time to decommission the vigilant activity in the uninhabited accommodation, put into a rich apartment booth, in an effective way, to defend the right of the bagger's booth to win the wet life and calm" [57]. This example is also important in view of ensuring the balance of private interests of different entities that simultaneously exercise their freedom, i.e. there is competition between general permits – the business entity and the occupant of the house.

The Supreme Court also determines *the content and scope of the ban*. An il-

lustration here is the legal position on determining the *content and scope of the* ban on the alienation of agricultural land in a way other than "share-by-share" [58]. In this context, we consider the Resolution, which contains an interpretation of the prohibitions provided by the Rules of the Road [59]. The position on the effect of the sign "stopping is prohibited" on the whole road (the side of the road where the sign is installed), the element of which is the sidewalk, led to the conclusion that the plaintiff's actions were to leave the car on the sidewalk in the area of the road sign 3.34 "Stopping is prohibited" constitute the objective side of the administrative offense provided for in part one of Article 122 of the Code of Ukraine on Administrative Offenses [60].

Ensuring freedom of campaigning in the election of the President of Ukraine, the Supreme Court pointed to the rebuttal of the plaintiff's representative (according to which the President of Ukraine cannot be a candidate for President of Ukraine and perform his functions or powers) and stressed that "campaigning does not include official notification during the election process about the actions of candidates for President of Ukraine related to the performance of their official (official) powers under the Constitution or laws of Ukraine" [48], which defended the general type of legal regulation of public relations by *establishing the content and scope of the ban.*

In the practice of the Supreme Court there is an indication of the *specific features of the application of legal prohibitions,* for example, as restrictions: 1) business activity: "To qualify the actions of a person under Art. 213 of the Criminal code of Ukraine it is necessary to establish, whether activity which is carried out by the person, business or other economic, whether it is systematic" [61]; 2) the right to privacy: "In deciding on the application of a restrictive provision, the court… must assess the proportionality of the service of the rights and freedoms of the person, considering that these measures are related to the wrongful conduct of such person."

Equally important is the Supreme Court's *finding* that there is *no prohibition,* which automatically leads to an increase in freedom and, consequently, the recognition of a generally permissible type of regulation in this area of public relations: "The law does not prohibit the agreement provided by Articles 407–412 of the Civil Code of Ukraine and Article 102–1 of the Land Code of Ukraine" [63]; "Current legislation does not establish prohibitions and conditions for the use of the owner of a residential building, apartment for business activities, trade activities" [64]. In this context, it is important to mention the Resolution of the Grand Chamber of the Supreme Court, which declares the norm unconstitutional to decriminalise the act, namely, the official statement of inconsistency with the

Constitution of Ukraine annuls its legal force, what is behind the change is equal to the inclusion of such a norm on the legislator's level [65].

Legal obligations, which are an active form of a person's legal obligation, also perform the functions of a general permit limiter. The point is that the limits of a person's legal freedom are set not only by prohibitive principles and norms of law, but also by principles and norms of a binding nature.

This broad approach to understanding the limiters of general permission is quite consistent with one of the proposed in legal doctrine definitions of "type of legal regulation", namely, as the most important type of combinations (combinations) of basic methods of such regulation – prohibitions, obligations, permits [66, p. 308].

In the practice of the Supreme Court we find examples:

– *approval of a legal obligation*, and at the same time an example of protection of the general permit type of legal regulation. This is the conclusion on setting the amount of monthly installments for the maintenance of an apartment building: "given the lack of an imperative rule on the establishment of the same amount of contribution for owners of apartments and non-residential premises, the decision of the general meeting of the association of co-owners of an apartment building to establish a contribution to the owners of non-residential premises in a larger amount than to the owners of apartments, does not contradict the law" [67];

– *determining the content and scope of legal obligations* as restrictions on legal freedom. In particular, this is a legal position according to which, although a pet is not a source of increased danger, its owner must fully compensate the damage caused to another person or his property in accordance with Article 12 of the Law of Ukraine "On Protection of Animals from Cruelty" [68]. In the context of determining the content and scope of the legal obligation as a limiter of the general permit, we assess the position of the Supreme Court that enforcement of the obligation to submit an electronic declaration of a person authorized to perform state or local government functions alternatives to the right to choose to file such a declaration by a believer violates his rights and freedoms [69].

An example *of the absence of legal obligation* is the legal position on the lack of legal obligation of the new apartment owner to pay the debts of previous owners (tenants) of the apartment for their previously received housing and communal services, unless provided by the contract of sale [70].

2.4. Special permits as a means of objectification of the general permit type of legal regulation

Special permits as a means of indirect objectification of the general permit type of legal regulation are associated with providing subjects with opportuni-

ties to take certain positive actions or refrain from them. Such permits form the basis of another type of legal regulation, which is reflected in the formula: "Only what is expressly permitted by law is allowed", which means that they are logically related to general prohibitions and are exceptions – limiters of the general prohibition. The analysis of the described legal permits in the practice of the Supreme Court allows tracing the trends in the implementation of permissive ideas, among which the following.

Determining the content and scope of individual legal permits "works", on the one hand, to narrow the capacity of subjects of power and other entities that fall within the scope of special legal regulation, and on the other – to expand the legal freedom of the individual, and therefore – and the general type of legal regulation.

For example, it is possible to observe restrictions of the special permission for termination of the employment contract at the initiative of the employer with separate categories of workers. This is a Resolution stating that "the publication of a work of art by a researcher and pedagogical worker, regardless of its content and individual perception of this work by others, cannot be considered an immoral misdemeanor and therefore cannot be grounds for his dismissal under paragraph 3 of part one. Article 41 of the Labour Code of Ukraine" [71]. Another example of narrowing the special permit is the legal position that "the presence of an act of examination by a commission of psychiatrists on signs of mental disorder in a patient, in the absence of other relevant and acceptable evidence of appropriate health, is insufficient to decide on involuntary hospitalisation of such a person to a psychiatric institution without his or her informed consent" [72].

No less important in the context of special permits is the problem of state discretion (discretionary powers). The Constitutional Court of Ukraine connects them primarily with the principle of legal certainty as an important component of the rule of law, which "does not preclude the recognition of public authority certain discretionary powers in decision-making, but in this case there should be a mechanism to prevent abuse" [73]. Such considerations of the Constitutional Court of Ukraine are fully consistent with international legal standards, the sources of which are, in particular, the Report on the Rule of Law approved by the European Commission for Democracy through Law (paragraphs 41, 45) [74]. The conclusion that the constitutional principle of the rule of law requires legislative consolidation of the mechanism to prevent arbitrary interference of public authorities in the exercise of their discretionary powers in the rights and freedoms of the individual [73], corresponds to paragraph 52 of the Report.

The European Court of Human Rights has not overlooked the issue of the exercise of discretionary powers

The Decisions "Chorherr v. Austria", "Kokkinakis v. Greece" note that "Contracting States enjoy a degree of discretion in determining the existence and limits of necessary intervention, but it is inextricably linked to European oversight of both law and law" [75], "adopted by independent courts. The task of the European Court of Human Rights is to determine whether a measure applied at national level is justified in principle and whether it is proportionate to a legitimate aim" [76]. As you can see, the European Court of Human Rights draws attention to the limits of state power in carrying out all types of legal activities of the state, including legislative.

The Supreme Court also examined state discretion. The "Scientific Opinion on the limits of discretion of the subject of power and judicial control over its implementation" sets out a number of theoretical provisions that may claim the role of doctrinal, concerning the nature of discretion as: 1) power not related to the concept "Subjective right", and therefore – not applicable to individuals, but only to the relevant competent authorities; 2) "legal obligation", which can and/or should be realised in the public interest. It consists in choosing a certain action or omission, and in choosing a solution or action among the options that are directly or indirectly enshrined in law. The formal basis of such authority is a relatively defined rule of law (alternative rule or rule with evaluative concepts) [77].

For our study, the considerations in the Conclusion constitute an important methodological basis, as they allow: 1) to distinguish the discretion of a person within the general resolution: "can be directly prohibited" (outlined by relevant legal prohibitions and legal obligations), powers under the general prohibition: "only the permitted is permissible" (although this permission will be relatively definite); 2) to analyse the practice of the Supreme Court from the standpoint of explaining valuation concepts as formal grounds for discretion and, consequently, proper exercise of such powers in accordance with the requirements of ensuring the content of constitutional rights and freedoms of a person, which is a kind of protection (objectification) of the general permit type of legal regulation. As an illustration, we can mention the provisions of the Supreme Court's rulings on the content of the concept of "sincere repentance" [78], "pardon" [79], the principles of less lenient punishment than provided by law [80], the definition of "abuse of procedural rights" [81].

It should be noted that the Supreme Court, exploring the limits of discretionary powers, uses the concept of "legally protected interest", and at the same time relies on the relevant decision of the Constitutional Court of Ukraine. Interestingly, this Decision establishes a methodology for understanding both "subjective law" and "related interest" *as permits.* But the first, according to the Constitutional Court of

Ukraine, is a special permit, i.e. a permit reflected in the well-known formula: "All that is provided by law is allowed", and the second – a simple permit, i.e. a permit to which no less well-known rule can be applied: "Everything that is not prohibited by law is allowed" [82]. Thus, we get for analysis another kind of special permission, namely, in the form of subjective rights of the person, including the category of "legitimate interest" as the embodiment of the general permissive idea. When analysing special permits, it is necessary to keep in mind their differentiation according to the addressee (subjects of power; subjects covered by the rule "allowed only expressly provided by law"; individuals, reflected in the concept of subjective law), as this will determine their ability to provide a general type of legal regulation.

In the case law of the Supreme Court, there are examples *of approval* (with subsequent development) of such *special permits,* such as: within the meaning of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and therefore its subsequent eviction from the relevant housing is an unjustified interference in the private sphere, a violation of the right to respect for housing [83]. As you can see, here the understanding of the concept of "housing" is expanded, and thus – the scope of legal freedom of the individual. In its position on this issue, the Supreme Court facilitated the implementation of the European standard of housing law set out in the judgment of the European Court of Human Rights in "Chapman v. The United Kingdom" [84], and also strengthened the general legal type of legal regulation in a certain area of public relations.

One can also trace the Supreme Court's *finding* that *special permits are not required,* as a result of which it directly defends the general permit type of legal regulation. Thus, defending the general permit regime in the field of public relations introduced by the Civil Code of Ukraine under part two of Article 383 "Rights of the owner of a house, apartment", the Supreme Court pointed out that "the person's redevelopment of the apartment owned by him, which does not involve interference in the structural elements of the building, does not require obtaining appropriate permits for such work" [64].

Otherwise, the Supreme Court ruled that there was no special permit, which should signal the existence of an obstacle to the exercise of a person's right, the realisation of his legitimate expectations: "The legislation of Ukraine does not contain a special procedure for compensation for damage to non-residential real estate damaged during the anti-terrorist operation, therefore, Article 19 of the Law of Ukraine "On Combating Terrorism" does not create a legitimate expectation of receiving such compensation from the State of Ukraine, regardless of the territory – controlled or uncontrolled Ukraine – the act took place" [85].

The category of "legitimate interest" is understood by the Supreme Court in view of its "permissive interpretation" by a body of constitutional jurisdiction. In addition, the Supreme Court formulated the definition of interest as an object of judicial protection in administrative proceedings, which in addition to the general features of interest, must contain special, defined by the Code of Administrative Procedure of Ukraine [86]. If the first group of features is necessary for the assignment of a category to the "interest", the second – allows qualifying such an interest as an object of judicial protection in administrative proceedings.

It is emphasised that since it is a question of restricting the right of access to justice, the obviousness of the plaintiff's lack of legitimate interest must be beyond reasonable doubt. If there is such doubt, it must be interpreted in favour of the plaintiff, and therefore the court must consider the case on the merits. This issue should be decided, first of all, by the court of first instance, which has a wide discretion [86]. The above illustrates that the Supreme Court has declared an understanding of the legitimate interest in the context of the general permit structure, as well as the scope of the court's discretion. This understanding of the legitimate interest is consistently reproduced and developed by the Supreme Court in its further work [87].

CONCLUSIONS

From the above it can be seen that the general permit structure ("everything is allowed, not prohibited by law") is conditioned by the legislative enshrinement of the basic principles of building human-state relations and potentially forms the methodological basis of state human rights and freedoms. In the practice of the Supreme Court as a component of the system of the most effective guarantees of human rights in Ukraine, such a construction is associated with certain features of the formalisation of law and is objectified:

– *directly* (with the help of legal tools to mediate the general permit as a basis for the relevant type of regulation (we are talking about the implementation of certain rights, in particular, the right to protection, features of contractual regulation, separation of private and public interest) and/or its limiters – legal prohibitions and legal obligations);

– *indirectly* (through special permits, the addressees of which are entities that are "obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine").

As the practice of the Supreme Court demonstrates, the following issues are of great methodological importance for the study of the legal implementation of general permits:

1) *discretionary powers,* which allows: a) distinguishing the discretion of the person within the general permit from

the discretion of the subject of power within the general prohibition; b) analysing the legal interpretation of Ukraine in terms of explaining valuation concepts as formal grounds for discretion, and hence the proper exercise of such powers, in accordance with the requirements of ensuring the content of constitutional rights and freedoms, which is a kind of protection of general legal regulation;

2) *special permits related to the subjective right of a person* (from the standpoint of the general permissive type of legal regulation, the degree of possible – from the point of view of law – a person's behaviour seems to be determined not only by the negative aspect ("everything but"), but also by the positive aspect ("everything, namely"). Accordingly, such special permits are able to "strengthen", guarantee the permissive nature of human rights, promote its establishment. Since this is a sphere of realisation of human rights and freedoms, such permits cannot be essentially within the framework of the construction of a general prohibition, on the contrary, they must "function" in the area of a general permit;

3) *legitimate interests,* which, on the one hand, serves as a direct form of implementation of the general permit, and on the other – determines the limits of state discretion.

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DEFINITION LEGAL CATEGORIES "PUBLIC AUTHORITY", "PUBLIC ADMINISTRATION" AND "PUBLIC ADMINISTRATING" IN THE MODERN DOCTRINE OF ADMINISTRATIVE LAW

Abstract. *The article examines the essence of public authority, public administration and public administrating as legal categories, defines their relationship as a basis for forming an optimal model of public authority in Ukraine in accordance with democratic principles of state formation, which is relevant in modern conditions, given the need to bring the organization of public authorities to European standards in light of Ukraine's European integration aspirations, its transition to a European civilizational model of public law institutions. The purpose of this study was to analyse the essence of the con-*

cepts of "public authority", "public administration" and "public administrating", and to investigate the relationship between these legal categories in modern administrative law. To achieve this goal, the study used general philosophical, general scientific methods of scientific knowledge (dialectical, analysis, abstraction, system), specific methods of scientific knowledge (comparative law (comparative), historical law), and special legal methods (formal legal, system-structural, activity). As a result of the study of the essence of the legal categories "public authority", "public administration" and "public administrating" proposed their own definitions of these legal categories and concluded that the category "public administration" determines how to build public authority, which entities are endowed powers for its implementation, while the category of "public administrating" reflects the substantive part of public authority, i.e. the form and procedure for its implementation

Keywords: *types of public power, concepts of essence of public administration, implementation of public administration, public interest, subjects of public power, realisation of public power*

INTRODUCTION

Ukraine's path to the European community, its transition to the European civilisation model of public law institutions, the ongoing reform processes encourage the reconsideration of the role of the state in regulating and implementing social relations, forming a politically organised society, building a legal, democratic European state, in which the person, his life and health, inviolability and security are recognised as the highest social value and citizens can freely and actively participate in public law matters. This requires a review of the relationship between the state and citizens, improving the organisation of public authorities, bringing it to European standards.

For the first time, the need to reform the system of public power was identified in the Concept of Administrative Reform in Ukraine, which was approved by the Decree of the President of Ukraine in 1998 [1]. However, this Concept had a number of shortcomings, in particular, it did not contain clear provisions on the division of powers between executive bodies vertically, did not enshrine the need for transparency in their decision-making processes, and therefore did not become a conceptual framework for solving all problems.

During 1999–2013, several projects were developed concepts of reforming public authorities, which provided for different options for the territorial organisation of public authorities and the principles of relations between such bodies on a horizontal and vertical basis. In particular, the main directions of public administration reform were set out quite clearly in the Concept of Public Administration Reform, which, in fact, officially used the term "public administration" [2]. Since 2015, the Ukrainian Parliament and the Government, with the participation of Ukrainian and European experts, have adopted a number of regulations aimed at inten-

sifying public administration reform in Ukraine. Such acts include the new Law on Civil Service [3] and bylaws aimed at its implementation, the Concept of the introduction of positions of reform specialists [4]; the concept of optimising the system of central executive bodies [5].

The importance of adopting the Public Administration Reform Strategy until 2021 should be pointed out separately [6]. This Strategy has been developed in accordance with European standards of good administration on the transformation of the system of public administration [6]. In addition, on July 21, 2021, the Cabinet of Ministers of Ukraine adopted an order "Some issues of public administration reform in Ukraine", which approved the Strategy for Public Administration Reform of Ukraine for 2022–2025 and approved an action plan for its implementation. The main goal of this Strategy is to build in Ukraine a capable service and digital state that protects the interests of citizens based on European standards and experience [7]. Important areas of public reform in Ukraine are also identified in the Council of Europe's Action Plans for Ukraine, which have been implemented since 2005. The Council of Europe Action Plan for Ukraine for 2018–2021 is currently in force [8], which has been extended until the end of 2022.

Thus, modern Ukrainian administrative law is characterised not only by the adoption of new regulations, but also the introduction into legal circulation of new categories that are inherent in the administrative law of the European standard. The concept of "public authority" is becoming more common, and the concept of "public administration" is being replaced by the concept of "public administration" and "public administration" in administrative law doctrine and practice. Of course, these terms are interrelated. However, the question arises: how identical is their content?

In the Western administrative and legal doctrine, a large number of scholars have paid attention to the organization and exercise of public power, the essence of the concepts of "public administration" and "public administration". In particular T. B. Jørgensen, B. Bozeman analyzed the legal and social nature of the public interest [9, p. 356–357]; P. Panagiotopoulos, B. Klievink, A. Cordella studied the issues of public interest in the functioning of digital government [10]; J. Alford, K. Geuijen, S. Douglas, P. Hart devoted his research to the analysis of the essence of public administration and the role of individual subjects of public administration in government [11, p. 8]; C. Conteh, B. Harding, A. Pirannejad, M. Janssen, J. Rezaei studied the issue of ensuring the public interest at different levels of public administration [12, p. 5; 13]; The works of L. Kuitert are devoted to the problems of public administration in certain spheres of state and public life. L. Kuitert, L. Volker,M. Hermans,

S. Douglas, A. Meijer, I. Criado, R. Gil-Garcia [14, p. 260–261; 15, p. 947–949; 16, p. 440]; M. B. S. Bojang in his research, focused on the problems of public administration in the public sector, analysis of the relationship between "public authority" and "state authority" [17, p. 5]. The work of these scholars is dominated by the principle of human-centeredness and mostly analyzes the issues of public values in public administration, considers the problems of public authority from the standpoint of public interests, while issues that are the subject of this study are touched upon only briefly.

In Ukrainian administrative and legal science to the problem essence of the categories "public authority", "public administration" and "public administrating" many scientists also turned their attention to scientific research. For instance, V. Averianov analysed the essence of state power as a type of public power [18, p. 1–14]. A. Bukhanevych emphasised the role of public administration in the implementation of public control in civil society [19, p. 47–49]. O. Lialiuk defined the concept of public power and the main elements of its implementation [20, p. 84]. The work of T. Carabin is devoted to the issue of the powers of public administration [21, p. 8]. T. Carabin [21, p. 8]. S. Kovalchuk investigated the problems of defining the concept of public authority in the theory of state and law [22, p. 50–51]. V. Kolpakov paid considerable attention to the analysis of the legal nature of public administration [23, p. 28–31; 24, p. 13, 14], the analysis of the essence of public administration is devoted to the work of V. Malynovskyi, who defined the content of this category as a set of state and non-state subjects of public power [25, p. 168–169; 26, p. 18], and R. Melnyk [27, p. 125], I. Paterylo [28, p. 84] and A. Prykhodko [29, p. 71–73]. E. Taran thoroughly analysed the problems of the relationship between the concepts of "public authority", "public administration" and "public administrating" in the modern conditions of state and legal development of Ukraine [30, p. 34–35]. However, the subject of research of Ukrainian jurists were mainly some issues of organisation and implementation of public authority, the nature and structure of public administration, understanding the content of public administrating. While systematic analysis of the relationship between these legal categories in the Ukrainian legal doctrine was not paid attention.

That is why the *purpose of the article* is analysis of the essence of the concepts of "public authority", "public administration" and "public administrating", and the study of the relationship of these legal categories in modern administrative and legal doctrine.

1. MATERIALS AND METHODS

The methodological basis for the study was system of methods of scientific cognition, including general philosophical, general scientific methods (dialectical,

analysis, abstraction, system), specific methods of scientific cognition used in many branches of science (comparative law (comparative), historical law), and special legal methods (formal-legal, system-structural, activity), etc. General philosophical methods of cognition were used by the authors of this study at all stages of the cognitive process. The dialectical method was used in the analysis of doctrinal approaches to the definition of "public authority", "public administration" and "public administrating".

The use of the method of analysis in the study helped to determine the characteristics of public authority, analytical interpretation allowed to identify the components of this concept, which are state power, local government and direct democracy. In particular, to substantiate the thesis that, despite the presence of many common features between state and public authorities, the subjective composition of the latter is much broader. Using the method of abstraction, the authors define the categories of "public authority", "public administration" and "public administrating", based on the doctrinal achievements of legal scholars to draw a general conclusion about the characteristics of each of these concepts.

The systematic method was used in the analysis of the essence of public authority, its individual elements. Means of a systematic approach have become an important component of the general methodological basis of the study and contributed to a deep understanding of the structural and functional content of public power, the relationship of its components, namely state power, direct democracy and local self-government, which are designed to promote the public interest, and also allowed to define public power as the ability of individuals and legal entities, bodies and officials to influence public and public policy issues.

The comparative legal (comparative) method was used in the research process. This method was used in the analysis of doctrinal approaches to the concept of public administration and public administration in Western and Ukrainian administrative and legal doctrines, in particular, on organizational and functional concepts of public administration, identifying differences in approaches of foreign and Ukrainian scholars to understand public administration. The historical method of cognition was used by the authors in highlighting the chronological sequence of development of the legal framework for reforming the organization and implementation of public authorities in Ukraine. This identified the absence of the terms "public administration" and "public administration" in national legal acts, in contrast to foreign legislation, which helped to substantiate the relevance of the research topic. The method of formal logic became the basis for constructing their own definitions of the studied categories, i.e. in giving their own definitions of public

authority, public administration and public administration, and the implementation of the substantive characteristics of these administrative and legal institutions.

Special legal methods were also used, in particular, formal-legal and system-structural methods were used in the development and research of the terminology of this article, namely in the study of the content of the categories "public authority", "public administration" and "public administrating" definition of the specified legal categories. In the context of application of the activity method in the research the phenomenon of public administration is determined, which is related to its functional orientation and reflects the substantive part of public power, i.e. the form and procedure of its implementation. This approach to methodology allowed to present the author's vision of the essence of public authority, to define its components, to analyse doctrinal approaches to understanding the essence of "public administration" and "public administrating", to distinguish these legal categories, to obtain scientifically sound results, to make reasonable and effective conclusions on the relationship between the concepts of "public authority", "public administration" and "public administrating" in the modern doctrine of administrative law.

The source base of the study was the work of scholars in the field of administrative law and public administration, which highlight the content and features of the concepts of "public authority", "public administration" and "public administrating".

2. RESULTS AND DISCUSSION

2.1. Concepts and types of public authority

The organised functioning of society is ensured by the government. Thus, methods and forms of realisation of such power, its sources can be various. In the case where the source of power is the people, such power is by its origin public, i.e. public. The public nature of such power is manifested in the fact that the very ability to dominate is the result of the consolidation of individual powers of each member of society and their transfer to a new public entity. By creating a public entity, society determines the subject of its jurisdiction and transfers to it part of its powers to address these issues. Thus, by its nature, public authority is derived from the will of each person – a member of an organised community. In this case, a person is simultaneously in two aspects: on the one hand, as part of the source of public power, the entity that delegates its powers; and on the other – as an object to which public power will later be directed [31, p. 8].

It should be noted that, despite the fact that the concept of public authority is well established in the legal conceptual apparatus, but it is rarely analysed in the scientific literature and therefore today, unfortunately, in administrative law doctrine there is no single approach

to the essence and content of this category. In the Legal Encyclopedia, public power is defined as socio-political power, democracy, and its main types are, respectively – the power of the people as direct democracy, direct democracy (elections, referendums, etc.); state power (legislative, executive, judicial); local self-government – local public authority exercised, in particular, by territorial communities, representative bodies of local self-government (councils), executive bodies of councils, village, settlement and city mayors, etc. [32].

Some scholars emphasize the relationship of public authority with the concept of democracy, giving a fairly generalised definition. In particular, O. Lialiuk defines public power as a kind of power in the state, which is focused on managing all state infrastructure, implemented mainly through a specially created apparatus of government, considering the interests of the vast majority of the population, emphasising that such power is aimed at meeting the needs of economically dominant class [20, p. 84].

The definition given by S. Kovalchuk most accurately reflects all the essential characteristics of public power, who considers public power as a kind of socio-political, sovereign, legitimate power, which is based on public interest and impersonal nature, expressed in the system of public, public-political, volitional relations that arise between bodies and officials of the state (endowed authorities), individuals and legal entities, which are mostly subjects of civil society (who delegate their powers first) based on public law and law [22, p. 51]. That is, the concept of public authority is closely intertwined with the concept of public law, the purpose of which is to satisfy the public interest, which, according to S. Kovalchuk, is aimed at solving social, socio-political and volitional relations [22, p. 50]. In fact, the public interest is the basis for the activities of public authorities, so on the basis of this feature can determine the characteristics of individual public authorities, the main among which is the state, which, accordingly, implements state power as a kind of public authority. Therefore, the state interest can be considered only one of the elements of public interest [33, p. 141].

The concept of public power is often associated with state power. However, these concepts are not equivalent. As for the concept of state power, the Legal Encyclopedia defines state power as a type of public power exercised by the state and its bodies, the ability of the state to subordinate the behaviour and activities of people and associations in its territory to their will, i.e. power "organisation of the dominant part of the population, which (organisation), ensuring the integrity and security of society, manages it in the interests of this part of it and organises the satisfaction of social needs" [32].

Some scholars consider state power as a system of state powers of its bodies and officials. Thus, according to R. Po-

horilko, state power is the will of the state, its bodies and officials to exercise their functions and powers by adopting legal acts within the limits and in the manner prescribed by the Constitution and laws of Ukraine [34, p. 9]. V. Averianov pointed out that the essence of state power is the ability of the "state to make binding decisions and enforce them" [18, p. 12].

Thus, state power is the realisation of the will of the state, which is expressed in the legally defined powers of state bodies and their officials aimed at implementing the tasks and functions of the state, ensuring stability and development of society and protection of human and civil rights and freedoms [35, with. 162].

As rightly noted by O. Halus, state power in form and content is always public power, but public power is not always exercised only by the state. It can also be implemented by other elements of civil society (people or part of it, territorial community, political parties, public organizations, etc.). Thus, public power is a broader concept than state power, because it is exercised by a wider range of subjects [36, p. 294; 37, p. 24]. After analysing the provisions of Art. 5 of the Constitution of Ukraine, which uses the term "power" and not "state power", meaning public power in general, the author concludes that it enshrines such types of public power as direct democracy, state and municipal power [37, p. 29].

This position is expressed by S. Kovalchuk, pointing out that the system of public authorities is a set of authorities of the people, which have different forms of exercising this power, in particular, these are representative bodies formed by elections, namely parliament, president, local governments. Each public authority is created to implement the goals and programs that ensure the protection of rights, freedoms and legitimate interests of the people, security of state and society, addressing issues of socio-economic and cultural significance. In this sense, state power is a type of public power through which the powers of the people, the nation are realised and formally reflected in the law [22, p. 48–49].

So, despite the fact that state and public authorities have many common features, but they have many differences, the main of which, as can be seen, is the subject composition, which public authority is much wider than the state. The right to exercise state power has state bodies and officials, while the subjects of public power along with the state and its structural units are also other social institutions, including local government and direct democracy [35, p. 163].

2.2. Concepts of the essence of public administration

As for the essence of the category "public administration", it should be emphasised that for the world administrative and legal theory and practice, the concept of "public administration" is one of the basic, key categories used in scien-

tific and educational literature in most countries, namely administrative law has always been considered as a branch of law that regulates the organisation and functioning of public administration, establishes the boundaries of its activities, and establishes the basic forms and procedures for exercising control over such activities. Moreover, in a number of countries the concept of "public administration" is enshrined in law (UK, Spain, Italy, Costa Rica, Mexico, Germany, etc.).

This concept is defined at the international level. Thus, in the UN glossary, the term "public administration" is defined as a centralised organisation of public policy and programs, as well as coordination of personnel and has two interrelated meanings: procedures, systems, organisational structures, personnel, etc.), which is financed from the state budget and is responsible for managing and coordinating the work of the executive branch, and its interaction with other stakeholders in the state, society and external relations; 2) management and implementation of the whole set of state measures related to the implementation of laws, decrees and decisions of the government and governing bodies aimed at providing public services [38].

In the doctrine of administrative law of democratic countries of the world, two main concepts of the essence of public administration have been formed:

1) organisational concept, for the conditions of which the decisive characteristic of public administration is its construction as a separate administrative organisation of the state [14, p. 33], the emphasis is on the interpretation of public administration as an administrative organisation of the state and the disclosure of its institutional characteristics. That is, in the subjective sense, public administration is understood as a certain system of administrative bodies and institutions that exercise administrative powers of executive power and service functions of the state; in this sense, public administration – a set of entities responsible for the implementation of the administrative function of public authority, including the provision of public services [11, p. 17].

2) functional concept, which is based on the understanding of public administration as a specific function of the state. Under this concept, the term "public administration" is identified with the term "public administrating", i.e. a specific administrative activity carried out by a statutory system of bodies and institutions endowed with public authority to meet public interests. Thus, the German administrative doctrine uses the term "public administration" in the formal sense in two main meanings: to describe any activity of public administration, regardless of whether it is carried out by the executive or the administrative apparatus that serves the legislature or judiciary; as public administration through administrative procedures that give a legally formal nature of administrative activi-

ties and decisions taken during its implementation [16, p. 49–50].

With regard to the interpretation of the category of "public administration" in Ukrainian administrative law, it should be noted that for Ukrainian administrative law theory and practice, this concept is new, as more common in this area is the use of the term "management". In regulations, the term "public administration" is not used today and is used only at the theoretical level. As rightly noted by B. Bevzenko and R. Melnyk, the emergence of this concept in research is associated with a change in the purpose of administrative law, which in the new realities is formed on the basis of the so-called "human-centric ideology" [27, p. 39].

The positions of Ukrainian scholars on this legal category vary: from the definition of this concept, which is similar to its understanding in Western administrative law, to the reduction of the essence of public administration to the functioning of public authorities at the local level. For example, V. Averianov defined the concept of "public administration" as 1) a set of bodies, institutions and organisations that perform administrative functions; 2) administrative activities carried out by this administration in the interests of society; 3) the sphere of public sector management by the same public administration [18, p. 1–14].

For their part, Yu. Deliia defined the category of "public administration" as a new subject of local government, namely – the system of territorial formations of executive bodies of state executive power on the ground and relevant local governments, their officials elected by communities, empowered to decide local issues independently or through bodies formed by them within the Constitution and laws of Ukraine [39, p. 6]. It is difficult to agree with this position, as limiting the concept of public administration only to local public authorities and their officials is clearly erroneous.

According to V. Bevzenka and R. Melnyk, the form of exercise of legislative power is lawmaking, the judiciary – justice, and the form of executive power is public administrating. This position also significantly narrows the understanding of the essence of public administrating only within the executive branch. At the same time, scholars rightly point out that within the executive branch, along with the implementation of public administrating, political decisions are also implemented, which are the content of political activity that is not part of the public administrating, therefore not regulated by administrative law [27, p. 39–40]. A similar position is held by I. Paterylo, who points out that public administration can sometimes act either as a subject of public administration or as a subject of political activity. This fact, according to the scientist, affects the responsibilities of politicians and civil servants. In addition, the activities of public officials are determined by the rules of adminis-

trative law and fall under the jurisdiction of administrative courts in case of their illegality, while the principles of political figures are the rules of constitutional law and, consequently, its results are often removed from the jurisdiction of the judiciary [28, p. 84].

Quite a significant number of Ukrainian scholars define the content of this category as a set of state and non-state subjects of public power, the key structural elements of which are: a) the executive branch; b) executive bodies of local self-government [25, p. 168–169; 26, p. 18; 40, p. 319; 41, p. 209; 42, p. 13; 43, p. 62].

2.3. Public administrating: organisational-structural and functional approaches to understanding the legal nature

Some scholars in the field of administrative law and public administration consider the legal nature of public administration through the prism of the category of "public administrating". Thus, according to V. Kolpakova public administrating is a set of bodies and institutions that exercise public power through compliance with the law, bylaws and other actions in the public interest. The scientist distinguishes two dimensions of this category: functional (the activities of relevant structural entities to perform functions aimed at realising the public interest) and organisational-structural (a set of bodies created for the exercise (realisation) of public power) [23, p. 28–31; 24, c. 13, 14].

However, if we consider the organisational and structural aspect of the understanding of public administration, highlighted by V. Kolpakov, it should be noted that the subjects of public administrating are not only "bodies" that exercise public power, as public power is exercised not only through the exercise of public authority powers, but also through the implementation of various forms of direct democracy. We believe that the content of the category "public administrating", in addition to public authorities, should also include bodies and structures that are not organizationally part of it, but perform delegated functions of public authorities to pursue public interests in all spheres of society.

In addition, the position of V. Kolpakov's understanding of the essence of public administrating is somewhat controversial. On the one hand, the scientist defines public administrating as a set of bodies, institutions and structures that exercise public power, and on the other – highlighting the functional aspect of this concept, defines it as the activities of relevant structural entities. It should be emphasised that the functional aspect is decisive in characterising the essence of public administrating, as this concept involves the activities of relevant bodies, institutions and structures that exercise public power. Moreover, given the global trends in the institution of public administrating, such activities should be aimed not at achieving certain political goals, strengthening the organisational and regulatory

influence of society on society, but to build a model of service state, which aims to serve the interests of citizens and society. Under this model, public administration plays the role of a service tool designed to ensure the public interest, and public administration is based on the principles of feedback between public administration and citizens.

CONCLUSIONS

Based on a detailed analysis of scientific approaches to the essence of the concept of "public authority", it is proposed to interpret this legal category as sovereign, legitimate authority, it is based on the public interest, which is the ability of individuals and legal entities, bodies and officials to influence the solution of social and public policy issues and includes state power, direct democracy and local self-government.

As for the category of "public administration", despite the fact that in Western administrative law doctrine it is interpreted mostly in organisational (set of entities responsible for the implementation of the administrative function of public authority) and functional (specific administrative activities of the relevant sub-projects to meet public needs) aspects, however, should still distinguish the functional component and allocate it to a separate category – "public administrating".

The categories of "public administration" and "public administrating" are similar in nature, but different in content independent administrative and legal concepts that characterize the organisation and functioning of public authority. Public administration should be understood as public authorities, and bodies and structures that are not organizationally part of the public authority system, but perform the functions delegated by it to realise public interests in all spheres of society and the state. For its part, public administrating is the activity of public administration represented by public authorities, bodies and structures that are not organisationally part of the public authority system, but perform delegated functions to realie public interests in all spheres of society and the state, acting exclusively within the powers and in the manner prescribed by law, in order to ensure the rule of law, human and civil rights and freedoms to meet the needs of society and the state and endowed with the prerogative of public authority. Based on the above approach to the understanding of public administration and public administrating, we can say that the category of "public administration" determines how public power is built, which entities are empowered to implement it. While the category of "public administrating" reflects the substantive part of public power, i.e. the forms and procedure for its implementation.

This understanding of the nature and relationship of the categories of "public authority", "public administration" and "public administrating" can be the basis for construction of a mod-

ern concept of these categories in the Ukrainian doctrine of administrative law. The practical implementation of this concept will contribute to the development of an optimal model of public authority, which is based on the principles of the rule of law, human and civil rights and freedoms and generally meets all the criteria of democratic principles of statehood.

RECOMMENDATIONS

The scientific value of the study is that it develops the concept of legal categories "public authority", "public administration" and "public administrating", based on the analysis of the content of these concepts and their relationship in the modern doctrine of administrative law. The findings of the study can be used in research work – for further general and special research in the field of law; in law-making – in the process of development and improvement of the legal framework in the field of organisation and implementation of public authority, in order to harmonise Ukrainian legislation with world standards; in the educational process – while studying in educational institutions of the legal direction of academic disciplines of general theory of law, constitutional law and administrative law.

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TRANSITION OF QUANTITATIVE INDICATORS OF CORRUPTION TO THE QUALITY OF EXTREME FORMS OF DENIAL OF LEGAL VALUES

Abstract. *The article reveals the transition of quantitative indicators of corruption into the quality of extreme forms of denial of legal values, such as war. The tolerant attitude of citizens to corruption and the high level of involvement of society in corrupt relations eventually weakens such a nation to the point that it becomes incapable of resisting external military aggression. The fact of such a failure is proof of the transition of the quantitative indicators of corruption into the quality of violence and war as extreme forms of denial of legal values, which are reflected at the level of the constitution and the norms of international law, including humanitarian law. It has been established that the main burden of destroying and weakening key economic and state institutions of power in peacetime is borne by corrupt and traitorous individuals. Their activities range from il-*

licit enrichment through the decline of entire sectors of the economy to espionage (the transfer of secret information to foreign states), propaganda of the values of other nations/states, terrorism and other subversive activities. Bribery, appointments to positions based on kinship and personal ties rather than professional qualities, and other ways of corruption reveal the social danger of the motive (subjective side) of the perpetrator and the method (objective side) of the customer of the crime. War is caused by the inability of law enforcement agencies to neutralize corruption in peacetime. This pattern is characteristic of both sides of the war. The state had the advantage of striving to integrate into a civilization whose standards allowed for much greater anti-corruption efforts (legislative, organizational-institutional, etc.) than a state not integrated into a highly developed civilization. The desire to return the occupied territories becomes an additional incentive to improve the activities of law enforcement agencies and other components of state power. At the same time, the aggressor state, which violates international law, has no such incentives to eradicate corruption and improve (organizational and technological) law enforcement. The author also emphasized that military law is a fully dynamic matter of change in the rules at the national and international level in the territory of war and in time of war. It is a system of generally binding rules. It regulates the legal relations between military personnel, and in wartime extends to the entire population. It is also noted that all national legislation during martial law and its transformation due to war, variations in the legal requirements of the occupiers in territories under their control, the norms of international humanitarian law and the practice of its application by the International Committee of the Red Cross, relevant judicial and other acts of law. The author recognized that the implementation of national law in time of war is limited by the need for organizational, economic and other costs to counter the enemy. Its effectiveness is also shown by the inertia of great corruption in peacetime, namely: insufficient technical equipment of troops; underdevelopment and psychological weakness of civil servants in a number of positions, etc. Public authorities are forced to focus on informing and educating the population through programs adequate to the military challenges for civil servants (ideological level). There is a growing need to formulate timely and adequate changes in legislation to meet the changing conditions of war. It is important to activate existing and form other organizational institutions to neutralize the enemy as quickly as possible and restore constitutional order throughout the country (volunteers, volunteers, territorial defense of local communities, and other forms of self-organization)

Key words: *corruption, humanitarian law, illicit enrichment, international law, law enforcement agencies, legal value, military law*

1. Introduction

The UN estimates that annual economic losses due to corruption amount to at least $2.6 trillion (5 percent of global GDP). Corruption in Ukraine remains a constant threat to the economic and military components of national security. Corruption in Ukraine remains a constant threat to the economic and military components of national security. The rate of corruption eradication during 2012–2022 has been slow,

and the Corruption Perceptions Index has improved by only 6 points. The historical period before 2012 was not marked by more significant progress in anti-corruption policies. Calculations of Ukraine's losses from corruption indicate that long-term trends of illegal income growth at the level of 25–40% of GDP persisted. There were significant differences between the official incomes of citizens and their expenditures. Accordingly, indicators of inefficiency show the following annual losses from corruption. Spending on bribes and anti-competitive collusion in public procurement (a total of 540 billion UAH in 2021) amounted to 4–8 billion dollars. Smuggling is estimated at $4 billion (total imports were $73.3 billion). Losses from tax optimization through offshore jurisdictions amounted to $ 2 billion. The consequences of the use of non-commodity schemes and/or minimum amounts of taxable income are estimated at least at $ 1 billion. The definition of officially lower than actual wages causes damage to the state budgets of $ 2 billion annually. Foreign investment of $35 billion and investment income of $3 billion are lost. According to the Ministry of Finance of Ukraine, the curtailment of investment plans of foreign companies due to the low pace of reforms and high level of corruption will lead to the loss of the budget of Ukraine in 2022 by 8.5 billion UAH The National Agency for the Prevention of Corruption in Ukraine estimates the organizational and legal effect of the implementation of anti-corruption strategy in Ukraine at least 8 billion dollars. However, since 2018, the state still does not have such a strategy.

2. Analysis of recent topical resources

The topic of the article was chosen because of the need to investigate the transition of quantitative indicators of corruption into the quality of extreme forms of denial of legal values. For Ukraine, such denial has become a reality of war. This demonstrates the close connection of high levels of corruption and related crimes with war, military law and challenges to the country's security. This nation is protected from external aggressors and at the same time has strong internal enemies: corrupt officials. Dishonest government officials have for decades committed crimes to steal national wealth and enrich themselves. The scale and depth of such thefts involving businessmen have become so great that they have critically diminished the country's defense capabilities. As a result, a foreign aggressor took advantage of the country's weakness and waged war on it. Given the destructive role of corruption in peacetime, it has become an integral part of social relations in wartime. The subject of the law of war has traditionally been the domain of international lawyers (N. Bhuta, A. Pagden, B. Straumann – The Justification of War and International Order; C. Zanin, V. Martins, R. Valim, C. Boland, L. Murur – Waging War through Law). At the same time, the issue of anti-cor-

ruption and the survival and development of human communities in times of war-related crisis is extremely complex and interdisciplinary. It is considered in the works of lawyers specializing in the theory (philosophy, anthropology, sociology) of law, criminal law, labor law and commercial law and other branches of law (P. P. Bogutsky, V. M. Koryakin, Yu. I. Migachev, V. Y. Pashinsky, I. F. Pobezhimov, M. M. Prokhorenko, V. V. Shulgin, etc.), as well as economists (N. Mulder – The Rise of Sanctions as a Tool of Modern War; R. Allio – Assessing the True Economic, Social and Political Costs of War), political scientists (L.-A. Berg – The Politics of Institutional Change in the Security Sector After War; S. E. Gent, M. J. C. Crescenzi – Market Power War in World Politics) and other scientists. However, the new actions of people reveal life circumstances that were not taken into account in the study of legal relations and human virtues in wartime by previous efforts of scholars. This actualizes research on the stated topic.

3. Correlation between the depth of corruption and the likelihood of war

The actualization of issues of transformation of legal consciousness, law enforcement practices and legislation is exacerbated in times of war for every country. And Ukraine is no exception. Although it is advisable to comprehend such changes before the war. Peaceful time is the most appropriate time to properly define progressive systemic legal norms of anti-corruption content and mechanisms for their effective implementation in wartime. Our state has been at war with Russia since 2014 and since then has taken legal measures to protect its citizens, territory, establish peace and restore all other constitutional values. Formally, this state was not recognized by either side. And each of them had their own reasons for doing so. Between 2014 and 2022, the influential states of the world (their associations) did not find it in themselves to force the Russian Federation to return the occupied territories, namely the Autonomous Republic of Crimea and some areas of Donetsk and Luhansk oblasts. To Ukraine's credit and its sincere peacefulness, it should be noted that it had all the necessary military forces to prevent the occupation of the Autonomous Republic of Crimea by the Russian military, but did not use them. The occupation of this territory cost the life of one Ukrainian soldier, who was killed by the Russian military, while other bloodshed was avoided. In essence, the return of the peninsula is a peaceful withdrawal of Russian troops, compensation for the loss of a dead soldier's family and occupation. It should be noted that Ukraine had all the necessary military forces to prevent the occupation of the Autonomous Republic of Crimea by the Russian military. However, it did not use them to honor Ukraine and its sincere peacefulness. The occupation of this territory cost the life of one Ukrainian

soldier killed by the Russian military, and another bloodshed was avoided. In essence, the return of the peninsula is a peaceful withdrawal of Russian troops, compensation for the loss of a dead soldier's family, and a way out of the occupation.

The above logic of legal history, combined with large-scale corruption, demonstrated the emergence of prerequisites for a full-scale war of Russia against Ukraine, which began on February 24, 2022. Ukraine's peacetime losses from corruption have been greatly underestimated. The factors that revealed this were requests for hundreds of billions of dollars worth of military equipment, requests to cover a budget deficit of $5 billion a month, and so on. The existence of such requests meant a loss of national wealth, which was the greatest in 1990. In the work noted the absence of force majeure circumstances that could objectively reduce the country's wealth without turning it into an investment of development. Accordingly, it is a waste of military property and the material base of industrial relations. This negative trend was steadily increasing as government officials and entrepreneurs were not held accountable for the theft and embezzlement of state assets. A full-scale war showed a loss of the country's economic and military potential at the level of 1990. Taken together, this represents at least a tenfold increase in officially estimated losses from corruption, namely, more than $20 billion per year.

The losses from corruption and related crimes have made Ukraine vulnerable. They have clearly demonstrated the inability of its legal system to protect its citizens from the extermination and destructive actions of corrupt officials. Such destruction is gradual. It was hidden to many, and only knowledgeable experts saw the reality of the destruction of the people and the nation. Ukraine's external weakness was a reflection of its internal incapacity. It used the full range of peaceful means to restore law and order, namely: the principles of law and the universal values on which they are based; communicating with and mediating with the aggressor (occupier) with the help of foreign statesmen, international law and organization. Ultimately, however, the country could not prevent corruption or war. Then these phenomena only reinforce each other, denying legal values and human virtues, condoning violence, selfishness and other human vices. Law and virtue presuppose peace and development. Nevertheless, they are despised.

The international community (foreign states and international organizations) proved unable to force Russia to comply with the law/human rights. Russia's denial of law as a value and its violent understanding of law led to the war. For them the law is rudeness, cruelty and violence. It denies the very essence of law. Peaceful communication and agreements for Russia do not become decisive in the law. For them, these are

rather elements that help violence. The right itself is identified with their power – military and physical force, energy resources. The war of the Russian Federation demonstrates a mental substitution of concepts, namely, rights by force, power, violence, the ability to kill and to commit other violence. Physically, the energy of violence is fueled by the use of uniquely large fossil natural resources. War can never be justified by anything other than necessary evil, and even when justified, it remains evil. Above all, it must be waged to minimize harm. Life must be protected by all means. One such means of protecting life is, in particular, the law of armed conflict. Although its current content has repeatedly continued to be defined by polarization and dehumanization. The power of life transcends such a conflict paradigm and gives existing laws of war a binding extra-legal character. In this respect, humanitarian conscience is one of those means that promote the observance of the principles of protection. This conscience reminds humanity of its interconnectedness and of living together, so that necessity can no longer threaten the survival of the human species at any cost. Both positivists and deconstructivists can use this spirit along with their textual and contextual interpretations to achieve the same goals: justice and equality for humanity (Vanhullebusch, 2015).

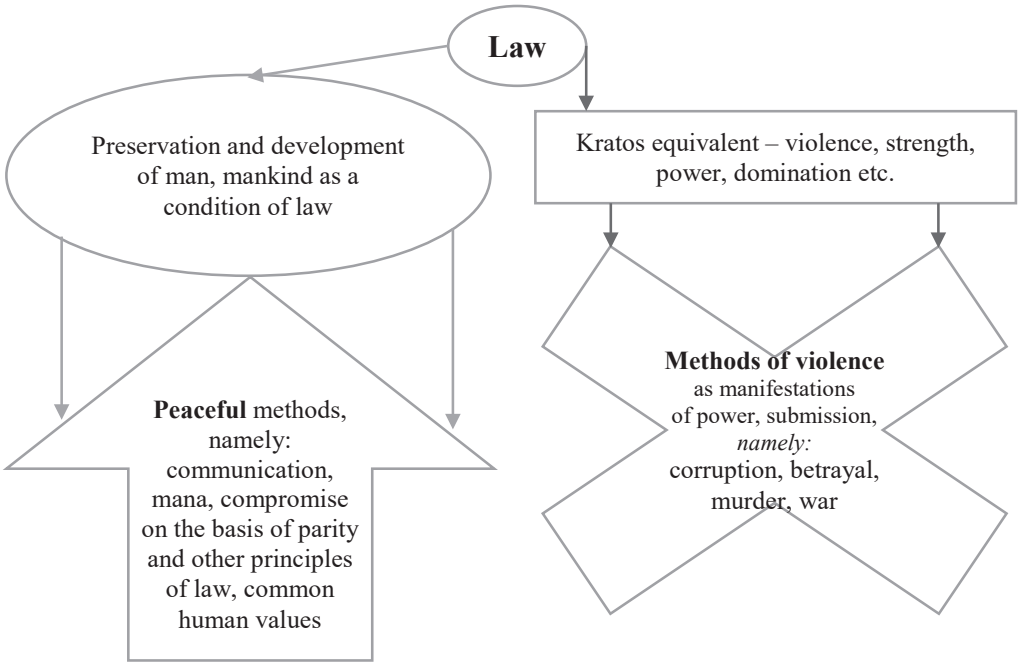

Figure 1. Interpretation of law by a viable civilization (peaceful) and a military aggressor (the case of the Russian Federation)

The main burden of destroying and weakening key economic and state institutions of power in peacetime is borne by corruptionists and traitors. Their activities range from illicit enrichment through the decline of entire industries to espionage (the transfer of secret information to foreign countries), propaganda of other nations/states' values, terrorism and other subversive activities. Bribery, appointments based on kinship and personal ties rather than professional qualities, and other methods of corruption reveal the social danger of the motive (subjective side) of the perpetrator of the crime and the method (objective side) of the person who ordered the crime. Accordingly, the inability of law enforcement agencies to neutralize corruption in peacetime leads to war. The effectiveness of the fight against corruption correlates with the ability to resist military aggression from outside. In particular, the corruption indicator contributes to the elimination of funds from financing channels of terrorism and armed formations of foreign states. The level of the money laundering is determined using the Basel AML indicator (Basel Anti-Money Laundering Index) which measures the risk of money laundering and terrorism funding. The calculations show a statistically significant impact of fiscal pressure on the risk of money laundering. In other words, with an increase in the degree of fiscal freedom (respectively, a decrease in tax pressure) there is an increase in the risk of money laundering. In addition, some important control variables of the impact of tax pressure on certain facts relating to economic and financial crime, such as the level of economic growth, the quality of institutions, etc., must be considered. Similar studies have revealed the differential impact of tax pressure on corruption in developed countries compared to developing countries. The influence of the quality of institutions on corruption was found to be much higher in developing countries than in developed countries. The excessive bureaucracy, 2 Economic and Political Determinants of Economic and Financial Crime 107 the lack of transparency, and the ambiguous and confusing legislation particularly stir up a poor person who becomes more and more preoccupied by the officer's corruption to obtain immediate benefits (Achim, Sorin Nicolae Borlea, 2020).

The absence of this correlation determines the pattern of increasing violence, particularly military violence. For example, the war of the Russian Federation against Ukraine. Ukraine's state advantage was its desire to integrate into the EU, whose economic and spiritual-legal civilizational standards encouraged us to make much greater anti-corruption efforts (legislative, organizational-institutional, etc.), compared to the military aggressor. An additional incentive for Ukraine was the tension created by the Russian Federation since 2014, namely the renewal of law enforcement agencies and other

components of state power for the return of enemy-occupied territories. At the same time, the military aggressor did not feel the challenges that would stimulate it to eradicate corruption and improve (organizationally and technologically) the law enforcement agencies. On the contrary, the limitlessness of material wealth covered the losses of corruption. The world community's lack of an effective response to Russia's violation of international law – the rules for all states – has created a sense of complacency and a lack of counterbalance to its wrongful decisions and violence. In fact, other countries around the world have given Russia the impression of impunity for crimes, namely, to plunder the goods of another state, the ability to ignore international law, to use violence against neighboring states, to intimidate, to attack critical infrastructure in cyberspace, to commit war crimes at will, devaluing human values and international law and order. Of course, such a misconception has nothing to do with natural law and is destructive to any state. The possibility of violence is fueled by the absence of courts, law enforcement, and other effective international institutions to prevent and punish it.

Nevertheless, there may be cases in which judges' rule, overtly or otherwise, in accordance with the interests of their own countries. The multinational composition of international courts and tribunals can serve to limit the impact of such bias; hybrid tribunals have been specifically designed to ensure that national judges do not have an advantage (Shane, 2014). In the context of an underdeveloped international legal system, H. Lauterpacht noted how States "distrust the impartiality of international judges in their inevitable creative function of filling gaps." In his view, to deny the very possibility that international judges can be impartial when their national interests are affected is to display a superficial skepticism that ignores both human nature and … historical experience. International judges have a deep and ever-growing consciousness that they are the guardians of humanity's best and most urgent hopes and occupy the highest position in the international hierarchy (Lauterpacht, 2011).

In addition to anti-corruption systemic shifts forward, during the 2014–2022 Russian terror, Ukraine succeeded in renewing its political elite, reforming courts, prosecutors, and municipal authorities. Progress has also been observed in strengthening market conditions for entrepreneurship (conditions for the functioning of the land market, etc., were created) and the financial sector (banks and non-bank financial institutions). In the face of subversion by saboteurs from the Russian Federation, Ukraine has renewed its army and law enforcement agencies, upgraded their skills and provided them with modern equipment; created territorial defense units; established stronger international ties, saturating them with work on

a number of economic (scientific, military and other) projects; developed and adopted several new standards in higher education to ensure legal opportunities for academic mobility. Anti-corruption training courses (content, practices, innovations and trends) continued for civil servants. During the war, the pre-war institutes for advanced training of civil servants continued to offer curricula that included subjects for gaining knowledge on minimizing war losses, neutralizing the enemy, and restoring peace. Their legal consciousness thus formed is an organizational weapon to fight the enemy. An important conclusion for states threatened with invasion by foreign troops is the need to saturate the minds of local and state officials with special knowledge of military law. The Center for Advanced Training has created training courses for public servants of Zaporizhzhia region, namely: "Current issues of ensuring the rights of Ukrainian citizens with the instruments of International Humanitarian Law" (three parts – theoretical and methodological basis, protection of human rights by legal instruments, denial nature of law by the requirements of the occupation legislation), "The law of war-forced migration: Ukrainian case"; "Organizational and legal protection of the person in the conditions of war", "The nature of changes in legal culture during the war". This strengthened the public administration's institutional capacity to restore peace and enforce the rule of national law throughout the country. Its actions became deliberate, timely, and ultimately effective in wartime.

Despite the fact that the practical life of business confirms the persistence during the war of the main requests from local public authorities to illegally obtain funds from businesses in the form of regular provision of money for personal needs, kickbacks, etc. This is observed in enemy-free territories, where businessmen continue to operate. During the war, the problem of corruption in such areas is particularly acute, namely: at customs in the form of bribes for smuggling; when distributing humanitarian aid by referral; and at military registration and enlistment offices, the risk of bribes for assistance in evading conscription increases. The war exposed the conflict of interests of officials appointed to office based on personal connections between officials rather than on an assessment of their high professional qualities. An indicator was that corrupt officials left their posts in the first challenges of the war and went abroad or to the west of the country. They acted explicitly as in the parable of the gifted rather than the earned good. Those who received them honestly, whose path to them was a manifestation of purely personal qualities and professionalism, often remained in office.

The war-related transformations of corruption and its manifestations in times of war convince us of the validity of the hypothesis of the vulnerability of

a nation with deep and long-standing problems of state dishonesty. Such corruption is nothing less than an internal abuser. Its actions are no less bloody than the violence of another country's army. The only difference is in the pace and obviousness. Corruptors commit violence stealthily and for a long time, while the enemy army commits violence openly and quickly.

At the bottom of the Corruption Perceptions Index are countries with unstable political situations, military conflicts, and where governments only have partial control over the territory of a state: Somalia and Syria (13 points) and South Sudan (11 points). Since 2014, Ukraine has been characterized by all three factors that exacerbate corruption. The Corruption Perception Index (CPI) for 2021 is not enviable: 122nd place with 32 points. Malawi had the greatest success in fighting corruption in 2021 (+5), scoring 35 points and ranking 110th. In recent years, local law enforcement agencies have effectively investigated a number of corruption cases involving senior government officials. The Malawi Anti-Corruption Bureau arrested the Minister of Energy and two other officials on suspicion of corruption in the awarding of a state oil contract. These investigations have resulted in court verdicts in several high-profile cases. They also include the "cash gate" cases, the essence of which was the spending of budgetary funds without following the procedures of 2009–2014. The Cash Gate scandal involved the misappropriation of public funds by transferring funds from public bank accounts to private companies under the guise of paying for goods and services. The scandal was dubbed "cash gate" because low-level government employees arrested for the scheme were found to have cash in their homes and cars. It was uncovered in September 2013 when a public accounting clerk, whose monthly compensation was less than $100, was found with a huge sum of cash, valued at more than $300,000.00, in his car. A week later, Malawi's budget director was assassinated. The government, with the assistance of the British government, conducted a forensic examination, the results of which were as follows. A preliminary report showed that government officials manipulated the payment system (Integrated Financial Management Information System – IFMIS) to steal more than $32 million over a 6-month period from April 2013 to September 2013. Government employees would run checks through the system to private contractors under the pretense that they were supplying goods or services to the government, when they were not. Once the check was written, they would remove the transaction from the system. A full audit showed that the cash-gate scandal could have originated as early as 2009, and for the period ending in 2014, $356 million was involved (Chiwala, 2018). If corruption is not addressed, productivity, investment, capital, and thus economic growth and de-

velopment decline over time. From this perspective, regression analysis using panel data methods showed that poverty, inequality, drug trafficking, and the actions of armed agents affect violence. Corruption was also found to have a negative impact on business growth. Based on the methodology and the methods used, it was found that these variables were suitable for analyzing the prevalence of corruption and violence in the process of economic growth and development. Institutional policies consist in strengthening the interaction between different economic agents, transparent participation in decision-making, adequate and strengthened governance, a strengthened judicial system and an adequate efficient resource allocation system. This would greatly reduce the vicious circle that impedes the development and economic growth of countries, makes the state weaker, and makes wars possible (Poveda, Martínez Carvajal, Pulido, 2019).

4. Conditions of lawmaking, law enforcement, and support for legally advanced civilizations defined by corruption

In keeping with the Confucian notion that a true king must rule for the good of the people, Xunzi believed that a true king could engage in punitive expeditions against corrupt rulers. Rulers become corrupt when they violate the Way and fail to fulfill their moral duties to the people. On the contrary, a true king always behaves virtuously and orders his army to refrain from massacring civilians. Indeed, in keeping with the Confucian view that the example of virtue can promote moral and political renewal, Xunzi believed that the army of a true king could bring about moral change only by acting virtuously toward the people (Traven, 2021). The basic legal principle of action in war has been the idea of the justness of its commencement. The authors rely on the scholarly doctrine of just war within the Western legal tradition. War combines power and law (Sein and Sollen), where the first in the service of law and law limits the power. War becomes just in response to unprovoked aggression; as a last resort to restore a violated right (consecutio juris); to punish an offender. Acceptable causes of such a war are defense (protection), return of lost property (territory), debt collection and retribution. Two Latin concepts, Jus ad bellum and Jus in bello, began to be used during the League of Nations to denote a system of rules about the war beginning and its course. They became part of the everyday lexicon of theoretical work and practical application after World War II in the late 1940s. The need to protect the innocent in wars of conquest is asserted. It is morally acceptable to wage punitive wars to overthrow corrupt leaders. If weapons are raised for a righteous cause, both aggressive and defensive warfare are appropriate. If the cause is unrighteous, then neither is right. Morally permissible wars are those aimed at punishing corrupt leaders devoid of the

Tao. Violence against the innocent, i.e., against those who have done no wrong, is inherently wrong (Traven, 2021). The purpose of Jus ad bellum is "to save succeeding generations from the scourge of war" (Haque, 2017). This is the rule about the causes of war. Ontologically it is the right of the sovereign, then the right of the state to wage war, the right to resort to the use of force. These rules define the conditions and legitimacy of the use of military force. According to them, the modern world limits the use of military force in international relations on a case-by-case basis. The fact of war is the action of a subject carried out for certain reasons. This action entails a legal regime reflecting the validity of the reasons and the status of the subject. Jus in bello – the laws of war are a system of legal regimes (rights and obligations) for belligerents. They are the rules governing the conduct of combatants during war. They apply if the war is just, for reasons justified in the doctrine (motive, material reasons). Otherwise, the law during war does not apply to the aggressor, but only to the subject who pursues just causes in the war. Anyone who does not fight for a good / worthy cause has no rights and can be executed. Example: discussion of this by ordinary citizens on social media; changing the boundaries of the law in the face of unwarranted / excessive violence, etc. (Kolb, 1997).

The first act before or immediately after the outbreak of war is fully committed within one day. This is the imposition of martial law. During the same period, restrictions are imposed on the crossing of borders, in the financial sphere, as well as in the areas of justice (courts) and law enforcement. Decisions to protect critical infrastructure, both physical and in cyberspace, are also becoming urgent. Information resources of courts and law enforcement agencies, tax information and all national (regional) registries of individuals, entrepreneurs, etc. are subject to closure. The following decisions concern everything at once, namely the administration of justice and the continuation of the criminal process, the execution of criminal penalties, security and, if necessary, the evacuation of the population, the logistics of businesses (raw materials and finished products) and the population; tax burden and benefits; nomenclature of humanitarian aid and its customs clearance; liberalization of labor law requirements; movement of money, food, medicine, fuel, weapons; ensuring the rights of asylum seekers who have lost housing, clothing, and other components of life; protection of refugee rights abroad, etc. For example, the destruction of buildings during wartime generates large amounts of debris, the depositing of which on the ground requires liberalization of the relevant environmental law regulations. In peacetime, such storage is only allowed on concrete or other surfaces, which prevents debris of building components from entering the soil, otherwise the

Environmental Inspectorate imposes huge fines.

Changes in the territory of the theater of military operations and the movement of military front lines are a variable factor for the adequate response of the parliament and public administration bodies. A separate area of work is to ensure strict executive discipline in public authorities, preventing the resignation and departure abroad of officials of these bodies, and especially the leaders! Winning the war with minimal losses presupposes the maximum preservation of productive forces and means, the economic ability to create added value and profit. Accordingly, a balance is struck in the optimal ratio of fiscal benefits and incentives with the tax burden, so as to preserve both entrepreneurs and not to lose revenues to state budgets (funds).

The outbreak of war required the mobilization of available national resources and support from other states. Numerous speeches of the President of Ukraine to the parliaments of foreign countries, civilizationally close to the Ukrainian multinational nation, became a phenomenal legal phenomenon in the defense of Ukraine (Table 1). At the very least, it is a source of constitutional, international public, international humanitarian law. The content of the speeches, the combination of communication styles (diplomatic, formal, colloquial, and others), and the successful combination of denotations with emotionality ensured their effectiveness, empathy, and help in response. The legal result of such assistance is expressed in the determination of the highest officials of foreign states (their alliances). They decide to act quickly and make the necessary decisions to support Ukraine. A separate type of such decisions are the sanctioning parts of legal norms aimed at punishing and weakening the military aggressor.

State power in time of war rebuilds its structure, replenishes its armed forces. Operational fulfillment of new tasks, conditioned by the need to defend against the armed forces of a foreign state, to neutralize and expel the enemy from its territory, to restore sovereignty in the territories temporarily occupied by the enemy, becomes urgent. That is, a number of wartime functions are added to the functionality of peaceful life. Thus, economic, legal, law-enforcement and other functions of state administration are meaningfully adapted to the needs of victory in war, namely: other structures and nature of expenditures, relocation of productive forces; material provision and other protection of children, the elderly, the disabled, women and other socially vulnerable groups, etc. Legal regimes are emerging for people who have lost their homes and migrated across the country because of war (internally displaced persons); those who have gone abroad (refugees or temporary asylum seekers); prisoners of war; victims of war, military and civilians, territorial communities. Accordingly,

the application of these regimes requires the creation or updating of existing procedures for their provision. These are the norms of administrative, criminal, criminal procedural branches of law.

Table 1

An innovative way to engage legally highly civilized nations in restoring law and order in a war caused by corruption and related crimes

№	Country's parliament, government, head, nation	Date of the President's speech
1.	European Parliament	01.03.2022
2.	The United Kingdom of Great Britain and Northern Ireland	08.03.2022
3.	Canada	15.03.2022
4.	The Federal Republic of Germany / Bundesrepublik Deutschland	17.03.2022
5.	United States of America	17.03.2022
6.	Switzerland / Confoederatio Helvetica / Schweizerische Eidgenossenschaft / Confédération suisse / Confederazione Svizzera / Confederaziun svizra	19.03.2022
7.	לְאָרְשִׁי / Israel ׀	20.03.2022
8.	Republic of Italy / Repubblica Italiana	22.03.2022
9.	French Republic / République française	23.03.2022
10.	Japan /日本	23.03.2022
11.	Kingdom of Sweden / Konungariket Sverige	24.03.2022
12.	The European Council (heads of state or government of the EU member states)	25.03.2022
13.	رطق / State of Qatar and participants of Doha Forum	26.03.2022
14.	Kingdom of Denmark / Kongeriget Danmark	29.03.2022
15.	Kingdom of Norway / Kongeriket Norge	30.03.2022
16.	Kingdom of the Netherlands / Koninkrijk der Nederlanden	31.03.2022
17.	Kingdom of Belgium / Royaume de Belgique	31.03.2022
18.	Commonwealth of Australia	31.03.2022
19.	Romania / România	04.04.2022
20.	Kingdom of Spain / Reino de España	05.04.2022
21.	United Nations Security Council	05.04.2022
22.	Republic of Ireland / Poblacht na hÉireann	06.04.2022
23.	Hellenic Republic / Ελληνική Δημοκρατία	07.04.2022
24.	Republic of Cyprus	07.04.2022
25.	Republic of Finland / Suomen tasavalta	08.04.2022
26.	Republic of Korea / 대한민국	11.04.2022
27.	Republic of Lithuania / Lietuvos Respublika	12.04.2022
28.	Republic of Estonia / Eesti Vabariik	13.04.2022

When you enter the offender's territory, do not do violence to his gods; do not hunt his wild animals; do not destroy earthworks; do not set fire to buildings; do not cut down forests; do not take the wool of domestic animals, grain, or implements. When seeing their elders or young men, return them without harming them. Even if you meet adults, if they do not engage you in battle, do not treat them as enemies. If an enemy is wounded, give him medical attention and return him (Traven, 2021). In addition to the warring parties, the International Committee of the Red Cross remains responsible for observing international humanitarian law in time of war. This organization is the only entity that has a mandate from the world community to help people in time of war and to fulfill the requirements of international law, namely: the Geneva Convention of 12 August 1949 On the Improvement of the Wounded and Sick in Armed Forces; On improving the fate of the wounded, sick and shipwrecked in the armed forces at sea; On the treatment of prisoners of war; On the protection of civilians during war; and the additional protocols ratified by not all States, concerning the protection of victims of international armed conflicts and concerning the protection of non-international armed conflicts victims, of 8 June 1977; as well, concerning the adoption of an additional distinctive emblem of 8 December 2005.

Foreign military and collaborators become a specific organization of state power in the occupied territories. They form the occupation authorities. The procedures of such formation and further exercise of power receive neither de facto nor formal legal legitimacy, as they contradict the principles of law and the requirements of international law. The essence of the occupiers' actions to organize power in the occupied territories is the result of their desires and illusions, which have nothing to do with the nature of law. The occupiers and/or other interested community refer to such actions and parts thereof in legal terms that cannot and do not make legal sense. As a result, the occupiers use words from the field of legal science and practice and do not create content for such nominations even in their imagination. Moreover, as a result of this use of legal categories, nothing legal emerges in real life. All that remains are the words of the occupiers, corresponding to those parts of the imagination of their minds that deny real legal reality, both in relation to themselves and to all other members of the peoples of the world.

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5. Conclusions

Thus, the tolerant attitude of citizens toward corruption and the high level of involvement of society in corrupt relations weakens such a nation over time to the point that it becomes incapable of resisting external military aggression. The fact of such a failure demonstrates the transition of quantitative indicators of corruption into the quality of violence and war as extreme forms of denial of legal values, which are reflected at the level of the constitution and the norms of international law, including humanitarian law. In time of war, law is a wholly dynamic matter of transforming national and international rules in the territory of war – military law. It is a blueprint for national self-preservation and victory over the enemy, a balance between humanity and military necessity in action and rules. As a system of generally binding norms, it regulates legal relations between military personnel and in wartime extends to the entire population, as well as all national law during martial law and its transformation in connection with war, variations in the legal requirements of the occupiers on their territories, and international norms. And also, this humanitarian law and the practice of its application by the International Committee of the Red Cross, the relevant judicial and other acts of law enforcement. Legal regimes during the war are conditioned by the emergence of new categories of citizens, including those affected by it; by the emergence of occupying forces and collaborators; by the reaction of foreign states and its changing dynamics, etc. The legal regime in territories occupied by foreign troops testifies to the decay of their legal consciousness, which allows fictitious legal phenomena to exist on such lands and the population living there, in which the occupiers and collaborators do not believe, admit their falsity and rational inconsistency, and deny international law. They do not apply them to themselves and/or their countries. The invalidity of these norms is proved by their absence in the highly developed countries of the world.

The implementation of national law in time of war is limited by the need for organizational, economic and other

costs of countering the enemy. Its effectiveness is also affected by the inertia of great corruption in peacetime, namely insufficient technical equipment of the troops, underdevelopment and psychological weakness of civil servants in a number of positions, etc. Public authorities are forced to focus on informing and educating the public for adequate war challenge programs for civil servants (ideological level). There is a rapidly growing demand to formulate timely and adequate legislative changes suitable to the changing conditions of war. It is important to activate existing and form other organizational institutions to neutralize the enemy as quickly as possible and restore constitutional order throughout the country (volunteers, territorial defense of local communities, and other forms of self-organization).

Jus in bello, which shows more clearly the complex relationship between fundamental principles and specific applications of the laws of armed conflict to attacks on computer networks. Principles such as the distinction between combatants and civilians, proportionality in attacking, and the prohibition against causing unnecessary suffering remain at the core of the commitment to the law regardless of the technology used. It is in the concrete application of laws that the impact of technology and the change in values and concepts brought about by the information revolution manifests itself. One of the most significant is the increasing value of intangible property and information in information societies. It will have an impact on the application of laws governing the conduct of hostilities to target analysis, protection of cultural property, and property crimes in general (Harrison Dinniss, 2012). International humanitarian law is applied in a very narrow and fragmented manner. The numerous casualties and victims of the war in Ukraine proved the ineffectiveness of the International Committee of the Red Cross, which is the only one authorized to apply the requirements of international humanitarian law and ensure the observance of human rights by the military, especially by the party that started the war. The backwardness and unsuitability of the UN to combat war crimes. The archaic and uselessness of its Security Council has also been exposed. This body has absolutely no function for its peacekeeping function and is unfit for it.

It is clear that the phenomenon of judicial development of international humanitarian law has not encompassed the totality of the law of armed conflict. Nor are judicial bodies capable of assessing the conduct of all States in the same way. Selectivity in the adjudication of humanitarian law has arisen for a variety of reasons, including the predetermined jurisdiction of courts and tribunals and the general reactive nature of judicial proceedings, where the judiciary can only decide cases referred to them. The compulsory jurisdiction of the International Court of Justice is rec-

ognized only by one permanent member of the Security Council, Great Britain, although the Court makes legal decisions affecting all States, mainly through its advisory opinions (Shane, 2014). Current international law on war prevention is extremely outdated, namely: there are no conventions on combating cybercrime; on the use of software to prevent and record war crimes, etc. For example, the use of eyeWitness to Atrocities (URL: https://www.eyewitness.global/), which automatically transmits information to the International Criminal Court.

In fact, war and law are mutually exclusive concepts that follow from the works of Roman jurists, the canon law and civil law of the Middle Ages, scholasticism, and the classics of international law of the Salamanca School. War and law are treated separately. Legal regimes in time of war norms of peremptory content (jus cogens). Their essence is utilitarian, namely, to determine the exhaustive conditions for the outbreak of war and the legal status of the subjects of law in the course of it, the settlement of social relations. However, if war is unjust, the law of war does not apply. In that case, the law operates at the discretion and goodwill of the victim and has no other limitations. During an unjust war the right of mothers and other relatives of those killed (wounded, maimed) applies.

The danger of the destructive insincerity and affectation of citizens who outwardly adopt slogans, fashionable communication trends, statements, and so on, remains an unacceptable basis of law, both in peacetime and in wartime. The essence of such people of conformist and marginal types of legal consciousness does not change, they continue to fail to conform to their new form. While dangerous in peacetime, their counterproductivity in wartime becomes critical, for example, leading to radical inhumane statements and actions contrary to the nature of law. As Diego Gambetta and Steffen Hertog note, the desire for purity often motivates right-wing terrorism. Right-wing terrorists have a very strong desire to preserve the purity of their social environment and reject the invasion of alien forces perceived as corrupting (Traven, 2021).

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POSTMODERN LOCATIONS IN ADMINISTRATIVE LAW: DOCTRINAL UNDERSTANDING AND OVERCOMING

Annotation. *The desire for a systematic understanding of the socio-legal mission of administrative law inevitably creates the need for a scientific forecast of the evolution of his doctrine, taking into account the presence in the Ukrainian socio-cultural development of postmodern locations.*

Analysis of postmodernism showed the following. In the legal space, it has no positive characteristics. Postmodernity is a negative phenomenon. The values of postmodernism are the antipodes of law (nihilism, unsystematicity, fragmentation, chaotization). He builds these bad qualities into the consciousness of society.

The aim of the article is to gain new knowledge about algorithms for overcoming postmodern tendencies by administrative law and implementation through its doctrine and subject of legal meanings of stability, systemicity, consistency in the interaction of government and civil society.

The methodology used in this work is harmonized with the principal position, according to which the use of one or another method cannot be reduced to a single formulation, and specific research technologies (procedures of analysis, comparison, systematics, periodization, etc.) vary depending on the nature of the subject of research and its purpose. However, we shall emphasize that the search tools include methods of phenomenological and systematic analysis, narrative, historical and genetic, method of ideal constructions and others.

The article introduces the idea that administrative law, under the influence of postmodern encroachments, although it has undergone corresponding distortions, has not lost its role as a regulator of relations between the government and civil society.

Both doctrine and administrative law and its subject matter have not always been negatively affected by postmodern trends. It can be assumed that the ideology of postmodernism has led to the emergence of progressive practices, in particular the adoption of the Concept of Administrative Reform. As a result, the industry gained service content and lost its totalitarian dependence on government doctrine.

Deprivation of dependence on postmodernism is associated with the latest research in the doctrine and subject of administrative law. Their most important result was the recognition that the fact that the concept is systematic is a bifurcation point on the way to separation from the postmodern.

Studies of the systemic nature of the subject and administrative law doctrine have determined the recognition of the relationship of administrative obligations and the related principle of protection of legitimate expectations as a new principle of administrative law.

The entry of administrative law into the paradigm of systemicity determined, first, overcoming postmodern disintegration and fragmentation of the structure of the subject, and secondly, evolution: a) from the right of satellite of public administration, b) through service law, c) to the right to form legal meanings government and civil society.

By the formation of legal meanings in the field of interaction between government and civil society, we understand the generation of normatively expressed motivation in government and civil society to turn the knowledge directed to them into practical law enforcement activities.

Thus, the modern administrative law of Ukraine, having undergone radical changes and ransformations in its path, becomes in the legal system the right to form legal sense in the field of interaction between government and civil society

Key words*: administrative law, relations of administrative obligations, doctrine of administrative law, law of legal sense, subject of administrative law; principle of protection of legal expectations*

Formulation of the problem. A clear trend of research interest in the field of law today is the issue of establishing the independence (and correlations in general) of scientific constants and doctrines in relation to the realities of society's perception of reality.

These issues become especially relevant in the context of total perception of public consciousness, and most importantly – social practice, postmodern, as an inevitable vector of social change. Today, postmodernist locations have gone beyond philosophical and sociological discourses and are adapting to specific life situations and processes.

Initially, "postmodern" was a literary concept. Then penetrated architecture and painting. He was later picked up by sociology and philosophy. We are already talking about "postmodern" theology, "postmodern" travel, "postmodern" patients, "postmodern" cookbooks, "salon" postmodern, and so on.

The term "postmodern" is used to denote the state of chaos, inconsistency,

disharmony, illogicality (R. Golovenko "Postmodern confusion with definitions of media terms").

Postmodern ornaments in political life are determined. The integration of political processes and postmodernism turns politics into an illusion. Metastases of postmodernism have undeniable "successes" in transforming a social person into a joke person and a meaningless incident that expresses nothing (Yuri M. "Presidential elections as a mirror of postmodernism").

Naturally, questions arise, first, about the ability of doctrines to generate legal meanings (motivations), principles, methods and forms for minimizing and avoiding postmodern risks by legal means, and secondly, about the ability of modern lawyers to critically comprehend social reality and propose methodological approaches, conceptual ideas and paradigms of action to resist postmodern activity; thirdly, the ability of legal practice to systematically apply research to inspire the formation of human-social characteristics of human-legal (the presence of a developed legal awareness and willingness to be guided in their actions by meanings derived from legal sources).

Their solution is an important mission of Ukrainian law in general, of each branch in the segment of its regulation. Administrative law has a specific place in this division of roles. After all, his competencies are focused on organizational and legal issues of relations between the government and civil society.

Based on this, the problem of this article is the search for algorithms for the effective use of administrative and legal components in the mission of Ukrainian law to bring public consciousness out of postmodern disharmony.

Analysis of sources and recent research. In modern administrative and legal publications, research on the doctrine and subject of administrative law, as well as certain components of postmodernism, as a kind of worldview formed in the public consciousness, aimed at identifying virtual chaos (chaos) with objective reality.

Analysis of the source base, in our opinion, it is appropriate to begin with consideration of their presentation in encyclopedic and general theoretical publications, because they contain the most generalized and established views on understanding the object and subject of this study.

Ukraine's first multi-volume systematized body of knowledge on the state and law (Legal Encyclopedia in 6 volumes) in a separate article notes that legal doctrine is a system of knowledge about a particular legal phenomenon and under appropriate conditions can be developed into legal theory (Legal encyclopedia: In 6 vols. Editor.: Shemshuchenko and others. K .: Ukr. encyclical. 1998. T. 2. 1999. S. 275).

The Great Ukrainian Legal Encyclopedia contains a special article where the "system of administrative obligations" is fixed by the system-forming

factor of the subject of administrative law. It also states that the origin and existence of these relations is due to the content of the Constitution of Ukraine on the responsibility of the state to man, recognition of the main duty of the state to establish and ensure human rights and freedoms, rule of law, limitation of powers and actions of public administration. (The Great Ukrainian Legal Encyclopedia: in 20 volumes. Volume 5. Administrative Law, edited by Bytyak (chairman) and others. Kh .: Law, 2021. 960 pp. Pp. 692–694).

Judgments expressed in philosophical, theoretical, legal and other professional studies have played a fundamental role in understanding the phenomenon of "postmodern".

In particular, this applies to its geopolitical nature (Dugin AG. "Postmodern Geopolitics" 2009; Safronov EE. "The state of postmodernism in 2021" 2021); reflection of the development of methodological principles and theoretical principles (Ratnikov VP "Postmodernism: origins, formation, essence" 2002; Rodyan MV "Development of postmodernism: methodological principles, theories, principles" 2021); interpretation of legal categories through the prism of postmodernism (Sorokin VV, Kutyavina NY Interpretation of law in the interpretation of postmodernism 2018; Fedoruk NS "Public law of Ukraine in a post-industrial state" 2020; Bochkarev SA "Origins of postmodernism in the true meaning and purpose of the post-law "2021); predicting the transition from postmodern to postmodern (Menshenina AE "Postmodern vs. postmodern: the possibilities of understanding political reality" 2021; Kutsepal SD "After postmodernism" 2021); impact on human existence (Gorbatenko VV "Postmodernism and the transformation of the value basis of human existence" 2015); influence on political processes (Yuri MR "Presidential elections as a mirror of postmodern" 2021), etc.

The value of axiomatic provisions of philosophical generalizations for understanding administrative and legal doctrine is extrapolated from the work of Maximov SF (Theory of Natural Law: Conceptual and Doctrinal Dimensions. Law of Ukraine. 2021. №1. P. 43–65; Legal Doctrine: Philosophical and Legal Approach Law of Ukraine, 2013. №9. P. 34–54); Vasiliev OJ (Legal doctrine as a source of law. Questions of theory and history: monograph. Moscow: Prospect. 2021. 232 p.); Zazyaev TN (Ontological essence of law: anthropological and value approach: monograph. Saratov publishing house Saratov. State University, 2005. 235 p.)

Understanding the genetic principles of the subject and the doctrine of administrative law contributed to the study of Averyanov (Administrative law of Ukraine: doctrinal aspects of reform. Law of Ukraine. 1998. №8. P. 8–13; Subject of administrative law: a new doctrinal assessment. Law of Ukraine 2004. №10. P. 25–30; Formation of a new doctrine of Ukrainian ad-

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In addition to the above, in the process of preparing this article, electronic materials of Wikipedia (free encyclopedia), the Institutional Repository of Zaporizhia National University, as well as the capabilities of the OpenDOAR platform (Directory of Open Access Repositories) were taken into account.

The aim of the study. The purpose of the study is to gain new knowledge: a) about postmodernism in the Ukrainian legal reality; b) characteristics of the influence of postmodernism on the doctrine and subject of administrative law; c) the ability of doctrines to generate legal meanings (motivations), principles, methods and forms for minimizing and avoiding postmodern risks by legal means; d) the ability of modern lawyers to critically comprehend social reality and propose methodological approaches, conceptual ideas and paradigms of action to resist postmodern activity; e) the ability of legal practice to systematically apply research to inspire the formation of human law with the presence of a developed legal awareness and willingness to be guided in their actions by meanings derived from legal sources.

Presentation of the main material. A clear trend of research interest in the field of law today is the issue of establishing the independence (and correla-

tions in general) of scientific constants and doctrines in relation to the realities of society's perception of reality.

These issues become especially relevant in the context of total perception of public consciousness, and most importantly – social practice, postmodern, as an inevitable vector of social change. Today, postmodernist locations have gone beyond philosophical and sociological discourses and are adapting to specific life situations and processes.

In the simplest sense, the term "postmodern" means the socio-cultural state of society after "modern". The main features of modernism are continuous modernization, the dominance of innovation over tradition, the pursuit of the new in rapid change, aimed at transforming and renewing the world.

Postmodernism is its antithesis. It is eclectic, unable to create anything new and is based on the perception of the world as chaos. Its structure (if we can talk about the structure) is an unsystematic set of "windows of Overton", in which the fan of opportunity moves in stages: unthinkable – radical – acceptable – reasonable – standard – normal. At the same time, along with this concept, there is quite the opposite. According to her, "postmodern" is a new stage of modernism, ie modernism is in the process of renewal.

It is generally accepted that the term "postmodern" was first used in 1917 by the German philosopher and writer Rudolf Pannwitz in his book "The Crisis of European Culture" [1]. He later became the focus of research interests of philosophers, sociologists, linguists, culturologists, political scientists, lawyers and other professionals.

Numerous studies present postmodernism as a paradigm of socio-cultural development, reaction to tradition and order, project of social renewal, spiritual state, period of history, worldview, way of orientation in the modern world, method of cognition of social reality, set of worldviews, trend in cultural self-awareness in social theory, etc.

There is also the opinion that "postmodern" is just a buzzword, for which there is nothing fundamentally new. In this regard, it is appropriate to refer to the characteristics of postmodernism, which set out Wolfgang Welsh.

He wrote that this term has become so common that almost every well-read person easily refers to it. But when pronouncing the word "postmodern" few people imagine its meaning. This is largely due to the ambiguity and even inconsistency of both the term and the very concept of "postmodern".

First, it concerns its legitimacy. Some say that there are no new phenomena that would justify its introduction, and the noise around it is for advertising purposes.

Secondly, there are questions about the relevance of its presence in various spheres of human existence. Initially, "postmodern" was a literary concept. Then penetrated architecture and painting. He was later picked up by sociology and philosophy. We are already talk-

ing about "postmodern" theology, "postmodern" travel, "postmodern" patients, "postmodern" cookbooks, "salon" postmodern, and so on. Moreover, the term "postmodern" is used to denote a state of chaos, inconsistency, disharmony, illogicality [2].

Third, the time of actualization of postmodernism as a phenomenon is not fully understood. Thus, the use of the term "postmodern" in 1917 has already been mentioned; it is thought that this is one of the phenomena of the 1950s; there is a justification for its determination in the 70s of the last century; according to Arnold Toynbee "postmodern" began in 1875; Jean-François Lyotard believes that Aristotle was a postmodernist. Interestingly, Lyotard found postmodern trends in the socio-cultural space before the advent of any modernism [3].

Fourth, the term "postmodern" is controversial in meaning. For some postmodernism is the era of new technologies. For others, under the sign of postmodernism, there is a farewell to the dominance of technocracy. Others expect the pluralization, fragmentation and chaos of society to deepen [4].

Understanding of postmodernism is characterized by dynamism, fundamentality, conceptual diversity, multidisciplinary. This is evidenced by the studies of P. Anderson, S. A. Bochkarev, N. V. Varlamova, V. P. Gorbatenko, F. Jamison, A. V. Pavlov, D. Harvey, I. L. Chestnov and others.

One of the important results of their research efforts was the development of proposals for a conceptual vision of postmodern society. The presented concepts are characterized by a wide range of approaches aimed at describing and explaining changes in the mechanisms of influencing social relations, understanding the prospects for the transformation of the processes on which the lives of individuals depend.

In particular, F. Jamison does not consider postmodernism as a new stage of evolution, but interprets social change as a continuation of the logic of the development of the already existing society of capitalism.

According to Z. Bauman, modern societies have already gone through two stages in their development: a) premodern and b) modern. Now we have entered a new stage – the postmodern stage. Premodern and modern societies were stable due to the monolithic religious culture and a stable hierarchy of power relations.

Postmodern is their antagonist. It is based on radical pluralism, which introduces insurmountable differences between people and all other actors in society. Coherence arises only as a result of negotiations, firstly, case-oriented negotiations, and secondly, negotiations aimed at eliminating ambiguity, ambivalence and uncertainty.

Ideally, postmodernism should create a decentralized, fragmented social order that leaves institutional space for discourses, disputes, and negotiations in the face of general and inevitable socio-political conflicts.

In this series it is appropriate to mention Manuel Castells. He is the author of the concept of a network society. Her main thesis is that modern society is increasingly organized on a network basis. As a result, there is a network structure of society, in which the subjects are decentralized units and operate autonomously. In fairness, Castells himself has a negative view of the term "postmodernism", but his concept of a networked society is quite postmodern.

It is natural that the study of postmodernism led to the determination of its principles, features, characteristics, properties and other attributes. They reflect the postmodernist understanding that any unity is "repressive" in nature and linked to totalitarianism; any form of unity is unacceptable and must be rejected; impartiality is manifested in total discursiveness; only discourse leads to understanding and coherence; the discourse cannot end because there is always the opinion of the opponent; phenomena do not have universal preconditions for their origin and existence; it is impossible to comprehend the truth, because the plurality (plurality) of connections and spheres is boundless.

Thus, everything that before postmodernism was considered stable, reliable and certain (man, mind, philosophy, culture, science, progress) was declared insolvent and uncertain, everything turned into words, arguments and texts that can be interpreted. Postmodernism cannot, in principle, exist as a holistic and general worldview or philosophy. After all, the chaos of life cannot be integrated into any theory. In this regard, we note that in the study of postmodernism, the term and concept of "chaos" [5].

Under the dominance of postmodernism, the legal reality is undergoing significant transformations. First of all, the opportunities for the authorities to realize the desire to create a holistic and unified system of government are becoming more difficult, as the government is gradually losing its previous socio-cultural base – people capable of implementing the will that comes from a single center.

At the same time, the objective reality is the evolution of legal relations. So the question is, how do evolutionary ideas or projects gain practical perspective in the postmodern context? We believe that their implementation is carried out through a kind of "melting pot" of endless discourses. In this "boiler" face on the one hand generated by postmodernism: denial of any subordination or hierarchy; fetishization of decentralization and fragmentation of society structure; proclamation of man's inability to know and change the world. On the other hand – the semantic constructions of legal projects, concepts, doctrines, which are based on the prospect of being confirmed by legal practice.

From their integration "semantic vectors of overcoming the postmodern era" are "melted", the main of which

are: a) identification of mechanisms of evolution of law; b) substantiation of his official role in relation to society; c) the rule of law; d) legal guarantees to the subjects of public relations, etc [6].

These locations systematize the prospects for the analysis of the legal space, in particular, in identifying the mechanisms of the evolution of law, its official role in relation to society and more. However, these fruitful ideas need not only to be concretized in the empirical legal material, but also to be equipped with theoretical knowledge of the "middle level", which ensures their adaptation to the specifics of legal reality.

Theoretical knowledge of the "middle level" is the knowledge of the level of the legal field. One of the carriers of such knowledge is administrative law, which takes on postmodern risks and forms legal meanings in the segment of interaction between government and civil society.

The identification of the presence of administrative law in the "melting pot" of postmodernism begins with the emergence and scientific design of the concept of administrative reform [7] and the concept of administrative law [8].

These concepts appear in times of postmodern chaos in the doctrine (essence) and subject (content) of this legal field. Systematically related between themselves, they formed a new paradigm for the development of administrative law, its subject (relations), institutions, relations with other branches of law.

First of all, the concepts, first, outlined the most important promising areas of research in the field of administrative law in the format of a new ideology of executive power and local self-government (as activities to ensure the rights and freedoms of citizens, public and public services); secondly, they focused the vector of research efforts: a) on the delimitation of public administration and other management activities; b) determination in the subject of administrative law of relations of administrative proceedings, administrative liability, administrative services; c) the expediency of establishing administrative liability of legal entities.

Having received official recognition and support from administrative scholars, they effectively ended the dominance of the Soviet concept of administrative law in its purely state-administrative nature and gave its followers the role of marginals of the administrative-legal space.

The concepts focused on the systemic nature of administrative law, which was opposed to postmodern chaos. The existence of a systematic approach to administrative law research marks the overcoming of postmodernism in administrative law and entering the paradigm of a new reality [9].

Systematics is an existential format of administrative law. It is in this format that administrative law, firstly, overcomes postmodern disintegration and

fragmentation of its essence and content, and secondly, evolves: a) from the right of satellite of public administration, b) through service law, c) the right to form legal meanings in the field of interaction between government and civil society [10].

By the formation of legal meanings we mean the ability of administrative law to generate normatively expressed motivation in government and civil society to turn the knowledge directed to them into practical law enforcement activities.

The most meaningful system of administrative law is manifested in the system of its subject (set of administrative and legal relations). His understanding on the basis of the concepts of administrative reform and administrative law reform led to the recognition in the structure of the subject of administrative law of the following types of relations: first, public administration relations, which consist of: a) public administration; b) managerial relations of local self-government; c) relations of public administration; secondly, the relationship of appeal, which consists of the relationship of a) administrative appeal; b) court appeal; third, the relationship of administrative services; fourth, administrative-tort relations.

The central issue in the analysis of these relations as a set that forms the subject of administrative law was to determine the presence or absence of integrative qualities in this set.

Its fundamental importance is due to the fact that the lack of such qualities made this set a conglomerate formation and in fact questioned their unity, and hence the existence of the subject in a new format. The presence of integrative qualities unequivocally testified that this set is a system and has every reason to be considered as a subject of law.

In this regard, it should be noted that in Soviet legal doctrine, the subject of administrative law is presented by a systemic entity. The integrative nature of the interaction of its components, researchers have argued on the basis of the following features: a) all relations of the subject – are the same type of relationship; b) all relations of the subject are relations of power and subordination; c) all relations of the subject arise as a result of the implementation of public administration by strictly defined structures of public administration.

None of the above integrative features is found in the set of structural components of the subject of modern Ukrainian administrative law. The relations of administrative services and the relations of responsibility cannot be called the same. Nor are they relations of power and subordination. Not all relations of the updated subject arise as a result of public administration.

The set of relations, which in the updated dimension are governed by administrative law, turn into a system, and hence into the subject of the industry, other factors. These categories are:

"public administration", "public administration", "relations of administrative obligations".

An important system-forming component of modern Ukrainian administrative law has been the public administration since about 2002 in the public interest.

In official documents, this term is probably the first to appear in the "Recommendations of Parliamentary Hearings" Decentralization of Power in Ukraine. Enhancing the Rights of Local Self-Government "(2005).

Today, the category of "public administration" actually occupies a place that in Soviet administrative law belonged to the category of "public administration". This fact indicates that the scientific understanding and further development of the theory of public administration: a) is one of the main directions doctrinal renewal of administrative law of Ukraine; b) an important basis for its transformation into a modern legal field of European content.

This movement is not a simple change of timing. The theory of public administration has fundamental differences from the theory of public administration, both in legal content and ideological essence. Its formation and recognition put an end to the still existing recent attempts to adapt the Soviet doctrine of public administration to the doctrine of a democratic state governed by the rule of law28 – a state where its responsibility to man is normatively recognized, where human rights and their guarantees determine the content and direction of its activities.

Public administration in the administrative law of European countries, in most cases, is defined as a set of bodies and institutions that exercise public power through the implementation of laws, regulations and other actions in the public interest. This understanding is also relevant for the Ukrainian legal system.

It should also be noted that the concept of public administration is not new to Ukrainian law. It is present in the works of Ukrainian administrators who worked outside the Soviet law school, for example, in the works of Yu. L. Paneiko, who wrote in "Theoretical Foundations of Self-Government" (1963) that the basis of administrative law is that it regulates organization and activity of public administration.

Public administration, as a legal category, has two dimensions: functional and organizational-structural. At the functional approach it is activity of the corresponding structural formations on performance of the functions directed on realization of public interest.

Such an interest in Ukrainian law recognizes the interest of the social community, which is legalized and satisfied by the state. Thus, for example, the performance of a public administration law enforcement function means the systematic activity of all structural entities that have such a function. This activity is called "public administration". In the organizational and struc-

tural approach, public administration is a set of bodies that are formed for the exercise (implementation) of public authority.

In Ukrainian law, public power is recognized: a) the power of the people, as direct democracy; b) state power legislative, executive, judicial; c) local self-government. It follows from the above that public power in Ukraine is exercised by: first, the Verkhovna Rada of Ukraine (Parliament), the President of Ukraine (as a government institution), local councils. They exercise the power of the people, which finds expression in the electoral process; secondly, all bodies and institutions that exercise state power. For example, executive bodies, courts and others; thirdly, all bodies and institutions that implement local self-government. For example, executive committees of local councils, public associations, bodies of self-organization of the population, etc.

The next system-forming factor in relations governed by administrative law is public administration. Public administration is the activity of a subject of public administration to exercise public authority. It occurs: through the use of management tools, the provision of administrative services, participation in the relationship of administrative appeal, participation in the relationship of judicial appeal (administrative proceedings), participation in administrative-tort relations.

All the above necessitates the consideration of the theory of public administration as a methodological basis of administrative law and use its concept as a basis in the formation of administrative and legal relations.

The dominant system-forming factor for the subject of administrative law is the category of "relationship of administrative obligations". This type of relationship is present in all other relationships that form the subject of the industry, due to their complex legal nature.

First, their essence correlates with the norms of the Constitution of Ukraine on: a) the responsibility of the state to man; b) recognition of the main duty of the state to establish and ensure human rights and freedoms; c) the rule of law; d) restriction of powers and actions of public administration by the Constitution and laws of Ukraine.

It follows from the constitutional provisions that the public administration in its formation undertakes to satisfy the interests of society and citizens. Among them are public obligations, the implementation of which requires the use of public administration powers. In the course of their implementation there are relations, which are called "relations of administrative obligations".

Secondly, the relationship of administrative obligations is derived from the standards (principles) that candidate countries must meet in order to bring their level of government closer to that of EU member states.

The document "European Principles of Public Administration. SIGMA Pub-

lication №27, 1999", in the part on the principles of administrative law, explicitly states the requirement for these countries to apply the principle of protection of legitimate expectations at the national level.

In Germany, which belongs to the countries of continental law, the principle of trust (Vertrauensschuts) is included in the content of the rule of law (Article 20 of the Constitution of Germany). In addition, its implementation is ensured by other regulations, in particular the Laws of Germany on the administrative activities of state bodies, the procedure for conducting cases in administrative bodies and others.

Third, a component of their legal nature are contractual properties. The legal relations arising from the promises are subject to the properties of the administrative contract.

By forming a separate (ideologically, politically or legally) composition of promises-obligations, the relevant subject demonstrates the intention to form a legally significant relationship with the definition of their content of the object and subjects.

Thus, the acceptance of administrative obligations for public authorities means: a) participation in the relationship of administrative obligations; b) the obligation to carry out their activities taking into account the promises made by them; c) be responsible for their violations.

Hence the important requirement for holders of power: citizens, acting reasonably and within the established legal regulation, should be able to rely on such promises in relations with the authorities.

Of course, the relationship of administrative obligations requires separate research, and given their legal nature, not only within administrative law. After all, for the expectation to be "legitimate" in the legal sense, there must be positive grounds sufficient to recognize his status as objectively justified.

In this regard, the study of Pamela Tate's "Consistency of Legitimate Expectations with the Fundamentals of Natural Law" [11] draws attention, which determines four features of legitimate expectations: 1) established behavior that has not changed unreasonably; 2) explicit and obvious assurances on behalf of the authority and within the competence of this authority; 3) possible consequences of violation of expectations with the impossibility of restoring what was expected; 4) compliance with legal requirements.

Thus, the relationship of administrative obligations in correlation with the principle of protection of legitimate expectations (protection of trust) has become an important factor in the evolution of administrative law.

Their determination shows that administrative law has overcome the location of postmodernism in its space and is in the phase of renewal as the right to form legal meanings in relations between government and civil society.

In conclusion, it is appropriate to note that in administrative law the prin-

ciple of protection of legitimate expectations (protection of trust) [12] is determined, which correlates with the relationship of administrative obligations.

Conclusions. Studies of administrative law in the ideology of postmodernism allow us to reach the following.

1. Being influenced by the peculiarities of the postmodern syntagm, administrative law, although it has undergone significant changes, has not lost its role as a regulator of relations between government and civil society.

2. Postmodernist currents have not always had a negative impact on administrative law. We can assume that the ideology of postmodernism is appropriate.

3. To some extent led to the emergence of progressive concepts of administrative reform and reform of administrative law. As a result, the industry has acquired a man-centered and service content. She got rid of totalitarian dependence on the doctrine of government. In the field of human rights protection, it has enriched its methodology and law enforcement with administrative justice. Democratized institutions providing administrative services to the population. Rethinking the sphere of administrative-tort relations.

4. Exit from the "embrace" of postmodernism is associated with research on the subject of administrative law and awareness of the need to update it. The point of bifurcation was to prove its systematicity. After all, inconsistency and fragmentation are one of the main features of postmodernism.

5. Studies of the systemic nature of the subject and administrative law doctrine have determined the recognition of the relationship of administrative obligations and the related principle of protection of legitimate expectations as a new principle of administrative law.

6. The entry of administrative law into the paradigm of systemicity determined, first, overcoming postmodern disintegration and fragmentation of the structure of the subject, and secondly, evolution: a) from the right of satellite of public administration, b) through service law, c) to the right to form legal meanings sphere of interaction between government and civil society.

7. By the latter we mean the generation of normatively expressed motivation of the government and civil society to turn the knowledge directed to them into practical law enforcement activities.

8. If we formulate this definition in expressive-emotional lexical format, we get a consistently determined by evolutionary logic expression: meanings in motives – motives in principles – principles in laws – laws in legal norms – legal norms in law enforcement – law enforcement in legal facts – legal facts in law. Thus, the modern administrative law of Ukraine, having undergone radical changes and transformations, is in the legal system the right to form legal meanings in the field of interaction between government and civil society.

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ALTERNATIVE RESOLUTION OF PUBLIC LAW DISPUTES IN ADMINISTRATIVE PROCEEDINGS OF EUROPEAN UNION MEMBER STATES

Abstract. *The unloading and effectiveness of administrative courts largely depends on effective mechanisms for legal protection of the rights and legitimate interests of individuals and legal entities, one of which is the alternative resolution of public law disputes. The article analyzes the positive experience of the European Union, which formed a regulatory array of acts on alternative dispute resolution. The purpose of the study is to imple-*

ment the theoretical and legal characteristics of the procedural features of the institute of alternative resolution of public law disputes in the administrative proceedings of the European Union, as well as to provide proposals for prospects for its improvement. The methodological basis of the study is a set of general scientific, philosophical, special methods of scientific knowledge, the use of which allowed to ensure the achievement of the stated goals and objectives of the study and comprehensive coverage of the research problem. The urgency of the work lies in the scientific and practical need to study the little-studied topic of procedural features of alternative resolution of public disputes in the administrative proceedings of Ukraine

Keywords*: alternative dispute resolution, public law dispute, administrative proceedings, alternative methods, pre-trial dispute resolution, mediation.*

1. Introduction

Processes of democratization of all spheres of state activity determine the need to intensify the introduction of various types of methods and procedures for pre-trial dispute resolution, which ultimately will reduce the level of conflict between the state and the citizen, legal entity, ensure efficiency and cost-effectiveness of existing disputes in the form of a statement of claim or to court proceedings. Ensuring fair justice is a priority for a democracy. The study of alternative ways of resolving disputes in the administrative proceedings of the European Union is quite relevant in connection with the amendments to the Procedural Codes of Ukraine. One such novel is the institute of mediation, which is of interest to both theorists and practitioners.

The importance of alternative methods of dispute resolution is that, on the one hand, it will relieve the administrative courts, on the other – this institution will allow you to quickly resolve the case without the participation of the court and thus save time and money (Lutsenko, 2019). In connection with Ukraine's desire to become a full member of the European Union (UN), it is expedient to study the positive experience of leading European states. There is a need to bring the current legislation to the standards of leading European countries. Such changes are necessary in the field of justice, in particular administrative (Yaroshenko et al., 2021a).

Currently, the widespread practice of using alternative methods of dispute resolution in public international law allows us to say that the degree of effectiveness of mediation efforts is growing and is beginning to yield significant results. This direction continues to develop within the activities of the UN Peacebuilding Commission, as well as UN special political missions. The introduction of the institution of alternative methods of dispute resolution in the domestic legal system is also based on the positive results of the practice of ap-

plying the institution of conciliation in many countries, which also testifies to its effectiveness (Yaroshenko et al., 2021b). In addition, it is in line with Ukraine's general position on harmonizing national legislation with that of the European Union, as a number of Council of Europe recommendations and decisions address conciliation procedures, as well as reducing the burden on the judiciary and speeding up dispute resolution.

The relevance of this study is due to the effectiveness of the mechanism for resolving administrative disputes, which can be considered as one of the features of the rule of law, which is mediated by the effectiveness of administrative law, establishing the mechanism of out-of-court settlement of administrative disputes, – legal norms and legality of such activities. This mechanism is designed to ensure an adequate balance of private and public interest in public administration, feedback from the state to society, the possibility of self-defense of citizens in the field of public administration against actions (decisions) of state and local governments that violate the rights and freedoms of citizens.

Many scientific works, including such scholars as O. Karmaza (2020), E. Baranova (2020), N. Volkovytska (2020), O. Ishchenko (2020), M. Blikhar (2020), V. Pilipenko (2020) are devoted to the issues of alternative resolution of public law disputes in administrative proceedings of European Union member states. The purpose of the study is to reveal the already developed in the international arena ways to resolve disputes out of court, to clarify the benefits of such an alternative, as well as to focus on existing in our and other countries alternative ways of resolving administrative disputes.[1]

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2. Materials and methods

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laws, categories and principles of dialectics, according to which the purpose, process, principles, activities and status of the subjects of alternative dispute resolution, the consequences of such a procedure are considered as a holistic phenomenon, all elements of which are in vestigated themselves and with public life, in their interaction and mutual influence. The specifics of the research topic led to the use of forecasting in its two main forms – modeling and extrapolation, which allowed to construct a future model of alternative dispute resolution, which is derived from the general laws of dispute resolution of public law and specific results of experimental implementation of such procedure.

Achieving certain research objectives led to the use of the following methods: historical-legal method used in considering the evolution of theoretical constructions for resolving legal disputes, including administrative-legal, in ways not related to the judiciary, their legal regulation; comparative-critical analysis of existing concepts of pretrial dispute resolution, in particular, public law, principles and principles of alternative dispute resolution in the European Union revealed the shortcomings and advantages of each of them and offer their own definitions.

Comparative legal method – when comparing the provisions of current legislation of Ukraine, the provisions of administrative courts involved in experiments on the settlement of administrative disputes using a separate procedure within administrative proceedings, draft laws with the relevant provisions of foreign legislation, as well as clarifying the features rights and obligations of the subjects of the procedure of alternative settlement of administrative-legal disputes and subjects of administrative proceedings. The method of systematic analysis helped to consider an alternative solution to administrative disputes in the European Union as a single system, to identify its impact on administrative justice in general and its individual institutions. The dogmatic method allowed to analyze the content of the main categories that form the procedure for alternative resolution of administrative disputes. The statistical method and the method of extrapolation were used to clarify the prospects of introducing the procedure of alternative resolution of administrative disputes in the European Union as a separate procedure from administrative proceedings in certain categories of cases of administrative jurisdiction.

The method of forecasting in the form of modeling is used in formulating proposals and recommendations for regulatory support for alternative dispute resolution, formal-logical method is used to determine the essence of alternative ways of resolving legal disputes, mediation, mediation, negotiation, and to distinguish certain types of alternative procedures. settlement of legal disputes. Methods of analysis and synthesis, structural-functional and other methods were also used, which pro-

vided an opportunity to comprehensively investigate the problematic aspects of the modern procedure of alternative resolution of administrative and legal disputes.

A number of articles related to the research topic were also analysed, such as "Mediation and negotiation as alternative ways of resolving disputes" (Karmaza, 2020), "Alternative ways of resolving disputes in international practice" (Baranova, 2020), "Claret The Multi-Door Courthouse Idea: Building the Courthouse of the Future" (Lay & Anne, 2020), "Mediation: alternative or an effective way to resolve disputes" (Volkovytska, 2020), "Mediation: foreign experience and significance" (Ishchenko, 2020), "Mediation as a way of resolving administrative disputes" (Blikhar, 2020), "On the issue of mediation in administrative proceedings" (Pilipenko & Kichko, 2020), "Principles of out-of-court decision of Administrative Disputes" (Bortnyk et al., 2019), "Pre-trial", "alternative", "extrajudicial" settlement/resolution of private disputes: the relationship of concepts" (Hanyk-Pospolitak & Pospolitak 2019), "Concepts and types of forms of out-of-court settlement of administrative disputes" (Bondarenko, 2019), "Out-of-court settlement of administrative disputes" (Shevchuk, 2020), "Reconciliation of the parties in administrative proceedings: domestic and foreign experience of legal regulation and some prospects for improvement" (Zheltobryukh, 2020), "Institute for Dispute Resolution with the participation of a judge needs improvement" (Smokovych, 2019).

3. Results

In today's world, the mechanisms of self-regulation are especially important, when the subjects of public relations have the opportunity to independently establish rules of conduct and monitor compliance. The growth of activity and responsibility of participants in legal relations allows the state to delegate part of its powers in certain areas to civil society institutions. Foreign experience shows that the resolution and settlement of legal disputes belongs to one of these areas. Thus, when analyzing the results of judicial reforms carried out in the second half of the twentieth century in continental Europe, attention was drawn to the need for a general abandonment of "state paternalism" (when legal disputes are resolved exclusively in law enforcement, by adopting appropriate decision) and the transition to a "pluralistic approach", the recognition of the need to provide conflicting parties with the right to choose how to resolve their differences by allowing the use of conciliation procedures.

Most often in the laws of Western countries you can find the definition of "alternative" dispute resolution. Although "extrajudicial" also happens. Moreover, these definitions do not actually differ in common law or continental Europe. "Alternative" and "out-of-court" dispute resolution are very often

used as identical concepts, or "alternative" is explained through the meaning of "out-of-court" as a dispute resolution procedure that is carried out without seeking help from a court. Out-of-court settlement of disputes usually involves the procedure for applying to an independent third party institution, which does not have to do so, and the parties have the right to choose between going to court and going to a third independent institution. The purpose of pre-trial settlement of disputes is to overcome the dispute, leveling the negative consequences of the existence of disputes between the parties in the most expeditious and acceptable to the parties. In this sense, the category of "pre-trial" includes the procedures used in the implementation of alternative dispute resolution and out-of-court methods, but with one condition – their use is carried out until the moment when the trial should begin (Karmaza, 2020).

In particular, out-of-court settlement of disputes by state or local selfgovernment bodies is usually carried out when court intervention is not required or when the procedure is required by law to intervene in court. Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe to member states on alternative litigation between administrative authorities and private parties of 05.09.2001 states that "judicial proceedings are not always the most appropriate way of settling administrative disputes, and the widespread use of alternative methods can help resolve administrative disputes and bring administrative bodies closer to the population (Committee of Ministers of the Council of Europe, 2001a).

Based on the provisions of Recommendation Rec (2001) 9 and its Annex, as well as the Guidelines No. 15, pre-trial methods of dispute resolution arising from public law relations include: internal review, conciliation, settlement by negotiation, mediation (Committee of Ministers of the Council of Europe, 2001b). Most of these methods can be used during litigation (except for internal review). Procedures for the application of all these methods of pre-trial settlement of disputes arising from public law relations are carried out in a manner outside the procedural activities of the administrative court. Such procedures should be called administrative, given their sectoral affiliation and public law nature. At the same time, taking into account the requirement of the law to determine the pre-trial procedure for resolving disputes determines the need to limit this list of methods of conciliation. The analysis of each method of pre-trial settlement of disputes arising from public law relations should be carried out by recognizing the place of a certain method in the structure of law and proving, in case of intersectoral nature, the content of its three legal cate gories: appropriate purposeful procedure, legal form, legal fact (Baranova, 2020).

The focus of administrative proceedings on the effective protection of

the rights, freedoms and interests of individuals, rights and interests of legal entities from violations by public authorities in the field of public relations necessitates the consolidation of the parties in administrative proceedings the right to conciliation, as administrative proceedings are most often achieved as a result of the peaceful settlement of public disputes and the settlement of disputed legal relations on the basis of voluntary coordination of actions and mutual understanding (Lay & Anne, 2020).

Conciliation procedures are varied and can be carried out both within and outside the judicial process, both voluntarily and on a mandatory basis. All of them provide a reduction in the workload on the courts. In Ukraine, the legislator determines reconciliation in the process of consideration of the case. In accordance with paragraph 5 of Art. 47 of the Code of Administrative Procedure of Ukraine (CAPU), the parties can achieve conciliation at any stage of the administrative process, which is the basis for closing the proceedings in an administrative case (Verkhovna Rada of Ukraine, 2005). At the same time, conciliation is allowed both at the stage of the preparatory hearing (Article 180), and during the trial (Article 190), and during the appeal hearing and appeal (Articles 314, 348), in the process of execution of the decision (Article 377). An important point of conciliation of the parties is that its terms should not violate the requirements of the law, as well as the rights and interests of individuals. This approach is justified, as it provides the parties to an administrative dispute with a wide range of opportunities for settlement and accelerates the process of protection of rights and freedoms that have been violated by the subject of power. We believe that the conciliation procedure should be extended to administrative appeals, as this would expand its capabilities and increase the number of disputes that would be resolved without recourse to the administrative court. This proposal is also supported by Recommendation Rec (2001) 9, which states that "the conciliation procedure may be initiated by interested parties, a judge or be mandatory under the law". This list of subjects and the possible binding nature of this procedure suggest that it may take place at the pre-trial stage of settlement of an administrative dispute (Volkovytska, 2020).

A review of foreign legal sources shows that in accordance with their provisions there is a largely the same procedure for conciliation of the parties in administrative proceedings to that provided by domestic legislation on administrative proceedings with some insignificant differences (Boiko et al., 2019). For example, a competent single judge or a panel of judges in Germany has the power, after hearing the parties, to refer the case to a mediating judge if the probability of agreeing on the rights and obligations of the parties violated appears high. In this case, the judicial

mediator is not a judge or a member of the panel of judges authorized to decide the case. Its activities are aimed at finding a solution that will satisfy the parties in the case, balance their interests taking into account the specifics of the case and minimize the risk of avoiding its non-compliance. Restrictions on the possibility of initiating the settlement of a case with a mediating judge are not provided for in German law, but in practice the settlement of a case with a mediating judge is most often used as a procedural tool in administrative cases arising in stable legal relationships, such as related ones. with public service, social security, urban planning and environmental protection. The amicable agreement of the parties is fixed by the court decision which can act as the executive document for direct execution (Ishchenko, 2020).

Almost similar to the above is the procedure for conciliation of the parties in administrative matters, provided by the procedural law of the United Kingdom. Thus, if the parties to the case have reached conciliation and agreed on what should be the final court decision on the merits of the case or other court decision, the plaintiff must submit to the court a document outlining how to resolve the issue and its concise legal and evidentiary justification. The plaintiff must also submit a draft judgment in respect of which the parties have reached a conciliation, which is marked "by agreement of the parties" and signed by the parties to the case concerned or their representatives (Parliament of the United Kingdom of Great Britain and Northern Ireland, 2019).

The court decision agreed by the parties may provide, inter alia, for the suspension or termination of the proceedings in whole or in part on the terms specified by the court decision; distribution of court costs; revocation of the decision of the subject of power, his performance of certain actions or refrain from committing certain actions; compensation for damages caused by the decision, action or inaction of the subject of power; release of a party from the case from liability. Court costs are distributed with the consent of the parties to the case or on the instructions of the court that approves the draft court decision.

At the same time, it is noteworthy that the parties are obliged to inform the court that they have reason to hope for conciliation, so that judges and other court staff have sufficient time and opportunity to organize the hearing accordingly. Failure to do so may result in a court order that the parties not be reimbursed in full or in part. However, the introduction of conciliation procedures in French administrative proceedings has not led to their widespread use, primarily due to the lack of attempts to ensure the proper training of judges (Blikhar, 2020).

Therefore, when considering ways to optimize the institutional and legal provision of conciliation in administrative proceedings, it is necessary to de-

termine the appropriateness of the obligation of the parties to submit a draft court decision on which the parties have reached conciliation, inform the court of the grounds for hope for conciliation. a training course on aspects of mediation and reconciliation. Alternative methods of dispute resolution referred to in Recommendation Rec (2001) 9 include out-of-court redress or administrative appeal. Recommendation Rec (2001) 9 highlights the main points of an administrative appeal: "strengthening the possibility of internal review of all administrative acts, both in terms of the timing of the adoption of such an act and its legality; in certain cases, an administrative appeal may be a prerequisite for the transition to jurisdiction; the results of the internal review must be examined by the competent authorities."

Summarizing the doctrine and norms of law, we conclude that negotiations (negotiation) belong to alternative dispute resolution procedures in which the parties to the disputed legal relationship (or their representatives) without the participation of any mediators agree on the disputed legal relationship. During negotiations, differences between the parties are resolved at their own discretion without the involvement of third parties. Recourse to international instruments allows us to highlight the specifics of the application of the negotiated settlement procedure (Annex to Recommendation Rec (2001) 9). Thus, it is stated that such a procedure needs to be regulated by law and that the officials involved in such a procedure have sufficient authority to reach a compromise. In this case, the relevant powers of officials should be established by law (paragraph 3 of Part III of the Annex to Recommendation Rec (2001) 9). International acts set requirements for the regulation of methods of pre-trial settlement of disputes (although in these acts they are listed as means), as well as the peculiarities of the procedures for their application. In this case, special attention is paid to the following two circumstances: the conditions of application, the competence of the subjects of the relevant procedures and the legal consequences (Pilipenko & Kichko, 2020).

Mediation is also an alternative dispute resolution procedure in which the parties resolve a dispute with an impartial, disinterested mediator, reaching consensus on all aspects of the dispute. As a rule, negotiations are the most common form of dispute resolution between the parties, which is based on dialogue (communication) between the conflicting parties to find a solution to the dispute. However, due to lack of knowledge in the field of law of the parties to the dispute or sometimes illegal actions of their representatives, negotiations as an alternative dispute resolution procedure are not widely used in Ukraine.

Mediation is used both as an alternative means of resolving disputes and as an out-of-court method. International

legal instruments provide not only mediation, but also procedures for internal review, conciliation, negotiation, arbitration, among the alternative means of dispute settlement, paragraph 1 of Part I of Part I of the Recommendation Rec (2001). The listed alternative means of dispute resolution, in addition to 58 arbitration, can be attributed to the methods of pre-trial dispute resolution. Moreover, Part II of the Annex to Recommendation Rec (2001) 9 proposes that the use of these methods be made a mandatory precondition for legal proceedings, the use of arbitration should exclude legal proceedings, and conciliation, mediation and negotiated settlement may be applied on the recommendation of a judge. during the trial. It should be noted about the doctrinal definition of the essence of the concept of "arbitration": 1) as a way of resolving disputes by specially authorized bodies – arbitration courts, etc.; 2) as a court in which the dispute is resolved by a mediating judge (arbitrator or panel of arbitrators). An arbitrator is a mediator, an arbitrator, who is elected by mutual agreement of the parties or who is appointed in the manner prescribed by law to resolve a dispute (Bortnyk et al., 2019).

European Union (EU) regulations aimed at regulating mediation procedures include Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, and a number of recommendations and guidelines (European Parliament and the Council, 2008). According to paragraph 8 of the Preamble to the Directive, "nothing should prevent the application of these 64 provisions also in internal mediation processes". In addition to the Directive, there is the UNCITRAL Model Law on International Conciliation Procedure of 2002, which was the basis for national legislation on mediation by 26 countries, and the Principles for Mediation Organizations, which were established in 2002 by world leaders in mediation. in the field of mediation and reproduce the best world practice in this field (The Committee of Organizational Organizations of the United Nations on International Trade Law, 2002). The initiators of the draft laws on mediation note that mediation is structured negotiations in which the parties try to reach an agreement on their own, on a voluntary basis, with the help of an independent third party mediator, which uses innovative negotiation technologies to satisfy their real interests and interests. need. Mediation can be introduced in the field of tax and customs relations in: disputes over the facts and circumstances (regarding the reality of the transactions, location of property, etc.); disputes over ambiguous interpretation of certain legal norms; disputes in which the taxpayer refers to procedural violations committed by the tax authority (Hanyk-Pospolitak & Pospolitak, 2019).

Based on international statistics, we can conclude that mediation has gained

widespread recognition in many countries around the world, including European countries. Thus, in the European Union, the mediation procedure is understood as the voluntary expression of the will of the parties to the dispute who have decided to involve a third, independent party in order to resolve the existing conflict, during which the mediator maintains personal impartiality and confidentiality. Interestingly, in the EU, mediation, as a way to resolve a dispute (conflict) that has arisen as a result of any legal relationship (family, labor, economic, civil, etc.), is used much more often than other out-of-court alternative methods. settlement of disputes, such as negotiations, conciliation, minitrial, pre-trial meeting or simplified jury trial.

It should be noted that the EU mediation procedure is used to resolve conflicts arising from various relationships. In particular, such disputes include: labor disputes, divorce, consumer or trade disputes, bankruptcy, tax disputes, conflicts involving the state (including in the field of public relations), conflicts in the Internet environment, and so on. However, both two or more parties are allowed to settle the dispute. In general, mediation plays a very important role in the EU, as it helps to prevent negative consequences and other adverse aspects for all parties to the conflict at an early stage, as well as to avoid lengthy court proceedings and, consequently, high material costs. To date, European countries have adopted a number of relevant international regulations that directly regulate the mediation procedure (Bondarenko, 2019).

We can talk about the expediency of using mediation to resolve public law disputes, in particular in the field of administrative law. However, it should be borne in mind that the mediation procedure can be used only in certain categories of administrative disputes, such as: disputes arising from appeals against legal acts of individual action, action or inaction of public authorities; disputes that have arisen regarding admission to public service, its passage and dismissal from public service; disputes arising in connection with the conclusion, execution, termination, cancellation or invalidation of administrative agreements; some disputes at the request of public authorities; disputes arising from payments between individuals and public authorities; disputes arising from appeals against decisions of executors; disputes arising from public-private partnerships; some investment disputes involving the state.

It is quite interesting that in the European Union mediation is seen not only as a way of alternative dispute resolution where conflict has already arisen, but also as a way to prevent future disputes, which certainly expands the scope of mediation. Due to the fact that the procedural flexibility of the mediation procedure allows the use of mediation in different situations, there is no clear regulation of mediation methods.

Legislation in almost all EU countries has deliberately abandoned attempts to regulate methods as such. The parties to the dispute, as well as mediators (mediators) have the right to choose the most effective ways to resolve disputes in each case, setting precedents. Even more, depending on the scope, different instruments (methods) of reconciliation can be used.

A peculiar form of mediation in administrative proceedings is the settlement of a dispute with a judge, which has the following features: conciliation usually concerns only the rights and obligations of the parties, but may go beyond the subject matter if the terms do not conflict with the rights or interests of third parties; the terms of conciliation must not contradict the law and go beyond the competence of the subject of power as a party to the dispute; the consequence of the decision to settle the dispute by conciliation is the suspension of the proceedings for the necessary time, not limited by law; the fact of reconciliation is made out by signing the statement; registration of the entire conciliation process ends with the issuance of a court decision, which closes the proceedings and at the same time is an executive document. It cannot be said that both classical mediation and dispute resolution with the participation of a judge are widely used in our country, because litigation is a more familiar and authoritative way for our compatriots to resolve the conflict. This is primarily due to the banal ignorance of the existence of such a procedure and its benefits, as well as due to the uncertainty of the parties to the dispute in its possible resolution through mediation (Shevchuk, 2020).

The development of alternative forms of resolving legal conflicts, despite the differences in legal systems in different countries, has much in common. In particular, the same methods of dispute settlement are used, although their procedure is partially different. For example, arbitration (arbitration) is common in all EU countries. In particular, the London International Court of Arbitration (LCIA), established in 1892, hears disputes of both national and international character. In Sweden, the Arbitration Court of the Stockholm Chamber of Commerce (ASCC listitute) is active, considering, among other things, foreign economic disputes. There are more than 300 arbitration courts in Germany, which resolve disputes related to banking, medical violations, insurance, construction and labor law issues. At the same time, in the national law of Great Britain, Austria, Germany, and France, such ABCs are actively used. as mediation, conciliation and conciliation procedures, the principles and procedure of which in the late 90's were borrowed by Sweden, Finland, Denmark. Tendencies to expand the practice of compromise dispute resolution are also characteristic of other Western countries. For example, in June 1998, the Finnish Bar Association developed the Rules of Mediation

(Mediation), which define the limits of the settlement of any commercial dispute through mediation, if the parties to the conflict have agreed to do so.

The concept of a court with many doors (Multi-Door Courthouse) remains quite ancient, but not widely known. This model covers all of the above alternative means of protection and continues to be used abroad. It was first announced by Frank Sander, a professor at Harvard Law School, in April 1976 at a conference addressing the challenges facing justice at the time. Professor Sander envisioned such a house for the future as a dispute resolution center, offering many options for resolving legal disputes. Litigation would be one of many options, including conciliation, mediation, arbitration, the ombudsman, and so on. In the first three years of the "House of Justice with many doors", seven programs were developed. Peculiar "doors" as a symbol of the possibility of resolving the dispute by any of the proposed alternative methods, which is rational in a particular case, were introduced in stages: Small Claims Mediation; Domestic Relations Mediation; Accelerated Resolution of Civil Disputes; Mandatory Arbitration; Mediation (as a technique seems to hold promise for appropriate and successful use in a wide variety of cases: small claims cases, a wide range of civil disputes involving thousands or millions of dollars, and domestic relations cases). Despite the fact that there are no official statistics, it is safe to say that the "House of Justice with many doors" was used in more than 10,000 different cases, the services of receiving and transmitting cases to several doors were used. Experience has shown that disputes involving either small claims or cases of multimillion-dollar abuses can actually be resolved with the alternatives available to them (Zheltobryukh, 2020).

Therefore, it should be noted that the "House of Justice with two doors" is an innovative institution that directs cases to the most appropriate methods of dispute resolution, which saves time and money for both judges and litigants, it remains effective and relevant today. The advantages of such an alternative way of resolving disputes are early assessment of their content and assessment of the case as a whole, accelerated processing and the nature of the emerging processes, which is less formal and more understandable than judicial. For the court, the available alternatives meant a reduction in the number of trials and the lack of ongoing jury trial and, as a result, a reduction in the workload on the courts as a whole. At the same time, the time for resolving cases in court was proportionally divided between those that need deeper concentration and more detailed study (Lay & Anne, 2020).

Thus, the conditions for the use of each of these alternative means of dispute resolution include, first of all, consolidating the competence of authorized persons (courts or officials) to decide on their application, as well as the legal

possibility of application to litigation or during its implementation. However, only conciliation, negotiation and mediation procedures can be used during the trial. If we turn to the definition of the specifics of the procedures for the use of alternative means of dispute resolution, it is enshrined in the recommendation addressed to the legislator to establish the internal review procedure as mandatory in all circumstances of the disputed legal relationship. It is also interesting to note that the Annex to Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe on alternatives to litigation between administrative authorities and private parties does not distinguish between conciliation and mediation procedures (Bobrovnyk et al., 2020).

In particular, Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe emphasizes the benefits of alternatives to litigation between administrative authorities and private parties and recommends that Member State governments promote the use of alternative means of settling disputes between administrative authorities and private parties. such as internal review, conciliation and mediation, negotiation and arbitration. The document states that the use of these tools could be made a mandatory precondition for litigation. It is proposed to use such alternative means of dispute resolution, as out of court in general, or before the trial or during it. The main advantages of alternative means of resolving administrative disputes may be, as the case may be, simpler and more flexible procedures that allow for faster and cheaper dispute resolution, amicable settlement, expert dispute resolution, fair dispute resolution and not just strict legal norms, and wider limits of discretion.

On 7 December 2007, the European Commission for the Efficiency of Justice adopted Guidelines No. 15 to better implement the existing Recommendation on Alternatives to Litigation between Administrative Bodies and Individual Parties. The European Commission on the Efficiency of Justice noted the following obstacles to the introduction of alternative dispute resolution between administrative bodies and private parties: lack of awareness of the potential usefulness and effectiveness of alternative dispute resolution between administrative bodies and private parties; Insufficient explanation to the administrative authorities of the advantages of alternative models for resolving such disputes, which may lead to unconventional, effective and rational results; distrust of courts in the development of out-of-court alternatives to judicial settlement of disputes in the administrative sphere; lack of awareness of the various alternative dispute resolution methods in this particular area; lack of specially trained neutral intermediaries in this area; a small amount of research into alternatives to resolving administrative disputes in court. The role of courts under the No. 15

guidelines is to recommend to the parties methods alternative to litigation, in particular conciliation, mediation and negotiation procedures for settlement, and to conduct appropriate information activities. In the trial of judges, judges should take into account the agreement reached by the parties, except in cases where it is contrary to the public interest.

4. Discussion

Ensuring accessible and effective justice has been and remains one of the priority areas for improving Ukraine's judicial system. This issue became especially relevant after our country signed the Partnership and Cooperation Agreement between Ukraine and the European Community and adopted a number of other acts that strengthened European integration processes, a natural consequence of which was the need to unify and harmonize national legislation with international (especially European) standards.

Despite the obvious advantages of the procedure, its effectiveness and the expediency of applying it to certain categories of administrative cases, this process is hampered by the lack of a relevant law that would regulate mediation in Ukraine. The current Code of Administrative Offenses and the Code of Administrative Procedure also do not explicitly regulate this issue. However, the Code of Administrative Procedure of Ukraine does not clearly state the institution of mediation as part of case law and there are no references to other codes that would allow such an interpretation. one possibility is to offer mediation as part of the administrative activities of the courts. In this case, with the consent of the participants in the process, the formal court proceedings are suspended in order to conduct a mediation procedure. After that, the judge of another judicial panel or – since it is not a case law – a researcher of the court acts as a mediator and conducts mediation (Dei et al., 2020a).

The trial itself is temporarily suspended. In case of successful completion of mediation before the judicial board, which actually considers the case, it must be declared an amicable settlement or other form of termination of the dispute (waiver of claims or their recognition), after which the proper judge officially closes the proceedings under the rules established by CAPU (nop., at the stage of preparatory proceedings – Article 121, at the stage of trial – Article 157 of the CAJ). In practice, this can be resolved as follows: if the mediation is successfully completed, the legal judge is invited to the mediation table with the consent of the parties, where he allegedly continues the formal proceedings without any transition and officially closes the legal dispute.

The situation with arbitration is somewhat more complicated in Ukraine (with an appeal to an arbitration court). In chap. 4 of Recommendation Rec (2001) 9 states: "representatives of the

arbitral tribunal should be able to verify the legality of the act as a precondition for examining the possibility of reaching a decision on the merits, even if they are not empowered to decide on the legality of the act." Therefore, the Recommendation provides for the arbitral tribunal to have the power to annul the impugned act and to establish its illegality in the process of resolving the dispute. In Ukraine, the activity of arbitration courts is regulated by the Law of Ukraine "On Arbitration Courts" of May 11, 2004 No. 1701-VI (The Verkhovna Rada of Ukraine, 2004a). In accordance with Part 1 of Art. 5 of this Law "legal and / or natural persons have the right to submit to arbitration any dispute arising from civil or commercial legal relations, except as provided by law." Therefore, administrative cases do not fall within the jurisdiction of the courts. In addition, in paragraph 6 of Part 1 of Art. 6 of the Law explicitly states that "arbitration courts do not consider cases in which one of the parties is a public authority, local government, their official, another entity in the exercise of its administrative functions on the basis of law, including including for the performance of delegated powers, a state institution or organization, a state-owned enterprise."

In addition, today there is no legal basis to consider arbitration in Ukraine as a way of out-of-court settlement of administrative disputes. Assessing the peculiarities of the introduction of arbitration in the administrative process of Ukraine, we note that there are a number of obstacles, both social and legal. Among the social reasons is the problem of corruption and the ambiguous experience of the functioning of arbitration courts in Ukraine. Among the legal obstacles is the inconsistency of arbitration with the nature of administrative relations that arise in connection with the realization of the public interest and in which contractual forms are secondary. In addition, in European countries it is often even forbidden to use arbitration in administrative cases (particularly in France) (Smokovych, 2019).

The right of citizens to appeal to the authorities, local governments, officials and officials of these bodies is defined in Art. 40 of the Constitution of Ukraine. Also, according to Art. 1 of the Law of Ukraine "On Citizens' Appeals": "citizens of Ukraine have the right to apply to public authorities, local governments, associations of citizens, enterprises, institutions, organizations, regardless of ownership, media, officials in accordance with their functional responsibilities with remarks, complaints and suggestions concerning their statutory activities, a statement or petition for the realization of their socio-economic, political and personal rights and legitimate interests and a complaint about their violation" (The Verkhovna Rada of Ukraine, 2004b). In addition, a special form of out-of-court appeal is the appeal to the prosecutor's office of a person whose rights, freedoms or interests have been violated by a subject of pow-

er. The development of the practice of out-of-court appeals should be linked to the weakening of the role of the prosecutor's office in this area (the latter should focus more on overseeing the rule of law when considering complaints), provided that the institution of administrative appeals is more effective. (Dei et al., 2020b).

Citizens in most foreign countries have the right to go directly to the ombudsman, who, having discovered the abuse, points it out to the relevant body or official and offers to remove them. In Ukraine, a similar institution is called the Verkhovna Rada Commissioner for Human Rights. However, the institution of ombudsman in the legal system of Ukraine does not allow him to be attributed to an effective form of resolving administrative and legal disputes. After all, citizens of Ukraine can apply to the Verkhovna Rada Commissioner for Human Rights only if all administrative and judicial means of protecting their violated rights, freedoms or legitimate interests have been exhausted.

The competence of the Commissioner does not include the function of settling administrative disputes. However, it should be noted that proposals to introduce into Ukrainian law alternative ways of resolving administrative disputes, in particular, such as mediation, contractual settlement and arbitration, are not always supported in the scientific community, due to their inconsistency with the legal nature of these disputes. An important aspect of the development of out-of-court settlement is the introduction of conciliation procedures in Ukraine, which can be applied at different stages of the administrative process.

5. Conclusions

One of the basic principles of public international law is the settlement of disputes peacefully. In this context, it is important to use means that do not violate the rights and legitimate interests of other states and at the same time contribute to the future development of diplomatic relations between them. Other states can participate in conflicts not only as parties to the dispute, but also as third parties who become independent arbitrators. Alternative dispute resolution can also be used at the national level. But the use of appropriate methods involves their prior implementation in law and the establishment of a clear procedure for their implementation.

In today's world, disputes are a common phenomenon that needs to be resolved in any case. Currently, a large number of ways have been developed and put into practice that allow to resolve a dispute not only in court, but also outside it, which has a number of advantages, which will be discussed in this article. Arbitration courts, international commercial arbitration, mediation, consultation, participatory proceedings, rental judges, multi-door courts, and more are not exhaustive lists of alternative dispute resolution. One of the most common procedures is mediation.

Out-of-court settlement of administrative disputes means the activities of executive bodies and other authorized entities, based on the rules of administrative procedure law and aimed at overcoming differences that have arisen on the basis of administrative legal relations. This is one of the forms of administrative process that is implemented without the participation of the court. The distinctive features of out-of-court settlement of administrative disputes are the simplification and speed of procedural actions, as well as the large number of entities authorized to make decisions in this dispute.

Since the signing of the Association Agreement between Ukraine and the European Union in the field of interaction of entities endowed with public authority, great changes have taken place. Legislation in this area is developing rapidly, a significant number of regulations in the field of public administration, which affect the rights, freedoms and legitimate interests of individuals and legal entities, there is a complication of administrative procedures involving citizens and organizations. At the same time, the regulatory restructuring of public administration necessitates the consistent consolidation of legal technologies for resolving administrative disputes, developing new forms of social cooperation, in particular, such as reconciliation and mediation. The importance of out-of-court forms of resolving administrative disputes through conciliation and mediation procedures in the protection of the rights, freedoms and legitimate interests of individuals and legal entities is obvious. These forms allow to provide high-quality, timely, with the least costs and confidentiality of administrative disputes. This is important because it allows to reduce the workload of the courts, to avoid material costs associated with the implementation of court proceedings, to avoid the bias of court decisions in favor of the state.

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THE PROBLEM OF LEGAL REGULATION IN THE FIELD OF ARTIFICIAL INTELLIGENCE IN THE CONTEXT OF THE DEVELOPMENT OF THE LEGISLATION OF THE EUROPEAN UNION

Abstract. *In the offered article the problem of legal regulation in the field of artificial intelligence actual in modern conditions of digital transformation and development of information society is investigated. The main provisions and proposals on the Regulation*

of the European Parliament and of the Council, which should establish harmonized rules in the field of artificial intelligence (Artificial Intelligence Act), published in April 2021 by the European Commission, are considered. The purpose, sphere of legal regulation, basic legal principles, legal mechanisms, specific content of basic legal norms of the Regulations are analyzed. Estimates of the advantages and disadvantages of the proposed legal regulation in the field of artificial intelligence are provided. The actual scientific and applied problems of finding a balance on the interaction of man with artificial intelligence are formulated; determining the possibility of granting a specific legal status for robots with artificial intelligence; development of a model of legal regulation in the field of artificial intelligence and the formation of state and legal guarantees for the protection of human rights, freedoms and security in the application of artificial intelligence. To carry out the study, a system of methods of scientific cognition was used, including general philosophical, general scientific (dialectical, analysis, synthesis, abstraction, analogy), private methods of scientific cognition used in many branches of science (comparative, quantitative and qualitative analysis), and special legal (formal-legal, comparative-legal, system-structural). Recommendations and proposals on priority areas of research on the problems of legal regulation in the field of artificial intelligence are also identified

Key words*: artificial intelligence, regulations, legal regulation, human rights, security*

Introduction

According to historical and legal analysis, during XX–XXI centuries there was a radical transformation of social relations in various spheres of human life, society, state and international community. Along with this, information technologies, products and services are rapidly developing and national and global information space is being formed. Under these conditions, making sound management and other decisions requires an increasing amount of information on social and international processes.

For a long time and given the previous decision-making requirements, information quantity and quality were satisfactory. Growing dynamics of socio-economic changes in some countries and international society as a whole has resulted in sharp increase of requirements to decision-making speed and quality at all public life levels. Time horizon of reliable forecasting began to decrease considerably, especially concerning medium- and long-term development strategies, while amount of time required for implementation of established management, production and technological processes mostly remained unchanged.

This has led to a significant problem, the meaning of which is that at some point of society's historical development human cognitive abilities began to limit collection and processing of necessary amount of information and provide necessary speed of decision-making, which shall be an adequate response to modern transformational change. Problem's clear indication is

that a number of negative factors, such as depletion of planetary mineral reserves, shortages of fertile land and food, clean water and air and other resulted from limited human capabilities related to analyzing vast amounts of information for making rational decisions under real time.

In the middle of XX century, humanity responded to the challenge of cognitive capabilities availability through the widespread introduction of information technology in virtually all social processes. Automation, computerization, infomatization, digitalization became widespread. Their implementation required significant intellectual, logistical, financial, organizational and other resources. It resulted in adoption and implementation of national programs on ***information society*** in many countries – *a society in which a complex of social relations to improve the efficiency of human activity in various fields is implemented through the use of information computer technology* [26].

Currently, relay for coping with limitations of human capabilities in decision-making has passed to the technology of ***Internet of Things***. It is a set of *interacting technical systems and complexes consisting of microprocessors, sensors, devices, data transmission systems, local and/or distributed computing resources and software, artificial intelligence (AI), in particular designed to implement public relations, including those related to the provision of services activities with or without participation of entities (legal or physical persons) based on the use of large data amounts and Internet* [27].

Fundamental advantage of Internet of Things (IT) technology is that when it is used, decisions are made and executed in real time and are based on existing potential:

- collection and processing of huge data amount;
- identification of all subjects and objects that participate in processes or are related to them;
- use of robots that provide various activities and services in the material world;
- application of special mathematical algorithms and artificial intelligence (AI) algorithms, in particular.

Gradually, in late 1990s, there was a strong belief that use of artificial intelligence systems opened up positive prospects for solving local and global problems of mankind due to the ability to make rational decisions as relevant as possible to changing circumstances, almost in real time.

Governments of leading countries, being aware of responsibility for their countries development and understanding AI benefits, develop and adopt appropriate national strategies during the last 3–4 years, aimed at ensuring of their own competitive advantage in international economy. For example, only in recent years Australia [29], Canada [30], China [31], Great Britain [32], the EU [33], Denmark, India, Italy, Kenya, Malaysia, Mexico, Germany [34],

South Korea [35], the United States [36], New Zealand, the UAE, Poland, Russia, Singapore, Taiwan, Tunisia, Ukraine, Finland, France, Sweden, Japan and others have adopted strategies and other government documents related to use and development of artificial intelligence systems.

National strategies on artificial intelligence development address a wide range of issues related to development of technology and other issues of widespread use of AI systems (social, economic, political, technological, legal, etc.). Legal components of national AI development strategies differ in content and approaches to problems' systematic consideration. This is due to differences in understanding of AI functionality and, accordingly, its social role [28].

On April 21, 2021 European Union published proposals on the legal regulation related to artificial intelligence implementation. At the same time, many countries started to actively discuss European Commission's initiative, which proposed EU institutions and European Community as a whole, long-awaited document on the legal regulation of public relations related to artificial intelligence, i.e. European Parliament and European Council Regulations on establishing harmonized rules for artificial intelligence (Law on Artificial Intelligence, April 21, 2021) (hereinafter, Regulations) [21].

This event was accepted with enthusiasm by a wide range of scientists and experts, as more than 30 countries adopted national strategies for artificial intelligence development. Ten of them identified as the main goal of these strategies the acquisition of the status of a leading state in the field of artificial intelligence systems' development and use. In addition, almost all states have declared the need in legal research and creation of national legislation in the field of artificial intelligence [28].

Assessments that EU was the first in the world to propose a possible legal regulation on artificial intelligence implementation are worth supporting. At the same time, some authors did not avoid an overly complementary response to this event, noting that Regulations is European Commission's first brilliant attempt to formulate a law that can be applied specifically to artificial intelligence [6] or that the EU is a leader in developing new global standards in order to make sure that AI can be trusted [19]. However, critics have taken a different view, noting that the Regulation is a retrograde step that will further lag EU in global struggle for dominance in AI sector [4].

Under current conditions of global transformations and regardless of further discussions around Regulation's provisions and the process of their elaboration, the historical significance of its promulgation and further formation of legal framework of EU member states on artificial intelligence use seems quite clear.

Given the extreme urgency of the problem, article is aimed at examining

of European Commission main proposals, set out in the draft Law on Artificial Intelligence of April 21, 2021.

1. MATERIALS AND METHODS

System of scientific cognition methods was applied to carry out the study, including general philosophical, general scientific (dialectical, analysis, synthesis, abstraction, analogy), private methods of scientific cognition used in many sector sciences (comparative, quantitative and qualitative analysis) as well as special legal ones (formal legal, comparative legal and system structural).

General philosophical (universal) method of cognition was applied at all cognitive process stages. Dialectical method was used to analyze doctrinal approaches to definition of the term "artificial intelligence", which has not yet received a stable definition in law or doctrine, including in view of domestic legal and law enforcement experience. While assessing activities in this area, scientists and experts note that artificial intelligence is a rapidly growing and often incomprehensible to general public technology's branch, which will not appear tomorrow, but has appeared already and is affecting everyone's life on a daily basis. Historical method was implemented during historical and legal analysis of information society and processes of digital transformation formation. Due to it was found that in late twentieth century there was a strong belief that the use of artificial intelligence systems opens positive prospects for mankind local and global problems. Under these conditions, European Union and a number of countries around the world adopted strategies and other legal acts on artificial intelligence systems' implementation and development. Hermeneutic method was used while interpreting scientific concepts of legal theory and current legislation's provisions. Deduction method provided an opportunity, based on doctrinal scientists' views, to draw a general conclusion related to basic principles and principles of identifying the directions and content of legal regulation on artificial intelligence. Inductive method of cognition made it possible to come to a conclusion about the need in developing a set of basic rules for artificial intelligence implementation both at state and local levels. It will make it possible to control advanced technologies used in state supervision over citizens. At national level citizens shall be protected from excessive state monitoring of social networks and other publicly available data.

Formal logical method was useful when analyzing the content of current European and domestic legislation related to artificial intelligence implementation in various spheres of public life and clarifying the problems of its legislative technique in relevant regulatory documents. Due to comparative legal method, comparative analysis was conducted and peculiarities of legislative regulation and human rights protection under conditions of artificial in-

telligence implementation were studied to identify the most advanced legal remedies that can be incorporated into national legislation in relevant sphere.

Special legal methods were also used. In particular, formal legal and system structural methods were used while developing and studying of terminological apparatus of current work, i.e. while clarifying the content following categories: "artificial intelligence", "Internet of Things", "information society", "digitization", as well as while formulating the definition of mentioned legal categories.

2. RESULTS AND DISCUSSIONS

Development of proposals to European Commission Regulations on legal regulation of artificial intelligence implementation was preceded by quite an intensive work, starting from development, discussion and publication of *European Parliament Resolution with recommendations of Commission on Civil Law Rules on Robotics* (February 2017) [13] and *ending with White Paper on Artificial Intelligence: European Approach to Excellence and Trust* (February 2020) [24]. In fact, main content of White Paper, finalized during open discussions, became the basis for draft Regulations of European Commission.

Regarding the discussions of the draft White Paper, it should be noted that over four months, more than 1,200 changes and additions to its text were received and processed online, in particular: 352 – from companies, enterprises and organizations; 406 – from individuals (92% from citizens of EU member states); 152 – from research institutions; 73 – from state bodies; 160 – from civil society institutions; 22 – from trade unions. At the same time, 84% from business and industry were proposed by 27 EU member states [21].

It should be noted that these proposals are set out in the form of Regulations, which according to the Treaty on the Functioning of European Union [8], is a legal document of direct action throughout the EU and does not require additional efforts for incorporation into national legislation of EU member-states.

Chosen type of legislation (Regulations) also proves consistent and persistent policy of the European Union related to creation of single and harmonized legal framework in the field of digital transformation for all member-states, including artificial intelligence implementation.

While assessing activities in the sphere, scientists and experts note that artificial intelligence is a rapidly growing and often incomprehensible to the general public branch of technology [2], which will not appear tomorrow, but has appeared already and which is affecting everyone's life and every day [5].

Here is a brief description of the proposed draft Regulations, according to European Commission press-release [11].

First, new legal regulation should be applied directly and in the same way in

all EU member-states on the basis of future definition of artificial intelligence.

Second, all regulation will be based on *risk-based approach: unacceptable, high, limited and minimal*.

Unacceptable risk: AI systems that are considered as clear threat to security, livelihoods and human rights will be banned. This type of artificial intelligence includes systems or programs that manipulate human behavior, try to overcome free will of users (for example, toys that use voice aids to encourage unsafe behavior of minors) and systems that make it possible for governments to "socially evaluate" people's behavior.

High risk: AI systems, defined as high risk systems, include AI technologies used in:

- *critical infrastructure* (e.g., transport), which can endanger citizens lives and health;
- *product safety components* (e.g., the use of artificial intelligence in robot surgery);
- *employment, employee management and access to self-employment* (e.g., resume sorting software for recruitment);
- *law enforcement agencies* that may interfere with fundamental human rights (e.g. assessing the veracity of evidence) and
- *administration of justice and democratic processes* (e.g. application of legislation to specific set of facts).

To be admitted to the free market, high-risk AI systems must meet strict requirements for certain components of algorithm and data processing.

Limited risk: AI systems with specific obligations related to transparency of their implementation. For example, users of AI systems such as chat-bots have the right to know that they are interacting with the machine to make their own decisions about it.

Minimal risk: legislative proposal allows the free use of programs such as video games with AI support or spam filters. The draft Regulations does not provide the regulation of such cases.

With regard to the management of AI application processes, European Commission proposes national competent market surveillance authorities to monitor the new rules, while the establishment of European Artificial Intelligence Council will facilitate their implementation as well as AI standards development. Besides, voluntary low-risk codes of conduct with artificial intelligence are proposed, as well as regulatory mechanisms to promote responsible innovation.

Let's consider basic legal framework, innovations and mechanisms proposed by the Regulations to address artificial intelligence implementation.

1) Conceptual and categorical apparatus. European Commission and states' authorities, when developing regulations aimed at regulating public relations based on the use of information (digital) technologies, including artificial intelligence technologies, always face the problem of defining new

terms. This is due to a number of reasons, including:

• *as a rule, new terms fall to the sphere of legal regulation from relevant technical, technological or other areas of knowledge and practice, which are in the active phase of their development;*

• *definitions of newest terms are not established because there is always a high probability of their change under the influence of new scientific and scientific-technical achievements. Moreover, these definitions may still be debated within their "native" field of knowledge, while legal regulation interests will require the use of just such a term/definition;*

• *definitions of the same term may have different meanings in different fields of knowledge, which may have both same interdisciplinary methodological tasks and specific tasks for each field.*

In recent decades, in view of the above and along with universal requirements for terminological systems in law, there has been a requirement to ensure legal certainty: definition of the latest technologically colored terms shall have minimum technical details and details to ensure compliance with important legal principle of technological neutrality as well as to ensure term's "longevity" while "absorbing" future technological achievements.

That is why European Parliament in its famous Resolution (2017) stated the lack of a common definition of the terms "robot" and "artificial intelligence", which should be flexible and should not hinder innovations, and formulated the task of European Commission related to developing the definitions of cyber-physical systems (CPS) (IoT), autonomous systems (AI systems – author's note), intelligent autonomous robots and their subcategories [13].

In 2018, in "Artificial Intelligence for Europe" Strategy, European Commission for the first time provided a formal definition of this concept, i.e.: ***artificial intelligence (AI)*** *means systems that demonstrate intellectual behavior by analyzing its environment and taking actions (with some degree of autonomy) to achieve specific goals* [12].

During recent years, this understanding of AI has been changed and a new definition has emerged in Regulations: *artificial intelligence system is software developed with the use of one or several methods and approaches listed in Annex I* (Annex to Regulations – author's note). *It can create results for a specific set of human-defined goals, such as: content, forecasts, recommendations or decisions that affect the environment with which they interact* [21].

Methods and approaches for establishing AI programs defined in Annex 1 to Regulations include:

• approaches to machine studies, including controlled and uncontrolled studies and studies with a wide range of methods;

• logics' and knowledge-based approaches, including inductive (logical)

programming, knowledge bases, inductive and deductive mechanisms, (symbolic) reasoning and expert systems;

• statistical approaches, search and optimization methods, etc.

Annex 1 to Regulations seems to be considered as an indicative list of methods and approaches for creation of artificial intelligence programs, compiled for reference or as an example. This view is confirmed by a preliminary expert assessment according to which some methods and approaches set out in Annex 1 to Regulations are considered as obsolete [6]..

Accordingly, Article 4 of Regulations states that European Commission is empowered to adopt acts to amend the list of methods and approaches set out in Annex I in order to update it in the light of technological developments. It is clear that an exhaustive list of methods and approaches will impede incorporation of certain systems to artificial intelligence systems, which will hinder innovations' development and will not contribute to proper legal regulation of access for AI systems' market.

2) Basic principles and principles for determining the directions and content of legal regulation on artificial intelligence.

A legal framework analysis proves that EU legislation has necessary legal framework and mechanisms to regulate public relations in the field of digital transformation and development of information technology, products and services.

"Artificial Intelligence for Europe" Strategy states that EU AI policy is aimed at following [12]:

• *increasing of technological and industrial EU potential and spreading of AI in private and public sectors of economy;*

• *getting ready to socio-economic changes caused by artificial intelligence development;*

• *ensuring of appropriate ethical and legal framework based on European Union values and in line with EU Charter of Fundamental Rights.*

Coordination Plan for Artificial Intelligence (2018) in terms of creating an appropriate and predictable ethical and regulatory framework in this area presupposes that it should provide the following [7]:

• *effective guarantees for fundamental rights and freedom protection;*

• *trust to artificial intelligence;*

• *investment security;*

• *competitive benefits for European companies on the world market.*

Besides, European Parliament and Council of Europe (EU) Regulations # 2016/679 of 27 April 2016 on the protection of individuals related to personal data processing and to free movement of such data (GDPR) can be considered as sampling for some of approaches of mentioned Regulations [23].

3) **Overall goal and objectives of developing the regulatory framework for artificial intelligence implementation.**

In Explanatory Memorandum to Regulations, European Commission

sets out the following specific objectives for its proposals:

• *to guarantee that artificial intelligence systems, placed and implemented on European Union market are secure and respect current law on fundamental rights and values of EU;*

• *to provide legal certainty aimed at AI investments and innovations facilitating;*

• *to strengthen management and effective application of current legislation on fundamental rights and security requirements applicable to AI systems;*

• *to promote the development of single market for legitimate, safe and reliable AI programs and to prevent market fragmentation.*

Besides, Article 1 of Regulations defines the following:

• *harmonized rules for artificial intelligence systems' (AI systems) placing on the market, commissioning and implementation in EU;*

• *prohibition of some artificial intelligence's practices;*

• *specific requirements related to high-risk AI systems and obligations for operators of such systems;*

• *harmonized transparency rules for artificial intelligence systems designed to interact with individuals, emotion recognition systems and biometric classification systems as well as artificial intelligence systems used to generate or manipulate the content of images, audio or video;*

• *rules for market monitoring and supervision.*

At the same time, researchers pay attention to other goal's emphases set by European Commission, i.e.:

• providing legal guarantees of confidentiality and fundamental rights for European citizens while strengthening support for investments and innovations to develop artificial intelligence in EU [5];

• regulation aimed at elimination of potential risks while developing and operating potentially harmful products and services that use software based on machine learning and other AI methods [6];

• legal certainty provision to promote investments and innovations in AI [18];

• formation of digital strategy as one that gives priority to comprehensive regulatory framework aimed at strengthening of confidence in new technologies and innovations [16];

• increasing of confidence in artificial intelligence systems to ensure their implementation [9];

• legal restrictions on the use of facial recognition by police [1], etc.

4) Territorial coverage of legal regulation on artificial intelligence.

Since GDPR is as a sampling for some legal mechanisms for artificial intelligence implementation, Regulations uses similar legal framework for determining territorial coverage. Extraterritorial approach to legal regulation proposed by Regulations is that foreign companies wishing to sell their own AI systems for further use in EU must

comply with all Regulations' requirements and provisions.

Incorporation of extraterritoriality principle in relation to artificial intelligence has extremely important consequences for the economy not only of EU but also of the whole world. Principle's wording *"if you want to promote your products that contain artificial intelligence systems, you shall comply with Regulations' requirements"* means that requirements of Regulations apply not only to direct manufacturer of AI systems, but also to all other manufacturers, AI systems or other products of which contain AI systems components. Thus, as European Union has a developed market for high-capacity, high-tech products, it is essentially becoming an indirect legislator for most of the world that will produce products containing artificial intelligence systems.

5) Approaches to legal regulation in sphere of artificial intelligence based related to risk assessment.

Regulations' provisions for high-risk AI systems define a special procedure for admission to EU market through the establishment and operation of an extensive risk and quality management system. We are talking about the use of a risk-oriented approach to regulate AI systems' implementation, which is widely used in EU legislation in sphere of cyber-security, personal data protection, etc.

Scientists and experts pay special attention to strategy of Regulations' legal framework, in particular: one of the highlights of GDPR approach is the so-called "risk-based approach" [5]. AI Regulations is considered as new "GDPR for AI" [22]. At the same time, it is worth paying attention to some basic principles.

First basic legal principle is the direct prohibition of certain categories of AI systems.

Regulations prohibit the promotion on EU market of AI systems, the application of which is incompatible with European values, rights and freedoms (Article 5) [21], including the following:

1) use subconscious techniques that provide significant distortion of human behavior in such a way that could physical or psychological harm;

2) use any vulnerability of a certain group due to group age, physical or mental disabilities to significantly distort the behavior of a person belonging to this group, so that it could cause physical or psychological harm to that person or another person;

3) are put into operation or used by public authorities to assess or classify the reputation of individuals or personal characteristics with a social score, which result in following:

• pernicious or unfavorable treatment of certain individuals or groups in a social context that are not related to the contexts according to which the data were originally created or collected (profiling – author's note);

• pernicious or unfavorable treatment of certain individuals or groups

that is unjustified or disproportionate to their social behavior or its severity;

4) are used in remote biometric identification systems "in real time" in public places for law enforcement purposes.

From the point of view of future law enforcement practice, items 1) and 2) seem to be the most controversial and need further elaboration given the difficulty of defining clear criteria for causal links between the algorithm of artificial intelligence and the fact of physical or psychological harm, as well as the definition of certain AI algorithms that implement subconscious techniques that clearly have harm's purpose.

This is also confirmed by the assessments of some authors, for example, regarding the lack of clarity and legal ambiguity related to definition of high-risk AI systems and definition used for "subconscious methods" used for prohibited AI systems [14] or that the ban on AI for certain spheres can lead to restrictions on competition for European players and the transfer of innovation from EU to other countries [5], etc.

In general, the presence of a direct ban on access to the EU market for certain categories of AI systems in Regulations may be a reason to criticize this position of the European Commission. However, we consider that Regulations' developers quite rightly believe that such a concept will contribute to the formation of an atmosphere of trust towards artificial intelligence products among politicians, businesses and population of European Union and other countries cooperating with the EU, by completely eliminating cases of AI systems' implementation that can actually cause harm.

Second basic legal principle is the establishment of a detailed and comprehensive legal regime for the admission of high-risk artificial intelligence systems to EU market.

Regulations define a class of high-risk AI systems for which a detailed legal regime for admission to EU market is established. This regime is aimed at elimination of the possibility of harm when using high-risk AI systems or to minimize the risks of such damage. In fact, basic idea of the entire Regulation is to create a legal basis for this goal's achievement.

Article 6 of Regulations also sets out the principles for AI systems classification, according to which the term "high-risk artificial intelligence" is introduced.

High-risk artificial intelligence *is an AI system which is placed on the market or put into service independently of the products referred to in points (a) and (b) and for which both of the following conditions are met:*

(a) artificial intelligence system, which is used as a component of product safety, or is itself a product covered by EU legislation listed in Annex II to Regulations;

(b) products, whose safety component is an artificial intelligence system or AI system itself are products, shall be

assessed for conformity by a third party for the purpose of placing on the market or putting these products into service in accordance with legislation, set out in Annex II to Regulations.

Besides general principles of AI systems classifying as high-risk, Annex III to the Regulations lists AI systems considered as high-risk due to their implementation in following spheres:

1) Biometric identification of physical persons;

2) Management and operation of critical infrastructure;

3) Education and vocational training;

4) Employment, employee management and access to self-employment;

5) Access to and use of private services and public services and benefits;

6) Migration, asylum and border control management;

7) Administration of justice and democratic processes.

It should also be noted that Regulations pays special attention to the use of artificial intelligence systems, classified as high-risk and intended for *law enforcement*, in particular:

• AI implementation by law enforcement agencies to make individual assessments of an physical person's risk related to committing or re-committing a crime or risk related to potential victims of criminal offenses;

• use of polygraphs and similar AI tools or systems by law enforcement agencies to identify the emotional state of a physical person;

• AI implementation by law enforcement agencies to assess the reliability of evidence while investigating criminal offenses;

• AI implementation by law enforcement agencies to predict the occurrence or recurrence of an actual or potential criminal offense based on the profiling of physical persons or assessment of personal qualities and characteristics, or past criminal behavior of physical persons or groups;

• use by law enforcement agencies to profile individuals during criminal offenses' detection, investigation or prosecution;

• crimes' analysis against physical persons, enabling law enforcement agencies to search for complex, related and unrelated large data sets available in different data sources or in different data formats, in order to identify unknown patterns or to identify hidden relationships within these data.

Given the conflicts in different countries all over the world related to the use of public video surveillance systems with AI for law enforcement purposes, European Commission position of in this sphere is quite clear.

H. Monzon has made public an important opinion regarding the classification of high-risk AI systems used in *employment, employee management and ensuring access to self-employment spheres*. In general, while supporting the draft Regulations' approach to careful assessment of the possibility of AI systems implementation to assess or pro-

vide certain characteristics of staff due to very high risk of *indirect discrimination*, it notes that this concept did not resulted from technology but passed a long and independent way, acknowledged at jurisprudence and regulatory levels [17].

In the context of the above, it should be noted that creation of algorithms for almost all modern AI systems, which demonstrate high efficiency of human cognitive functions' modeling, is based on the use of various methods of machine learning *(artificial neural networks, deep learning, inductive logic programming, Bayesian networks, reinforced learning, etc.).* Accordingly, results of human experience, represented by certain information or in the form of data, are widely used for development and "learning" of algorithms of artificial intelligence systems as well as for teaching children of different ages. At the same time, the shortcomings of real human activity are reflected in information or data used to "teach" AI systems.

In general, reasons for currently known manifestations of indirect discrimination and errors related to the use of artificial intelligence systems seem to be the circumstances that have historically developed due to following:

- *certain biased traditions and customs;*
- *certain biased set of rules of law, each of which separately could not be considered as discriminatory;*
- *imperfectly formed criteria for evaluation or determination of individual data or characteristics of subjects;*
- *unrepresentative set of factual or other data about a person.*

In the "pre-algorithmic era" *(when there were no artificial intelligence systems)* the risk of possible discrimination under above circumstances was minimized due to the influence of experience, personal qualities and impressions of a person who made decisions related to assessments concerning a person. This is because the decision-maker, besides processing the usual set of human cognitive functions of a certain set of factual information about a particular person, also uses such complex cognitive functions as: compassion, dignity, respect, emotions, empathy, etc.

Thus, due to super-complex cognitive functions, imperfection of applied criteria was compensated. At the same time, modern science and technology have not yet demonstrated examples that would indicate the possibility of super-complex cognitive functions' modeling at the algorithmic level. Therefore, modern models of artificial intelligence systems, for sure, can make mistakes when assessing human qualities, which result in indirect discrimination.

It seems possible to solve the problem related to high risk of indirect discrimination with the use of AI systems in following areas:

First (internal for AI systems) – improving the capabilities of AI systems in terms of modeling of complex human cognitive functions. However, this path is long and not reliable enough in terms of predicting the outcome.

Second (external to AI systems): a) development of more accurate, detailed and reliable criteria for assessing certain qualities and characteristics of people according to certain representative set of factual or other data; b) improving of legal system at jurisprudence and regulatory levels in order to create legal conditions for reducing the risks of possible indirect discrimination; c) preliminary maximum cleansing from possible prejudices of different nature of information and data that are being developed for AI systems' "training".

Indirect discrimination's problem related to AI systems is known in almost all countries. For example, in May 2021, Working Group on Artificial Intelligence (AI) of US House of Representatives held a hearing on "Fair Algorithms: How Human-Oriented Artificial Intelligence Can Combat Systemic Racism and Racial Injustice in Housing and Financial Services" [10]. Participants of the hearings proposed the following: to use unbiased data for analysis, to improve the government's financial situation in order to reduce inequality risk, to develop more representative and reliable data sets from non-traditional sources, etc. [20].

Regulations proposed by European Commission still have a lot of debatable issues that need further elaboration. Extremely important for determining the further vector of human development and legal regulation of artificial intelligence seems the problem of predictable and controlled relations as well as determining what information should be exchanged between people and robots. In Regulations, the European Commission has taken into account almost all the recommendations of the well-known of European Parliament Resolution (2017) [13], except for this problem.

Proposed draft Regulations is not designed in principle for implementation in autonomous robots, as it defines that ***artificial intelligence system*** can be used for a ***specific set of human-defined purposes*** and generate following results: content, forecasts, recommendations or solutions that affect the environment, they interact with.

European Parliament Resolution (2017) [13] emphasizes that predictable and managed relationships are crucial for identifying what information needs to be exchanged between people and robots in order to ensure unimpeded joint action between man and robot. It therefore recommends European Commission to submit a proposal for a legislative instrument on legal issues related to the development and use of robotics and AI, the horizon of which could extend to next 10–15 years, i.e. the period during which rapid development of robots and AI is expected, especially, in terms of their actions' autonomy. It also notes that future legislative document shall in no way limit the type or amount of damages and the form of compensa-

tion solely on the grounds that the damage is caused by an inhuman agent.

Separate paragraph of Recommendations (paragraph 59) clearly put the task to European Commission: to study, analyze and consider the consequences of all possible legal solutions, such as ***creating a specific legal status for robots***, so that at least the most complex autonomous robots responsible for preventing the harm they may cause, can have the ***status of electronic legal persons*** and make it be possible to use of electronic legal personality ***in cases when robots make independent decisions or interact independently with third parties***.

European Parliament also defines that characteristic criterion of robot autonomy and artificial intelligence is the ability to *self-learn*. We are witnessing that science and practice are on the verge of creating robots with artificial intelligence and new generation self-learning systems.

In general, as analysis shows, in the near historical perspective the ***problem of creating a model of legal regulation*** for *development, implementation and application of robots with artificial intelligence and opportunities for self-learning* will become extremely important. Its solution seems to be facilitated by introduction of a new term – ***"Artificial General Intelligence" (AGI)*** [25].

The essence of this concept can be defined as *set of computer programs that equivalently simulate (model) human cognitive functions, which are used while implementing any activity without human participation to achieve goals or self-defined goals in accordance with established criteria and parameters*.

Along with above, it should be noted that Ukrainian legal science, along with scientists from leading countries, is already actively moving in the context of studying the urgent problems of legal regulation on development, implementation and application of artificial intelligence and robotics. In particular, grounding on considered and other scientific achievements [25, 27, 28, 37, 38, 39, 40, 41, etc.], separate section "Legal support in the field of digital transformation" was incorporated into Development Strategy of the National Academy of Legal Sciences of Ukraine for 2021–2025 (identifies priority areas of basic and applied studies, tasks and principles for further legal science development, scientific support to modernization of state and legal relations in Ukraine).

CONCLUSIONS

Consideration of legal regulation in the sphere of artificial intelligence in the context of European Union legislation's development provides an opportunity to make following main conclusions and proposals.

1. Historical and legal analysis related to formation of information society and digital transformation processes shows that in the late twentieth century

there was a strong opinion that the use of artificial intelligence systems opens up positive prospects for solving local and global problems of mankind. Under these conditions, European Union and a number of countries all over the world (Australia, Great Britain, India, Canada, China, Malaysia, Mexico, South Korea, the United States, Japan and others) have adopted strategies and other legal acts on of artificial intelligence systems' implementation and development.

Mentioned documents address a wide range of topical issues related to artificial intelligence systems' implementation (social, economic, political, technological, legal, etc.). At the same time, legal components of national strategies for the development of artificial intelligence differ in content and approaches to systematic consideration of real and potential problems in the sphere.

2. Under conditions of global processes, European Commission proposals on legal regulation in the sphere of artificial intelligence and adoption of European Parliament and European Council Regulations establishing harmonized rules on artificial intelligence – Artificial Intelligence Act – seem to be perspective.

At the same time, European Commission identifies following main objectives for legal regulation in the sphere of artificial intelligence:

• *to ensure that artificial intelligence systems placed and implemented on European Union market are secure and respect existing EU law on fundamental rights and values;*

• *to provide legal certainty to promote investments and innovations in artificial intelligence;*

• *to strengthen the management and effective application of current legislation on fundamental rights and security requirements applicable to artificial intelligence systems;*

• *to promote the development of a single market for legitimate, secure and reliable artificial intelligence programs and to prevent market fragmentation.*

3. Under modern conditions, the creation of legal regulation model for development, implementation and application of robots with artificial intelligence and opportunities for self-learning is becoming an extremely important and complex scientific and applied problem.

At the same time, in accordance with EU legal acts, first of all, possible consequences of all legal decisions shall be considered in the case of:

• *establishing of specific legal status for robots with artificial intelligence;*

• *establishing of status of electronic persons responsible for preventing the damage they may cause for the most complex autonomous robots;*

• *possible use of electronic legal personality in cases when robots make independent decisions or independently interact with third parties.*

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MODELS OF PUBLIC GAME BUSINESS GOVERNANCE IN THE WORLD

Abstract. *The urgency of researching the issue of models of public gambling management in the world is explained by the need to study foreign experience to improve the legal regulation and tools of public management of the gambling market in Ukraine. The authors used philosophical, general scientific and special scientific methods of cognition. The authors highlight the following models of public administration: ban on gambling; permission to conduct gambling without restrictions, but the establishment of certain qualification, organisational, financial and other requirements; establishment of a state monopoly on the organization and conduct of gambling, which manifests itself in various forms. To develop proposals for improving public management of the gambling market in Ukraine, the authors identify the advantages of each of the selected models of public management of the gambling market used in different countries, including the United States, India, Denmark, Slovenia, France, Austria, Greece, Norway, Germany, Poland, Switzer-*

land, Hungary. It is stated that the establishment of an absolute (total) ban on the organisation and conduct of gambling does not solve the problem of uncontrolled gambling and gambling addiction in society. The authors conclude that the introduction of the so-called third model of public administration in Ukraine, in which the state, acting on behalf of society and in the public interest, enters into a so-called social contract with gambling organisers, according to which socially harmful effects of gambling will be compensated financing of socially useful goals (good deeds)

Keywords: *gambling, gambling market, lottery activity*

INTRODUCTION

Ukraine has come a long way in regulating the gambling business: from its permissiveness and uncontrollability from 1991 to 2009 to its total ban in 2009, which lasted until 2020. Thus, during the period of permissiveness of the gambling business in Ukraine, a large number of various gambling establishments operated, but the greatest damage to society was caused by slot machine halls, of which there were several thousand. Without proper legislation, the gameplay was in no way controlled by the state, and players were very quickly drawn into gambling addiction and then into debt. When the gambling business reached catastrophic proportions and became threatening to society, in 2009 it was banned by the state Law of Ukraine "On Prohibition of Gambling Business in Ukraine" on May 15, 2009 No. 1334-VI before the adoption of a special law that would regulate this activity [1], respectively, the organisation and conduct of gambling was recognised as a criminal offense. In fact, the ban lasted for eleven years before the adoption of a special law in 2020 [2], which legalised gambling, but gambling did not disappear, but went into the illegal sphere and became a powerful tool for financing criminal activity. The player again found himself alone with his problems, as he was in fact recognised by the state as a participant in the crime, and was prosecuted for participating in illegal gambling. Accordingly, illegal gambling was also carried out without any tools to protect players, and was aimed at maximising the involvement of players in the game, which led to the involvement of organisers of criminal activity in gambling addiction and debt.

Only in 2020, the Law of Ukraine "On State Regulation of Activities Related to the Organization and Conduct of Gambling" No. 768-IX of 07/14/2020 gambling business was again allowed in Ukraine [2]. The market itself started operating in the spring of 2021 (when the first license to organise and conduct gambling was issued). At the same time, at all stages of development of the legal regulation of the gambling business in Ukraine, the choice of models of state regulation of certain types of gambling business and public management of the gambling market as a whole has always attracted attention.

V. Dorogykh was the first in Ukraine to conduct a comprehensive study at the level of dissertation research in 2004 issues of administrative and legal regulation of the gambling business [3, p. 5]. N. Maidanyk explored the civil law nature of the gambling agreement [4, p. 240]. Since gambling was banned in Ukraine in 2009, most of the dissertation research was devoted to the fight against illegal gambling: V. Filyutovych-Gerasimenko considered the issue of administrative and legal bases of counteraction to illegal gambling business [5, p. 22], N. Petrychko researched the issues of criminal law and criminological research of illegal gambling [6, p. 154], A. Savchenko drew attention to the criminal law qualification of illegal gambling [7, p. 40–44], S. Ryabchuk considered the criminological characteristics and prevention of illegal gambling [8, p. 200], M. Lyskov considered the issue of administrative and legal regulation of the lottery sphere [9, p. 19], E. Drachevsky researched the issues of criminal law protection of economic relations in the field of organization and conduct of gambling and lotteries [10, p. 14].

In most foreign countries, gambling has long been legalized and therefore most of the work of foreign scientists is devoted to assessing the effectiveness of a model of gambling, in particular R. Williams, J. Rehm, R. Stevens evaluated the social and economic impact of gambling in Canada [11, p. 10]. M. Abbott, P. Binde, L. Clark, D. Hodgins, M. Johnson, D. Manitowabi, L. Quilty, J. Spångberg, R. Volberg investigated and evaluated the harm from gambling and possible ways to compensate for it [12, p. 134]. V. Zheng, E. P. W. Hung assessed the economic benefits of liberalizing casino regulation in Macau [13, p. 541], A. Gonzales, T. Lyson, K. Mauer evaluated the impact of casino development on Indian reservations in Arizona and New Mexico [14, p. 405].

After the legalisation of gambling in 2020, Ukraine began to face a number of theoretical and practical problems of public administration that need to be addressed today: which public administration tools to choose, which methods and tools to apply, how to enshrine all elements of public market management appointed in the Law, etc. In particular, the gambling market, which has long been in the shadows, has generally supported the legalisation of the gambling business, but has strongly opposed certain elements of public administration, in particular by opposing strict government regulation and control. Thus, the organisers of gambling believed that the legalisation of the gambling business should only provide for the licensing of this type of activity and not impose any strict restrictions on the gambling establishment, gambling equipment, process and types of games. As of today, the market is opposed to the introduction of an online control system for the organisation and conduct of gambling, as it does not want to show real turnover and pay taxes, citing the very high cost of licenses in Ukraine.

In addition, the parliament has not yet adopted a law that would regulate the issue of taxation of the gambling business, which seriously hinders the development of the legal gambling market. In fact, the problem of illegal gambling establishments still exists today conditioned upon the extremely high cost of gambling licenses (the highest in Europe) and the high tax burden conditioned upon higher tax rates. This means that the illegal gambling business still remains "more profitable" for the organisers than the work officially. And this, among other things, means the existence of corruption in law enforcement agencies.

The purpose of the article is a study of foreign experience of public management of the gambling business, the study of the positives on the shortcomings of each of the models of public management of the gambling market to develop proposals for improving public management of the gambling market in Ukraine.

1. MATERIALS AND METHODS

The legal basis of this study was foreign legislation, which regulates the issue of gambling, including current legislation of Ukraine. The authors used philosophical, general scientific and special scientific methods of cognition, which provided an opportunity to conduct a detailed analysis of the main models of public management of the gambling market that exist in the world.

The dialectical method of cognition allowed to highlight the content of the basic provisions of public management of the gambling market in certain countries, to study the patterns of development of categories of gambling management, features of their reflection in the environment, the impact of individual models of public administration and objective reality. Using this method, the authors were able to analyse the development and transformation of different models of gambling management in different periods of development and based on this study to identify key trends in the model of public gambling management in Ukraine. Within this method, the authors also analysed the natural relationships between different models of public administration in different countries and identified how changes in the model of public governance of gambling in some countries affect the change of models in neighboring countries. Based on the dialectical method of cognition, it was also possible to analyse the contradictions that exist between the purpose and results of a particular model of management and suggest ways to resolve such contradictions.

Methods of logic (analysis, synthesis, abstraction, generalisation, analogy, induction and deduction) were used to study some features of public management of the gambling market, in particular, the synthesis method summarised the main features of state regulation of gambling in each country and grouped them into separate models of public administration, the method of analysis allowed identifying the main advantages

and disadvantages of each. The methods of induction and deduction were used by the authors to study the scientific literature, find the necessary material, generalise and develop proposals for improving the legal regulation of public administration in Ukraine.

The formal-legal (dogmatic or legal-technical) method was used to study and interpret the norms of legislative acts of foreign countries, which regulate their national gambling markets. The comparative legal method was used in the study of the main provisions of legislation of different countries on the regulation of different types of gambling.

Special legal methods were also used in the study, namely specific sociological and system-structural methods. The specific sociological method allowed to study the case law and draw conclusions about the effectiveness of the implementation of certain tools and methods of public administration in Ukraine and abroad. The system-structural method was used in formulating the basic forms of public administration and in explaining the content of the categories of these forms of government. The method of generalisation allowed consistently bringing together certain facts and formulating sound conclusions of scientific research aimed at improving public governance of the gambling market in Ukraine.

2. RESULTS AND DISCUSSION

To choose the most appropriate for Ukraine model of public gambling management, it is advisable to study the models of foreign gambling management, considering their advantages and disadvantages in choosing and improving the gambling market management model in Ukraine. At the same time, the choice of the model of public administration should be conditioned by certain principles that guide the state in shaping the policy on gambling. In particular, on June 5, 2017, the general strategy and principles of European lotteries were approved in Europe [8]. This strategy uses a value-oriented approach. It is noted that the main difference between lotteries and gambling is the values pursued by game organisers. The principle of public utility of lotteries applies to lottery operators. Therefore, the right to conduct lotteries is given by the state to certain lottery operators with the condition of supporting socially important projects or allocating funds for "good deeds", while the main focus and value for gambling operators (including illegal ones) is to benefit shareholders.

Lotteries that are members of the European Lottery Association must adhere to three core values:

1) responsibility – lottery operators must ensure and prioritize the interests of consumer protection and responsible gaming over other interests.

2) society/sustainability – this value is based on the idea that the problems of social and public order prevail. This does not mean that lotteries are not for profit, but it does mean that lotteries are in the public interest, so a balance must

be struck between each country's legal requirements for spending on social goals and profiting from lotteries.

3) integrity – lottery operators are required by EU and national law to adhere to strict performance standards (such as EL and WLA safety standards) to ensure safe and fair operations and to manage the risks of fraud or other criminal activity. The implementation of these values requires the introduction of strict regulatory principles and rules, which are described in more detail in this Strategy.

We believe that the lottery market in Ukraine should definitely develop on the same principles (values). However, since lotteries in Ukraine are not gambling, the gambling business must define its own principles of public administration, on which the governance model should be based.

There are three main models of public management of the gambling market in the world, on which government regulation of certain types of gambling depends:

1) ban on gambling (China (except Macau), Afghanistan, Pakistan, Saudi Arabia, Iran, Bahrain, Azerbaijan, Iceland, Brazil, Indonesia, Thailand, Algeria, Libya, Sudan, Central African Republic and others). However, some of these countries are considering the possibility of legalisation and strict regulation of gambling activities for tourists. That is, most of the countries where the gambling ban is in force are Muslim countries, and the gambling ban is explained by the religious traditions of society. At the same time, a number of Muslim countries in recent years have relaxed the absolute ban on gambling in favor of tourism, allowing the opening of land-based casinos exclusively for tourists (Egypt has about 25 casinos for tourists only; in Turkey, casinos are banned, so many tourists the part of Cyprus where you are free to gamble, Mongolia, Vietnam, Cambodia, North Korea, etc. allow gambling only for foreigners [15]);

2) permission to conduct gambling without restrictions, but the establishment of certain qualification, organisational, financial and other requirements (Ukraine until 2009, Malta, Gibraltar, Monaco). A subspecies of this model of public administration is the authorization of gambling without any serious restrictions only in a certain territory of the state and not anywhere (individual states of the United States, Macao, India, Laos, Malaysia, South Korea, Peru, Paraguay, Uruguay). Such a model of public administration usually requires a certain permit or license. Market control, as a rule, involves only the supervision of compliance with licensing conditions, the number of licensees is not limited, and the licenses themselves are quite easy to obtain. Most of these countries have consciously chosen this model and today are the centers of the gambling industry. In particular, the turnover of the land gambling market in Macau actually occupies half of the world turnover of the gambling market,

in particular, the income of casinos in Macau is three times higher than the income of casinos in Las Vegas [13, p. 541]. This was achieved in part conditioned upon the lack of a tax on winnings in gambling in Macau. In 2014, revenues from the gaming business tax accounted for 84% of Macao's total budget revenues. However, when in 2021 the Chinese government decided to tighten control over the activities of casinos in Macau and only took the initiative to change the rules for licensing gambling, and imposing new restrictions on casino operators, including appointments of government officials to oversee companies, casino shares Sands China fell 30%, Wynn Macau 27.5% and Galaxy Entertainment Group 18.4%. For a number of companies, this decline was a record in its history. And the capitalisation of the Macau casino market lost $ 14 billion [16];

3) the establishment of a state monopoly on the organisation and conduct of gambling, which manifests itself in various forms (almost all EU countries: France, Finland, Denmark, Austria, Great Britain, etc.) – absolute state monopoly, state monopoly of a private company, oligopoly, restriction of the maximum number of gambling establishments, restriction of permitted types of gambling, etc.

The first model of public administration – a complete ban on gambling, has a number of shortcomings and problems for the state, including:

a) the gambling business is moving into the shadows and is an instrument, including the financing of criminal activity, and therefore in a state with a complete ban on gambling, as a rule, the crime rate increases;

b) the level of corruption in law enforcement agencies is growing, as the ban on gambling is introduced simultaneously with the introduction of criminal liability for its organization, and therefore gambling organisers use corrupt connections in law enforcement and other agencies to cover up criminal activities;

c) declining markets in related industries – tourism, hospitality, horseback riding and racetracks, professional sports, sports analytics and sports media. Many tourists (especially from countries where gambling is banned) travel to gamble. Gambling has always been at the forefront of the world tourism system. Accordingly, the ban on gambling in one country means the rise (increase of the market) of gambling in neighboring countries and increase tourism in such countries, i.e. is a stimulus to economic development for neighboring countries. At one time, Georgia developed on this principle;

d) direct revenues to the state budget from gambling organisers in connection with the ban on gambling are reduced, including budget revenues from related industries are reduced, primarily hotel activities and tourism;

e) society is not protected from the risks of gambling addiction. Protecting

the vulnerable part of society from the risks associated with gambling addiction is possible only through the regulation of the gambling business and only in conditions where the gambling business operates in the legal field and subject to the principles of responsible gambling. In particular, in Ukraine from 2009 to 2020, gambling was considered a crime, and therefore the player actually acted as a participant in the crime, because without the fact of the game it was impossible to prove the fact of gambling. In addition, the player was held administratively liable for participating in prohibited gambling. Accordingly, the player was considered an offender, and the current legislation of Ukraine does not provide for the possibility of proving the fact of harm to the offender. Moreover, the disposition of Art. 203–2 of the Criminal Code of Ukraine was formulated in such a way that gambling was recognized as a crime in the field of economic activity, not a crime in the field of public order and morality, and therefore the disposition of the article did not provide for [17, p. 225].

It is interesting that during the thirty years of independence, Ukraine has gone through each of the above three models of public governance, as mentioned in the previous section. In fact, it was the permissiveness of the gambling business in the 1990s that led to the choice of a radically different model of public administration – a total ban on gambling in 2009. At the same time, over a period of ten years, the state authorities assessed the shortcomings of the total ban on gambling, which manifested itself in the rapid growth of illegal gambling and gambling-related crimes (tax evasion, money laundering, fraud, extortion, etc.), which, considering the experience of the state on the permissiveness of the gambling business, led to the election in 2020 of the third model of public management of the gambling business.

Examining the second model of public administration, it should be noted that this is the model organised by the world's largest gambling markets – the United States and Macau. In choosing the second model of public administration, but extending it only to certain territories, states were guided by the goal of maintaining and developing depressed regions.

Macau occupies the largest share of the Asian gambling market. Macau, which has long been a Portuguese colony, has successfully used the ban on gambling throughout China, allowing the province to grow rapidly, primarily at the expense of the national population (Chinese) who came to the province to play. Conditioned upon deductions from the gambling business, Macao's budget is actually formed. The impetus for the rapid development of Macau as a gaming center was the focus on wealthy customers. Macau's focus on high-stakes customers with private rooms and special privileges is the reason for its success. Initially, casinos

were created on the basis of VIP-rooms. They signed contracts with gambling promoters, who made a profit from attracting wealthy players. These high-stakes players earned casinos 66% of total revenue in 2013 [18].

In Macau, significant funds have been invested from the gambling business in new casino complexes with luxury hotels and first-class shopping malls. These casinos have created new jobs for the city's residents, increased the number of tourists and increased tax revenues. The area of Macau is extremely small, it is 29.7 km^2, including 6 km^2 of land connecting the small islands of Coloan and Taipa, which houses large casino complexes. In 2014, 49 Macau casinos generated annual revenue of approximately $ 28 billion, which is 3 times the revenue of 135 casinos in Las Vegas. Today, there are about 33 terrestrial facilities in Macau, with 850 gaming tables and 4,000 slot machines. Today, Macau focuses only on the rich, and develops the direction of middle-class players through the organisation of various exhibitions and forums [19].

All types of gambling are allowed in Macau: land-based casinos, gaming terminals, lotteries, poker and sports betting. The legal status of online gambling is uncertain, as the Macao authorities do not issue online gambling licenses and do not prohibit such activities. This way, users can gamble online. This contrasts with other neighboring regions, such as mainland China, Singapore and Taiwan, where online gambling is prohibited [13, p. 545].

Las Vegas (Nevada) is the second largest gambling center in the world. The largest gaming centers in the United States are Las Vegas and Atlantic City. Until recently, casinos in the United States could be located in these two gaming zones, in Indian reservations and on floating establishments. However, in recent years, US law has changed and today gambling is allowed in 48 of the 50 states. But gambling is still allowed only in Nevada and New Jersey, and other states have significant restrictions or bans on certain types of gambling. To open a casino in Las Vegas, you must obtain a license and meet a number of requirements that are set for the casino, in particular, the gambling establishment can be opened only in a specially designated area. In addition, there are a number of requirements for the area of the gambling establishment, equipment, etc. [20].

In Nevada, the gambling business is regulated by the Nevada Gaming Commission (NGC), which is the licensing and oversight body. There is also a Nevada Gaming Control Board (NGCB), whose main functions are primarily to monitor the casino's compliance with financial requirements, audit, inspection of technical and gaming equipment, testing and certification [21].

According to the American Gaming Association, in the second quarter of 2021, US gambling revenue reached a record $ 13.6 billion. Experts predict

that the industry's annual revenue will be more than $ 44 billion [22]. However, numerous studies in the United States show that every tenth American suffers from gambling addiction, and the crime rate is about 8% higher than in states without casinos. Also, US research has shown that the opening of casinos has a significant impact on small businesses, as there is a mass bankruptcy of cafes, restaurants, shops, beauty salons, bakeries, etc. conditioned upon "excessive" excitement of the owners of such businesses [23]. In this regard, the permission to gamble in almost all US states is a matter of serious concern. We believe that in ten years it will be possible to assess the extent of the impact of such a decision on society. After all, in the past, the permissiveness of gambling was chosen by those countries that focused primarily on the development of tourism, i.e. when a person only occasionally comes for a certain time and has a certain amount per game. Free access to gambling for the entire population of the state without any significant restrictions, as a rule, leads to an increase in gambling dependence among the population. We believe that over time, the United States will return to the model of limited gambling.

India is a very promising market for the development of gambling, given the population of this country. India is one of the countries where the legal status of the gambling industry is enshrined in the Constitution. According to Entry No. 34 of Entry No. 34 of the 7th Schedule of the Indian Constitution, some states have full authority and legal authority to enact gambling and betting laws. In addition, the entry No. 62 empowers states to tax gambling [24].

In gambling regulation, the country has chosen a model similar to the United States, where states choose the gambling regulation model on their territory, today only three of the 29 states and 7 union territories allow casinos: Goa and Sikkim and Daman and Diu, Daman and Diu Public Gambling Act, 1976, in 1987 Goa became a separate state). Under the Goa, Daman and Diu Public Gambling Act of 1976, casinos may only be opened in five-star hotels or on vessels with the prior permission of the government. There are now about 20 casinos in India. At the same time, most of the Indian market today operates in the shadows in other states. The issue of legalisation of online games has not been resolved yet [24].

Laos in the settlement of the gambling business also aimed primarily to attract tourists from other countries (China, Vietnam, Thailand). Therefore, casinos in Laos are allowed to open in the so-called special economic zones bordering China and Thailand [25]. At the same time, the local population is prohibited from visiting the casino.

The third model of public management of the gambling business in its various manifestations exists in almost all European countries.

The most common types of public management of the gambling market in the form of state monopoly are:

• permission to gamble exclusively for one state-owned company (France is the sole operator of Francaise des Jeux for casinos), Denmark is a state-owned company Danske Spil A/S, 80% owned by the state, 10% by the Danish Sports Federation and 10% of the Gymnastics and Sports Association);

• free access to the gambling market for companies (regardless of ownership or other indicators, subject to organizational and qualification requirements), but limiting the maximum number of gambling establishments that can operate simultaneously in the country (Denmark – no more than nine casinos; Slovenia) limited the maximum number of casinos to 15, the UK, with the adoption of a new Gambling Act in 2005 [26, p. 250], limited the total number of casinos that can operate simultaneously in a given region, one regional casino, eight large casinos and eight small casinos);

• limiting the maximum number of entities that can operate in the gambling market at the same time limiting the number of gambling establishments (Austria – the maximum number that can operate in the territory – 12 casinos (currently all 12 licenses are issued to only one company Casinos Austria AG, 70% owned by the state), Finland – only one operator can engage in separate gambling activities (1 license for lotteries owned by Veikkaus OY and 1 license for casinos, separate slot machines, Greece – the only operator of sports betting and some lotteries – OPAR, 34% owned by the state, the sole operator of state-owned drawing/passive lotteries Kratika Laxeia, which is 100% state-owned and controlled by the Ministry of Economy and Finance, the only operator of odds on races ODIE, which is 100% state-owned and state control represented by the General Secretariat of Sport and the Ministry of Culture, 9 licenses for casinos as and issued by the Ministry of Economy and Finance and the Greek Tourism Development Company (ETA).

All European countries now have special legislation that provides a legal definition of gambling and gambling and establishes a legal framework for their activities. France has long maintained a state-owned monopoly. In particular, according to Art. 136 Finance Law 1933 monopoly on lottery activities was granted to La Française des Jeux, only in 2019 part of the state shares were privatized, and the company received a monopoly on lotteries and sports betting for 25 years [27]. In exchange, the state budget received 380 million euros. The company also received preferential tax terms, in connection with which the European Commission launched an investigation into this fact [28].

As for the land-based gambling business, there are more than 200 casinos in France, but they can only be located in areas that have officially re-

ceived resort status and are more than 100 kilometers from Paris or in tourist cities with a population of more than 500,000 people. The only exception is the casino in the resort town of Engen, which today is one of the most profitable. The regulator today is the recently established Commission Supérieure des Jeux (Gambling Commission), although until recently this area was regulated by the Ministry of the Interior and the Ministry of Finance. Licenses are issued subject to a positive opinion of local governments on the feasibility of opening a casino (considering economic interests, competition, etc.) [29]. All casinos are operated by four operators: Partouche, Barriere, JOA and Tranchant [30].

The website of the French Gambling Commission clearly defines the objectives of state policy on gambling:

1) prevention of excessive or pathological gambling and protection of minors;

2) ensuring honesty, reliability and transparency of gambling operations;

3) prevention of fraud or criminal activity, including money laundering and terrorist financing;

4) ensuring the balanced and fair development of various types of gambling to avoid economic destabilization of certain sectors [31].

These goals are to limit and control the supply and consumption of games, as well as control over their use.

Denmark has, as a general rule, banned gambling from anyone other than Danske Spil A/S. Such an absolute monopoly existed until 2012 (entry into force of the Law on Gambling, which was adopted on 07/04/2010) [32]. With the adoption of this law, the gambling market became open to private operators, and a new independent body became the regulator – the Gambling Office. The number of online casinos is not limited. Land-based casinos are limited by the maximum number. The following criteria are considered when issuing a license to open a casino: the casino must be located in a place that is popular with tourists; cannot be in the immediate vicinity of a school or other institution for children; the location must be agreed with the local police and the city council [33]. There are currently nine casinos in Denmark, the maximum number allowed, so it is not possible to obtain new casino licenses. The license is issued for 10 years, and the annual payment depends on the annual turnover of the casino [34]. Slot machine halls are also allowed in Denmark. The values of the Danish Gambling Authority are to ensure a fair and well-regulated gambling market for the benefit of gamblers and operators.

Austria has introduced a federal monopoly on gambling regulation. The single company Österreichische Lotterien GmbH has a monopoly on lotteries until 2027. As for land-based casinos, 12 of the 15 possible licenses have been issued by Casinos Austria AG until 2027, and three remain unused due to breaches of tender rules and it is un-

known when the tender will be announced again. Therefore, Austria has both a monopoly on the number of entities and a limit on the maximum number of gambling establishments. The state regulator is the Finanzamt Österreich (Austrian Tax Service) [35].

The purpose of state regulation of the gambling market in Austria is to regulate and control gambling with a special emphasis on combating gambling addiction, protecting consumers and preventing illegal activities and crime. Objectives of regulatory policy: prevention of organized crime (e.g., money laundering, terrorist financing and other illegal activities); prevention of indirect crimes (theft, burglary, fraud) by gambling addicts; youth protection; consumer protection; financial market stability [36].

Belgium clearly limits the maximum number of all gambling establishments in its territory by defining the classes of licenses issued on a competitive basis. The exception is the lottery, a monopoly right held by a single company as defined in the King's Decree. In particular, no more than nine casino licenses may be issued, a Class I license (category A) and issued for 15 years. A class II license (category B) is issued for gambling halls for 9 years, no more than 180 licenses can be issued. Class III licenses (category C) are issued to pubs and bars, which give the right to install no more than two slot machines, are issued for 5 years. Class IV licenses are issued for bookmakers, which can be landline or mobile (mobile), the organiser is issued an F1 license (maximum 31 licenses) for a period of 9 years, and the office (which is the organiser's agent) is issued an F2 license for 3 years (not more than 600 licenses for stationary points and 60 for mobile). Only entities licensed to play online games can obtain an online gaming license [37].

In Germany, the regulator has also chosen a protectionist approach to the regulation of gambling, including consumer protection (prevention of gambling addiction and protection of minors and other vulnerable people), directing the player to a regulated market, guaranteeing orderly and fair gambling, and combating gambling other crimes related to gambling, and the protection of honesty in sports [38]. The gambling business is regulated at the local level – by 16 lands. At the same time, in most lands, land-based casinos are state-owned, and lotteries are also managed by state-owned companies. Only in some countries are licenses for terrestrial casinos issued to private operators, with the maximum number of such licenses being limited, for example, in Baden-Württemberg no more than 3 casinos are allowed, and in Mecklenburg-Vorpommern no more than six.

In Norway, the monopoly on gambling and the activities on which they depend is based on the notion that lotteries (and other types of gambling) must remain in safe forms under public scrutiny to prevent negative social im-

pact, while considering lotteries and gambling as benefits: source of income for sports, culture, humanitarian and socially useful purposes (Article 1 of the Law on Lotteries [39]). In Norway, Norsk Tipping has a monopoly on conducting commercial games such as casinos (online), betting and betting on sports, and the Norsk Rikstoto company has a monopoly on accepting bets on horse races [40]. The opening of land-based casinos is prohibited. Only charitable organisations can qualify for the lotteries.

In Poland, the state-owned company Totalizator Sportowy has a monopoly on lotteries, slot machines and online casino games. Land-based casinos and betting activities can be carried out by private operators. The number of casinos is limited by the population – 1 casino in a village with a population of up to 250,000 people. If the population is more than 250,000 people, it is possible to open two casinos and so the number can increase for every 250,000 people, but not more than six casinos for one province with a total population of 650,000 people. In 2020, 51 casino licenses were issued in Poland [41].

In Portugal, lotteries are run by the sole state-owned Santa Casa da Misericórdia de Lisboa (SCML). Land-based casinos can be opened only in certain premises on the terms of a concession, which is obtained by the results of the competition, usually up to 40 years. Today, Portugal has 12 casinos and 1 gaming hall in nine gaming zones (Azores, Algarve, Espinho, Estoril, Figueira da Foz, Funchal, Povoa de Varzim, Troy and Vidago Pedras Salgadas). Today, the casino does not operate only in the Porto San Gaming Zone.

Spain has established a monopoly on lottery activities based on the principle of oligopoly (there is one state lottery operator – Sociedad Estatal Loterías y Apuestas del Estado (SELAE), also a charity of the Society of the Blind – ONCE Organización Nacional de Ciegos Españoles and lottery operator Chevo). The opening of land-based gambling establishments is regulated at the local level by 17 separate regions [43].

Switzerland, based on a protectionist approach, also introduced a state monopoly on gambling. The field of lotteries and sports betting is a state monopoly and today only two licenses have been issued for the Swisslos and Loterie Romande state lotteries. Based on a protectionist approach, part of the proceeds from gambling should be returned to society through the financing of good deeds or the federal pension fund. Under the new Gambling Act, which came into force on January 1, 2019 (Federal Act on Money Games) [44], casino licenses are issued on the basis of concessions, the maximum number of which is determined by the Federal Council (government) and as of 2021 opened 21 casinos. The concession is issued for 20 years. An online casino license can only be obtained by an operator who has a land-based casino license [45].

According to the Hungarian Law "On the Organisation of Games (Gambling Business)" [46]. The gambling business includes all types of games in which players are entitled to a cash prize or other prize in cash in exchange for amounts paid or provided by them, and which are conducted under predetermined conditions. Winning or losing depends solely or mainly on temperament. According to this Law, games on bets and games with the use of winning cash machines are also classified as games.

The following types of gambling business are allowed in Hungary: a) organisation of games with a draw; b) gambling activities with the use of winning cash machines; c) establishment and activity of an organization that accepts bets on races (totalizator) and other types of gambling business, which do not fall under items a) – c), but are defined in this law (under the general name "gambling business organisation").

Casinos can be owned by both the state and private companies that have a concession. Gambling establishments in Hungary are divided into two classes. Class 1 casinos require capital of at least 1 billion forints (about $ 5 million), class 2–100 million (for Budapest and Pest – 300 million). The term of the concession for the 1st class is 20 years, for the 2nd class – 10 years. The casino should be located in a separate house or in an isolated part of the building. All its premises must be monitored by video. Persons under the age of 18, as well as staff and owners of gambling establishments are not allowed to play. Slot machine halls are also divided into classes. In the second it is allowed to have no more than 2 machines. In the first it is allowed to place at least 10 machines, each of which must have at least 2 sq.m. Thus, the hall of 1 class is obliged to have a separate entrance. For the first class of slot machines, the obligatory technologically established level of winnings is not less than 80%. For the second class the maximum bet is limited to 200 forints. Machines must obtain a technological conclusion.

The permission of the Gambling Council is required to open a gaming hall. At the same time, its location must be approved by the municipality. There are also general restrictions on the location of gambling establishments, typical for the whole of Europe: the distance from children's, educational and medical institutions, churches and youth clubs is not less than 200 m. Control of the gambling market is vested in the Gambling Council of the Hungarian Ministry of Finance. The annual fee from the 1st class casino is at least 500 million forints, 2nd class – 50 million, and in the capital region – 600 and 350 million, respectively. In addition, a tax is provided for the casino: from the first 5 billion forints of annual income – 30%, from the next – 25%, from the amount of more than 10 billion – 10%. Each slot machine is charged a monthly fee of 100 thousand forints.

In conclusion, the first and third models of public gambling management are based on a protectionist goal – to protect members of society from the harmful effects of gambling. The choice of the third model of public administration is also guided by the principle of public good, where the state, acting on behalf of society and in the interests of society, enters into a so-called social contract with gambling organizers, according to which socially harmful effects of gambling useful goals (good deeds).

CONCLUSIONS

Regardless of model proposed to regulate the gambling business, experts agree that he must be limited to the maximum number of entities that organise it, the maximum number of gambling establishments, or a separate area to prevent its wide availability for all segments of the population. At the same time, it should be recognised that all other activities that do not meet the established requirements will be outlawed and recognised as conducting illegal gambling as a criminal offense.

Today in the world there are the following basic models of public governance of gambling: a complete ban on gambling; permission to conduct gambling without restrictions, but the establishment of certain qualification, organisational, financial and other requirements; establishment of a state monopoly on the organisation and conduct of gambling, which manifests itself in various forms – absolute state monopoly, state monopoly of a private company, oligopoly, limiting the maximum number of gambling establishments, limiting the permitted types of gambling.

Establishing a total ban on the organisation and conduct of gambling does not solve the problem of gambling and gambling addiction, as it contains a number of negatives for society. Therefore, a number of countries today are revising the total ban and liberalising their legislation, in particular, allow gambling for tourists. The most successful model of public administration today is the third – the state monopoly on the gambling market, which, given the historical development of the country, society, the tendency of the population to form gambling, society's attitude to gambling, form of government, etc., is selected by one.

RECOMMENDATIONS

The scientific value of the article is that for the first time in Ukraine it comprehensively generalized the models of public management of the gambling market in the world. The article will be useful for researchers conducting research on legal regulation and public administration of the gambling market and students studying administrative law, to prepare for practical classes, use in the preparation of course and qualification papers on administrative law.

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HARMONISATION OF UKRAINIAN LEGISLATION ON EXCISE TAXATION OF ALCOHOLIC BEVERAGES WITH THE LAW OF THE EUROPEAN UNION

Abstract. *Excise tax is a source of filling the budget in Ukraine and an instrument of state regulation of production and circulation of excisable goods. However, tax evasion and the growth of the shadow economy have a negative impact on all spheres of public life. Therefore, the purpose of this publication is to identify ways to improve the legal regulation of excise taxation in Ukraine, identify problematic aspects, the impact of increasing excise tax rates on the production of excisable alcohol, shadowing of the sector of production and sale of excisable goods, and analysis of foreign experience. The article based on systematic analysis using dialectical, comparative law, statistical and other methods analyzes the state of legal regulation of excise taxation of alcoholic beverages*

and are discussed approaches to improving tax legislation in Ukraine. In particular, the need to bring the legal framework in line with European directives, simplify tax procedures for taxpayers, establish economically justified tax rates, strengthen control over the production and circulation of excisable alcohol, prevent tax evasion, and introduce positive foreign experience in this sphere. One of the priority areas of harmonisation of legislation is the application of a differentiated approach to the taxation of alcoholic beverages depending on their strength, and other qualitative and quantitative characteristics; investing part of the budget revenues from the excise tax on alcoholic beverages in programmes aimed at preventing and stopping alcoholism; use of electronic control systems for the movement of alcoholic beverages from producer to consumer

Keywords: *excise tax, indirect taxes, tax policy, Association Agreement between Ukraine and the EU, Directive 92/83/EEC, Directive 92/84/EEC*

INTRODUCTION

Harmonisation of Ukrainian legislation with the law of the European Union (hereinafter – the EU) and its adaptation to the key requirements of building a common European legal space covers various areas of legal regulation. The study of the experience of EU countries in the field of excise taxation acquires not only theoretical but also purely practical significance. The signed Association Agreement between Ukraine, on the one hand, and the European Union and its Member States, on the other hand (hereinafter referred to as the Association Agreement [1]) contributes to Ukraine's rapprochement with the European political, economic and legal space and provides for harmonization legislation of Ukraine with EU law. Under the Agreement, the Parties undertook to apply the principles of good governance in the field of taxation, aimed at establishing fiscal neutrality, simplifying trade conditions for external and internal agents and creating conditions for the effective functioning of the EU internal market. That is why the issue of national implementation in Ukraine of directives in the field of indirect taxation in general and excise taxation in particular is of particular importance.

The Constitution of Ukraine [2] defines the obligation of everyone to pay taxes and fees in the manner and amounts prescribed by law. Taxes are the basis of welfare of the state and society, the main source of filling the revenue side of the budget, a tool for regulating socio-economic processes in society, a tool for influencing the economic activities of enterprises and organisations. In addition, tax regulation is an integral part of state regulation of public relations as an important tool for influencing the development of civil society by the state through streamlining the tax system, the establishment and administration of taxes and fees.

We share the opinion of L. Sidelnikova that "only by comparing the interests of man and the state at the

level of society can we realize the benefits of taxation, which will be obtained in the form of public goods. That is, society is an entity that reconciles the interests of taxpayers and the state, expressing benefits for each of them" [3, p. 587–588]. The use of excise tax allows having a targeted impact on the level of consumption of goods harmful to human health, and stimulating the production of quality goods of the excise group. After all, the place and role of excise in society is manifested in the fact that the excise tax, as a mandatory payment, is used to finance public goods and services, and is an effective means of financial policy to influence the allocation of resources, redistribution of wealth, public choice in democratic society.

Today, the issue of excise tax reform is one of the most relevant in the formation of the general system of taxation of our state. Excise tax has always been and remains an important source of filling the budget in Ukraine and is an important lever of state regulation of production and circulation of excisable goods. Moreover, according to the State Treasury Service of Ukraine [4] in recent years, we can observe a gradual increase in revenues from excise tax to the budget by payers of this tax (Fig. 1).

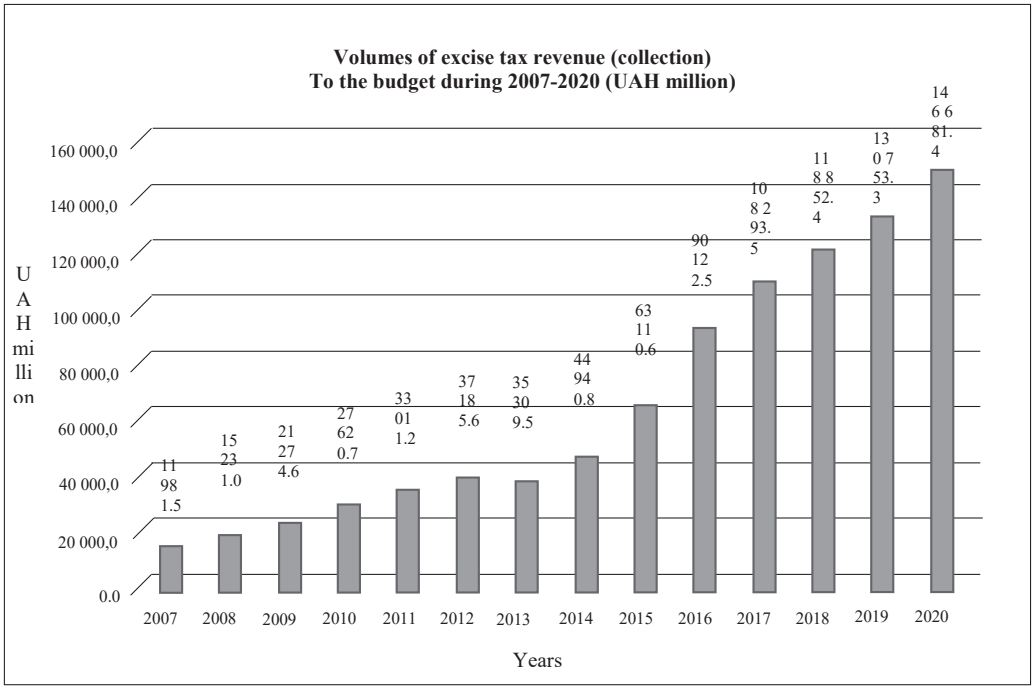

Figure 1. Volumes of excise tax revenues to the budget during 2007–2020
Source: [4]

Particular attention needs to be paid to the study of computational features excise tax on alcoholic beverages, problematic aspects of legal regulation of relations in the field of administration and ways to solve them, taking into account foreign experience. We share the opinion of Ukrainian scientists that "… the system of excise taxation of world countries is formed in balance with the interests of producers and consumers, the public need to support industries and regions, employment, social priorities such as public health and the need to limit harmful foods and beverages, etc. According to the analysis of various approaches that exist in world practice, there is no consensus in the world on the defining direction of the implementation of excise policy, which would fully consider the balance of fiscal interests and social regulation. Each country establishes such a balance in its own way, based on the realities of the time, the influence of political currents, the transformation of public consciousness and values. At the same time, the general approaches used by the EU countries, which our state is also preparing to join, can be taken as a basis for the development of excise policy in Ukraine" [5, p. 218].

By implementing tax policy measures, the level of production and consumption of excisable goods is influenced, the structure of excise tax revenues is optimised, other socio-economic effects are achieved (reduction of consumption of goods harmful to human health, stimulation of production of better goods, etc.) [6, p. 234–235]. We share the opinion of Ukrainian scientists that "in conditions of economic instability, economic reform and adaptation of tax legislation to EU norms in Ukraine there is a decrease in fiscal efficiency of excise tax and increase the level of illegal (shadow) production and sale of excisable groups of goods. Such phenomena are caused, first of all, by the factor of imperfection of the current tax legislation on taxation, regulation and sale of groups of excisable goods" [7, p. 10].

The purpose of this study is to determine on the basis of a comparative analysis of the EU Council Directives on excise taxation, and international treaties of Ukraine, areas of improvement of legal regulation of excise taxation of alcoholic beverages in Ukraine, identify major problems of excise taxation. excisable alcohol products, shadowing of the sector of production and sale of excisable goods, including research of foreign experience on this issue.

1. LITERATURE REVIEW

The issue of implementation of international legal norms in Ukrainian legislation, in particular EU norms, is being studied by such Ukrainian scholars as M. Buromensky on the relationship between international and national law [8], B. Denisov and A. Melnyk studies the interaction of international law with the domestic law of Ukraine [9], V. Myt-

syk, K. Smirnova, E. Streltsov analyses the current problems of unification of international law and its impact on national law [10]. Some aspects of excise tax administration are studied in the works of Ukrainian scientists, namely: V. Korotun, S. Brekhov, N. Novitskaya focused on the mechanism of excise tax administration, control over the production and circulation of excisable goods in Ukraine [6], I. Liutyi, A. Dryga, M. Petrenko formulated the main directions of improving the taxation system through excise duty [5], O. Bondarenko and V. Chizhenko studied the fiscal efficiency of the excise tax as a component of the optimisation of the indirect taxation system [7], N. I. Atamanchuk, N. S. Khatniuk, H. Boreyko, Yu. Bakay analysed the features of excise tax on fuel in Ukraine [11], I. Khlebnikova studied the impact of a specific excise tax on the parameters of the development of markets for alcoholic beverages and tobacco products in Ukraine [12] and others.

Numerous studies have been devoted to foreign scholars administration of excise tax on alcoholic beverages, namely: L. Wilson, R. Pryce, C. Angus, R. Hiscock, A. Brennan, D. Gillespie on the impact of alcohol tax on retail prices [13], A. M. Solov'ev analyses the level of excise rates on alcoholic beverages, estimates revenues from the collection of excise duties on alcoholic beverages and their share in budget revenues and GDP of European countries [14]; A. Ngo, X. Wang, S. Slater, J. Chriqui, F. Chaloupka, Y. Lin, L. Smith, Q. Li, C. Shang presents a thorough overview of excise taxes on alcohol as a percentage of retail prices for alcohol in 26 OECD countries [15]; A. Ardalan, S. Kessing studies the impact of excise duty rates on the price of beer in EU member states [16]; T. Bieber examines the provisions of Directive 2020/1151 on excise duty on beer [17]; C. Shang, A. Ngo, F. Chaloupka determine the extent to which alcohol prices increase with increasing taxes and the effectiveness of tax policies in reducing consumption in OECD countries [18]; K. Anderson analyses alcohol tax rates and the types of tax instruments used in different countries [19]; J. Nelson, J. R. Moran estimates the impact of excise tax rates on the price of alcohol [20]; E. Kolářová, D. Homola, V. Kolářová, E. Kramná focuses on the consumption of alcohol and cigarettes in the Czech Republic and its impact on the income of the Czech Republic [21]; U. Bergman, N. Hansen is studying the change in excise duties on the price of alcoholic and non-alcoholic beverages in Denmark [22] and others.

Without diminishing the importance of scientific work of scientists, it should be noted that some issues of excise taxation of alcoholic beverages remain insufficiently studied, which necessitates deepening and expanding research in the context of tax reform and harmonization with EU standards. In particular, it is necessary to analyse the international legal obligations undertaken by

Ukraine in accordance with the Association Agreement, including the compliance of Ukrainian legislation with the provisions of EU directives on excise taxation. The issue of preventing the shadowing of the production sector and the sale of excisable goods in the context of reforming tax and customs legislation needs to be studied more thoroughly. According to Ukrainian scientists, "the problem of the current system of excise taxation is a significant shadowing of the sector of production and sale of excisable goods" [7, p. 14]. That is why in the current conditions of tax legislation reform, harmonisation of excise tax with EU legislation, this tax requires further research and finding new ways to improve its administration.

2. MATERIALS AND METHODS

The research used a set of general and special methods of scientific knowledge, namely: dialectical, comparative law, statistical and graphical representation of results. The dialectical method, based on the principles of unity of systems in the study of their individual interdependent components, was used in the analysis of elements in the holistic structure of the mechanism of legal regulation of relations in the field of excise taxation of alcoholic beverages. The comparative legal method was used to review the current legislation of Ukraine, including tax legislation of foreign countries, EU Council directives in the field of taxation. This allowed outlining the common and distinctive features of excise tax administration and to suggest some positive European experience in Ukraine. The application of the statistical method allowed to identify the dynamics of growth of revenues from excise tax to the budget, determine the role of this tax in the development of the revenue side of our budget, analyse the dynamics of reduction of ethyl alcohol and alcoholic beverages during 2013–2020.

The article is based on the provisions of international treaties of Ukraine, EU legislation, Ukrainian legislation, laws and bylaws of Ukraine aimed at regulating relations in the field of legal regulation of indirect taxation, as well as relevant legislation of foreign countries, namely: Constitution of Ukraine [2]; Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part [1]; Tax Code of Ukraine [23]; Budget Code of Ukraine [24]; Council Directive "On the Harmonization of the Structures of Excise Duties on Alcohol and Alcoholic Beverages" No. 92/83/EEC of 10/19/1992 [25] and the Council Directive "On the Approximation of Excise Duties on Alcohol and Alcoholic Beverages" No. 92/84 /EEC of October 19, 1992 [26] and others. It should be noted that the tax legislation of Ukraine is focused on the application of international law. Article 3 of the Tax Code of Ukraine includes in the tax legislation "current and international agreements, the bind-

ing nature of which has been approved by the Verkhovna Rada of Ukraine", the same agreements are referred to in paragraph 3 of Art. 13 and Article 19[1].1.32 of the Code. But in paragraph 5 of Art. 13, and in Art. 14.1.53, 14.1.154, 14.1.158 The Tax Code requires the application of all "current international treaties of Ukraine", all this allows to involve a wide range of international legal acts for the development of tax legislation [27, p. 337–358].

The authors study the practice of applying tax legislation by the State Tax Service of Ukraine, use reference books, statistical materials on the administration of excise tax in Ukraine, indicators of the alcohol industry and the industry of alcoholic beverages. In preparing the study, scientific and educational literature on financial law, economic theory, and branch of legal sciences was used. The main stages of the study of the peculiarities of the legal regulation of excise taxation of alcoholic beverages were: 1) putting forward a scientific hypothesis about the role and place of excise duty in society, as well as excise taxation of alcoholic beverages in the general taxation system; 2) testing the hypothesis for which: 2.1) statistical analysis of excise tax revenues to the state budget of Ukraine during 2007–2020, the dynamics of production of ethyl alcohol during 2013–2020 and alcoholic beverages during 2013–2020, the ratio of the production of ethyl alcohol and spirits during 2014–2020 and the volume of the retail market for alcoholic beverages during 2017–2019; 2.2) analysis of the impact of increasing excise tax rates on the price of alcoholic beverages and the tendency to reduce the production of ethyl alcohol and, as a consequence, the growth of "shadowing" of the market for the production of these products; 2.3) clarification of the regulatory and social potential of the excise tax, which is carried out through the influence of the state on the volume of production of excisable goods and the volume and direction of their consumption by the population; 2.4) research of scientific positions of Ukrainian and foreign scientists on the administration of excise tax on alcoholic beverages, legal issues and ways to solve them; 2.5) legal analysis of the provisions of EU Council directives on excise duties on alcoholic beverages; 2.7) synthesis of the obtained scientific results; 2.8) formation of own scientific position; 2.9) giving arguments in support of it; 2.10) final formulation of conclusions and proposals in terms of further research on the topic of "excise taxation of alcoholic beverages".

3. RESULTS AND DISCUSSION

In Ukraine, the procedure for calculating and paying excise tax is regulated by the Tax Code of Ukraine (hereinafter – the Tax Code of Ukraine). In accordance with paragraph 9.1 of Art. 9 of the Civil Code of Ukraine [23] excise tax belongs to national taxes and is defined as an indirect tax on the consumption of certain types of goods (prod-

ucts), defined as excisable, included in the price of such goods (products). Article 215 of the Civil Code of Ukraine clearly defines the list of excisable goods. And one of these goods is ethyl alcohol and other alcoholic distillates, alcoholic beverages, beer (except kvass "live fermentation"). Peculiarities of calculating the excise tax on alcoholic beverages are determined by Article 225 of the Criminal Code of Ukraine. We share the opinion of M. Jarosz [28, p. 8] that today in Ukraine the excise tax is undergoing another stage of reform at much lower tax rates than in the EU, the presence of problems in the administration on the way to the European system of indirect taxation.

It should be noted that most of the recently developed proposals in the field of excise tax reform in Ukraine are justified by the need to implement the provisions of the economic part of the Association Agreement between Ukraine and the EU. And one of the directions is to increase the size of excise tax rates. Thus, in Ukraine, the constant increase in the rate of excise tax on vodka and alcoholic beverages amounted to almost 300% for the period from 2011 to 2017, namely: from 01/01/2011 to 03/31/2012–42.12 UAH per 1 liter 100% alcohol; from 04/01/2012 to 03/31/2013 – UAH 45.87 per 1 liter of 100% alcohol; from 04/01/2013 to 02/28/2014 – UAH 49.49 per 1 liter of 100% alcohol; from 03/01/2014 to 06/30/2014 – UAH 56.42 per 1 liter of 100% alcohol; from 07/01/2014 to 02/29/2016 – UAH 70.53 per 1 liter of 100% alcohol; from 03/01/2016 to 02/28/2017 – UAH 105.80 per 1 liter of 100% alcohol; from 03/01/2017 – UAH 126.96 per 1 liter of 100% alcohol. At the same time, if from 2011 to 2014 the increase in excise tax rates was gradual and insignificant (from UAH 20.00 to UAH 32.00 per 1 liter of 100% alcohol, or 60%), then for the period from January 2014 to January 2017 year rates increased from 32.00 UAH to 105, 80 UAH per 1 liter of 100% alcohol, or more than three times [29].

However, excessive growth of tax rates remains one of the main factors in the shadowing of the alcoholic beverages market and, as a consequence, the lack of tax revenues to the budget. We share the opinion of scientists that for any tax there is a limit on the rate above which taxpayers will try to avoid paying taxes. This dependence is traditionally illustrated by the Laffer curve, first discovered and described by the American economist Arthur Betz Laffer. The Laffer curve is a curve that shows the relationship between tax rates and tax revenues. Its main idea is that when the tax rate increases from 0 to 100%, tax revenues will first increase to a certain maximum level, and then begin to decline (to 0). The reason is that high rates restrain business activity and thus reduce the tax base. A. Laffer proved that "not always raising the tax rate leads to an increase in tax revenues of the state" [30, p. 400–401].

It is worth noting that for most countries, excise tax rates are the main tool for regulating the level of alcohol consumption. However, each type of alcohol has its own specifics of production and sale, which requires a special approach to regulation and control by the state. According to K. Anderson, "the wide distribution of rates and differences in tax instruments between countries and products demonstrates the different benefits of health and welfare lobbyists and industry groups in influencing government decision-making." Foreign scholars also note that "the only significant increase in the excise tax rate may help in the field of prevention, but it would not benefit the Czech treasury, as the impact of higher tax rates on state revenues will be eliminated by falling consumption" [21]. The percentage of excise duties on average alcohol prices ranged from 5% in Luxembourg to 59% in Iceland for beer and from 0% in France to 26% in Iceland for wine. Excise taxes were 5% of reduced prices for alcoholic beverages in the Czech Republic to 41% in Sweden for cognac, 19% in the US to 67% in Sweden for gin, 13% in the US and 63% in Australia for Scotch whiskey for six years and for 6% in Iceland to 76% in Sweden for Kuntro liqueur [15].

The establishment of differentiated rates of specific excise duty on certain types of alcoholic beverages is precisely the tool of tax regulation, the use of which allows to influence the formation of a socially acceptable structure of their production and consumption. The result of this approach is to curb the production of certain types of alcoholic beverages and stimulate the production of others. A typical example of the latter is the establishment of a zero rate for natural grape wines, differentiation of rates depending on the strength of beer [6, p. 242]. After all, the system of excise taxation in the world's leading countries is formed based on the need to balance the interests of producers and consumers, the public need to support industries and regions, employment, and other priorities of socio-economic policy. Issues of public health, public order, the need to limit the social consequences of alcohol abuse are also taken into account [6, p. 88].

In the context of the above, we note that the excise tax on alcoholic beverages in Ukraine, in terms of harmonisation of its legislation with EU law, requires in-depth research, generalisation of legal issues and borrowing positive foreign experience in solving them. Because, the excise tax is characterised by significant regulatory and social potential, which is carried out through the influence of the state on the volume of production of excisable goods and the volume and direction of their consumption by the population. Carrying out the analysis indicators of the alcohol industry, it can be noted that during 2016–2020 there is a steady trend to reduce the production of ethyl alcohol (Fig. 2).

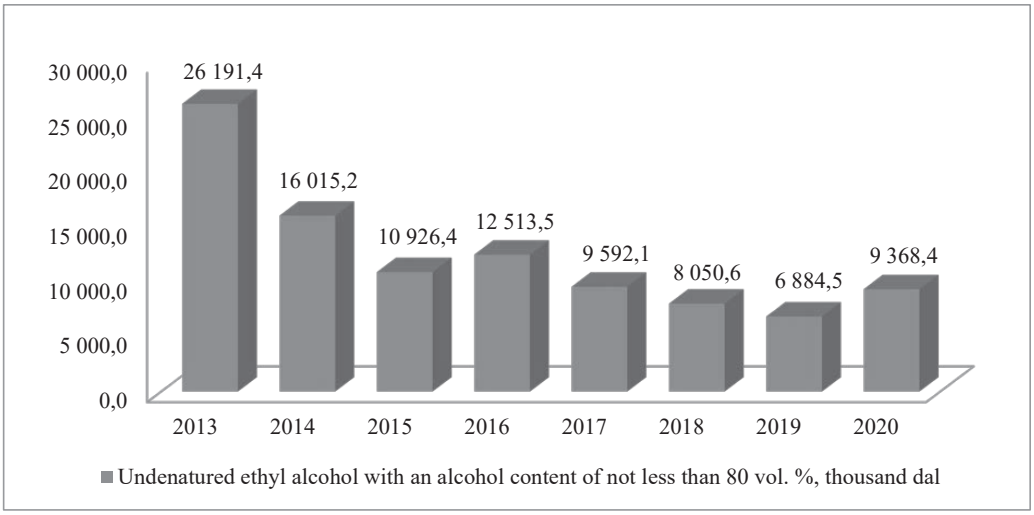

Figure 2. Volumes of production of ethyl alcohol during 2013–2020
Source: [31]

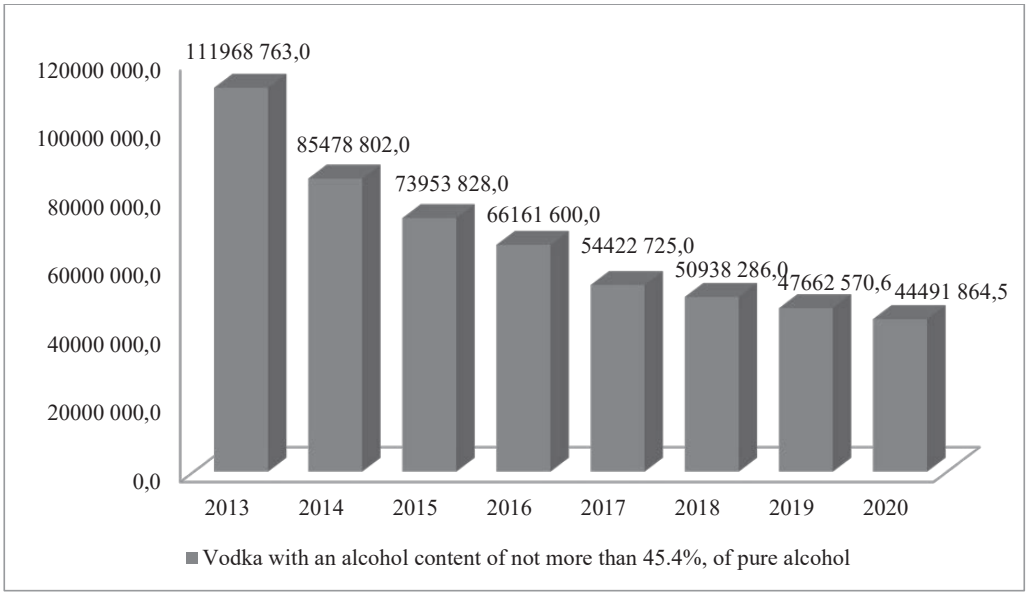

Figure 3. Volumes of production of alcoholic beverages during 2013–2020
Source: [31]

In addition, the tendency to reduce production is also observed in the production of alcoholic beverages (Fig. 3).

Thus, according to the State Statistics Service of Ukraine [31], the volume of alcohol production in 2020 compared to 2013 decreased by 3

times, and the volume of alcoholic beverage production in 2020 compared to 2013 decreased by 2,5 times (Fig. 4).

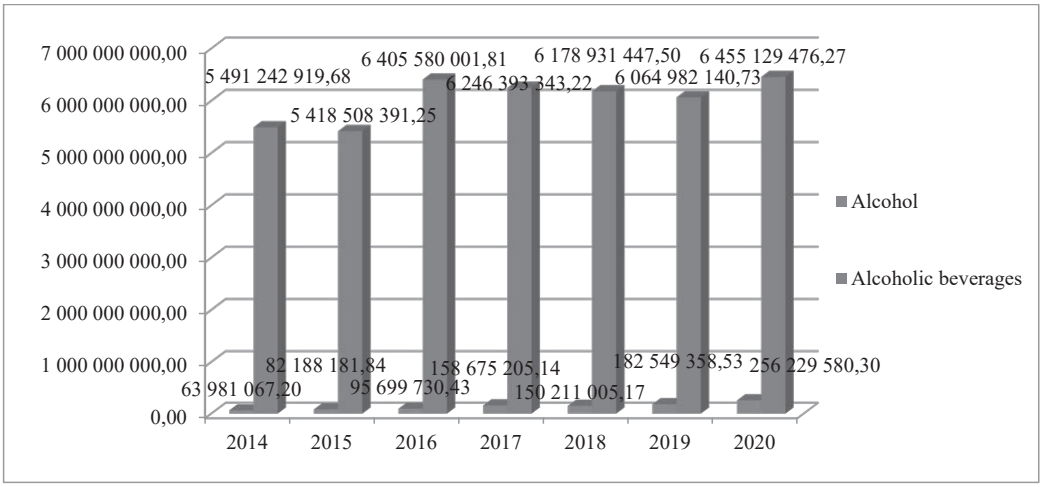

Figure 4. The ratio of ethyl alcohol production and spirits during 2014–2020
Source: [31]

Table 1.

Volumes of the retail market for the sale of alcoholic beverages during 2017–2019

Product name	**2017**	**2018**	**2019**
Alcohol	37 849,0	47 127,9	53 483,7
Vodka and alcoholic beverages, UAH million	12 182,5	14 698,1	15 616,9

At the same time, the analysis of statistical data of the State Statistics Service of Ukraine [31] shows a steady increase in the retail market for alcohol during 2017–2019 (Table 1).

Analysis of statistical data [31] suggests that the reduction in production of spirits by 2.5 times in the period 2013–2020 and, at the same time, the growth of retail sales of these products indicates a steady upward trend in the volume of "shadowing" of vodka production market. As a result, raising the excise tax rate on alcohol and alcoholic beverages has led to negative consequences, namely the demotivation of producers and the strengthening of competitive positions of the "shadow" sector, increasing consumption of illegal alcohol.

As rightly noted by T. Chizhova that "today the shadow economy is an urgent problem for the whole world and for Ukraine. It remains one of the most significant threats to the economic security of the state, exacerbating the so-

cio-economic crisis in Ukraine and negatively affecting its international image." [32, p. 94]. Really, the growth of the shadow sector of the economy can negatively affect all spheres of public life, including the development of civil society in our country. At the same time, citizens and associations of citizens, drawing the attention of society and government agencies to dangerous phenomena and processes in the field of taxation, protect their rights to realise personal economic interests by means provided by applicable law.

The regulatory impact of the excise tax on the development of society may be due to the impact on the volume of production and consumption of excisable goods, the impact on the structure and efficiency of production, improving the quality of manufactured products, improving consumer goods and so on. Undoubtedly, the excise tax, as an indirect tax, is a very important fiscal instrument of the state. For example, according to the official data of the State Treasury Service of Ukraine in 2016, the Consolidated Budget of Ukraine received UAH 346.2 billion from indirect taxes, in 2017 – UAH 447 billion, in 2018 – UAH 520.7 billion, in 2019 – UAH 539.9 billion. At the same time, the total amount of tax revenues to the Consolidated Budget of Ukraine in 2019 amounted to UAH 1,070.3 billion. Analysis of the structure of revenues of the State Budget of Ukraine for 2019 also confirms that more than 50.4% of its revenues are indirect taxes [4].

Analysis of the dynamics of excise tax revenues by 2007–2019 shows an annual increase in its volume to the budget. Thus, in 2007 budget revenues amounted to UAH 11,981.46 million, in 2008 – UAH 15,230.96 million, in 2009 – UAH 21,274.55 million, in 2010 – UAH 27,620.70 million, in 2011 – UAH 33,011.18 million, in 2012 – UAH 37,185.64 million, in 2013 – UAH 35,309.49 million, in 2014 – UAH 44,940.84 million, 2015 – UAH 63,110.60 million, in 2016 – UAH 90,122.48 million, in 2017 – UAH 108,293.46 million, in 2018 – UAH 118,852.42 million and in 2019 – UAH 130,753.28 million [4]. It is worth noting that in accordance with Art. 9 of the Civil Code of Ukraine [23] excise tax refers to national taxes, the proceeds of which fill the state budget. At the same time, Art. 64 of the Budget Code of Ukraine [24] stipulates that revenues from excise tax on the sale of excisable goods by retailers are revenues of the general fund of budgets of rural, urban, urban communities. The tax rate for beer, alcoholic beverages, tobacco products, tobacco and industrial tobacco substitutes sold by retailers of excisable goods is 5 percent (paragraph 215.3.10 of Article 215 of the Civil Code of Ukraine [23]). At the same time, the excise tax on the retail sale of alcoholic beverages can quickly fill the revenue side of local budgets and, as a result, meet the needs of communities, promote the development of civil society institutions at the local level.

However, the rapid increase in excise tax rates while taking measures to limit the consumption of these products leads to a reduction in the tax base by reducing the consumption of legal products and, consequently, worsening the administration of excise tax to the budget. Therefore, the prevention of illicit trafficking in excisable goods, timely detection of such facts by regulatory authorities, will increase tax revenues to local budgets and ensure a competitive environment of the alcohol market, improve the administration of excise tax on retail sales of alcoholic beverages in Ukraine. According to I. Khlebnikova [12, p. 830], "to consider the excise tax on alcohol and tobacco products only as one of the priority sources of budget replenishment is unacceptable. Moreover, excise taxation of these types of goods as a method of state regulation is aimed at solving problems related to alcohol and tobacco consumption, is actively used and widely studied in developed countries. We share the opinion of this scientist that the excise policy in the field of taxation of alcoholic beverages should be implemented in combination with state, regional and local measures in the field of public health, in particular, in reducing alcohol abuse and alcoholism prevention [12, p. 834].

The strategy of improving tax policy itself should be aimed at optimizing tax relations in society, ensuring sustainable innovative economic growth and, on this basis, maximising the social welfare of citizens. The implementation of such a strategy in the context of current trends in social development is possible only if the combined efforts of a democratic state and civil society. The statements of scientists that "the harmonisation of the tax interests of the state and the interests of citizens-taxpayers depends on how the state performs not only the fiscal function, but also the social one, are quite correct. An important role in this process in most developed democracies of the world is played by civil society, which seeks to actively interact with the state in addressing issues of public importance [33, p. 63]. In addition, as noted, today, one of the problems of the tax system is the development of important areas of harmonization of national legislation with EU norms. Ukraine, as a state that has concluded an Association Agreement with the EU, faces the task of implementing and harmonizing national legislation with EU norms. Of particular importance in this context are the rules on excise duties on alcoholic beverages and bringing them into line with Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (hereinafter Council Directive 92/83). [25] and Council Directive 92/84/EEC of 19 October 1992 on the approximation of excise duties on alcohol and alcoholic beverages (hereinafter referred to as Council Directive 92/84/EEC) [26], with a view to establishing a common approach to determine the base of ex-

cise taxation, the application of uniform tax terms and simplification of foreign economic activity. It should be noted here that the reference in the Association Agreement to acts of EU legislation is sufficient for such acts to become legally binding on Ukraine to the extent that they are binding on the EU. According to D. Buromensky, in some cases an international treaty of Ukraine authorises the use of other international acts, "in which case the treaty norm authorizes the use of such international documents in the domestic law of Ukraine, and the legal force of their rules will be equal to the rules of the treaty" [34, p. 73].

It should be noted that Council Directive 92/83/EEC [25] establishes general rules for determining the basic elements of the excise tax on alcohol and alcoholic beverages, contains a definition of all excisable goods falling into the excise category "alcohol and alcoholic beverages", the unit of measurement of the tax base for all excisable goods, general approaches to setting excise tax rates, including opportunities and conditions for the use of preferential (reduced) tax rates. The requirements of this Directive on the harmonisation of structures of excise duties on alcohol and alcoholic beverages are mainly taken into account in the legislation of Ukraine, except for the provisions on: definition of such an concept as "intermediate goods", which are considered excisable goods, the actual strength of which is higher than 1.2% by volume, but not higher than 22% by volume (paragraph 1 of Article 17 of Council Directive 92/83/EEC); reimbursement of the amount of excise duty paid on alcoholic beverages withdrawn from the market if, conditioned upon their condition or term, they are unfit for consumption (Article 25 of Council Directive 92/83/EEC) [25]. The Civil Code of Ukraine also contains definitions of such excisable goods as beer and ethyl alcohol, which differ from the definitions given in Directive 92/83 / EEC.

In addition, Article 27 of Council Directive 92/83/EEC [25] sets out the conditions for exemption from alcohol, namely: which is completely denatured and not intended for human consumption; for the production of vinegar, and medicines, flavors, food products. In contrast to the EU countries, our country provides for the taxation of alcohol at zero rate of excise tax depending on the direction of its use, in particular, for the production of drugs, organic synthesis products, bioethanol, chemical and technical products, vinegar from food raw materials, perfumes and cosmetics, fortified wine materials, etc. (Article 229 of the Criminal Code of Ukraine [23]).

Council Directive 92/84/EEC [26] lays down the minimum rates of excise duty to be applied in the Member States to alcohol and alcoholic beverages. However, EU law sets only minimum rates, so EU countries are free to apply excise duty rates above these mini-

mums, according to their own national needs. Council Directive 92/83/EEC [25] applies in conjunction with Council Directive 92/84/EEC [26], which sets rates of excise duty depending on the strength of the alcoholic beverage. In the context of the above, Ukraine needs to revise the rules governing the mechanism of excise tax administration, taking into account EU Council Directives, to reform tax legislation and establish a common approach to determining the excise tax base, applying common tax terms and simplifying foreign economic activity. It is also worth noting that in developed countries, pricing policies are used to prevent excessive alcohol consumption, including to prevent and reduce alcohol consumption by minors. After all, pricing policy can change the structure of alcohol consumption by the population, reducing the level of consumption of spirits and reducing the overall level of pure alcohol in terms of absolute alcohol.

As noted by scientists [6, p. 100–101], the main global trends in the field of alcohol taxation are: excise policy in the field of tax regulation of the alcohol market is formed considering national traditions based on finding a balance of interests of producers and consumers, the need to limit social consequences of alcohol abuse; in the implementation of measures aimed at reducing the consumption of alcoholic beverages, the excise tax is characterised by high efficiency; gradual increase in the general level of taxation of alcoholic beverages; use of electronic control systems for the movement of alcoholic beverages from producer to consumer; use of full or partial exemption from excise tax on natural grape wines; application of a differentiated approach to the taxation of alcoholic beverages depending on their strength, and other qualitative and quantitative characteristics, etc.

We share the opinion of scientists that the main task of improving excise taxation in Ukraine is to form an effective system of excise taxation using economically reasonable level of its rates and ensure its performance of the function of limiting the consumption of certain goods harmful to human health [35, p. 111].

CONCLUSIONS

In today's conditions, excise taxation has an important role and place in the formation of the general system of taxation of our state. Excise tax, as an indirect tax, is an important fiscal instrument of the state and a significant source of filling both state and local budgets in Ukraine. Through tax regulation, which is an integral part of state regulation of society, the state influences the development of society through streamlining the tax system, the establishment and administration of taxes and fees. In addition, the use of excise taxation through economically justified tax rates, allows for a targeted impact on the level of consumption of goods harmful to human health, and stimulating the production of quality goods of

the excisable group. At the same time, evasion of excise tax and the growth of the shadow sector of the economy can negatively affect all spheres of public life, including the development of civil society in our country. At the same time, citizens and associations of citizens, drawing the attention of society and government agencies to dangerous phenomena and processes in the field of taxation, protect their rights to realise personal economic interests by means provided by applicable law.

We consider the main shortcomings of the tax system of Ukraine to be imperfection and instability of legislation, ambiguity in the interpretation of tax legislation, which negatively affects the activities of economic entities, reduces the attractiveness of the national economy for foreign investors. To eliminate the shortcomings that exist in the tax system of Ukraine, the first steps are to bring the legal framework in line with European directives and principles, for this in Ukraine there are the necessary international and national legal bases and conditions. It is necessary to review the benefits of excise tax in the direction of approximation to EU standards and their formation in accordance with such vectors as: support for the production of national product, which is characterised by the history of its manufacture and thecorresponding recipe; support for small producers in the production of alcoholic beverages, in particular, winemakers.

Ways to improve the fiscal efficiency of excise taxation can be measures to improve its administration, namely simplification of tax procedures for taxpayers, setting economically justified tax rates and benefits, strengthening control over the production and circulation of excisable alcohol products, preventing the effects of shadowing goods, including the introduction of positive foreign experience in this area. We consider the main directions of reforming the excise taxation of alcoholic beverages in Ukraine: a gradual increase in the overall level of taxation of alcoholic beverages; application of a differentiated approach to the taxation of alcoholic beverages depending on their strength, as well as other qualitative and quantitative characteristics; investing part of the budget revenues from the excise tax on alcoholic beverages in programmes aimed at preventing and stopping alcoholism, and financing health care facilities; use of electronic control systems for the movement of alcoholic beverages from producer to consumer. In our opinion, such clarifications will fully consider the existing practice of administering the excise tax on alcoholic beverages and will further increase the efficiency of the mechanism of its action in Ukraine.

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PREVENTION AND COUNTERACTION TO BULLYING IN UKRAINE AS A NEGATIVE SOCIAL PHENOMENON

Abstract. *Every State of law that really wants to achieve it's objective in maintaining a stable and democratic society must be able in dealing with those deviant character constituting a threat to the smooth functioning of the society. It is therefore the responsibility of every State of law in ensuring that all conduct of it's citizens must be able in respecting available legal prescription. The State of Ukraine has put in place credible penal laws by combating all acts considered to be bullying and a threat to social life. It is in this regard that a need for this paper was considered necessary, as it articulates the ills or aftermath of failure to effectively combat acts of bullying in Ukraine. In answering the above objective, there was the need to analyses the role of the Ukrainian Penal Laws in matters relating to bullying. From the position of the Criminal Law in Ukraine, one can ascertain that act of bullying continues to be a great pandemic to the society as we continue to experience an increase of this character irrespective of the efforts put in place by the laws. In is therefore in this regards that we think that it is not just providing the punishment of acts of bullying in the laws that is relevant, but in essence ensuring effective and severe punishment to all those considered as perpetrators of the crime concerned*

Key words: *preventing, bullying, counteraction, social consequences*

Introduction

Article 3 of the Constitution of Ukraine states that the human being, his or her life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value. The right to life and health, honour and dignity, inviolability and

security are among those human rights that are conditioned by their nature and do not depend on the status of the individual in the state, i.e. are inalienable. The state is obliged to provide effective protection to all persons from such encroachments by third parties. In this regard, effective legal mechanisms must be introduced at the state level to counteract any negative manifestations of encroachment on the rights, freedoms and legitimate interests of a man and citizen. Nowadays, the issue of preventing such a negative phenomenon as bullying, as well as establishing legal responsibility for its commission, is becoming more acute.

The negative socio-economic situation and large gaps in the moral and ethical education of the younger generation have led to an increase in the number of cases of deliberate abuse of older and stronger to the smaller and weaker members of educational institutions (Sorochan, 2020). One of the areas of ensuring the rights of the child is to create a favorable environment for education, training, development and an effective system to ensure the realization of his or her rights. Bullying has become a common way of self-affirmation in schools. Sometimes participants in the educational process violate not only the norms of morality, but also the legal norms, for the violation of which there is legal liability. The prevention and counteraction of bullying in the realities of today's Ukrainian society is a priority in the fight against this phenomenon, the level of which is constantly growing (Dzhafarova, Morhunov, Sorochan, 2021).

The research by a lawyer I. Homzyak is interesting, where the law enforcement practice of courts in relation to bullying were analyzed and advice to human rights defenders in this area were provided. In particular, in 58% of cases the mother of the educational process participant was brought to justice, and the father was only in 13%. Only 2% of cases where a minor was brought to justice were recorded, and the teachers were in 7%. Thus, if a participant in the educational process commits bullying, it is most likely that their mother will be prosecuted. Most often, materials on offenses are compiled on the actions of minors, including persons aged 14 to 18 (a case of a first-grade pupil`s actions has been recently recorded). The main age group suffering from bullying is minors (14–18 years old). They are immediately followed by minors (up to 14 years old). At the same time, there is a probability that 29% of the materials will be returned to the police for revision or the case will be closed in the absence of crime in the act. There is a problem, that is low level of law enforcement officials` training, who submit improperly executed protocols and appendices to the court. As a result, the court cannot answer even the most basic questions: who did it, what was done, what evidence may confirm that persons are participants in the educational process (Gomzyak, 2019).

Thus, the issue of effective prevention and counteraction to bullying in the Ukrainian realities finds its manifestation at both theoretical and applied levels. As for the theoretical, the analysis of bullying becomes important in the context of identifying conditions and factors affecting the lawful or unlawful conduct of the offender. And this issue is extremely important in the light of the legal awareness formation of young people who suffer from this negative phenomenon. Also, the relevance of bullying analysis is determined by no less complex and fundamental issues of jurisprudence as a distinction between illegal and lawful, as an objective and subjective side of lawful behaviour. At the applied level, the study of bullying is manifested through the need to improve legal understanding of the legal qualifications of bullying, regulation of public relations relating to children's rights, educational process, improving responsibility for bullying in the national legislation of Ukraine and more.

Methodology

During the study of the problems of preventing and combating bullying as a negative social phenomenon, general scientific and special legal methods of cognition of legal reality have been used.

The dialectical method was fundamental for revealing all the features of the nature of bullying as a socially harmful phenomenon that has negative legal consequences. The systematic approach was useful in forming the structure of the study and the most important conclusions.

Scientific pluralism has contributed to the accumulation of a wide range of knowledge accumulated by legal science on the essence of valuation concepts in law, defining among them the features of bullying as a valuation concept, understanding the various legal consequences of bullying.

The logical semantic and formal logical methods have contributed to the analysis of the peculiarities of responsibility for bullying in the national legislation of Ukraine. The normative dogmatic method was used in understanding the role of judicial practice in overcoming bullying in Ukraine. All these methods use are considered to be of huge essence as it has really delves into the cranes and depth of acts that will constitute bullying and how it can be combatted and prevented. The problem or bone of contention one need to develop here is that, the increasing phenomenon of bullying in the country is a clear indication that something need to be done if the State of Ukraine really wants a stable society if everyone has to live peacefully without constraints. It is one thing in providing good methodology to be used in combating and preventing this great vice, it is another to ensure effective prevention and why not complete eradication of the act. This will all depend on our legal commitment in ensuring a secure environment for crime prevention.

Results and Discussion

Understanding bullying in the scientific literature

Referring to domestic developments regarding the understanding of the concept of bullying, we can say that this term is also translated as "intimidation", "persecution". First of all, this is due to the fact that a significant feature of bullying is psychological and / or physical abuse of a person who cannot protect oneself for some reason, committed by an individual or group of people. It follows from the meaning of the word intimidation that a person is aware of certain consequences. These consequences can be either legally neutral (for example, when a person is intimidated by their parents) or have a certain legal consequence (threat of murder, use of physical force, violence). At the same time, we must understand that bullying is one of the types of offenses, that is "socially dangerous or socially harmful, illegal, culpable act committed by a tort person, which entails legal liability" (Shulga, 2013, p. 110).

The main characteristics of bullying should include emotional humiliation, insult to human feelings, which leads to its exclusion from the group. That is why bullying refers to aggressive behavior that is aimed at humiliating feelings, expressing negative emotions and degrading assessments of another person (Levchenko, 2021). Bullying does not include fraternal peer rivalry or impulsive aggression by victims in response to an attack by an abuser, which is essentially spontaneous, non-discriminatory, and with an unspecified victim. On the other hand, bullying does not include criminal acts that began as a conflict and developed, i.e. serious physical violence, threats of such violence, attacks with weapons, vandalism, and others are not bullying (Korol, 2009, p. 85). In view of this, and in particular on the basis of self-awareness, the bullying can be divided into: conscious, i.e. a person who commits violence is aware of the seriousness of their own actions and their consequences; unconscious, when a person does not perceive own actions as violent, but considers them as a joke or a game (Levchenko, 2021, p. 69). Bullying is manifested through various forms of violence that are committed systematically against the same person. Bullying is intensified when there is an imbalance of power between people. An imbalance can mean that one student is older, belongs to another race, or has more friends than another. This is really serious because the act of bullying really constitutes a great threat to our society as it makes life really unbearably unfair. Everyone wants and will always want to live in a society where their fundamental human right will be respected at all levels, and anything that will jeopardize this peace or co-existence should be questionable and combated.

In the educational environment, bullying occurs not only between students, but also by teachers in relation to stu-

dents or parents. Such kind of bullying can be manifested through systematic actions: unreasonable underestimation, systematic ignoring the opinion of the student or their actions, hanging "labels" on students, the use of derogatory words, intimidation (Levchenko, 2021, p. 70).

Thus, bullying always aims to destroy, offend, demoralize, subdue, and frighten the victim. In one case, it may be systematic verbal abuse, contempt, humiliation of someone. Otherwise, the consequences can take the form of knocking out, taking away or damaging things, degrading treatment, etc. These physical or verbal actions are inherent in direct bullying. In particular, it is necessary to single out indirect bullying. It is manifested through manipulative behaviour, spreading gossip, information, exclusion from a certain group of people communication, joint activities (hobbies), games, ignoring and boycott.

Influence on the psyche affects the formation of will, understanding the consequences, which may be legally significant, legally neutral or illegal. It is in this context that bullying should be understood as an element of lawful conduct in the context of lawful or unlawful behaviour. Provided that a person wants to have certain negative consequences, bullying can be understood as an offense, as an impact on people's consciousness. Understanding bullying from the point of view of the theory of law is important volitional criterion, i.e. a person forms a will that determines behaviour, legal consequences, especially negative, and all this we must understand in the context of bullying in order to formulate and analyze behaviour. Truly, the Ukrainian legislations are clear and explicit when it comes to assessing and evaluating the aspect of bullying and the various effects it has on the society. The rule will and continue to remain that, all these laws and legislations put in place by Ukraine are really fundamental as there is the need to combat this great pandemic and ill which has constituted a migraine in the society as some people think that they are stronger and more important than others by intimidating and ridiculing them in the eyes of the society. This is really a pole of frustration and embarrassment as the basic tenets of human right standard that of equality and non-discrimination has been challenged and defeated creating insecurity. Of what crime has the weaker and younger ones committed that they will experience such cruel act and practices from those who considered themselves as stronger. The law truly will be unjust when the presumed equal are treated unequal just because of their age, physical output or position occupied in the society. There is really a need for adjustment on the part of the law.

National legislation of Ukraine in the field of prevention and counteraction to bullying

Today the basic national legislation in the field of bullying is the Consti-

tution of Ukraine (1996), the Law of Ukraine "On Education" (2017), the Code of Ukraine on Administrative Offenses (1984), the Civil Code of Ukraine (2003) order of the Ministry of Education and Science of Ukraine "Some issues of response to bullying (persecution) and the use of measures of educational influence in educational institutions", orders of the Ministry of Internal Affairs of Ukraine, letters of the Ministry of Education and Science of Ukraine etc.

First of all, it should be emphasized that under the Article 52 of the Constitution of Ukraine "children are equal in their rights regardless of their origin, as well as whether they were born in or out of wedlock. Any violence against and exploitation of a child is prosecuted. The basic principle of the legal status of the child in the modern world is that children are equal in their rights regardless of origin, as well as whether they were born in or out of wedlock. It does not matter what is the ethnic and social origin, language or place of residence, race, color, political, religious and other beliefs they are, which family the child was born in, if they have full family and relatives or are deprived of parental care from birth, and what age or property status their parents are. Regardless of their origin, a child has equal rights with other children. This principle implies the absence of illegal privileges or any discrimination against children, depending on their origin. The legislation of Ukraine also protects the child from economic exploitation and from the performance of any work that may endanger their health, may be an obstacle to their education or harm their health, physical, mental, spiritual, moral and social development (determines the minimum age for employment, requirements for working hours and working conditions, measures in the field of education to protect children from illicit drug and psychotropic substance abuse, necessary measures to prevent forcing a child to be engaged in any illegal sexual activity).

The key legal act that directly enshrines the concept of bullying, the typical features of bullying, the rights and responsibilities of educational entities is the Law of Ukraine "On Education" (2017). In particular, in accordance with paragraph 3–1 of Part 1 of Article 1 of this Law "bullying (persecution) are acts (actions or omissions) of participants in the educational process, which consist in psychological, physical, economic, sexual violence, including the use of electronic communications against minors or juvenile and (or) by such a person in relation to other participants in the educational process, as a result of which the mental or physical health of the victim could or has been harmed".

Legislation defines typical signs of bullying (persecution), including systematic (repetitive) actions; presence of the parties such as the offender (buller), the victim (bullying victim), observers (if any); actions or omissions of the of-

fender, which result in mental and / or physical harm, humiliation, fear, anxiety, subordination of the victim to the interests of the offender, and / or social isolation of the victim (On Education, 2017). In its turn, bullying differs from a quarrel between children because (Bullying)

• *it is accompanied by real physical or psychological violence: the victim is ridiculed, intimidated, teased, blackmailed, beaten, spoiled, gossiped about, boycotted, disclosed personal information and photos on social networks;*

• *three parties are always involved in a bullying situation: the one who persecutes, the one who is persecuted and the observer;*

• *bullying negatively affects all participants, their physical and mental health;*

• *bullying may occur spontaneously when a child suddenly finds himself or herself in a situation of persecution or joins a persecutor;*

• *if bullying has occurred, it may be repeated many times*.

Having analyzed the concept of bullying, the question immediately arises: do adult students fall under the Law of Ukraine "On Education" (2017)? In this case, it should be noted that only school children, students of 1–3 courses of professional (vocational) education and freshmen of higher education institutions can be prosecuted for bullying. Given this legislative gap, lawyers are already preparing a bill to amend the legislation of Ukraine on bullying, so that adult participants in the educational process can also be protected, as well as the mechanism for responding to bullying in vocational (technical) education and higher education.

It should be noted that in accordance with Part 2 of Article 30 of the Law of Ukraine "On Education" (2017) educational institutions that have a license to conduct educational activities are required to provide on their websites (in their absence on the websites of their founders) open access to such information and documents as the rules of behaviour for the applicant in the educational institution; a plan of measures aimed at preventing and combating bullying (persecution) in the educational institution; the procedure for submitting and reviewing (with confidentiality) applications for cases of bullying (persecution) in an educational institution; the procedure for responding to proven cases of bullying (persecution) in an educational institution and the responsibility of persons involved in bullying (persecution).

In our opinion, the availability of these documents is very important, because in cases of bullying it allows you to quickly collect the necessary evidence, other documents and pass them to authorized law enforcement officials. It also indicates the creation of a safe educational environment free of violence and bullying by the head of the educational institution, and their authority includes consideration of applications for bullying (persecution) of

students, their parents, legal representatives and others, as well as issuance of decisions on investigation; convening a meeting of the commission to consider cases of bullying (persecution) to decide on the results of the investigation and take appropriate response measures, cooperation with authorized units of the National Police of Ukraine and the Service for Children, notifying them of bullying (persecution) cases in educational institutions (Part 3 of Article 26 of the Law of Ukraine "On Education").

To comply with these regulations, the Ministry of Education and Science of Ukraine in its recommendations to educational institutions on the application of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Combating Bullying (persecution)" (Recommendations for educational institutions on the application of the Law of Ukraine, 2018) stressed the need to create a safe educational environment in the institution. In particular, it was pointed out the need to introduce an integrated approach in the field of prevention and counteraction to bullying (persecution), which provides for two key areas:

[1] managerial (analysis of the situation in the educational institution, development of rules of behaviour, algorithms of action, etc.);

[2] educational (systematic work on informing, explaining in order to develop skills of tolerant and non-violent behaviour, communication and interaction of all participants in the educational process

Important for the prevention of bullying is the order of the Ministry of Education and Science of Ukraine (2019) "Some issues of responding to bullying (persecution) and the use of educational measures in educational institutions", which approves the Procedure for responding to bullying (persecution) and the Procedure application of measures of educational influence. The procedure for responding to the cases of bullying (persecution) regulates the concept of participants in bullying, the procedure for submitting applications or reports of cases of bullying (persecution) in an educational institution, the main issues of preventing and combating bullying (persecution) in an educational institution.

In August 2020, the order of the Ministry of Internal Affairs of Ukraine came into force, which approved amendments to the Instruction on the organization of juvenile prevention units of the National Police of Ukraine with children who have committed administrative or criminal offenses. In particular, the amendments provide for the introduction of information on the taking the children who have committed bullying to the relevant records of the information system of the Ministry of Internal Affairs of Ukraine and the implementation of individual prevention measures by the police. As previously envisaged, a child who has been prosecuted two or more times during

the year is the subject to preventive registration. Exceptions were made for bullying. A child who committed bullying is registered on the first established fact of persecution on the basis of a court decision to prosecute the child or parents or persons replacing them under Article 173–4 of the Code of Administrative Offenses. The specified registration provides carrying out preventive work with the child, namely carrying out of acquaintance, preventive and educational conversations at the place of residence, training or work at least once a month; conducting interviews with the child's parents, legal representatives, family members in order to eliminate the causes and conditions that led to the commission of an administrative or criminal offense; drawing up the plan of actions for individual prevention on the basis of studying the characteristics materials and individual psychological features of the child, etc. (Paduchak, 2021).

Bullying is also a basis for civil liability. According to the provisions of the Civil Code of Ukraine, every person has the right to go to court to protect their personal non-property or property rights and interests (Article 16 of the Civil Code of Ukraine) and is entitled to compensation for non-pecuniary damage (Article 23 of the Civil Code of Ukraine). Moral damage consists of suffering experienced by an individual as a result of an injury or other harm to health; in the mental suffering that an individual has experienced as a result of wrongful conduct towards a person, members of their family or close relatives; in mental suffering experienced by an individual in connection with the destruction or damage of their property; in humiliation of honor and dignity of an individual, as well as the business reputation of an individual or legal entity (Part 2 of Article 23 of the Civil Code of Ukraine). Guided by the provisions of Articles 16 and 23 of the Civil Code of Ukraine and the content of the right to compensation for moral damage in general as a way to protect subjective civil law, compensation for moral damage must occur in any case, so the right to compensation for moral (non-pecuniary) damage arises as a result of violation of the right of a person, regardless of the existence of special rules of civil law (the decision of the Grand Chamber of the Supreme Court of Ukraine dated 01.09.2020 in the case No. 216/3521/16-ц).

As we can see, the above regulations are the legal basis for combating bullying in Ukraine, even despite some of the shortcomings and gaps they have. Of course, the legal framework in the field of preventing and combating bullying needs constant review and improvement, especially in the light of case law. All these measures and practices used by the government of Ukraine is a laudable initiative and methods, but what one need to understand is why the constant experience of bullying notwithstanding the various methods and measures used by the State? It is the fact

that the laws are not efficient or effective enough that combating of this. Or it is that those who are supposed to ensure the effective implementation of the governmental measures are not up to their responsibilities in preventing and combatting this act, this is really a question that needs to be handled with if we really need a stable and peaceful society. Putting in place measures, policies, laws, strategies, mechanisms, recommendations is a laudable and appluadable initiative, but of what use will this be if all these measures are not enforceable and implemented to the fullest.

National judicial practice as a factor in improving legislation to prevent and combat bullying in Ukraine

Since the adoption of legislation in Ukraine in the field of preventing and combating bullying, judicial practice has gradually begun to take shape, which should be an indicator for lawmakers to improve regulations further, as in practice, there are many issues that need to be addressed immediately when bringing participants in the educational process to justice.

The bodies of the National Police of Ukraine are perhaps the most important state body, whose officials are obliged to consider and resolve cases of administrative offenses in most areas of public relations in the country. The issue of the system of subjects for prevention and counteraction to bullying in Ukraine is ambiguous. On the one hand, it is quite broad, on the other hand, there is no clear legislative regulation on this issue. Therefore, there is a big problem in the order of interaction of the subjects for prevention and counteraction to bullying with each other, which negatively affects the common goals and objectives of this activity. The main problem is the lack of legislation that clearly establishes the list of subjects to prevent and combat bullying in Ukraine (Dzhafarova, Morhunov, Sorochan, 2021).

O. V. Pohorilets (2020) has offered the measures regarding the procedure and the obligation to consolidate evidence by representatives of juvenile prevention units of the territorial units of the National Police of Ukraine, in accordance with the requirements of the current legislation, in the case of teachers contacting law enforcement agencies as victims of bullying and activities to create a safe educational environment in educational institutions. At the same time, quoting D. A. Sorochan (2020), it is necessary to develop a set of preventive and educational measures aimed at preventing bullying manifestations among minors. It is necessary to fight not with individual facts of bullying, but to enshrine in the legislation the system of counteraction to harassment in educational institutions, which can be preventive in nature.

Olga Buleyko (Judge of the Court of Cassation of the Supreme Court) described the jurisprudence in the bullying cases. Thus, according to statistics in 2019–2020, local general courts considered 513 cases of bullying. During

this period, 261 cases were closed, 36 of them on the grounds of release from liability for minor offenses, 121 – due to lack of event and body of the offense, 100 – due to the expiration of the penalty. In addition, 30 appellate cases were pending before the courts of appeal (Buleyko, 2021).

As an example from the practice of the courts of appeal in cases of offenses under Article 173–4 of the Code of Administrative Offenses (1984), we can cite the decisions of the Buchach District Court of Ternopil region and the Ternopil Court of Appeal in case No. 595/420/20. The decision of the Buchach District Court of Ternopil region from 27.05.2020 considered the case of bringing to justice the teacher of Perevolotsk comprehensive school of I–III degrees, to responsibility for the offense under Part 1 of Article 173–4 of the Code of Administrative Offenses (1984), namely "Bullying" against an 8th grade student, which is expressed in psychological pressure on the student, namely forced her to sit on a chair with a wet cloth for 45 minutes of the lesson, and to close the proceeding due to lack of event and body of the offense. The representative of the injured schoolgirl appealed to the Ternopil Court of Appeal and asked to cancel the above-mentioned decision of the Buchach District Court of Ternopil region dated 27.05.2020 and to issue a new one to close the proceedings in the case of the teacher due to the expiration of the term of bringing to administrative responsibility. The decision of the Ternopil Court of Appeal (2020) considered the appeal; indicated the typical features (regularity (recurrence) of the act; the presence of the parties; actions or inaction of the offender, resulting in mental and / or physical harm, etc.); emphased on the fact that the protocol and written explanations show that the teacher's actions were not systematic, there is no proper and permissible evidence of the teacher's guilt in committing the incriminated offense, which would constitute an administrative offense under Part 1 of Article 173–4 of the Code of Administrative Offenses (1984); confirmed that the court of first instance correctly concluded that the event was only on February 20, 2020, which indicates a lack of systematic persecution or intimidation, which is defined by the concept of "bullying" and accordingly left the court decision unchanged and dismissed the appeal.

It should be noted that in Article 173–4 of the Code of Administrative Offenses (1984), there are no typical signs of bullying, which are provided by the Law of Ukraine "On Education" (2017), namely: systematic (repetitive) actions; the presence of the parties such as the offender (buller), the victim (bullying victim), observers (if any); actions or inaction of the offender, which result in mental and / or physical harm, humiliation, fear, anxiety, subordination of the victim to the interests of the offender, and / or causing social isolation of the victim. Due to this, a large per-

centage of reports on administrative offenses do not contain any signs of bullying and the proceedings are closed (Mironenko-Shulgan, 2019).

Sometimes there are cases of incorrect classification of acts. For example, instead of acting under Part 3 or 4 of Article 173–4 of the Code of Administrative Offenses (1984), police and courts qualify the actions of the perpetrators under Article 184 of the Code of Administrative Offenses (failure of parents or guardians to fulfill their responsibilities for the upbringing of children). This took place in the case No. 213/1175/19 on bringing the father to justice for committing offenses under Part 1 of Article 173–4, part 1 of Article 184 of the Code of Administrative Offenses (1984), namely: a young son committed bullying, i.e. acts of psychological and physical violence against his classmates, which could harm the psychological health of students (throwing other students' things from desks, insulting and touching classmates, pushing teachers, aggressively responded to a call for a lesson, moved desks in class, threatened classmates). The Resolution of the Ingulets District Court of Kryvyi Rih, Dnipropetrovsk (2019) in the case No. 213/1175/19 the father of the young son was found guilty of committing an offense under Part 1 of Article 184 of the Code of Administrative Offenses (1984) and imposed a fine.

There are many cases of returning case materials for revision due to shortcomings in drawing up reports on administrative offenses. In particular, the protocol does not specify whether the offender is a participant in the educational process, what violent acts were committed by the offender against the victim, what were the consequences of these actions and whether they really took place, whether the act was systematic, if so, in what period of time, with a specific indication of the time of each event (Mironenko-Shulgan, 2019). Thus, by the Resolution of the Zolochiv District Court of Lviv region (2019) in case No. 445/523/19, having studied the case file, the court considers it necessary to return the relevant materials for revision and proper registration to the Zolochiv Police Department of the Main Department of the National Police of Ukraine[1].

It should be noted that the court closed the cases of offenses under Article 173–4 of the Code of Administrative Offenses (1984), due to the lack of corpus delicti or the expiration of the term of bringing a person to administrative responsibility. For example, the Resolution of the Slavyansk District Court of Donetsk region (2019) in the case No. 243/1542/19, a 3rd year student of the state educational institution "Slavyansk Professional Agrarian Lyceum", who committed psychological and

[1] *in the case file there are no explanations of the offender, no information about the events (date, place, time and place), which led to a criminal offense of a minor, the proceedings against whom are under pre-trial investigation at Zolochiv Police Department of the National Police of Ukraine*

physical violence against a minor, resulting in the latter damage to mental health, than committed an offense, liability for which is provided for in Part 1 of Article 173–4 of the Code of Administrative Offenses (1984), was released from liability, the proceedings were closed and an oral remark was announced in accordance with Article 22 of the Code of Administrative Offenses (1984), due to the insignificance of the offense, which did not lead to serious consequences. The court took into account the identity of the offender, as well as the insignificance of the offense and the lack of causing property damage to anyone. By the Resolution of the Selidovo City Court of the Donetsk Region (2021, June), in case No. 242/3697/19, where a minor, a student of the Selidovo Vocational Lyceum, committed an administrative offense under Part 1 of Article 173–4 of the Code of Administrative Offenses (1984), the proceedings were closed without establishment of guilt in actions of the offender in connection with the expiration of term of imposing of administrative penalty on the basis of Part 1 of Article 38, paragraph 7 part 1 of Article 247 of the Code of Administrative Offenses (1984).

It should also be acknowledged that sometimes a report on an administrative offense is drawn up against a teacher or class teacher, stating that the latter has been concealing the fact of bullying that has taken place in the classroom. However, as can be seen from the existing judicial practice and the available court decisions in the Unified State Register of Judgments, the court closes the case due to the lack of administrative offenses in the actions of the teacher. In the given case, the court refers to Article 26 of the Law of Ukraine "On Education" (2017), which states that the head of the educational institution within their powers ensures the creation of a safe educational environment in the educational institution, free from violence and bullying (persecution), including: considers reports on cases of bullying (persecution) of students, their parents, legal representatives, other persons and issues a decision on the investigation; convenes a meeting of the commission to consider cases of bullying (persecution) to decide on the results of the investigation and takes appropriate measures, informs the authorized units of the National Police of Ukraine and the Service for Children about cases of bullying (persecution) in educational institutions. That is, as seen from the position of the court, only the head of the educational institution is responsible for not reporting the fact of bullying, as he or she is a party to the relevant legal relationship.

Thus, it should be recognized that the judicial practice in cases of bringing to administrative responsibility for bullying a participant in the educational process is currently considerable and is constantly accumulating. On the one hand, it is unfortunate that bullying as a negative phenomenon is only spread-

ing in Ukrainian educational institutions, but on the other hand, the existing case law of such cases allows for better preparation for the collection and proper preparation of materials on administrative offenses, protection of victims of bullying in court and to consider the case as soon as possible.

Conclusions

The term "bullying" appeared in the legislation of Ukraine in December 2018 since the adoption of regulations on combating bullying. At present, the legislative level defined the concept of "bullying (persecution) of a participant in the educational process", its typical features, parties of bullying and introduced a separate article on administrative liability for bullying, manifestations that may be grounds for suspicion of a case of bullying (persecution) of a participant in the educational process in an educational institution, as well as identified the subjects of response in case of bullying (persecution) in educational institutions and their powers.

The study of bullying as a socially harmful and negative phenomenon shows the need to pay considerable attention to the state issues related to its prevention and counteraction. Moreover, statistics clearly show that bullying in Ukrainian educational institutions is becoming more frequent every year.

The analysis of judicial practice allows to single out certain problematic issues that arise during the prosecution of a participant in the educational process for bullying: incorrect qualification of acts committed; shortcomings in drawing up reports on administrative offenses; closing the case by the court due to the lack of corpus delicti or the expiration of the period of prosecution. Sometimes police officers confuse bullying with conflict when recording an offense. The court, considering the protocols on administrative offenses and available evidence, notes that bullying is not just a conflict, a quarrel between participants in the educational process, it is a manifestation of psychological or physical violence, both by classmates and teachers, teachers, which may have irreparable consequences for the life of the victim of bullying. Bullying is a frequent manifestation of violence, and a long process of conscious aggressive behaviour to inevitably cause fear, to create a negative environment for the victim of bullying.

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OVERVIEW OF APPROACHES TO THE INSTITUTE OF CIVIL LEGAL RESPONSIBILITY IN THE PROCESS OF RECODIFICATION OF THE CIVIL CODE OF UKRAINE

Abstract. *Although the issue of civil liability is not new to civil doctrine, it is still relevant. In the research of Ukrainian scientists there are two approaches to understanding the concept of civil liability – positive-perspective and negative-retrospective. However, recently the issue of extension to contractual relations, risk-related relations, the category of "civil liability" has been actively discussed. There are opinions that in cases of breach of contractual obligations or damage as a result of risky activities, it is difficult to justify and apply measures of civil liability. Moreover, in foreign doctrine, breach of contract is not traditionally considered an offense. Therefore, the purpose of this article is development of approaches to the institute of civil liability and outlining the directions of updating civil legislation considering current European trends. The work based on economic analysis of law using dialectical, comparative, logical-dogmatic and other methods analyzes approaches to understanding the concept of civil liability and distin-*

guishes between measures of civil liability and measures to protect civil rights. In particular, it is concluded that the use of the category of "civil liability" to cases of offense, i.e. unlawful infliction of harm, is justified. It seems appropriate to introduce into civil law, along with the category of "legal consequences of default" a broader legal category "legal consequences of non-performance (violation) of civil duty", as civil obligations may arise from both obligations and other legal facts. This will allow expanding the possibilities of protection of rights and legitimate interests and effectively restore the violated right, as the restorative function is inherent in the measures to protect subjective civil rights

Keywords: *civil law, tort, protection of civil rights, compensation for damages, updating of civil legislation*

INTRODUCTION

The institute of civil liability in the doctrine of civil law has not received a clear understanding. In a way, the position on the two meanings of the concept of responsibility can be considered established in Ukrainian science: positive-perspective and negative-retrospective. According to V. Eugenzicht, responsibility is a multifaceted concept that is connected not only with the past (with a misdemeanor already committed), but also with the future. Duty and responsibility always depend on each other. The legal concept of responsibility is primarily a responsible attitude to their responsibilities, which ensures their proper performance. Responsibility for violations is a consequence of irresponsible behaviour, breach of duty, a consequence of the fact that individuals have betrayed the "sense of responsibility" [1, p. 6]. That is, the positive-perspective understanding of civil liability is associated with the performance of its preventive function, and negative-retrospective – compensatory. According to I. S. Kanzafarova, the attempt of scientists to formulate the concept of positive responsibility cannot give an effective result given the lack of signs of a legal phenomenon [2, p. 80].

It should be noted that today negative-retrospective understanding dominates legal responsibility as a law enforcement institution, which provides for state coercive measures for the offense and is to establish for the offender negative consequences in the form of restrictions of personal and property nature [3, p. 86]. In this context, civil liability is considered within the framework of protective legal relations, where the restoration or protection of violated rights can be carried out through the application of measures of civil liability. In this sense of civil liability, the use of coercive measures provided for at the regulatory level, most civilians associated with the commission of an offense in both contractual and non-contractual areas [4, p. 365–366].

For a long time, the basis of civil liability was the composition of the offense in the field of property or personal non-property rights, which was under-

stood as a set of signs of objective and subjective nature. One of the authors of the concept of the composition of a civil offense is quite rightly considered to be G. Matveev Matveev [5, p. 29]. Later, the term "composition of the offense" was abandoned in civil law, calling the basis (or conditions) of civil liability illegal behavior, harm, causal link between wrongdoing and harm, guilt of the offender. However, according to N. Kuznietsova, this is nothing more than a detail of one and in principle the only basis, which is an offense (civil, disciplinary, etc.). However, sharp criticism of this approach has not yet changed the general assessment of the doctrine of the composition of civil offense, which in almost all textbooks still occupies a prominent place [4, p. 193, 195].

Judicial practice also uses the term "composition of the offense". In particular, in case 3-72gs12 the Commercial Chamber of the Supreme Court of Ukraine noted that according to Article 1166 of the Civil Code of Ukraine [6] to apply such a measure of liability as damages requires the presence of all elements of a civil offense, namely: wrongful conduct, losses, the causal link between the debtor's wrongful conduct and damages, guilt. In the absence of at least one of these elements, civil liability does not arise [7]. In this regard, we cannot agree with those authors who argue that although the law does not contain a list of conditions of a civil offense, but they can be distinguished by logical interpretation of articles of the Central Committee of Ukraine (Article 22, Article 1166) [6]. Of course, it is impossible not to consider the presence in cases provided by law, "truncated" composition of the offense (Article 1176, Article 1187 of the Civil Code of Ukraine [6]).

Modern unification of private law and the introduction of European standards have necessitated updating the provisions of current legislation on the institution of civil liability. Thus, the harmonisation of civil law in the field of non-contractual obligations is carried out under the influence of the Principles of European Tort Law (Principles of European Tort Law – PETL) [8]. However, the approach implemented in PETL cannot coexist with the above construction of civil liability, as tortious liability can also occur in the case of lawful infliction of damage or regardless of the fault of the perpetrator [9, p. 416]. The question of the relationship between measures of responsibility and measures to protect civil rights, which were mostly studied separately, also needs a separate study [10]. The civilist literature emphasises that the application of measures of responsibility is always based on the principle of guilt. When a person is assigned a duty that already existed, but which the person did not perform voluntarily, it is not a measure of responsibility, but a measure of protection [11, p. 95–96].

In Europe, outdated approaches to understanding civil liability have long been revised. In particular, after the re-

form of French contract law in France, the second stage of modernization of civil law began – the reform of civil liability law. The main tasks of the reform: consolidation of legislation; considering the principle positions that are actively discussed in the professional environment; supplementing the current legislation with a number of short stories [12, p. 108–109]. In Ukraine, there is also an urgent need to review approaches to the institution of civil liability. Modern law enforcement practice requires a well-developed and scientifically sound concept of civil liability, which would allow to achieve maximum efficiency in the restoration and protection of violated civil rights. This should consider the main functions of civil liability, such as compensation (aimed at restoring the affected area of the victim) and preventive (providing appropriate incentives to take optimal precautionary measures to reduce or avoid expected liability).

Given the ambiguity of the understanding of civil liability, its place in the mechanism of legal regulation, the lack of a single concept of liability, there is a need to discuss the issue of civil liability. *The purpose of this article* is to develop approaches to the institution of civil liability and outline areas for updating civil law, taking into account current European trends.

1. MATERIALS AND METHODS

Transformations in socio-economic life, the emergence of new global risks: terrorism, hybrid wars, coups, natural and social cataclysms encourage the revision of existing mechanisms for regulating relations based on legal positivism and natural law approach, in terms of their effectiveness. The focus on the development of a single legal space, a developed civil society, a common system of protection of rights and interests, and protection against global dangers makes it necessary to unite efforts to develop effective approaches to regulating public relations. Ukraine, which recently joined the socialist system with a dominance of planning and administrative approaches to governance, is only at the beginning of the path of forming the rule of law and integration into the developed world community. And this, in turn, necessitates a rethinking of approaches to understanding the law and change the legal consciousness.

The current trend is the introduction of rationalist legal understanding as a balance of general legal, sociological and economic analysis of law. Such a rationalist concept of understanding the essence of law presupposes the awareness of law as a self-sufficient phenomenon that actively influences other, non-legal, social phenomena (economics, ethics, religion, etc.), which leaves an imprint on methodology. Therefore, the perception of law is not limited to the normative reflection of material (economic) relations. Law is seen as a defining form of social life for the economy. Therefore, when studying civil liability, it is advisable to use eco-

nomic analysis of law and use such general techniques as dialectical, formal-logical, comparative, along with the logical-dogmatic method of interpreting law as a special method of scientific knowledge, combined with hermeneutics.

Economic analysis of law is a method by which ideas taken from economics are combined with legal theories and principles in order to predict the impact of legal norms on the behavior of subjects and study the economic consequences of such behavior. The fundamental basis of economic analysis of law is the category of efficiency, which, having economic content, can become an important criterion in the creation of legal norms. However, no less important is the basic value for law – justice. Given that economic efficiency cannot contradict justice (and morality in general), the study of civil liability was carried out in terms of justice, taking into account the concept of economic efficiency. These basic categories – economic efficiency and equity – can be sufficient criteria for drawing conclusions about the need to distinguish between protection measures and civil liability measures. However, economic analysis was used as a subsidiary (additional) methodological toolkit, along with traditional methods of legal science – logical-dogmatic method.

Using the dialectical method, various social phenomena are studied in their development. This method allowed analysing the contradictions of approaches to understanding civil liability. Formal-logical approach was used to substantiate the proven theories of judgment on the application of measures of civil liability. And the comparative method made it possible to analyse and identify differences between measures of civil liability and measures of protection. The state of doctrinal developments on the understanding of civil liability was also studied with the help of a comparative method.

The logical-dogmatic method of scientific research is aimed at identifying obvious signs (aspects, characteristics) of legal phenomena without immersion in the internal essential connections. It was aimed at cognising the dogma of law, which solves the problems of systematisation, interpretation, and application of law, as well as the development of law. The combination of the dogmatic method with the method of hermeneutics, which involves the spread of knowledge of the intellect, feelings, intuition of the researcher, allowed considering civil liability through the prism of its perception by researchers from different countries.

The main stages of the study of civil liability were: 1) the hypothesis that the concept of "civil liability" should be used in the understanding of law enforcement, which provides for coercive measures for the offense; 2) analysis of approaches to understanding civil liability; 3) development of directions of delimitation of measures of responsibility and measures of protection; 4) for-

mulation of the conclusion that the category of "responsibility" should be used in a negative retrospective sense, and in order to expand the protection of rights and legitimate interests to introduce into civil law the category of "legal consequences of failure (violation) of civil duty".

2. RESULTS AND DISCUSSION

2.1. Approaches to understanding the concept of civil liability

In foreign doctrine, the doctrine of civil liability is reduced to the following theories: the theory of responsibility as a duty (liability as duty), the theory of responsibility as a price (value) (liability as cost) and the theory of liability as a vulnerability (liability as vulnerability). According to the first theory, liability is understood as a secondary obligation that arises as a result of failure to perform the primary duty. In this case, the secondary obligation is a legal consequence of the violation of primary rights or failure to perform primary obligations, but the initial obligation does not disappear, but is transformed into another form. Liability as a price is considered in the context of those costs, losses, fees that the perpetrator must pay for the violation. And a relatively new theory – the theory of responsibility as a vulnerability was formulated by N. Oman. In his opinion, the first two theories have a significant drawback: they focus on state coercion. But such state coercion will not be applied without appropriate action by the victim. Instead, responsibility as a vulnerability is explained by the author that being responsible means that a person is exposed to an attack to which he has not been subjected before. The property and liberty of the defendant, who has been found not liable for certain civil offenses, remain protected from any further action by the plaintiff. However, when the defendant is found responsible, everything changes. Now the plaintiff has the right to apply to the coercive apparatus of the state with a request to coerce the defendant to perform a certain duty. Since the defendant is no longer "invulnerable" as a result of the defense of the state, the coercive mechanism that protected him is now given to the plaintiff to use as he sees fit. Of course, there are limitations on the defendant's vulnerability. The plaintiff has only certain remedies at his disposal. The defining feature of the legal status of civil liability is precisely this unstable situation – the possibility of being subjected to private attack by the plaintiff [13, p. 393–394]. (To be liable means that one is exposed to attack in a way that one was not previously exposed. The property and liberty of a defendant who has been found not liable for some civil wrong remains protected from any further action by the plaintiff. Once a defendant is found liable, however, this changes. Now the plaintiff has the power to call upon the coercive apparatus of the state to do things to the defendant. In the absence of civil liability, this machinery lies inert. It is unlawful

for a private party to employ it against an opponent. In many cases it is even unlawful for the state to employ the machinery against the defendant. Once the defendant is found liable, however, this changes. Now he is exposed. As he is no longer "invulnerable, impenetrably armed" by the protection of the state, the very coercive apparatus that protected him is now put at the disposal of the plaintiff to use or not as he or she sees fit. To be sure, there are limits on the vulnerability of the liable defendant. Only certain remedies are put at the disposal of the plaintiff. What defines the legal status of civil liability, however, is precisely this precarious position of exposure to private attack by the plaintiff.)

As already mentioned, in the Ukrainian civil doctrine, civil liability is understood in two aspects: as retrospective liability (liability for a civil offense) and long-term or positive liability (the obligation to act lawfully, the requirement to comply with legal norms) [4, p. 196]. In accordance with paragraph 22 of Part 1 of Art. 92 of the Constitution of Ukraine [14, p. 196] exclusively the laws of Ukraine determine the principles of civil liability; acts that are crimes, administrative or disciplinary offenses, and responsibility for them. Considering the issue of official interpretation of the provisions of paragraph 22 of Part 1 of Art. 92 of the Constitution of Ukraine [14, p. 196]. The Constitutional Court of Ukraine (hereinafter – CCU) used the concept of legal responsibility in understanding the application of measures of public law for non-performance or improper performance of their duties. A systematic analysis of the above constitutional provisions led the CCU to conclude that the content of paragraph 22 of the first part of Article 92 of the Constitution of Ukraine is not aimed at establishing a list of types of legal liability. It stipulates that only the laws of Ukraine should regulate the principles of civil liability (general grounds, conditions, forms of liability, etc.), the basis of criminal, administrative and disciplinary liability – acts that are crimes, administrative or disciplinary offenses (the main features of offenses their composition), and responsibility for them [15, p. 196]. Thus, we can state that in contrast to criminal, administrative and disciplinary liability, the grounds for civil liability are not limited to those established by law. This allows talking about a fairly broad understanding of civil liability, which includes breaches of obligations.

In foreign scientific literature, the term "responsibility" is used in connection with torts [16; 17]. For example, in a publication examining trade agreements, the term "liability" is used in the context of non-contractual claims. [17, p. 83]. The purposes of tort law are compensation for damage and deterrence of future tort behaviour [18, p. 443], which in essence is the performance of compensatory and preventive functions of civil liability. It is also suggested that breach of contract is not tra-

ditionally considered an offense [19]. In the Concept of updating the Civil Code of Ukraine, members of the Working Group on recodification (updating) of civil legislation of Ukraine within the systematic update of the Civil Code of Ukraine [6] (hereinafter – the CC of Ukraine) proposed to reconsider the normative approach to the relationship responsibility". Instead of the phrase "liability for breach of obligation" in the opinion of the authors it is advisable in the title of Chapter 51 of the Civil Code of Ukraine [6] to use the category "legal consequences of default". Instead, the category of "liability" should be used in cases of illegal harm [20, p. 43].

It is clear that liability for unlawful infliction of harm and the legal consequences of non-performance are covered by the retrospective and prospective notions of civil liability, respectively. The first is the result of an offense, and the second is the failure to fulfill an obligation or obligation. However, the concept of civil liability, including its grounds and measures, it is advisable to clarify. In particular, is it appropriate to cover the concept of civil liability and, accordingly, to apply the conditions of civil liability to those situations where there is no responsible attitude of the subjects to their responsibilities, which ensures their proper implementation. And how to deal with risky activities in this case – it is covered by the conditions of civil liability or not, because the risk characterizes the activities carried out within the legal field. And so, it is difficult to talk about the first condition of responsibility – the illegality of behaviour. And although the category of "civil liability" is often confused with the category of "risk", however, in their legal orientation and legal consequences, they differ significantly. The risk goes far beyond property liability and in many cases, due to regulations, a person is forced to bear negative property consequences in the absence of illegality of his behaviour. In this regard, the ratio of risk and liability is manifested in the fact that the risk allows to overcome the negative consequences, which are not due not only to the illegality of the debtor's behavior, but also his behavior in general. Liability in any case is associated with adverse consequences for the person who violated the law [21, p. 95].

On the other hand, it is worth remembering that responsibility together with the function of compensation performs the function of deterrence, which allows to ensure an effective (socially and economically) result [22, p. 156]. From the economic standpoint, the rules of responsibility are a tool for internalising risks, thus creating incentives for socially beneficial behavior [23, p. 150]. For example, when it comes to a special type of activity associated with the relationship of the use of technology, artificial intelligence, or the implementation of certain professional activities, the concept of higher responsibility is used in a positive and long-term sense. This

means a responsible attitude of the subjects to their responsibilities, which ensures their proper performance. At the same time, conditioned upon the peculiarities of activities related to the use of technology or the implementation of certain types of professional activities, the requirements for a responsible attitude to responsibilities are inflated compared to other activities. Compensation for the culprit in such cases should be understood as a measure of civil liability. In the case of innocent harm, compensation is a measure of protection for the victim.

In general, approving the abovementioned idea expressed in the Concept of updating the Civil Code of Ukraine, it seems appropriate to introduce into the Civil Code of Ukraine the category "legal consequences of nonperformance (violation) of civil duty" [6]. In this case, the concept of "legal consequences of non-performance (violation) of civil duty" will cover 1) measures to protect civil rights and interests; 2) measures to ensure the restoration of the dynamics and functioning of civil relations; 3) measures of civil liability. In this regard, it is appropriate to amend Art. 14 of the Civil Code of Ukraine, in particular to set out Part 3 of Art. 14 in the following wording: "The performance of civil duties is ensured by means of encouragement, the application of measures of responsibility and other legal consequences established by the contract or act of civil law" [6]. This will expand the possibility of protection of violated rights and interests and their effective restoration.

There is also a need to amend the title of Chapter 51 of the Civil Code of Ukraine. Now this chapter is called "Legal consequences of breach of obligation. Liability for breach of obligation". This wording is not very correct, as the legal consequences of violation of goiter' binding is opposed to responsibility. However, liability is only a component of the legal consequences of breach of obligation. Therefore, it is expedient to rename Chapter 51 of the Civil Code of Ukraine [6] to "Liability and other legal consequences of nonperformance (breach) of the obligation". At the same time, it is necessary to think about the delimitation of such categories as "measures of civil liability" and "measures to protect civil rights".

2.2. Distinguishing between measures of civil liability and measures to protect civil rights

In legal doctrine, the protection of rights and interests is understood as:

− a comprehensive system of measures of material and procedural order, which includes forms, methods, means, which are independently chosen by the person whose rights and interests are violated, and is used to ensure such rights [24, p. 47];

− An integrative legal model based on the protection of civil rights and legally protected interests as an interdisciplinary (mixed) legal institution that

exists on the border of substantive and procedural law, contains rules of private and public law and, accordingly, considers substantive and procedural aspects of civil rights protection. interests protected by law, covers its material, procedural and procedural elements, and combines static and dynamic states of protection [25, p. 156–157];

– legal activities aimed at eliminating obstacles to the exercise of their rights and the termination of the offense, the restoration of the situation that existed before the offense. At the same time Yu. Pritika notes that the term "measure of protection" is synonymous with the word "methods", while "means" and "forms" of protection should not be confused with the concept of "method" of protection of rights [26, p. 16–17]. We will adopt this approach and in the future we will proceed from the identity of the concepts of "protection measure" and "protection method".

The opinion of O. Cot seems appropriate that measures to protect civil rights and measures of civil liability are coercive, which is expressed not in their implementation solely through state coercive activities, but in the fact that their use is provided by possible coercion [27, p. 221]. In addition, the relationship between measures to protect subjective civil rights and civil liability is manifested in the fact that: 1) and measures of responsibility and methods of protection are certain legal means, legal instruments to influence the relevant social relations; 2) they are aimed at localizing the consequences of violations of rights, but methods of protection in their scope is a broader concept, which involves not only the restoration of the violated right or compensation for losses, but also prevention, suppression and elimination of violations of civil law; 3) the list of methods of protection of civil rights is wider than the measures of responsibility provided by law. Responsibility measures are an integral part of protection [28, p. 206], confirmed by the content of Art. 16 of the Civil Code of Ukraine [6], in which responsibility is inherent only in some ways of protecting civil rights and interests. It should be borne in mind that liability alone cannot provide such protection, as it is a static legal category. This function is realized through the application of specific measures of responsibility, which in civil science are called sanctions [29]. Quite common today is the legal position that civil liability is the imposition on the offender of legal consequences, which are manifested in the deprivation of his certain rights or in replacing the default with a new one, or joining the default additional [30, p. 97; 31, p. 127].

O. Cot, clarifying the criteria for distinguishing liability measures from other protection measures, adds that liability is associated with the deprivation of existing rights or the imposition of new additional responsibilities and performs compensatory, not restorative function, which is characteristic of measures to protect subjective civil rights.

This opinion is supported by other scholars, who point out that the absence of this feature indicates that this method of protection of civil rights is not a measure of civil liability [32, p. 137]. Finally, measures of legal responsibility are not factual, but legal in nature, which distinguishes them from self-defence, or property compensatory nature, which distinguishes them from measures of operational influence, which are organisational in nature [27, p. 230–233]. It is believed that such an approach is balanced and corresponds to the essence of measures to protect civil rights and civil liability and allows to effectively protect the violated right. In fact, this possibility of choosing the form of protection of rights or interests is a manifestation of the principle of dispositiveness, as the realisation of the right to protection involves self-determination of all issues related to the choice of remedies and their practical implementation [33, p. 144].

In this context, it is appropriate to note that at the time of adoption of the Central Committee of Ukraine, Art. 16, which enshrines ways to protect civil rights and interests, contained an extremely progressive (if not revolutionary) rule establishing the right of the court to apply other than those expressly provided for in this article, methods of protection: not only those provided by law, but and those established by the treaty [6]. According to the authors of the Central Committee of Ukraine, the parties, concluding the contract, had the opportunity, not limited to statutory means of protection, to provide effective, in their opinion, a way to protect rights in such a particular situation. But in practice, this idea did not work: when concluding the contract, the parties did not go so far in managing contractual risks to not only anticipate the consequences of non-performance or improper performance of the contract, but also to minimise them by identifying a unique method of protection. In the best case, when concluding the contract, they were limited to an indication of the means of protection established by the current legislation. However, the ambiguous case law on the application of the provisions of Part 2 of Art. 16 of the Civil Code of Ukraine [6] gave impetus to the negative trend that led to mass rejection of lawsuits due to the fact that the plaintiff, applying to the court, chose a method of protection not established by law or contract to protect the right or interest violated, unrecognised or disputed. The situation was partially remedied in 2017, when procedural legislation, including the Civil Procedure Code of Ukraine [34], was amended to expand the court's capacity to protect the rights, freedoms and interests of individuals. In the same year, in particular on October 3, Part 2 of Art. 16 of the Civil Code of Ukraine was supplemented with the words "or by a court in cases specified by law." Now this norm reads as follows: "The court may protect a civil right or interest in another way established by contract or

law or court in cases specified by law" [6]. This has improved the position of persons who apply to the court to protect their violated right or legitimate interest, as such a rule is aimed at implementing the provisions of Articles 55, 124 of the Constitution of Ukraine and Art. 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [6, p. 491–494]. However, such an updated rule came into conflict with the norm of Part 2 of Art. 5 of the CPC of Ukraine [34], according to which the court has the right to determine such a method of protection, which does not contradict the law, which has already been noted in the literature [28, p. 61]. Thus, protection measures and measures of civil liability are correlated as general and partial, i.e. protection measures are a broader concept that includes measures of civil liability [35, p. 81–86].

Currently, in the context of the recoding of civil law, the proposal to formulate the current principle of freedom of contract as broader – the principle of freedom of transaction – is considered promising. It is proposed to consider further expansion of the content of this principle in such a way as to generally declare freedom of entry into civil law relations (of course, subject to the requirements of reasonable and fair conduct of the subjects of legal relations) [36, p. 194]. Therefore, it seems logical not only to expand the possibility of entry of subjects into civil law relations, but also the possibility of protection of rights and legitimate interests by introducing into civil law category "legal consequences of non-performance (violation) of civil duties". And the category of "liability" to use in cases of illegal harm.

CONCLUSIONS

Revision of approaches to the institute of civil liability is already not only a matter of scientific discussion, but also a request for law enforcement practice. Unification of private law and harmonisation of civil law requires a coherent theory of civil liability, which must be developed by doctrine and ensure maximum efficiency in the restoration and protection of violated civil rights. To this end, the category of "responsibility" should be used in the negative-retrospective understanding as a law enforcement institution that provides for coercive measures for the offense and consists in establishing negative consequences for the offender in the form of restrictions of a personal and property nature. The obligation to act lawfully, the requirement to comply with legal norms – a positive perspective of responsibility – is rather a category related to the exercise of civil rights and the performance of civil duties. Failure to do so, especially in the case of a contractual relationship, a risk relationship, may not always be covered by the conditions of civil liability or, moreover, the concept of "composition of a civil offense". Therefore, it is advisable in such cases to use the category of "legal con-

sequences of non-performance (breach) of the obligation." Accordingly, it was proposed to amend the title of Chapter 51 of the Civil Code of Ukraine, stating it as follows: "Liability and other legal consequences of non-performance (breach) of obligation." This approach will allow not only to use measures of civil liability to restore the violated civil law, but also to apply other measures to protect civil rights and interests.

The distinction between protection measures and civil liability measures is made based on the ratio of general and partial, where protection measures, as a general category, cover measures of civil liability. At the same time, protection measures are not only legal instruments of influence on the relevant public relations and are aimed at localising the consequences of violations of rights, but also provide for the prevention, suppression and elimination of violations of civil law. In addition, the list of ways to protect civil rights is broader than statutory liability measures. This allows significantly expanding the actual possibility of protection of violated rights and restoring the violated rights as effectively as possible and to encourage participants in civil relations to socially desirable behaviour. At the same time, the issues of general grounds for liability for damage and conditions of civil liability, as well as certain measures (sanctions) for its application are also promising for further research.

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AGREEMENT ON CREATION BY ORDER AND USE OF THE OBJECT OF INTELLECTUAL PROPERTY RIGHTS

Abstract. *In the conditions of increasing attention of modern society and each of its members to creativity, manifestation of their personality, opportunities to disseminate creative activities through information networks, technical innovations, increasing importance and popularity are gaining agreements on intellectual property rights of this study. The purpose of the article is to determine the characteristics of the contract for the creation and use of intellectual property rights and disclose the content of new approaches in the legislative regulation of relations between customers and creators of intellectual property rights under contracts on the creation by order and use of the object of intellectual property rights. In the course of the research, to achieve this goal, the following methods were used, in particular: formal-logical, system-structural, empirical analysis, dogmatic and a number of others. This article analyses the concepts and features of the agreement on the creation by order and use of the object of intellectual property rights, identifies the essential terms of this agreement, its content, outlines the specific features of the parties to the transaction. The authors classify the agreements on the disposal of intellectual property rights and determine the place of the agreement on the creation by order and use of the object of intellectual property rights among these agreements. Current case law on contracts for the creation and custom of the object of intellectual property rights*

is studied. Current changes in the legislation of Ukraine, which regulates the distribution of rights between the customer and the creator, including based on the agreement on the creation of the order and use of the object of intellectual property rights. A comparative analysis is carried out with the previous version of certain norms of the legislation of Ukraine. Own conclusions on changes in the legislation of Ukraine on the ownership of intellectual property rights to objects created by order and further development of agreements on such objects in the field of intellectual property relations

Keywords: *customer, creator, obligations, property rights, employee*

INTRODUCTION

It is necessary to support the standpoint of scholars that the civil law of Ukraine is a special legal regulator of public relations [1, p. 138], and that the role of private law is increasing [2, p. 111], and the civil science of Ukraine has the main task of conducting research aimed at improving the current civil legislation [3, p. 53].

At one time, the 3rd President of the United States of America Thomas Jefferson noted the special nature of intellectual property, focusing on inventions that, in his opinion, could not be ordinary objects of property rights [4, p. 1].

In today's world, information and technological objects are often defined as increasingly important. In this regard, the state and business pay much attention to the recognition and protection of intellectual property [5, p. 1].

J. Hughes, notes that intellectual property should be considered as a stimulating structure that contributes to the progress of science and art [6, p. 1].

At the same time, we agree that intellectual property rights can arise for an extremely wide and diverse range of objects: from novels, computer programs, paintings, films, television broadcasts and performances, to clothing design, pharmaceuticals and genetically modified animals and plants, etc. [7, p. 1].

Information and communication technology products are indispensable tools of modern life around the world. Smartphones and laptops connect to a huge global computing infrastructure. The emergence of autonomous vehicles, products that provide virtual reality, a wide range of devices "Internet of Things" and countless other innovations suggest that these types of products will continue to play a growing role in today's global economy [8, p. 1].

Expansion and complication of economic relations lead to the transformation of the system of contracts, the emergence of new contractual forms [9, p. 130], and the function of the contract is especially relevant in cases where the legislation either does not contain legal regulation of certain relations, or legislative regulation is imperfect [10, p. 70]. The information component in contractual relations also becomes important in the conditions of information society [11, p. 85–94], especially given the fact

that information in civil law is considered as a separate intangible object [12, p. 145], and the contract is the main tool for organising public relations [13, p. 35], which reflects the dynamics of social relations [14, p. 174]. At the same time, the contract is a legal fact and a form of legal relationship, and a document that fixes the rights and obligations of the parties [15, p. 115].

Agreements on the disposal of intellectual property rights is a special legal form of use of works of science, literature, art and industrial property [16, p. 890], which are becoming increasingly important in modern society.

At this stage of development of legal science, a number of works by leading scientists are devoted to issues arising in connection with the conclusion of agreements on the disposal of intellectual property rights, in particular, such as: V. Dmitryshyn "Disposal of intellectual property rights" (Kyiv, 2008), O. Zhilinkova "Contractual regulation of intellectual property relations in Ukraine and abroad" (Kyiv, 2015), A. Kodynets "Civil law regulation of binding information relations" (Kyiv, 2016), O. Yavorska "IT Law" (Lviv, 2017), Yu. Kapitsa "Unification and harmonization of legislation on the protection of intellectual property rights of EU member states and the legislation of Ukraine" (Kyiv, 2019) and others.

At the same time, some issues remain unresolved regarding the subject of agreements on the creation and use of intellectual property rights, the essential conditions of these agreements and legislative approaches to the distribution of rights between the customer and the creator.

The relevance of the research topic is thus explained by the need to analyse at the current level of civil law science and practice aspects related to the definition of the subject, content, essential conditions of contracts for the creation of custom and use of intellectual property rights. The issue of determining the parties and objects of such agreements deserves special attention.

In Ukraine, in the process of legal reform, the current legislation is being actively updated [17, p. 36], as a result, in connection with the adoption of the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021 [18], new approaches were introduced in regulation of the relationship between the customer and the creator, which requires a separate study.

Considering the provisions of the current Civil Code of Ukraine of January 16, 2003 (hereinafter – the "Civil Code of Ukraine") [19], special civil legislation governing relations, arising in connection with the use of intellectual property rights, and doctrinal developments [20, p. 65–66], you can define the following system of agreements on the disposal of intellectual property rights:

1. Agreements on the transfer of exclusive intellectual property rights

This group includes, in particular:

1.1. Agreement on the transfer of exclusive intellectual property rights (Article 1113 of the Civil Code of Ukraine);

1.2. Copyright agreement on transfer (alienation) of property rights of copyright subjects (Article 31 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993) [21];

1.3. Agreement on the transfer of ownership of a trademark (Part 9 of Article 16 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" of December 15, 1993) [22];

1.4. Agreement on the transfer of ownership of an invention (utility model) (part 8 of Article 28 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" of December 15, 1993) [23];

1.5. Agreement on the transfer of ownership of an industrial design (Part 6 of Article 20 of the Law of Ukraine "On Protection of Industrial Design Rights" of December 15, 1993) [24].

2. Agreements on granting rights to use intellectual property rights.

This group includes, in particular:

2.1. License agreement (Article 1109 of the Civil Code of Ukraine);

2.2. Publishing agreement (Article 17 of the Law of Ukraine "On Publishing" of June 5, 1997) [25; 26, p. 107–108];

2.3. Agreement on the use (publication) of the work (Article 33 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993) [21].

3. Agreements on the creation of intellectual property rights

This group includes, in particular:

3.1. Agreement on the creation by order and use of the object of intellectual property rights (Article 1112 of the Civil Code of Ukraine) [19];

3.2. Copyright agreement (part 6 of Article 33 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993) [21];

3.3. Scenario contract [27, p. 239].

4. *Other ("related") agreements on the disposal of intellectual property rights*

This group includes, in particular:

4.1. Agreement on the distribution of property rights to the official work (Article 16 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993);

4.2. Agreement between co-authors (Article 436 of the Civil Code of Ukraine; Article 13 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993) and others.

From the above classification it can be seen that one of the agreements on the disposal of intellectual property rights is the agreement on the creation by order and use of the object of intellectual property rights, which belongs to the group of agreements on the creation of intellectual property rights.

The purpose of this study is definition features of the agreement on the

creation and use of the object of intellectual property rights and the disclosure of new approaches in the legislative regulation of relations between customers and creators of intellectual property rights under agreements on the creation and use of the object of intellectual property rights.

1. MATERIALS AND METHODS

The use of general scientific and special legal methods is carried out, including for full-fledged, comprehensive, comprehensive and complete work. Therefore, during this study, the paper used, in particular, the following methods: formal-logical, system-structural, empirical analysis, dogmatic.

The formal-logical method was used to analyse the provisions of the Civil Code of Ukraine, and other regulations governing the relationship between customer and creator. During the study, the following current regulations of Ukraine were analyzed: the Civil Code of Ukraine of January 16, 2003 [19], the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993 [21], Law of Ukraine "On Protection of Rights to Marks for Goods and Services" of December 15, 1993 [22], Law of Ukraine "On Protection of Rights to Inventions and Utility Models" of December 15, 1993 [23], Law of Ukraine "On Protection of Rights to industrial designs" of December 15, 1993 [24], the Law of Ukraine "On Publishing" of June 5, 1997 [25], and the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021 [18].

The application of the system-structural method in the work made it possible to classify agreements on the disposal of intellectual property rights into four main groups: 1) agreements on the transfer of exclusive property copyrights; 2) agreements on granting rights to use objects of intellectual property rights; 3) agreements on the creation of objects of intellectual property rights, and 4) other (so-called, "related") agreements on the disposal of intellectual property rights.

The empirical method was used to study the practical aspects of the application of certain types of agreements on the creation and use of intellectual property rights, including the analysis of current case law on these agreements of various courts of Ukraine. The legal nature of agreements on the creation and use of objects of intellectual property rights, the essential conditions, features of the subject composition and the content of these agreements are studied.

In the process of preparing a scientific article, using formal-logical and system-structural methods, and the method of empirical analysis, the authors analyzed the legislation of Ukraine governing the distribution of rights between customer and creator, both before and after the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021 [18].

The application of the dogmatic method allowed making a thorough

systematic analysis of the current legislation of Ukraine, which is devoted to the settlement of contractual relations with the participation of subjects of intellectual property rights in Ukraine. In the course of the study, based on the analysis of current doctrinal developments, including case law on contracts for the disposal of intellectual property rights, own conclusions were made, including the settlement of relations between the customer and the creator arising in connection with the implementation of agreements on the disposal of intellectual property rights; concerning the legal nature and features of agreements on the disposal of intellectual property rights; in terms of the essential terms of agreements on the disposal of intellectual property rights; in respect of the parties to agreements on the disposal of intellectual property rights; in relation to the subject and object of agreements on the disposal of intellectual property rights

2. RESULTS AND DISCUSSION

According to Article 1112 of the Civil Code of Ukraine under the agreement on the order and use of intellectual property rights, one party (creator – writer, artist, etc.) undertakes to create an intellectual property object in accordance with the requirements of the other party (customer) and in the established terms. It should be noted that along with the term enshrined in Article 1112 of the Civil Code of Ukraine, the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993 contains another concept – "copyright agreement". Thus, Part 6 of Article 33 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993 stipulates that under the copyright agreement the author undertakes to create a future work in accordance with the terms of this agreement and transfer it to the customer. The contract may provide for the payment by the customer to the author of the advance as part of the royalties [21].

Based on the analysis of the above definition, it can be concluded that the design of the contract for the creation and use of intellectual property rights is similar to the contract under Article 33 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993, but with the difference that the subject of the contract on the creation by order and use of the object of intellectual property rights is broader. In particular, the subject of the contract on the creation and use of the object of intellectual property rights may include rights to any objects of intellectual property rights, and the subject of the copyright agreement – only the rights to the objects of copyright.

As noted in the annotation to the article, agreements on the disposal of intellectual property rights are gaining in importance and popularity. This conclusion also applies to agreements on the creation by order and use of the object of intellectual property rights and is confirmed, in particular, by the materials of current case law:

– according to the decision of the Solomyansky District Court of Kyiv of December 29, 2018 in case No. 760/24493/18 one of the evidences in the case of invalidation of the certificate of Ukraine on the mark for goods and services is an agreement to create custom design sketches [28];

– the study of the contract for the creation and use of design objects was carried out by the court in the case of copyright infringement and recovery of compensation (decision of the Shevchenkivsky District Court of Kyiv of October 17, 2018 in the case No. 761/13278/16) [29];

– the author's contract for the development of characters for an audiovisual work was studied in the case of recovery of compensation for copyright infringement (decision of the Commercial Court of Odesa region of November 25, 2019 in the case No. 916/1506/19) [30];

– according to the decision of the Desniansky District Court of Kyiv of July 20, 2021 in case No. 754/9399/20 one of the evidences in the case of copyright protection is the contract with the author on the creation of works [31];

– rights to copyright objects created in connection with the terms of the contract were investigated in the process of consideration of the case No. 910/9490/20 by the Commercial Court of Kyiv (decision of the Commercial Court of Kyiv of December 11, 2020) [32];

– the author's contract for the creation of a script for a children's television series was studied in the case of recovery of compensation for copyright infringement (decision of the Commercial Court of Kyiv of May 25, 2020 in case No. 910/2552/15) [33], etc.

Special attention should be paid to the nature and characteristics of the contract for the creation and use of the object of intellectual property rights. Based on the analysis of the structure, which is enshrined in Article 1112 of the Civil Code of Ukraine, we can conclude that the contract for the creation and use of the object of intellectual property rights is a consensual transaction, because at the time of the contract the creator undertakes to create the object intellectual property, therefore, is not able to transfer such an object at the time of the contract. With regard to the essential conditions, it should be noted that the following should be distinguished: the condition of the subject of the contract; the period during which the creator undertakes to create an object of intellectual property rights; ways and conditions of using the object of intellectual property rights.

It should also be noted that the legislation may contain essential conditions for certain types of contracts for the creation of custom and use of the object of intellectual property rights. As mentioned above, in accordance with Part 6 of Article 33 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993, under the copyright agreement, the author undertakes to create a future work in ac-

cordance with the terms of this agreement and transfer it to the customer; the contract may provide for the payment by the customer to the author of the advance as part of the royalties.

Therefore, based on the analysis of this rule, we can conclude that the advance payment can be made by agreement of the parties to the copyright agreement, and royalties should always be paid to the author. The author's contract may specify the specific amount of remuneration or the procedure for determining the remuneration, including the terms of its payment [34, p. 216]. The tariff of royalties for the creation of a work, among other things, can be set, for example, by calculating the cost of one page of a certain format or taking into account the cost of a certain number of printed characters in the work, etc. [35, p. 1007]. Therefore, in our opinion, the condition on the amount of royalties refers to the essential conditions of the copyright agreement of the order. As you know, the subject of civil law can independently perform certain actions permitted by objective law in order to force the obligated person to perform his duty [36, p. 91]. Part 1 of Article 1112 of the Civil Code of Ukraine states that the parties to the contract for the creation and use of the object of intellectual property rights are the creator (writer, artist, etc.) and the customer.

The Civil Code of Ukraine stipulates that the creators of the object of intellectual property rights, in particular, include the author, performer, inventor (part 1 of article 421 of the Civil Code of Ukraine). In turn, Article 1 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993 states that the author is a natural person who has created a work through his creative work. This article also states that a performer is an actor (theater, film, etc.), singer, musician, dancer or other person who performs, sings, reads, recites, plays a musical instrument, dances or in any other way performs works of literature, art or works of folk art, circus, pop, puppet shows, pantomimes, etc., and conductor of musical and musical-dramatic works [21]. According to Article 1 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models", an inventor is a person whose intellectual, creative activity has created an invention (utility model). According to Article 1 of the Law of Ukraine "On Protection of Rights to Industrial Designs", the author is a person whose creative work created an industrial design [24].

Thus, we can draw an intermediate conclusion that the current legislation of Ukraine under the concept of "creator" means only a natural person. At the same time, we consider it necessary to state the position of O. Kulinich and L. Romanadze, who point out that if we assume that copyright regulates the relations that develop in the process of using an already created work, then to create the actual work, the party to the copyright agreement can be called only

conditionally [37, p. 271]. In our opinion, this position can be supported, because, indeed, at the time of concluding the agreement on the creation and use of the object of intellectual property rights, the object of intellectual property rights does not yet exist, and it cannot be said that the person will create such an object project and, as a consequence, will become the creator.

With regard to the customer as a party to the agreement on the creation and use of the object of intellectual property rights, it should be noted that currently there are no restrictions on the number of persons who may be customers of intellectual property rights. Regarding the subject of the contract on the creation by order and use of the object of intellectual property rights, it should be noted that its subject is the obligation of the creator to create a certain object of intellectual property rights. At the same time, the object of this agreement can be almost any object of intellectual property rights that will be created in the future (literary and artistic works, computer programs, phonograms, videograms, inventions, utility models, industrial designs, plant varieties, animal breeds, etc.). Considering the practical component of preparation and implementation of agreements on the creation and use of the object of intellectual property rights, it should be emphasised that this agreement must clearly define the requirements to be met by the object of intellectual property rights. In particular, depending on the type of object, you need to specify the volume, structure, shape, genre, purpose, working title of the work, type of invention, utility model, scope of the device, requirements for the appearance of the product and more.

The issue of the content of the agreement on the creation and use of the object of intellectual property rights and the information component in such agreements deserves special attention [6, p. 85–94], given that the processes of use, dissemination, storage of information contribute to information legal relations [38, p. 123]. The content of this agreement consists of the rights and obligations of the customer and the creator. Based on the analysis of actual practice of execution of agreements on creation by order and use of object of the intellectual property right it is possible to allocate such basic rights and duties of the parties of the agreement. Thus, the creator, in particular, undertakes to create an object of intellectual property rights that meets the terms agreed in the contract, the task of the customer, and transfer it in the appropriate form to the customer within the period specified in the contract. At the same time, the creator, among other things, has the right to demand payment of remuneration specified in the contract and to respect his personal non-property rights. In turn, the customer is obliged to pay the creator a fee for the creation and further use of the object of intellectual property rights, and to comply with the personal non-

property rights of the creator. In addition, first of all, the customer has the right to require the creator to create an object of intellectual property rights in accordance with the requirements specified in the contract, and to use such object in accordance with the terms of the contract.

In the process of studying the peculiarities of fulfillment of obligations under contracts for the disposal of intellectual property rights, special attention should be paid to current changes in the legislation of Ukraine governing the distribution of rights between customer and creator, including on the basis of the contract intellectual property rights, which were introduced by the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021. To reflect changes in the legal regulation of relations between the customer and the creator, we present previous and current versions of the articles of the Civil Code of Ukraine (Table 1).

Table 1.

Provisions of the Civil Code of Ukraine governing the distribution of rights between the customer and the creator

Previous edition (before the entry into force of the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021)	**Current edition (after entry into force of the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021)**
1	**2**
Article 429. Intellectual property rights to the object created in connection with the implementation of the employment contract 1. Personal intangible intellectual property rights to an object created in connection with the performance of an employment contract shall belong to the employee who created the object. In cases provided by law, certain personal non-property intellectual property rights to such an object may belong to a legal entity or individual where or where the employee works. 2. Intellectual property rights to an object created in connection with the performance of an employment contract shall belong	Article 429. Intellectual property rights to the object created in connection with the implementation of the employment agreement (contract) 1. Personal intangible intellectual property rights to an object created in connection with the performance of an employment contract shall belong to the employee who created the object. In cases provided by law, certain personal non-property intellectual property rights to such an object may belong to a legal entity or individual where or where the employee works. 2. Intellectual property rights to an object created in connection with the performance

1	2
jointly to the employee who created the object and to the legal or natural person where or in which he works, unless otherwise established. contract. 3. Specific features of exercising intellectual property rights to an object created in connection with the performance of an employment contract may be established by law	of an employment agreement (contract) shall belong to the employee who created the object and to the legal or natural person where or in which he works, jointly, if otherwise not established by this Code or agreement. 3. Specific features of exercising intellectual property rights to an object created in connection with the performance of an employment contract may be established by law
Article 430. Intellectual property rights to the object created to order 1. Personal intangible intellectual property rights to an object created by order belong to the creator of this object. In cases provided by law, certain personal intangible intellectual property rights to such an object may belong to the customer. 2. Intellectual property rights to an object created by order shall belong to the creator of this object and the customer jointly, unless otherwise provided by contract.	Article 430. Intellectual property rights to the object created to order 1. Personal non-property intellectual property rights to an object created by order belong to the creator of this object. In cases provided by law, certain personal intangible intellectual property rights to such an object may belong to the customer. 2. Intellectual property rights to an object created by order shall belong to the creator of this object and the customer jointly, unless otherwise provided by contract or law
Article 440. Intellectual property rights to the work 1. Property rights of intellectual property for a work are: 1) the right to use the work; 2) the exclusive right to allow the use of the work; 3) the right to prevent the misuse of the work, including the prohibition of such use; 4) other intellectual property rights established by law. 2. Property rights to a work belong to its author, unless otherwise provided by contract or law.	Article 440. Intellectual property rights to the work 1. Property rights of intellectual property for a work are: 1) the right to use the work; 2) the exclusive right to allow the use of the work; 3) the right to prevent the misuse of the work, including the prohibition of such use; 4) other intellectual property rights established by law. 2. Property rights to a work belong to its author, unless otherwise provided by contract or law.

1	2
	3. Intellectual property rights to a work created in connection with the performance of an employment agreement (contract) shall belong to the employee who created the work and to the legal or natural person where or in which he works, jointly, unless otherwise provided by the contract or by law. Property rights to computer programs and (or) databases created in connection with the performance of an employment contract (contract) belong to the legal or natural person where or in which the employee who created these computer programs and (or) databases, unless otherwise provided by contract. A legal or natural person where or where an employee works who created a work in connection with the performance of an employment agreement (contract) acquires intellectual property rights to such work in accordance with this Code or the contract at the time following the creation of such work, unless otherwise provided by contract. 4. Intellectual property rights to a work created by order shall belong to the customer, unless otherwise provided by contract or law. Intellectual property rights to a work of art created to order (except for a work specially created as part of the software) belong to its author, unless otherwise provided by contract or law. The customer acquires intellectual property rights to the work created by order, in accordance with the law or contract at the time following the creation of such work, unless otherwise provided by contract

Based on the analysis of the above provisions, it can be concluded that the legislator continues to adhere to the concept of joint ownership of intellectual property rights to the object created by order, the creator of this object and the customer. At the same time, it should be noted that the above law radically changed the approach to the distribution of intellectual property rights to computer programs, databases created in connection with the implementation of the employment contract (contract), including works of fine art created to order.

In particular, the following changes should be emphasised:

– As a general rule, property rights to computer programs and (or) databases created in connection with the performance of an employment contract (contract) belong to the legal or natural person where or where the employee who created these computer programmes and (or) databases works, unless otherwise provided by contract;

– as a general rule, intellectual property rights to a work created by order belong to the customer, unless otherwise provided by contract or law.

In addition, the legislator made an exception to the rule on the distribution of intellectual property rights, namely, works of art: intellectual property rights to a work of art created by order (except for a work specially created as part of software) belong to its author, unless otherwise provided by contract.

CONCLUSIONS

Proceeding from the foregoing, the conclusions can be drawn as follows.

1. Contracts for the creation and use of objects of intellectual property rights are increasingly used in practice by the subjects of civil law, as evidenced, inter alia, current case law.

2. The agreement on the creation by order and use of the object of intellectual property rights has all the hallmarks of a consensual transaction.

3. It is necessary to allocate the following essential conditions of the contract on creation by order and use of object of the intellectual property right: condition on a subject of the contract; the period during which the creator undertakes to create an object of intellectual property rights; ways and conditions of using the object of intellectual property rights.

4. At the time of concluding the contract for the creation by order and use of the object of intellectual property rights, the object of intellectual property rights does not yet exist, and it can not be said that the person will create such an object and, consequently, become a creator.

5. The subject of the contract on the creation by order and use of the object of intellectual property rights is the obligation of the creator to create a certain object of intellectual property rights.

6. The parties to the contract for the creation and use of the object of intellectual property rights must clearly define the requirements to be met by the

object of intellectual property rights. Depending on the type of object, you need to specify the scope, structure, shape, genre, purpose, working title of the work, type of invention, utility model, scope of the device, requirements for the appearance of the product and more.

7. The legislation of Ukraine regulating the procedure for the distribution of rights between the customer and the creator has changed. Meanwhile, the legislator continues to adhere to the concept of joint ownership of intellectual property rights to the object created by order, the creator of this object and the customer.

8. Currently, the legislator has changed the approach to the distribution of intellectual property rights to computer programs, databases created in connection with the implementation of the employment contract (contract), as well as works, including works of fine art, created to order, which requires further testing in time and practice. As a general rule, property rights to computer programs and (or) databases created in connection with the performance of an employment contract (contract) belong to the legal entity or individual where or in which the employee who created these computer works. programmes and (or) databases. Intellectual property rights to a work created to order belong to the customer. Intellectual property rights to a work of fine art created to order (except for a work specially created as an element of software) belong to its author.

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ENSURING HUMAN RIGHTS IN LAND LEGAL RELATIONS: SOCIO-ECONOMIC AND LEGAL FRAMEWORKS

Abstract. *The opening of the free land market and the expansion of its purchase and sale in the current conditions of development of Ukrainian society and the state is an extremely relevant topic and requires appropriate scientific study from the standpoint of human rights. Therefore, the authors aimed to analyse international legal documents in the field of regulation of protection of peasants' rights to land and proposed scientifically sound proposals to improve the relevant processes in Ukraine. The work with the use of general and special methods of scientific knowledge (dialectical, formal-logical, systematic, historical-legal and comparative analysis) considers the legal framework and international approaches to protect the rights of peasants to land in the context of clarifying and summarizing the basic provisions of human rights documents. especially the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas, adopted by*

the UN General Assembly in December 2018. The analysis showed that a number of other rights enshrined in the Declaration are mutually reinforcing and necessary for the protection of land rights, including the right to participate, the right to information and access to justice. As a result of the study, proposals were developed for Ukraine to fulfill its obligations as a member of the UN and a member state of the UN Human Rights Council in the field of protection of land rights of peasants. All branches of government in Ukraine, including the executive, legislature and judiciary, should be involved in the implementation of the Declaration by creating new mechanisms for human rights practices in land regulation and a system for monitoring the rights of peasants in the free land market at national and local levels

Keywords: *human rights approach, right to land, rural areas, land reform, UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas*

INTRODUCTION

On July 16, 1990, the Verkhovna Rada of the Ukrainian PCP adopted the Declaration [1] on State Sovereignty, "expressing the will of the people of Ukraine" and "seeking to create a democratic society" and "recognising the need to build the rule of law, with the aim of establishing the sovereignty and self-government of the people of Ukraine," proclaimed the state sovereignty of Ukraine as the supremacy, independence, completeness and indivisibility of power within its territory and independence and equality in foreign relations. According to Section II of the Declaration: "citizens of the Republic of all nationalities constitute the people of Ukraine; the people of Ukraine are the only source of state power in the Republic; the sovereignty of the people of Ukraine is realized based on the Constitution of the Republic both directly and through people's deputies elected to the Verkhovna Rada and local councils of the Ukrainian PCP" [1]. The Declaration enshrined the right of ownership of the Ukrainian people: "The people of Ukraine have the exclusive right to own, use and dispose of the national wealth of Ukraine. Land, its subsoil, airspace, water and other natural resources within the territory of the Ukrainian PCP, natural resources of its continental shelf and exclusive (marine) economic zone, all economic and scientific-technical potential created in Ukraine is property of its people, the material basis of the sovereignty of the Republic and are used to meet the material and spiritual needs of its citizens" [1].

On July 1, 2021 in Ukraine in accordance with the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Circulation of Agricultural Land" No. 552-IX from 03/31/2020 opened a free market of purchase and sale of agricultural land for individuals, and from 2024 The participants of the land market will be enterprises of various organisational and legal forms, including export-oriented agricultural holding companies, which today lease from 100 to 600 thousand hectares of land.

In many countries, the transition to large-scale export-oriented agriculture has led to significant increases in food prices, local food insecurity, forced evictions, and rural displacements, which in turn has increased migration from rural to urban areas and, as a result, contributed to increased migration from rural to urban areas and, as a result, increased pressure on access to urban land, communications and housing [2]. Much of this relocation is carried out in a way that violates human rights in many communities, further exacerbating their precarious situation and negatively affecting the country's spatial development.

The Office of the United Nations High Commissioner for Human Rights (Office of the High Commissioner for Human Rights – the main body of the United Nations for Human Rights, which represents international obligations to promote and protect the full range of human rights and freedoms) said that land is not just a commodity, but an important catalyst for the realisation of many human rights [3]. The right to land is pervasive, directly affects the exercise of a number of other human rights and therefore needs the highest recognition and protection of all UN member states.

The postulate is obvious – for many people the land is a source of livelihood and the basis for the realisation of their basic rights to food, water, habitat. It is closely linked to people's identity, their social and cultural rights. Aspects of human rights to land address a number of issues related to poverty reduction and rural development, building harmony in rural areas, and humanitarian development.

The issue of land relations is especially relevant in connection with the military conflict in eastern Ukraine, which began in 2014 and continues to this day. According to the Unified State Register, the number of companies, among the owners, founders or final beneficiaries of which there is at least one citizen or resident of the Russian Federation or the Republic of Belarus, as of January 1, 2022 was 16,896 companies. Among them, about 1,200, along with their main activities, also declared work in the agricultural sector by renting land. Under such conditions, this poses a threat to Ukraine's national security.

The aim of the work is to analyse the legal framework and international approaches to the protection of peasants' land rights in the context of clarifying and summarising the main provisions of the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas adopted by the UN General Assembly in December 2018 and development based on scientifically sound proposals for improving the relevant processes in Ukraine in a free land market.

1. MATERIALS AND METHODS

The methodological basis of the study was taken in dialectical unity and contradictions of genetic and teleological

principles of knowledge of socio-legal phenomena and concepts in terms of their causal relationship and interdependence, historical development and functioning; their value-target structure and social purpose.

The materials of the study are the main provisions of international legal acts of the UN in the field of human rights, as Ukraine as one of the founding members of the UN (Ukraine participated in the UN from 1945 to 1991 as the USSR, and since independence – as Ukraine) in the activities of this organisation one of the priority areas of foreign policy.

The Declaration on the Rights of Peasants and Other Persons Working in Rural Areas (hereinafter referred to as the Declaration) is a key study of international legal documents. In 2018, the United Nations, in the light of current challenges and the growing threat to peasants of their rights to land, has offered States an integrated human rights instrument, the Declaration of the Rights of Peasants and Other People Working in Rural Areas. With this tool, states can build national systems to protect the rights of peasants, especially during agrarian and land transformations. In developing the main provisions of the Declaration, experts have applied an integrated systematic approach to the protection of the rights of peasants to use and strengthen existing instruments for the protection of human rights [5]. With this in mind, the adoption of the Declaration at the UN General Assembly level has created a unique opportunity to recognise and protect the rights of peasants, local communities, indigenous peoples, fishermen, pastoralists, nomads, hunters, landless, rural women, rural youth and agricultural workers vision of solving the problem.

In the course of the research the materials and main provisions of the international documents related to the Declaration [6–8] were used, such as: Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women for Youth; ILO Convention No. 169 concerning Indigenous and Tribal Peoples; UN Declaration on the Right to Development; UN Declaration on the Rights of Indigenous Peoples; Voluntary principles to support the progressive realisation of the right to adequate food in the context of national food security; Voluntary principles for responsible management of land use, fishery resources and forests in the context of national food security; Voluntary principles for sustainable small-scale fisheries in the context of food security and poverty eradication.

The study includes an analysis of the main conclusions of the UN Special Rapporteur on the right to food, including land rights [9], and the provisions of the Joint Statement of Key Human Rights Advisers at the UN level, "Ac-

tion to implement the UN Declaration on the rights of peasants and other people working in rural areas" [10], made by them on the occasion of the 1st anniversary of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas on December 17, 2019. The statement said that the Declaration on the Rights of the Peasant was drafted in the light of the provisions of binding international treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on Biological Diversity and its Protocols, and the International Treaty on Plant Genetic Resources for Food and Agriculture. Based on the fact that the Declaration summarises the basic provisions of binding international treaties, UN human rights experts have recognised the need for all states to better protect the rights of peasants and other people working in rural areas and called on states to implement the Declaration on the Rights of Peasants and Other People working in rural areas, as the widespread recognition of the new norms set out in this document is crucial to promoting a comprehensive human rights movement.

2. RESULTS

In the Declaration of the Rights of Peasants and Other People Working in Rural Areas, the rights of rural communities to land are argued in various articles (first, second, third, fourth, fifth, seventeenth, eighteenth, twenty-first, twenty-fourth) [4]. Land rights are set out directly in Articles 5 and 17, and in Article 4, which deals exclusively with women's right to land. The right to land includes freedoms and norms, including freedom from discrimination, protection against forced evictions, movement and exploitation of land, and the right to agrarian reform and the preservation and sustainable use of land. Other rights, such as the right to participate, information and access to justice, which are important for the protection of the rights of rural communities to land, are also enshrined in the Declaration [4]. Therefore, the Declaration is an important tool for synergetic interaction between the state and the peasants in protecting their legal rights in access to land and the realization of the public function of land ownership.

The Declaration defines the right to land and other natural resources along with the obligations of states to respect the legitimate rights of peasants in Articles 5 and 17. In particular, Article 5 provides:

1. Peasants and other people working in rural areas have the right to access and use natural resources in their communities in a sustainable way to ensure adequate living conditions […].

They also have the right to participate in the management of these resources.

2. States should take measures to ensure that any exploitation affecting natural resources owned or used by peasants and other people working in rural areas is carried out based on:

(a) conducting appropriate social and environmental assessments;

(b) voluntary consultations in accordance with Article 2.3 of this Declaration;

(c) creating conditions for the equal and equitable distribution of the benefits of such exploitation, established on mutually agreed terms between those who use natural resources and peasants and other people working in rural areas.

Article 17 of the Declaration states:

1. Peasants and other people living in rural areas have the right to land, individually and/or collectively, […] including the right of access, sustainable use and management of land, water bodies, coastal waters, fishery resources, pastures, forests to ensure a decent standard of living in security and peace and to develop their culture.

2. States should take appropriate measures to eliminate and prohibit all forms of discrimination related to the right to land, including those arising from marital status, incapacity or lack of access to economic resources.

3. States should take appropriate measures for the legal recognition of property rights, allowing for the existence of different models and systems. This includes ordinary property rights, which are not currently protected by law. States must protect legal property and ensure that peasants and other people working in rural areas are not evicted arbitrarily or illegally, and their rights are not diminished or violated. States must recognise and protect natural resources and related systems of collective use and management.

4. Peasants and other people working in rural areas have the right to protection from arbitrary and illegal movement from their land or place of residence, or from the deprivation of other natural resources necessary to meet decent living conditions. States should include protection against relocation in national legislation consistent with international human rights and humanitarian law. States should prohibit unauthorised and unlawful forced evictions, the destruction of agricultural land, and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as an instrument or means of war.

5. Peasants and other people working in rural areas who have been arbitrarily or illegally deprived of land have the right, individually and/or collectively, together with others or as a community, to return to their land, which they have arbitrarily or illegally deprived of, including in cases of natural disasters and/or armed conflicts and to restore access to natural resources necessary to meet adequate living conditions or to obtain equal, fair and legal compensation in the event that their return is not possible.

6. If necessary, states should take appropriate measures to carry out agrarian reforms to facilitate comprehensive and equal access to land and other natural resources needed to provide peasants and other people working in rural areas with adequate living conditions and to limit excessive land concentration and control of land, considering its social function. Priority in the distribution of public lands, reservoirs and forests should be given to landless peasants, youth, small-scale fishermen and other rural workers.

7. States should take measures aimed at the conservation and sustainable use of land and other natural resources used in their production, including through agri-environment, and provide conditions for the restoration of biological and other natural opportunities and cycles.

Article 5 enshrines the right of peasants and other people working in rural areas – alone or in association with others or as a community – to have access to and use the natural resources available in their communities to ensure adequate living conditions, including land, in a sustainable way; and have the right to participate in the management of these resources (paragraph 5.1). Article 17 enshrines the right to land of peasants and other people living and/or working in rural areas and stipulates that this right may be exercised individually and/or collectively (paragraph 17.1), independently or jointly with others or as a community (in accordance with Article 1, paragraph 1.1) [4].

Therefore, according to the Declaration, the right to land of peasants and other people working in rural areas includes the right of access, sustainable use, management of land and water bodies, coastal waters, fishery resources, pastures and forests to achieve a decent standard of living to have a place to live in security, peace and dignity and develop their culture (p. 17.1).

Given the particular severity of the problem, a special place in the Declaration is given to the right of rural women to land (Article 4). According to the Food and Agriculture Organization of the United Nations, rural women around the world play a key role in local and global food systems – producing food crops and earning income for their families. However, women and girls make up 70% of the world's hungry people and face multiple discrimination in access to productive resources, including land [11]. Article 4 of the Declaration provides:

1. States shall take all appropriate measures to eliminate all forms of discrimination against rural women and other women working in rural areas and to promote their empowerment to ensure the full and equal enjoyment of all human rights and fundamental freedoms based on equality between men and women, including the realisation, free participation and benefit of rural development in the economic, social, political and cultural spheres.

2. States shall ensure that rural women and other women working in rural areas enjoy all the human rights and fundamental freedoms set forth in this Declaration and other international human rights instruments without discrimination. [4]

In international human rights law, in particular the Convention on the Elimination of All Forms of Discrimination against Women [12], the rights of rural women are recognised in Article 14, which is fully consistent with Article 4 of the Declaration [4]. This article states that States should take all appropriate measures to eliminate all forms of discrimination against rural women and other women working in rural areas, promote their rights and ensure that they enjoy all human rights and fundamental freedoms without discrimination, including the right to on equal access, use and management of land and other natural resources, including equal or priority treatment of land and agrarian reforms and resettlement schemes (Article 4, paragraph 4.1 and paragraph 4.2) [12]. To prevent discrimination against rural women's land rights from family conflicts, Article 17 provides that States must eliminate and prohibit all forms of discrimination relating to land rights, including those arising from marital status, incapacity or lack of access to economic resources (Article 17, paragraph 17.2) [12].

The right to land includes freedoms and rights that states must respect, protect and exercise without any discrimination [7], as the right to land is complementary to other human rights. In rural areas, the right to land is a "portal" for the realisation of other vital rights and freedoms of rural communities. Among them, the most important are the following human rights and freedoms, which directly depend on the right to land, namely: freedom from discrimination; protection against forced eviction and relocation; protection against the negative consequences of land use; real participation in the benefits of agrarian transformations; conservation and sustainable use of land resources.

2.1. Freedom from discrimination

Peasants and other people working in rural areas have the right to full enjoyment of the right to land and have the right to be free from various forms of discrimination in respect of this right (Article 3.1, paragraph 17 and Article 17, paragraph 17.1) [12]. The Declaration stipulates that States should take appropriate measures to eliminate conditions conducive to the continuation of discrimination, including various and pervasive forms of discrimination against peasants and other persons working in rural areas (Article 3, paragraph 3.3) [4]. States should also eliminate and prohibit all forms of discrimination concerning land rights, including those arising from marital status, incapacity or lack of access to economic resources (Article 17, paragraph 7.2) [13, p. 1597; 14, p. 1187].

2.2. Protection against forced eviction and relocation

Peasants and other people working in rural areas also have the right to freedom from forced eviction (migration) and movement (Article 17, paragraph 17.3 and paragraph 17.4). States must ensure the legal recognition of property rights [15; 16], including customary land tenure rights, which are currently not protected by law, while recognising the existence of different models and systems of land use by peasant farms in the place of residence [17, p. 48–50]. States should protect the lawful residence of local people and those working in rural areas, ensure that peasants and other people working in rural areas are not evicted arbitrarily or illegally, and that their rights are not suppressed or violated in any other way. States must also recognise and protect the natural heritage of rural communities and related systems of collective use and management (Article 17, paragraph 17.3) [15].

To protect peasants and other people working in rural areas from arbitrary and illegal removal from their land, states must implement protection against displacement in national legislation consistent with international human rights and humanitarian law. States must prohibit the arbitrary and unlawful forced evictions of rural residents, the depopulation of rural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as an instrument or method of violent confrontation (Article 17, paragraph 17.4) [15].

The Declaration stipulates that those who have been arbitrarily or illegally deprived of land have the right, individually and/or collectively, together with others or as a community, to return to their land from which they were arbitrarily or illegally deprived, including in the event of natural disasters and/or armed conflict, and to restore access to the natural resources used in their activities and necessary to meet adequate living conditions or, where possible, to obtain equal, fair and legal compensation in the event that recovery is not possible (Article 17, paragraph 17.5) [4]. Article 24 on the right to housing also stipulates that States shall not arbitrarily or illegally, temporarily or permanently evict peasants or other persons working in rural areas against their will from the houses or lands they occupy without providing access to appropriate forms of legal or other protection (Article 24, paragraph 24.3). In the event that eviction is imminent, the state must provide or provide the peasants with equal and fair compensation for any material or other damage (Article 24, paragraph 24.3) [4].

2.3. Protection against the negative consequences of land use

Article 5 stipulates that States must take measures to ensure that any exploitation affecting natural resources traditionally preserved or used by farmers and other persons working in rural areas is based

on a proper assessment of the social and environmental impact of such exploitation of rural communities and territories; bona fide consultations organised for rural residents in accordance with Article 2, paragraph 2.3, Declarations and methods of equal and equitable distribution of benefits from such exploitation, established on mutually agreed terms between those who use natural resources and rural communities (Article 5, paragraph 5.2) [18, p. 112].

2.4. The right to participate in the benefits of agrarian reform

The Declaration recognises the need for agrarian transformation for peasants to exercise their land rights. Article 17 stipulates that States must take appropriate measures to carry out agrarian reforms to guarantee rural communities wide and equal access to land and other natural resources necessary to provide peasants and other people working in rural areas with decent living conditions, and in order to limit the excessive concentration and control of land resources to a limited number of users, considering the social function of the land (Article 17.6). When allocating public lands, fish resources and forests, priority should be given to landless peasants, youth, small-scale fishermen and other rural workers (Article 17, paragraph 17.6) [4].

2.5. Conservation and sustainable use of land

The Declaration defines the right of peasants and other people working in rural areas to preserve and protect the environment and the productive potential of agricultural land, and other natural resources that they use and dispose of (Article 18, paragraph 18.1). Article 18 states that states must take effective measures to overcome the lack of safe storage and disposal of hazardous materials, substances and waste on the land of peasants and other people working in rural areas. Rural communities, in turn, will cooperate in addressing the threat to the exercise of their rights resulting from transboundary environmental damage (Article 18, paragraph 18.4). States should also protect peasants and other people working in rural areas from the abuse of non-state actors (private sector, corporations, agribusinesses and entrepreneurs), including by complying with environmental laws (Article 18, paragraph 18.5) [4].

States should also protect and restore water-related ecosystems in rural areas, including wetlands, forests, rivers, aquifers and lakes, from overuse and pollution by harmful substances, including industrial effluents and concentrated minerals and chemicals, which are slowly or quickly lead to poisoning of living organisms (Article 21.4). To realise this right, the Declaration stipulates that states must take measures aimed at the conservation and sustainable use of land and other natural resources used for production, in particular through agri-environment, and provide conditions for the restoration of biological and other nat-

ural opportunities and cycles (Article 17, paragraph 17.7) [4]. A number of other rights enshrined in the Declaration are interdependent and mutually reinforcing with the right to land and necessary for the protection of land rights. These are the right to participate, information and access to justice, which are enshrined in Articles 2, 10, 11, 16, 19, 27 [4].

2.6. Fundamental right to participate

The right to participate enshrined in Article 2, paragraph 2.3, Article 10 and Article 16, paragraph 3 [4] is fundamental to the exercise of the right to land, and the entire Declaration. A separate article 10, in particular, states:

1. Peasants and other people working in rural areas have the right to participate actively and free of charge directly and/or through representative organisations in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods.

2. States should promote the participation of peasants and other people working in rural areas, directly and/or through representative organisations, in decision-making processes that may affect their lives, land and livelihoods; this includes respect for the establishment and growth of strong and independent organisations of peasants and other people working in rural areas and their participation in the preparation and implementation of food, labour and environmental safety standards that may affect their lives, work and safetyi n the countryside.

States should promote rural communities and ensure their full and equal access to and participation in local, national and regional markets to sell their products at prices that ensure them and their families a decent standard of living (Article 16.3) [4].

According to the Declaration, states must also respect the creation and growth of strong and independent organizations of peasants and other people working in rural areas (Article 10.2). States promote their involvement directly and/or through their representative organisations in decision-making processes that may affect their lives, land and livelihoods. This involves the involvement of rural communities in the development of national and international agreements and standards (Article 2, p. 4), food safety, labour and environmental standards (Article 10, p. 2), legislation covering product evaluation and certification (Article 11, p. 3), seed policy, protection of plant varieties and other intellectual property laws, certification schemes and seed market laws (Article 19, item 8) and conducting research and development in the field of agriculture (Article 19, p. 7) [4].

The Declaration also stipulates that States, in partnership with peasants and other people working in rural areas, must pursue public policies at the local, national, regional and international levels to promote and protect the rights to

adequate nutrition, food security and food sovereignty, steel and fair food systems (Article 15, paragraph 5). Specialised institutions, funds and programmes of the UN system and other intergovernmental organisations, including international and regional financial organisations, are also considering ways to ensure the participation of peasants and other people working in rural areas in the implementation of the Declaration (Article 27, paragraph 1) [4].

2.7. The right to housing

The right to information is enshrined in Article 11, p. 1 and 2:

1. Peasants and other persons working in rural areas have the right to seek, receive, develop and transmit information, including information on factors that may affect the production, processing, marketing and distribution of their products.

2. States shall take appropriate measures to ensure that peasants and other people working in rural areas have access to appropriate, transparent, timely and adequate information in a language, form and means appropriate to their cultural traditions, to promote their empowerment and ensuring effective participation in decision-making in matters that may affect their lives, land and livelihoods.

The right to information is the right of peasants and other people working in rural areas to seek, receive, develop and transmit information, including information on factors that may affect the production, processing, marketing and distribution of their products [19, p. 101; 20, p. 2055]. To guarantee this right, states should take measures to ensure access to relevant, transparent, timely and adequate information in the language, form and means appropriate to their cultural methods, to promote their empowerment and ensure effective participation in decision-making in cases that may to influence their life, land and livelihoods [21, p. 3; 22, p. 1535].

2.8. Access to justice

Access to justice is key to upholding the right of peasants to land and protecting defenders of the right to land [23]. This fundamental right of the peasants is reflected in Article 12, paragraphs 1 and 12, paragraph 5:

1. Peasants and other people working in rural areas have the right to effective and non-discriminatory access to justice, including access to fair dispute resolution procedures and effective remedies against all human rights violations. Such a decision must take due account of their customs, traditions, norms and legal systems in accordance with the relevant obligations under international law.

2. The State shall provide to peasants and other persons working in rural areas effective mechanisms to prevent and compensate for any action aimed at or leading to human rights violations, the unauthorised deprivation of land

and natural resources or deprivation of livelihoods, and to any form of forced relocation of the rural population.

These articles of the Declaration recognise the right of peasants and other persons working in rural areas to effective and non-discriminatory access to justice, including access to fair dispute resolution procedures and effective remedies against all human rights violations (Article 12, paragraph 1). It is also stipulated that such decisions must take due account of the customs, traditions, norms of peasants and other people working in rural areas and legal systems in accordance with the relevant obligations under international human rights law (Article 12, paragraph 1) [4].

To guarantee the right of access to justice, and the right to land, Article 12, paragraph 5, requires the state to provide peasants and other people working in rural areas with effective mechanisms to prevent and compensate for any actions aimed at or leading to to the violation of human rights, unauthorized deprivation of land and natural resources, deprivation of livelihood, and any form of forced displacement [24, p. 431; 25, p. 12].

3. DISCUSSION

In today's world, when the problem of human rights has gone far beyond the borders of a single state, there is a need to create universal international legal standards, which are also recognised as fundamental human rights. These standards are reflected in a number of important international legal acts that have established universal standards of human rights and interests, defining the limit beyond which the state can not go [26, p. 8]. The Declaration of the Rights of Peasants is a universal international legal standard in guaranteeing the rights of peasants to land. The implementation of the Declaration is a unique opportunity to set precedents for the redress of various forms of discrimination, violations and historical injustices that have affected peasants and other people working in rural areas for decades. Particular attention should be paid to developing appropriate measures to eliminate all forms of discrimination against women farmers and other women working in rural areas, promoting their rights and ensuring that they enjoy all human rights and fundamental freedoms without discrimination in the Declaration.

At the international level, the main provisions of the Declaration will be included in the strategies aimed at achieving the Sustainable Development Goals. UN human rights experts in their respective positions will implement the provisions of the Declaration of the Rights of Peasants in the course of their mandates; available methods will protect the rights of peasants and other people working in rural areas and provide recommendations to states on the directions, mechanisms and tools for implementing the provisions of the Declaration of the Rights of Peasants at the national level [10].

Specialised UN agencies, funds and programmes and other intergovernmental organisations, including international and regional financial organisations, will contribute to the full implementation of the Declaration, including through mobilization, assistance and cooperation; promote respect for and full application of the provisions of the Declaration; will monitor their effectiveness. These include the United Nations World Food Security Committee (FAO) and UN specialised agencies, funds and programmes. The International Monetary Fund (IMF), the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO) should consider the need to implement the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas.

The UN Human Rights Council is currently establishing a new Special Procedure for Monitoring the Rights of Peasants and Other People Working in Rural Areas; monitoring the implementation of the Declaration will be included in the Universal Periodic Review. It is also planned to establish a UN Voluntary Fund for peasants and other people working in rural areas to support their participation in the UN human rights system [10].

At the national level, states must play a key role in implementing the Declaration of the Rights of Peasants. This role is emphasised in numerous UN regulations that define and detail the obligations of states [27]. States parties to the UN Human Rights Council must report on the implementation of the rights of peasants and other people working in rural areas, and, above all, the rights to land. The UN Council also has the right to consider individual complaints from peasants about violations of their rights in the process of land reform in accordance with the rights guaranteed to them by the Declaration. Following the consideration of individual applications, the Council makes recommendations to the authorities.

Ukraine, which is a member of the United Nations and a member state of the UN Human Rights Council, has opened a real land protection instrument, approved by the UN General Assembly. To transform the Declaration from a human rights document into a real tool, the state of Ukraine must implement a number of measures:

- to involve all branches of government, including the executive, the legislature and the judiciary, in the implementation of the main provisions of the Declaration on the Rights of Peasants and Other Persons Working in Rural Areas;
- to ensure the coherence of international agreements and standards to which Ukraine is a party with the rights of peasants enshrined in the UN Declaration, and to develop mechanisms to ensure their coherence with national agricultural, land, regional, economic, social and cultural policies;
- to consolidate at the legislative level the status of peasants and other

people working in rural areas as agents of change and key actors in local, national and international implementation of human rights protection. Effective implementation of the Declaration provides for the full and active participation of peasants and other people working in rural areas in all measures related to its implementation. Peasants should be involved directly or through representative organisations in decision-making processes that may affect their lives, land, resources and livelihoods. To this end, the creation and development of strong independent organisations of peasants and other people working in rural areas must be supported at the state level;

•to develop a number of measures of state regulation of the activities of private sector entities (large land users, agricultural holdings, transnational corporations and other economic entities), aimed at their observance of the rights of peasants enshrined in the Declaration. Such measures include the need to protect peasants from landlessness, forced migration, arbitrary or illegal evictions and relocations; ensure that no hazardous materials, substances or wastes are stored or disposed of on their land, and prevent risks arising from the development, transport, use, transfer or release of any living modified organisms;

• create a rural network of legal aid to peasants, especially landless people, youth, small producers and other rural workers in the sale of land, distribution of state lands, forest and water resources for agriculture and fisheries, support for peasant seed production and agro-biodiversity;

• introduce new mechanisms for monitoring the protection of peasants' rights in the process of introducing a free land market at the national and local levels, prepare regular public reports on the state of affairs in the field of respect for peasants' land rights and other rights set out in the Declaration;

• ensure the implementation of appropriate and effective measures to promote international cooperation in support of national efforts to realise the rights of peasants in accordance with the Declaration, including in partnership with relevant international and regional organisations and civil society, including organisations of peasants and other rural workers.

CONCLUSIONS

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas is an important tool for synergistic cooperation between the state and peasants in protecting their legal rights to land and realising the public function of land ownership. According to the Declaration, the right to land of peasants and other people working in rural areas includes not only the right to sell land. In the international interpretation, it is the right to access, sustainable use, management of land and water bodies, coastal waters, fishery resources, pastures and forests to achieve a decent standard of living, to have a place

to live in security, peace and dignity, to develop their culture.

In legal theory and practice, land law should be considered not only from a purely technical standpoint, but also on a systematic basis, as the right to land is a "portal" for the realization of other vital rights and freedoms of rural communities. Among them, the most important are the following human rights and freedoms, which directly depend on the right to land – the right to food, water, spatial livelihood; freedom from discrimination; protection against forced eviction and relocation; protection against the negative consequences of land use; real participation in the benefits of agrarian transformations; conservation and sustainable use of land resources, etc.

The Declaration summarises the main provisions of binding international human rights treaties, indicating the need for Ukraine to better protect the rights of peasants and other people working in rural areas, as wide recognition of the new norms set out in this document is crucial to promote inclusive human rights movement.

The primacy of human rights enshrined in the Declaration of the Rights of Peasants over other international instruments, including those governing trade, investment and intellectual property rights, is based on the priority given to human rights in international and national law under UN Charter – Article 1, paragraph 3, Articles 55, 56 and 103.

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THE FORMS OF RESPONSIBILITY FOR VIOLATION OF THE FOREST LEGISLATION

The thesis reflects topical issues on the form of responsibility for violation of the forest legislation. There is the complexity of legal liability of the legal institution for violation of the forest legislation noted, that is an important mean of ensuring the rule of law in the forest relations.

The relationship between the concept of a form and sanction of responsibility is considered by reflecting the relationship of these dialectical categories as a content (sanction) and form. In the external expression, the concept on the form of responsibility for violation of the forest legislation is defined by testing negative additional consequences of a personal property or organizational nature by an individual or legal entity for committing offenses in the use of forests, forest resources, and forestry lands

It is proposed to divide the forms of responsibility for violation of the forest legislation into general and special. The following general forms of liability were proposed to include the collection of a fine (punitive sanctions) and termination, modification or limitation of the relevant relationship. The offered special forms of liability refer to the compensation for damage, deprivation of liberty, restriction of liberty, application of operational

and economic sanctions, confiscation of an item or direct object that has become an instrument of committing an administrative offense.

The thesis uses practice materials on the main part of the named both general and special forms of liability for violation of the forest legislation, demonstrating the relevance of the research topic.

The importance of understanding the forms of responsibility for the most complete restoration of the violated rights and legitimate interests of the owners and users of forests, forest resources and forestry lands, that is the main function of the responsibility in the forest relations, is significantly substantiated

Key words: *responsibility, violation, forest legislation, form of responsibility, general and special forms of responsibility*

The relevance of research. Legal responsibility is one of the main elements of legal support for environmental protection and rational use of natural resources. Currently, there is a pluralism of opinions on the definition of the concept, essence, content and forms of legal liability. The presence of scientific discussions on this subject also relates to liability for violation of environmental legislation including forests.

The application of measures of legal responsibility for violation of legal norms is the well-known statement in the theory of law. Violation of the norms of environmental legislation, causing harm to the environment, including forests, is also provided for the application of legal liability measures, which is associated with specific hardships and is accompanied by negative consequences for the perpetrator, including the oppression of his personal, property and other rights. Such measures have different forms, the understanding of which is especially important for liability for violation of forest legislation.

In practice, an error in choosing the form of liability in these respects may lead to the impossibility or only to partial restoration of the violated right or legitimate interest.

At the legislative level, the forms of responsibility are determined by the norms of many regulatory legal acts, and only a certain part of them is provided by the Forest Code of Ukraine (hereinafter – FCU). This state of legislation has a negative impact on ensuring the objectives of forest legislation.

The scientists such as A. P. Getman [1], O. A. Zayarny [2], L. I. Kalenichenko [3], V. V. Kostitsky [4, p. 32–331], O. E. Leist [5], Z. F. Tatkova [6] and others have studied the issues of definition, essence and content of legal responsibility including the correlation of its forms. At the same time, the questions of responsibility forms for violation of forest legislation remain debatable. The above indicated the relevance for the stated research topic.

The purpose of the article is to clarify the provisions on the liability forms for violation of forest legislation.

In order to achieve the goal there have been used general and special methods of reality cognition including dialectics, analysis and synthesis, observation, induction and deduction, generalization and legal interpretation.

Presenting the main material of the study. First of all, it is advisable to clarify the definition of the concept of the form of responsibility, since this issue is debatable. Exploring the concept of the responsibility form we can identify the general definition of "form".

The Great Explanatory Dictionary of the Modern Ukrainian Language presents the "form" as outlines, contours, external boundaries of an object that determine its appearance. From a philosophical point of view, this category is considered as a way of existence of the content, its internal structure, organizational and external expression [7]. The similar interpretations are also stated in the Academic Explanatory Dictionary, a public electronic dictionary of the Ukrainian language [8, 9] and can be taken as a basis of this study.

To clarify the concept of the form of responsibility, it is advisable to refer to the concept of legal responsibility itself that has different approaches to the definition. The most acceptable classical understanding of the concept of responsibility is the approach according to which it is the legal duty of the offender to undergo the forced deprivation of certain values belonging to him or her. Consequently, legal responsibility is the obligation of a person to undergo certain deprivations of a state-imperious nature provided by the law for committing an offence [10, p. 167]. In this case, attention is focused on the subjective understanding of responsibility i.e., on the part of the offender, while the essence of responsibility lies in the suffering by the guilty person of the hardship provided by the law. Therefore, the external expression of such an enduring can be considered as a form of responsibility.

In the scientific literature, in particular civil and economic law, it has been talking about forms of legal liability which are defined as additional burdens (personal, proprietary or organizational) imposed on the offender [11, p. 370]. Thus, the form of civil liability is a way of expressing additional property encumbrances imposed on the offender. Civil law establishes different forms of liability including compensation for damage (Article 22 CCU), compensation for non-pecuniary damage (Article 23 CCU), payment of a penalty (Article 624 CCU), loss of a deposit (Article 571 CCU) and others.

A similar approach is presented in the scientific literature in terms of forms of economic and legal liability. Although there is no single approach to determining the number and types of forms of such liability and their relationship with sanctions. According to the analysis of art. 217 p. the Commercial Code of Ukraine (hereinafter – CCU) it follows that the forms of economic and legal liability can be consid-

ered as compensation for losses, payment of penalties, the application of operational and economic sanctions, and the application of administrative and economic sanctions that are defined by this article as economic sanctions.

V. K. Grischuk's position is close to the content. He believes that the form of negative (retrospective) criminal liability of a person is understood as a method of applying the norm (norms) of criminal law for a person who has committed a crime, provided by the current Criminal Code of Ukraine (hereinafter referred to as the CCU) [12].

The above approaches do not contradict the understanding of the form of responsibility as an external expression of the negative consequences suffered by the offender in accordance with the law.

In the study of forms of responsibility, it is advisable to consider the relationship between the concepts of forms and sanction of responsibility. Due to polysemantic nature of the Ukrainian language, the term 'sanction" is used in different meanings which primarily depends on the scope of use. In general theory of law, a sanction is understood as a structural element of a rule of law that indicates the type and extent of possible legal liability for its violation. Some scholars view the sanction as coercion and adverse consequences for the violator of the rule of law. At the same time, the sanctions are characterized by the following features: it is an element of the rule of law, acts as a way to protect the rule of conduct set forth in the disposition of the legal norm from its possible violations in order to prevent their commission, this is the indication of the adverse consequences that occur in the event of a violation of the rule of law, and applied by entities authorized to bring legal liability.

Based on the analysis of the concept of a sanction, as a measure of responsibility and the concept of a form of responsibility, as an external expression of suffering, the conclusion can be on the relationship between these dialectical categories as content (sanction) and form. These provisions form the basis of this study on the forms of responsibility for violation of forest legislation. Such liability is a rather complex legal institution based on the general principles of liability including violation of environmental legislation that is an important means of ensuring legality in the use of forests, forest resources and land.

In accordance with the FCU, liability for violation of forest legislation may be disciplinary, administrative-legal, civil-law or criminal legal (Article 105). Each type of liability has specific penalties, as well as, a special procedure for their application. Such types of liability have appropriate grounds (types of offence), a special implementation procedure and specific coercive measures. Despite fixing of four types of liability in the current legislation, scientists point to the existence of another type of liability, namely environ-

mental and legal, based on the continued discussions.

Taking into account the analysis of various points of view regarding the indicated types of responsibility and their forms for further research of the stated topic, it is advisable to take as a basis such understanding that the form of responsibility for violation of forest legislation is an external expression of negative additional suffering of a personal, proprietary or organizational nature by an individual or legal entity for committing offenses in the field of the use of forest, forest resources and land.

Forms of liability for violation of forest legislation should be divided into general and special. The general forms of liability for violation of such legislation include those that are inherent in several types of liability for the violations, although they are provided by the norms of different branches of law and differ in other features. Special forms of liability include the ones that are provided for a particular type of liability.

Having in mind the above division, the general forms of liability include collection of a fine (penalties), termination, modification or limitation of the relevant relationship. Special forms of liability for violation of forest legislation include compensation for damage (civil liability, economic liability), deprivation of liberty, restriction of liberty (criminal liability), application of operational and economic sanctions (economic and legal liability), confiscation of an object that has become an instrument of committing or a direct object of an administrative offense (administrative-legal responsibility).

The most common general form of liability for violation of forest legislation is the collection of a fine (punitive sanctions). First of all, fines, as a form of liability, are provided by the norms of the Criminal Code of Ukraine and the Code of Administrative Offenses of Ukraine (hereinafter CAoOU). Thus, a fine in the amount of 1000 to 2000 UAH tax free with the minimum incomes of citizens is provided for illegal felling and damage to trees and shrubs (Article 246 of the CCU). In practice it is also pointed to the use of this form of responsibility. According to the verdict of the Slavutsk City District Court of the Khmelnytsky region in criminal case № 682/2090/19 on accepting an offer, promise or receiving an unlawful benefit by an official (Article 368 of the CCU), a fine in the amount of 1000 non-taxable minimum incomes was imposed on the guilty person, amounting to 17000 UAH [13].

The application of a fine of 30 to 900 tax-free minimum incomes of citizens for the same violation is provided in Art. 65 CAoOU. In addition, this form of responsibility is provided by eighteen more articles of the Code of Administrative Offenses (Art. 54, Art. 63–77, Art. 188^5). Thus, according to the results of supervision (control) in the field of environmental protection, in particular on the use of forests, the State Environmental Inspectorate has fined in

the amount of 817,48 thousand UAH, out of which only 742,252 UAH have been collected for 9 months in 2020 in total in Ukraine [14].

The collection of fines as a form of liability is also provided by the Civil Code of Ukraine for non-fulfillment or improper fulfillment of contractual obligations. The procedure for the application is provided in Articles 549–552. In particular, a fine may be provided as a type of security for the fulfillment of obligations under contracts, including the use of forests, forest resources and land, by the individual violation.

Penalties for violation of forest legislation can be applied on the basis of article 230–234 of the Commercial Code for non-fulfillment or improper fulfillment of a business obligation. If the subjects of such an obligation are business entities. For example, penalties can be used to ensure the fulfillment of a contract for the long-term temporary use of forests for recreational use concluded between a forest enterprise and a limited liability company or other business entity.

Therefore, the conclusion can be made that such forms of liability when the application of a fine is inherent in those types of liability that are mostly used in violation of forest legislation.

The following general form of responsibility for violation of forest legislation, namely in termination, change or restriction of the relevant relations, can be divided into types due to the types of responsibility. The types of this liability form are deprivation of the right to hold certain positions or engage in certain activities (criminal or administrative liability), termination or suspension of activities (economic and legal liability), and termination of the use of forests and forest resources (environmental and legal responsibility).

Deprivation of the right to occupy certain positions or engage in certain activities is provided by the Criminal code (Article 55) and is applied for an offense committed in the field of forest use as an additional punishment for a period of one to three years, The specified form or responsibility for violation of forest legislation is also provided by the Code of Administrative Offenses (Article 30) applied by the court for the period of six months to one year. The use of this form is possible without indicating it in the sanction of the relevant article of the Special Part of the Criminal Code or the Code of Administrative Offenses, if the court recognizes the impossibility of retaining the right of the offender to hold certain positions or engage in certain activities. This form of responsibility was applied in accordance with the verdict of the Slavutsk City District Court of the Khmelnytsky region in criminal case No. 682/2090/19 against a person guilt of a criminal offense under the first part of Article 368 of the Criminal Code which consists of the deprivation of the right to hold positions related to organizational, and administrative functions at state enterprises for a period of one year [13].

Termination or suspension of activities as a form of liability is provided in art. 238–239 of the Commercial Code of Ukraine which is applied among other things for violation of forest legislation. In this case, the application of such a form is possible on the basis of the second part of Art. 10 and part three of Art. 50 of the Law of Ukraine "On Environmental Protection" (hereinafter referred to as the Law), according to which the activities of individuals and legal entities that cause harm to the environment may be terminated by a court decision. In addition, the termination of the activities of forest users who were granted the right to use forest resources is provided by the FCU (Clause 3 of the first part or Article 78). Thus, according to the results of state supervision of the State Environmental Inspection of Ukraine, a temporary suspension of activities of forest enterprises was applied once in the Rivne region in 2019 and the Kharkiv region in 2020 [14, 15].

The following general form of liability for violation of forest legislation, such as termination of the contract, can be applied in accordance with Art. 651 CCU and Art. 188 CCU, according to which the contract may be terminated in the event of a material breach of the terms of the contract. The subject of which is the use of forests, forest resources and land which is decided by the court at the request of one of the parties. According to the decision of Commercial Court of the Cherkasy region, the contract for the long-term temporary use of forests is subject to termination with the private enterprise Leader-2009 for improper performance of obligations [16].

Termination of the use of forests and forest resources as a form of liability is provided by forest legislation. Thus, the termination of the right to permanent forest use is provided for in the following cases: the use of forest resources in ways that are harmful to the environment, do not ensure the preservation of health-improving, protective and other useful properties of forests, negatively affect their condition and reproduction; use of a forest plot for other purpose that its intended (Article 22 FCU).

In addition, the termination of the right to use forest resources is provided in case of violation of the rules and regulations, the conditions of special permits for the use of forest resources; the use of forest resources in ways that adversely affect the state and reproduction of forests, lead to the deterioration of the natural environment; violation of the established deadlines for collecting fees for the use of forest resources; use of the forest plot for purposes other than its intended; non-compensation in accordance with the established procedure for damage caused to forestry due to violations of forest legislation, and failure to comply with requirements to eliminate identified shortcomings (Article 78 FCU).

The given general forms of liability for violation of forest legislation are the most common in practice when such violations are detected.

In addition to general forms, it is possible to use special forms of responsibility inherent in certain types of responsibility. First of all, compensation for damage is a special form of liability for violation of forest legislation. General provisions on compensation for damage are determined by the norms of the Civil Code of Ukraine (Article 1166), in the case when the violator of the forest legislation is an individual. Also, this form can be applied in accordance with Chapter 25 of the Commercial Code, when an enterprise is a violator of forest legislation. In addition, this form is provided by environmental legislation, including the Law (Article 69), FCU (Article 107). So, according to Art. 69 of the Law, damage caused as a result of violation of legislation on environmental protection is subject to compensation in full; according to Art. 107 FCU persons guilty of causing harm to forest are obliged to compensate for it in the manner prescribed by law. This form was applied in accordance with the decision of the Peremyshlyansky District Court in the Lviv region in civil case №449/1295/19 to the guilty person in the form of recovery of damage caused by illegal logging in favor of the Bibrsky united territorial community in the amount of 5,002.48 UAH [17].

A feature of the application of this form is the calculation of damage on the basis of taxes, that is, conventional units for calculating harm. The tax is a predetermined amount of the penalty. The specified is regulated by the Decree of the Cabinet of Ministers of Ukraine "On the approval of taxes for calculating the amount of damage caused to the forest" dated July 23, 2008 №665 [18]. According to the decision of the Commercial Court of the Transcarpathian region, the state enterprise the forest Volovets was charged with losses in the amount of 98,694.70 UAH for violation of forest legislation, calculated according to the indicated taxes [19].

The following special forms of responsibility for violation of forest legislation is imprisonment, provided for in Art. 246 of the Criminal Code for illegal felling or illegal transportation, storage, sale of timber. According to the verdict of the Drogobych city district court of the Lviv region, imprisonment of three years was applied to an official (forest master) for unauthorized felling of 175 trees [20].

Another special form of liability is the restriction of freedom, which is also provided in Art. 246 of the Criminal Code for illegal felling or illegal transportation, storage, sale of timber. The verdict of the Shatsky District Court of the Volyn region, a two-year restriction of freedom was applied to the offender for unauthorized illegal logging [21].

The application of operational and economic sanctions, as a special form of liability for violation of forest legislation, is provided by the norms of the Commercial Code of Ukraine (Articles 235–237), in the case, when one of the parties is a business entity. The applica-

tion of this form is possible in case of violation of the terms of reforestation and other requirements of forest management established by legislation in the field of protection, use and reproduction of forests, if such violations are provided by the contract. This form is used primarily extra judicially, however, in case of disagreement with the application of operational and economic sanctions, the interested party may apply to the court for the cancellation of such a sanction and compensation for losses caused by its application (part two of Article 237). For example, this form may be provided for by an agreement on the use of forest resources in the form of termination of the right to use these resources in the event of a systematic violation of the terms for making payments for such use.

Special forms of responsibility also include the confiscation of an object that has become an instrument for committing or a direct object of an administrative offense, which is provided for in Art. 29 CUoAO. This form can be used in case of carrying out activities related to the use of forests, forest resources and land, and consist in the forced transfer of this item to the state ownership by a court decision.

The above special forms of responsibility for violation of forest legislation can be applied both along with general ones, and separately or in combination with each other. Understanding the forms of responsibility, their content and differences is necessary for a more complete implementation of the responsibility of its main function in forest relations, namely: the most complete restoration of the violated rights and legitimate interests of the owners and users of forests, forest resources and land.

Findings. As a result of the study, a definition of the concept of the form of responsibility for violation of forest legislation is proposed, which is understood as an external expression of the incurring of negative additional consequences of a personal, property or organizational nature by an individual or legal entity for committing offenses in the use of forests, forest resources and land.

It is proposed to divide the forms of responsibility for violation of forest legislation into general and special. The general forms of responsibility for violation of forest legislation include those that are inherent in several types of responsibility for these violations, although they are provided by the norms of different branches of law and differ in other features. Special forms of liability include those provided for a separate type of liability.

General and special forms of liability for violation of forest legislation are specified. It is proposed to refer to the general forms of such liability: collection of a fine (punitive sanctions); termination, change or restriction of relevant relations, among which are: deprivation of the right to hold certain positions or engage in certain activities; termination or suspension of activities;

termination of an agreement; termination of the use of forests, forest resources. It is proposed to refer to special forms of liability for violation of forest legislation: compensation for damage; deprivation of liberty, restriction of liberty; application of operational and economic sanctions; confiscation of an item that has become an instrument of committing or a direct object of an administrative offense.

Further research into the issue of forms of liability for violation of forest legislation should be devoted to the content, grounds and procedure for the application of such forms of liability.

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INTERNATIONAL LEGAL RESPONSIBILITY OF THE STATE FOR DAMAGE CAUSED TO THE ENVIRONMENT AS A RESULT OF ARMED CONFLICT

Summary. *The article is devoted to the analysis of international legal mechanisms of holding states accountable for damage caused to the environment as a result of armed conflict. Man's harmful impact on the environment has reached such a scale that its protection is absolutely necessary to maintain ecology at an optimal level. The Russian military aggression, which causes devastating damage to the environment of the Ukrainian state, has a particularly destructive effect on the natural environment, using prohibited types of weapons, including biological and chemical, which causes natural resources to become unusable.*

It is noted that the occurrence of international legal responsibility for damage caused to the environment in the event of an armed conflict requires the presence of such conditions as (1) the legal fact of violation of the norms of international law, manifested in the action (inaction) of the state, (2) the presence of the caused damage, (3) the causal relationship between the illegal act of the state and the negative consequences (4) the fault of the state that caused the damage. In the presence of the specified conditions, the corresponding consequences of international legal responsibility occur: (1) termination of the offense, (2) satisfaction, (3) restitution, and (4) compensation.

Cessation of international wrongdoing and satisfaction as types of international legal responsibility for environmental damage in the event of armed conflict are ineffective because the wrongdoing has already led to significant negative environmental consequences. Therefore, the damage caused to the environment as a result of the armed conflict should be compensated only through restitution and compensation, which involve the application of a set of restorative measures. Payment of compensation does not eliminate the damage caused to the environment, but it sponsors the restoration of useful properties of the soil, planting of forest areas, the return of representatives of certain species of flora and fauna to their habitat, and other actions.

It is proposed to create a specialized international fund, which is designed to ensure the implementation of a set of measures to clean up and restore the environment, which suffered as a result of the military aggression of the Russian Federation.

Environmental protection is only one of many rules that parties to an armed conflict must adhere to. The responsibility of states for the actions of the armed forces is an extremely urgent problem of modern interstate relations, especially in the case of damage to the natural environment during military aggression, and requires further improvement through a clear definition of international legal mechanisms for compensation for the damage caused

Key words: *armed conflict, environment, environmental damage, international legal responsibility, types of international responsibility*

Formulation of the problem. The intensive development of international law on environmental protection in recent decades is explained by the awareness of the dangerous deterioration of the quality of life and health of every person. Many armed conflicts of the last century are associated with various environmental threats, including long-term chemical pollution on land, water and atmospheric pollution. The consequences of these threats affect not only the countries directly involved in the conflict, but also civilians and neutral states, which is felt for a long time after the end of the armed conflict and creates many different threats to the environment.

Art. 3 IV of the Hague Convention on the Laws and Customs of Land War: «A belligerent party that violates the provisions of this Regulation shall be liable in the form of compensation for damages, if there are grounds for this. It is responsible for all actions committed by persons who are part of its armed forces» [1].

The military aggression of the Russian Federation against Ukraine caused significant environmental damage. As a result of shelling by the regular troops of the Russian Federation, fires were recorded at chemical enterprises, which led to dangerous chemical pollution of the environment. Forest fires became large-scale as a result of hostilities, as a result of which tens of thousands of hectares of forest massifs, including objects of the nature reserve fund, were damaged. Mine danger has led to the restriction or loss of the possibility of nature use in large areas. As a result of the destruction of sewage treatment plants, the ecological condition of water bodies has deteriorated. The aggression of the Russian Federation led to the introduction of harmful and dangerous substances into the environment, the destruction of the fertile soil layer, plant cover, and objects of wild fauna, including those listed in the Red Book of Ukraine [2, p. 20–32]. Therefore, the issue of the international legal responsibility of the Russian Federation for the damage caused to the Ukrainian environment as a result of the armed conflict is gaining special relevance.

State of development of the problem. Researchers of international legal responsibility, including M. Buromenskyi, M. Baimuratov, Y. Blazhevich, O. Bukevich, S. Bratus, N. Vytruk, P. Kuris, I. Lukashuk, O. Mysak and others emphasize that there is no legal issue that would not be so little researched and confused and at the same time would be as relevant as the understanding of the concept of international legal responsibility of states.

The purpose of the article is to define the concept of international legal responsibility and identify modern trends in international practice regarding the responsibility of states for gross violations of international environmental law as a result of an armed conflict.

Main material. The norms of international humanitarian law are one of the main regulators of legal relations in the field of environmental protection during armed conflicts. Modern international law has developed a system of norms that regulate restrictions and prohibitions, as well as provide for responsibility for causing damage to the surrounding natural environment in connection with the military aggression of states.

International legal responsibility is the obligation of a subject of international law to remove, liquidate the damage caused to another subject of international law as a result of a violation of an international legal obligation, or the obligation to compensate for losses suffered by the injured party. The institution of responsibility is a general, end-to-end institution of international law, its norms are designed to ensure the protection of law and order in all spheres of interstate relations [3, p. 311–312].

The UN International Law Commission defined the international responsibility of states as all types of legal relations that may arise as a result of an internationally wrongful act of a state, regardless of whether these relations are limited to the legal relationship between the state that committed the wrongful act and the state, which is directly affected, or they extend to other subjects of international law, and, regardless of whether these relations are limited to the obligations of the guilty state to renew the right of the injured state and recover the damages caused to it, or whether it covers the right of the injured state itself or other sub entities of international law to apply to the guilty state any sanction allowed by international law [4, p. 204]. The content of international responsibility is defined as the consequences of an action to compensate for damages and sanctions in response to a violation of international law.

The modern concept of legal protection of the environment envisages a special nature of responsibility for environmental damage caused by the need to ensure prevention and compensation for damage to the environment, which may be caused by environmental pollution, spoilage, destruction, damage, irrational use of natural resources, de-

struction of natural ecological systems and other offenses. Y. S. Shemshuchenko notes that the UN Subcommittee on Human Rights and the Environment has developed four types of environmental human rights: the right to access environmental information, the right to a favorable environment, the right to access environmental justice, and the right to public participation in the decision-making process on issues that relate to the environment [5, p. 29].

Therefore, international legal responsibility can be defined as the legal relationship between a state that violates its international obligations and a state whose rights have been violated. The occurrence of international legal and domestic responsibility requires the presence of certain grounds, which are defined as the conditions of international legal responsibility: 1) presence of an offense expressed in the action (inaction) of the state; 2) causing damage, which is manifested in significant losses suffered by the affected state; 3) cause-and-effect relationship between action (inaction) and negative consequences (losses, damages, etc.); 4) the fault of the state that caused the damage.

In the science of international law, the classification of the grounds of international legal responsibility into legal and factual is fairly common. International treaties, international customs, decisions of international courts, decisions of international (intergovernmental) organizations binding on member states, unilateral international legal acts of states, and even decisions of international arbitration courts are recognized as legal grounds for the international legal responsibility of states. The actual basis of international legal responsibility is a crime as a complex social phenomenon with the presence of all the signs of an international crime [3, p. 313–314].

The application of the norms of international legal responsibility leads to the emergence of a new type of international legal relations, which give rise, on the one hand, to the duty of the offending state to stop wrongful actions, restore the violated right of the injured state, compensate for the damage caused and undergo sanctions, and on the other hand the right of the injured party to demand from the offending state the fulfillment of these obligations, receiving appropriate compensation for the damage caused and satisfaction of the interests of the injured party [3, p. 312].

The environment is understood as everything that surrounds a person on Earth. However, in recent decades, the term «environment» has been increasingly «greened», and the environment is understood as the entire natural environment. Unfortunately, humanity, which actively promotes the cult of «consumer society», does not think about the far-reaching consequences of the deterioration of the ecological situation on planet Earth. V. I. Vernadsky noted that the history of mankind and the history of nature increasingly over-

lap and vice versa, the history of nature increasingly coincides with the history of mankind and feels the growing influence of the latter. All this is rather related to the fact that the connection of people with nature is becoming deeper and more organic. The absence of wars and conflicts, harmony, and a peaceful state of society throughout the world has a beneficial effect on both people and nature [6, p. 34].

Since the adoption of the Stockholm Declaration of 1972 and the Paris Convention on the Protection of the World Cultural and Natural Heritage of 1972, the environment has become a value protected by international law not only in peacetime, but also, especially, during international armed conflicts [7, p. 26–32]. Therefore, the most important principle in the field of environmental protection is the principle of banning the use of the natural environment for military purposes.

Separately, it should be noted that clause 3 of Art. 35 of Additional Protocol I to the Geneva Conventions of 1949, indicates that "it is prohibited to use methods or means of warfare that are intended to cause or can be expected to cause widespread, long-term and serious damage to the natural environment" [8]. In this article, along with the general principle, a special principle related to the protection of the environment during an armed conflict is established. Complementing this principle, the 1980 Convention on the Prohibition or Restriction of the Use of Specific Types of Conventional Weapons Causing Excessive Damage or Having a Non-Selective Effect established norms, the content of which categorically prohibits the use of combat incendiary means against forests and other green spaces.

As you know, an international offense is an act (action or inaction) of a subject of international law, which creates a legal basis for international responsibility, which is based on the obligation of a subject of international law to suffer certain circumstances of a negative nature as a result of causing damage to another subject of international law both as a result of committing an international offense and as a result of lawful activity [3, p. 313]. In the science of international law, it is customary to distinguish: responsibility for culpable actions that caused damage to the environment in areas of armed conflicts and responsibility for actions in which there is no fault of the state that caused damage to the injured party. Traditionally, international responsibility, which arises as a result of illegal actions of a subject of international law, is «culpable responsibility», to establish which the plaintiff state must prove that the defendant state committed acts of violation of international obligations and prove the connection between the illegal act and caused damage [9, p. 83].

The concept of culpable responsibility was defined by the UN International Law Commission in the following version: «An illegal act of the state, com-

mitted at the international level, occurs when: a) the behavior, which consists in the action or inaction of the state, does not comply with the norms of international law; and b) when the behavior leads to the violation of international obligations by the state» [9, p. 3]. According to this definition, the presence of guilt is assumed as a necessary condition for violation of international law.

The question of absolute responsibility, that is, responsibility without fault for damage caused to the environment in situations of armed conflicts, is debatable [10], since damage caused to the environment can be caused by legitimate activity on the part of the subject of international law without violation of due diligence.

A subject of international law can be held responsible not only for violations of international obligations, but also for actions that, according to international legal norms, can cause damage to the environment of another state, and such responsibility is considered absolute. On the mandate of the UN General Assembly, the UN Commission on International Law began working on a draft convention on international responsibility for the harmful consequences of actions not prohibited by international law back in 1978. Absolute responsibility is imposed if «a state invades the territory of neighboring states under circumstances that cannot justify claims of self-defense (Article 2(4) of the UN Charter). The state will bear responsibility even if, during the battle, its armed forces destroy military facilities that do not meet the requirements of articles 35(3) and 55 of Additional Protocol 1, and thereby cause damage to the environment» [11].

Another condition that is necessary for the onset of international legal responsibility for causing damage to the environment during an armed conflict is a causal relationship. This is the connection between the action (inaction) of a certain subject of international law and the damage caused to the environment, which is a consequence of such action (inaction) [12]. Some international agreements defining the issue of international responsibility require the presence of a cause-and-effect relationship between the state's actions and the damage caused. For example, Article 2(1), (3.4) of the Vienna Convention on Civil Liability for Nuclear Damage states that «the operator of a nuclear facility shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident» [13].

Another difficulty in confirming causal relationships arises from the fact that actions taken in one place can cause negative consequences in other distant areas [14, p. 5]. Moreover, many harmful effects of exposure to the environment do not appear immediately after a dangerous event and can manifest years or decades later.

The third necessary condition for the onset of international legal responsibility is damage caused to the environment in the event of an armed con-

flict, which can be caused during military operations, in peacetime or in situations of armed conflict.

The concept of damage includes air pollution, resource depletion, damage to groundwater, shorelines, fisheries, wetlands and pastures, cultural heritage, human health, etc. It is difficult to determine the amount of damage caused to the environment of those regions that do not belong to any state, in particular, the open seas, outer space or Antarctica. In this case, according to Art. 145 of the UN Convention on the Law of the Sea, measures necessary to ensure effective protection of the marine environment from harmful consequences that may arise from such activities of the aggressor state are taken in the relevant territory.

Thus, international legal responsibility for damage caused to the environment as a result of an armed conflict can be defined as a legal relationship arising between subjects of international law who are in a state of armed conflict, due to which the subject who committed an international offense there is an obligation to compensate for the damage caused to the environment.

Four types of international legal responsibility for damage caused to the environment during armed conflicts should be distinguished: termination of the offense, satisfaction, restitution and compensation.

Restitution as a means of international legal responsibility for damage caused to the environment in the event of an armed conflict is the return of property illegally seized from the state, its organizations and citizens, which is not always possible, as it involves the application of a complex of cleaning and restoration measures, which in in turn, it requires the presence of significant material resources in order for the damaged ecological system to return to a normal state. The recovery process should include, among other things, the restoration of people's health, the fight against diseases, as the consequences of an environmental disaster [15].

Compensation as a type of international legal responsibility for damage caused to the environment in the event of an armed conflict is the right of the state affected by the armed conflict to material compensation for the damage caused to the environment by the aggressor state in the event of a lack of restitution. Payment of compensation does not eliminate the damage caused to the environment, but it can sponsor compensatory measures: planting trees in damaged forests, restoring useful properties of soils, returning representatives of certain species of flora and fauna to their habitat, etc.

Compensation must be sought regardless of when the effects of environmental damage occurred, in situations of armed conflict or in peacetime. At the same time, some authors claim that if the damage is irreparable, then no compensation is required, since noth-

ing significant will be done to restore the affected area [16]. Such an opinion, in our opinion, is not entirely correct due to the inconsistency with international norms and principles. The compensation must be equivalent to the extraordinary value of the damaged objects and suitable for financing projects related to the search for the replacement of non-renewable objects in a commercial or scientific way and the requirement to finance the means of protection of similar environmental objects to guarantee safety in other parts of the world.

Environmental damage shall include losses or costs due to: a) reduction and prevention of environmental damage, including costs directly related to pollution in coastal and international waters; b) measures to clean and restore the environment due to depletion or destruction of natural resources; c) the availability of health care and conducting a medical examination in order to combat the increased risks of diseases due to the damage caused to the environment [17].

The demand for the cessation of an international offense, as well as satisfaction, are ineffective types of legal responsibility, since the offense has already led to negative consequences for the environment. Environmental damage caused by armed conflicts can only be remedied through restitution and compensation. Restitution involves the application of a set of restorative measures, therefore it is expedient to create a specialized international fund that would be able to ensure the implementation of a set of measures to clean up and restore the environment, which suffered as a result of armed conflicts. The payment of compensation does not eliminate the damage caused to the environment, but the compensation payment can, for example, sponsor the restoration of beneficial properties of soils, planting trees in damaged forests, returning representatives of certain species of flora and fauna to their habitat, and other actions.

Conclusion. The responsibility of the subjects of international law for causing damage to the environment acquires a new conceptual meaning. Responsibility is an important legal tool that ensures the functioning of the international legal system and is achieved, on the one hand, by establishing mandatory rules of conduct, and on the other hand, by determining sanctions for violations of international law and establishing legal mechanisms for compensation for damages caused the aggressor state to the environment of the injured party.

Consequently, the responsibility of states for the actions of the armed forces is an extremely urgent problem of modern interstate relations, especially in the case of damage to the natural environment during military aggression, and requires further improvement through a clear definition of international legal mechanisms for compensation for the damage caused.

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SOME CURRENT ISSUES OF LEGAL PROVISION OF RESTORATION OF LAND

Abstract. *Due to the rapid deterioration of the state of lands in Ukraine over the past decades, a significant part of the latter, regardless of their intended purpose, requires urgent measures to restore them. The relevance of such scientific research is primarily due to the lack of a complex and comprehensive analysis of the legal support of land restoration. In addition, without a thorough theoretical study of the problems of legal support for land restoration, it is impossible to make appropriate reasonable proposals to improve existing and develop new legislation in the study area. Research methods are a set of philosophical, general scientific and special legal methods. At the heart of methodological approaches to the study of legal issues of land restoration is the philosophical concept of biospherecentrism. The article provides a comprehensive study of current theoretical problems of legal support for land restoration. The definition of the concept of "restoration of land" as a legal category is formulated, its essence and features are clarified. Preliminary and main measures of land restoration are described. The place of legal norms regulating public relations in the field of land restoration in the system of land law has been established. Criteria of delimitation of protection and restoration of lands are proposed. The necessity of making changes to the current land legislation regarding fixing the obligations of owners and users of land plots to restore soil fertility, other useful properties and functions of land is substantiated. The proposal of legislative strengthening of*

legal liability in the studied sphere is made. The study aims to improve the legal provision of land restoration, which will ensure their preservation as a major national wealth

Keywords: *protection, measures, land user, soils, fertility*

INTRODUCTION

In the conditions of the swift worsening of the state of the land resources in Ukraine of exigent decision one of the most thorny problems of the present requires is stopping of the further scale worsening of the state of lands and their restoration. The outlined problem updated that goes speech about lands of Ukraine, which pursuant to Constitution of Ukraine make basic national riches and are under the special protection of the state. They show by itself basis of sovereignty of the state and come forward basis of vital functions of all of living. Land executes different functions. How an object of menage, it comes forward the basic mean of production in a rural and forest economy, is a spatial base for placing of the buildings and structures. In addition, land is a basic natural object, and also serves as a spatial base for the location of other natural objects – forests, waters, bowels of the land, objects of the vegetable and animal world. The use of land (land plot) can take place on various legal titles, a prominent place among which is the right to lease land [1].

Restoration of the state of all lands of the country as the main national wealth, regardless of their purpose, is an important basis for its sustainable development, because ensuring the latter requires stability and the quality of land. In this way restoration of land, which is essential for the preservation of land as the main national wealth, for present and future generations, to ensure sustainable development of the country as a whole, environmental and food security. The provision of the latter is reflected in a number of modern studies [2–4].

Thus, saving of the state of land, which is able to provide the necessities of humanity both today, and in the future, can be attained due to realization of measures, directed on renewal of the high-quality state of land of the agricultural and forestry setting, and also other properties of land of separate categories. Basis of forming of public policy in the field of protection and restoration of land in Ukraine makes Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part. As rightly noted in scientific research, one of the ways to prevent legal defects in land and legal regulation in Ukraine at present and in the future is to ensure the adaptation of the national land legislation to the requirements of the EU [5]. The state accepted the row of position papers on which undertook certain obligations, in particular, about joining: a) to Scope convention of UNO about the change of climate (Conven-

tion on Climate Change, 1992) [6]; b) to Convention of UNO about a fight from desertification (United Nations Convention to Combat Desertification, UNCCD, 1994) [7]; c) to Convention of UNO about the guard of biological variety (Convention on Biological Diversity, 1992) [8]. Today basis of planning of measures of restoration of land in the state is made: Basic principles (strategy) of public ecological policy of Ukraine on a period to 2030 year [9], approved by Law of Ukraine from February, 28 in 2019 No. 2697-VIII, Conception of fight against degradation of land and desertification, approved by order of Cabinet of Ministers of Ukraine from October, 22 in 2014 No. 1024-p. [10], National plan of actions in relation to a fight against degradation of land and desertification, approved by order of Cabinet of Ministers of Ukraine from March, 30 in 2016 No. 271-p [11].

A large area of land, regardless of its purpose, requires urgent restoration measures. Legal norms aimed at restoring the state of land are enshrined in regulations of various legal force. At the same time, they, unfortunately, are mostly general or declarative in nature, devoid of any systematization. This leads to legal gaps and conflicts in the mechanism of legal regulation of public relations concerning the restoration of land as an important natural resource. In addition, the current land legislation does not clearly distinguish between the provisions for ensuring the restoration of land and the regulations for their protection. Public relations in the field of land restoration remain insufficiently regulated by the legal provisions of the legislation, which ultimately has a negative impact on judicial practice. The presence of these shortcomings in the legal provision of land restoration today has an extremely negative impact on the development of relevant legal relations and the state of the land as a whole. The state of the land is related to the climate, changes in the latter are largely due to the state of the land.

Most scientific labours of land-legal subject devoted research of questions of legal safeguard of land. The problems of restoration of land were examined in legal science of Ukraine only fragmentary or side. In particular theoretical problems in relation to the separate measures of restoration of land were probed at the level of dissertation researches. Speech goes about labours of P. Kulinich [12], M. Deynega [13] and A. Misinkevich [14].

The special attention is deserved by monographic research of P. Kulinich, in which a scientist is offer the ways of perfection of the legal adjusting of agricultural land-tenure in Ukraine in the context of priority of requirements in relation to restoration, guard and saving of land of the agricultural setting [15]. Ponderable payment in the study of theoretical-methodological and applied principles of legal regulation of the use, restoration and protection of soils is carried out N. Gavrysh [16]. Separate aspects of legal problem of restoration

of soils are reflected in the monographic study of S. Khominets [17]. Certain aspects of innovative methods for restoring soil fertility were studied in the works of S. Arora, D. Sahni [18], M. Drosos and A. Piccolo [19].

The purpose of this article is to research of modern problems in the field of the legal providing of restoration of lands and offer ways to resolve them.

1. MATERIALS AND METHODS

The methodological framework of this study included a set of philosophical, general scientific and special methods of scientific knowledge, namely: dialectics, analysis and synthesis, modeling, historical and legal, formal logical, systemic and structural, comparative legal, formal legal.

The basis of methodological approaches to the study of legal support for restoration of land should be the idea of biospherocentrism. In the current significant deterioration of the state of land, which is extremely important in the relations of land use and restoration, there is a change in the anthropocentric paradigm of nature management to a biospherecentric paradigm of human-environment interaction. Biospherecentrism is interpreted in science as a new type of worldview, makes the interests of an individual and society as a whole dependent on the needs of the entire planet and all living things that are on it. In particular, in philosophy, anthropocentrism and biospherocentrism are considered as philosophical concepts that reflect a person's attitude to the world around him and his perception of himself in it. From the position of supporters of biospherocentrism, a person is an integral part of the biosphere and should not put himself, his needs and interests above the needs of all living organisms on the planet. In this case, we are talking about a whole set of ecosystems. Negative processes characteristic of the current state of land have an impact on social development, to a certain extent restraining it by destroying the results of human labor and a tangible slowdown in the development of productive forces. Further uncontrolled and irresponsible use of natural resources without taking into account the needs and peculiarities of the existence of all life on the planet poses a serious threat to all mankind. Thus, both in the use of natural resources (including land) and in their restoration, it is necessary to adhere to the idea of biospherecentrism.

The general scientific dialectical method became the basis for the entire study, made it possible to consider the legal support of land restoration in conjunction with other legal phenomena, and the corresponding normative legal array – in the dynamics of its development. Using the formal-logical method, a number of legal constructions have been formulated, such as: "restoration of land". Today the so-called synergetism of technical processes in crop rotation technologies as a preliminary measure of land restoration is reflected in the agricultural sphere. When disclos-

ing the problems of legal support for land restoration, the anthropological methodological approach cannot be left out either, as the conducted scientific research is to some extent aimed at man, at realizing his rights and interests, because the state of land and ecological and food security impact on the life and health of the individual.

Formally, a legal one was needed in the process of establishing the content of individual prescriptions of land legislation in the field of ensuring of restoration of land. The systemic-structural method is the basis for the classification of land restoration and the adoption of certain measures. The modeling method was used in the design and modernization of legal norms proposed to amend the current land legislation, as well as in the processing of the draft Concept of the restoration of degraded, unproductive and technologically contaminated land and the draft law "On restoration of land".

2. RESULTS AND DISCUSSION

2.1. Defenition of "restoration of lands" as a legal category, its essence

Above all things it is necessary to mark that the analysis of encyclopaedic and linguistic literary sources allows to draw a conclusion, that term "restoration" is used in the context of high-quality properties of land (in particular, fertility of soils), states of the broken land. In accordance with the large explanatory dictionary of the modern Ukrainian language to "restore" a term means to return a previous kind to anything to damaged, spoiled, blasted [20]. The new explanatory dictionary of the Ukrainian language contains analogical formulations of term "restoration" as returning of previous kind to anything to damaged, spoiled, blasted; adduction to the previous state; returning to old [21]. A word "reproduction" interpreted how to reproduce again that, to repeat, reproduce, copy [22]. In other encyclopaedic editions this term is interpreted as an update, recreation of old [20]; creation again that, reiteration [23].

Restoration is bringing the state over of lands from existent negative to inherent them to the primary high-quality state. Speech goes about certain positive changes, including to soil fertility, and also about restoration of executable lands functions in accordance with their having a special purpose setting. To reproduce lands as natural object it is impossible. It is known that the high-quality state of lands is characterized the aggregate of their both positive and negative properties. It is expedient to notice that terms "reproduction" and "restoration" are not identical. Terms resulted at the same time in the current landed legislation and in the most advanced studies of scientists, as a rule, equate, thus as in researches will present of legal doctrine, so in labours of research soil scientists.

It is necessary to underline that such natural object as lands in general are unreproduced, it is impossible anew to

create them as a natural object, however they can be restored. However, to restore of lands, unlike some other natural resources, for example forest resources, inherent certain specific. It consists in that the state of lands is subject restoration (speech goes about restoration of their high-quality state, their soils, due state of the broken lands), and also functions which execute lands on their basic having a special purpose setting. In the wide understanding restoration is a removal of worsening of the state of land.

Therefore, it is expedient to consider restoration of lands as a legally provided system of measures aimed at restoring lands to their original quality condition, deteriorated due to anthropogenic or natural (natural) factors, lost ability to perform certain functions arising from their main purpose, proper condition of disturbed lands through their reclamation, conservation of degraded and unproductive lands, land reclamation of this natural object and other measures provided by law. We emphasize that in accordance with the recently adopted Law of Ukraine "On Making Alteration in Some Legislative Acts of Ukraine in Relation to Perfection of Control the System and Deregulation in the Field of Land Relations" from April, 28 in 2021 No. 1423-IX [24] conservation of lands includes not only termination of their economic use for the purpose of silting and afforestation, but also through renaturalization, that is transformation of lands degraded, unproductive, and also technogenic polluted into natural biogeocenoses.

2.2. Features of restoration of lands

Reproduction of natural objects finds its manifestation precisely through quantitative indicators, they cover the creation of natural objects. We are talking about the reconstruction of, say, objects of the plant world, including forests, as well as objects of the animal world. It is obvious that reclamation of disturbed lands, conservation of degraded and unproductive lands, land reclamation are legal measures for their restoration. As rightly noted in scientific papers, these measures are directly related to the quality of land. For agricultural and forestry lands, which perform the function of a means of production, the primary basis should be the restoration of their quality, in particular, soil fertility [25].

Restoration of lands combines both the restoration of their quality and the restoration of the previous condition of disturbed lands. After all, in the latter case there is a destruction of the upper layer of the land. It should be noted that land plots, the condition of which is recorded in the materials of the State Land Cadastre, are subject to restoration. The qualitative condition of lands is fixed in the materials of their inventory in the implementation of land management, in particular, by conducting an inventory, qualitative characteristics of land plots are established, contaminated and degraded land plots in need of conservation are identified. In addition, the qual-

itative condition is reflected in the materials of the normative monetary valuation of land.

The condition of the land plot is also indicated in the agrochemical passport of the field (land plot), which is, for example, obligatory when leasing agricultural land. Therefore, the quality of the land, recorded in the relevant documentation, and should be considered initial (from the moment of its transfer to ownership or provision for use). The initial, so to speak, zero state for each owner and land user may be different, but it is necessary to focus on the materials of the State Land Cadastre. Any changes in the condition of the land plot must be timely reflected in the documentation of the State Land Cadastre. It seems appropriate that, say, notaries, when certifying land contracts, require a certificate of the state of the land, so that the new owner of the land was aware of the existing state of the land at the time of alienation.

First of all, the restoration of lands damaged as a result of illegal actions that caused the deterioration of soil cover, led to unusable condition of lands due to negative impact on them, such as: contamination of lands with radioactive and chemical substances, waste, wastewater and others. However, in some cases, legitimate actions are also taken, necessitating the restoration of both agricultural and non-agricultural land.

Thus, the actions that led to a change in the structure of the terrain as a result of mining, exploration, construction and other works are legitimate, provided that there is a relevant working project of land management. It should be noted that by law mentioned Ukraine "About making alteration in some legislative acts of Ukraine in relation to perfection of control the system and deregulation in the field of land relations" from April, 28 in 2021 No. 1423-IX [24] relocation of soil cover (fertile soil layer) within the same land plot intended for personal farming, horticulture, construction and maintenance of a dwelling house, farm buildings and structures (homestead plot), individual country house construction and construction of individual garages, carried out without the development of a working project of land management.

2.3. Measures of restoration of lands

The need for land restoration is caused by various factors. First of all, the condition of lands is negatively affected by anthropogenic activities: (a) improper tillage, (b) violation of the organization of the territory, (c) deterioration of protective forest belts, (d) insufficient application of erosion measures, (e) deforestation, (f) destruction of slopes, (g) improper cultivation of slope lands, (h) neglect of reclamation measures, etc. At the same time, soil erosion can be caused by natural disasters. Especially these problems were exacerbated during the land and agrarian reform. A detailed study of individual important problems of their implementation was the sub-

ject of special scientific research [26]. Among the natural factors are most often: (a) terrain, (b) surface shape, (c) steepness and exposure of slopes, (d) erosion resistance of soils, (e) rainfall, (f) volumes of natural intakes, (g) the thickness of the snow, (h) the speed of its spring melting, etc.

It should be emphasized that among the legal measures of restoration of land there are previous and basic. Thus, the existence of preliminary land restoration measures is evidenced by the Land Code of Ukraine [27] obligations of owners and users of land to preserve the useful properties of land, at their own expense to restore the land in case of illegal change of its terrain, except for illegal change of terrain land (Articles 91, 96). In order to prevent the intensification of land degradation processes (including soils), mineral fertilizers are applied, soils are washed in cases of salinization, appropriate irrigation regimes are applied, etc. After all, as soil experts rightly emphasize, the legal regime of lands (including soils) is aimed at strict observance by owners and land users of scientifically sound technological regulations, high culture of behavior to prevent and/or eliminate the phenomena of soil degradation and possible environmental risks, associated with illegal, environmentally unsafe land use [28].

The previous measures to restore soil fertility also include the introduction of crop rotations, in the process of which the approved standards for the optimal ratio of crops in various natural and agricultural regions are taken into account. So, the main restoration measures are: conservation of degraded and unproductive lands, reclamation of disturbed lands, land reclamation. It is the implementation of these measures for land restoration that received proper legal support. However, there are other land restoration measures. Although, unfortunately, their implementation is not regulated by law today. Such measures primarily include phytoremediation – a method of biological neutralization of soil pollutants, which restores their fertility. Experts recommend considering it as one of the areas of reclamation [29]. When using this method, plant roots absorb organic pollutants, transforming them into environmentally friendly products. Bioremediation is also a measure of land restoration, which is divided into two types: biostimulation and bioaugmentation. Restoration of man-made contaminated lands can be carried out by cutting the soil layer, collecting pollutants, steam extraction, etc. Such a measure is the so-called detoxification, which can be used as a stand-alone measure or in the reclamation of disturbed lands. It should be emphasized that the implementation of these measures in the future should be enshrined in law.

2.4. Specificity of ensuring of restoration of lands in the countries of Western Europe

Increased attention to soil protection and restoration is due to the current state

of soil resources, awareness of their role in providing food and fulfilling their environmental functions, population growth and declining agricultural land, projected climate change and exacerbation of the world's food problem. Soil protection agricultural technologies are currently being introduced in European countries to reduce chemical and mechanical stress on both the soil and the environment as a whole. First of all, these are zero and conservative systems of cultivation, which is carried out both with the support of state institutions and by providing appropriate subsidies, which, of course, contributes to the implementation of soil protection technologies. In some European countries, especially in Great Britain, Germany, France, Denmark conservative agriculture, which involves reducing the use of agrochemicals, is becoming increasingly popular.

It should be emphasized that the Annexes to the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 "On Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage" address the removal, control and reduction of harmful substances so that contaminated soils, taking into account their current, established at the time of contamination or future use, do not pose a risk of adverse effects on human health in the long run [30].

In accordance with Annex II to the above-mentioned Directive 2004/35/CE, the restoration of the natural state is carried out by applying both initial and additional restoration. Thus, initial recovery means any restorative measure through which natural resources that have been damaged or damaged services are returned to their original state or close to the latter. Additional restoration, like any restorative measure applied to natural resources or services to correct that fact, means that the initial restoration does not end with the full return of natural resources or services to their previous state.

2.5. Legal aspects of restoration of lands

Land restoration includes various legal aspects. Thus, depending on its purpose, the restoration of soil fertility of agricultural lands, the productivity of forest lands, restoration in order to perform other functions (in the case of lands of other categories) are distinguished.

Restoration measures are carried out at the national, regional and local levels, carried out by owners and users, including tenants of land. According to the role of anthropogenic factors, natural and artificial land restoration should be distinguished. Thus, the reclamation of disturbed lands, their land reclamation provides their artificial restoration. Conservation of lands contributes to their natural restoration, resulting in the formation of fallow lands and self-restoration of land. According to the source of legal support, land restoration is carried out if there are grounds and in the

manner prescribed by law (it is about their reclamation), and according to by-laws (it is about land conservation).

It is quite important that when implementing land restoration measures, especially soils, it is necessary to take into account the division of the territory of Ukraine into soil-ecological zones. In addition, it makes sense to talk about the restoration of not only the state of the land, but also land rights, in particular, the return of illegally occupied land (it is about the restoration in a broader sense). Thus, the return of illegally occupied land plots must be preceded by bringing them to the previous, usable condition by demolishing illegally constructed buildings and structures, restoring the disturbed relief of land plots, etc. (article 212 of the Land Code of Ukraine).

Today, as rightly noted in scientific papers, the return of illegally occupied land is an example of a measure to eliminate violations of land legislation [31]. Land restoration is an element of defence of rights to them. It should be emphasized that the above method of defence of violated rights is manifested through the reclamation of disturbed lands, conservation of degraded and unproductive lands, as well as the implementation of land reclamation and other measures to restore them.

It should be noted that the restoration of the state of the land plot, which existed before the violation of rights, is usually considered a substantive method of defence. However, examined it can be and as an obligation-legal method of defence of land. Thus, there are cases of loss of original quality, violation of the terrain due to the actions of the tenant. Therefore, in this case, the rights of the subjects who are in a contractual relationship (in particular, the owner of the land) are violated. In obedience to the decree of Cabinet of Ministers of Ukraine of "On Approval of the Typical Lease Contract of Land" [32] after the termination of the agreement the lessee must return to the landlord land (land) in a condition not worse than that in which he received it for rent. Therefore, in the presence of an agrochemical passport of the field (land) when the relevant obligation of the lessee is included in the text of the lease agreement as one of the conditions of the latter, it is a mandatory legal way to protect the rights of the land owner [33].

2.6. Criteria for distinguishing restoration and protection of lands

The question of the legal nature of land restoration is extremely relevant, to clarify which it is appropriate to pay attention to the analysis of the relationship between restoration and protection of land, because in scientific works restoration is often interpreted as an independent area of land protection.

The law considers the protection and restoration of land to be the responsibility of landowners and land users. Land protection measures are aimed at ensuring the rational use of land, preventing their clogging and pollution,

guaranteeing a special regime of land use for environmental, health, recreational and historical and cultural purposes. Land protection measures are carried out both at the state level (these are the relevant management functions) and at the local level (when using land plots by their owners and users). We are talking about their rational use, fulfillment of obligations to comply with the requirements of environmental legislation, as well as the preservation of useful properties of the land.

Thus, land restoration has certain specifics. Its measures are carried out, when worsening of the high-quality state of land of the agricultural setting took a place already, in particular, to fertility of soils, violations of the previous state of lands in the case of change of their relief, and also if it be impossible implementation of the proper functions lands pursuant to their having a special purpose setting. Land restoration measures should be introduced not only in case they lose their original quality condition, but also the ability to perform appropriate functions, disturbance of land relief, and so on. Measures of protection of land on maintenance article 22 of the Law of Ukraine of "On Protection of Land" [34] more aimed at preventing the deterioration of the quality of agricultural land, reducing or losing fertility, as well as productivity of forestry land, to ensure the performance of non-agricultural land relevant functions.

At the same time, there is a kind of connection between land protection and restoration, because, due to certain measures for land protection (such as: the state complex system of observations; natural-agricultural, ecological-economic, anti-erosion and other types of zoning lands) are lands that have undergone changes in the structure of the terrain, are degraded, have low natural properties, are characterized by high erosion of soils, where the intensity of erosion processes and their dynamics. Land protection measures contribute to the establishment of their negative quality characteristics, topography, low soil fertility, which, of course, helps to more effective and timely restoration measures.

2.7. The place of legal norms regulating public relations in the field of land restoration in the system of land law

In connection with the above, the question of the legal nature of land restoration, establishing the place of legal norms governing public relations for land restoration in the system of land law of Ukraine remains extremely important. Legal norms are known to form the relevant branch of law through individual legal institutions. These rules are part of the field of law, but differ from other industry rules in some way. In the theory of law, it is generally accepted that the legal institution is a separate group of rules of law that regulates one or another type of homogeneous social relations.

Legal norms aimed at ensuring the restoration of land operate in case of

deterioration or loss of quality of agricultural land, in particular, soil fertility, violation of the previous state of land in case of change of their relief, as well as inability to perform certain basic functions according to their purpose. We are talking, for example, about the reduction or loss of the original quality of land. For example, when grading soils, there is a decrease in the assessment of soil quality due to the deterioration of their natural properties. Information on changes in soil properties must be included in the land cadastral documentation, in particular, in the Land Book, in the agrochemical passport of the field or land plot. In the latter case, certification is carried out in order to control changes in fertility, soil contamination with chemicals. If these indicators change in the direction of deteriorating soil quality, there is a need to restore their fertility.

Land protection and restoration measures are separated by a time frame. The first are aimed primarily at ensuring the rational, targeted use of land, preventing deterioration, pollution and littering, providing a special regime of land use for environmental, health, recreational and historical and cultural purposes. The obligations of land owners and users regarding land protection are referred to in the Land Code of Ukraine, which stipulates that these entities are obliged to comply with environmental legislation, increase soil fertility, preserve other useful properties of land, maintain erosion structures, networks of irrigation and drainage systems (Articles 91, 96). If the implementation of these protection measures did not give the expected result (that is protection measures were not effective or not implemented at all), and negative consequences for the condition of lands and reduction of soil quality (soil fertility) occurred, it is necessary to carry out restoration measures.

After the restoration of the quality of lands (including their soil fertility), the condition of disturbed lands, as well as the functions they perform for the main purpose, the lands again become the object of legal relations for their protection.

Legal norms regulating public relations in the field of restoration of land can be considered an independent legal institution, which is characterized by a special subject composition. It is characterized by specific concepts, legislative constructions, such as: disturbed lands; degraded lands; unproductive lands; man-made contaminated lands; land degradation; soil degradation; land plots with eroded, waterlogged, with high acidity or salinity soils; unfavorable water regime; waterlogged, overdrained lands; land conservation; reclamation of disturbed lands; land reclamation; plastering of soils; liming of soils, etc.

2.8. Features of legal relations in the field of restoration of lands

Public relations arising from the restoration of land should be considered an

independent component of land relations, therefore, they are part of the subject of land law, as well as public relations related to the protection and use of land. However, these types of land relations are closely related. For example, the use of land in different legal titles involves both owners and users fulfilling a number of responsibilities for its protection and restoration. In the case of conservation of degraded, unproductive and man-made contaminated land plots, their owners and land users for a certain period lose the right to use them. After the conservation and restoration of such land plots, these entities regain the right to use them. It should be noted that certain measures for land protection allow to identify lands that need to take measures for their restoration, in particular, to identify the processes of land and soil degradation and the peculiarities of the manifestation of these processes. Yes, it is first of all about the state complex system of supervision; implementation of natural-agricultural, ecological-economic, anti-erosion and other types of zoning (zoning) of lands; implementation of rationing (article 22 of the Law of Ukraine "On Protection of Land" [34]). After appropriate restoration measures, these lands again need protection from the state, their owners and users.

Further development of land relations in the field of land restoration will depend on the land legal regulation of such relations. After all, we repeat, as of today, the legal norms governing public relations in this area, properly unsystematized, are contained in regulations of various legal force, and a certain part of them, which is in the legislation governing public relations for land protection, is characterized by conflict and the lack of effective support for the mechanism of their implementation.

It should be emphasized that legal relations in the field of land restoration belong to the legal relations of the active type. Thus, land conservation is preceded by active actions of the obligated person aimed at stopping their economic use (in particular, it is about the initiation of land conservation by land owners or land users). It seems impossible to carry out conservation of degraded and unproductive lands without ordering a project developed by the contractor for land management. Failure to use the land will not directly lead to the restoration of its quality at the appropriate level. In this case, there is a possibility of littering the land with harmful plants, which will lead to further deterioration of its quality. Conservation of land should be carried out, as already mentioned, only on the basis of the developed project. The need for active action is evidenced by the afforestation of such lands, and sowing them, in certain cases, with appropriate herbs. In addition, preserved land plots are subject to systematic monitoring. Both owners and users of land participate in the work of the commission for the survey of land in kind (on the ground) in order to make a proposal to the authori-

ties to return them for use or extend their conservation.

2.9. Obligations of owners and users of land plots in the field of restoration of lands

The main legal relationship in the restoration of land should be considered a legal obligation, which is manifested in the active behavior of the obligated person in order to ensure the subjective rights of other entities. Above all things it is needed to underline that to the articles 90, 91, 95 and 96 the Land Code of Ukraine foresee common laws and duties of proprietors and users of lot lands, and only some of them belong to the rights and duties of subjects of legal relationships in relation to restoration of lands. Pursuant to the article of 91 of the Land Code of Ukraine, most of the responsibilities of landowners are aimed at ensuring the protection of the latter, to increase soil fertility and preserve other useful properties of land. Among the responsibilities of landowners in the field of land restoration under article 91 of the Code can also be distinguished: bringing the land to its previous state at its own expense in case of illegal change of its relief, except for such a change not by the owner of the land, when this procedure is carried out at the expense of the person who illegally changed the terrain. Land owners must restore land plots both their users during their operation. In this case, there is only one object of use, protection and restoration – land.

However, the current land legislation does not specify the obligation of landowners and users to restore lost soil fertility and other useful properties of land in the course of economic activity. After all, even with careful improvement of soil fertility and preservation of other useful properties of land, neither land owners nor land users are insured either by natural forces or by the actions of outsiders, resulting in deteriorating initial quality of land, arise and acquire spread processes of their degradation, disturbance of a relief. In this regard, the problem of restoring the condition of disturbed lands, their quality and ensuring that they perform their functions is acute. We consider it necessary to enshrine the obligation of owners and users in the article 91 and 96 the Land Code of Ukraine [25] to restore soil fertility and other useful properties of land, as well as to restore the land in the event of a change in its terrain. Unfortunately, today there is a certain lack of interest of landowners and users in the implementation of measures for the protection and restoration of land, which in some cases is mostly due to financial problems. We emphasize that the owners and users of land, which carry out their rational use, protection, increase soil fertility, in case of deterioration of land quality, loss of their relevant functions take timely measures to restore them, it is advisable to provide certain preferences and benefits (tax, credit and others). In this case, it is obviously a matter of ensuring the public interest.

In contrast, for owners and land users, failure to take measures to restore degraded, contaminated and disturbed land should have negative consequences in the form of, for example, the imposition of fines. It is at the expense of such funds that it is expedient to provide appropriate benefits to land owners and land users who carry out proper land cultivation, increase soil fertility, preserve other useful properties of land, initiate and implement land restoration measures. The above will provide incentives for both the rational use of land, their protection, and the timely restoration of land. At the same time, given the dispersion of powers in the field of land restoration between the State Geocadastre and the State Ecoinspection, it is advisable to create a separate body (state agency or civil service) to promote more effective activities in this area.

The need for restoration of land is closely linked to the application of legal liability measures in this area. Given the weak economic and legal mechanism, there is an urgent need to strengthen both administrative and criminal liability. In particular, it is expedient to supplement the Code of Ukraine on Administrative Offenses with a special article on liability for non-fulfillment by both the land owner and the land user of the obligation to timely start the procedure of conservation of degraded, unproductive and man-made contaminated lands. In addition, it is necessary to establish criminal liability for ignoring the restoration of the quality of degraded and unproductive lands (primarily by conserving them), the relief of disturbed lands by recultivating them in cases prescribed by law, if it has serious consequences for the environment and human health.

CONCLUSIONS

To restoration of lands and relevant legal requirements need to be systemic. It is necessary to ensure the effective implementation of the legislation on this procedure by amending existing legislation, adopting new regulations in this area in order to properly implement appropriate measures for land restoration through the responsibilities of owners, land users, other entities, through actions which there was a loss of the original quality of such areas, violation of their relief, while strengthening their responsibility in the field of land restoration, as well as the creation and functioning of an appropriate level of incentives for landowners and land users to timely land restoration in parallel with the actual receipt of funds from the state to land owners and users.

In conditions of significant deterioration of land, as the main national wealth, the rapid spread of degradation processes in the country there is an urgent need to develop and adopt the Concept of restoration of degraded, unproductive and man-made contaminated land. The purpose of this Concept is to outline priority areas for ensuring the restoration of man-made contaminated,

degraded and unproductive land. Its main tasks include: a) improving the legal framework for land restoration; b) elaboration of approaches to land restoration, promotion of processes of reduction of their degradation and desertification; c) definition of mechanisms and conditions of realization of this Concept; d) development of a plan of priority actions for the implementation of the provisions of this document; e) improvement of international cooperation in this field. On its basis should be adopt a separate special Law "On restoration of land", which should establish a definition of "restoration of land", its measures, and provide for the restoration of land of different categories.

Thus, the time has come for a significant renewal of the legal provision for land restoration, which is essential for the preservation of land as the main national wealth for present and future generations, to ensure environmental and food security, sustainable development of the country as a whole.

RECOMMENDATIONS

The study may be interest to researchers of problems of land and agricultural law, practicing lawyers, politicians. The materials of this study can be used to prepare methodological recommendations, text-books on land law. Results of the conducted research can be used to improve the land legislation of Ukraine.

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EXAMINATION OF EVIDENCE IN CRIMINAL PROCEEDINGS AS A COMPONENT OF THE PROOF PROCESS

Abstract. *Despite the active use of the term "examination of evidence" in the current Criminal Procedure Code of Ukraine, the scientific literature lacks a common position on the content and significance of this component of the evidence process, which allows to emphasize the relevance of its research. Therefore, the purpose of this article is to clarify and substantiate the essence of the examination of evidence in criminal proceedings as part of the proof process. To achieve this goal following methods were used: linguistic analysis, generalization, formal-logical, formal-legal, system-structural, product analysis, comparative and modeling; activity and praxeological approaches, and a number of techniques of formal logic. It is established that the provisions of the Criminal Procedure Code of Ukraine require the court to personally and directly examine the evidence that will be used to make a decision on the merits in the criminal proceedings. Such evidence is submitted by the parties of the proceedings, after which the court examines and demonstrates to the participants material evidence and announces (reproduces) the content of documents and expert opinions. The testimony is examined through the parties and other participants in the trial asking questions to the interrogated persons. It has been established that the examination of evidence by a court (as well as proof process in general)*

contains practical (instrumental) and mental (cognitive) components. The authors argue that the examination of evidence takes place not only in court, but also during the pre-trial investigation of criminal offenses. It is determined that the examination of evidence in criminal proceedings consists of familiarizing of the subject of evidence with a particular source of evidence, obtaining and clarifying the content of factual data from such a source, assessment of the source for admissibility, verification of facts, their assessment for relevance, reliability and (in combination with other evidence) sufficiency for making a certain procedural decision or committing a procedural action in criminal proceedings

Keywords: *criminal proceedings, criminal procedural evidence, subjects of evidence, practical components of evidence examination, mental components of evidence examination*

INTRODUCTION

With the adoption of the current Criminal Procedure Code of Ukraine (hereinafter – CPC) the domestic criminal process moved from the (post)soviet inquisitorial to a more modern mixed model. Such a transition is inextricably linked to strengthening the principles of competitiveness and dispositiveness and increasing the opportunities of the defense party to defend its positions during the pre-trial investigation and trial. Another global innovation of the current CPC of Ukraine can be considered the shift of the court's functions towards an "independent arbitrator"model. The court now evaluates the arguments of the parties to the proceedings and in most cases does not actively participate in establishing circumstances of a criminal offense. These and a number of other provisions of the updated Criminal Procedure Legislation significantly influenced law enforcement practice and the process of proof in criminal proceedings, which requires scientific understanding and theoretical justification.

Among other things, the new CPC of Ukraine named the components of evidentiary activity of authorized subjects. In accordance with Part 2 of Art. 92 of the Criminal Procedure Code of Ukraine, proving consists in collecting, verificating and evaluating evidence. And although such a "rational-empirical" interpretation of evidentiary activity is generally accepted in the doctrine of the criminal process [1, p. 21], we consider it expedient to join the academic discussion regarding its reinterpretation.

Thus, the analysis of the category "examination of evidence" is of scientific interest, which, according to various scientists, is either identical to the verification of evidence [2; 3], combines verification and evaluation of evidence [4], or is a separate component of proof process along with verification and evaluation [5]. At the same time, the majority of modern domestic scientists do not at all include the examination of evidence among the components of evidentiary activity, despite the use of such a term in the CPC of Ukraine. The lack

of a unified approach to the understanding of the named category creates a certain gap in the criminal procedural theory of evidence and in forensic doctrine about the collection, examination and use of evidence in criminal proceedings, as well as significantly complicates the development of practically-oriented forensic recommendations regarding the evidentiary activities of the subjects of criminal proceedings. The above gives reason to emphasize the exceptional relevance, scientific and practical value of clarifying and substantiating the essence of evidence examination in criminal proceedings.

Therefore, *the purpose* of the proposed article is to clarify and substantiate the essence of the examination of evidence in criminal proceedings as a component of the evidence process, to determine the most typical positions of scientists regarding the content of this category, to analyze the provisions of the current procedural legislation and to outline the legal basis of the examination of evidence in criminal proceedings, to define the structure and components of the examination of evidence by various subjects during the pre-trial investigation and trial, to formulate the doctrinal definition of "examination of evidence in criminal proceedings", as well as to determinate further prospects for the scientific development of this problem.

1. LITERATURE REVIEW

Today, in the specialized literature, there is a lack of a single approach to understanding the content of the "evidence examination" category. Without resorting to the analysis of all scientific views on this term, we will present the most typical approaches to its definition.

Thus, V. D. Arsenyev equated examination and verification of evidence and considered it as a study of the content, quality, and properties of the obtained evidence. In his opinion, such activity is different from obtaining (collecting), because it applies only to already obtained evidence [6 p. 15, 16], which is difficult to agree with. Yu. M. Groshevyi and S. M. Stakhivskyi supported the above position regarding the synonymy of the terms "examination of evidence" and "verification of evidence", preferring the latter [2, p. 56]. In their opinion, all the evidence collected in criminal proceedings, as well as the procedural sources in which they are contained, should be subject to verification. At the same time, the mentioned authors rightly point out that the examination of the content of the evidence cannot be carried out separately from the procedural form of their receipt (collection) [2, p. 56, 57].

In turn, R. S. Belkin interpreted the analyzed term somewhat more broadly. The mentioned scientist defined the examination of evidence as the clarification of their content by the investigator, the court, verification of the authenticity of the existence of those factual data that constitute the content of the evidence, establishing the consistency of

the evidence with others available in the case [7, p. 223].Named author considered evidence examination as a category that includes verification and some other cognitive operations on evidence. Later, A. R. Belkin expanded the definition formulated by R. S. Belkin, adding establishing the adequacy and admissibility of evidence as the task of their examination [3, p. 178], which is understood by the modern doctrine of the criminal process as a component of the evaluation. At the same time, the quoted author recognized the evaluation of evidence as a separate component of proving, which is a logical continuation of evidence examination.

V. M. Tertyshnyk and S. V. Slinko defined the examination of evidence as clarifying its meaning and information value and singled out examination as an independent component of evidentiary activity along with the collection, verification, evaluation and use of evidence [5, p. 57].

The most rational, in our opinion, is the position of V. V. Vapnyarchuk, who consistently enough [8, p. 146; 4, p. 196] considers evidence examination as a component of proof-cognition and combines verification and evaluation of evidence within this term. Unfortunately, the mentioned author does not reveal the content and purpose of the examination of the evidence, limiting himself to the analysis of the components of such activity.

Supporting V. V. Vapnyarchuk's approach, we should note that the "verification" and " evaluation" enshrined in the CPC of Ukraine do not reveal the entire meaning of the term "examination of evidence", just as they do not exhaust the operations necessary for the formation of evidence for its further use in criminal proceedings. Therefore, clarifying the essence of the analyzed term is of exceptional relevance and scientific value.

It is also worth noting that in Western scientific literature, the issues we are investigating are most often raised in the context of examining evidence by jurors [9], [10] who are not professional lawyers. The specified aspect of the problem is also promising for domestic criminal justice; however, it goes beyond the scope of our research.

2. MATERIALS AND METHODS

In order to clarify the essence and significance of evidence examination as a component of the proving process in criminal proceedings, the authors used a number of general and special methods of scientific research, which were chosen in view of the subject and the stated purpose of the study. The basis of the applied methodology at all stages of the research was the dialectical method of scientific cognition. Since the subject of the proposed study is on the border of the sciences of criminal procedure, forensic science and legal psychology, the authors also used the methods inherent in these sciences. The works of domestic and foreign scientists in the field of criminal procedure and forensic

science as well as modern encyclopedic literature served as the theoretical basis of the proposed article. The normative base of the study was made up of the norms of domestic criminal procedural legislation.

Linguistic analysis, generalization, and formal-logical methods helped to determine the most typical approaches to understanding the examination of evidence in scientific literature, and the historical method made it possible to clarify the genesis of such approaches. The formal-legal method was used to analyze the provisions of the current legislation regarding the process of proving in criminal proceedings. With the help of logical methods of analysis and synthesis, the main features of evidence examination during court proceedings were clarified; techniques of induction and deduction made it possible to identify similar signs in the evidentiary activity of participants in criminal proceedings during the pre-trial investigation. Taking into account the activity and praxeological approaches in forensic science, the examination of evidence was considered as an activity of the subjects of proving in criminal proceedings and as a subject of forensic scientific research aimed at increasing the efficiency of such activity. The comparative method was used in order to compare the practical and psychological components of the evidentiary activity of subjects at various stages of criminal proceedings, the system-structural method was used to determine the practical (instrumental) and mental (cognitive) operations that make up the examination of evidence. The analysis of activity products, as a method of psychological research, was used to clarify the psychological features of evidentiary activity based on its external manifestations and results. The formal-legal and modeling methods allowed the authors to formulate a doctrinal definition of the term "examination of evidence in criminal proceedings". Using the method of forecasting, the authors determined further prospects for the scientific development of this problem.

The proposed study is structured and sequential. At its first stage, the authors found out the most typical positions of domestic and foreign scientists regarding the content of the category "examination of evidence in criminal proceedings" and came to the conclusion that there is no unified position in the specialized literature regarding the given issue. At the second stage of the study, the provisions of the current procedural legislation regarding the examination of evidence by the court were studied, as well as the evidentiary activity of the trial participants was analyzed. On this basis, the authors clarified the essence and content of evidence examination in court proceedings, distinguished the practical (instrumental) and mental (cognitive) components of such activity. Within the third stage of the study, the evidentiary activity of the subjects of proving during the pre-trial investigation was analyzed, its compo-

nents corresponding to the features of the evidence examination were singled out. The above made it possible to conclude that the examination of evidence is an integral part of the evidentiary process and an activity carried out by the relevant subjects both during the pre-trial investigation and in the court proceedings. At the fourth stage of scientific research, the authors summarized the features and components of evidence examination in criminal proceedings, formulated the doctrinal definition of this category, and determined further prospects for the scientific development of the raised issues.

The chosen structure of the study and the research methods used by the authors made it possible to achieve reliable results, which are characterized by relevance, scientific novelty, theoretical and practical value. Formulated provisions and conclusions may be used during the further study of the problems of proving both within the criminal procedural theory of proof and within the forensic doctrine about the collection, examination and use of evidence in criminal proceedings.

3. RESULTS AND DISCUSSION

In the current CPC of Ukraine, the term "examination" is used in the context of various procedures and subjects. Perhaps, the most characteristic case of its application is the requirements of Art. 23 of the Criminal Procedure Code of Ukraine, according to which the evidence (information), which should become the basis of a decision in a criminal proceeding on the merits, must be directly examined by the court.

The judicial examination of the evidence takes place at the stage of trial, which is called "ascertaining circumstances and their verification with evidence" (Article 363 of the Criminal Procedure Code of Ukraine). At its beginning, in accordance with Art. 349 of the CPC of Ukraine, the parties to the proceedings, at will, deliver their opening speeches, in which, in particular, they offer their own view on the evidence examination order. After the opening speeches are over, other participants in the trial may also express their opinions regarding the list and order of examination of the evidence. As a general rule, first of all, the evidence from the side of the prosecution is examined. The volume of evidence to be examined and the order of its examination are determined by the court decision and may be changed if necessary.

The examination of evidence by the court can take place according to three main scenarios. In accordance with the first one, the parties submit physical evidence, documents or expert findings to the court (in a criminal misdemeanor trial, Article 298^1 of the Criminal Procedure Code of Ukraine provides additional procedural sources of evidence that may be used in court trial). The court personally examines the physical evidence, after which it is presented to the participants of the judicial process; the content of the documents (including

the expert's findings) is announced at the court session, audio recordings are played and video recordings are shown. The court examines both the procedural source of evidence and the factual data contained in it (in this aspect, the prevailing in the domestic criminal process concept of dualism of evidence, which is a combination of factual data and their procedural sources prescribed by law, is absolutely fair).

The submitted judicial evidence were formed at the stage of the pre-trial investigation: collected, verified and evaluated by the parties to the proceedings (in this regard, we agree with the position of V. V. Vapnyarchuk, who notes that certain factual data acquire the status of evidence even before the transfer of criminal proceedings to court [1, p. 61]).Based on this evidence, the representatives of the prosecution party have already made relevant procedural decisions (in particular, on applying to court with an indictment or a petition provided for in Article 283 of the Criminal Procedure Code of Ukraine), and the representatives of the defense party have taken certain procedural actions. Therefore, the submission of judicial evidence to prove the persuasiveness of one's position is a form of use by the parties to the proceedings of previously formed evidence.The parties to the criminal proceedings and other participants in the trial take an indirect part in judicial examination of evidence – together with the court, they familiarize themselves with evidence content, and within the court debates express their own positions regarding the examined evidence, results and consequences of their examination.

At the same time, accordingto the Part 2 of Art. 23 of the CPC of Ukraine, as a general rule, information contained in testimony, things and documents that were not the subject of a court's direct examination cannot be recognized as evidence.Therefore, from the moment of submission of evidence to the court for the examination, their formation begins anew: the court examines the procedural source, familiarizes itself with the content of the factual data it contains, checks the received information, evaluates each piece of evidence from the point of view of adequacy, admissibility and reliability, the totality of already examined evidence – from the point of view of sufficiency, and makes a decision on their use for checking or obtaining other evidence or for making and justifying a substantive decision in criminal proceedings.It is obvious that the assessment given by the court to the examined evidence may differ from the assessment given to this evidence by the parties of the proceedings before the start of the trial.

The court receives and examines the statements of the accused, the victim and witnessesaccording to the second scenario.Although these interrogations have already been conducted by the prosecution at the stage of the pre-trial investigation (on its own initiative or on the basis of the request of the defense),

and factual data have already been obtained and used to make procedural decisions, the Criminal Procedure Code of Ukraine requires the court to personally and directly receive the oral testimony of such persons.During a procedural action – a judicial interrogation, such evidence is actually collected (obtained) again. In addition to the court, the parties to the proceedings, the victim and other participants in the trial take part in this process. At the same time, their role is more active compared to the study of material evidence, documents and expert opinions. Named participants may ask questions to the interrogated persons, request a summons for the purpose of interrogating other persons and express their positions regarding the information obtained during judicial interrogations in court debates.Therefore, the "submission" of such evidence to the court is quite specific: as a general rule, during direct and cross-examination, the parties ask the person the necessary questions within the defense and prosecution tactics, and the answers of the interrogated are accepted by the court. The testimony of an expert is obtained and examined in a similar way, with the only difference that the latter cannot be pre-interrogated during a pretrial investigation.

The third scenario of examination of evidence by the court is related to situations when the court is obliged or at its own discretion takes the initiative in clarifying the circumstances of the criminal proceedings.In particular, this concerns the authority of the presiding judge to ask his own questions during the interrogation of the accused, witness, victim and expert, which is a manifestation of a certain activity of the court while establishing circumstances of a criminal offense. As a rule, the court uses such powers in cases where the questions posed by the parties and other participants in the trial did not allow obtaining necessary information from the interrogated person. In addition, the presiding judge has the right, upon the party's protest, to remove questions that do not relate to the essence of the criminal proceedings (Part 8 of Art. 352 of the CPC of Ukraine) and to specify the questions asked in order to obtain a clear answer "yes" or "no" from the person (Part 11 of Art. 352 of the CPC of Ukraine). Another manifestation of the court's activity in clarifying the circumstances of a criminal proceeding is appointing an expertise by court order. If there are grounds provided for in Art. 242 of the CPC of Ukraine, the court has the right to appoint an expert examination without the request of the parties to the proceedings or the victim.The court can also show its own initiative by summoning an expert for questioning in order to clarify his findings, as well as by engaging a specialist to obtain oral consultations or written opinions (in particular, for the purpose of evaluating the expert's findings [11, p. 259]).

Regardless of the scenario, the examination of evidence in court proceed-

ings is directly related to the procedural activity of the parties, each of which tries to realize its own procedural interest. R. Koloma rightly points out that evidentiary activity in court proceedings consists in the construction of a story by the parties, a narrative that allows one to move from means of proof to hypotheses about the occurrence of a criminal offense and vice versa [12, p. 617]. The parties to the proceedings, based on the results of the pre-trial investigation, form their own positions regarding the circumstances of the criminal proceedings and evaluate them.They try to convey their position to the court, using previously formed evidence by submitting it to the latter for examination.Such activity of the parties is a component of the prosecution and defense tactics, respectively, and therefore is of scientific interest to forensic scientists. The submitted evidence allows the parties to indirectly form the internal conviction of the court, on the basis of which a decision on the merits in the criminal proceedings will be made.

The court's examination of each piece of evidence starts from the moment it is submitted, but does not end with the submission of the next one, the completion of the stageof ascertaining circumstances and their verification with evidence, or the court's exit to the deliberation room. Each new examined evidence (as well as the arguments of the parties expressed during the debate) can affect the court's understanding of other evidence, their totality, the circumstances of the criminal offence, etc. In the court's mind examination and clarification of the content of evidence is inextricably linked with its verification, evaluation and use for building versions of the event of a criminal offense. Such a cognitive process is repeated every time the next examined piece of evidence affects the understanding of the previous ones; for the last time this happens after the court goes to the deliberation room, where the content of the entire evidence base is clarified and evaluated and a certain decision is made on its basis. Therefore, the examination of evidence by the court consists in familiarizing with the procedural source of evidence, clarifying its content (factual data that such a source contains), checking the received data, evaluating each piece of evidence from the point of view of adequacy, admissibility, and reliability, and the totality of already examined evidence – from the point of view of sufficiency for the purpose of making a certain procedural decision in court proceedings.

Examination of evidence by the court (as well as evidentiary activity in general) contains practical (instrumental) and mental (cognitive) components. The first one is manifested in the actions of the parties regarding the presentation of evidence to the court, drawing its attention to certain features of these objects, asking questions to the interrogated persons, as well as in the

actions of the court regarding the inspection of physical evidence, declaration of the content of documents, etc. The second component is related to the thinking of the court, which receives information about the circumstances of the criminal proceedings from submitted sources, checks and evaluates the received data, forms its own internal conviction about the essence and circumstances of the event under investigation and the guilt of the accused.

Similar cognitive processes take place in the minds of the parties to the proceedings. In order to operate on the formed evidence, to build and validate versions, to validate other evidence, to form an internal conviction and make procedural decisions or take procedural actions, the subjects of proving must first find out the essence and content of each procedural source and the factual data it contains.Such thought processes are an integral part of the formation of evidence and are not limited to logical operations regarding their evaluation and verification.

Therefore, it is incorrect to claim that the examination of evidence takes place only in court proceedings, with the court presiding and with the optional participation of other participants in the process. On the contrary, the cognitive processes of evidence examination begin at the moment of the initial discovery of potentially evidentiary information and continue with the collection of evidence (its fixation in the proper procedural form).In particular, understanding the essence of the revealed information allows an authorized person to choose a relevant, legally prescribed method of securing it (these components of evidentiary activity are of direct interest to forensic scientists). Moreover, the examination of particular piece of evidence does not end with its initial verification and evaluation. Each subsequent piece of evidence collected affects the understanding of the content of previously received evidence, the evaluation of the existing evidence base, the presentation of versions about the event of a criminal offense, etc.

The practical (instrumental) component of the examination of evidence during the pre-trial investigation, as a rule, is manifested in the following. Any evidentiary information discovered by the prosecution must be properly recorded – by describing in the protocol the investigative (search) action, photo-video recording, drawing up a scheme, etc. From the very moment of discovery of objects that can potentially carry evidentiary information, authorized subjects are able to apply certain instrumental methods of their preliminary examination (for example, discovered documents are examined using magnifying devices, in infrared or ultraviolet rays, etc.). Further instrumental the examination of evidence is possible by sending certain objects for forensic examination. The forensic expert in most cases helps both to establish the characteristics of the examined object

itself, and to find out the content of the actual data that it carries.

Simultaneously with the fixation of evidentiary information, mental (cognitive) processes of examination of the evidence take place. The authorized person finds out the essence and forensically significant features of the examined object, the content of the factual data it carries, formulatesprimary versions about its connection with the event of a criminal offense. At the same time, the formed evidence is compared with the previously collected, undergoes an initial evaluation and verification.

One of the obvious examples of the examination of evidence during the pretrial investigation is regulated by Art. 266 of the CPC of Ukraine. The study of information obtained as a result of the use of technical means during undercover investigative (search) actions involves the examination of video and audio recordings, photographs and other results of the use of technical means by investigators in order to identify information that is important for pre-trial investigation and court proceedings. Provided it is discovered, such information must be recorded in the protocol, and the technical means and primary information media used during such undercover investigative (search) actions must be kept until the court verdict becomes legally binding.In essence, this activity of the investigator is manifested in the study of the procedural source (primary media of information – a disk or flash card containing the recording), familiarization with the actual data contained in it and their evaluation for adequacy. It is the adequate information that will be entered into the protocol and later used to prove certain circumstances of a criminal offense.

The examination of evidence is an integral part of procedural activity of other subjects of evidentiary activity too.Part 3 of Art. 93 of the Criminal Procedure Code of Ukraine provides the defense, the victim, and the representative of the prosecuted legal entity a number of procedural means of gathering evidence.The evidence collected by the mentioned persons can be used in the future by handing it over to the prosecution or submitting it to the court during the trial. It is obvious that the collection and further use of evidence by the mentioned entities is not possible without their thorough examination.

Moreover, perusal of the materials of the pre-trial investigation (Articles 106^1, 221, 290 of the CPC of Ukraine) is essentially anexamination by the defense party of the evidence that was produced by the prosecution at this stage of the criminal proceedings.The materials of the pre-trial investigation contain documents and physical evidence that will be used by the prosecution in the court proceedings. During the familiarization process, the representative of the defense party examines the procedural sources of evidence contained in the materials, finds out the factual data provided by the relevant

sources, verifies them (by comparing the evidence of the prosecution with each other and the evidence of the defense) and evaluates them.In the future, the evidence gathered by the prosecution can be used by the defense in the court proceedings for their own good: for some of them, motions for recognition as inadmissible will be filed, for others – counterarguments found, and others – turned in favor of the versions formulated by the defense. The described procedural mechanism also works in the opposite direction, because in accordance with Part 6 of Art. 290 of the Criminal Procedure Code of Ukraine, the prosecutor may demand the disclosure of evidence that the defense intends to use in court proceedings.

It is also worth noting that the investigating judge is one of the subjects who examine the evidence at the stage of the pretrial investigation of a criminal offense. In particular, in accordance with Clause 1, Part 1 of Art. 178 of the Criminal Procedure Code of Ukraine, when deciding the issue of choosing a preventive measure, the mentioned subject, among other things, is obliged to assess the weight of the available evidence about the commission of a criminal offense by the suspector the accused. To achieve this, the investigating judge on the basis of Part 4 of Art. 193 of the Criminal Procedure Code of Ukraine may hear any witness or examine any materials relevant to the decision on the application of a preventive measure, which meets all the above-mentioned features of the examination of evidence.

The above makes it possible to cite the following set of practical (instrumental) and mental (cognitive) operations that make up the examination of evidence:

– identification of a medium (source) of potentially evidentiary information (examination that takes place simultaneously with the collection of evidence), or obtaining a procedural source of evidence (examination of already formed evidence);

– familiarization with the medium, determination of its essence and methods of obtaining (fixing) information, or familiarization with the procedural source and evaluation of the legality of its receipt (evaluation on the subject of admissibility);

– obtaining factual data (evidential information), their reflection in the mind of the person examining the evidence, clarifying content and essence of the data;

– the use of factual data to build versions of the event of a criminal offense (with a simultaneous evaluationfor adequacy);

– verification of factual data (both "intellectual", by comparison with other evidence, and "instrumental", by conducting investigative (research) actions for verification) and evaluation for reliability;

– evaluation of factual data in combination with other evidence for their sufficiency for making a certain proce-

dural decision or taking a procedural action (this operation is repeated in the person's mind with each new examined evidence and for each subsequent procedural decision).

It seems that the listed operations are inextricably linked in practical activity and in the minds of the subjects of proof, and therefore it is inappropriate to distinguish examination, verification and evaluation of evidence as separate components of the proving process.

CONCLUSIONS

In the criminal procedural and forensic scientific literature, there is a lack of a unified approach to understanding the essence and meaning of evidence examination as a component of the proving process. In particular, the majority of scientists do not include this category among the components of proving, despite the use of the given term in the current CPC of Ukraine. Because of this, finding out the essence of evidence examination in criminal proceedings is of exceptional relevance and scientific value.

Art. 23 and other provisions of the CPC of Ukraine require the court to personally and directly examine the evidence that will be used to make a decision in a criminal proceeding on the merits.Evidence is submitted by the parties to the proceedings within the tactics of prosecution and defense, and the court examines and shows physical evidence to the participants of the proceedings, announces (reproduces) the content of documents and experts' findings. Submission and the examination of testimony in court hearings are quite "specific": as a general rule, the parties ask the person questions during direct and cross-examination, and the answers of the interrogated are accepted by the court.

Examination of evidence by the court (as well as evidentiary activity in general) contains practical (instrumental) and mental (cognitive) components. The first one is manifested in the actions of the parties regarding the presentation of evidence, asking questions to the interrogated persons, as well as in the actions of the court regarding the inspection of material evidence, the declaration of the content of documents, etc. The second component is related to the thinking of the court, which receives information about the circumstances of the criminal offence from submitted sources, checks and evaluates the received data, forms its own internal conviction about the essence and circumstances of the event under investigation and the guilt of the accused.

However, similar cognitive processes take place in the minds of the parties to the proceedings, in particular, during the formation of evidence at the pre-trial investigation stage. Therefore, it is incorrect to claim that the examination of evidence takes place only in court proceedings, with the court presiding and with the optional participation of other participants in the process. On the contrary, the cognitive processes of evi-

dence examination begin at the moment of the initial discovery of potentially evidentiary information and continue with the collection of evidence (its fixation in the proper procedural form)and its use.

In view of the above, the examination of evidence is a component of the proving process, one of the operations with evidence (along with their collection and use), which consists in familiarizing the subject of evidence with a certain source of evidentiary information, obtaining and clarifying the content of factual data, which contained in such a source, evaluating of the source for admissibility, verification of factual data, their evaluating for adequacy, reliability and (together with other evidence) sufficiency for making a certain procedural decision or taking a procedural action in criminal proceedings. Examination of evidence is carried out by subjects of evidentiary activity both during pre-trial investigation and in court proceedings and is inextricably linked with the process of their collection and use.

The development of recommendations for the most effective examination of evidence by all subjects of proving in criminal proceedings is a promising direction of forensic scientific research.

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CRIMINALISTICS AND FORENSIC SCIENCES IN UKRAINE: HISTORY AND CURENT TRENDS

Abstract. *The article is dedicated to the problems of formation and the present state of criminalistics, forensics and forensic sciences in Ukraine. The historical antecedents and peculiarities of scientific (special) knowledge application in crime prevention, formation of different forensic sciences (forensic medicine, forensic psychiatry, forensic psychology, forensic toxicology, forensic chemistry, forensic accounting and others) are addressed. The relationship of criminalistics, forensics and forensic sciences is analyzed, and their role in the current context is defined.*

The functional purpose of criminalistics, forensics and forensic sciences makes it possible to determine the directions and trends of their development. Currently, criminalistics, forensics and forensic sciences are designed to provide the legal practice with the latest tools, techniques and technologies in various jurisdictional processes, contribute to the optimization of pre-trial, trial and extrajudicial proceedings, to improve the performance of employees of law enforcement and expert services.

Formation and development of criminalistics and other forensic sciences in Ukraine reflects their integrative function. The development of criminalistics, its trends are due to the influence of information flows, technological progress of society. Digital criminalistics, the use of digital evidence, protection of information sources and the problem of information security should become an important direction.

The article considers the role of national and European non-governmental organizations in the development of criminalistics, forensics and forensic sciences in approximation to the common European space

Key words: *criminalistics, forensics, forensic history, forensic knowledge, trends in forensic science, types of forensic science*

Science as a reflection of the activities of prominent figures. The development of criminalistics, forensics and certain forensic sciences depends on the contribution of individuals who carry out scientific or practical activities. The role of individuals in the history of the formation and development of criminalistics knowledge is significant. The decisive contribution to the development of criminalistics and forensics is made by a distinguished scientist-criminalist, a renowned research organizer, a forensic expert, a member of the Lithuanian Association of Criminalists and a member of the International Criminalists Congress, Doctor of Law, Professor Vidmantas Egidijus Kurapka, who is widely known not only in Lithuania but also outside the Republic of Lithuania. V. E. Kurapka conducts active work on popularization of criminalistic knowledge, establishment of contacts with criminalists of different countries of the world, interaction through national and international non-governmental societies of criminalists. A significant role belongs to V. E. Kurapka on the establishment and functioning of the Lithuanian Association of Criminalists and the International Criminalists Congress, in holding annual conferences (congresses): Criminalistics and Forensic Sciences: Science, Studies, Practice. The universities of Ukraine study the scientific works of Professor V. E. Kurapka, which reflect promising views and express progressive ideas on the doctrinal problems of European criminalistics, forensic science and criminalistic didactics. The scientific works of Professor V. E. Kurapka are useful not only for teachers, scientists, practitioners of law enforcement agencies and forensic experts, but likewise for students.

Scientific basis of the research. The doctrinal problems of criminalistics and forensic science were addressed by criminalists from around the world: R. Belkin, A. Vinberg, M. Goc, V. Zhuravel, V. Konovalova, V. E. Kurapka, E. Locard, H. Malewski, S. Matuliene, H. Matusovskyi, J. Metenko, M. Saltevskyi, M. Segai, E. Simakova-Yefremian, V. Tischenko, T. Tomashevski, B. Holyst, P. Saukko, Yu. Chornous, B. Shchur *et al*. An important basis for the formation of the doctrine of criminalistics and forensics is the development of separate criminalistic theories (doctrines) by certain scientists: identification theory, theory of criminalistic diagnostics, theory of forensic forecasting, theory of criminalistic leads, theory of tactical operations, theories of tactical techniques systematization, theories of criminalistic didactics, etc. A certain synthesis of the study of the doctrine of criminalistics and forensics is the consideration of general theoretical, methodological and most relevant issues of development of this scientific knowledge in a compre-

hensive interdisciplinary study in the structure of the legal doctrine of Ukraine[1].

Statement of the scientific problem. Criminalistics, forensic sciences and forensics can be considered in terms of doctrinal approaches, the formation of their methodological principles, theories and concepts. Recourse to the doctrine of criminalistics and forensics requires establishing a relationship with the State's criminal policy and criminalistic strategy. Criminalistics, unlike other sciences of the criminal law cycle, traditionally and historically uses the term "criminalistic strategy" instead of policy… The criminalistic strategy has already been formed as a category and a separate direction.

The development of criminalistic strategy as a separate category in criminalistics has not reached the level of a separate section of science[2].

The history of criminalistics and forensic science is intrinsically linked to the establishment and development of the institution of involving informed individuals in criminal (or other) proceedings… Forensics is the examination, which is based on the use of specialized knowledge; it is carried out in accordance with the procedural and / or other law individual who possesses specialized knowledge[3].

There is a need to establish the relationship between criminalistics and forensic sciences, criminalistics and forensics[4]. At the same time, traditionally, criminalistics and forensic sciences are considered to be controversial sciences, which are intended to contribute to achieving the truth in legal proceedings through the development of investigation methods and evidentiary information evaluation. Criminalistics and forensic sciences is a reflection of the different development of science, which develops in different schools and accordingly – scientific fields with the use of those legal, technical, tactical and methodological possibilities, which were in the arsenal of its leading representatives[5].

The role of national and European non-criminal organizations in the development of criminalistics and fo-

[1] Legal Doctrine of Ukraine: in 5 volumes. Kharkiv: Pravo, 2013. T. 5: Criminal law sciences in Ukraine: state, problems and ways of development / V. Ya. Tatsiy, V. I. Borisov, V. S. Batyrgareieva *et al*.; editors-in-chief V. Ya. Tatsiy, V. I. Borisov. 1240 p.; Ukrainian Legal Doctrine in Five Volumes. Edited by V. Ya. Tatsiy. Volume Five (Part Two): Judicial Law, and Forensic Legal Sciences. Edited by V. Ya. Tatsiy and V. Borysov. London. 472 p.

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[4] For more details see: Shepitko M. V. Conceptual bases of the development of criminalistics and forensic sciences. *Archives of criminology and forensic sciences.* Academic journal. 2020. № 1. C. 89–97.

[5] M. V. Shepitko. Spec. work. P 89.

rensics. The history of criminalistics knows the times when there was a real push to create certain associations of criminalists for solving certain tasks. In this regard, the history of the emergence and functioning of the International Criminalistic Union (hereinafter referred to as ICU) is interesting.

The creation of the ICS is related not only to the emergence of the scientific idea and the historical circle of its supporters, but also to the active participation of famous personalities – Franz von Liszt, Gerardus Antonis van Hamel and Benoit Adolphe Georges Prince[1].

It is also important that since 1897 the ICS has had representatives of Ukrainiane (belonging to the Russian Empire at the time) (Professor V. P. Danevsky of the Imperial Kharkiv University). Later, (June 12, 1900) the International Criminalistic Union was joined by a renowned criminalist, the leader of the psychological aspect of criminal law, professor of criminal law at the Imperial Kharkiv University L. Ye. Vladimirov, and later on (from September 1, 1901) it was joined by A. A. Löwenstimm and M. J. Kuplevaskyi[2].

The history of criminalistics knows other examples of the establishment of international criminalistic organizations. For example, in 1929, the International Academy of Criminalistics was founded and based in Vienna, Austria. Its founders were M. Bischoff, E. Locard, C. J. van Ledden Hulsebosch, G. Popp, S. Türkel[3].

Recent publications by renowned criminalists (von R. Ackermann, V. E. Kurapka, H. Malewski, V. Yu. Shepitko) show trends in the development of criminalistics and criminalistic didactics in various European countries (Germany, Lithuania, Ukraine)[4].

In the current context in the European space, national associations of criminalists have been created and are successfully functioning, which perform an important role in the development of criminalistics and forensics, promote the best achievements in criminalistics (Lithuanian Association of Criminalists, Polish Association of Criminalists, Slovak Association of Criminalists, German Association of Criminalists, and others).

In particular, H. Malewski rightly says that a certain place in the development of criminalistics, especially at the present juncture, can be taken by the

[1] For more details see: M. Shepitko. Ukrainian Group of International Union of Penal Law: Way from Vienna to Paris. *A First Printed Criminalist.* 2019, № 18. P. 43–61

[2] M. V. Shepitko.Ukrainian Group of International Union of Penal Law: Way from Vienna to Paris. A First Printed Criminalist. 2019, № 18. P. 43–61.

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[4] R. Ackermann, V. E. Kurapkai, H. Malewski, V. Yu. Shepitko. Schaffung eines einheitlichen europaischen kriminalistischen Raumes. Die Tayigkeit offentlicher Organisationen zur Starkung der internatioalen Beziehungen. Kriminalistik. 2020. № 6. P. 355–363.

Lithuanian Association of Criminalists (which has been functioning since 2001). Among the initiators of founding the Association were representatives of academic criminalistics, collaborators of expert and criminalistic divisions, police and prosecutor's office. The main goal of the Association is to promote active criminalalistic activities, advocate for the achievements of criminalistics and forensics, and involve its members in active scientific and methodological activities. Members of the Association organize and hold seminars, lectures, and competitions. The Association actively participates in conferences "Criminalistics and Forensic Science: Science, Studies, Practice"[1].

Today in Ukraine, the International Criminalists Congress is an international non-profit organization that brings together scientists-criminalists, academics, and specialists of joint fields of scientific knowledge, judicial experts, collaborators of law enforcement bodies, public actors for the protection and defense of their legitimate interests. The existence of a single informational space requires further integration of criminalists, scientists and practitioners of other states and scientific schools, development of modern tools and methods of criminalistics, as well as the popularization of criminalistic knowledge.

An important event in international cooperation among criminalists is the signing by representatives of the Lithuanian Association of Criminalists, the Polish Association of Criminalists and the Criminalists Congress (Ukraine) of Palanga Memorandum on intention to establish the European Federation of National Associations of Criminalists (16 November, 2017, Palanga, Lithuania). During the XV International Congress "Criminalistics and Forensic Science: Science, Studies, Practice", which took place on 19–21 November 2019 in Kaunas, Lithuania, where the establishment of the European Federation of Criminal Justice Partnerships (Headquartered in Vilnius, Lithuania) was discussed. As of today, all the organizational measures for the establishment and start of real functioning of the European Federation of National Criminalists' Associations, in which the association of Ukrainian criminalists has a worthy place, have been completed.

State of Criminalistics and Forensic Science in Ukraine. In Ukraine, the development of criminalistics is carried out in three main directions: 1) development of university science (science at educational institutions); 2) development of academic science (within the scope of activity of scientific-research institutes); 3) development within the limits of departmental subordination (within the scientific and research divisions of the Ministry of Internal Affairs

[1] H. Malewsky. In Search of One's Own Teaching Model – Metamorphosis of Criminalistic Didactics in Lithuania. Models of Criminalistics Teaching: History and Modernity. A joint international project: collection of scientific papers / Edited by N. P. Yablokov, V. Yu. Shepitko. Kharkiv: Apostil, 2014. P. 60.

of Ukraine, court and expert institutions of the Ministry of Justice of Ukraine, the Ministry of Health Care of Ukraine and others)[1].

The development of university science is carried out, as a rule, through scientific research specialized departments of law faculties, institutes or universities (departments of criminalistics[2], criminalistics and forensic medicine, criminalistics and forensic science, etc.) and the development of scientific topics of criminalistic direction in scientific and research sectors of higher legal education institutions.

Within the framework of academic science, research in criminalistics is carried out by structural divisions of the National Academy of Legal Sciences of Ukraine (NALSU), within the framework of its research institutes (i.e., Laboratory "Application of Modern Achievements of Science and Technology in Combating Criminality" of the Academician Stashis Scientific Research Institute for the Study Crime Problems National Academy of Legal Sciences of Ukraine).

Coordination of scientific research in this field is carried out by the division of criminal and legal sciences of NALSU. The structure of this department includes a bureau for problems of criminalistics, forensics, operative and investigative activities and legal psychology. In particular, the result of scientific research of the academic science is the preparation of fundamental works and encyclopedic editions[3].

The development of criminalistics and forensics in Ukraine is related to the development of general and specific criminalistic theories, investigation of problems of criminalistic techniques, tactics and methods of investigation of certain types of crimes, formation of the general theory of forensic examinations (forensic experts). At the present stage, individual scientists and scientific teams are engaged in the development and implementation of scientific and technological means, methods and technologies in the practice of com-

[1] See: V. Yu. Shepitko. Modern State of Criminalistics in Ukraine and Problems of Criminalistic Didactics. *Criminalistic and Forensic Expertology: Science, Studies, Practice.* Vilnius, 2020. P. 50; V. A. Zhuravel, V. Yu. Shepitko. Development of Criminalistics and Forensics in Ukraine: Approaching a Single European Space. *Legal Science of Ukraine: the Current State, Challenges and Prospects of Development* Monograph / edited by: O. V. Petryshyn (Chairman of the Editorial Board: O. Petryshyn). O. V. Petryshyn (chairman of the editorial board), V. A. Zhuravel, N. S. Kuznetsova *et al*. Kharkiv: Law, 2021. 3. 652, 653.

[2] See, for example: Department of Criminalistics: History of Formation and Development. To the 80th anniversary of the foundation: monograph / edited by V. Yu. Shepitko. Kharkiv: Law, 2020. P. 10.

[3] The Legal System of Ukraine: History, State and Prospects: in 5 volumes. Kharkiv: Pravo, 2008. Vol. 5: Criminal law sciences. Actual problems of combating criminality in Ukraine / edited by V. V. Stashis. 840 p.; Legal doctrine of Ukraine: in 5 volumes Vol. 5: Criminal law sciences in Ukraine: state, problems and ways of development / edited by V. Ya. Tatsii, V. I. Borisov. Kharkiv: Pravo, 2013. 1240 p.; Large Ukrainian Legal Encyclopedia in 20 vol. Vol. 20: Criminalistics, forensics, legal psychology / edited by: V. Yu. Shepitko (Chairman) and others. Kharkiv: Law, 2018. 952 p.

bating criminality. Confirmation of this fact is the presentation of a significant number of dissertations on various problems of criminalistics and forensics, preparation of monographs and scientific articles for publication, participation in international congresses, symposiums and conferences.

Trends in Criminalistics. Criminalistics belongs to the sciences of the criminal law cycle, which is dynamically evolving. Formation of scientific knowledge, which contributes to counteracting crime, is related to different processes: internal integration of criminalistics and integration of separate areas (scientific disciplines), namely forensic toxicology, forensic pharmacology, forensic psychology, forensic psychiatry, forensic medicine, forensic archeology, forensic accounting, forensic expertise, and others.

The formation and development of criminalistics in different countries of the world is a reflection of its integrative nature. The process of development of criminalistics is reflected in the names of scientific disciplines: "Forensic Sciences" in the United States, Great Britain, Canada, Australia; "Kriminalistik" in Germany, Austria; "Police Scientifique" in France, Switzerland. In English-speaking countries, the term "Forensic Science" is likewise used to define other terms: "Criminalistics" (as part of the forensic sciences), "Criminal Investigation", "Criminology"[1].

The trend of criminalistics is the transformation and expansion of its subject matter, which is caused by the tendency of science to change the objects that are studied by it. Changes in the paradigm of criminalistics affect the system of knowledge, which is considered to be criminalistic. Globalization of criminalistics implies the following general principles: 1) widening the range of influence of criminalistics; 2) technologization and informatization of criminalistic postulates; 3) unification of criminalalistic knowledge[2].

The development of criminalistics and forensics is related to the formation of the terminological apparatus, the language of science. This is confirmed by the preparation and publication of dictionaries and encyclopedias in the field of science[3]. Ukraine's integration into

[1] V. Yu. Shepitko. Nature, subject and tendencies of criminalistics in the context of globalization of the modern world. *Criminal Process and Criminalistics: Critical Issues of the Times:* Collection of Articles. All-Ukrainian Scientific and Practical Conference on the occasion of the 20th Anniversary of the Department of Criminal Procedure and Criminalistics of Ivan Franko National University (June 24, 2020, Lviv). Lviv: LNU named after Ivan Franko. 2020. P. 225, 226.

[2] V. Yu. Shepitko. The nature, subject and trends of criminalistics in the context of globalization of the modern world. *Criminal Process and Criminalistics: Critical Issues of the Times*: Collection of Articles. All-Ukrainian Scientific-Practical Conference on the occasion of the 20th Anniversary of the Department of Criminal Procedure and Criminalistics of the Ivan Franko National University (June 24, 2020, Lviv). Lviv: LNU named after Ivan Franko. 2020. P. 225, 226.

[3] Glossary of Special Terms of Forensics. P. 1 / author-compiler. G. V. Mikhailenko *et al* under general edition by A. S. Rubis. Minsk: Theseus,

the international and European community necessitates the unification of terminology in the field of science[1].

In the current context, in Ukraine the processes of reforming law enforcement bodies and courts are taking place, the legislation is changing dramatically, and electronic resources are being introduced. Criminalistics is influenced by the changes in the legal framework, the "revision" of traditional institutions of criminal law and procedure.

Actual in the Eastern European countries is the problem of using unified methods, technologies and tools for conducting forensic examinations, implementation and validation of judicial and expert methods, implementation of international standards, certification of scientific and methodological support, definition of a unified system of expert staff training in the framework of international cooperation[2].

Currently, Ukraine is experiencing significant changes in the criminal legislation. In particular, in 2020 there is a division of criminal offenses into crimes and criminal misdemeanors. As for criminal offenses, simplified pretrial investigation is concerned. In this sense, criminalistics must provide an algorithm of actions to law enforcement officers, and offer criminalistic methods of investigating criminal offenses.

The problem becomes particularly relevant due to the need for harmonization of the criminal procedural mechanism in accordance with the European standards, ensuring an appropriate balance of public and private interests[3]. During this period, suggestions were made about the necessity of ensuring the prosecutor's, court and lawyer's activities in a criminally safe manner.

In the current context, the formation of criminalistic knowledge is dependent on the scientific and technological progress of human cooperation. The development of criminalistics and forensics, their trends are caused by the influence of world information flows, the integration of knowledge about the possibilities of combating criminality with the aid of scientific and technological achievements of modern society.

An important trend of criminalistics is the integration of knowledge, proposing new, innovative scientific develop-

2007. 420 p., V. Yu. Shepitko. Criminalistics: Dictionary of Terms. Kyiv: In Yure, 2004. 264 p.; V. Yu. Shepitko. Criminalistics: Encyclopedic Dictionary (Ukrainian-Russian and Russian-Ukrainian) / edited by V. Ya. Tatsii. Kharkiv: Law, 2001. 554 p.

[1] See: Criminal Law, Criminalistics and Forensic Sciences: Encyclopedia / V. Yu. Shepitko, M. Shepitko. Kharkiv: Pravo / Criminal Law, Criminalistics and Forensic Sciences: Encyclopedia. Kharkiv: Pravo, 2021. 508 p.

[2] V. Yu. Shepitko. Legal regulation of expert activity and trends in the formation of a common European space in the field of forensics. *Topical Issues of Forensics and Criminalistics.* Collection of Materials of the International Scientific-Practical Conference-Polilog (Kharkiv, April, 15–16, 2021). Kharkiv: Pravo, 2021. P. 93.

[3] V. Yu. Shepitko. Criminalistics in the system of legal sciences and its role in the global world. Criminalistics and Forensics: Science, Studies, Practice. 2014. V. I. P. 149.

ments, aimed at solving problems of combating criminality[1]. Informatization of the social environment has led to the "technologization" of criminalistics, development and implementation of information, digital, telecommunication and other technologies. Today, the state has set the task of digitalization of the most important spheres of public life.

A significant milestone in the implementation of modern information technologies can be attributed to the latest development of the Electronic Court System (the Single Court Information and Telecommunication System), which provides for the exchange of procedural documents in electronic form[2]; use of the Unified Register of Court Proceedings, which is created through an automated electronic database system for collecting, storing, protecting, monitoring, searching for, and consolidating data on criminal offenses[3]. In addition, the information and telecommunication system of pre-trial investigations is being introduced in Ukraine[4].

It is significant that there are now registries of pre-trial investigations, judicial decisions and forensic techniques that record the status of judicial proceedings (trials). There is an automated document circulation system in the court[5].

Information technologies that play the most important role in ensuring the investigation of criminal offenses and court proceedings, include: automated data banks; automated information and process systems; automated workstations; software and hardware systems; software and hardware packages; automated decision making systems; decision making support systems or forensic examination support systems, etc[6]. At the present stage of development of criminalistics, new scientific and technological devices and technologies are offered for use: audio- and video-control devices, monitoring and registration systems, digital photo and video

[1] V. Yu. Shepitko. Innovations in criminalistics as a reflection of the development of science. Innovations and digital technologies in criminalistics, forensics and legal practice: materials of the internartional "Round table" (Kharkiv, December 12, 2019). Kharkiv: Pravo, 2019. P. 147

[2] See …: Unified judicial information and telecommunications system (UJITS) – "Electronic Court" [Electronic resource]. Mode of access: https://wiki.legalaid.gov.ua/index.php

[3] See: Regulation on the Unified Register of pre-trial investigations, the order of its formation and maintenance: approved by Order of the Prosecutor General 30.06.2020 № 289 [Electronic resource]. Mode of access: https://zakon.rada.gov.ua/laws/show/v0298905-20#Text

[4] See: Law of Ukraine of June 1, 2021 № 1498-IX "On Amendments to the Criminal Procedure Code of Ukraine regarding the introduction of information and telecommunication system of pre-trial investigation" [Electronic resource]. Mode of access: https://zakon.rada.gov.ua/laws/show/1498–20#Text

[5] M. V. Shepitko. Criminal policy in the sphere of ensuring the activity of justice: monograph. Kharkiv: Publishing Agency "Apostil", 2021. P. 132. (192 p.).

[6] Criminalistics: textbook: in 2 volumes, Vol. 1 / [V. Yu. Shepitko, V. A. Zhuravel, V. A. Konovalova *et al*]; edited by V. Yu. Shepitko. Kharkiv: Pravo, 2019. P. 47.

recording equipment, electronic controllers, unmanned aerial vehicles, etc.

There are additional changes and innovative approaches in the criminal security of law enforcement bodies. In fact, we can state the emergence of a separate criminalistic trend – "*digital criminalistics*"[1] (Digital Forensic, Digital Forensic Science or Digital Criminalistics). Special journals use other terms to describe this area – "computer criminalistics" or "criminalistics in computer systems". At the same time, some scientists even consider computer criminalistics as "the applied science of investigating crimes (incidents), related to computer information, in the investigation of digital evidence, methods of searching, obtaining and fixation of such evidence[2].

Digital Evidence and its Role in the Modern Doctrine of Criminalistics and Forensics. The institute of evidence and proof is essential for criminalistics – a self-contained branch of scientific knowledge. In the late19th century, H. Gross, the founder of criminalistics, viewed it as complementary to criminal law and defined it as a study of the realities of criminal law. In the 1940s, Professor S. Potapov stated that criminalistics is a science of judicial evidence – a science of evidence law. Not coincidentally, in the 60s of the XX century there were already seen monographic works of renowned criminalists such as Professor R. Belkin "Collection, Examination and Evaluation of Evidence". Essence and Methods" (1966) and Professors R. Belkin and A. Vinberg, "Criminalistics and evidence" (1969).

In criminalistics, digital evidence should be considered in the mechanism of their marking formation. There is an axiom, which of its time was suggested by Dr. E. Locard, that "every contact – leaves a trace"[3]. It can be stated that any criminal offence always leaves traces (materially-fixed, ideal, virtual or electronic). In the context of digital criminalistics people, after using information and communication technologies, leave digital footprints[4]. In the criminalistics literature, attention was paid to digitalization of evidence[5].

In legal doctrine there are different approaches to the understanding of evidence. Evidence is regarded as "facts of

[1] V. Yu Shepitko. Innovations in criminalistics as a reflection of the development of science. Innovative methods and digital technologies in criminalistics, forensics and legal practice: material of the international "Round Table" (Kharkiv, December 12, 2019). Kharkiv: Pravo, 2019. P. 148.

[2] See: Hrytsiv. Criminalistics in computer systems: processes, ready solutions. *Bulletin of the National University "Lviv Polytechnic". Automation, measurement and control.*2013. №774. P. 120–126.

[3] Encyclopedia of Criminalistics in Persons / edited by V. Yu. Shepitko. Kharkiv: Apostil, 2014. P. 212–214 (400 p.).

[4] See : Cybercrime. Introduction to digital criminalistics. Module 4. Vienna: United Nations, 2019. P. 4 (38 p.).

[5] J. Metenko, M. Samek, M. Metenkova. New view of the criminalistic documentation and its use. *Criminalistics and forensic expertology: science, studies, practice.* Kaunas, 2019. Book II. P. 151, 152. (138-159).

reality", "any factual data that are relevant for criminal proceedings", "the appropriate medium (source) of information related to them", "the penal procedures and the form (method) of its consolidation in the materials of criminal proceedings".

Approaches to the possibilities of working with the so-called digital evidence (digital information or electronic traces) – information created through the use of high information technology deserves special attention. In scientific journals of foreign countries, the term "digital evidences" is widely used, which means any stored data or data transmitted using computer or other technology[1]. Digital evidence is actual data that is filed digitally and recorded on any type of storage medium[2].

Along with the term "digital evidence," other terms are used, such as "electronic evidence," "electronic traces," "digital information sources," "electronic documents," etc.

Digital evidence requires new approaches to their collection, preservation, use and examination during the proof in criminal proceedings. In working with digital evidence, it is necessary to follow such principles as: availability of training, expert support and prudent caution.

Digital evidence requires verification and authentication (validity verification procedures). In particular, compared to traditional evidence, digital evidence creates unique difficulties during authentication through the amount of available data, its speed, instability and fragmentation[3].

Development of Digital Criminalistics and Criminalistic Strategy, Digital Evidence and Evidence Standards. Digital criminalistics is "a branch of criminalistics centered on criminal procedural law and evidence regarding computers and related devices" (Maras, 2014, p. 29)[4], such as mobile devices (e.g., phones and smartphones), game consoles and other devices that function via the Internet (i.e., health and fitness devices and medical devices)[5]. In addition, digital criminalistics is related to the process of collecting, receiving, storing, analyzing and submitting electronic (digital) evidence in court proceedings[6].

Digital criminalistics is a promising trend in the development of criminalistic knowledge and forensics. Therefore, digital criminalistics can be considered as a strategic direction in the development of criminalistic science. At the same time, the criminalistic strategy is defined as a sphere of knowledge with

[1] D. M. Tsekhan. Digital evidence concept, features and place in the system of evidence. *Scientific bulletin of the International humanitarian university.* Ser.: Jurisprudence. 2013. № 5. P. 257.

[2] D. M. Tsekhan. Honored work. P. 256–260.

[3] Cybercrime. Introduction to digital criminalistics. Module 4. Vienna: United Nations, 2019. P. 6 (38 p.).

[4] M.-H. Maras. Computer Forensic: Cybercriminals, Laws, and Evidence. Second Edition, 2014. 408 p.

[5] Cybercrime. Introduction to digital forensics. Module 4. Vienna: United Nations, 2019. P. 2.

[6] Ibid. P. 2.

respect to combating criminality by means of criminalistic means for the long term…

This means the necessity of development and use of new technologies, the possibility of data fixation in electronic systems, the great distances and extremes, the investigation of electronic and idealized traces, automation of investigations and court proceedings by national authorities, work in international groups and institutions for investigations and court procedures[1].

It is necessary to state a high interest of scientists and practitioners to the strategy in criminalistics in the XXI century… The survey of 82 judges, 86 prosecutors, and 102 lawyers conducted in connection with the research of the criminalistic strategy in the structure of the criminalistic policy is very interesting. Judges expressed their desire for high-quality changes in the scientific and technological support of court proceedings through the automation of the court proceedings – the development and use of special computer programs, algorithms of court proceedings (91% of respondents). Prosecutors also mentioned the necessity of using modern technical equipment for work at the scene of crime (86%) and the use of photo, video, audio recording equipment, drones and other special equipment when conducting investigative (search and seizure) activities (52%). Lawyers took a similar (intermediate) position to judges and prosecutors and expressed their desire to automate the process of lawyer's activity (54%) and to use photo, video, audio recording and other special technology during pre-trial investigations (58%)[2].

One of the main directions of optimization of investigative, judicial and expert activity is its computerization and the possibilities of implementation of information technology – the crushing force of globalization of the modern world and a new category of criminalistics. This new category of criminalistics pretends to occupy a prominent place in its structure[3]. Moreover, successful investigation of cybercrimes is not possible without obtaining (collecting) electronic (digital) evidence which the evidence base for making motivated and fair decisions is based on[4].

The development of digital criminalistics takes place in three main directions: 1) formation of a separate scientific field in criminalistics; 2) application of specialized knowledge while working with digital evidence; 3) con-

[1] Criminalistics: textbook: in 2 volumes. T. 1 / [V. Yu. Shepitko, V. A. Zhuravel, V. A. Konovalova *et al*]; edited by V. Yu. Shepitko. Kharkiv: Pravo, 2019. P. 253, 254.

[2] M. V. Shepitko. Criminal policy in the domain of ensuring the activities of justice: monograph. Kharkiv: Publisher's house "Apostil", 2021. P. 25. (192 p.).

[3] Criminalistics: textbook: in 2 vol. T. 1 / [V. Yu. Shepitko, V. A., Zhuravel, V. A. Konovalova *et al*]; edited by V. Yu. Shepitko. Kharkiv: Pravo, 2019. P. 41.

[4] V. G. Khakhanovsky, M. V. Hutsalyuk. Features of using electronic (digital) evidence in criminal proceedings. *Criminalistics bulletin.* 2019. № 1 (31). P. 14. (P. 13–19).

ducting forensic examinations (computer forensics, in particular).

Special literature rightly points out that the main focus of computer (digital) criminalistics is the study of computer media in order to form evidence for the court (conducting computer forensics, copyright objects), as well as the collection of operational information, which will not be used as evidence in court[1]. Moreover, computer criminalistics likewise includes other sectors in which the investigation of computer information plays an important role: investigation of incidents of information security in organizations, companies, and banking institutions[2].

In criminal proceedings, collecting evidence in electronic form is quite a arduous process, due to the complexity of objects… Due to this fact, the assistance of an appropriate specialist (practitioner), which is sufficiently trained in this area is required, because even a small unqualified action on the evidence in electronic form can cause an unintentional loss of valuable information[3].

Examination of digital information is carried out during forensic examinations. This type of examinations includes computer forensics as a very new and promising type of forensic examinations[4], as well as the examination of telecommunication systems and devices (examination of digital and analog devices).

The pursuit of truth in criminal proceedings is a very complex process, the basis of which is evidence. There arises a question about the value of digital evidence, its sufficiency and role in the application of evidentiary standards. It is also important to establish the level of probability of the results of research and the problem of errors committed in the conclusions of forensic analysis during the examination of digital information.

Currently, a list (system) of evidentiary standards to be applied during criminal proceedings ("balance of probabilities", "preponderance of evidence", "availability of clear and verified evidence", "beyond reasonable doubt") is proposed[5]. The question arises about the relationship between the attainment of truth in criminal proceedings and application of the standards of proof.

Conclusions. An important function in the development of criminalis-

[1] A. I. Hartsev. Criminalistics in computer systems: processes, ready solutions. Bulletin of the National University "Lviv Polytechnic". Automation, measurement and control. 2013. № 774. P. 120, 121. (P. 120–126).

[2] Ibid. P. 121.

[3] The use of electronic (digital) evidence in criminal proceedings: method. recom. / [M. V. Hutsaliuk, V. D. Havlovskyi, and V. H. Khakhanovskyi]; edited by O. V. Korneika, 2-nd ed., suppl., Kyiv: Publishing house of the National Academy of Internal Affairs, 2020. P. 12 (104 p.).

[4] Ye. R. Rossinskaia. Forensic computer-technical expertise. Moscow: Law and Legislation, 2001. P. 119. (416 p.).

[5] G. R. Kret. The system of standards of proof in the criminal proceedings of Ukraine. *Bulletin of the Southern Regional Center of the National Academy of Legal Sciences of Ukraine.* 2019. № 19. P. 132–139.

tics, forensic sciences, and forensics is performed by criminalists, as well as by national and international non-profit organizations, which promote the best achievements of criminalistic science, popularize criminalistic knowledge, and advocate the necessity of using the best achievements of science and technology in combating criminality.

Criminalistics and forensics have a sufficiently high level of scientific research; the system of scientific knowledge has been formed. In the structure of criminalistics and forensic examinations, their general theory is actually formed and a whole range of specific scientific theories and teachings is proposed. In Ukraine, the development of criminalistics and forensics requires the existence of university and academic science, as well as its initiation within the limits of the departmental subordination.

The current state of development of criminalistics is characterized by the emergence of a new and promising trend – digital criminalistics (Digital Forensic, Digital Forensic Science or Digital Criminalistics). This is due to the digitalization of daily life, implementation of electronic systems and resources in the activities of law enforcement bodies and courts (electronic registries, electronic court, automated workstations, etc.), as well as the training of law enforcement officers and judges), as well as the commission of crimes in the cyber space.

Digital criminalistics is attributed to the strategic directions of science development (criminalistic strategy) and practical activities of law enforcement officials. Investigated is the use of modern information technology in the activities of judges, prosecutors and lawyers.

The role of digital evidence (digital information or electronic traces) in the modern doctrine of criminalistics is specified. Digital evidence requires new approaches to their collection, storage, use and examination during the proof in the criminal proceedings.

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ISSUES OF COMPENSATION FOR DAMAGES CAUSED TO A CITIZEN AS A RESULT OF ARMED AGGRESSION: CRIMINAL AND PROCEDURAL ASPECTS

Current issues of reparation for damages caused to Ukraine by Russia armed aggression: a full-scale war, unprecedented (compared to the Second World War and the rest of the wars of the 21st century) in scope, cruel in essence, genocidal in purpose, devastating in means and consequences are considered. One of consequences of war and war crimes committed by Russian aggressors starting from February 24, 2022, is massive destruction and damage to housing and other property of Ukrainian citizens. Within framework of initiated criminal proceedings, damages are compensated by filing a civil lawsuit. However, specifics of the grounds of such a lawsuit cause the occurrence of certain risks for the victim, as well as problems with law enforcement and the exercise of their powers by investigators and prosecutors. In particular, difficulties may lie in the impossibility of inspecting the scene of the incident, which will ultimately negatively affect the determination of the amount of damage caused (calculation of the material equivalent of the damage). Determining the amount of damage caused as a result of the destruction or destruction of housing is also problematic, as it often requires the appointment of an expert opinion, while the scale of the destruction within the state makes it impossible to conduct

such an expert opinion in a reasonable time. Attention is focused on the issues of establishing the person who should be responsible for the claim, or the civil defendant. Possibility of overcoming the jurisdictional immunity of Russia as a defendant in the declared civil lawsuits was also considered. Conducted research made it possible to formulate proposals on mechanism of compensation for the damage caused, as well as on improvement of current criminal procedural legislation of Ukraine

Keywords*: compensation for damage in criminal proceedings; civil claim in criminal proceedings; damage caused by criminal offense; victim; civil defendant*

Research Problem Formulation

On February 24, 2022, Russia launched a full-scale war against Ukraine, unprecedented (compared to the Second World War and other wars of the 21st century) in scale, cruel in essence, genocidal in purpose, devastating in means and consequences; they brutally and improperly tried to hide under the name "military operation". The scale of this tragedy for Ukraine is evidenced by the data of the Office of the United Nations High Commissioner for Human Rights (hereinafter referred to as OHCHR UN): 4,634 dead civilians in the period from February 24 to 24: 00 on June 21. However, OHCHR believes that the real number is much higher, as it is difficult to obtain information from places of intense hostilities, and many reports require confirmation. In addition, there is no reliable information about the dead in Mariupol (Donetsk region), Izium (Kharkiv region), Popasna (Luhansk region), from where reports of numerous civilian casualties have been received to this day. These data are subject to further verification and do not belong to the above statistics. According to confirmed UN data, 1,780 men, 1,194 women, 148 boys and 131 girls died, while the gender of 41 children and 1,340 adults cannot yet be ascertained[1].

OHCHR UN notes that since war beginning, more than 8 million people have left Ukraine. The largest number of refugees left for Poland, more than 4 million Ukrainians. Ukrainian citizens are hiding from the war in Romania, Moldova, Slovakia, Hungary, and the rest of Europe.

Since the beginning of the Russian invasion, almost a third of Ukrainians have forcibly left their homes: more than 7.7 million people have been internally displaced due to the war. This is the biggest displacement crisis in the world today. The UN estimates that 15.7 million people are in urgent need of humanitarian assistance and protection[2].

[1] Війна в Україні забрала життя щонайменше 4634 цивільних, 5769 поранено/ Інформаційне агентство Інтерфакс Україна. 22.06.2022. URL: https://ua.interfax.com.ua/news/gener-al/840932.html (date accessed: 22.05.2022).

[2] Україна. Квітень 2022 року. *UNHCR. The UN Refugee Agency*: щоміс. інформ. бюл. URL: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2022/06/Ukraine-Monthly-

The losses of the Ukrainian economy are also horrifying. According to the Kyiv Institute of Economics, as of June 8, the direct losses of the Ukrainian economy from damage and destruction of residential and non-residential buildings and infrastructure are equal to 103.9 billion dollars (3 trillion UAH). We should note that this number takes into account the complete destruction of the relevant objects.

At the beginning of June, as a result of the war of Russia against Ukraine: 44.8 million m^2 of residential buildings were lost (39,379 million dollars); 23.9 thousand km of roads were damaged (30,034 million dollars); 11 airports and 12 military airfields (6,817 and 468 million dollars, respectively); 656 health care institutions (1,147 million dollars); 305 bridges (1,692 million dollars); 1,177 institutions of higher and secondary education (1,127 million dollars); 111 administrative buildings (607 million dollars); 668 kindergartens (576 million dollars); 141religious buildings (81 million dollars); 203 cultural buildings (270 million dollars); 20 shopping centers (345 million dollars); 28 oil depots (227 million dollars). The pride of Ukrainian aircraft construction, the world's largest and most powerful the Antonov An-225 Mriya transport aircraft has been destroyed[1].

The war takes lives of Ukrainians, destroys their homes, the usual infrastructure all components of happy life before the war.

However, the key task of law enforcement agencies is to record every fact of war crimes and bring to justice those responsible for solving the war and specific war crimes. As of June 23, 2022, 19,086 crimes of aggression and war crimes; 9,396 crimes against national security were entered into the Unified Register of Pre-trial Investigations. A pre-trial investigation is underway into the so-called main case of aggression of Russian Federation, in which 623 persons representatives of military and political leadership of the aggressor country were reportedly suspected[2].

Among the criminal proceedings initiated, 18,383 were initiated under Art. 438 *Violation of the law of war* of the Criminal Code of Ukraine[3].

Many residents of Ukraine have suffered the destruction of their housing, sometimes it is not just destroyed, but destroyed and is not subject to restoration. Adjacent or household buildings, cars, household plots, etc. have been

Operational-Update_April-2022_UKR.pdf (date accessed: 02.06.2022).

[1] «Росія заплатить» / damaged.in.ua. Проєкт зі збору, оцінки й аналізу інформації про матеріальні втрати України від війни з Росією/ Kyiv School of Economics. URL: https://kse.ua/ua/russia-will-pay (date accessed: 02.06.2022).

[2] Злочини, вчинені в період повномасштабного вторгнення РФ / Офіц. сайт Офісу Генпрокурора. URL: https://www.gp.gov.ua (date accessed: 02.06.2022).

[3] Кримінальний кодекс України від 05.04.2001р. No2341-III (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/2341–14#Text (date accessed: 22.05.2022).

destroyed. Hosts are beginning to claim damages for armed aggression.

Already on 20.03.2022, the Cabinet of Ministers of Ukraine (hereinafter referred to as the *CabMin*) adopted Resolution *On Approval of the Procedure for Determining Damage and Damage Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation* No 326[1], dated on 26.03.2022 – Resolution *On Collection, Processing and Accounting of Information on Damaged and Destroyed Immovable Property as a Result of Combat Acts, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation* No 380. This Resolution approves the Procedure for Submitting Information Notice on Damaged and Destroyed Immovable Property as a Result of Combat Acts, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation[2]. A draft law on compensation for damage caused to the victim as a result of the armed aggression of the Russian Federation[3] has been developed and submitted to the Verkhovna Rada of Ukraine for consideration. Fixing any destruction and future compensation for damage caused by aggression is one of the priority tasks of the state.

Taking into account the fact that the damage was caused due to commission of war crimes, the question arises about the possibility of compensating it to the victims within the framework of criminal proceedings.

Analysis of Essential Researches and Publications

As we can see, one of the ways to protect the property and personal non-property rights and legitimate interests of the victims, violated as a result of the commission of a criminal offense or other socially dangerous act, is compensation (compensation) for the damage caused. Such compensation is an international legal standard established in the following documents: International Covenant on Civil and Political Rights[4]; European Convention on the Compensation of Victims of Violent Crimes dated on

[1] Про затвердження Порядку визначення шкоди та збитків, завданих Україні внаслідок збройної агресії Російської Федерації: Постанова КМУ від 20.03.2022 р. No 326 (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/326–2022-%D0%BF/ed20220512#Text (date accessed: 22.05.2022).

[2] Про збір, обробку та облік інформації про пошкоджене та знищене нерухоме майно внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації: Постанова КМУ від 26.03.2022 р. No 380 (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/380–2022-%D0%BF/ed20220526#Text (date accessed: 02.06.2022).

[3] Проєкт закону про відшкодування шкоди, завданої потерпілому внаслідок збройної агресії Російської Федерації від 17.05.2022 р. No 7385. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=74243 (date accessed: 02.06.2022).

[4] Міжнародний пакт про громадянські і політичні права: прийнят. Генасамблеєю ООН 16.12.1966 р.; ратифік. Указом Президії ВР УРСР від 19.10.1973 р. No 2148-VIII. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 02.06.2022).

1983[1]; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985[2]; Recommendations Rec (2006)8 of the Committee of Ministers of the Council of Europe to member states on assistance to victims of crimes[3]; Resolutions (77)27 of the Committee of Ministers of the Council of Europe on compensation to victims of crime (September 28, 1977); Recommendations N R(85)11 of the Committee of Ministers of the Council of Europe to member states on the position of the victim within the framework of criminal law and proceedings (June 28, 1985); Directive of the Council of the European Union 2004/80/EC on compensation to victims of crimes (April 29, 2004); Directive 2012/29/EU of the European Parliament and of the Council of the European Union on establishing minimum standards for the rights, support and protection of victims of crime and many others[4].

Considering this international community approach, as well as requirements of the Constitution of Ukraine (Article 3), according to which a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as highest social values and affirmation and guarantee of rights and human freedoms are determined by the content, direction and main duty of the state[5], domestic legislator provided in the Criminal Procedural Code of Ukraine[6] a set of norms aimed at ensuring compensation for damage caused by a criminal offense, in particular, the introduction of the institution of civil action in criminal proceedings.

Civil claim issues of application and consideration in criminal proceedings and compensation for the damage caused to victim were devoted to research papers as well-known domestic scientists (Yu. P. Alenin, S. A. Alpert, O. A. Banchuk, I. V. Hloviuk, V. H. Honcharenko, M. I. Hoshovskyi, Yu. M. Hroshevyi, Yu. O. Hurdzhi, O. P. Kuchynska, L. M. Loboiko,

[1] European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116): Stras-bourg, 24.XI.1983/ Council of Europe Portal. URL: https://rm.coe.int/1680079751 (date accessed: 02.06.2022).

[2] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: Resol. ad. by the Gen. Assembly 29 Nov. 1985. No. 40/34. URL: http://www.un-documents.net/a40r34.htm (date accessed: 02.06.2022).

[3] Рекомендація Rec(2006)8 Комітету Міністрів Ради Європи державам-членам щодо допомоги потерпілим від злочинів: ухвал. Ком. Міністр. Ради Європи 14.06.2006 р. на 967-му засід. заступ. міністр. URL: https://issuu.com/uccg/docs/12_rec_2006__8__of_coe_ukr (date accessed: 02.06.2022).

[4] Банчук О. А., Дмитрієва І. О., Малишев Б. В., Саідова З. М. Відшкодування потерпілим віднасильницьких злочинів: європейські стандарти ізарубіжне законодавство : збірник/ за заг. ред. О. А. Банчука. Київ, 2015. С. 34–112.

[5] Конституція України: Закон України від 28.06.1996 р. No 254к/96-ВР (зізмін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text (date accessed: 02.06.2022).

[6] Кримінальний процесуальний кодекс України від 13.04.2012 р. No 4651-VI (зізмін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022)

V. T. Maliarenko, M. M. Mykhieienko, V. T. Nor, D. P. Pysmennyi, M. A. Pohoretskyi, V. O. Popeliushko, L. D. Udalova, V. P. Shybiko, M. Ye. Shumylo), as such young scientists (I. A. Vorobiova, S. V. Davydenko, M. I. Demura, O. R. Mala, D. Yu. Kavun, Kh. R. Kakhnych, N. S. Kravchenko, A. M. Stebeliev, I. I. Tataryn et al.).

However, mentioned authors left aside the issue of compensation for damage caused to a citizen by the armed aggression of any state.

Article Purpose

Analysis of means of compensation for damage caused by the armed aggression of the Russian Federation against Ukraine; determination of possible risks from the statement of civil claim within the framework of criminal proceedings; identification of problems of enforcement (for example, due to inability to inspect the scene); calculation of the amount of damages caused by military actions; identification of the person who should be responsible for the claimed claim, or civil defendant. Authors also consider the purpose of the article to be the development of proposals for effective compensation mechanism and improvement of criminal procedural legislation.

Main Content Presentation

It should be noted that Criminal Procedural Code of Ukraine of Ukraine provides for several ways to compensate for damage caused by a criminal offense or other socially dangerous act: 1) voluntary (compensation) – Part 1 of Art. 127; 2) compulsory (compensation), in particular: a) under a civil lawsuit – Part 2 of Art. 127, Art. 128 and 129; b) with a pledge to execute a sentence in terms of property penalties (Part 11 of Art. 182); c) at the expense of the State Budget of Ukraine (Part 3 of Art. 127, Part 1 of Art. 130); d) criminal law restitution (Parts 1 and 5 of Part 9, Part 11 and 12 of Art. 100); e) under the right of retroactive claim (Part 2 of Art. 130)[1].

One of the most modern and common ways of compensating the victim in criminal proceedings is a claim form. At the same time, in recent years, in the legal literature, scholars have tried to provide arguments in favor of the opinion that institution existence civil lawsuit in criminal proceedings is inappropriate (noting that the "joint process" does not correspond to the nature and essence of the criminal process), despite its exclusively humane orientation. Gaps in regulatory regulation necessitated the need to formulate similar constructions of articles of criminal procedural legislation to norms of civil procedural legislation. Since in criminal proceedings the guilt of a person in committing a crime (and in causing damage) is proved by the bodies that conduct the process, and in civil proceedings each party is obliged

[1] Кримінальний процесуальний кодекс України … . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

to prove the circumstances to which it refers, in civil proceedings for such proof the parties submit much more efforts, perform their functions more diligently than parties to criminal proceedings. The bodies of the pre-trial investigation are forced to be distracted from the answer to the main question of the investigation about the guilt of the person to prove the extent of caused damage , ensure the rights and legal victim interests or civil plaintiff, identify, collect documents to confirm ownership rights, etc. All this significantly lengthens the period of pre-trial investigation, sometimes causing controversial situations. In the case of a poor quality pre-trial investigation (in part of proving a civil claim) by a person who, in fact (given his position) is interested only in bringing the guilty to criminal responsibility, leads to the court leaving the civil claim without consideration, and the victim is forced to file a claim in the order of civil proceedings with the hope of compensating for damages caused by a criminal offense. In addition, scientists note: sometimes a judge (as an expert in the field of criminal justice), considering a civil lawsuit, does not delve into the material aspect, considering the subject of the lawsuit superficially. Even a well-versed prosecutor who supports the state prosecution in court is not always able to refute the arguments of the defense side regarding the civil lawsuit, and in case the lawsuit is left without consideration, he does not challenge this decision in the appeal procedure[1].

We should note that scientists have expressed similar opinions recently, when the legal relations related to the rights to own, use and dispose of property have become significantly more complicated, the property volume that can be owned by a person has increased significantly and its value has increased the number of types of economic activities and economic relations have become more complicated. The victims file civil claims for compensation for moral damage, which is very difficult to calculate and is sometimes the topic of disputes between the civil plaintiff and the person responsible for damage caused by criminal offense.

However, such scientific trends are negative. The current Criminal Procedural Code of Ukraine is constantly criticized for insufficient attention to the mechanisms for protecting the rights of the victim, because depriving the victim of the right to compensate for the damage caused by a criminal offense will amount to several steps backwards compared to the existing procedure, since without such compensation, the

[1] Кахнич Х. Р. З'єднаний процес як спосіб захисту прав потерпілого відзлочину укримінальному судочинстві : дис. … канд. юрид. наук. Львів, 2013. С. 27–28; Титова В. Н. Проблемы реализации норм уголовно-процессуального законодательства о возмещении ущерба, причиненного преступлением: монография. Москва, 2013. С. 4–5; Шадрин В. С. Обеспечение прав личности при расследовании преступлений. Москва, 2000. 232 с.

tasks of criminal proceedings declared in Art. 2 of the Criminal Procedural Code of Ukraine cannot be considered solved[1].

Advantages of submitting, considering and resolving a civil claim in a criminal proceeding are obvious. Since the size of the damage often affects the legal qualification of the crime and the degree of punishment, the determination of the size of the damage requires the comprehensiveness and completeness of the investigation of all the circumstances of the criminal proceedings (Part 2, Article 9 of the Criminal Procedural Code of Ukraine[2]), it is easier to prove the existence of grounds and the size of the civil claim (because the type and the amount of the damage caused belongs to the circumstances that are subject to investigation in each criminal proceeding and which are enshrined in Clause 3, Part 1, Article 91, Clause 6, Part 1, Article 505 of Criminal Procedural Code of Ukraine[3] and the subjects of proof are mainly not the victim (civil plaintiff) and investigator and prosecutor). Only in the event that the victim supports the accusation in private prosecution cases or when the prosecutor refuses to support the accusation, the victim becomes the subject of proof of a civil claim (Part 1 of Article 92, Articles 338 and 340, Chapter 36 of the Criminal Procedural Code of Ukraine[4]). Consideration of a civil lawsuit within the framework of criminal proceedings significantly accelerates compensation for the damage caused, since a civil lawsuit is: a) an effective means of eliminating the negative consequences of an illegal act as soon as possible; b) a universal way of restoring violated property and personal non-property rights and legal interests of individuals. The combined process saves time and state funds, eliminates the need to consider the same circumstances twice in criminal and civil proceedings and the victim is not forced to experience the events of a criminal offense twice, which would be required by proof in each type of process. Equally important is the exemption of the civil plaintiff from paying the court fee (as opposed to the civil process). In order to protect the rights and legal interests of victims who have been harmed by a criminal offense and who, due to their physical condition or financial situation, underage, advanced age, incapacity or limited capacity, are unable to defend their rights on their own, a civil lawsuit may also be brought by the prosecutor (para. 3 Part 1 of Article 1311 of the Constitution of Ukraine[5]; Part 12 of Part 2 of Article 36, Part 3 of Article 128 of the Criminal Procedure Code of Ukraine[6];

[1] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

[2] *Ibid*.

[3] *Ibid*.

[4] *Ibid*.

[5] Конституція України… . URL: https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text (date accessed: 02.06.2022).

[6] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/

Part 2 of Part 1 of Article 2, Article 23 of the Law of Ukraine: On the Prosecutor's Office[1]). The declared civil lawsuit stimulates pre-trial investigation bodies in criminal proceedings to take measures to ensure the declared lawsuit and future compensation for damage: for example, to seize property (clause 4, part 2, article 170 of the Criminal Procedural Code of Ukraine[2]). Thus, as mentioned above, a civil lawsuit in criminal proceedings can be one form of compensation for damage caused, in particular, by Russian aggression.

The following actions of an investigator, prosecutor can be considered as means of ensuring compensation for damage caused by criminal offense: 1) independent detection of a criminal offense or acceptance of a statement about its commission from an injured person, entering information into Unified Register of Pre-Trial Investigations; 2)acceptance of an application to involve a person in criminal proceedings as a victim; 3)explaining to the victim his right to file a civil lawsuit in criminal proceedings; 4) accepting a statement of claim from a person who was harmed by a criminal offense; 5) proving nature and extent of the damage; 6) establishing and involving in criminal proceedings a person guilty of a criminal offense or a person responsible for damage caused by a guilty person; 7) application of measures to ensure criminal proceedings to ensure the declared civil claim.

However, it is worth noting some sensitive points related to the filing, proof and consideration of a civil claim in criminal proceedings in the event of harm caused by armed aggression.

The first problem is the impossibility (in particular, due to military actions) in accordance with Art. 214 of the Criminal Procedural Code of Ukraine[3] to inspect destroyed or destroyed as a result of shelling, aerial bombardment, etc. housing or other property after submitting a statement about the commission of a crime.

As you can see, the scene inspection is carried out with an important procedurally significant goal to discover and record information about the circumstances of the commission of a criminal offense (Part 1 of Article 237 of the Criminal Procedural Code of Ukraine[4]). This is the only investigative action that is carried out before the information is entered into Unified Register of Pre-Trial Investigations, or (in lack of access to Unified Register of Pre-Trial Investigations) the investigator, prosecutor, decides to initiate criminal proceedings. The inspection itself is an investigative (research) action acquir-

laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

[1] Про прокуратуру: Закон України від 14.10.2014р. No 1697-VII (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/1697–18#Text (date accessed: 02.06.2022).

[2] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

[3] Ibid.

[4] *Ibid.*

ing key importance, since (as an urgent) it has a local purpose: 1) to record the fact of a committed criminal offense; 2) directly examine and record the destroyed home and/or other personal property; 3) find out the previous reasons for the destruction or destruction of housing or other property.

On the basis of information recorded while the inspection, information is obtained about the circumstances of the commission of the criminal offense affecting the decision to enter information into Unified Register of Pre-Trial Investigations, the preliminary legal criminal offense qualification with article indication (article par) on criminal liability and find out other circumstances necessary for pre-trial investigation.

Combat operations can make it impossible or significantly difficult to inspect the scene. Certainly, it is possible to fill in the gaps of the scene first inspection during a repeated and additional inspection. However, the vulnerability of this approach lies in the fact that most often the victims are already starting to restore the house and/or farm buildings that makes impossible to record in detail the destruction extent and determine the damage caused by the crime in case of a repeat inspection.

Without delving into detailed consideration of the issues of conducting the scene inspection during hostilities (since this is the subject of a separate research), we note that a high-quality inspection, correct recording of the destruction with the obligatory professional involvement and implementation of photo and video recording will ensure an objective reflection of committed criminal offense, will make possible to detect and record details that are weakly visible and invisible under visual observation, as well as destruction in the dynamics that will contribute to objective determination of the damage caused to victim.

Impossibility of the investigator, prosecutor, to go to the scene of committed war crime leads to the fact that victims try to independently record the premises, buildings, structures, etc., that were damaged and/or destroyed as a result of hostilities (hitting means of destruction, explosions, fires, etc.). Current criminal procedural legislation does not prohibit such recording. According to the Criminal Procedural Code of Ukraine, victim has the right to submit evidence in support of his statement (clause 3, part 2, article 56 of the Criminal Procedural Code of Ukraine), as well as to submit evidence to the investigator, prosecutor, investigating judge, court throughout the entire criminal proceedings (clause 3, part 1 Article 56 of the Criminal Procedural Code of Ukraine)[1]. In addition, the facts of destruction, destruction of homes, buildings, etc. are recorded by representatives of domestic and/or foreign mass media, creating photo and video docu-

[1] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

ments. However, their inclusion in the materials of criminal proceedings is extremely vulnerable and may cause problems with evaluation, recognition as inadmissible as evidence: since they were collected by non-professional participants in criminal proceedings.

As it is known, the order of criminal proceedings and resolution of its tasks is ensured by criminal procedural form: a set of legally established legal procedures, conditions, guarantees, which observance contributes to achievement of tasks of criminal proceedings. Within the framework of the criminal procedural form, the Criminal Procedural Code of Ukraine provides for a system of means by which criminal procedural evidence is carried out (collection (consolidation), verification and evaluation of evidence). The prosecuting party collects evidence by *"conducting investigative (search) actions and covert investigative (search) actions, demanding and receiving from state authorities, local self-government bodies, enterprises, institutions and organizations, officials and individuals things, documents, information, expert opinions , conclusions of audits and reports of inspections, conducting other procedural actions"* (Part 2 of Article 93 of the Criminal Procedural Code of Ukraine)[1]. In view of the principle of publicity, the prosecutor and the investigator are obliged within their competence to start a pre-trial investigation in case of detection of signs of a criminal offense (except for cases when criminal proceedings can be started only at the request of the victim) or in case of receipt of a statement (notification) about the commission of a criminal offense , as well as take all the measures prescribed by law to determine the event of a criminal offense and the person who committed it (Art. 25 of the Criminal Procedural Code of Ukraine)[2]. Therefore, it is the investigator, the prosecutor, who is obliged to conduct an inspection of the scene of the incident after submitting a statement or directly detecting a committed criminal offense, to record it in accordance with the requirements of the criminal procedural form.

Criminal Procedural Code of Ukraine stipulates that the obligation to prove the circumstances provided for in Art. 91 of the Criminal Procedure Code of Ukraine, entrusted to the investigator and prosecutor. The victim proves such circumstances in exceptional circumstances, if he supports the prosecution in the case of a private prosecution, or the prosecutor refused to support the public prosecution (Article 92 of the Criminal Procedural Code of Ukraine)[3]. Regarding civil claimant, the law provides for the rights and obligations established in the Criminal Procedure Code of Ukraine for the victim in the part that concerns the civil claim (part 3

[1] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022)

[2] *Ibid.*

[3] *Ibid.*

of Article 61 of the Criminal Procedure Code of Ukraine)[1]. At the same time, for a clear representation of the procedural status of the latter, a systematic interpretation of a number of norms of Criminal Procedural Code of Ukraine is necessary.

As you know, the circumstances to be proven are outlined in Art. 91 Criminal Procedural Code of Ukraine[2]. From the declared civil claim proof, only three can be singled out among such circumstances: 1) criminal offense (time, place, method and other circumstances of the commission of the criminal offense); 2) guilt of the accused in committing a criminal offense, form of guilt, motive and purpose of the criminal offense; 3) type and amount of damage caused by a criminal offense. However, it is worth agreeing with domestic scientists that this state of regulation in the Criminal Procedural Code of Ukraine of relations with the proof of a civil claim does not contribute to their proper implementation by the bodies of pre-trial investigation, since proving all the circumstances necessary for making a correct decision on a civil claim in criminal proceedings is a guarantee of its fair solution[3].

Unfortunately, Criminal Procedural Code of Ukraine of Ukraine does not establish the of proof topic in a civil lawsuit: it is much broader than the circumstances that are subject to proof and are contained in Art. 91 Criminal Procedural Code of Ukraine[4]. The special (or local) subject of proof for a civil claim contains the following elements: 1) event of a criminal offense that caused damage (time, place, method and other circumstances of committing such an offense); 2) presence of damage from this offense and its specific type; 3) direct cause-and-effect relationship between the offense and the damage caused by it; 4)the fault of the person who committed the offense in causing damages; 5) a person who was harmed by an offense; 6) person who will be materially responsible for the declared civil claim; 7) amount of damages to be compensated.

Despite the fact that the obligation to prove the circumstances provided for in Art. 91 of the Criminal Procedural Code of Ukraine, entrusted to the investigator and prosecutor, when submitting a statement (or a lawsuit), the victim and/or civil plaintiff is obliged to indicate the damage caused by the criminal offense. The content of a civil lawsuit is not determined by criminal procedural legislation. At the same time, Part 4 of Art. 128 of the Criminal Procedural Code of Ukraine stipulates that form and content of the statement of claim should meet the requirements for claims

[1] *Ibid.*

[2] *Ibid.*

[3] Аленін Ю., Пожар В. Цивільний позов у кримінальному провадженні: особливості доказування та вирішення. Право України. 2014. No 10. С. 117.

[4] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

filed in civil proceedings[1] According to Art. 175 of Civil Procedural Code of Ukraine[2] in the claim statement, the plaintiff sets out his claims regarding the subject of the dispute and their justification. The claim statement is submitted to the court in writing, it is signed by the plaintiff, or his representative, or another person who is granted the right to apply to the court in interests of another person. Among other things, claim statement should contain: 1) claim *price,* if the claim is subject to a monetary assessment; 2) *reasonable calculation* of amounts charged or disputed; 3) content of claims (method(s) of protecting rights or interests provided for by law or contract, or other method(s) of protecting rights and interests that do not contradict the law and that plaintiff asks the court to determine in the decision); 4) statement of circumstances by which the plaintiff substantiates his claims; indication of evidence to confirm these circumstances (clauses 3, 4 and 5 of part 3 of Article 175 of the Civil Procedural Code of Ukraine)[3]. If a civil plaintiff files a lawsuit for the recovery of monetary funds for damage caused by a crime, he must indicate the amount that, in his opinion, the court should recover (clause 1, part 1, article 176 of Civil Procedural Code of Ukraine[4].

If proving the fact of crime commission causing the emergence of criminal-legal relations, is entrusted to the investigator, prosecutor, then claim topic (substantive legal claim for compensation for damage caused by a war crime) must be confirmed by the civil plaintiff. Thus, it can be stated that civil defendant should assist the investigator, prosecutor in clarifying circumstances that are subject to proof, that is, he is the one who provides the documents that confirm the claim price and the right to property ownership , etc. However, sometimes this is quite difficult to do if the situation is complicated by destruction of property ownership documents together with the housing.

Thus, in accordance with the requirements of Clause 6, Part 2 of Art. 242 of Criminal Procedural Code of Ukraine[5], the investigator or prosecutor is obliged to provide forensic examination to determine the amount of material damages, if the victim cannot calculate them and has not provided a document confirming the amount of such damage. Therefore, most often, determining the amount of damage from destruction or destruction of a person's home or other property is possible only by appointing and conducting construc-

[1] *Ibid*.

[2] Цивільний процесуальний кодекс України від 18.03.2004 р. No 1618-IV (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/1618–15/ed20220101#Text (date accessed: 02.06.2022).

[3] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

[4] *Ibid*.

[5] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

tion and technical, commodity and other types of expertise. The need to apply expert knowledge in these extremely complex situations is obvious. The scale of the destruction within the state, significant number of proceedings that requiring forensic examination, significantly reduce efficiency and speed of the process of compensation for the damage caused by a civil claim within the framework of criminal proceedings.

We will note one nuance that is important for filing and resolving a civil lawsuit. A person who has been harmed by a war crime has the right, during criminal proceedings, *"submit a civil lawsuit against the suspect, accused, or against a natural or legal person who, by law, is civilly liable for the damage caused by the actions of the suspect, the accused"* before the start of the trial. (Part 1 of Article 128 of the Criminal Procedural Code of Ukraine)[1]. In this context, let's consider two possible options. Some criminal proceedings have been initiated against specific persons – prisoners of war, who have been notified of the suspicion of committing war crimes (for some of them, indictments have already been sent to the court, even several verdicts have been issued, according to which they were found guilty). In such cases, within the framework of criminal proceedings, a civil action can be brought against a specific suspect or accused. However, even if the guilt of such a person in committing a crime (in particular, provided for in Article 438 of Criminal Code of Ukraine[2]) is proven, the execution of the court decision is impossible in the part of the civil lawsuit due to the lack of property of prisoners of war.

In another case, despite the significant number of initiated criminal proceedings and significant damage caused by the violation of war law, it is difficult to determine the person guilty of committing this and other crimes that indefinitely postpones legitimate expectations of the victim who seeks compensation.

It is logical to assume that during hostilities, aggressor state is responsible for the damage caused by the actions of the military. In this aspect, we note that issue of the procedural status of a civil defendant in criminal proceedings cannot be called sufficiently researched in domestic criminal procedural science. If the starting point is that the civil defendant can be a person who, by law, bears civil responsibility for the damage caused by the criminally illegal actions (inaction) of the suspect, the accused or an insanity committed a socially dangerous act and against whom a civil lawsuit has been filed in according to the procedure provided by the Criminal Procedural Code of Ukraine, then to find out who exactly can be a civil defendant, one should refer to the norms of civil legislation.

[1] *Ibid.*

[2] Кримінальний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/2341–14#Text (date accessed: 02.06.2022).

From the norms of the Civil Code of Ukraine[1] the following groups of individuals and legal entities can be singled out, which may bear civil liability for the damage caused: 1) parents (adoptive parents) or guardians (citizens or a corresponding educational, medical institution, institution of social protection of the population etc., which by law is the guardian of a minor suspect, accused; Articles 1178, 1179 of the Civil Code of Ukraine); 2) guardian of a person recognized as incapable, or a legal entity, is obliged to supervise him, if they do not prove that the damage was not caused by their fault (Article 1184 of the Civil Code of Ukraine); 3) legal or natural persons – owners of the source of increased danger, with which the suspect, the accused caused harm to the victim (Article 1187 of the Civil Code of Ukraine); 4) insurance company in which the suspect, accused has insured his liability under mandatory insurance, in the event of an insured event during crime commission (Article 979 of Civil Code of Ukraine and Article 7 of Law of Ukraine: *On Insurance*[2]); 5) legal or natural persons, if the suspect, the accused (who was their employee) caused damage during the performance of his labor (official, official) duties (Article 1172 of the Civil Code of Ukraine).

Therefore, civil defendant is an independent participant in criminal proceedings, involved in it in the presence of legal grounds, due to which he bears civil responsibility for the actions of the suspect. However, in Part 1 of Art. 79[3] of Law of Ukraine: *On Private International Law* stipulates judicial immunity, according to which the filing of a lawsuit against a foreign state, the involvement of a foreign state in the case as a defendant or a third party, the seizure of property belonging to a foreign state and located on its territory of Ukraine, use of other means of securing a claim and enforcement of such property in relation to such property is possible only with the consent of the competent authorities of the relevant State, unless otherwise stipulated by an international treaty of Ukraine or the law of Ukraine. In this way, immunity of a foreign state from civil liability is ensured.

It is clear that domestic criminal procedural and civil legislation was adopted in peacetime and is designed to be applied to peacetime legal relations. In addition, responsibility for committed war crimes is provided for by the norms of international law which turned out to be completely imperfect. Such a situation requires a new toolkit, in particular, aimed at reparation for dam-

[1] Цивільний кодекс України від 16.01.2003 р. No 435-IV (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/ru/435–15/ed20220507 (date accessed: 02.06.2022).

[2] Про страхування: Закон України від 07.03.1996 р. No 85/96-ВР (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80/ed20220615#Text (date accessed: 02.06.2022).

[3] Про міжнародне приватне право: Закон України від23.06.2005р No2709-IV (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/2709–15#Text (date accessed: 29.06.2022).

age caused by war crimes. Ukraine should develop and implement such a compensation mechanism, through radical changes and additions to current legislation regulations, creating new compensation paradigm.

We believe that we should not neglect any opportunity aimed at restoring the violated victim rights and capable of areal result. As is clear from the above approach and the risks that may befall the victim whose home and other property is destroyed and/or damaged, criminal proceedings are a rather complex and long-term way to restore justice and compensate for the damage caused. However, the victim rights (civil plaintiff) should be protected in the most effective way. Within the framework of criminal proceedings, ***two mechanisms*** of such protection can be proposed.

Extraordinary situation where Ukraine found itself due to the war, started by the Russian Federation, necessitates search for non-traditional ways of solving it. In particular, we suggest that in case of impossibility to establish the specific person who caused the damage in criminal proceedings, find guilty the civil defendant, i.e. the Russian Federation. Since the damage was caused by war crimes committed by combatants serving in the armed forces of the aggressor country and carrying out its orders, the aggressor state should bear civil responsibility for the damage caused by.

On April 14, 2022, judicial panel of the Third Judicial Chamber of the Civil Court of Cassation of the Supreme Court expressed a rather important position[1] for the formation of law enforcement practice in case No 308/9708/19: *"Feature of the legal status of the state as a subject of international relations is its immunity, which is based on the general principle of international law equal over equal has no power and jurisdiction. However, a necessary condition for observing this principle is mutual recognition of the country's sovereignty, so when the Russian Federation denies the sovereignty of Ukraine and commits a war of aggression against it, there is no obligation to respect and observe the sovereignty of this country. <...> "After the start of the war in Ukraine in 2014, the court of Ukraine, considering a case in which the Russian Federation is identified as the defendant, has the right to ignore the immunity of this country and consider cases of compensation for damage caused to an individual as a result of armed aggression of the Russian Federation, based on a lawsuit filed specifically against of this foreign country"*[2]. In this way, the Supreme Court of Ukraine created

[1] Невядомський Д. Грааль імунітету агресора. Ключ до розв'язання проблеми компенсацій від Росії слід шукати в області правової науки. Закон і бізнес. 23.06.2022. URL: https://zib.com.ua/ua/151862.html (date accessed: 29.06.2022).

[2] Постанова Верховного Суду України від 14.04.2022 р. у справі No 308/9708/19, провадження No 61-18782св21. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zakonodastvo/Rish_sud_imun.pdf (date accessed: 29.06.2022).

a precedent that should be supported and developed in law enforcement practice, and later enshrined in legislation, because impunity, as it turned out, causes tragic consequences. We should also note that we are only at the beginning of the difficult journey of recovering damages. However, the existing problem should be solved in the legal field, guided by the principles of legality and the rule of law, gradually creating compensatory mechanisms; changing international and national legislation regulations with the help of international legal institutions and judicial institutions.

The second mechanism is related to the creation of the State Compensation Fund. At one time, the Interdepartmental Working Group of the Ministry of Justice developed a draft law on compensation at the expense of the state for material damage to individuals who suffered from a crime[1], while preparing the ratification of the European Convention on the Compensation of Victims of Violent Crimes ETS No 116 (1983)[2]. Implementing the provisions of the Convention, the draft law proposed the following mandatory conditions for compensating the victim or members of his family: 1) commission of a crime resulting in damage to the victim's health; 2) initiation of a criminal case; 3) lack of information about the person who committed the crime or information about the whereabouts of identified person who committed the crime in criminal case for more than six months from the day the natural person was recognized as a victim; 4) availability of information in criminal case about insolvency of the person who committed the crime; 5) impossibility of compensating damages at the expense of guilty persons or other sources has been established by the court. According to this project, the right to compensation for damage at the expense of the state should arise from the victim not in all cases, but only in the case when the damage caused to him by the crime is significant, that is, the amount of which exceeds five times the minimum wage. The draft law also *limited the maximum* amount of compensation.

Introduction of such a mechanism of compensation by the state for damage caused by a violent crime did not deprive the victim right to apply to the court to recover damage from the person who committed the crime in civil proceedings.

Compensation of damage to the victim at the expense of the state would be one of the types of social assistance, an important guarantee of basic human

[1] Проєкт закону про відшкодування за рахунок держави матеріальної шкоди фізичним особам, які потерпіли від злочину, від 27.10.2010 р. No 7303. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=7303&skl=7 (date accessed: 29.06.2022).

[2] Статус Европейской конвенции о возмещении ущерба жертвам насильственных преступлений ETS No 116 (Страсбург, 24.11.1983 г.). URL: https://zakon.rada.gov.ua/laws/show/994_541#Text (date accessed: 02.06.2022).

rights, which is responsibility of the social, legal State.

In the end, the project under consideration was not adopted, in particular, due to the following arguments: 1) such compensation, given the number of crimes committed will be too burdensome for the State Budget; 2) it is difficult to prevent abuses; 3) damage caused only in the case of serious and especially serious crimes, etc. should be compensated.

For the purpose of guaranteed and accurate execution of court decisions on compensation to victims of crime at the expense of the state, the draft law provided for the creation of a special Victim Fund in Ukraine (Art. 16[1]) at the expense of part of the State Budget revenues from the payment of state duty and the rest of the budget revenues related to the activities of law enforcement agencies, as well as other revenues of the State Budget. It was from this Fund that compensation was planned under the current Law of Ukraine: *On the Procedure of Compensation of Damage Caused to a Citizen by Illegal Actions of Inquest, Pre-Trial Investigation, Office of Public Prosecutor and Judicial Bodies*[2].

Despite progressiveness of approaches mentioned above, the legislators have not created a mechanism for implementing the right to compensation for victims of violent crimes. However, its foundations are laid in the current criminal procedural and civil legislation. In particular, you should refer to Art. 1177 of Civil Code of Ukraine: "Reparation (compensation) of damage to a natural person who suffered from a criminal offense"[3], according to which damage caused to a natural person who suffered from a criminal offense is compensated in accordance with the law[4]. In Part 3 of Art. 127 of Criminal Procedural Code of Ukraine "Reparation (compensation) of damage to the victim" stipulates: *"Damage caused to the victim as a result of a criminal offense shall be compensated to him at the expense of the* ***State Budget of Ukraine in the cases and in the manner prescribed by law****"*[5] [emphasis added].

[1] Проєкт закону про відшкодування за рахунок держави… . URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=7303&skl=7 (date accessed: 29.06.2022).

[2] Про порядок відшкодування шкоди, завданої громадянинові незаконними діями органів, що здійснюють оперативно-розшукову діяльність, органів досудового розслідування, прокуратури і суду: Закон України від 01.12.1994 р. No 266/94-ВР (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/266/94-вр#Text date accessed: 02.06.2022).

[3] Цивільний кодекс України… . URL: https://zakon.rada.gov.ua/laws/show/ru/435–15/ed20220507 (date accessed: 02.06.2022).

[4] The article refers to compensation of damage caused by the destruction, destruction of housing and other possession of a person as a result of armed aggression. Attention should be paid to the fact that the legislation provides (however not implemented) opportunities for compensation from mechanisms under consideration for damage caused by mutilation, other damage to health or death as a result of armed aggression. Such bases are also laid in Art. 1207 of the Civil Code of Ukraine.

[5] Кримінальний процесуальний кодекс України… . URL: https://zakon.rada.gov.ua/

Consequently, national legislation has a basis for building a mechanism of compensation for damage (caused, in particular, by armed aggression of Russian Federation against Ukraine) at the expense of a specially created State fund.

Funding for such a fund can come from various sources (both due to charitable contributions from foreign states and private individuals, and due to funds from confiscation, special confiscation, reparation, complementation, etc.): however, first of all, it should be filled at the aggressor State expense.

Conclusions

The performed research makes possible to formulate such conclusions. The armed aggression of the Russian Federation caused casualties among the civilian population, as well as mass destruction and destruction of property and other property of residents of Ukraine. Currently, the State is creating a number of mechanisms aimed at compensating (compensating) for the damage caused by armed aggression.

Filing a civil claim in criminal proceedings initiated due to the commission of a war crime is one of the means to compensate for the damage caused to the victim. This is determined by the legal nature of the civil lawsuit combining public and private principles due to the fact that the subject of the civil lawsuit is directly related to the committed crime, as well as due to the fact that it is the state bodies that are tasked with determining the type and amount of damage caused a criminal offense. At the same time, the filing of a civil claim for compensation for damage caused by armed aggression is preceded by a number of factors that inhibit the mechanism of compensation: difficulty of properly recording the fact of destruction, especially in the conditions of hostilities; problems with calculating the amount of such damage, which requires time and labor due to the appointment of appropriate examinations; mostly: missing a person against whom a civil claim can be filed. However, we believe that every opportunity should be used to restore the victim rights.

In order to optimize procedural procedure for compensation for damage caused by war crimes, we consider it expedient to: 1) supplement the current criminal procedural and civil legislation with norms according to which aggressor State should be involved as a civil defendant in order to hold it responsible for the damage caused by its military staff; 2)create a state fund to compensate for the damage caused by war crimes.

In order to implement the proposed mechanism, we consider it appropriate to make the following changes and additions to the current Criminal Procedural Code of Ukraine of Ukraine.

1. Part 1 of Article 62: *Civil Defendant* after the first sentence shall be supplemented with the second sentence as

laws/show/4651–17/ed20220520#Text (date accessed: 02.06.2022).

follows: "In case of damage caused by war crimes or the crime of aggression against Ukraine, the civil defendant may be recognized as the aggressor State".

2. Part 1 of Art. 91: *Circumstances to be proved in criminal proceedings* after paragraph 7, add a new paragraph with the following content:

"The fact of the armed aggression of the Russian Federation against Ukraine cannot be proven".

3. Part 10 of Art. 100: *Storage of physical evidence and documents and resolution of the issue of special confiscation* shall be amended as follows:

"10. While resolving the issue of special confiscation, issue of returning money, valuables and other property to the owner (legal owner) and/or compensation for damage caused by a criminal offense must first be resolved. Special confiscation is applied only after the prosecution proves in a court of law that the owner (legal owner) of money, valuables and other property knew about their illegal origin and/or use, *except for property, valuables, money and other material assets belonging to physical or legal entities persons of the aggressor state of the Russian Federation.* Such property, money, valuables, other material assets are subject to special confiscation in any case. In the event that the guilty person does not have property that can be levied, except for property that is subject to special confiscation, the damages caused to the victim, the civil plaintiff, are compensated at the expense of funds from the sale of the confiscated property, and the remaining part is transferred to the State ownership".

4. Relevant parts of Art. 170: Property Seizure should be amended as follows:

a) Part 2:

Property Seizure is allowed to ensure:

1) preservation of physical evidence;

2) special confiscation;

3) confiscation of property as a type of punishment or measure of a criminal legal nature against a legal entity;

4) compensation for damage caused as a result of a criminal offense (civil lawsuit) or recovery from a legal entity with illegal benefits.

5) *compensation for damage caused by armed aggression and temporary occupation of the territory of Ukraine by the Russian Federation";*

b) Part 10:

"10. Seizure may be imposed in accordance with the procedure established by this Code on movable or immovable property, money in any currency in cash or in non-cash form, in particular, funds and valuables held in bank accounts or in custody at banks or other financial institutions, expenditure transactions, securities, property, corporate rights, virtual assets, in which respect of decision of investigating judge, the court determines the need for seizure of property.

Property cannot be seized if it is owned by a bona fide acquirer, except

for the seizure of property for the purpose of ensuring the preservation of material evidence or property belonging to natural or legal persons of the aggressor state of the Russian Federation".

5. Part 4 of Art. 173: *Decision on Property Seizure* should be amended as follows:

"4. If the petition is granted, the investigating judge shall apply the least burdensome method of property seizure. The investigating judge, the court is obliged to apply such a method of seizure of property that will not lead to the suspension or excessive restriction of the lawful business activities of a person, or other consequences that significantly affect the interests of others. *This requirement does not apply to property owned by individuals or legal entities of the aggressor State of Russian Federation".*

6. Part 11 of Art. 182: *Pledge* is proposed to read as follows:

"11. The pledge that has not been turned into the state income shall be returned to the suspect, accused, pledgor after the termination of this preventive measure. At the same time, the pledge made by the suspect, accused, may be fully or partially applied by the court for the execution of the sentence in terms of property penalties. The pledge taken by the pledgor may be applied by the court for the execution of the sentence in terms of property penalties only with his consent. *The pledge made in criminal proceedings initiated under Articles 109–114[1], 258–258[5], 260, 261, 437–442 of the Criminal Code of Ukraine shall be applied by the court for execution of the sentence in terms of property penalties without the consent of the pledgor".*

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IDEOLOGICAL FOUNDATIONS OF THE BOLSHEVIK CRIMINAL–LEGAL POLICY

The study of the problems of criminal political ideology objectively led to turn to the analysis of the ideological basis of criminal law of the Soviet era, the sources of this ideology, forms and methods of its influence on the formation and implementation of criminal policy. Applying historical-legal, institutional and systemic methods of research, the roots of the criminal-legal policy of Bolshevism should be sought in the ideological and political program and activities of the Bolsheviks, in the activities of their government, which chose terrorism against its own people. On the basis of this study, it is no exaggeration to say that the Bolshevik ideology (ideology of Marxism-Leninism-Stalinism) gave rise to a unique type of criminal law policy, whose main task was to ensure the existence of power, and, to be more precise, first rebel groups power by means of an elementary armed coup, and later by a class of Soviet nomenklatura formed on its basis

Keywords*: criminal law policy, ideology, ideology of criminal law policy, Bolshevism, criminal law policy of Bolshevism*

Problem statement. The study of criminal-political ideology problems objectively compelled us to examine the ideological foundations of criminal law during the Soviet era, the sources of this ideology, and the forms and techniques of its influence on the creation and implementation of relevant legal policy. It became evident that the roots should be sought in the Bolshevik ideological political program and activities, in the acts of their government, which chose terror against its people as the principal technique of administering society while disguising its cannibalistic nature. Indeed, without exaggeration,

the Bolshevik ideology of Marxism-Leninism-Stalinism gave rise to a unique type of criminal-legal policy, the main objective of which was to ensure the existence of the government, to be more precise, primarily a group of rebels who seized state power through an armed coup, and later, the class of Soviet nomenklatura formed on its basis. We defined the temporal scope of Bolshevism between 1917–1953 when the type of administration in the USSR was characterized as the "dictatorship of the proletariat." After Stalin died in 1953, the party nomenklatura came to power and declared the establishment of a nationwide state in the USSR, abandoning both proletarian dictatorship and mass terror as the primary means of exerting state authority. Terror was limited against open opponents of the ruling circle and activists for separate state independence.

Review of recent related research and publications. It should be mentioned that the influence of ideology on criminal-legal policy has only lately been explored in national criminal-legal science. Most of the studies were devoted to the ideology of criminal law[1], and within this context, a few of its effects on criminal-legal policy were examined. Only in recent years has this issue received the attention it deserves. The author published a study on criminal-political ideology in 2021[2]. While I. V. Kozych also covered the issues of the ideological foundation of criminal-legal policy (functional and operational aspects) in his monograph[3].

Summary of the main research findings. Neither a state nor any legal system can exist in an ideological vacuum without being built on an appropriate ideological basis. The Bolshevik criminal-legal ideology reproduced the legal consciousness of the rebels who seized power in the state (formed in prisons and transfers, where they were often held for committing common crimes – blatant robberies, murders with a profit motive, etc.) followed by the ideology of party-state nomenclature, formed and strengthened on their basis. "The ideology of socialism was the basis for the formation of the value system of the population and therefore served as the spiritual support of the partocracy … ideology in the Soviet country was put above legislation and justice. This allowed the party to usurp legislation, to monopolize all the levers of social life management".[4]

In the Soviet Union, a unique state legal system was created, which differed from all previously known history

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and legal theory in that the central place in the mechanism of state legal regulation was occupied by the RSDLP (b) – A-UCP (b) – CPSU. "Party documents in the field of historical and legal doctrinal studies as an issue for discussion are very complex and ambiguous. This problem is of fundamental importance in studying the Soviet state and law since the formation of Soviet statehood, and legal regulation had a pronounced ideological basis. It was based on the postulates of Marxist doctrine in Leninist-Stalinist interpretation, which shaped all the political decisions. The ideological foundations and political decisions were externalized and transmitted to the population in the form of the documents of the RSDLP (b) – A-UCP (b) – CPSU".[1] The decisions of the party (no matter in what form they were made – decisions of congresses, plenums of the Central Committee of the party, its Politburo) were normative, although they did not correspond to the form of a normative act. The normative acts were created after receiving the relevant decision on a specific issue of the party bodies. This happened throughout the entire chain of power of the country, from the center to the most remote outskirts. Thus, a kind of unique state formation was created, which can be defined as "party-state" or "party state" in which the state, as a political element of society, was pushed to the background. It carried out the political and administrative functions, pushed out the ideological and political interests of the Communist Party, performing the functions of its instrument in implementing party decisions. Evaluating this situation, the authors of the collection of documents "Stalin's Politburo in the 1930s" rightly note: "the leaders of the Politburo with good reason could have declared: "We ARE the state."[2]

The party's effect on the evolution of law was based on the steady and increasingly rigid normative consolidation of its societal position. This becomes clear in the evolution of the constitutional provision regarding the position and function of the RSDLP (b) – A-UCP (b) – CPSU within the Soviet state. In the norms of the Constitution of the RSFSR of 1918 it was fixed only at the level of consolidation of its basic ideological positions on the organization of state power and legal regulation. Whereas the Constitution of the USSR of 1936 defined the A-UCP (b) as

[1] Кодан С. В. Документы РКП(б) – ВКП(б) – КПСС в системе источников изучения истории государства и права: проблемное поле исследования. *Эволюция российского и зарубежного государства и права. К 80-летию кафедры истории государства и права Уральского государственного юридического университета (1936-1916). Сборник научных трудов. Т. IV: Эволюция российского и зарубежного государства и права в трудах-поздравлениях коллег Уральского государственного юридического университета* / под ред А. С. Смыкалкина. Екатеринбург : Урал. гос. юрид. ун-т. 2016. С. 62–63.

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"the leading core of all workers' collectives, both public and state," and the famous Art. 6 of the 1977 Constitution stated that "The leading and guiding force of Soviet society, its core, is the Communist Party of the Soviet Union."

In the USSR, party membership was also declared fundamental to all humanities.

It is appropriate to mention S. S. Aleksieiev: "Socialist legislation is a functionally connecting component of political organization that, in tandem with the functioning of the state, is organically linked with the Communist Party's leading action. The direct (or rather, the most direct after the party's program documents, decisions, directives, and other guiding documents) and simultaneous national execution of the party policy is found through the Soviet bodies".[1]

Besides the idea of party membership, the legality principle stated by the Bolsheviks had a prominent position. There appears to be nothing wrong with it, but the government has perverted its meaning. Absolute conformity with the laws enacted by the authorities captured by the Bolsheviks, the authorities that enacted legislation based on the principles of the Bolshevik Party, provided an extra assurance of retaining power. This circumstance enabled the discussion of the existence of the rule of law in the Soviet Union during the 20th century. A. Malytskyi argued in 1924 that the country had a legal regime, defined as "the subordination of all governmental bodies to the demands of the legislation, to the law."[2] However, what sort of laws were these? The rules safeguarded the rebels, the regulations that enabled them to maintain control! Ultimately, the Holodomor, the Great Terror (the Great Purge) of 1937–1938, and all repressions during the Soviet era were based on legal principles. However, the observance of the rule of law, as well as its elevation to the category of a constitutional principle of the Soviet state, were entirely distinct from its widespread concept. We fully concur with L. E. Laptieva's assertion that such a conception of legality "may conceal the "rule-making arbitrariness of a police state," in which any administrative action is permissible if at least a departmental normative act can support it."[3]

In this manner, the Bolsheviks disproved Marxism's theoretical tenet regarding the economic base's superiority to the superstructure (which includes the party). The party dominated the economic foundation of the Soviet Union and regulated all parts of society.

[1] Алексеев С. С. Советское право как средство осуществления политики КПСС. *Правоведение.* 1977. № 5. С. 23.

[2] Малицкий А. Советская конституция. Харьков, 1924. С. 27–28.

[3] На превеликий жаль рудименти такого підходу ми спостерігаємо ще до сьогоднішнього дня коли під поняття «Закон» підводять відомчі нормативні акти.

Лаптева Л. Е. О кризисе правосознания и правовом государстве / Киберленинка. URL: https://cyberleninka.ru/article/n/o-krizise-pravosoznaniya-i-pravovom-gosudarstve

In criminal justice, all efforts were concentrated on developing a criminal legislation system that would provide maximum protection for those who acquired power in the country. The most extreme kind of compulsion, terror against its people, was elevated to the forefront. This strategy was inherent to the USSR and all nations that followed the same development route. Cambodia, China (under Mao Zedong), and Nicaragua are sufficient examples of socialist camp nations. All the classic literary villains were infants compared to Lenin, Stalin, Pol Pot, Kim Jong-un, and others because they were essentially just villains, whereas the latter are armed with ideology, which pushes their villainy worldwide on a vast scale.

At the inception of Marxism, fear as a means of social control was recognized as a top priority. Its architects and developers did not try to hide this, once again exemplifying both their cynicism and the cynicism of their administration. Russia was receptive to the concept of using terror to solve political problems. The roots of this savagery can be found in Russian history. Appropriately, we recall the words of Ilarion Vasiliev, an eminent (but regrettably little-known) lawyer, who wrote: "The Mongols, who ruled Russia for approximately two and a half centuries, left behind formidable monuments of cruelty in Russia, which were characteristic of the crude and ignorant peoples. They burdened our Motherland greatly, drastically altering Russian customs…"[1] Thus, the combination of Bolshevism and Russia's national-political ideology, both formed under the influence of Asian medieval cruelty, served as the fertile ground on which the Soviet totalitarian machine for the destruction of its people, concealed by criminal law, grew. The same complicated ideology was the basis for establishing the Soviet people's criminal-political legal consciousness and criminal-political ideology. It was supplemented by the innate mentality of the Russian people (which was transferred into the consciousness of the nations incorporated into Russia), the belief that the state can only prosper under the leadership of a strong Tsar-Batushka. Except for the period between February and October 1917, it is impossible to find a period when Russia was not ruled by a leader (strong or weak, a tsar, a party leader, or, as of today – a president) rather than a democratically elected parliamentary majority. At that, a leader was considered an inviolable entity – all his ideas, words, and actions were perceived as the final authority and were subject to unconditional implementation. Any criticism of him was unacceptable.

These leaders, with the assistance of the state apparatus established by them, introduced the appropriate ideology into the minds of the masses, which

[1] Цит. за Томсинов В. А. Российские правоведы XVIII–XX веков: очерки жизни и творчества: в 3-х т. изд. 2-е, доп. Москва : Зерцало-М. 2015. Т. 1. С. 255.

served as the basis for the formation of its criminal-political element, further to be implemented into the criminal legislation.

The Soviet government monopolized the sphere of criminal and political ideology to the point that it turned the Soviet people, in their masses, into mere "cannibals," chanting slogans like "shoot," "execute," "kill like rabid dogs," etc. at rallies gathered to support political repressions. They were hunting for traitors, spies, and enemies of the nation everywhere. Wives denounced their husbands; husbands denounced their wives; children called for the execution of their parents… And in all cases, all of this was disguised by the alleged commission of crimes by the accused, i.e., the need to apply the criminal law. We agree with the point of view of V. I. Pernatskyi, who notes that "law extends politics through other means."[1]

There has always been a connection between party ideology and criminal legislation. Criminal-political ideology is a relevant structural aspect of the ideology of legal policy, which is a component of the party's defined and molded state political ideology. From the beginning of the Bolshevik authorities' involvement in criminal law, the definition of unlawful actions was approached from the perspective of preserving Bolshevik control. Therefore, "… the reality of retaining the Bolsheviks in power guaranteed the dominance of views on the law as an instrument of authority"[2] based on the Bolsheviks' criminal and political doctrine, criminal law was "edged" against adversaries – class, political, and economic – on the first day of their coming to power. The fluidity and ambiguity of the concept of crime permitted Bolshevik authorities to include in this category any act, any perpetrator (or non-perpetrator), and anybody they saw necessary to eliminate during a specific historical time, from Humilov to Stus and Marchenko. This horror was practiced throughout the history of the Soviet Union, but it reached its zenith in the late 1930s, a period known as the "Great Terror."

To preserve the power, the legislation notably established the characteristic of "class threat" of an act (which was later renamed "public threat" (to reflect the agenda of the time better), which permitted an almost unrestricted range of activities and subjects to be declared criminal and punishable. This enacted the development of the criminal-political ideology of Bolshevism and unleashed terror in the country under the guise of criminal law on its basis[3].

[1] Пернацкий В. И. Философия политики и права. Москва : РИОР : Инфра-М. 2013. С. 30.

[2] Соломон П. Советская юстиция при Сталине. Москва : РОСС ПЭН. 1998. С. 23.

[3] Слід зазначити, що аналіз історії кримінально-правової політики часів СРСР, що здійснюється російськими вченими сьогодні, суттєво різниться від такого ж аналізу, який проводився у 90-х роках минулого та в перше десятиріччя цього сторіччя. Зміни, нажаль, відбуваються не в кращу сторону. Фактично, під впливом відомих політичних

Marxism-Leninism has always questioned the authority of law in public life. According to the doctrine, the state precedes the law in its correlation. This relates to Marx, who stressed that "Society is not founded on the rule of law. It is a lawyer's fantasy".[1] This is understandable because the authority in the socialist state belonged to the rebels and their descendants, as well as the party, which was the state's pivot. The opposite would be acknowledging the illegality of the party's domination and grabbing and maintaining power for over seventy years. Such a status requires dependable protection. This was accomplished not only by a specifically created body of the VNK-OGPU-NKVS-KGB but also with pertinent legal provisions upon which this protection was to be grounded. These rules were concentrated in criminal codes and other statutes, including criminal liability-specific provisions.

The entire criminal-legal policy of Bolshevism was focused on violence, which, according to Marx and Engels, was the only proper way to establish a new society. The law should provide for using as much violence as possible, as was first established by Lenin. Marxism acknowledges the priority of violence in the criminal-legal policy. A. Solzhenitsyn, quoting statements from the correspondence of Marx and Engels, said: "Marx and Engels in their correspondence repeatedly mention the necessity of terror politics after rising to power. Repeatedly they write: "We will have to repeat the year of 1793. After coming to power, we will be considered monsters, which, of course, we do not care about"[2]. They formulated an identical position in the Manifesto of the Communist Party, which states: "the goals can be achieved only through the violent overthrow of the entire existing social order. Let the ruling classes tremble before the Communist Revolution …"[3]. According to the doctrine of Marxism, the entire criminal-legal policy of a socialist country should be based on the advancement of the class struggle. Soviet lawyers adopted this thesis in their theoretical research and rule-making activities. Such ideological filling of the content of criminal-legal policy has always justified violence and terror because there is always an enemy to be fought and eliminated (to quote Stalin's famous statement – "if the enemy does not surrender, he should be destroyed"!)

Marx and Engels had no other concepts for criminal-legal policy. Marx was broadly critical of ideology, regarded it as distorted thinking, and opposed

тенденцій, відбувається виправдання кримінально-правової політики того часу, більшовицького терору, звеличення постатей його організаторів та ідейних натхненників В. Леніна, Й. Сталіна та виконавців.

[1] Маркс К. и Энгельс Ф. Соч. Т. VII. С. 254.

[2] Цит. за Александр Солженицын. Фрагмент выступления в Американской Федерации Труда. 7 июля 1975 года, Нью Йорк. URL: https://www.golosameriki.com/a/a-33-2008-08-04-voa2/595161.html

[3] Манифест коммунистической партии. Москва, 1969. С. 47.

it to science. Its importance for the retention of power was understood only by his heirs, and Soviet scholars argued it was "the ideas of Marx and Engels on the need for a dialectical-materialist approach to the doctrine of crime were the basis of the science of Soviet criminal law, which from the first years of the Soviet state approached the assessment of crime from a Marxist class position[1].

The assessment of acts from an ideological standpoint prevailed in Bolshevism's criminal-political ideology. Laws, in their essence, were not the foundation of statehood; therefore, the ideology of legal policy was not to determine the forms and methods of governance, but the class struggle was. Lenin noted: "The revolutionary dictatorship of the proletariat is a power conquered and maintained by violence … which cannot be bound by any laws"[2].

Lenin, unlike Marx and Engels, who, as noted, did not comprehend and therefore did not attach importance to ideology, understood its role in the life of society and the possibility of maintaining power in the hands of the party. He immediately drew a line between proletarian and bourgeois ideology and put this division in justification to fight the latter. Having done this, he did not analyze ideology as a phenomenon, stopping at using it only for political purposes for hands-on activity.[3]

Ideological postulates forged the foundation of legislative activity. As for the criminal law, it was chosen as a weapon in the hands of the Bolsheviks to keep power in their hands, to destroy their opponents and all who "did not fit" into the picture of the "socialist paradise" that was painted by the Bolshevik ideology. In the Decree "On the Court" of 05.12.1917, it was fixed: "Local courts decide cases in the name of the Russian Republic and are guided in their decisions and sentences by the laws of the overthrown governments only insofar as they have not been abolished by the revolution and do not contradict the revolutionary mentality and revolutionary legal consciousness."[4] The last part of the phrase practically nullified any discussion on the rule of law in the country, since anything could be brought under the category of what "contradicts the revolutionary legal consciousness." This situation suited the authorities, and they rejected any attempts to introduce the criminal-legal policy in a civilized manner. That is why the first criminal legal act developed in the RSFSR – the "Criminal Code" of 1918, which the Ministry of Justice developed, has never seen the light of day. "When by 1917 the con-

[1] Шишов О. Ф. Становление и развитие науки уголовного права в СССР. Москва : ВНИИ МВД СССР. С. 17.

[2] Ленин В. И. Пролетарская революция и ренегат Каутский. ПСС. Т. 37. С. 245.

[3] Ленин В. И. Набросок тезисов постановления о точном соблюдении законов. URL: https://ru.wikisource.org/wiki

[4] Декрет «О суде» 05.12.1917 г. URL: http://www.hist.msu.ru/ER/Etext/DEKRET/o_sude1.htm.

cept of law had already been practically formed, after the revolution it lost its significance," – the authors of the monograph "Russian Legislation of 1920" note.[1] However, the complete bacchanalia of lawlessness could not last long since the lumpen who came to power themselves committed succumbed to economic crimes, bribery, and "looting the looted." A sharp increase in bribery among the new government representatives reached such a scale that in 1918, a special Decree "On Bribery" was adopted.

The state's functioning in the complete absence of any codified criminal legislation could not last long and caused the adoption of a normative document that, in general terms, defined the basics of criminal liability. This was done by adopting a document entitled "Guidelines on the Criminal Law of the RSFSR" of 1919. This normative act enshrined the rejection of many legal institutes of criminal law, which had received comprehensive theoretical development before the revolution and were fixed in the legislation of the Russian Empire. There was also a reassessment of the values that were the basis of criminal legal protection before 1917 – religion, the rule of law, etc. As noted in the preamble of the "Guiding Principles": "Just as the proletariat could not simply adapt the ready-made bourgeois state machine for its purposes, but had to create its state apparatus on the former's wreckage, so it could not adapt the bourgeois codes of the past era for its purposes and had to hand them over to the archives of history. Without special rules, without codes, the armed peoples coped and copes with their oppressors". The basis of criminal legal protection was put into faceless "social relations," which made it possible to hunt primarily those who were disadvantageous (unnecessary) to the Bolshevik government. This was fixed in Section 5 of the "Guiding Principles" in the form of the concept of crime – "5) Crime violates the order of social relations protected by criminal law. 6) A crime, as an action or inaction dangerous for a given system of social relations, necessitates combating against persons (criminals) committing such actions or allowing such inaction".[2]

The concept of crime was defined exclusively from an ideological standpoint as a manifestation of the class struggle. M. Yu. Kozlovskyi argued, based on the Leninist postulate, that the leading cause of crime is the outcome of class inequality, which stems from economic inequality. Every crime is the product of class antagonisms.[3]

The guidelines were in force for almost a year and a half and were replaced

[1] Российское законодательство 1920 годов : монография / под ред. С. А. Боголюбова, Д. А. Пашенцева, В. А. Селенцева. Москва : Юрлитинформ. 2019. С. 8–9.

[2] Руководящие начала по уголовному праву РРСФСР. URL: http://docs.cntd.ru/document/901870462

[3] Козловский М. Ю. Пролетарская революция и уголовное право. *Пролетарская революция и право.* 1918. № 1. С. 26.

in 1922 by the first Criminal Code of the RSFSR.

However, the main idea behind adopting the Code was not related to the desire to regulate criminal liability at the legal level but to a different cause. The other significant cause, with his inherent cynicism, was clearly defined by Lenin in a letter to Kurskyi on 17.05.1922, in which he wrote: "The main idea, I hope, is clear, … to openly expose the principled and politically true (and not only legally narrow) position which motivates the essence and justification of terror, its necessity, its limits". And further: "The court should not eliminate terror; to promise such would be self-deception or fallacy, but to justify and legitimize it in principle, clearly, without falsehood and embellishment. It is necessary to formulate as broadly as possible because only revolutionary legal consciousness and revolutionary mentality will set the conditions for its application in practice, more or less wide".[1]

Lenin chose terror as a method of preserving the Bolshevik power, which was substantiated by him before the seizure of power and was consistently enforced throughout his stay in power. There is no need to repeat dozens, hundreds of his letters, telegrams, etc., with demands to "intensify terror," "unleash terror," "to carry out a merciless mass," "to prepare terror secretly," etc., which are well known and widely quoted today. Nevertheless, he rarely raised the question as in the quoted letter to Kurskyi – by merging terror and the Criminal Code.

All these positions of Lenin and his entourage were based on the ideological constructs of Marxism developed by his predecessors and deepened by him and his supporters. Thus, in the work "The Proletarian Revolution and the Renegade Kautskyi," he wrote: "The dictatorship of the proletariat is a power based directly on violence, which is not bound by any laws[2]. And also: "The scholastic concept of dictatorship means nothing more than a power unbound by any laws, not constrained by any absolute rules, directly based on violence."[3]

Let us not forget that Lenin brought the idea of creating concentration camps. He can be considered the founder of the GULAG system.

Lenin's death practically changed nothing in the criminal-legal policy of the Soviet Union. As before, the criminal-legal policy was aimed only at the extermination of the so-called "class adversaries," which included, first, former military, police, justice officials, etc. No one was interested in whether they committed actual actions against the authorities. However, during this period, criminal law was also used against real opponents of the regime and, foremost, against the peasantry,

[1] Ленин В. И. Полн. собр. соч. Т. 45. С. 190.

[2] Ленин В. И. Пролетарская революция и ренегат Каутский // ПСС. Т. 37. Москва, 1969. С. 245.

[3] Ленин В. И. К истории вопроса о диктатуре. // ПСС. Т. 41. Москва, 1969. С. 383.

which rebelled at being dissatisfied with the predatory policy of the Bolsheviks in the rural areas. The number of these uprisings and terrorist attacks against the Bolsheviks in these years is counted in thousands. Only in 1930, there were over 1300 armed riots and uprisings, in which over 2.5 million peasants participated. A significant part of these events occurred in Ukraine, which was the "breadbasket" of the state and whose peasantry suffered the most from the grain procurement policy.

During this period, criminal-legal policy gradually redirected against former Bolshevik leaders as Stalin fought for control over the state. Criminal repression was common; criminal-legal measures were carried out without bringing a person to criminal liability.

In 1926–1927, the criminal codes of the Union republics were adopted, which were created on the conceptual basis of the ideology of Lenin's criminal-legal policy. Crime was defined as encroaching on class interests, measures of "social influence replaced punishment," etc. The possibility of applying the criminal-legal analogy was enshrined, which created ample opportunities for abuse. These codes later became the regulatory basis of Stalin's terror against nations.

Stalin's seizure of power was connected with the termination of representatives of the so-called "Lenin's Guard" and the deployment of widespread terror against the people. At this, criminal law itself became an instrument of such. Stalin, whom M. O. Berdiaiev called "a state leader of the eastern, Asian type,"[1] widely used political trials for the ideological processing of the masses. There was a complete ideologization of criminal justice, a final turn from "justice" as fairness to "justice" as a revolver pressed to everyone's temple.

Stalin justified the direction of criminal-legal policy towards terror as the intensification of the class struggle on the way to building socialism, which, of course, from the scientific point of view, even of Marxists, did not stand up to any criticism. In this regard, he wrote: "the death of the state will come not through the weakening of state power, but through its maximum strengthening, necessary to finish the remnants of the dying classes."[2] Also: "A strong and powerful dictatorship of the proletariat – that is what we need now to scatter to the last remnants of the dying classes and smash their thieving machinations."[3] This thesis vividly illustrates the influence of Bolshevik ideology on criminal law. The consequence of this turned millions of victims of repressions carried out by the Stalinist regime until the last days of his life. The influence of ideology on criminal justice by the party entities was persistent. Thus, the newspaper "Pravda," a subsidiary of the

[1] Цит. за Наумов А. В. Преступление и наказание в истории России. Т. 2. Москва : Юрлитинформ. 2014. С. 589.

[2] Сталин И. Сочинения. 1951. Москва : Госполитиздат, 1951. Т.13. С. 211–212.

[3] Сталин И. Вопросы ленинизма. изд. 11. Москва : Госполитиздат, 1945. С. 394.

Central Committee of the CPSU (b), called on the judiciary and prosecutors not to put formal legality above the political line and to use criminal law solely in the interests of the party[1]. The author believes that the lowest point of the fall of Soviet criminal law was the period of collectivization[2]. However, we cannot agree with this. The lowest point was the period known as the "Great Terror" – 1937–1938. Fabrication of high-profile political trials aimed at eliminating any party opposition to Stalin and removing possible contenders for the role of the party leader. Extermination of their families to the "tenth knee" (often without a court verdict as Kamenev's first wife and son). Elimination of the Red Army command staff. Millions of innocently executed, tens of millions of innocently convicted – all this under the banner of "socialist legality" based on the Criminal Code.

In addition, between collectivization and World War II, Stalin authorized four significant changes to criminal legislation that significantly expanded the scope of criminal repression. Thus, in 1932, the Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of August 7, 1932, "On the Protection of Property of State Enterprises, Collective Farms and Cooperatives and Strengthening of Public (Socialist) Property" was adopted, which was infamously called the "Law of Spikelets." This law introduced nearly draconian measures of criminal liability for encroachment on state, collective, and public property. The laws of 1935 significantly expanded the possibilities of bringing minors to criminal responsibility. In 1936, abortion was criminalized, followed by the 1940 violation of labor discipline criminalization. All these legislative steps served to intimidate the people, turning them into biomass subjugated by the tyrant. And all this was done through criminal legislation. Criminal-legal policy became the policy of tyranny. With the help of Vyshynskyi and his subordinate prosecutors, Stalin used criminal law to legitimize his plans by creating a jurisprudence of terror.

With the entry of the USSR into the Second World War (WWII), against the background of strategic defeats of the army, and mass refusal of soldiers to defend Stalin's terrorist regime, several laws were adopted that established increased measures of criminal legal response to the facts of surrender, escape from the battlefield, desertion, etc. It should be particularly emphasized that repressions were directed not only against the "perpetrators" but also against their family members. One could argue that this was when the institute of hostages was legally formalized.

We will not estimate the number of executed servicemen under the verdicts of military tribunals – which, according to some estimates, exceeds the staff of

[1] Соломон П. Советская юстиция при Сталине. Москва : РОССПЭН. 1998. С. 80.

[2] *Ibid, p.* 79.

a regular army. We will not tally the number of those sent to penal companies and battalions – there are more than we can count. We will not count those brought to criminal responsibility for the so-called "desertion from the labor front." We will not. Criminal-legal policy during the Second World War exhibited particular cruelty to the people who defended the Bolshevik regime.

In the post-war period, the criminal-legal policy had little change, although the victorious nation expected the attenuation of terror. According to researchers, its main trends during this period were:

1st – by-laws (orders, directives, instructions), which substituted or supplemented the law, acquired greater importance.

2nd – the number of normative acts issued with a restricted use stamp and not brought to the population's attention expanded.

3rd – the severity of punishment has significantly increased.[1]

Some steps that could indicate the liberalization of criminal-legal policy, such as the abolition of the death penalty, were caused by foreign political pressure on the leadership of the USSR rather than a change in the terrorist criminal-legal policy of Stalinism. They did not last long and concerned only court sentences, while executions in the GULAG system remained.

In the late 40s and early 50s, Stalin began preparations for a new wave of mass terror. Several high-profile political trials were initiated against military and economic leaders, the so-called "Doctors' plot" was brought up, etc. A significant shift was coming among the party's top management. The end of this bacchanal of terror was put by the death of Stalin, marking the end of the criminal-legal policy of Bolshevism, founded solely on terror.

Conclusions. A unique state-legal system was created in the Soviet Union – the party's decisions had a normative character, although they did not correspond to the form of a normative act. The normative acts were created after receiving the relevant decision on a specific issue from the party bodies. The ideological influence of the party on legal development was based on the gradual and increasingly rigid normative consolidation of its role in society.

The conventional Bolsheviks were replaced by a new class, created within the Bolsheviks as their ideological descendant – the class of party and economic nomenclature, which perfectly understood that it would not be possible to rule the country with only terror for a long time. As a result, the XX Congress of the CPSU exposed the cult of Stalin's persona and began work on new criminal legislation. This marked the transition to a new criminal-legal policy, which can be conditionally defined as "party-nomenclature." During the last decades of the USSR's existence, the party-state leadership generally recognized the crime

[1] *Ibid, p.* 389.

causes as temporary shortcomings in the country's socio-economic life, which were not related to the fundamental conditions of the state and society. Nevertheless, it was still impossible to publicly discuss the shortcomings of the nomenclature apparatus. The criminal-political ideology of these periods has yet to be studied separately, given that it is not a reflection of its Bolshevism counterpart, albeit its successor.

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INNOVATIVE ESSENCE OF CRIMINALISTIC AND PROSPECTIVE DIRECTIONS OF ITS DEVELOPMENT

Abstract. *The article discusses the debatable problems of the innovative essence of criminalistic, analyzes its current trends and promising directions of development. It is determined that one of the priority tasks of forensic science is the creation and implementation of innovative forensic products into law enforcement practice. To solve this and other problems, modern criminalistic integrates and synthesizes the latest achievements of science and technology, which determine and determine the innovative directions of the development of criminalistic. It is noted that the current stage of development of criminalistic, its prospects are naturally associated with active research and application of innovative approaches, tools and technologies in all its components – the general theory of criminalistic, criminalistic techniques, tactics and methods.*

It is substantiated that the scientific works of Professor Dr. Vidmantas Egidijus Kurapka played a significant role in the formation of the provisions of criminalistic innovation. In this regard, the scientific research of the scientist and the practitioner, devoted to the problems of criminalistic policy, criminalistic strategy, criminalistic didactics and innovative directions of the development of criminalistic science in modern conditions, is of particular importance. The paper analyzes innovative approaches in criminalistic science and the proposals of an outstanding scientist-criminologist on the formation of a modern concept of forensic science and promising directions of its development.

It is substantiated that the determining factors for further research into the problems of innovations in criminalistic science in the framework of the formation of a private criminalistic theory, first of all, are questions regarding the definition of the subject, object and method of this theory. It is argued that at present, scientific prerequisites have been created for its development and formation, which is a promising innovative direction of modern criminalistic research. Considering the importance of the provisions of this

theory for the prospects for the further development of criminalistic science, it is proposed to consider criminalistic innovation in the structure of the general theory of criminalistic science. Therefore, the scientific legacy of Professor Dr. Vidmantas Egidijus Kurapka creates a scientific foundation for further prospects for the study of criminalistic innovation and criminalistic science in general

Keywords: *innovative essence of criminalistic, criminalistic innovation, Professor Dr. Vidmantas Egidijus Kurapka, innovative directions in the development of criminalistic, innovations in criminalistic didactics*

INTRODUCTION

The history of the origin and development of science shows that criminalistics has always been and is an innovative science, it has an innovative nature, because always developed according to the innovation scenario[1]. The history of criminalistics is the history of the creation and use of innovative products in the field of combating crime. At the same time, criminalistics, as an applied science, has always been closely linked to practice, it has positioned itself as a proven product designed to detect and investigate crimes, establish the true circumstances of criminal proceedings and effectively combat crime. Therefore, the innovative path of development of criminalistics is due primarily to the latest advances in science and technics[2], scientific developments, introduction of information technologies, high-tech equipment, scientific and technical means of the new generation, computerization and automation of the process of detection and investigation of criminal offenses[3].

In modern conditions of formation of criminalistic knowledge, this process depends on the scientific and technological progress of the human community. The development of criminalistics, its trends are due to the influence of global information flows, the integration of knowledge about the possibilities of combating crime through the scientific and technological achievements of modern society[4]. The informatization of the social environment has actually led to the «technologicalization» of criminalistics, the development and implementation of information, digital, telecommunications and other technologies. Given the above, radical changes

[1] Шепітько В. (2019). Інновації в криміналістиці як віддзеркалення розвитку науки. *Інноваційні методи та цифрові технології в криміналістиці, судовій експертизі та юридичній практиці*: матеріали міжнародного «круглого столу».

[2] Шепітько В. та ін. (2019). *Інноваційні засади техніко-криміналістичного забезпечення діяльності органів кримінальної юстиції :* монографія / за ред. Шепітька В., Журавля В., 20–22.

[3] Коновалова В. (2018). Нові тенденції розвитку криміналістики. *Матеріали науково-практичної конференції Міжнародного конгресу криміналістів.* Т. 1, 55–64.

[4] Shepitko V. (2018). Criminalistics as a system of scientific knowledge in conditions of global threats and crime transformation. *Theory and Practice of Forensic Science and Criminalistics*, 18, 4–9.

are currently taking place and innovative approaches are being introduced in the criminalistic support of law enforcement agencies[1].

Practice and time show that the need for criminalistic science to choose an innovative path of development was caused by a number of objective reasons, which are related to the urgent needs of practice and aimed at finding adequate innovative tools, techniques and methods to counter modern challenges of crime[2]. As can be seen, the current challenges of crime are a reflection of trends in the current realities of society. Such circumstances have posed new challenges to criminalistics, which are related to the «social order» of practice to find adequate means, techniques and methods to combat modern challenges to crime[3].

In this regard, in the criminalistic literature, researching the issue of criminal politics, it is fair to point out that in the scientific, social and political discourse has always been quite acute issues of combating crime. Therefore, it is not enough to know the nature and causes of crime, because in this essence, an effective tool for detecting and investigating criminal offenses, which has become criminalistics[4]. It seems that this is the meaning of criminalistic science for investigative and judicial practice – to promote their recommendations, specific methods and means of detection, recording, research and use of evidence of law enforcement, to increase its effectiveness[5]. In this regard, V. Yu. Shepitko emphasizes that the developed tools, techniques and recommendations affect the effectiveness of detection and investigation of criminal offenses, despite the level of development of the latter, and testifies to the development of criminalistics, which combines best practices in combating crime, opportunities in this area[6].

Modern crime accompanies the global problems of society in the field of economy, politics, ecology, energy, demography, including significant impact and the current exacerbation of the epidemic situation in the country and the world. In such circumstances, crim-

[1] Шепітько В. (2019). Проблеми оптимізації науково-технічного забезпечення слідчої діяльності в умовах змагального кримінального провадження. *Матеріали наукової конференції за результатами роботи фахівців НДІ вивчення проблем злочинності ім. акад. В. В. Сташиса НАПрН України за фундаментальними темами*, 144.

[2] Жижина М. (2012). Инновационный путь развития криминалистики на современном этапе. *Вестник криминалистики*, 1 (41),18–24.

[3] *Textbook of criminalistics. V.1. General Theory.* (2016). Ed. Malevski, H., Shepitko V. 89–93.

[4] Малевски, Г., Курапка В. Э., Матулиене С. (2017). *Судебная экспертиза в Литве – есть ли стратегия государственной криминалистической политики? Doctrina multiplex, Veritas una. Наукові праці Національного університету «Одеська юридична академія».* Т.19, 326–335.

[5] Салтевський М. (2005). *Криміналістика (у сучасному викладі): підручник*, 19–20.

[6] Шепітько В. (2010). Вибрані твори, Избранные труды, "*Криміналістика в системі наукового знання: сучасний стан та деякі тенденції Шепітько В. Ю.*" (Київ : Апостіль, 2010), 14.

inal elements are quite active in using the current situation of coronavirus infection, fear and existing problems around the pandemic to carry out active criminal activity, which is often aimed at obtaining «criminal profits». As we can see, such processes have affected criminal activity, the activities of law enforcement agencies, the national security of states in the field of health care, which has led to the emergence of new tasks and functions of criminalistics in modern realities. Therefore, the creation and implementation of criminalistic innovative products has always been, and remains today, one of the priorities of criminalistics[1], which determines the innovative nature of the development of modern criminalistic science.

ANALYSIS OF BASIC RESEARCH AND PUBLICATIONS

The scientific basis of the study were the works of criminalists, which are devoted to the development of innovative areas of criminalistic science and its discussion issues related to current issues of forming a scientific concept of innovation in criminalistics and highlighting the priority areas of such developments: H. K. Avdeeva, V. L. Hryhorovych, M. I. Dolzhenko, M. V. Zhuzhuna, V. A. Zhuravel, V. O. Konovalova, M. V. Saltevkyi, N. B. Nechaeva, H. V. Fedorov, Yu. V. Chornous, V. Yu. Shepitko etc.[2]. Scientific works are of special importance for the formation of the scientific concept of criminalistic innovation by prof. Dr. Vidmantas Egidijus Kurapka [3]. At the same time, it should be noted

[1] Геннадий Федоров и Василий Григорович, *Инновационные направления развития криминалистики: монография*, под ред. Геннадия Федорова (М.: Юрлитинформ, 2012).

[2] Журавель В. (2018). Окремі вчення в структурі загальної теорії криміналістики. *Теорія та практика суд. експертизи і криміналістики:* збірник наукових праць. 18, 9–21; Шепітько В. та ін. (2017). *Інноваційні засади техніко-криміналістичного забезпечення діяльності органів кримінальної юстиції: монографія*, за ред. Шепітька В. та Журавля В., 15; Когутич І. (2013). Тенденції пристосування криміналістичних знань у здійсненні судочинства. *Вісник Львівського університету. Серія юридична,* 57, 338; Нечаева Н. (2013). Инновации в криминалистике. *Ленинградский юридический журнал,* 2 (32), 158; Сокол В. (2008). Инновационная деятельность как объект криминалистических исследований. *Пробелы в законодательстве,* 1, 378–79; Шевчук В. (2019). Інноваційні напрямки розвитку криміналістики. Матеріали міжн. «круглого столу»: *Інноваційні методи та цифрові технології в криміналістиці, судовій експертизі та юридичній практиці*, 142–47; Шепітько В., Журавель В., Авдєєва Г. (2019). Інновації в криміналістиці та їх впровадження в діяльність органів досудового слідства. *Питання боротьби зі злочинністю: збірник наукових праць,* 21, 44–45; Федоров Г., Григорович В. (2012). *Инновационные направления развития криминалистики: монография*, под ред. Федорова Г. та ін.

[3] Kurapka V. E., Malevski H. (2000). Zarys koncepcji rozwoju kryminalistyki na Litwie Problemy współczesnej kryminalistyki. *Prace naukowe Zakładu kryminalistyki Wydziału prawa i administracji Uniwersytetu Warszawskiego i Polskiego Towarzystwa Kryminalistycznego,* eds E. Gruzy i T. Tomaszewskiego (Warszawa, 2000), 207–212; Kurapka V. E., Malevski H., Matulienė, S. (2016). *Europos kriminalistikos bendros erdvs 2020 vizijos gyvendinimo Lietuvoje mokslin koncepcija* (Vilnius, 2016); Kurap-

that in criminalistics today a number of issues that are crucial in the development of problems of criminalistic innovation as a new scientific direction in criminalistics, including the problem of developing and forming theoretical and methodological foundations of criminalistic innovation, its functions, tasks and prospects of implementing the provisions of this concept in law enforcement practice. These circumstances necessitate a comprehensive approach to the study of these issues and require significant intensification of further research in this area of knowledge.

THE AIM OF THE ARTICLE is to study the theoretical and methodological foundations of criminalistic innovation as a new scientific direction in criminalistics, the impact of scientific works and developments professor' Dr. Vidmantas Egidijus Kurapka on the formation of this scientific concept, including the problems of defining the concept of criminalistic innovation, functions, tasks, outlining promising areas of research and ensuring the implementation of its provisions in law enforcement practice. The aim is to formulate its concepts, functions and tasks, to determine the priority areas of research on this issue.

PRESENTING MAIN MATERIAL

The realities of today require the scientific community to develop and implement adequate tools that are close to European standards and able to meet the needs of investigative and judicial practice. In addition, V. O. Konovalova rightly notes that criminalistics is innovative because it aims to create a scientific "product" for the practice of combating crime. Criminalistics is the science that must respond to changes and transformations in crime, its subtle and latent nature, the emergence of new ways and mechanisms of criminal activity. Development and implementation of innovations in investigative activities can be carried out in such areas as the creation (development) and proposal for the use of new techniques, methods,

ka V. E., Malevski H. (2005). Kriminalistiklehre an Universitäten-Notwendigkeit, Realität oder Problem?" *Kriminalistik. Unabhängige Zeitschrift für die kriminalistische Wissenschaft und Praxis* 1, 47–50; Kurapka V. E., Malevski H., Matulienė, S. (2016). (ats. red.). *Europos kriminalistikos bendros erdvės 2020 vizijos įgyvendinimo Lietuvoje mokslinė koncepcija. Mokslo studija.* (Vilnius: Mykolo Romerio universitetas, 2016); Kurapka V. E. et al. (2016). Planning ab initio pre-trial investigation as the condition for a more effective investigation of crimes: from theory to practice. *Criminology Journal of Baikal National University of Economics and Law*, 2 (10), 387–398; Курапка В. Э., Малевски Г. (2016). Научная концепция криминалистической политики в стратегиях органов правопорядка как инновационный прорыв в обеспечении создания общего европейского криминалистического пространств. Матеріали міжнародного «круглого столу»: *Інноваційні методи та цифрові технології в криміналістиці, судовій експертизі та юридичній практиці*, 84–91; Ackermann R. et al. (2020). Schaffung eines einheitlichen europaisehen. Kriniinalistischen Raumes: Die Tatigkeit offentlicher Organisationen zur Starkung der internationalen Beziehungen". *Kriminalistik*, 6, 355–363 та ін.

techniques of investigative (search) actions and the process of detection, disclosure and investigation in general[1].

Thus, the history of innovations in criminalistics is the history of the emergence, development trends and current state of criminalistics. The emergence and history of criminalistics as a system of knowledge due to the social order of the state and society: to develop new tools and methods for detecting and investigating criminal offenses in the context of professional and organized crime, because this is the science that is at the forefront of combat crime[2]. Moreover, the development and implementation of criminalistic innovations in law enforcement practice has always given and gives impetus to the sustainable development of criminalistic science, creates certain conditions for overcoming crisis trends in criminalistics and in combating the challenges of crime. All these processes and problems are appropriately reflected in the innovative directions of the development of criminalistic doctrine in modern conditions.

Recently, in the criminalistic literature there is a tendency of increased interest of criminalistic scientists in some problems of scientific principles of criminalistics, but such interest is still limited to scientific research, mainly related to the study of object and subject of criminalistics, functions, tasks, principles and laws of criminalistics. While there is a lack of thorough research on the problems of transformation of criminalistic knowledge into practice, mechanisms for implementing criminalistic theory in practice, problems of implementing criminalistic innovations in law enforcement, the role of criminalistic innovation processes to improve the efficiency of criminal investigations, that is a number of issues related to the problems of criminalistic support of the practical activities of law enforcement agencies, which significantly strengthen the practical orientation of criminalistic innovations and their implementation in practice.

Analysis of criminalistic literature and practice of crime investigation, trial shows that today there is a peculiar situation in which modern criminalistics, developing its recommendations, including criminalistic innovations aimed at optimizing criminal proceedings, is not specifically engaged in targeted research devoted to their implementation in practice.

However, in view of the above, the problems of implementation of criminalistic innovations in practice are fundamentally important, as, firstly, it is related to the applied function of criminalistics, and secondly, recent decades are characterized by the fact that many criminalistic innovations have not been implemented in practice. The reasons

[1] Коновалова В. (2012). Избранные труды. Вибрані твори. *Криміналістика в системі наукового знання: сучасний стан та деякі тенденції*, 44.

[2] Шепітько В. (2010). Вибрані твори. Избранные труды. *Тенденції і перспективи розвитку криміналістики (концептуальність підходів і дискусійність поглядів*, 8.

for the latter are different, they can be both objective and subjective. In particular, this may be a clear impracticality or far-fetchedness of such criminalistic recommendations, innovations, and the lack of opportunities for their use in practice or their unclaimed, etc. In our opinion, the reasons for non-implementation and unclaimed innovations in criminalistic innovations should be the subject of separate criminalistic studies.

Thus, the above once again confirms the feasibility and necessity of allocating as an independent task of criminalistics, as scientific support for the implementation in practice of its innovative products, methods, techniques and tools. In our opinion, the isolation and formulation of such a task, its study significantly affects the development of innovative products, effective criminalistic recommendations of practical direction, determines the content and directions of innovative development of criminalistics.

The study of criminalistics ways and forms of implementation of the results of its research in practice should be considered as a transition from cognitive-theoretical to practical-transformational activities. In our opinion, the study of methods and mechanisms of implementation of the results of scientific criminalistic developments in law enforcement practice is impossible without studying the essence, patterns and trends in the development of innovative criminalistic activities. In criminalistics at present there are virtually no such studies, which does not allow to form an effective mechanism to stimulate the implementation of its recommendations in the practice of combating crime and requires some scientific developments in this area.

In our opinion, another aspect requires in-depth study and research of the issues under consideration, in particular – the problems of implementing criminalistic innovations in the practice of combating crime, the effectiveness and practical value of developed and proposed innovations in criminalistics. Given the above, one of the priorities of criminalistics in modern conditions is to study and develop the scientific concept of criminalistic innovation, which now, as practice shows, has a lot of hidden, unused reserves and promising opportunities to optimize law enforcement in today's difficult realities. Therefore, the development of innovative criminalistic products and their use in law enforcement is primarily due to the needs of practice and is an important issue facing criminalistics today and requires research to address a number of controversial issues.

It is important to note that in criminalistics, any new method, technique, tool, new methodology, etc., developed by scientists for the needs of practice, can be considered from the standpoint of innovation as a criminalistic innovation. However, it should be borne in mind that from the moment of adoption to dissemination, such an innovation

does not become something special and is not always an innovation that has taken root in practice. At the same time, from the point of view of the theory of innovation, innovation is the result of a certain innovative activity, brought to the stage of practical use of this innovation. Accordingly, the development of criminalistic innovation without its introduction and dissemination does not give a useful effect for practice, but only creates certain prerequisites for its further implementation in practice. Thus, innovative scientific criminalistic developments act as an intermediate result in the chain – «science – the practice of combating crime» and only as their practical application are transformed into criminalistic innovations, completing the end result of this cycle (chain) and becoming popular and useful for practice and long enough time or to solve certain problems of criminalistics.

It should be borne in mind that the process of translating the developed and proposed innovation into a practical result of innovation is closely related to a certain type of activity – innovation activity. There is a life cycle (period of time) of innovation and a life cycle of innovation. These cycles are closely related, interdependent and impossible without each other, but they should be distinguished. The difference is that in one case there is a process of innovation, in another – the process of its implementation and application. Both life cycles of the innovative criminalistic product are covered by the more general concept of «criminalistic innovation process». Thus, the innovation process of criminalistic products is closely linked to the creation, implementation, development and dissemination of criminalistic innovations.

In our opinion, these circumstances are important and the consequences for the recognition of new proposed developments, technologies and innovations in criminalistics and their classification as real and real criminalistic innovations. In particular, in our opinion, the developed and proposed innovative criminalistic products should have such essential features as: 1) *novelty* (related to the creation and emergence of new properties of the object, as well as improving its parameters and characteristics); 2) *demand* in practice; 3) *practical applicability* and implementation; 4) *the presence of a lasting positive effect* in the process of their application. In this case, the criminalistic innovation process cannot be considered complete if the innovative criminalistic product is not used in practice on a regular basis and does not give the desired effect and result. In this regard, there is a paradoxical situation associated with the fact that in modern criminalistics and practice can be found a large number of proposed criminalistic innovations that do not meet the above characteristics.

In addition, as we can see, mainly in criminalistic research the main attention is paid to the study and coverage of the probable effectiveness of the proposed innovative criminalistic product, and

only in some cases the life cycle of innovation is considered. This, unfortunately, does not take into account the important provision that the life cycle of criminalistic innovations after their proposal is a relatively independent process, which is associated with them: a) demand in practice; b) practical applicability and implementation; c) the presence of a lasting positive effect in the process of their application. As we can see, such criminalistic innovations are mostly characterized by only the first feature – the novelty of the developed and proposed criminalistic product. At the same time, it is the life cycle of criminalistic innovations after their proposal, as a rule, remains without further due attention of criminalistic scientists who are engaged in the study and research of this issue. These and other circumstances require a modern theoretical and applied rethinking of scientific approaches to the study and adaptation of the latest advances in science and technology, other fields of knowledge, innovations in criminalistic technology and their application in the fight against crime.

In our opinion, these circumstances are due to methodological miscalculations in criminalistics, which do not allow to distinguish between innovation and innovation, as well as to distinguish as an independent object of study criminalistic innovation. This is the need to strengthen the practical component of modern criminalistic research[1]. Therefore, solving the problem of implementation of its recommendations and innovations involves the identification and comprehensive study of the subject of criminalistics on an independent, homogeneous group of laws that characterize the use in practice of methods developed by criminalistics, techniques and tools to optimize pre-trial investigation and judicial review and their implementation in the practice of counteracting the challenges of modern crime.

In the theory of criminalistics and the practice of investigation and trial, the question of the concept of criminalistic innovation and its features remains controversial. Nevertheless, it is obvious that the vast majority of definitions express the opinion of scientists (T. V. Averyanova, H. K. Avdeeva, M. V. Zhuzhuna, V. A. Zhuravel, N. B. Nechaeva, V. Yu. Shepitko etc.), that innovations in criminalistics should be understood as new modern methods, techniques, technologies, technical means, devices, equipment, tools developed and put into practice, the purpose of which is to optimize the investigation of crimes and their trial, improve the quality and efficiency of law enforcement and reduce errors[2], which is absolutely true. However, the position of

[1] Zhuravel V. (2020). Criminalistics' language: Concept-terminological apparatus formation. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(1), 162–76.

[2] Шепітько В., Журавель В., Авдєєва Г. (2019). Інновації в криміналістиці та їх впровадження в діяльність органів досудового слідства. *Питання боротьби зі злочинністю: збірник наукових праць,* 21, 45.

scientists on the essence of this concept, its essential features, role, purpose remains inconsistent, as they use different content-intensive methods, techniques, tools, technologies, solutions, services, their different focus on solving criminalistic problems and achieving effect, different goals, objectives, results of their implementation and use are seen.

In our opinion, the essential features of criminalistic innovation include the following: 1) the novelty of developed, proposed and implemented in practice products, technologies, services, solutions is manifested in the fact that they are associated with the creation and emergence of new properties significantly improve its parameters and characteristics, so they are newly created, or newly used, or improved; 2) developed, proposed and implemented in practice the latest technical, tactical, methodological and criminalistic tools (innovative criminalistic tools) are in demand and used constantly in practice, they are implemented in the form of new products, technologies, services, decision; 3) developed, proposed and put into practice the latest technical, tactical, methodological and criminalistic tools are the result of research or development, demanded and used in practice, forms of implementation (application) of such innovative criminalistic tools are new products, technologies, services, solutions; 4) the use of such innovations is carried out by special entities (investigator, judge, etc.), which ensures the qualification and efficiency of the use of developed and implemented in practice innovative tools; 5) the focus of innovative tools on the effective solution of criminalistic problems, ensuring optimization, improving the quality and effectiveness of law enforcement practice and further innovative development of criminalistics[1].

Thus, criminalistic innovation should be understood as developed, implemented and applied in practice the latest technical, tactical, methodological and criminalistic tools, which are the result of research or development, embodied in the form of a new product, technology, service , solutions used by qualified special entities in practice and aimed at effectively solving criminalistic problems and ensuring optimization, improving the quality and effectiveness of law enforcement practice. In turn, an innovative criminalistic product is a new product or technology developed and proposed for implementation, which is the result of research or development, which is designed for their further use by qualified special entities and aimed at solving criminalistic tasks and ensuring optimization, improving the quality and effectiveness of law enforcement.

In view of the above, it is seen that in criminalistics there should be a system of scientific provisions, combined into criminalistic theory, ensuring the

[1] Shevchuk V. (2020). Current problems of forensic innovations research: concept, attributes and significant features. *Theory and Practice of Forensic Examinations and Criminalistics*: *Collection of Scientific Papers*, 21, 39.

transition from the system of scientific knowledge and their implementation in practice to optimize the implementation of criminalistic recommendations. In our opinion, such a theory can be called «criminalistic innovation»[1]. Criminalistic innovation is a separate branch of scientific knowledge, it is related to the theory of innovation, social and legal innovation. Therefore, there is a need to develop criminalistic innovation as a separate criminalistic theory.

Today, the vast majority of issues that are crucial in the formation of criminalistic innovation, in particular, the concept and essence of innovation in criminalistics, their features, functions, principles of formation and implementation, classification, stages of their life cycle, determining the place in the criminalistic system, identifying factors – determinants that determine the development and implementation of innovations in practice, as well as problems of their implementation in practice, efficiency and effectiveness of such innovations. To these and many other problematic questions it is necessary to give reasoned answers, based on sound methodological principles, taking into account modern scientific concepts in criminalistic science.

In this regard, it is worth noting the study of criminalistic innovation on the basis of general theoretical approaches that provide an explanation and justification of such fundamental principles of any particular scientific theory as its genesis, essence, fact, hypothesis and theoretical construction. It is important at the theoretical level to study and reveal the patterns of functioning, all stages of the life cycle of innovation in criminalistics, from creation, proposal, implementation and implementation, the constant use of innovation in practice and their dissemination and dissemination. In this case, the full development of a particular theory in criminalistics must be justified by the subject and object of its study, as well as the methods used[2]. The issues of determining the place of this theory in the criminalistic system, its structure and functions are also significant.

In view of the above, this process of constructing such a criminalistic theory cannot be considered complete due to the significant number of uncoordinated, undeveloped and debatable issues that have already been mentioned yet. In this regard, we believe that today the concept of criminalistic innovation has not yet reached the level of a separate criminalistic theory and is still in the process of formation.

In determining the level of formation of a criminalistic theory, it is necessary to proceed from general philosophical approaches to solving this problem. In particular, P. V. Kopnin noted that

[1] Шевчук В. (2020). Методологічні проблеми формування понятійного апарату криміналістичної інноватики. *Вісник Національної академії правових наук України*, 2,170–83.

[2] Rolf Ackermann et al. (2020). Schaffung eines einheitlichen europaisehen. Kriniinalistischen Raumes: Die Tatigkeit offentlicher Organisationen zur Starkung der internationalen Beziehungen". *Kriminalistik*, 6, 355–363.

knowledge to become a theory must reach a certain maturity in its development. The theory should include not only a description of the known set of facts, but also their explanation, highlighting the laws to which they are subject. There is no explanation – there is no theory[1]. Guided by the above provisions, R. S. Belkin states that a separate criminalistic theory cannot be any set of individual theoretical provisions, even very significant and those that relate entirely to the subject area of criminalistic science. Individual theoretical constructions can be combined into a separate criminalistic theory only when they relate only to a clearly defined set of phenomena that are organically related to each other. Within the framework of certain theoretical provisions, cognition can lead to knowledge of certain laws of the subject; the objective connection of these laws, that's is knowledge of the laws of a deeper essence – this is the level of a separate criminalistic theory[2].

These provisions should be considered fundamental, starting to further study the problems of tactical operations in the formation of a separate criminalistic theory, which primarily raises questions about the subject, object and method of this theory[3].

Taking into account that the subject of a separate criminalistic theory are certain laws of objective reality from those studied by criminalistics in general[4], we consider it possible to join the point of view of V. Yu. Sokil and attribute to the *subject* of the theory of criminalistic innovation three groups of patterns: 1) patterns of innovation in criminalistics, in particular, the concept of innovation, their criteria, the ratio of innovative approaches to traditional, research stages of innovation, their classification, sources of innovative ideas in criminalistics, legal support for innovation, innovation actors, etc. *(criminalistic neology)*; 2) patterns and features of perception and evaluation of criminalistic innovations by scientists and practitioners, their readiness to accept and evaluate the proposed innovations, etc. (*criminalistic axiology*); 3) patterns and features of implementation, use and application in practice of criminalistic innovations *(criminalistic praxeology)*[5].

The object of this particular theory has a complex structure and represents both the criminalistic innovation itself, and the links and relationships that are manifested in the process of its creation, implementation and practical implementation and application. The object of criminalistic innovation is a special

[1] Копнин П. (1973). *Диалектика как логика и теория познания*, 260.

[2] Белкин Р. (2001). *Курс криминалистики: учебное пособие для вузов 3-е издание, дополненное* (М.: ЮНИТИ-ДАНА, Закон и право), 285.

[3] Белкин Р. (1997). *Курс криминалистики. Т.* 2. *Частные криминалистические теории*, 19–23.

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type of activity – innovative criminalistic activity – the activities of authorized persons to create (develop), implement and apply in practice criminalistic innovation. It is obvious that innovative criminalistic activity, as an independent object of criminalistic research, has a security (service) in relation to the activities of criminal investigation and trial. Accordingly, the subject of this separate criminalistic theory are the specific patterns of this activity, which we mentioned earlier.

Method is a system of cognitive techniques that are used both to build the theory itself and to apply its provisions in certain practical activities[1]. As for the theory of criminalistic innovation, it acts both as an object of study of this theory, and as its own method.

Thus, given the stated methodological provisions, today it is too early to talk about creating a separate criminalistic theory of innovation. As can be seen, a new theoretical construction is being formed in today's realities, which allows us to figuratively represent a separate criminalistic theory of innovation in the criminalistic system. Now accumulated theoretical knowledge and extensive experience in the practice of development and implementation of innovations in the activities of law enforcement agencies, which allows to state the existence of prerequisites for the formation of criminalistic theory of innovation.

Regarding promising areas of innovative development of criminalistics, in our opinion, it is necessary to identify those that determine the innovative nature of further development and formation of criminalistic knowledge in modern conditions. In particular, in the field of criminalistic technology it is necessary to intensify research on the creation and implementation of innovative criminalistic products aimed at optimizing the fight against crime[2]. These include new developed or adapted to the tasks and needs of combating modern criminal manifestations of new criminalistic tools, information technology, electronic knowledge bases, methods of recording, analysis, evaluation and collection of evidence, and others. In particular, modern biometric identification systems can be used for such needs – electronic identification of a person by biometric features – by appearance, fingerprints, iris pattern, gait, handwriting, DNA, etc[3]. Thus, the prospects for the development of this industry are related to the further improvement of existing criminalistic tools and the creation of new such tools, innovative technologies, as well as taking into account the positive foreign experience in combat-

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ing crime (Europe, USA, etc.). Therefore, the work on the use of artificial intelligence to ensure the solution of practical problems in the fight against crime should be significantly intensified[1].

In criminalistic tactics, research related to the development of criminalistic recommendations for the tactics of conducting individual investigative (search) and covert investigative (search) actions in modern conditions should be promising[2]. This necessitates the formation of new tactics, tactical combinations and tactical operations, algorithms of investigative (search) actions. It is important to develop tactics for covert investigative (search) actions, criminalistic strategy[3] and the introduction of new information technologies to increase the efficiency of gathering evidence in investigative situations in conditions of uncertainty and lack of information about the event of a criminal offense. In criminalistic methodics, such activities are associated with recent changes in criminal and criminal procedure law[4]. They require the improvement of existing methods of crime investigation and the development of new ones, such as: crimes committed in emergencies; health crimes; smuggling of medical masks and other anti-epidemic products, falsification and illicit trafficking in falsified medicines, etc.

CONCLUSIONS

In modern conditions, the effectiveness of the fight against crime is a complex problem that covers a whole system of measures and areas that require joint efforts of government agencies, various ministries and agencies, law enforcement agencies and academics to direct such joint activities to address emerging practical challenges. Today, criminalistics must activate its powerful scientific potential and modern capabilities and use them in technical-criminological, tactical-criminological and methodological-criminological areas to ensure effective prevention and fight against modern challenges of crime.

In such modern realities, criminalistics, in our opinion, should intensify its prognostic function and scientifically

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and methodologically provide the process of criminal proceedings with criminalistic recommendations for the effective use of innovations in pre-trial investigation and trial. It is important that without innovative technologies and means of solving organizational, legal, scientific and technical problems of development and implementation of criminalistic methods, means and recommendations to ensure the activities of law enforcement agencies will not meet the requirements of efficiency[1].

Purely with an integrated approach, in such unity and interconnection of emerging and solved tasks, it is possible to fully ensure the planning and implementation of the innovation process in criminalistic science and law enforcement practice[2], which involves the creation, implementation, application and dissemination of innovations.

In this regard, it can be argued that today in criminalistics the creation of scientific prerequisites for the development and formation of criminalistic innovation and such research in modern conditions is a promising innovative direction in the development of criminalistics, which requires scientific development. These issues are on the agenda, form the basis of further research by criminalistic scientists. Therefore, at the present stage of development of criminalistics, the problem of developing a separate criminalistic theory of innovation – criminalistic innovation is quite relevant and important. Further research on this scientific concept will enrich the theory of criminalistics, provide prerequisites for new approaches to solving important problems of general theory of criminalistics, criminalistic techniques, tactics and methods aimed at optimizing investigative, judicial and expert activities.

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COMPUTATIONAL CRIMINOLOGICAL REASONING: CONCEPTS, POSSIBILITIES AND PERSPECTIVES OF USE

The relevant issues of crime research with the use of information technologies are proposed to be united by the concept of "computational criminological reasoning" and defined as follows: the process of substantiating the provisions about crime, its causes, the personality of the criminal, prevention measures, which is carried out by methodologically consistent acquisition of new knowledge from data, which are collected and processed automatically. The results of implemented research projects that provide an opportunity to assess the potential of computational criminological reasoning are presented: collection and intelligence analysis of social media data, use of specialized open databases, modeling of crime prevention using artificial society, computational analysis of the content of criminal liability legislation, reproducible research of crime prevention by data science methodology.

The difference in the direction of trends in the development of legislative and law enforcement levels of criminal law regulation has been established: if criminal legislation develops by increasing prohibitions and increasing sanctions in the form of deprivation of liberty, then the practice of its application demonstrates the tendency to reduce the number of convicts and apply fines more often than deprivation of liberty. Inadequate imple-

mentation of public interest in the proper functioning of the criminal justice system, as well as a partial oversimplification of combating crime, are observed.

It was concluded that the application of computational criminological reasoning in such a situation becomes especially relevant. It is necessary to improve the effectiveness of criminal law regulation at both the law enforcement and legislative levels, the development of crime prevention must necessarily involve the collection and analysis of the largest possible amount of data on crime prevention. It was concluded that the application of computational criminological reasoning in such a situation becomes especially relevant. It is necessary to improve the effectiveness of criminal law regulation at both the law enforcement and legislative levels, the development of crime prevention must necessarily involve the collection and analysis of the largest possible amount of data on crime prevention

Keywords: *data science, reproducible research, big data, crime prevention effectiveness, computational criminological reasoning*

Formulation of the problem. Social sciences in general and criminology in particular are experiencing a significant renewal of methodology. This is not least due to the widespread introduction of information technologies. Researchers got the opportunity to work with extremely large amounts of information, to set tasks that were previously impossible to solve. At the same time, many new problems arise regarding the directions, expediency, and limits of using modern technologies for social research.

We united the The relevant issues of crime research with the use of information technologies by the concept of "computational criminological reasoning" and tried to investigate.

Formulation of goals. The purpose of this work is to define computational criminological reasoning, demonstrate the possibilities of its application, and formulate prospects for further use.

Analysis of recent research and publications. Argumentation is defined as "the process of a person substantiating a certain position (assertion, hypothesis, concept) in order to convince of its truth, correctness" [1, 36]. According to the provisions of classical science, the structure of argumentation consists of a thesis, arguments and demonstration.

Legal argumentation is one of the urgent problems of modern legal science [2; 3; 4; 5; 6; 7; 8]. Criminological argumentation is a type of legal argument that concerns crime, its causes, the personality of the criminal, and prevention measures. Criminological argumentation operates with provisions related to criminal law regulation and crime-related social processes. Social dynamics are a necessary context for analysing data on the use of law.

Computational reasoning is carried out by using information technology to collect, process, analyze and visualize data. The use of information technologies for the study of social processes is studied by computational social sci-

ence. The methods of this science are divided into such groups as automation of data collection, analysis of social systems, social geoinformation systems, modelling of social systems, etc. [9]. Computational social science is considered as an interdisciplinary field that includes mathematics, statistics, data science and, of course, social science [10]. In turn, data science is defined as a set of fundamental principles for extracting information and knowledge from data [11].

Logic considers an argument as "an opinion, the truth of which has already been established before, and which can be used to justify the truth of an arbitrary position" [12, 365]. Data obtained using modern technologies are considered arguments when they are obtained in accordance with the appropriate methodology. Such, in particular, is the methodology of reproducible research. Data analysis is considered reproducible if the analytical data sets and the computer code used to create the data analysis are made available to others for independent study and analysis.[13] In this way, the openness of the research is achieved and trust in its results is significantly increased.

So, computational reasoning consists in methodologically consistent acquisition of new knowledge from data collected and processed automatically. It is worth noting that the development of logical models of legal argumentation currently takes place precisely at the intersection of modern information technologies, in particular, artificial intelligence, and law [0].

Thus, computational criminological argumentation can be defined as the process of substantiating statements about crime, its causes, the personality of the criminal, prevention measures, which is carried out by methodologically consistent acquisition of new knowledge from data collected and processed automatically.

From the standpoint of the rational paradigm of criminal law, effective legislative decisions in the field of criminal law regulation should be considered to be those that provide a balance between the social significance of the protected goods and the reasonable amount of necessary social expenditures, namely the amount of expenditures that the state and society can allocate to ensure criminal law regulation. Effective decisions at the law-enforcement level of criminal law regulation should be considered those that are adopted in accordance with the current legislation and require the implementation of social costs that correspond to the danger of a specific criminal offence committed [15]. The proper implementation of the public interest in the functioning of criminal justice institutions will be considered when the majority of decisions at the legislative and law-enforcement levels of criminal law regulation are effective and ensure the rational use of social resources.

The statement of the basic material. The modern level of information

technologies, their availability and prevalence allow the use of computational criminological reasoning to analyze crime prevention in Ukraine. We have implemented research projects that provide an opportunity to assess the potential of computational criminological reasoning.

In particular, projects have been implemented that demonstrate the variability of sources of information that can be used for analysis. It is quite clear for most of the tasks we used statistical reports presented on the Internet representations of the Office of the Prosecutor General of Ukraine and the State Judicial Administration of Ukraine. However, these and similar sources are not the only ones that can be used for computational criminological reasoning. Thus, the open software Web Scraper [16] allows you to automatically collect data from various Internet sources. Using it, we collected comments on the video about the resolution of the Russian war against our State. This video was posted on the YouTube channel of one of the US mass media [17]. At the time of analysis, the video had more than half a million views and 2,129 comments. Using the environment for statistical calculations R [18] and the library for it "tm" (text mining) [19] collected comments were transformed into a list of words that were most often used in the comments, and the number of uses of each of these words was calculated. Finally, with the use of one of the online services for building visualizations of the "tag cloud" type [20], a graphical presentation of data on the frequency of used words was carried out[1]. The obtained result (Fig. 1) makes it possible to quickly assess the mood of the audience of this mass media regarding the Russian criminal solution to the international armed conflict. The main topics of the comments were support for Ukraine, the danger of harm to civilians, and the need to counter aggression.

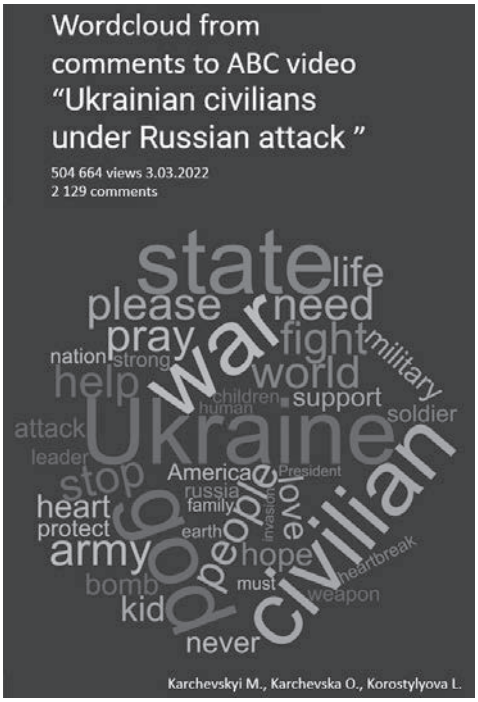

Fig. 1 "Tag cloud" from comments on the ABC News video about the Russian attack on Ukraine

Specialized open databases can be an important source of data for computational criminological reasoning.

For example, to study the victims of Russian aggression in Ukraine, we used The Armed Conflict Location & Event Data Project (ACLED) database [21]. After making a request from the project database based on space and time (Ukraine, 24.02.2022–28.10.2022), we received information about those who died as a result of the aggression of the Russian Federation, the time of death and the geographical coordinates of the places of tragic events. Using the MS Excel 3D Maps module [22], we created an animation that allows us to characterize the geographical distribution of Russian war crimes committed during the studied period (Fig. 2). It is noteworthy that the duration of the created video is 30 seconds, a data array of about 10,000 indicators was used for its construction. Obviously, viewing the data in table form, even for an hour, is unlikely to provide a better understanding of the data content than viewing 30 seconds of video [0].

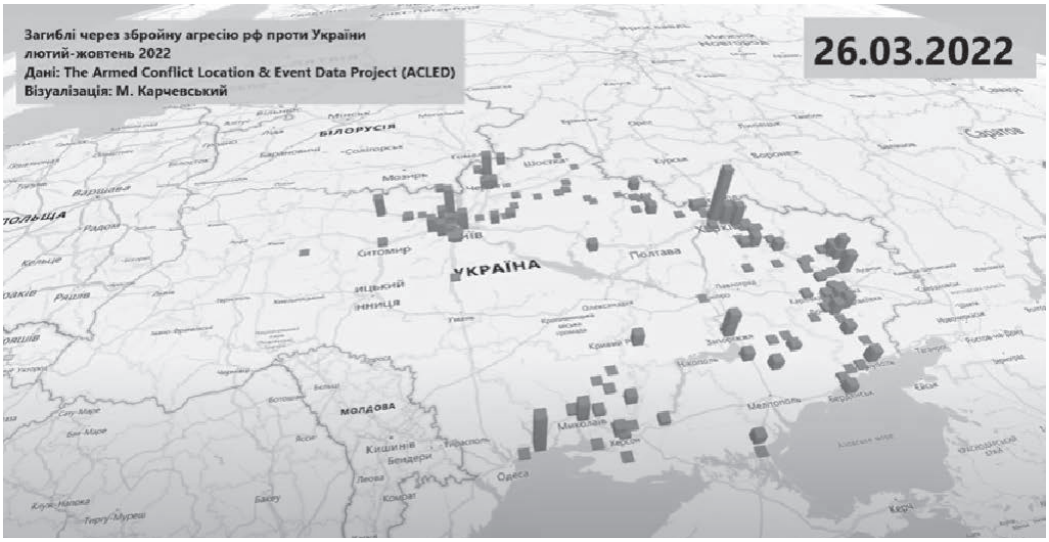

Fig. 2. Screenshot of data animation using MS Excel 3D Maps

Computational criminological reasoning is not limited to visual data analysis. Using agent-based modelling and NetLogo [24] software, we conducted a pilot study of crime prevention based on the creation of a society model (Fig. 3). The key provisions characterizing this method are as follows: "agent is an autonomous computing object with certain properties and actions; agent modelling is a type of computational modelling where a phenomenon is modelled by defining agents and their interaction" [0, 1]. Such modelling is implemented by using specialized software that allows you to describe the properties of agents and calculate the results of their interaction. The result of using such

a method is called an artificial society, which is defined as "a simulation model of society or a group of people created using computer technology, which is based on agents and is usually limited by their interaction in a specific situation." [0]. An important hypothesis was confirmed by computer simulations: increased punishment is less effective than non-repressive measures [27].

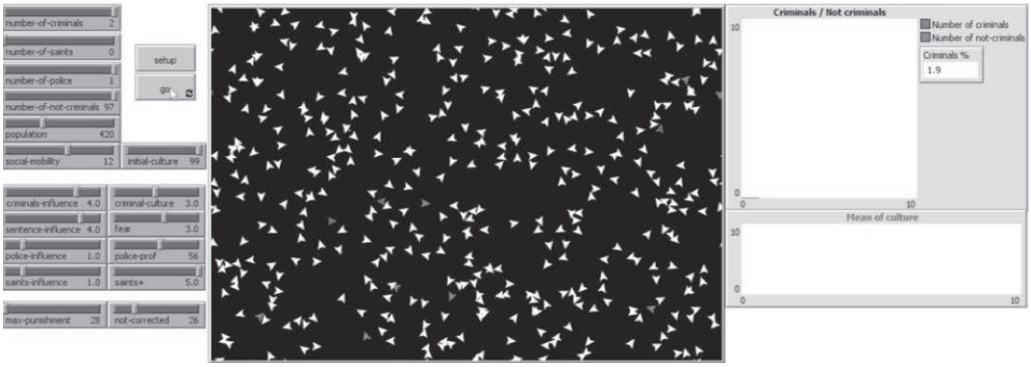

Fig. 3. The user interface of the model developed by us

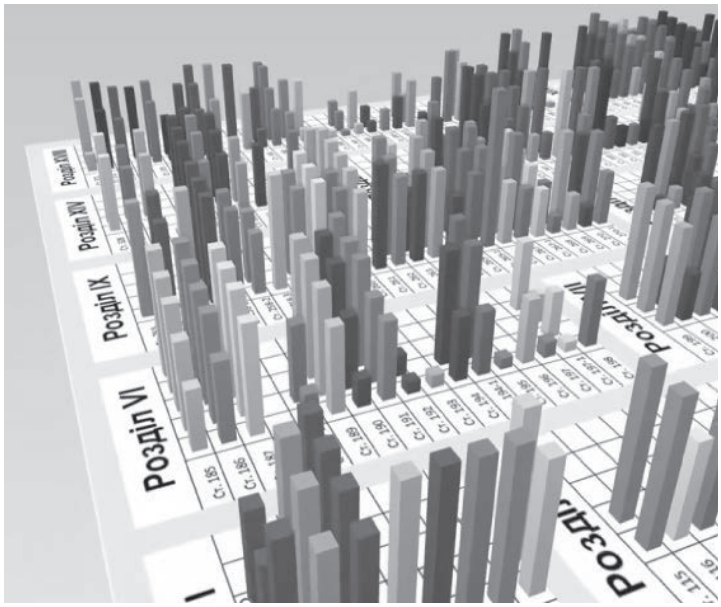

Fig. 4. Visualization of the severity of sanctions of the Criminal Code of Ukraine by the "InContext" system

Computational analysis of legislative texts is a promising direction of research. Thus, we developed an automated research system for the legal assess-

ment of the public danger of criminal offences "InContext". In the process of using the system, cases of unbalanced sanctions of criminal law norms were identified, and it was also established that the leading trend in the development of criminal legislation is the expansion of the subject of criminal law regulation and the increase of the severity of sanctions [28].

Using the developed methodology of automated comparison of the severity of sanctions of the Criminal Code, a report was prepared for the working group on the preparation of the new Criminal Code of Ukraine [29]. The following were selected for analysis: the first edition of the Criminal Code (2001), the edition preceding the implementation of the Institute of Criminal Misdemeanors (2019), and the edition in force at the time of the research (2021). The comparison made it possible to conclude that, in general, the approaches to the legislative assessment of the dangerousness of criminal offences have not changed significantly since 2001. Along with the increase in the number of legal definitions of minor and serious crimes, there is no significant change in the legislative assessment of the dangerousness of offences. Visualizations of the average values of the severity of the sanctions of the articles of the Special Part by year testify section to the preservation of the approaches to the legislative assessment of the dangerousness of encroachments laid down by the developers of the Criminal Code of 2001. The hypothesis of a significant imbalance of sanctions in the process of making changes to the Criminal Code during 2001–2021 was not confirmed. Despite the existence of individual examples, the legislative assessment of the dangerousness of criminal offences remains stable.

A study of law enforcement criminal law regulation was also conducted [30]. In accordance with the methodology of reproducible research, we collected, cleaned and visualized data from the statistical reports of the Office of the General Prosecutor and the State Judicial Administration of Ukraine by software. All input data, software scripts, and obtained results are publicly available [31], and a web application (Fig. 5) was developed to work with the obtained results [32]. It was integrated and provided the opportunity to analyze information on more than one hundred indicators of combating crime, for each article of the Special Part of the Criminal Code of Ukraine for 9 years (2013-2021), the total volume of the data set was about 980 thousand indicators.

Further work with the application clearly demonstrated the previously formulated thesis about the need to consider data on the application of certain norms of criminal law in the context of data characterizing social processes. For example, the explosive growth of crimes against the foundations of national security since 2014 is explained precisely by the context – the military aggression of the Russian

Federation against Ukraine. The fall in registered offences in the field of drug trafficking in 2016 does not indicate that there were fewer relevant offences this year but reflects the complex processes of reforming the National Police of Ukraine. The explanation of the increase in the number of recorded rapes and the number of persons convicted of this crime requires consideration of these processes in the context of Ukraine's ratification of the Istanbul Convention. Therefore, computational criminological argumentation, like any criminological research, is not reduced to the analysis of certain indicators of the functioning of the law, it necessarily requires their consideration in the context of relevant social processes.

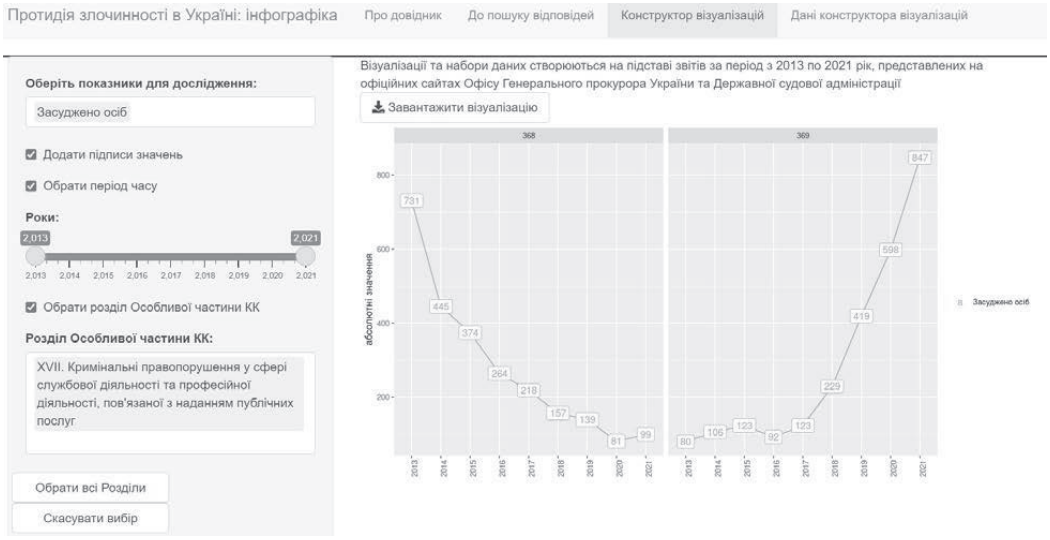

Fig. 5. Web application interface "Combating crime in Ukraine: infographic"

Using the developed application, an analysis of the main trends in combating crime in Ukraine was carried out. The following conclusions were obtained: together with the gradual decrease in the number of recorded proceedings, the decrease in the number of convicted persons and the mitigation of punishments, insufficient implementation of the public interest in the proper functioning of the criminal justice system, partial primitivization of crime prevention, and insufficient constructive professional communication is observed; there are risks of a fall in the level of public trust in social institutions that ensure compliance with laws and, as a result, an increase in crime [30].

A comparison of established trends in the development of the legislative and law-enforcement levels of criminal law regulation shows the difference in their direction. If criminal legislation develops by increasing prohibitions and in-

creasing sanctions in the form of deprivation of liberty, then the practice of its application demonstrates the tendency to reduce the number of convicts and the use of fines more often than deprivation of liberty. About half of the prohibitions in the code have never been used.

The application of computational criminological reasoning in such a situation becomes especially relevant. It is necessary to increase the effectiveness of criminal law regulation both at the law enforcement and legislative levels, the development of combating crime must necessarily involve the collection and analysis of as much data as possible regarding the accounting of criminal proceedings, the time of decision-making, regional features of the work of law enforcement officers, prescribed punishments, psychometric characteristics criminals, features of their post-criminal behaviour, etc. This will ensure the possibility of making well-founded, so-called data-driven decisions regarding the organization of combating crime in the state.

Conclusions.

The complex of problematic issues of crime research with the use of information technologies is proposed to be united by the concept of "computational criminological reasoning" and defined as follows: the process of substantiating the provisions about crime, its causes, the personality of the criminal, prevention measures, which is carried out by methodologically consistent acquisition of new knowledge from data, which are collected and processed automatically.

1. The research projects carried out by us clearly demonstrate the significant potential of computational criminological reasoning. First, it makes it possible to quickly evaluate the content of sufficiently large volumes of data and respond to dynamic social processes. Secondly, the methodology of reproducible research, characteristic of computational reasoning, can qualitatively increase the level of confidence in the results of criminological research. That is why, thirdly, solutions developed on the basis of a large amount of data, according to a methodology that ensures a high level of confidence in the results of the analysis, are able to significantly rationalize the national discourse on combating crime.

2. The established insufficiency of the implementation of public interest in the proper functioning of criminal justice, the primitivization of combating crime, the different direction of the development of criminal legislation and the practice of its application, critically actualize the problem of the effectiveness of criminal law regulation and the search for ways to solve it. One of these is the implementation of computational criminological reasoning for crime prevention decision-making.

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