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Cuestiones Políticas

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Inteligencia Artificial: Un Futuro Inteligible

DOI: https://doi.org/10.46398/cuestpol.3968.00

Jorge F. Vidovic *

Resumen

A modo de editorial este ensayo breve tuvo por objetivo reflexionar sobre el presente y futuro próximo de la inteligencia artificial, en el contexto de la pandemia del nuevo coronavirus. Se parte de la hipótesis que observa en la inteligencia artificial un factor de primer orden que ha acelerado los procesos tecnológicos, que a su vez impulsan las mejoras continuas en todos los campos de la acción humana. No obstante, a pesar de sus múltiples beneficios se concluye, por un lado, que esta forma de inteligencia no humana jugará cada vez más un papel impórtate en todas las relaciones humanas de tipo cultural, laboral, militar y recreacional y; por el otro, que las naciones modernas y civilizadas tienen en consecuencia el deber moral de crear leyes que establezcan mecanismos de regulación y equilibrio entre la inteligencia artificial y la persona humana, como condición de posibilidad para que su uso generalizado no devenga en una distopia al estilo de lo plantado en su momento por algunas narrativas de ciencia ficción, en el cine y la literatura.

Palabras clave: inteligencia artificial; futuro inteligible; telemática; COVID-19; acción humana.

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Artificial Intelligence: An Intelligible Future

Abstract

As an editorial, this short essay aimed to reflect on the present and future of artificial intelligence, in the context of the pandemic of the new coronavirus. It is based on the hypothesis that observes in artificial intelligence a factor of the first order that has accelerated the technological s processes, which in turn drive continuous improvements in all fields of human action. However, despite its many benefits, it is concluded, on the one hand, that this form of non-human intelligence will increasingly play an important role in all cultural, labour, military and recreational human relations and; on the other hand, that modern and civilized nations therefore have a moral duty to create l eyes that establish mechanisms of regulation and balance between artificial intelligence and human condition, as a condition of possibility so that its widespread use does not become a distinction in the style of what was planted at the time by some sci-fi narratives, in film and literature.

Keywords: artificial intelligence; intelligible future; telematics; COVID-19; human action.

La pandemia COVID-19 que inicia en marzo del año 2020 y que continua a principios del 2021 sumergió al mundo en una de sus peores crisis políticas y económicas a lo largo de su historia (Villasmil, 2020a; Villasmil, 2020b). Hoy seguimos padeciendo los enormes inconvenientes que el virus produce y reproduce en su decurso; entre ellos, una especie de acuartelamiento que algunas personas asumen por temor y, otras, por obligación. Pero metafóricamente hablando donde unos ven oscuridad otros ven luz y en este sentido la pandemia ha obligado a un grueso número de empresas y trabajadores el tener que buscar una manera alternativa para seguir produciendo y generando bienes y servicios. Este tipo de práctica laboral en la actualidad se conoce como trabajo telemático y, muy seguramente, va a revolucionar las relaciones laborales en un futuro muy próximo.

Las innovaciones en este tipo de práctica telemática han acelerado un proceso tecnológico, que desde hace tiempo viene aflorando mejoras continuas en todos los campos de la acción humana; no referimos a la inteligencia artificial (Villasmil, 2021). En este sentido, esta forma de inteligencia es entendida por investigadores como Brito *et al*., (2019) como:

> (...) un tipo particular de inteligencia tecnológica que, aunque tiene su punto de inicio en las personas, que es su artífice y causa primaria, puede funcionar con independencia y autonomía frente a la misma, llegando incluso a superar en muchos aspectos las capacidades cognitivas y procedimentales de la humanidad (Brito *et al*., 2019: 261).

La creación de la inteligencia artificial ha sido planteada no solo por documentales sino por películas que revelan un futuro incierto pero que hoy ha llegado con sus aciertos y desaciertos. Desde los escritos de Julio Verne, hasta películas como el Exterminador[2] y "Her[3]" muestran un mundo donde esta forma de inteligencia no humana juega un papel predominante en la vida cotidiana de los seres humanos. Hoy gracias a los avances científicos en materia de informática se pueden realizar compras por internet de forma automática gracias a diferentes tipos de software creados para tal fin; igualmente, algunas empresas cuentan con robots que aminoran el esfuerzo humano y aceleran la cadena de producción. Un ejemplo claro se puede observar en las industrias automovilísticas donde maquinas preconfiguradas realizan trabajos cotidianamente asignados a seres humanos, haciendo que los vehículos se produzcan a gran escala, con menos esfuerzo y a menor costos para la empresa que cuenta con dicha tecnología.

Por otro lado, la inteligencia artificial también puede conducir a algunas personas hacia un mundo diferente donde el ensimismamiento es más importante que el contacto con la realidad. Un ejemplo que cotidianamente nos rodea es cuando observamos a jóvenes adictos a juegos interactivos o, simplemente, que pasan el día compartiendo con simuladores de una realidad paralela y, todo esto, sin tomar en consideración los niveles de violencia y destrucción simbólica que pueden generan algunos de esos juegos. Sin embargo, no debemos juzgar como malo el progreso tecnológico y científico pues el mismo será, o no, de utilidad, en función de los intereses de quienes los creen, modifiquen y controlen.

Cuando estamos frente a un procesador de información ya sea el teléfono inteligente o el computador debemos tener claro que podemos o no autorizar a los llamados Cookies al momento de acceder a ciertas aplicaciones pues estas inteligencias artificiales consolidadas en software están diseñadas para atraparnos; es decir, bombardeándonos constantemente con publicidad que nosotros mismos autorizamos al darle clic a aceptar; e inclusive podemos ser víctimas de robo de identidad y apropiación de datos por parte de piratas cibernéticos que crean programas inteligentes para despojarnos de nuestros bienes materiales. No obstante, no podemos agobiarnos por el progreso de la Inteligencia Artificial pues como ya hemos dicho más son los beneficios que los tropiezos. Hoy podemos mediante una aplicación disponible en la web visitar: Museos Virtuales, ver películas desde nuestros hogares y escuchar música sugeridas por nosotros mismos en anteriores

2 *The Terminator*. Película de ciencia Ficción protagonizada por Arnol Schwarzenegger y Linda Hamilton (1984) donde se muestra como *Skynet* una inteligencia artificial lidera un ejército de máquinas para exterminar a la humanidad.

3 Película de drama romántica producida en el año 2013 y protagonizada por Joaquín Phoenix donde el protagonista desarrolla una relación amorosa con Samanta quien resulta ser una asistente virtual con base a inteligencia artificial.

oportunidades pues plataformas como YouTube, Netflix o AMAZON Prime, entre otras, facilitan el desarrollo de acceso a la información mediante algoritmos predeterminados que emulan y recrean nuestros gustos y preferencias al escuchar o ver en más de una oportunidad alguna música o video enmarcado en un ámbito temático específico (Vaganova, 2019; Vaganova *et al*., 2019).

Los países que no cumplan con los requerimientos y las condiciones materiales para incorporar dichas inteligencias artificiales como el internet 5G y empresas de reproducción de bienes robóticos, entre otras, quedaran relegados y a la intemperie al tener que depender de la producción tecnológica que de los países desarrollados provengan. Ya en Europa, se están haciendo ensayos con coches autónomos electritos e híbridos que te llevan de un sitio a otro sin necesidad de tocar el volante. En Japón, existen robot que ayudan con la limpieza y el mantenimiento del hogar entre otros logros asociados a la biotecnología.

De igual modo, conviene señalar que la inteligencia artificial también puede ser utilizada para otros fines como los de facilitar la obtención de ingresos financieros utilizando Máquinas para Minar Bitcoin y Criptomonedas en la bolsa de valores, y que, en algunos casos, pueden ser utilizadas para el blanqueo de capitales provenientes de corrupción y narcotráfico. También se puede utilizar la inteligencia artificial para desarrollar actividades destructivas como la conducción de drones para destruir objetivos militares, así como para el desarrollo de una carrera armamentística a nivel mundial. En este sentido, el deber de las naciones civilizadas es el de crear Leyes que establezcan mecanismos de regulación y equilibrio entre la inteligencia artificial y lo eminentemente humano para que esas películas apocalípticas como el Exterminador y Transcenderce no pasen de la ficción a la realidad (Arbeláez-Campillo y Villasmil, 2020).

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Política Latinoamericana

Cuestiones Políticas Vol. 39, Nº 68 (Enero - Junio) 2021, 23-50
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Transparencia y Gobernanza en la Gestión de la Crisis de COVID-19

DOI: https://doi.org/10.46398/cuestpol.3968.01

Lorayne Finol Romero *

Resumen

El estado de emergencia acontecido por el COVID-19 pone a prueba las capacidades de los gobiernos del mundo, en contextos de conflictividad política creciente, donde las necesidades y aspiraciones sociales de justicia y equidad crecen de forma exponencial, todo lo cual incide en la estructuración de un orden post-coronavirus con características inciertas. En este sentido, mediante una metodología documental y el análisis de datos oficiales de gestión de gobierno, el objetivo del artículo consiste en describir el sentido de las políticas de transparencia y gobernanza desplegadas en el marco de la crisis sanitaria de la pandemia del nuevo coronavirus, desde la perspectiva del gobierno abierto con énfasis especial en los casos de Chile y Colombia. Los principales hallazgos de la investigación enfatizan que la política de datos abiertos es una condición necesaria para incrementar cualitativamente los niveles de gobernanza y transparencia de la gestión pública en el manejo de la crisis, todo lo cual permite concluir que el modelo de gobierno abierto pone a disposición del ciudadano información pública que lo posiciona como vigilante de las actividades gubernamentales pero, al mismo tiempo, los datos, al ser oportunos y exhaustivos, promueven la creación de iniciativas en beneficio colectivo.

Palabras clave: transparencia en la gestión pública; gobierno abierto; crisis de COVID-19; datos abiertos; ciudadano vigilante.

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Transparency and Governance in the Management of the COVID-19 Crisis

Abstract

The state of emergency at COVID-19 tests the capabilities of the world's governments, in contexts of increasing political conflict, where social needs and aspirations for justice and equity grow exponentially, all which impact on the structuring of a post-coronavirus order with uncertain characteristics. In this sense, through a documentary methodology and the analysis of official government management data, the objective of the article is to describe the meaning of transparency and governance policies implemented within the framework of the health crisis of the pandemic of the new coronavirus, from the perspective of the open government with special emphasis on the cases of Chile and Colombia. The main findings of the research emphasize that open data policy is a necessary condition for qualitatively increasing the levels of governance and transparency of public management in crisis management, all of which makes it possible to conclude that the open government model makes public information available to the citizen that positions him as a watchdog for government activities but, at the same time, the data, being timely *and comprehensive,* promote the creation of initiatives for collective benefit.

Keywords: transparency in public management; open government; COVID-19 crisis; open data; vigilant citizen.

Introducción

En los últimos años los estudios desarrollados sobre gobierno y acceso a la información pública adquieren una importancia inusitada para los científicos sociales y los agentes hacedores de las políticas públicas en general. Esto es así, por distintas y diferenciadas razones entre las que destacan al decir de Finol Romero (2018), en el mismo sentido que Criado y Ruvalcaba-Gómez (2016), la necesidad de crear un gobierno democrático acorde con los requerimientos de las sociedades de la información, que actúe en cada momento con base a los principios de rendición de cuentas, transparencia y acceso a la información de interés general. Evidentemente, estos principios fortalecen la cultura política de participación de la ciudadanía.

Recientemente, la idea de la transparencia ha cobrado aún más fuerza, considerando que las prácticas de publicación de información gubernamental, en portales web con formatos de datos abiertos son una vía importante para mejorar la calidad del gobierno, en relación proporcional al grado de su apertura (Roelofs, 2019). De lo que se trata es de construir

un nuevo o, al menos, renovado modelo de democracia sustantiva en el siglo XXI que facilite la contraloría social de los poderes constituidos y, especialmente, de la gestión pública en situaciones de crisis, a través del rápido acceso a la información oficial por parte de una ciudadanía informada y dispuesta a participar en la construcción de su realidad y en la realización efectiva de sus deberes y derechos cívicos, como mecanismo de alerta temprana para la disminución de contagios en medio de la pandemia.

Para los efectos partículas de esta investigación, postulamos la hipótesis de que los estado de emergencia o conmoción general de la sociedad, motivados por crisis como la sucedida en el 2020 –en el plano internacional– por el resultado devastador de la pandemia del nuevo coronavirus, son escenario propicio para apuntalar o reforzar según sea el caso, las políticas de gobierno y acceso abierto a la información como condición de posibilidad para incrementar la legitimidad del diverso abanico de políticas implementadas por los gobiernos para hacer frente a la emergencia sanitaria, políticas que más allá de sus particularidades locales y nacionales convergen en la puesta en marcha de: a) la cuarentena social, b) protocolos de bioseguridad ciudadana, c) comunicación e información sobre la prevención y tratamiento de la pandemia y, d) políticas de asistencia social a los grupos más vulnerables de la población en condición de emergencia.

En este hilo conductor, el objetivo del artículo consiste en describir el sentido de las políticas de transparencia y gobernanza en el marco de la crisis sanitaria de la pandemia del nuevo coronavirus, desde la perspectiva del gobierno abierto. Conviene clarificar que la palabra sentido se emplea para dar cuenta simplemente del propósito esencial que quieren lograr estas políticas de gestión de la crisis en su contexto particular, no obstante, no por ello se trata de una investigación propiamente dicha anclada en el método fenomenológico y hermenéutico. En lo metodológico estamos ante una investigación documentada que se sirvió del análisis, recuperación y sistematización de información impresa y digital, para la delimitación apriorística de categorías selectivas, como lo recomiendan Strauss y Corbin (2002), a partir de la revisión documental disponible en artículos científicos de alto impacto, monografías o textos académicos y cuerpos normativos, principalmente.

El trabajo en cuestión se divide en tres secciones o apartados interrelacionados, en el primero, se analiza el *Impacto mundial de pandemia COVID 19*, a través de un recuento de las principales consecuencias económicas, políticas y sociales que ha tenido la pandemia a nivel global, desde una visión general; en el segundo, *Transparencia y Gobernanza a través de datos abiertos* se describen las idea centrales que sirven para estructurar, en la teoría y en la realidad concreta, una experiencia de gobierno transparente en el manejo de la información de la gestión

pública a través de portales *data.gov*; en el tercer apartado, *Iniciativas de gobernanza de datos abiertos del gasto público en el contexto COVID 19*, se identificaron algunas prácticas desarrolladas en distintas instancias de gobierno en Chile y Colombia para fortalecer la cultura de datos abiertos incluso en escenarios complejos de estado de emergencia. Por último, en *Hallazgos y conclusiones* se discuten los principales resultados de la investigación.

1. Impacto Mundial de Pandemia COVID 19

Cualquier balance sobre el impacto material y moral del nuevo coronavirus en el mundo actual, es cuanto menos dramático si se toma en cuenta su impronta en factores como: pérdidas de vidas humanas, huella económica global y alteración de la gobernabilidad por motivo de la crisis pandémica, tal como lo ha reseñado sistemáticamente la prensa occidental de mayor divulgación. Para el momento que se escriben estas líneas se registran más de un millón de muertes por COVID-19, siendo Asia y América del Norte las regiones del mundo más afectadas (BBC News Mundo, 2020). Incluso no se puede descartar *a priori* que las cepas del virus mutan rápidamente y se convierta en una enfermedad más letal, incrementando sustancialmente su índice de morbilidad.

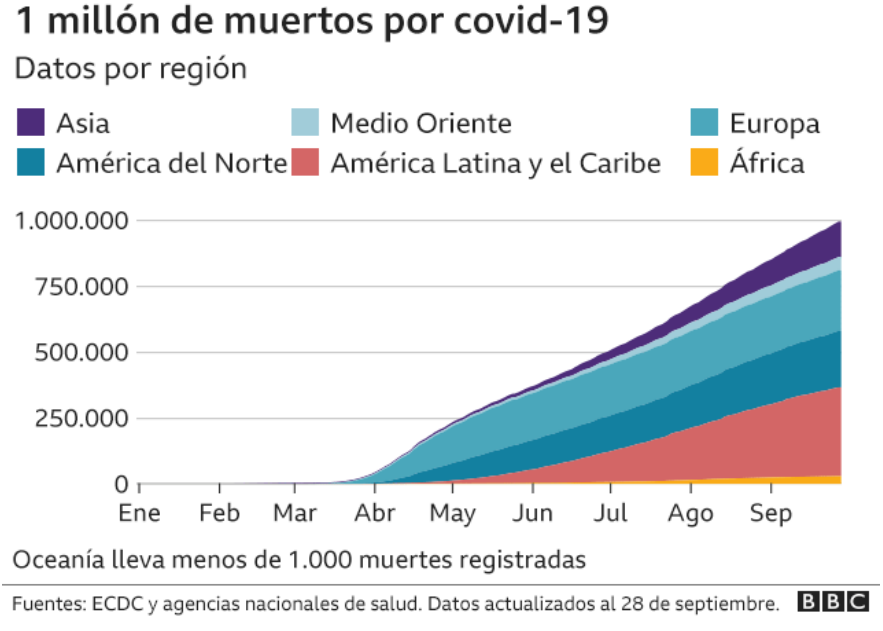

Figura No. 1. Tomado de (BBC News Mundo, 2020).

En los dominios de las finanzas públicas hay un cierto consenso en los economistas y organismos multilaterales sobre el hecho de la pandemia crea las condiciones de posibilidad para una recesión mundial, al tiempo que incrementa la pobreza neta en comunidades, países y regiones por el paro forzoso de buena parte de las actividades laborales por motivo de las políticas de confinamiento. En este sentido, según un estimado del Banco Mundial (BM), la recesión ocasionada por la pandemia se trata de la peor desde las postrimerías de la segunda guerra mundial, agravada en su decurso por la cuarentena social:

> Las medidas de suspensión de las actividades que se adoptaron para contenerla han ocasionado una drástica contracción de la economía mundial, que, según las previsiones del Banco Mundial, se reducirá un 5,2 % este año. De acuerdo con la edición de junio de 2020 del informe Perspectivas económicas mundiales del Banco, **sería la peor recesión desde la Segunda Guerra Mundial, y la primera vez desde 1870 en que tantas economías experimentarían una disminución del producto per cápita** (Banco Mundial, 2020: párr. 1, negritas añadidas).

En un contexto con estas características surgen preguntas como: ¿qué políticas económicas se deben implementar para gestionar la crisis y reactivar los sectores más afectados de las economías nacionales? ¿el orden posterior al COVID-19 requiere de la implementación de un nuevo o renovado modelo económico que trascienda los límites del neoliberalismo, las economías mixtas y las planificadas para generar desarrollo sostenible? ¿la nueva arquitectónica mundial implica el retorno a las economías nacionales y, a lo sumo, regionales a contravía de las tendencias globalizantes? ¿la recesión que está en desarrollo será un acontecimiento coyuntural o estructural? Obviamente aún no hay respuestas definitivas a las mismas y al decir de Arbeláez-Campillo y Villasmil Espinoza (2020), conviene más bien plantear de forma prospectiva algunos escenarios posibles para ilustrar los venideros contextos que dependerán en último término de las capacidades, limitaciones y recursos de cada país, así como de la eficacia y eficiencia de las políticas formuladas en cada lugar y momento.

Por su parte, la alteración de la gobernanza democrática por la pandemia no ha sido, desde nuestra percepción, lo suficientemente estudiada hasta al momento para poder determinar a ciencia cierta el verdadero impacto político del COVID-19 para los distintos actores y factores de poder. De cualquier modo, tal como refiere Arbeláez-Campillo *et al.* (2019), por un lado, una pandemia fuera de control puede erosionar la gobernabilidad democrática de muchas formas, bien sea al rebasar la capacidad de respuesta institucional de las instancias de gobierno dotadas de escasos recursos para hacer frente a necesidades que bien pueden aumentar de forma exponencial o; por el otro, al propagarse focos de anarquía y rebelión social motivados por los déficit en el acceso a los bienes y servicios básicos. Incluso, no debe descartarse en un contexto así una crisis humanitaria compleja en los países

más pobres con desplazamientos y migraciones masivas que pueden afectar a conglomerados de países.

No obstante, para los efectos concretos de las investigaciones desarrolladas en la perspectiva teórica del gobierno abierto, interesa valorar más específicamente el modo como los agentes gubernamentales y las instituciones públicas en general proporcionan información fidedigna a la ciudadanía, sobre los recursos públicos invertidos en las políticas desplegadas para gestionar la crisis y satisfacer, al mismo tiempo, las necesidades y aspiraciones sociales que este fenómeno viral ocasiona continuamente, hasta su superación definitiva. En este contexto de crisis general, formulamos la hipótesis de trabajo que postula que la transparencia no solo es una condición para la gobernanza y la gobernabilidad democrática, sino que además, es el factor clave para legitimar las políticas implementadas en los dominios de una opinión pública relativamente bien informada de su realidad, mediata e inmediata; de ahí que la combinación de herramientas de comunicación política junto el acceso abierto a la información ocupan un rol destacado en el proceso de las representaciones sociales de la pandemia.

2. Transparencia y Gobernanza a Través de Datos Abiertos

Recientemente la política de transparencia ha cobrado fuerza, considerando prácticas de publicación de información gubernamental proactiva, en portales web con formatos de datos abiertos de información del sector pública, bajo la premisa que estrategias de 'datos abiertos' podrían aumentar la transparencia, la participación y la eficiencia del gobierno (Sandoval-Almazan y Styrin, 2018). En este orden de ideas, su reimpulso se ha fundamentado a partir de los compromisos establecidos en los planes de acción de la Declaración de Gobierno Abierto (CEPAL, 2018) y, además, por su estrecha relación con el derecho a saber de los ciudadanos y la gobernanza en la economía digital (Bellver y Kaufman 2005; Tapscott y Agnew, 1999). Empíricamente los estudios acerca de la disponibilidad (o ausencia) de datos relevantes para las políticas, y su correlación con el tipo de régimen político, donde Hollyer *et al.,* (2011), concluyeron que, *las democracias sí son más transparentes*.

A su vez, la apertura de la información pública y el gobierno abierto, concilian como un punto de encuentro, entre el fortalecimiento de la democracia y el buen gobierno (Worthy, 2015). No obstante, en América Latina sus antecedentes, se inician en la Asamblea General 75º de las Naciones Unidas donde se aprobó por consenso en el año 2011, la creación de la Alianza para el Gobierno Abierto (AGA), conocida por sus siglas en inglés como 'OGP', que significan *Open Government Partnership* (Finol, 2018). Antes de este hito, antecedió el célebre *Memorándum* de Gobierno

Abierto, del presidente de los Estados Unidos de América, Barak Obama durante su primer mandato en el año 2009 (Obama, 2009).

En este orden de ideas, también Ruvalcaba (2020) advierte que, en los últimos años, se ha presentado una tendencia en los gobiernos de diferentes niveles hacia liberar y publicar datos, no solo como un medio para generar transparencia y acceso a la información, sino también para impulsar el uso de la información en nuevas iniciativas que busquen mejorar la calidad de vida de los ciudadanos. En concordancia Birskyte (2019), señala que la transparencia en la administración pública ha tomado fuerza, convirtiéndose muchas veces en el *slogan* de los políticos.

Por otra parte, Rodríguez-Zepeda (2004) considera que las razones que justifican el fenómeno de la información gubernamental abierta, no es tan reciente. Pues es parte de la necesidad de fortalecer la rendición de cuentas, por su rol protagónico en la calidad de la democracia y en el proceso de incorporación de la participación ciudadana en el ejercicio del poder, así como, en la consolidación de la democracia participativa. En coherencia con Bobbio (2013), quien afirma que la democracia desde siempre ha permanecido con un halo de oscurantismo, bajo la premisa de una democracia ideal y otra real.

Sin embargo, la combinación de transparencia en portales de web de organismos del Estado con las características de los datos abiertos ha retomado un papel importante en la agenda política, a propósito del Memorándum Presidencial de Transparencia y Gobierno Abierto (Quintanilla y Gil-García, 2016). Por lo que, la revisión bibliográfica reciente refuerza la tesis que se trata de una tendencia en pleno desarrollo, según lo explican Criado *et al.* (2018), al señalar que, en síntesis, es una estrategia gubernamental dirigida a "abrir ventanas" en el sector público para permitir el escrutinio ciudadano a fin de reducir el oscurantismo en la información de interés público. Este mismo sentido, lo ha resumido Safarov (2019), mediante una línea de tiempo que da cuenta del proceso de incorporación del estándar de los datos abiertos, por su utilidad en múltiples dimensiones, como se puede observar en la figura 2 a continuación.

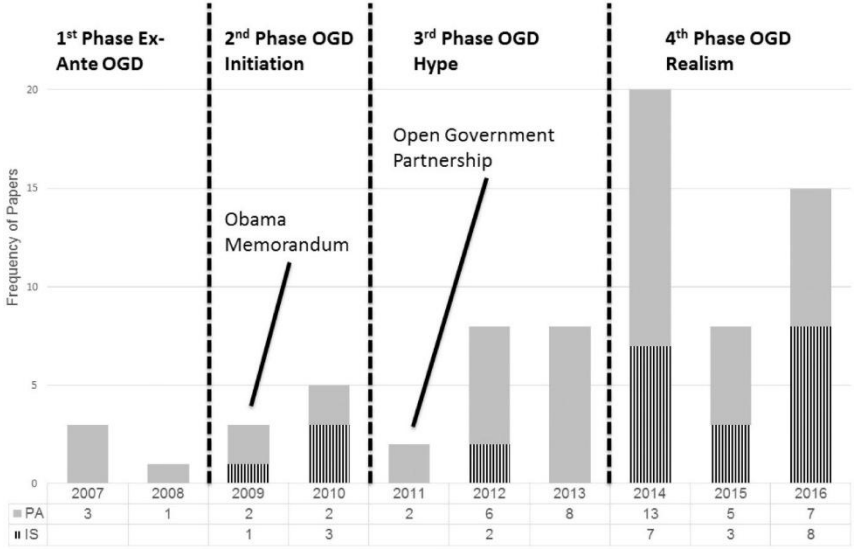

Figura No. 2. Tomado de Matheus y Janssen (2019).

Como puede observarse en la figura, los autores Matheus y Janssen (2019), en su investigación respecto a la revisión sistemática de la literatura para desentrañar la transparencia habilitado por los datos abiertos del gobierno, en inglés *Open Government Data* (en adelante OGD), reconocen el proceso de evolución de este fenómeno en una línea de tiempo, que inicia *ex ante,* la creación de la Alianza para el Gobierno Abierto en el año 2011. Esto puede ser un indicio para validar la hipótesis, que la transparencia en su dimensión dual, como la explican Meijer *et al*., (2018), marcó un hito importante para la institucionalización de este tipo de prácticas para la apertura del gobierno, acreditada por mejorar la transparencia y para brindar una ventana al interior del funcionamiento del gobierno, en especial referencia a que, la reutilización de la información del sector público es la consecuencia y el objeto final de la apertura de datos, donde cualquier individuo u organización aprovecha los recursos públicos expuestos por las administraciones públicas – *open data gov*– para cualquier propósito, incluso con fines económicos particulares por las empresas.

En este orden de ideas, el fenómeno de los datos abiertos, también se le relaciona con la llamada revolución pacífica de los datos, impulsada como un fenómeno de la cuarta revolución industrial (Ruvalcaba, 2020). Del mismo modo, como consecuencia de la incorporación de la transformación digital en la economía (OCDE[2], 2020). En forma análoga así lo consideró

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el Parlamento Europeo en la Directiva (UE) 2019/1024 (2019) que reformó a la Directiva 2003/98/CE, en donde exhorta a todos los países de la Unión a actualizar el marco legislativo conforme a los avances en las tecnologías digitales, para afrontar los obstáculos restantes y emergentes hacia la facilitación de la reutilización de la información del sector público y financiada con fondos públicos, toda ello en reconocimiento del potencial de la información del sector público para la economía y la sociedad europea.

Por otra parte, Matheus y Janssen (2019), en su estudio proponen un modelo teórico denominado *The Window Theory,* para la efectividad de los datos abiertos, porque existen determinantes que posibilitan o impiden la transparencia habilitada por datos gubernamentales abiertos y condicionan los efectos esperados. Todo lo anterior, es reforzado por Ruijer y Meijer (2016), quienes señalan que los datos abiertos promueven beneficios e impactos positivos en dos pilares: primero en el fortalecimiento de la confianza pública de los ciudadanos y; segundo, en el escrutinio público en escenarios sociales democráticos, cada vez más difíciles de gobernar.

En este hilo conductor, las políticas de transparencia activa a través del estándar de los datos abiertos, tiene efectos disímiles entre diferentes usuarios. Así lo explican los autores Safarov *et al.,* (2017), cuando concluyen en su estudio que la utilización de OGD, puede tener diferentes tipos de usos y efectos, ello depende de las condiciones clave y los diferentes actores que participen en su diseño. Además, los autores antes citados, afirman que la gobernanza centralizada de OGD produce mejores resultados y un mayor nivel de implementación. En el mismo sentido, se ha pronunciado la OCDE (2020), cuando afirma que la implementación de los principios de la Carta Internacional de Datos Abiertos (IODC) evidencia en el *OURdata Index,* que mide el nivel de cumplimiento de los principios de la Carta entre los 33 países miembros de la OCDE y los que se encuentra en proceso de adhesión, entre ellos Colombia. Los resultados de este estudio alcanzados a través de una encuesta que tiene como objetivo medir el progreso de los países miembros, posiciona como los mejores países a Corea del Sur con 0.93 puntos, seguida de Francia con 0.90 puntos, y Colombia con 0.88.

De lo anterior se desprende que, las prácticas de publicación de la información gubernamental con características de datos abiertos, además de ser producto de los cambios suscitados con el advenimiento de la sociedad del conocimiento y la tecnología de la información y comunicación (TIC), donde el interés en la apertura de la información gubernamental y su puesta en marcha, en portales de transparencia sin restricciones legales en múltiples formatos, es lo que se conoce como *Datos Abiertos* (Quintanilla y Gil-García, 2016). Así se ha plasmado también en la Carta Internacional de los Datos Abiertos (2015), como datos digitales (entiéndase, información pública) son puestos a disposición de cualquier persona, en cualquier momento y en cualquier lugar, con las características técnicas y jurídicas

necesarias para que puedan ser usados, reutilizados y redistribuidos libres de costo alguno (*World Web Web Fundation*, 2018).

A los efectos de esta investigación, se entiende indistintamente *datos o información* como la razón principal que impulsa las prácticas de transparencia y gobernanza especialmente importantes, en tiempos de crisis como la pandemia COVID 19, que ha develado la desarticulación del marco legal respecto a protección de datos personales, datos abiertos y política de transparencia de la función pública, pudiendo representar un obstáculo para la efectividad de las medidas que adopten las autoridades, especialmente las sanitarias en medio de pandemias. Por ello, el esfuerzo indagatorio se concentra en describir la política de transparencia activa, datos abiertos gubernamentales, ante la inminente necesidad impostergable de conciliar acciones políticas que permitan disminuir los contagios y evitar pérdidas de vidas humanas.

Considerando que gran cantidad de los datos e información que los gobiernos recolectan de sus ciudadanos, están protegidos por la excepción al principio de máxima divulgación de la información pública, por afectar derechos fundamentales de las personas, se origina una tensión entre la obligación de transparencia activa y el derecho fundamental a la protección de datos personales (Finol, 2020). Sin perjuicio de su reconocimiento expreso en el cuarto plan nacional de acción de gobierno abierto comprendido dentro del periodo 2018-2020 del Ministerio de la Secretaría de la Presidencia de Chile (2018), en el caso de Chile, el documento contiene compromisos específicos, medibles, alcanzables, relevantes y con plazos definidos. Según los principios de la Alianza, los países parte de se comprometen a garantizar el cumplimiento de cada uno de los compromisos del Plan de Acción y deberán asegurar en forma clara cada uno de los valores de gobierno abierto a través de un proceso multisectorial y con la participación activa de la sociedad civil y la academia (Naser y Concha, 2012).

Sin perjuicio de los compromisos pactados, este esquema dicotómico se agudizó en medio de la pandemia, con un marco regulatorio desactualizado, que data de 1999 con la ley 19.628, y la ley 20.285 de 2008, además de una Norma Técnica de Datos Abiertos vigente desde el años 2013 (en proceso de reforma desde el año 2019), que pretende quitar del sustrato de la transparencia activa, prácticas de datos abiertos, dejando al margen una capacidad instalada por el Consejo para la Transparencia creado desde los inicios de la ley en el año 2009. Estas disonancias, son el común denominador en sociedades donde la transparencia es normalmente débil y se junta con altos niveles de pobreza, proyectos innecesarios, corrupción y servicios ineficientes, factores que al final, obstaculizan los esfuerzos para mejorar el gobierno, haciendo nugatorios los efectos positivos de la política en la praxis.

La desarticulación normativa antes señalada podría ocasionar niveles inadecuados de resguardo de información personal, de igual forma, que asimetrías de información entre los diferentes estamentos públicos, impactando negativamente en las decisiones de las autoridades en materia sanitaria, haciendo referencia a los datos abiertos gubernamentales, constituidos por toda aquella información que el gobierno y sus órganos producen, gestionan, archivan y distribuyen mediante unas características específicas de una licencia abierta denominada *Creative Commons* (Berners-Lee, 2009).

En ese sentido se considera que, la información gubernamental publicada conforme a los principios de gobierno y datos abiertos, favorecen los procesos de toma de decisiones, impulsando una gestión gubernamental y administrativa más transparente y, al mismo tiempo, participativa que puede promover desarrollo político, económico y sociocultural (Berners-Lee, 2009; OGP, 2011). Los antecedentes teóricos señalados, han dado lugar a dos instrumentos del derecho internacional, que significan un hito en esta diatriba. El primero, es la declaración de la Carta Internacional de los Datos Abiertos, de octubre de 2015 y; el segundo, es la Carta Iberoamericana para el Gobierno Abierto, en julio de 2016. Todo ello, con la finalidad de promover un consenso global sobre las características técnicas y jurídicas necesarias para garantizar la utilización, reutilización y distribución libre de la información pública en una etapa de la historia reciente, denominada la revolución mundial de los datos (Naser y Rosales, 2016).

En este contexto, la migración de la digitalización de la información gubernamental hacia formatos de *datos abiertos* ocupa un lugar importante en la sociedad del conocimiento y la información (Castells, 2015). Puesto que, antes del siglo XIX los estudios científicos de los asuntos públicos se centraban principalmente en la democracia formal, es decir, en la legitimidad política del gobierno, relacionada con la estructura y el funcionamiento del régimen político, verbigracia; el sistema electoral y de partidos, composición de los poderes públicos, normas de regulación, relaciones entre los niveles de gobierno, entre otros, tópicos, conocidos doctrinalmente como la democracia del sufragio (Diamond, 2003).

3. Iniciativas de Transparencia, Gobierno y Datos Abiertos en el Contexto COVID 19

El proceso de institucionalización de la transparencia a través del estándar de los datos abiertos evidenciado en América Latina se caracteriza por el énfasis de los gobiernos nacionales de incorporar cambios transformacionales, propios de la cuarta revolución industrial y la digitalización de procesos que afectan la vida de todos los ciudadanos (Scrollini, 2017). En particular, porque los datos abiertos permiten contar

con nuevos mecanismos para acceder y adquirir el conocimiento, es decir, crear valor, al valerse de la información que los órganos del Estado producen en el cumplimiento de su labor pública reforzados para la apertura de la información pública proactiva, como mecanismo fundamental (Forero de Moreno, 2009; Criado *et al*., 2018). Lo anterior, en parte impulsado por la necesidad de hacer más transparente la rendición de cuentas a la ciudadanía, así como, de incorporar los resultados de las políticas públicas como prácticas que mejoran la gestión pública, para que pueda ser reutilizada, reproducida y difundida (Directiva 2019/1425/EU; Flores-Crespo, 2013; OGP, 2011; Declaración internacional de los Datos Abiertos, 2015; *Open Government Data Act,* 2019).

En concordancia con la hipótesis que OGD contribuyen con la formulación de políticas basadas en evidencia en las instituciones (Safarov, 2019). Preliminarmente en esta sección antes de abordar las prácticas OGD en el marco de la pandemia por COVID-19, se analiza el estado de avance de este tipo de prácticas *ex ante* de la pandemia, cuya finalidad se centra en la publicación de información provista por los órganos públicos, dirigida a asegurar a las personas el efectivo ejercicio del derecho fundamental de acceso a la información pública, asimismo, como el deber de los órganos públicos de entregarla proactivamente.

Para ello, a través de un análisis descriptivo a partir de las muestras conformadas por los portales de datos abiertos centralizados de cada uno de los países latinoamericanos integrantes de la Alianza para el Gobierno Abierto, se ha retratado transversalmente la evolución de este proceso, que da cuenta de la promulgación de un conjunto de leyes y políticas en temas de transparencia y de datos abiertos, del mismo modo, que la creación de un organismo centralizado con funciones y atribuciones para la fiscalización y garantía de los estándares mínimos que coadyuven con su doble finalidad, política y administrativa. Bajo la premisa que los archivos oficiales son una gigantesca fuente de información y albergan la evidencia de las actividades que se realizaron y las que no se realizaron, de allí, radica la importancia de organizar sistemáticamente en un portal web, dado que tener un archivo desorganizado es casi lo mismo que no tenerlo, pues, aunque los datos de interés estén allí, encontrarlos será casi imposible (Torres, 2014).

La evolución de este tipo de prácticas ha quedado retratada a modo de panorama global de los datos abiertos en la región en la Tabla No 1, a continuación.

Tabla Nº 1. Panorama de los datos abiertos en América Latina		
País	Portal OGD	Autoridad Responsable
Argentina	Datos Argentina *Datos.Gob* Argentina https://datos.gob.ar/	Secretaria de Modernización Presidencia de la República
Brasil	Portal Brasileño de Datos Abiertos http://dados.gov.br/	Secretaria de Tecnología de Información, Ministerio de Planeamiento Desarrollo y Gestión
Chile	Datos del gobierno abiertos y transparentes https://es.datachile.io/	Ministerio Secretaría General de la Presidencia de Chile (SEGPRES)
Colombia	Datos Abiertos de Colombia https://www.datos.gov.co/	Ministerio de Tecnologías de la Información y las Comunicación (MINTIC)
Costa Rica	*Data.gob* Costa Rica http://datosabiertos.presidencia.go.cr	Gobierno Abierto Presidencia
Ecuador	Plataforma de datos abiertos de Ecuador http://www.datosabiertos.gob.ec/	Gobierno Nacional de la República Administración Pública Central, (APCID)
El Salvador	Portal de Datos Abiertos El Salvador https://datos.gob.sv/	Secretaría Técnica y de Planificación de Presidencia Gobierno Digital
Guatemala	Portal de Datos Abiertos Guatemala https://datos.minfin.gob.gt/	Secretaría Nacional de Ciencia y Tecnología, -SENACYT-
Honduras	No tiene	No tiene.
México	Datos Abiertos de tu gobierno de México https://datos.gob.mx/	Secretaria de la Función Pública
Panamá	Datos Abiertos Panamá (DAP) http://www.datosabiertos.gob.pa/	Autoridad Nacional de Transparencia y Acceso a la Información (ANTAI)
Paraguay	Portal de *Data.gob* del Paraguay https://www.datos.gov.py/	Ministerio de Tecnología, Información y Comunicación (TIC)

Perú	Portal Nacional *Data. gob* Perú https://www.datosabiertos.gob.pe/	Secretaria del Gobierno Digital Presidencia del Consejo de Ministros
Uruguay	Catálogo *Data.gob* Uruguay https://catalogodatos.gub.uy/	Agencia de Gobierno Electrónico y Sociedad de la Información y el Conocimiento de Uruguay (AGESIC)
Venezuela	No tiene	

Fuente: Elaboración propia.

Nota: Se incluyó Honduras pese que, a la fecha de la realización de la investigación, no cuenta con un portal de datos abiertos *data.gov*, no obstante, su gobierno lo ha prometido a futuro, tras su adhesión a la Alianza. No se consideran las Islas del Caribe para este estudio comparado. Tampoco Belice y Guyana, donde los dat.gov han sido impulsados por iniciativas privadas y no como una política pública.

Siguiendo con el esquema de análisis basado en categoría delimitables apriorísticamente para facilitar su comparación basada en la codificación selectiva, en el caso concreto de los portales de datos abiertos (*data.gob o data.gov)* en América Latina, se delimitaron tres categorías de análisis (Strauss y Corbin, 2002). La primera referida al marco institucional; la segunda, a organismos responsables de la política OGD y; la tercera, remite a su implementación como un compromiso de la Alianza. En cuanto al marco institucional se observó que la mayor parte de los países, representado por el 50% de la muestra analizada, equivalente a 7 países de la región, han impulsado esta iniciativa como una política nacional, al alero de la modernización del Estado. Esta circunstancia, según lo explica Safarov (2019), responde a planes de gobierno con un marcado carácter presidencial y, por consiguiente, la continuidad de este tipo de iniciativas resulta amenazado producto de la poca institucionalidad política de la región. Este es el caso de Argentina, Chile, Costa Rica, Ecuador, Salvador, México y Perú, donde la gestión del portal *data.gov* ha sido encomendada a secretarías ministeriales de la presidencia.

En lo que concierne al segundo criterio de comparación, relativo a la organización administrativa responsable de este tipo de portales centralizados, en los países examinados solamente Panamá y Uruguay, han delegado esta función al órgano responsable de la fiscalización de las obligaciones de transparencia y derecho de acceso a la información pública, a través de Autoridad Nacional de Transparencia y Acceso a la Información, conocido por las siglas ANTAI en Panamá y a la Agencia de Gobierno Electrónico y Sociedad de la Información y el Conocimiento de Uruguay conocida por las siglas AGESIC, en Uruguay.

Por otra parte, destacan los países que han impulsado esta iniciativa al alero del Ministerio de Ciencia, lo que puede interpretarse que su fundamentación está aparejada al fenómeno de la cuarta revolución industrial, más cercano a la revolución de los datos, que como una política presidencial propiamente dicha. Este es el caso de Paraguay, Guatemala, Colombia y Brasil. No obstante, en sentido contrario se observó en el resto de los países analizados, que el órgano responsable de la gestión de este tipo de información en el estándar dato abierto se atribuye a una secretaria o Despacho del Gobierno Digital, adscrito a la Presidencia de la República, marcando una de las características del presidencialismo acentuado de las democracias latinoamericanas (Gargarella, 2015).

En una visión de análisis comparado, respecto al tercer criterio de contrastación de los portales OGD revisados, se puede decir, que *prime facie* representan la puerta de entrada de la implementación de la política de apertura del gobierno con herramientas de tecnología social de última generación, sustentadas en el principio de publicidad de la información proactiva del gobierno, a la par de los avances de la era digital, en virtud, de sus múltiples beneficios de control democrático y mejoramiento de la gestión pública, que al decir de Castellano-Claramunt (2019), contribuyendo en paralelo con el debate relativo al impacto político entre la participación ciudadana e internet, donde cada país de la región ha incorporado al alero de políticas de modernización del Estado.

Sin perjuicio de aquello, hay que decir además que este tipo de iniciativas, representan el inicio del proceso OGD en América Latina, el cual puede retrotraerse al 2009, cuando dos países pioneros en este ámbito, al decir de Quintanilla y Gil-García (2016) Estados Unidos inauguró el portal data.gov y, el Reino Unido data.gov.uk, considerados por la doctrina especializada como las primeras prácticas de transparencia y apertura de información gubernamental con el estándar dato abierto, mediante portales gestionados centralizadamente a nivel de gobierno nacional y fiscalizados por un organismo responsable de la administración pública del Estado.

Por otra parte, estas prácticas ODG se observaron en los portales de Costa Rica, México, Chile, Perú, Uruguay, bajo el amparo de los compromisos del gobierno abierto. En sentido contrario, el resto de los países como, Argentina, Colombia, El Salvador Guatemala, Panamá, Paraguay, quienes se limitan a publicar la información pública, basado en el determinismo tecnológico del gobierno digital en el marco de las agendas políticas para la modernización del Estado, olvidando el principio de colaboración ciudadana, basadas en la participación de los ciudadanos en la gestión de asuntos públicos bajo la filosofía del gobierno abierto (Santa *et al*., 2019; Worthy, 2015).

Por lo que se refiere, a las implicancias de incorporar este tipo de iniciativas políticas como control democrático de la función pública

impulsadas, al decir de Arenas (2016) como consecuencia del debilitamiento de la democracia y frente a la desconfianza de los ciudadanos en las instituciones políticas, hace que su incorporación como política de apertura de información pública, en los planes de gobierno abierto de cada uno de los países de la Alianza, sea verdaderamente criticable. Habida cuenta que, se han ido implementando en: "Contextos de crisis de legitimación democrática, sospechas de corrupción y debilidad gubernamental" (Guichot, 2012: 261), buscando hacer propaganda política y no como un objetivo central, de reforzar el carácter democrático de los Estados.

Por tanto, el desafío hacia la consolidación de la democracia de ciudadanos y ciudadanas informados y educados para la participación propuesta por Guillermo O`Donnell, no se ve disminuido, por el contrario, resulta agigantado, dando cuenta de una brecha inalterable entre la teoría y la práctica del debate que se cierne sobre la democracia sustantiva en el continente latinoamericano, matizada por una sensación de descontento de los ciudadanos en sus políticos y en las instituciones que los representan (Alianza para el Gobierno Abierto, 2011; O'Donnell, 2007).

4. Datos Abiertos y COVID 19

En el caso concreto de los portales de datos abiertos en el marco de la pandemia, en una muestra acotada conformada por Chile y Colombia, considerando como dimensión analítica los criterios del estudio de Abeleida *et al*., (2019), en concordancia con los principios de la Carta Internacional de los Datos Abiertos (2015), a saber: (1) Apertura, (2) Relevancia, (3) Accesibilidad y utilidad, (4) Comparación e interoperabilidad. Y con la finalidad de profundizar en el análisis descriptivo de los portales desde una perspectiva crítica se adicionaron dos indicadores específicos al tema COVID 19, la fotografía revelada en la tabla No 2, a continuación:

Tabla No 2. Portal de Datos abiertos y COVID 19: Colombia-Chile.

Dimensión	Indicador	Chile	Colombia
Apertura	Ley de datos abiertos	Norma Técnica 2018	Decreto 2573/2015
	Ley de acceso a la Información	Ley 20285	Ley de Transparencia y Derecho de Acceso a la Información, Nº 1712.

Relevancia	Política modernización del Estado	Política de gobierno digital	Agenda de modernización del Estado
	Compromiso del Gobierno Abierto	Instrucción presidencial Nº 5.	No
Accesibilidad y utilidad	Barreras burocráticas ni administrativas para la Re-Utilización	No hay que registrarse	Hay que registrarse para acceder y publicar los datos
Comparación e interopera-bilidad	Comparables	Información publicada al menos 4 formatos	Información publicada al menos 4 formatos
	Interoperables	2166 organismos	1184 organismos
Datos abiertos COVID 19	Temas publicados	8	Programas sociales (1), Transferencias interterritoriales fiscales (1), Impacto económico COVID en el sector minería (4)
	Cantidad de conjunto de datos abiertos (*data sets*)	127	(125) Salud y Protección, (1) Justicia y Derecho, (1) Convivencia durante la pandemia

Fuente: Elaboración propia (2020) a partir de Abeleida *et al.*, (2019).
Nota: Estas observaciones se dieron lugar a la fecha 29 de octubre de 2020, por lo tanto, las modificaciones posteriores, no pudieron ser incorporadas en este análisis.

Respecto a los datos abiertos en el marco de la pandemia, se pudo observar en el portal de Chile, la publicación proactiva de 8 conjuntos de datos abiertos, es decir, de información pública que cumple con los principios de la Carta Internacional de los Datos Abiertos. De la información disponible en el portal data.gob.cl, solo uno de ellos, da cuenta del Programa alimentos para Chile, publicado por Municipalidad de Peñalolén, en donde la municipalidad rinde cuentas del listado que contiene información respecto de la cantidad de cajas distribuidas según unidad vecinal, junto con información de mermas producidas.

Por otra parte, se observó la publicación de otro conjunto de datos, relativos a Información de gastos municipales con aportes Gobierno Central, igualmente publicado por Municipalidad de Peñalolén. Esta rendición de cuenta del gasto fiscal es consecuencia de los mecanismos de financiación transparente en el medio de la emergencia sanitaria, que obligó al gobierno central a realizar aportes a los municipios para el apoyo con los gastos derivados producto de la necesidad de vecinas y vecinos. Ambos *datasets*, publicados en formatos abiertos editables en el portal centralizado de datos abiertos de Chile, lo que da cuenta de la verdadera utilidad de este tipo de prácticas, dirigidas a rendir cuentas y además a la reutilización por la población.

Respecto a otra información publicada en el portal *data.gob* Chile, en el marco de la pandemia, se concentra en el rubro minero del cobre, específicamente información relativa a los proyectos mineros afectados por COVID-19, publicado por Ministerio de Minería, en donde da cuenta de los proyectos mineros, de diversas pastas, afectados por la aparición del COVID-19, del mismo modo, se observó información relativa a las faenas de cobre afectados por COVID-19, publicado por Ministerio de Minería –y considera el impacto en la producción de las faenas operativas de cobre por la aparición del COVID-19–.

Por otra parte, también entrega información en datos abiertos, en temas relativos a las faenas de oro afectados por COVID-19, por parte del Ministerio de Minería, en donde producto de la reducción de las faenas considera el impacto en la producción por la aparición del COVID-19. Lo mismo, en el caso de las faenas de plata afectados por COVID-19, donde el Ministerio de Minería, considera el impacto en la producción de las faenas operativas de plata por la aparición del COVID-19 y, por último, el mismo, rinde cuenta de la evolución del precio del cobre por COVID-19 en Chile, desde primer caso de COVID-19 el 3 de marzo en Talca. Respecto a las características de la información publicada, cabe destacar, que los conjuntos de datos, o *data sets* observados, cumplen con el estándar de los datos abiertos, dado que están publicados en formatos editables, estructurados en CSV; XLS; XLSX.

En lo que respecta al portal de datos abiertos de Colombia, se pudo observar una mayor cantidad y calidad de datos abiertos publicados en el portal, en lo que se refiere al tema COVID 19, además, resaltar que la información disponible gravita en torno al área de Protección y Salud, excepto dos *datasets* diferenciados, relativos a Justicia y Derecho y Convivencia Ciudadana. Es importante señalar, que este análisis descriptivo pretende resignificar la información publicada, es decir, no basta con publicar grandes cantidades de información pública en estos portales, si esta información no guarda relación con un propósito mayor, que pasa por orientar la rendición de cuentas a la ciudadanía y permitirle participar en los procesos de toma de decisiones políticas, como un sistema de alerta temprana para la prevención de los contagios.

En este aspecto crucial conviene detenerse en lo que señala Criado *et al.* (2018), respecto al verdadero propósito que persiguen los OGD, el cual no solo se centra en facilitar el escrutinio ciudadano a fin de reducir el oscurantismo, pues, de conformidad con los principios de la carta internacional de los datos abiertos (2015), específicamente en el Principio VI éstos también permiten impulsar el desarrollo incluyente y la innovación, según el cual, la reutilización de la información del sector público, conlleva un conjunto de externalidades positivas, tanto para fines comerciales como no comerciales, además de promover la creatividad y la innovación.

Bajo esta premisa, gobiernos, ciudadanos, instituciones académicas y organizaciones de la sociedad civil y del sector público mediante su reutilización crean valor público, con miras a propender beneficios sociales y económicos a todos los sectores (Moore, 1997; Mulgan, 2016). En el mismo orden de ideas, lo describen Margetts y Dorobantu (2019), quienes señalan que actualmente se producen más de 2.5 quintillones de bytes de datos cada día y, las empresas del sector privado ven en este fenómeno una oportunidad para impulsar modelos de inteligencia artificial que puedan procesar este alto tráfico de información, así como, modelos de negocios cuya materia prima la configura la información pública generada en estos portales de datos abiertos gubernamentales.

Bajo esta premisa, podría pensarse que una menor cantidad de información del Estado disponibilizada en estos portales, podría significar una ralentización de la activación económica post coronavirus, lo contrario, mayor disponibilización de datos abiertos en el portal data gov/gob, de conformidad con la Directiva 1425/2019(EU), sería un catalizador de la economía digital, validando la hipótesis de los estudios empíricos, como el de Shambaugh y Shen (2018), quienes demostraron que los niveles más altos de transparencia del gobierno están fuertemente relacionados con períodos más cortos de inflación y crisis monetarias. En forma análoga, lo describen Muente y Serale (2019), quienes los comparan con el oro negro de esta era.

De igual modo Mueller y Engewald (2018), quienes señalan que están ventanas de información son oportunidades de acceder a información oficial de las autoridades públicas y, por tanto, de aumentar el nivel de transparencia la efectividad de estas políticas, puede incrementar la confianza en el gobierno, además, de contribuir con el *tercer pilar* de la calidad de la democracia propuesta por Morlino (2007), y ratificado por Meijer *et al.* (2018) cuando afirman, que en una democracia de calidad los ciudadanos tienen el:

> (...) poder de controlar y evaluar cómo se realizan a través del pleno respeto de las normas vigentes, el llamado *rule of law*, su eficiente aplicación, la eficacia en la toma de las decisiones junto a la responsabilidad política por las elecciones tomadas por el personal elegido también (Morlino, 2007: 6).

En relación con el concepto de calidad de la democracia antes señalado, la información gubernamental abierta, pasa a ser un instrumento que impulsa una mejor comprensión de determinadas situaciones o problemas sociales y, así mejorar los procesos de toma de decisiones y el diseño de políticas públicas preventivas en resguardo de la salud pública (Quintanilla y Gil-Gracia, 2016). En este hilo conductor, podría disminuir la corrupción, fortalecer la democracia y la legitimidad de los gobiernos. En ese sentido, la información pública se convierte en el núcleo medular del proceso de rendición de cuentas, por tanto, su accesibilidad se tutela como el derecho humano universal de acceso a la información pública. En ese sentido, se ha conducido el desarrollo legislativo evidenciado en el derecho internacional latinoamericano en el último periodo, en coherencia con el movimiento denominado la revolución de los datos y del reconocimiento progresivo del derecho de acceso a la información pública como un derecho humano.

5. Hallazgos y Conclusiones

Todo indica que es muy recomendable que la publicación de información de los estamentos gubernamentales debe ser gestionada por agencias especializadas y centralizadamente, dada la amplia gama de conjuntos de datos disponibles. Este tipo de prácticas de transparencia y gobernanza a través de datos abiertos publicados en portales *data.gov*, guardan relación con la hipótesis que afirma que un gobierno abierto, es un modelo de gestión donde los políticos responsables del gobierno, *abren ventanas de información* al mundo a través de portales web, además que, inter-operan en red con los demás actores del sistema político; compartiendo información que anteriormente estaba celosamente guardada, potenciando el poder de la colaboración masiva y, la transparencia en todas sus operaciones para innovar junto con la ciudadanía, en la creación de soluciones a las demandas de una sociedad cada vez más informada y difícil de gobernar.

Es decir, además de poner a disposición del ciudadano información pública proactivamente que permite darle herramientas como un observador y vigilante de las actividades gubernamentales, al mismo tiempo, los datos, al ser oportunos y exhaustivos, conforme al *Principio II de la Carta Internacional de los datos abiertos,* promueve la creación de iniciativas en beneficio colectivo. En este sentido, hay que diferenciar la oportunidad y exhaustividad de los datos abiertos observados en el portal de Colombia en contraste con el rezago observado en el portal de Chile. Podría pensarse que esto se debe a que, para ello, se requiere de tiempo, recursos humanos y técnicos para identificar los datos que pueden ser liberados o publicados, a fin de saber qué datos priorizar para su liberación y mejora, datos que deben ser exhaustivos, precisos y de alta calidad.

Sin perjuicio que en los años setenta, la frase de información pública del gobierno abierto se vinculó con el secreto gubernamental y de restricciones del derecho a saber de las decisiones públicas del Reino Unido (Sandoval-Almazán et al., 2018), hoy en día, en sentido contrario y en convergencia con la llamada revolución de los datos, también conocida como la economía de los datos (Agenda Digital para la Unión Europea), se ha impulsado un conjunto de reformas globales, dirigidas a fortalecer la implementación de prácticas de gobernanza y datos abiertos, que procuran la máxima eficiencia de la acción pública, así como, el rescate de la confianza de los ciudadanos, en consonancia los Principios de la Alianza para el gobierno Abierto (AGA) suscrita en el año 2011.

En el mismo orden de ideas, fue reconocida como uno de los Objetivos para el Desarrollo Sostenible en la Agenda 2030, por la Asamblea General de las Naciones Unidas (ODS, 2015). De igual modo, Sandoval-Almazan y Styrin (2018); así como, Criado *et al*, (2018), al igual, como ya se mencionó Safarov *et al*. (2017), quienes, con sus estudios empíricos han reanimado el debate público contemporáneo a reimpulsar la apertura y la reutilización de la información pública, en virtud, de sus efectos en tres dimensiones.

Estas iniciativas, por un lado, hacen más participativa la acción estatal, al exigir que en la formulación de políticas se incorporen evidencias, así como, la colaboración ciudadana y las buenas prácticas aplicadas. La iniciativa de gobierno abierto, fue re-impulsada por la Ley Pública 115-435 promulgada en Estados Unidos el 14 de enero de 2019 identificada como *Open Government Data Act*., 2019, en donde se exige a las agencias federales que las políticas sean abiertas, es decir, que promuevan la participación ciudadana y, además, que los datos de la agencias gubernamentales estén disponibles, como insumos necesarios para la elaboración de políticas, así como su re-utilización para emprendimientos económicos y servicios públicos que generen valor social.

Por el otro, la apertura de la información pública también promueve transparencia y rendición de cuentas, núcleo central para la superación de la escasa credibilidad de los ciudadanos en las instituciones políticas y sus gobernantes, haciéndolas más transparentes, responsables y receptivas (Morlino, 2007, OCDE, 2020). Y, por último, los datos abiertos permiten a los usuarios identificar, comparar, inequidades económicas y sociales, para la toma de decisiones informadas (Lathrop y Ruma, 2010). Por su parte, los países de América Latina, a través de iniciativas legales centradas en favorecer la transparencia de la gestión pública y el acceso a la información gubernamental, han iniciado un proceso de reformas legislativas y reimpulso de prácticas de gobierno, dirigidas a promover un rediseño del rol del Estado, en coherencia con el fenómeno de la revolución de los datos.

Quedan pendiente para futuras investigaciones sobre gobierno abierto y acceso abierto a la información, valorar cualitativa y cuantitativamente la

forma como las campañas de comunicación política sobre el COVID-19 y sus consecuentes normas de bioseguridad, por ejemplo, manejan ingentes cantidades de recursos que deben ser publicadas exhaustivamente en los portales de las diversas instancias de gobiernas que las promocionan, como condición necesaria para determinar en una relación costo-beneficio, su éxito, limitaciones o fracasos según el contexto, en un ejercicio reflexivo e indagatorio que combina en igualdad de condiciones el derecho público, evaluación de las políticas públicas y la ciencia política, entre otras ciencia sociales.

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Factores psicosociales en estudiantes universitarios de Loreto, Ancash, Moquegua y Puno durante el confinamiento por el Covid-19, Perú

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Resumen

El estudio tuvo como propósito comparar y analizar los factores psicosociales como el estrés, la depresión y ansiedad en estudiantes universitarios de pregrado de Loreto, Ancash, Moquegua y Puno durante el confinamiento por el Covid-19, Perú. Se llevó a cabo un estudio de corte cuantitativo a través de un diseño no experimental, transversal descriptivo y correlacional con muestreo no probabilístico e intencional, se aplicó una encuesta online a una muestra de 665 estudiantes de pregrado por medio de instrumentos validados tales como la Lista de Indicadores de Vulnerabilidad al Estrés, la Escala de Depresión de Zung, y la Escala de Ansiedad de Hamilton. El estudio da cuenta de la vulnerabilidad al estrés en 50,8%, 46,3%, 36,4% y 37,5% en Loreto, Ancash, Moquegua y Puno. La prevalencia de depresión fue del 100,0%, 97,6%, 96,9% y 95,2% entre leve, moderada y grave; además, el 100,0% presentó síntomas de ansiedad.

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Se concluyó que, una situación de confinamiento social obligatorio está directamente relacionada con la presencia de factores psicosociales en estudiantes universitarios de pregrado, afectando en mayor proporción a mujeres; y con mayor incidencia en regiones con mayor número de casos confirmados; donde el insomnio, la preocupación e irritabilidad fueron los síntomas más significativos.

Palabras Clave: ansiedad; COVID-19; depresión; estrés; factores psicosociales.

Comparison of psychosocial factors in university students from Loreto, Ancash, Moquegua and Puno confinement by Covid-19, Peru

Abstract

The study was carried out with the objective of comparing and analyzing psychosocial factors such as stress, depression and anxiety in undergraduate university students from Loreto, Ancash, Moquegua and Puno during confinement by Covid-19, Peru. The study was based on a non-experimental, quantitative-descriptive, cross-sectional and correlational design with non-probability and intentional sampling, an online survey was applied to a sample of 665 undergraduate students using validated instruments such as the List of Indicators of Vulnerability to stress, the Zung Depression Scale, and the Hamilton Anxiety Scale. The study reports vulnerability to stress in 50.8%, 46.3%, 36.4% and 37.5% in Loreto, Ancash, Moquegua and Puno. The prevalence of depression was 100.0%, 97.6%, 96.9% and 95.2% between mild, moderate and severe; likewise, 100.0% presented anxiety symptoms. It was concluded that a situation of obligatory social confinement is directly related to the presence of stress, depression and anxiety, particularly in undergraduate university students, affecting a greater proportion of women; of these between 19 and 22 years, and with a higher incidence in regions with a greater number of confirmed cases; where insomnia, worry and irritability are the most significant symptoms.

Keywords: anxiety; COVID-19; depression; stress; psychosocial factors.

Introducción

El 06 de marzo de 2020 en Lima, Perú se hizo público el primer caso confirmado con la enfermedad del coronavirus (COVID-19) y el 19 de marzo del mismo año, se confirmó el primer fallecimiento, dos semanas después

del primer caso. El 11 de marzo de 2020, la Organización Mundial de la Salud, decreta el estado de pandemia (OMS, 2020), convirtiéndose así en un problema de salud pública (Jung y Jun, 2020; Nishiura *et al*., 2020; Xie y Chen, 2020). Ante ello, muchos gobiernos han optado por implementar el aislamiento social obligatorio bajo normativas de alcance nacional (Ayala *et al*., 2018; Harapan *et al.,* 2020; Palacios Cruz *et al*., 2020), decisión que es compartida por la mayoría de expertos epidemiológicos dada la experiencia de éxito en China (Jiménez-Pavón *et al*., 2020; Mukhtar, 2020; Valero-Cedeño *et al*., 2020)SARS-CoV-2 o COVID-19.

El 15 de marzo, el Gobierno de turno decretó el estado de emergencia y una orden de aislamiento social obligatorio (cuarentena obligatoria) por 15 días a nivel nacional (PCM, 2020), incluyendo días más tarde el toque de queda y prórrogas sucesivas (PCM, 2020). Al 22 de mayo de 2020 existen 111,698 personas infectadas y ha causado 3,244 fallecimientos en Perú. Esta nueva enfermedad (COVID-19), ha desnudado de manera cruda y real, la terrible situación sanitaria del Perú (Maguiña Ciro, 2020). Hay regiones como Loreto y Ancash que presentan mayor número de casos confirmados, y regiones como Moquegua y Puno, donde la enfermedad ha tardado en llegar y donde se presentan un número menor de casos.

En Loreto, una situación caótica, lleva a un total de 3201 casos confirmados y 264 fallecidos. Sumado a ello, la presencia de dengue antes de la llegada del coronavirus da como resultado un escenario sindémico de dengue y COVID-19. Al 22 de mayo de 2020 en Ancash, llevan un total de 2557 casos confirmados y 196 fallecidos y con una tasa de letalidad del 7.35% siendo la quinta más alta de todo el Perú. En el Sur del País, Moquegua al 22 de mayo de 2020, tuvo 315 casos confirmados con ningún fallecido. Y Puno, con 232 casos confirmados y 1 fallecido (Plataforma digital única del Estado Peruano, 2020).

Sin embargo, esta crisis mundial tiene efectos colaterales, a nivel social estas medidas pueden conducir a trastornos psicológicos y psiquiátricos como el estrés postraumático, confusión, frustración, depresión, ansiedad, trastornos de pánico y de conducta, por factores como separación de la familia, dolor, duelo, soledad, vergüenza, culpa, ira, miedo, xenofobia, histeria colectiva, desinformación en las redes sociales, inseguridad financiera, la estigmatización y otros problemas de salud mental (Choi *et al*., 2017; Egan *et al*., 2008; Sood, 2020; Zhu *et al*., 2020)tabulated and synthesised. Results. Thirty-one reviews met our inclusion criteria. These explored a variety of psychosocial factors including social support and networks, social capital, social cohesion, collective efficacy, participation in local organisations - and less favourable psychosocial risk factors such as demands, exposure to community violence or anti-social behaviour, exposure to discrimination, and stress related to acculturation to western society. Most of the reviews focused on associations between social

networks/support and physical or mental health. We identified some evidence of favourable psychosocial environments associated with better health. Reviews also found evidence of unfavourable psychosocial risk factors linked to poorer health, particularly among socially disadvantaged groups. However, the more robust reviews each identified studies with inconclusive findings, as well as studies finding evidence of associations. We also identified some evidence of apparently favourable psychosocial risk factors associated with poorer health. Conclusion. From the review literature we have synthesised, where associations have been identified, they generally support the view that favourable psychosocial environments go hand in hand with better health. Poor psychosocial environments may be health damaging and contribute to health inequalities. The evidence that underpins our understanding of these associations is of variable quality and consistency. Future research should seek to improve this evidence base, with more longitudinal analysis (and intervention evaluations que requerirán una intervención efectiva ante una crisis psicológica posterior para el individuo y la sociedad (Duchaine *et al.*, 2017; Ho *et al.*, 2020)including adverse psychosocial work factors, could contribute to the development of MHP including psychological distress. However, the contribution of psychosocial work factors to social inequalities in MHP remains unclear. This study evaluates the contribution of psychosocial work factors from two highly supported models, the Demand-Control-Support (DCS.

El estrés, la depresión y la ansiedad en estudiantes constituyen una problemática a nivel mundial, que se refleja en reacciones psicológicas, físicas y de comportamiento (Bedoya-lau *et al.*, 2014), siendo las reacciones estresantes más frecuentes la somnolencia (reacción física) o mayor necesidad de dormir, la inquietud (reacción psicológica) y aumento o reducción del consumo de alimentos (Hugo *et al.,* 2014). Por tanto, nuestro estudio tiene como objetivo comparar y analizar los factores psicosociales como el estrés, la depresión y ansiedad en estudiantes universitarios de pregrado de Loreto, Ancash, Moquegua y Puno durante el confinamiento por el Covid-19, Perú.

1. Materiales y métodos

1.1 Diseño de investigación

Se llevó a cabo un estudio de corte cuantitativo a través de un diseño no experimental, transversal descriptivo y correlacional, el cual se realiza sin manipular deliberadamente variables; recolecta datos en un solo momento, en un tiempo único. Su propósito es describir variables y analizar su incidencia e interrelación en un momento dado; y, asimismo, busca conocer la relación entre las variables (Hernández *et al.*, 2010).

1.2 Participantes

Se realizó un muestreo no probabilístico e intencional, el cual consiste en que la elección de los elementos no depende de la probabilidad sino de las causas relacionadas con las características de la investigación, se eligen los individuos que se estima son representativos o típicos de la población que puedan facilitar la información (Hernández, Fernández, & Baptista, 2010). La muestra se conformó por 665 estudiantes universitarios de pregrado del 2º al 10º ciclo académico de cuatro programas de estudios, con un rango de edad entre 18 y 30 a más años de edad, que realizan sus estudios de nivel superior en Universidad Públicas y Privadas de regiones con mayor y menor incidencia de la enfermedad (COVID-19) como son: Loreto, Ancash, Moquegua y Puno, Perú; en condiciones de aislamiento social obligatorio por el COVID-19.

1.3 Instrumentos

Se empleó la Lista de Indicadores de Vulnerabilidad al Estrés (adaptado por Dionisio Zaldivar Pérez) (Gonzáles Llaneza, 2007) siendo una escala de 20 indicadores, cuya puntuación oscila entre: 0=nada frecuente, 1=poco frecuente, 2=medianamente frecuente, 3=frecuentemente y 4=muy frecuentemente. La Escala de Depresión de Zung (Zung, 1965: ver pág. 63-70) siendo un cuestionario autoaplicado formado por 20 frases relacionadas con la depresión, formuladas la mitad en términos positivos y la otra mitad en términos negativos, donde se asigna un peso mayor a los sintomas somaticos (8) y los cognitivos (8) completando la escala referentes al estado de animo (2) y a sintomas psicomotores (2). La escala consta de 20 items, cuya puntuación oscila entre: 1=nunca o muy pocas veces, 2=algunas veces, 3=frecuentemente, 4=la mayoria del tiempo o siempre.

La Escala de Ansiedad de Hamilton (Hamilton, 1959) tiene como objetivo valorar la intensidad de la ansiedad, consta de 14 ítems, siendo 13 referentes a aspectos psíquicos, físicos y conductuales de la ansiedad, y el último que valora el comportamiento del individuo durante la aplicación del cuestionario. La puntuación de la escala oscila entre: 1=intensidad leve, 2=intensidad moderada, 3=intensamente grave y 4= totalmente incapacitado. Cabe indicar que las escalas han sido empleadas en estudios anteriores, demostrando índices de validez y confiabilidad aceptables. No obstante, para esta muestra se estimó la fiabilidad de los instrumentos mediante el Alfa de Cronbach, siendo de .947 para la “Lista de Indicadores de Vulnerabilidad al Estrés”, de .768 para la “Escala de Depresión de Zung” y de .929 para la “Escala de Ansiedad de Hamilton”.

1.4 Procedimiento

Del 03 al 22 de mayo de 2020 se aplicaron los instrumentos, siendo los docentes de educación superior los que invitaron a los estudiantes a participar de manera voluntaria. Cada uno de los participantes dio el consentimiento informado por medio del primer acápite del formulario virtual (cuestionario online), dadas las condiciones de aislamiento social obligatorio en Perú. El procesamiento y análisis de los datos se procesó en el paquete estadístico SPSS versión 23.0, a fin de ser analizados y expuestos en los resultados y conclusiones del estudio.

2. Resultados

De un total de 665 estudiantes universitarios, el 62,4% fueron mujeres y el 37,6% varones, siendo el 44,5% con edades entre 19 y 22 años; el 28,7% con edades entre 23 y 26 años; y el 10,4% con edades entre los 27 y 30 años. En la tabla 1, se muestra datos generales respecto al sexo y edad. En Loreto, Ancash, Moquegua y Puno el 54,8%, 71,3%, 64,6%, 57,2% fueron mujeres y el 45,2%, 28,7%, 35,4%, 42,8% varones respectivamente; siendo el 24,2%, 59,7%, 45,8% y 41,0% entre los 19 y 22 años. Para el estudio los participantes fueron en 18,8% de Loreto, el 32,5% de Ancash, el 14,4% de Moquegua, y el 34,4% de Puno.

Tabla 1. Características de los estudiantes universitarios de pregrado de Universidad Públicas y Privadas de Loreto, Ancash, Moquegua y Puno, en mayo 2020.

	Loreto		**Ancash**		**Moquegua**		**Puno**	
	n=124	(%)	n=216	(%)	n=96	(%)	n=229	(%)
Sexo								
Mujer	68	54,8	154	71,3	62	64,6	131	57,2
Varón	56	45,2	62	28,7	34	35,4	98	42,8
Edad								
De 18 años	2	1,6	23	10,6	25	26,0	1	0,4
Entre 19 y 22 años	30	24,2	129	59,7	44	45,8	94	41,0
Entre 23 y 26 años	50	40,3	51	23,6	21	21,9	69	30,1

Entre 27 y 30 años	24	19,4	13	6,0	3	3,1	29	12,7
Más de 30 años	18	14,5	0	0,0	3	3,1	36	15,7
Criterio de acompañamiento								
En familia	120	96,8	208	96,3	86	89,6	192	83,8
Solo (sin compañía)	4	3,2	8	3,7	10	10,4	37	16,2
Región de procedencia en Perú								
n=665	124	18,8	216	32,5	96	14,4	229	34,4

Fuente: Elaborada por los autores.

En la tabla 2, se observa las frecuencias de los factores psicosociales en estudiantes universitarios de pregrado durante el confinamiento por el COVID-19 en Perú. En Loreto, del total de participantes un 29,8% se mostró vulnerable al estrés, un 21,0% seriamente vulnerable al estrés. El 100% de los participantes presentaron depresión entre leve, moderada y grave. Un 21,8% depresión leve, un 60,5% depresión moderada, un 17,7% depresión grave, siendo la mayor cantidad de datos distribuidos entre leve y moderada. Un 62,1% presentó ansiedad con intensidad moderada, un 33,1% ansiedad con intensidad grave, un 4,8% síntomas de ansiedad total. En Ancash, del total el 31,0% se mostró vulnerable al estrés, un 13,9% se mostró seriamente vulnerable al estrés. El 35,6% presentó depresión leve, un 50,0% depresión moderada, un 12,0% depresión grave, siendo la mayor cantidad de datos distribuidos entre leve y moderada. El 62,0% presentó ansiedad con intensidad moderada, un 30,1% ansiedad con intensidad grave, un 7,9% ansiedad total.

En Moquegua, del total el 26,0% se mostró vulnerable al estrés, un 9,4% se mostró seriamente vulnerable al estrés. El 39,6% presentó depresión leve, el 54,2% depresión moderada y el 3,1% depresión grave, siendo la de mayor incidencia la depresión moderada. El 65,6% presentó ansiedad con intensidad moderada, un 30,2% ansiedad con intensidad grave, un 4,2% ansiedad total. En Puno, del total el 20,5% se mostró vulnerable al estrés, el 16,6% se mostró seriamente vulnerable al estrés. El 40,6% presentó depresión leve, un 42,4% depresión moderada y el 12,3% depresión grave, siendo la mayor cantidad de datos distribuidos entre leve y moderada. El 66,8% presentó ansiedad con intensidad moderada, un 26,2% ansiedad con intensidad grave, y un 7,0% ansiedad total. De los datos analizados en Loreto, Ancash Moquegua y Puno, se precisó que las mujeres son más

vulnerables al estrés y tienden a presentar mayor incidencia de depresión y ansiedad entre los 19 y 22 años en una situación de aislamiento social obligatorio producto del Covid-19 que los varones.

Tabla 2. Niveles de estrés, depresión y ansiedad de estudiantes universitarios de pregrado de Loreto, Ancash, Moquegua y Puno durante el confinamiento por el COVID-19, en mayo 2020.

	Loreto		**Ancash**		**Moquegua**		**Puno**	
	n=124	(%)	n=216	(%)	n=96	(%)	n=229	(%)
Estrés								
No vulnerable	61	49,2	116	53,7	61	63,5	143	62,4
Vulnerable	37	29,8	67	31,0	25	26,0	47	20,5
Vulnerable seria	26	21,0	30	13,9	9	9,4	38	16,6
Vulnerable extrema	0	0,0	3	1,4	1	1,0	1	0,4
Depresión								
Ausencia de depresión	0	0,0	5	2,3	3	3,1	11	4,8
Depresión leve	27	21,8	77	35,6	38	39,6	93	40,6
Depresión moderada	75	60,5	108	50,0	52	54,2	97	42,4
Depresión grave	22	17,7	26	12,0	3	3,1	28	12,3
Ansiedad								
Ansiedad con intensidad leve	0	0,0	0	0,0	0	0,0	0	0,0
Ansiedad con intensidad moderada	77	62,1	134	62,0	63	65,6	153	66,8
Ansiedad con intensidad grave	41	33,1	65	30,1	29	30,2	60	26,2
Ansiedad total	6	4,8	17	7,9	4	4,2	16	7,0

Fuente: Elaborada por los autores.

La tabla 3, contiene los coeficientes de correlación entre las variables estrés, depresión y ansiedad, de donde el estrés evidenció una correlación directamente proporcional y estadísticamente significativa con Ansiedad (r=,662; Sig.=,000). En la misma dirección, existe una correlación directamente proporcional y estadísticamente significativa entre Depresión y Ansiedad (r=,476; Sig.=,000). En síntesis, se puede observar que todas las variables del estudio se correlacionan significativamente al 99% (sig. = ,001).

Tabla 3. Correlaciones entre las variables en estudio: estrés –ansiedad y depresión– ansiedad.

		Estrés n=665	**Depresión** n=665	**Ansiedad** n=665
Estrés	Correlación de Pearson	1	,472**	,662**
	Sig. (bilateral)		0	0
Depresión	Correlación de Pearson	,472**	1	,476**
	Sig. (bilateral)	0		0
Ansiedad	Correlación de Pearson	,662**	,476**	1
	Sig. (bilateral)	0	0	

Fuente: Elaborado por los autores

La tabla 4, contiene la relación entre los factores psicosociales Estrés - Ansiedad y Depresión - Ansiedad durante el confinamiento por el Covid-19. En Loreto, Ancash, Moquegua y Puno los estudiantes que no presentaron vulnerabilidad al estrés presentaron ansiedad con intensidad moderada en 90,2%, 90,5%, 90,2%, 86,7% y con intensidad grave en 8,2%, 9,5%, 9,8%, 13,3% respectivamente. No obstante, cuando el estudiante es vulnerable al estrés, el nivel de ansiedad con intensidad grave llega a afectar al 51,4%, 56,7%, 72,0%, 46,8%, confirmando así, la incidencia del estrés sobre el nivel de ansiedad. Asimismo, en los estudiantes con depresión grave se observó una distribución de ansiedad con intensidad grave en el 50,0%,

46,2%, 33,3%, 42,9% y un 27,3%, 23,1%, 33,3%, 35,7% de ansiedad total en las cuatro regiones.

Tabla 4. Relación entre los factores psicosociales Estrés -Ansiedad y Depresión- Ansiedad durante el confinamiento por el COVID-19.

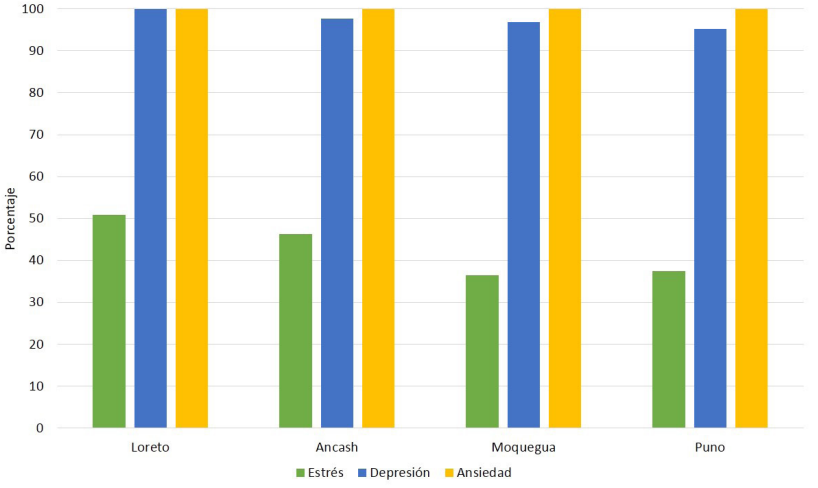
	Loreto			**Ancash**			**Moquegua**			**Puno**		
	n=124			**n=216**			**n=96**			**n=229**		
Ansiedad (%)	ACIM	ACIG	AT	ACIM	ACIG	AT	ACIM	ACIG	AT	ACIM	ACIG	AT
Estrés (%)												
NV	90,2	8,2	1,6	90,5	9,5	0,0	90,2	9,8	0,0	86,7	13,3	0,0
V	45,9	51,4	2,7	38,8	56,7	4,5	28,0	72,0	0,0	48,9	46,8	4,3
VS	19,2	65,4	15,4	9,1	48,5	42,4	11,1	55,6	33,3	15,8	50,0	34,2
VE	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	100,0	0,0	0,0	100,0
Depresión												
AD	0,0	0,0	0,0	100,0	0,0	0,0	100,0	0,0	0,0	100,0	0,0	0,0
DL	92,6	7,4	0,0	87,0	13,0	0,0	89,5	10,5	0,0	88,2	11,8	0,0
DM	62,7	37,3	0,0	50,0	39,8	10,2	48,1	46,2	5,8	55,7	38,1	6,2
DG	22,7	50,0	27,3	30,8	46,2	23,1	33.3	33.3	33.3	21,4	42,9	35,7

ACIM=Ansiedad con intensidad moderada, ACIG= Ansiedad con intensidad grave, AT= Ansiedad total, NV=No vulnerable, V= Vulnerable, VS= Seriamente vulnerable, VE=Extremadamente vulnerable, AD=Ausencia de depresión, DL=Depresión Leve, DM=Depresión moderada, DG=Depresión grave.

Fuente: Elaborada por los autores.

En la figura 1, se muestra los porcentajes de estrés general, depresión y ansiedad de estudiantes universitarios de pregrado de Loreto, Ancash, Moquegua y Puno durante el confinamiento por el COVID-19. En Loreto, Ancash, Moquegua y Puno el 100,0% presentó ansiedad, y en la misma proporción también Loreto presentó depresión y solo el 50,8% se mostró vulnerable al estrés. La prevalencia de depresión fue en el 97,6%, 96,9%, 95,2% en Ancash, Moquegua y Puno; y en el mismo orden, el estrés fue en el 46,3%, 36,4% y 37,5%.

Figura 1. Porcentajes de estrés general, depresión y ansiedad en estudiantes universitarios de pregrado de Loreto, Ancash, Moquegua y Puno durante el confinamiento por el COVID-19.



La tabla 5, muestra los porcentajes de los síntomas en la prevalencia de estrés, depresión y ansiedad. Para la prevalencia de estrés frecuentemente y muy frecuentemente resalta la preocupación en 52,4%, 47,7%, 39,6%, 46,8% en Loreto, Ancash, Moquegua y Puno. Además de trastornos de sueño en 42,8%, recursos insuficientes en 41,1% en Loreto. En Ancash, el cansancio en 36,1%, recursos insuficientes en 35,6% y temor en la misma proporción. En Moquegua, trastornos de sueño en 35,5%, recursos insuficientes en 34,4% y cansancio en 33,4%. En Puno, recursos insuficientes en 37,5%, cansancio en 28,8%, y falta de motivación en 28,4%.

Los síntomas de prevalencia de depresión frecuentemente y la mayoría del tiempo fueron el insomnio en 62,9%, 45,8%, 56,3%, 41,0%, irritabilidad en 40,3%, 42,2%, 40,6%, 30,1%, triste o deprimido en 38,7%, 35,6%, 32,3%, 35,4% en Loreto, Ancash, Moquegua y Puno respectivamente. Cabe indicar que el 86,3%, 85,2%, 79,2% y 71,6% aún tienen esperanza en el futuro en el mismo orden. Los síntomas de prevalencia de ansiedad en condición de grave y muy grave fueron dificultad para conciliar el sueño en 55,7%, 24,9%, 47,9%, 27,1% en Loreto, Ancash, Moquegua y Puno. Además de zumbido de oídos en 30,7%, temor o miedo en 29,9%. En Ancash, temer o miedo en 24,6%, zumbido de oídos en 20,2%. En Moquegua, dolores musculares en 25%, zumbido de oídos en 23,9%. En Puno, temor o miedo en 28,4%, y fatiga en 22,2%.

Tabla 5. Síntomas asociados a la prevalencia de estrés, depresión y ansiedad en estudiantes universitarios de pregrado durante el confinamiento por el Covid-19

	Loreto	**Ancash**	**Moquegua**	**Puno**
	(n=124)%	(n=216)%	(n=96)%	(n=229)%
Estrés				
Dolores de cabeza	25,0%	22,2%	19,8%	19,2%
Cansancio	29,0%	36,1%	33,4%	28,8%
Falta de energía	27,4%	31,5%	20,9%	28,4%
Trastornos del sueño	42,8%	30,1%	35,5%	16,2%
Excesiva sensibilidad	33,9%	28,2%	19,8%	22,7%
Procesos orgánicos: latidos del corazón, respiración	31,4%	19,5%	15,6%	15,3%
Ansiedad o temor	39,5%	35,6%	20,8%	22,3%
Descontrol	25,8%	22,2%	18,7%	17,9%
Preocupación	52,4%	47,7%	39,6%	46,8%
Pensamientos poco deseados	17,8%	19,0%	14,6%	20,1%
Recursos insuficientes	41,1%	35,6%	34,4%	37,5%
Falta de motivación	26,6%	29,6%	31,3%	28,4%
Depresión				
Triste y deprimido	38,7%	35,6%	32,3%	35,4%
Deseos de llorar	30,5%	34,3%	25,0%	18,8%
Insomnio	62,9%	45,8%	56,3%	41,0%
Intranquilidad e inquietud	29,1%	31,4%	25,0%	23,6%
Pérdida de peso	32,3%	12,5%	11,5%	17,0%
Esperanza en el futuro	86,3%	85,2%	79,2%	71,6%
Irritabilidad	40,3%	42,2%	40,6%	30,1%
Idea de no seguir viviendo	8,0%	11,1%	9,4%	17,9%

Ansiedad				
Temeroso	29,9%	24,6%	20,8%	28,4%
Fatiga	25,8%	18,2%	23,0%	22,2%
Dificultad para conciliar el sueño.	55,7%	24,9%	47,9%	27,1%
Dolores musculares	20,2%	15,7%	25,0%	21,9%
Zumbido de oídos, oleadas de frio y calor	30,7%	20,2%	23,9%	18,3%
Dolor abdominal, náuseas	19,3%	10,6%	13,5%	10,1%

Fuente: Elaborada por los autores.

3. Discusión

Los resultados obtenidos proporcionan soporte concluyente de la prevalencia de estrés, depresión y ansiedad en estudiantes universitarios de pregrado durante el confinamiento por el COVID-19, siendo Loreto la región con mayor incidencia de estos factores psicosociales. No obstante, Ancash es la de mayor prevalencia de ansiedad total y Moquegua la de menor incidencia de estrés. Asimismo, existe una relación entre estrés y depresión, con un nivel de ansiedad.

Resultados similares han sido obtenidos por un estudio chino realizado en la fase inicial de la pandemia en 1210 personas, de donde el 53.8% calificaron de moderado a grave el impacto psicológico, el 16.5% con síntomas depresivos de moderado a grave; el 28,8% con síntomas de ansiedad de moderado a grave; y el 8,1% con niveles de estrés de moderado a grave; registrando un mayor nivel de estrés, depresión y ansiedad en estudiantes; y con síntomas físicos (escalofríos, mialgia, mareo, coriza y dolor de garganta) en las mujeres (Wang *et al.*, 2020).

Otro estudio chino realizado en 52730 personas durante la fase inicial de la pandemia evidenció que el 35% de los participantes experimentaron estrés psicológico, con niveles más altos en las mujeres. Asimismo, las personas entre 18 y 30 años, y los mayores de 60 años, tuvieron niveles más altos de estrés psicológico (Qiu *et al.*, 2020). Estos resultados han reforzado nuestro punto de vista sobre el riesgo de la salud mental durante situaciones de confinamiento.

Asimismo, resultados similares han sido obtenidos por otro estudio chino en donde se realizó una comparación del estado emocional, las

respuestas somáticas, la calidad del sueño y el comportamiento de las personas en la provincia de Hubei con las provincias no endémicas en China, donde participaron 939 personas, incluidos 33 de Hubei y 906 de provincias no endémicas. Del total, el 65% eran estudiantes universitarios, el estado emocional y el comportamiento de los participantes en Hubei mejoró, pero la calidad de sueño no (Yuan *et al*., 2020) the coronavirus disease 2019 (COVID-19.

En consecuencia, este brote está provocando problemas de salud mental a nivel mundial. Los mensajes de salud pública principalmente aluden a la higiene personal, distanciamiento, uso de tapa boca, entre otros; sin embargo, asuntos urgentes como la salud mental deberían abordarse directamente con recomendaciones específicas para el suicidio como política de prevención (Klomek, 2020).

Como parte de la solución, la provincia de Sichuan publicó un manual de intervención psicológica y autoayuda, además de la apertura de varias líneas telefónicas de asistencia psicológica y de consulta, considerando que la salud mental es tan importante como la física (Zhou, 2020). Entre tanto, (Mamun y Griffiths, 2020) se propone intervenir problemas de salud mental por medio de la telemedicina cuando sea posible, y no dejar de lado la ayuda básica de alimentos y medicamentos a sectores vulnerables; que muchas veces se convierten en causas del problema. No obstante, los adultos mayores tienen acceso limitado a servicios de internet y teléfonos inteligentes, y como tal solo una pequeña parte puede beneficiarse del servicio (Yang *et al*., 2020).

Conclusiones

En conclusión, una situación de confinamiento social obligatorio está directamente relacionado con la presencia de estrés, depresión y ansiedad, particularmente en estudiantes universitarios de pregrado, afectando en mayor proporción a mujeres, que en varones; de estos entre los 19 y 22 años, y con mayor incidencia en regiones con mayor número de casos confirmados; donde el insomnio, la preocupación e irritabilidad son los síntomas más significativos. Un dato importante que se obtuvo es que pese a la prevalencia de estrés, depresión y ansiedad los estudiantes manifestaron tener esperanza en el futuro. Por lo que, la salud mental debe abordarse directamente con recomendaciones específicas para el suicidio como política de prevención en el corto plazo; así como diseñar políticas públicas de salud mental en un contexto post pandemia.

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Derechos Humanos

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Derechos Humanos en la República del Ecuador: su protección por la Corte Interamericana de Derechos Humanos

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Resumen

En este trabajo se analiza la protección de los derechos humanos por la Corte Interamericana de Derechos Humanos en la República del Ecuador. Se trata de una investigación documental y descriptiva, con la aplicación del método analítico. Los derechos humanos deben constituirse en el norte de las actuaciones tanto nacionales como internacionales porque atienden a la dignidad de los seres humanos, de ahí se deriva el interés que tienen los Estados y los órganos especializados en su protección, incluso por medio de la efectividad de sentencias. Se concluye, que los derechos humanos son un conjunto amplio, inacabado y progresivo de atributos perteneciente a los seres humanos sin ningún tipo de diferencias, y que la República del Ecuador realiza esfuerzos para hacer real la aplicación de los fallos de la Corte Interamericana de Derechos Humanos, siendo un compromiso constante por las disposiciones jurídicas constitucionales y los tratados internacionales.

Palabras clave: derechos humanos; República del Ecuador; Corte Interamericana de Derechos Humanos; dignidad humana.

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Abstract

This work analyzes the protection of human rights by the Inter-American Court of Human Rights in the Republic of Ecuador. It is a documentary and descriptive investigation, with the application of the analytical method. Human rights must be established in the north of both national and international actions because they attend to the dignity of human beings, hence the interest that States and specialized bodies have in their protection, including through the effectiveness of sentences. It is concluded that human rights are a broad, unfinished, and progressive set of attributes belonging to human beings without any type of differences, and that the Republic of Ecuador is making efforts to make the application of the judgments of the Inter-American Court of Rights a reality. Human, being a constant commitment to constitutional legal provisions and international treaties.

Keywords: human rights; Republic of Ecuador; Inter-American Court of Human Rights; human dignity

Introducción

En el escenario internacional existe un denominador común: el ser humano. Diversos instrumentos se han configurado en aras de la protección de los derechos inherentes al ser humano, entre ellos la Convención Americana de los Derechos Humanos, constitutiva del Sistema Interamericano de Protección de los Derechos Humanos, que requiere para la protección regional a la Comisión Interamericana de Derechos Humanos y a la Corte Interamericana de Derechos Humanos.

Sin embargo, para materializar o hacer efectivas las decisiones de la Corte se requiere de la actuación de los Estados, desde la reparación hasta la indemnización, para ello deben existir –internamente– procedimientos que permitan aplicar los fallos emanados de la Corte Interamericana de Derechos Humanos, en tanto no se pretenda dilatar la eficacia de tales decisiones.

La República del Ecuador ratificó la Convención Americana de Derechos Humanos y aceptó la competencia contenciosa de la Corte Interamericana de Derechos Humanos, lo cual representa el compromiso de asumir las decisiones por ella pronunciadas. En este sentido, el presente manuscrito analiza, bajo una óptica documental y descriptiva, la protección de los derechos humanos por la Corte Interamericana de Derechos Humanos en la República del Ecuador, para ello se desarrollan tres aspectos, a saber: 1. Los Derechos Humanos en la República del Ecuador; 2. La Corte Interamericana de Derechos Humanos; y, 3. La Corte Interamericana de Derechos Humanos en la Constitución de la República del Ecuador, para luego presentar una serie de consideraciones finales.

1. Derechos Humanos en la República del Ecuador

Una de las características más destacadas del Estado Ecuatoriano, es la estipulación jurídica como un Estado constitucional de derechos y justicia, además de ser reconocido como un Estado social, democrático, independiente, unitario, intercultural, plurinacional y laico (Constitución de la República del Ecuador, 2008: artículo 1). Por tanto, la República del Ecuador se constituye en un Estado más que de Derecho, en un Estado de Derechos, ya que la consideración suprema de los derechos humanos forma parte de su propia existencia.

Por esta razón, uno de los deberes primordiales de la República es, precisamente, garantizar "...sin discriminación alguna el efectivo goce de los derechos establecidos en la Constitución y en los instrumentos internacionales..." (Constitución de la República del Ecuador, 2008: artículo 3, numeral 1°). Este reconocimiento de derechos se hace extensivo no solo a las personas, comunidades, pueblos, nacionalidades y colectivos, tal como lo prevé el artículo 10 constitucional, sino también se reconoce que la: "...naturaleza será sujeto de aquellos derechos que le reconozca la Constitución".

En el Título relacionado con los Derechos, la Constitución también alude a los principios que regirán el ejercicio de los derechos, en tal sentido, el artículo 11 estipula que el ejercicio, promoción y exigencia de los derechos puede hacerse de forma individual o colectiva por ante las autoridades competentes, quienes están en la obligación de garantizarlos, sin ningún tipo de discriminación ni diferencias. Tanto los derechos previstos en la Constitución como los derechos establecidos en los instrumentos internacionales sobre la materia son de aplicación directa e inmediata, sin exigencia de condiciones o requisitos que no estén establecidos en el ordenamiento jurídico, pues todos los derechos son plenamente justiciables, y no puede negarse su reconocimiento por ausencia de norma que los desarrolle.

Igualmente, en virtud del comentado artículo, ninguna norma de rango inferior a la Constitución puede pretender menoscabar o disminuir los derechos previstos en el texto constitucional, y la interpretación de la misma siempre debe ser aquella que más favorezca la efectiva vigencia de los derechos regulados; dichos derechos son inalienables, irrenunciables, indivisibles, interdependientes y de igual jerarquía, además, los derechos expresamente regulados en la Constitución o en los instrumentos internacionales, no excluye la vigencia de otros implícitamente establecidos. Por esto, se reconoce la progresividad de los derechos humanos, los cuales se desarrollarán a través de normas, jurisprudencia y políticas públicas, y cualquier desmejoramiento al ejercicio de los derechos será considerado de manera automática inconstitucional.

Estas consideraciones en torno a los derechos humanos, requiere la determinación conceptual de esta figura, diversas son las definiciones existentes fundadas en varios criterios, sin embargo, la noción más acertada respecto al derecho interno ecuatoriano, es entender a los derechos humanos como un conjunto amplio, inacabado y progresivo de atributos perteneciente a los seres humanos sin ningún tipo de diferencias, por lo tanto es preciso que sean asumidos como inherentes a las personas humanas. Ante esta noción, es evidente la necesidad de estar siempre alerta ante su posible vulneración, y en caso de ocurrencia de algún tipo de inobservancia, conocer cuáles son los mecanismos o vías disponibles para su restablecimiento, o en todo caso, indemnización y sanción.

Ese deber de cumplimiento de los derechos humanos le corresponde, en primer lugar, al Estado Ecuatoriano, quien además es el responsable de castigar a los servidores públicos que incurran en alguna violación o desconocimiento de derechos. Así, el artículo 11, numeral 9, de la Constitución ecuatoriana, dispone:

> El más alto deber del Estado consiste en respetar y hacer respetar los derechos garantizados en la Constitución.
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> El Estado, sus delegatarios, concesionarios y toda persona que actúe en ejercicio de una potestad pública, estarán obligados a reparar las violaciones a los derechos de los particulares por la falta o deficiencia en la prestación de los servicios públicos, o por las acciones u omisiones de sus funcionarias y funcionarios, y empleadas y empleados públicos en el desempeño de sus cargos.
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> El Estado ejercerá de forma inmediata el derecho de repetición en contra de las personas responsables del daño producido, sin perjuicio de las responsabilidades civiles, penales y administrativas.

Para la efectividad de la protección de los derechos humanos, el Constituyente de Montecristi[2] reconoce el derecho de petición de las personas, al establecer que "Se reconoce y garantizará a las personas: 23. El derecho a dirigir quejas y peticiones individuales y colectivas a las autoridades y a recibir atención o respuestas motivadas. No se podrá dirigir peticiones a nombre del pueblo" (Constitución de la República del Ecuador, 2008: artículo 66).

Aunado a lo anterior, la República del Ecuador cuenta con los Consejos Nacionales para la Igualdad que "son órganos responsables de asegurar la plena vigencia y el ejercicio de los derechos consagrados en la Constitución y en los instrumentos internacionales de derechos humanos" (Constitución de la República del Ecuador, 2008: artículo 156). Para lograr la mayor

2 Montecristi es la ciudad ecuatoriana donde se conformó la Asamblea Nacional Constituyente que dio lugar a la Constitución de la República del Ecuador de 2008.

interacción, coordinarán sus actividades con las entidades rectoras y ejecutoras y con los organismos especializados en la protección de derechos en todos los niveles de gobierno. Incluso, sostiene el artículo 163 constitucional, que la formación de los miembros de la Policía Nacional estará basada en Derechos Humanos.

De tal manera, que la Constitución ecuatoriana no es ajena a la recepción de los derechos humanos, aún más, cuando han sido incorporados al ordenamiento interno por medio de los procedimientos constitucionales previstos para tal propósito. En este sentido, la Convención Americana de Derechos Humanos, ratificada por el Estado Ecuatoriano el 28 de diciembre de 1977, mantiene una posición jurídica privilegiada por mandato constitucional, en efecto "... En el caso de los tratados y otros instrumentos internacionales de derechos humanos se aplicarán los principios pro ser humano, de no restricción de derechos, de aplicabilidad directa y de cláusula abierta establecidos en la Constitución" (Constitución de la República del Ecuador, 2008: artículo 417).

En este orden de ideas, la Constitución de la República del Ecuador reafirma el carácter esencial de los derechos humanos al establecer que los tratados internacionales prevalecerán por encima de las disposiciones normativas o actos del poder público, en tanto hayan sido ratificados y reconozcan derechos más favorables a los contenidos por ella misma, ello según el artículo 424 constitucional.

2. Corte Interamericana de Derechos Humanos

2.1. Consideraciones preliminares

A nivel mundial existen dos tipos de sistemas de protección de los derechos humanos: por un lado, el sistema universal de protección, representado básicamente por el Organización de Naciones Unidas (ONU) y por sus Comités; y, por el otro, los sistemas regionales de protección. Este segundo tipo será abordado, pues la Corte Interamericana de Derechos Humanos forma parte del sistema interamericano de protección.

En otras palabras, el Sistema Interamericano de Derechos Humanos, se crea en el marco de la Organización de Estados Americanos, con la Declaración Americana de Derechos y Deberes del Hombre en 1948 y, posteriormente, con la Carta de la Organización de los Estados Americanos que entró en vigor en 1951. Dicho Sistema Interamericano de Derechos Humanos está constituido por dos órganos: la Comisión Interamericana de Derechos Humanos (CIDH) y la Corte Interamericana de Derechos Humanos (Corte IDH). La mencionada Carta de la Organización de los Estados Americanos creó la Comisión Interamericana de Derechos Humanos, cuyo artículo 106 establece:

> Habrá una Comisión Interamericana de Derechos Humanos que tendrá, como función principal, la de promover la observancia y la defensa de los derechos humanos y de servir como órgano consultivo de la Organización en esta materia. Una convención interamericana sobre derechos humanos determinará la estructura, competencia y procedimiento de dicha Comisión, así como los de los otros órganos encargados de esa materia.

Por su parte, en 1969 se dicta la Convención Americana sobre Derechos Humanos o Pacto de San José de Costa Rica, la cual configura un instrumento internacional regulador de derechos humanos y obligaciones para los Estados que formen parte de esta, y creó la Corte Interamericana de Derechos Humanos. El artículo 33 de la Convención Americana de Derechos Humanos de 1969, señala: "Son competentes para conocer de los asuntos relacionados con el cumplimiento de los compromisos contraídos por los Estados Parte en esta Convención: ...b) la Corte Interamericana de Derechos Humanos...", y luego el artículo 62 de la Convención Americana de Derechos Humanos de 1969, reconoce que:

> La Corte tiene competencia para conocer de cualquier caso relativo a la interpretación y aplicación de las disposiciones de esta Convención que le sea sometido, siempre que las Partes en el caso hayan reconocido o reconozcan dicha competencia, ora por declaración especial, como se indica en los incisos anteriores, ora por convención especial.

De tal manera, la Corte Interamericana de Derechos Humanos es un órgano judicial de naturaleza contenciosa, denominado también cuasicontenciosos[3], para la resolución de los casos mediante el dictado de sentencias, supervisión de cumplimiento, función consultiva y función de dictado de medidas provisionales, con la finalidad última de interpretar y aplicar la Convención Interamericana de Derechos Humanos.

El objetivo medular de la Corte Interamericana de Derechos Humanos es lograr la reparación de los daños causados a las víctimas frente a las potenciales violaciones de derechos humanos por parte de los Estados, esta reparación implica, a su vez, el establecimiento de la responsabilidad de los países y la creación de medidas indemnizatorias de distintas naturalezas, que pueden versar incluso en recomendaciones para la modificación de normas internas.

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3 Se denominan de esta manera, según Bregaglio (s/f: 100) "en la medida que la resolución de los comités que pone fin al procedimiento no es una sentencia en sentido estricto, ni dichos comités son tribunales. A pesar de ello, el dictamen de los comités tiene la apariencia formal de una sentencia. Para que estos mecanismos operen, los estados deben aceptarlos, ya sea mediante una declaración expresa o mediante la omisión de una reserva. Ello es así porque si bien no son mecanismos contenciosos propiamente dichos, si establecen cierta responsabilidad de los Estados".

La activación de la función de la Corte se materializa cuando resulten agotadas todas las vías e instancias nacionales para lograr el reconocimiento de responsabilidades de los Estados, de tal manera, que ante esa ineficacia nacional surge la opción de acudir por ante instancia del Sistema Interamericano de Derechos Humanos para lograr la referida reparación de la parte lesionada. A tal efecto, Albuja Varela plantea que el dictado de sentencias por parte de la Corte Interamericana de Derechos Humanos implica:

> ...resoluciones finales y definitivas que emite la Corte IDH en ejercicio de su función jurisdiccional, en los casos que han sido sometidos bajo su conocimiento, sustanciación y resolución por violaciones a derechos humanos establecidos en la CADH[4], mediante las cuales se sanciona y condena a los Estados (2015: 26).

En todo caso, el fin último que persigue la Corte Interamericana de Derechos Humanos es la protección y salvaguarda de los derechos humanos, y en el supuesto de su inobservancia, debe garantizarse la justa, oportuna y correcta reparación. Dicha reparación debe ser entendida como una reparación integral, cuyo centro sea la persona humana, en tal sentido, se busca el restablecimiento de la situación anterior a la vulneración del derecho, la rehabilitación médica y/o psicológica, satisfacción de daños inmateriales que permitan reconocer la dignidad de las víctimas, garantías de no repetición, reparaciones económicas o pecuniarias, entre otras.

2.2. Funciones

La función genérica de la Corte Interamericana de Derechos Humanos es la de garantizar la protección y promoción de los derechos humanos. Para ello, de conformidad con la Convención Americana de Derechos Humanos, la Corte ejerce, entre otras, tres funciones específicas: función contenciosa, función provisora y función consultiva. En tal sentido, el artículo 63 de la mencionada Convención, dispone:

> 1. Cuando decida que hubo violación de un derecho o libertad protegidos en esta Convención, la Corte dispondrá que se garantice al lesionado en el goce de su derecho o libertad conculcados. Dispondrá, asimismo, si ello fuera procedente, que se reparen las consecuencias de las medidas o situación que ha configurado la vulneración de esos derechos y el pago de una justa indemnización a la parte lesionada.
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> 2. En casos de extrema gravedad y urgencia, y cuando se haga necesario evitar daños irreparables a las personas, la Corte, en los asuntos que esté conociendo, podrá tomar las medidas provisionales que considere pertinentes. Si se tratare de asuntos que aún no estén sometidos a su conocimiento, podrá actuar a solicitud de la Comisión.

4 Convención Americana de Derechos Humanos.

En esta disposición, se evidencia la función contenciosa al establecer la competencia para decidir sobre la violación de derechos humanos, así como la garantía de reparación de las consecuencias de la vulneración de los derechos. Al respecto, Correa plantea:

> La gran virtud del Sistema Interamericano de Derechos Humanos es que ha establecido un mecanismo obligatorio supranacional que permite a personas naturales reclamar cuando los recursos internos no han funcionado, y obtener decisiones que contienen medidas concretas de reparación, y que los Estados se sienten obligados a ejecutar y han solido cumplir (2014: 825).

Igualmente, se prevé la función provisora, puesto que la Corte puede tomar medidas preventivas para evitar daños irreparables a las personas en asuntos que incluso no estén sometidos aún a su conocimiento. Por otra parte, el artículo 64 de la Convención Americana de Derechos Humanos establece:

> 1. Los Estados miembros de la Organización podrán consultar a la Corte acerca de la interpretación de esta Convención o de otros tratados concernientes a la protección de los derechos humanos en los Estados americanos. Asimismo, podrán consultarla, en lo que les compete, los órganos enumerados en el capítulo X de la Carta de la Organización de los Estados Americanos, reformada por el Protocolo de Buenos Aires.
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> 2. La Corte, a solicitud de un Estado miembro de la Organización, podrá darle opiniones acerca de la compatibilidad entre cualquiera de sus leyes internas y los mencionados instrumentos internacionales.

En el referido artículo se hace mención a la función consultiva de la Corte, la cual puede estar referida a la interpretación, no solo de la Convención, sino también de cualquier otro tratado relativo a los derechos humanos. Esta labor de consulta se hace extensiva tanto a los Estados miembros de la Organización de los Estados Americanos como la Reunión de Consulta de Ministros de Relaciones Exteriores y el Comité Consultivo de Defensa. Esta función consultiva debe ser entendida en su sentido más amplio, pues no se encuentra limitada a las disposiciones de la Convención, sino que puede ser solicitada por los Estados para obtener opiniones sobre la compatibilidad de normas internas de su ordenamiento con instrumentos internacionales sobre derechos humanos. Así, Steiner y Uribe exponen:

> ...la Corte tiene competencia para conocer de cualquier caso relativo a la interpretación y aplicación de las disposiciones de la Convención Americana sobre Derechos Humanos que le sea sometido, siempre que los Estados parte en el caso hayan reconocido o reconozcan dicha competencia, por declaración especial o por convención especial. La Corte cuenta también con una función consultiva, los Estados miembros de la Organización de los Estados Americanos pueden

> consultarle acerca de la interpretación de esta Convención o de otros tratados concernientes a la protección de los derechos humanos en los Estados americanos. Asimismo, a solicitud de un Estado miembro de la Organización, puede emitir opiniones acerca de la compatibilidad entre cualquiera de las leyes internas y los instrumentos internacionales, o solicitar una consulta sobre la interpretación de tratados internacionales (Steiner y Uribe, 2014: 7).

El Reglamento de la Corte Interamericana de Derechos Humanos (2009) la configura como una institución judicial autónoma (artículo 1), conformada por siete jueces, nacionales de los Estados miembros de la Organización de Estados Americanos, sin coincidencia de nacionalidades (artículo 4). Por su parte, el Estatuto de la Corte reconoce la inmunidad de estos jueces en el ejercicio de sus funciones (artículo 15), no obstante, si se reconocen responsabilidades y un régimen disciplinario que deben observar en ejercicio o no de sus funciones (artículo 20). En todo caso, anualmente la Corte debe remitir a la Asamblea General de la Organización de Estados Americanos, un informe señalando los casos de los Estados que no hayan dado cumplimiento a sus fallos, haciendo propuestas y recomendaciones para el mejor funcionamiento de la Corte en el marco del Sistema Interamericano de Derechos Humanos (artículo 30).

3. La Corte Interamericana en la Constitución de la República del Ecuador

El Estado Ecuatoriano –como se indicó- ratifica la Convención Americana de Derechos Humanos el 28 de diciembre de 1977, en tanto que la aceptación de la competencia contenciosa de la Corte se verificó el 24 de julio de 1984. Desde esta fecha hasta el presente, la República del Ecuador está comprometida en cumplir con las decisiones y demás actos emanados de la Corte Interamericana, dicho cumplimiento es tanto en el ámbito externo como en el ámbito interno. Por lo tanto, las decisiones tomadas por la Corte deben ser ejecutadas por los Estados, es por ello, que es indispensable que cada Estado estructure los mecanismos de aplicación interna en su ordenamiento jurídico, esto permitiría no solo la garantía de observancia de los derechos humanos, sino como adición general, la efectividad y vigencia del Estado de Derecho.

En el marco de la Constitución de la República del Ecuador, el artículo 11, menciona los principios a los cuales está sometida la protección de los derechos humanos, al estipular que el ejercicio de los derechos se regirá por los siguientes principios:

> 1. Los derechos se podrán ejercer, promover y exigir de forma individual o colectiva ante las autoridades competentes; estas autoridades garantizarán su cumplimiento.

> 3. Los derechos y garantías establecidos en la Constitución y en los instrumentos internacionales de derechos humanos serán de directa en inmediata aplicación por y ante cualquier servidora o servidor público, administrativo o judicial, de oficio o a petición de parte (…)
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> 7. El reconocimiento de los derechos y garantías establecidos en la Constitución y en los instrumentos internacionales de derechos humanos, no excluirá los demás derechos derivados de la dignidad de las personas, comunidades, pueblos y nacionalidades, que sean necesarios para su pleno desenvolvimiento.
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> 9. El más alto deber del Estado consiste en respetar y hacer respetar los derechos garantizados en la Constitución.
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> El Estado, sus delegatarios, concesionarios y toda persona que actúe en ejercicio de una potestad pública, estarán obligados a reparar las violaciones a los derechos de los particulares por la falta o deficiencia en la prestación de los servicios públicos, o por las acciones u omisiones de sus funcionarias y funcionarios, y empleadas y empleados públicos en el desempeño de sus cargos (…) (Paréntesis nuestros).

Además, los jueces administrarán justicia con sujeción a las disposiciones constitucionales, a los instrumentos internacionales de derechos humanos y a la ley, según lo dispuesto por el artículo 172 de la Constitución de la República del Ecuador. Con mayor extensión, el artículo 426 constitucional refiere que también las autoridades administrativas y los servidores públicos aplicarán directamente las normas previstas en los tratados internacionales de derechos humanos siempre que sean más favorables a los establecidos en la Constitución.

Por tanto, el Estado Ecuatoriano, en aras de cumplir con su obligación internacional y con las disposiciones constitucionales en cuanto a la salvaguarda de los derechos humanos, debe ejecutar las sentencias de la Corte IDH, puesto que representan un soporte real y cercano de protección y efectividad de los instrumentos internacionales que recogen la protección de los derechos humanos, ya que no basta con el planteo normativo, sino que la tutela de los derechos humanos tiene que ser verdadera. Además, el artículo 62 de la Convención Americana sobre Derechos Humanos especifica, que todo Estado reconoce como obligatoria de pleno derecho y sin convención especial, la competencia de la Corte sobre todos los casos relativos a la interpretación o aplicación de dicha Convención Americana sobre Derechos Humanos.

Es menester destacar, que si bien, la mención de la Corte Interamericana en la Constitución de la República del Ecuador no es expresa, no es menos cierto que cuenta, entre diversos mecanismos, con las funciones conferidas a la Corte Constitucional como máximo tribunal interno de la República del Ecuador para ejecutar sus decisiones; en otras palabras:

> La Corte Constitucional ejercerá, además de las que le confiera la ley, las siguientes atribuciones: 1. Ser la máxima instancia de interpretación de la Constitución, de los tratados internacionales de derechos humanos ratificados por el Estado ecuatoriano, a través de sus dictámenes y sentencias. Sus decisiones tendrán carácter vinculante (…). 5. Conocer y resolver, a petición de parte, las acciones por incumplimiento que se presenten con la finalidad de garantizar la aplicación de normas o actos administrativos de carácter general, cualquiera que sea su naturaleza o jerarquía, así como para el cumplimiento de sentencias o informes de organismos internacionales de protección de derechos humanos que no sean ejecutables por las vías judiciales ordinarias (artículo 436, Constitución de la República del Ecuador) (Paréntesis nuestros).

Un mecanismo para ello es la acción por incumplimiento, cuya competencia le corresponde a la Corte Constitucional y tendrá por objeto garantizar la aplicación de las normas que integran el sistema jurídico, así como el cumplimiento de sentencias o informes de organismos internacionales de derechos humanos, cuando la norma o decisión cuyo cumplimiento se persigue contenga una obligación de hacer o no hacer clara, expresa y exigible, tal como lo señala el artículo 93 de la Constitución de la República del Ecuador.

Es pertinente resaltar, que la Corte Interamericana de Derechos Humanos, puede orientar al Estado sobre los pasos necesarios para ejecutar las sentencias, incluso servir como órgano informativo a la Asamblea General de la Organización de los Estados Americanos acerca de tal finalidad. En tal sentido, la Corte Interamericana de Derechos Humanos no sólo conoce de las denuncias ante ella interpuestas –léase función contenciosa–, sino que también tiene labor supervisora de la ejecución de las sentencias por ella dictadas, de tal manera que puede solicitar al Estado correspondiente –en este caso al ecuatoriano- información sobre las actividades que realmente han sido realizadas para la ejecución del fallo, es decir, para verificar los pasos que, efectivamente, se hayan desarrollado para el cumplimiento de las decisiones, lo cual tiene que ser en tiempo oportuno. Si bien, la labor supervisora de la Corte refuerza las actuaciones encaminadas a la protección de los derechos humanos, no es menos cierto que:

> Esta labor no tenía, en sus orígenes, un respaldo convencional ni reglamentario expreso. Desde su primera sentencia en materia de reparación, sin embargo, la Corte dispuso que 'supervisará el cumplimiento de las reparaciones acordadas y que sólo después [de que éstas se declaren cumplidas] archivará el expediente'. Estos procesos de supervisión se tradujeron en la remisión de comunicaciones con el Estado que en este caso se extendieron por ocho años, hasta que la Corte declarara por cumplida la sentencia (Correa, 2014: 845).

Debido a lo anterior, se dará cuenta, de manera breve, acerca de algunos casos denunciados y tramitados por ante la Corte en contra de la República del Ecuador que han sido objeto de sentencia y conocer si los resultados efectivos de las mismas, en cuanto al resarcimiento en cada uno de ellos en razón la labor supervisora.

Tales casos se decidieron entre los años 2007 y 2016, los mismos han estado referidos a las violaciones de los derechos humanos que se indican a continuación: derechos a las garantías judiciales, a la protección judicial e integridad personal (Caso Albán Cornejo vs. Ecuador. Sentencia de 22 de noviembre de 2007: Fondo, Reparaciones y Costas; Caso Mejía Idrovo vs. Ecuador. Sentencia de 5 de julio de 2011: Excepciones Preliminares, Fondo, Reparaciones y Costas; Caso Suárez Peralta vs. Ecuador. Sentencia de 21 de mayo de 2013: Excepciones Preliminares, Fondo, Reparaciones y Costas; Caso del Tribunal Constitucional (Camba Campos y otros) vs. Ecuador. Sentencia de 28 de agosto de 2013: Excepciones Preliminares, Fondo, Reparaciones y Costas); derecho a la propiedad privada (Caso Salvador Chiriboga vs. Ecuador. Sentencia de 6 de mayo de 2008: Excepciones Preliminares y Fondo. Sentencia de 3 de marzo de 2011: Reparaciones y Costas); derechos a la consulta, a la propiedad comunal indígena y a la identidad cultural (Caso Pueblo Indígena *Kichwa de Sarayaku*vs. Ecuador (Sentencia de 27 de junio de 2012: Fondo y Reparaciones); derecho a la vida y del deber de protección de los niños (Caso García Ibarra y otros vs. Ecuador. Sentencia de 17 de noviembre de 2015: Excepciones Preliminares, Fondo, Reparaciones y Costas); garantías judiciales de independencia e imparcialidad, derecho a una protección judicial efectiva y obligación de garantizar el derecho a la vida de la víctima (Caso Valencia Hinojosa y otra vs. Ecuador. Sentencia de 29 de noviembre de 2016: Excepciones Preliminares, Fondo, Reparaciones y Costas).

Ahora bien, de la revisión de dichos casos[5] se desprende que la mayoría ha contado con el resarcimiento previsto en las sentencias y la

5 Caso Albán Cornejo vs. Ecuador (Sentencia de 22 de noviembre de 2007: Fondo, Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, 28 de agosto de 2015); Caso Salvador Chiriboga vs. Ecuador (Sentencia de 6 de mayo de 2008: Excepciones Preliminares y Fondo. Sentencia de 3 de marzo de 2011: Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, fecha 3 de mayo de 2016); Caso Mejía Idrovovs. Ecuador (Sentencia de 5 de julio de 2011: Excepciones Preliminares, Fondo, Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, 4 de septiembre de 2012); Caso Pueblo Indígena *Kichwa de Sarayaku*vs. Ecuador (Sentencia de 27 de junio de 2012: Fondo y Reparaciones), situación actual (Supervisión de cumplimiento de la sentencia, 22 de junio de 2016); Caso Suárez Peralta vs. Ecuador (Sentencia de 21 de mayo de 2013: Excepciones Preliminares, Fondo, Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, 28 de agosto de 2015); Caso del Tribunal Constitucional (Camba Campos y otros) vs. Ecuador (Sentencia de 28 de agosto de 2013: Excepciones Preliminares, Fondo, Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, 23 de junio de 2016); Caso García Ibarra y otros vs. Ecuador (Sentencia de 17 de noviembre de 2015: Excepciones Preliminares, Fondo, Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, 5 de febrero de 2018); Caso Valencia Hinojosa y otra vs. Ecuador (Sentencia de 29 de noviembre de 2016: Excepciones Preliminares, Fondo, Reparaciones y Costas), situación actual (Supervisión de cumplimiento de la sentencia, 14 de marzo de 2018).

Corte los ha dado por concluido, la excepción es el Caso Pueblo Indígena *Kichwa de Sarayaku* vs. Ecuador, en el cual el Estado ecuatoriano ha dado cumplimiento a realizar un acto público de reconocimiento de responsabilidad internacional por los hechos y violaciones de este caso, realizar las publicaciones y radiodifusión de la sentencia y de su resumen oficial; y, pagar las cantidades fijadas en la sentencia por concepto de indemnizaciones por daños materiales e inmateriales, y por el reintegro de costas y gastos; no obstante, aún debe continuar implementando la medida de reparación relativa a la implementación de programas o cursos obligatorios referidos a los estándares nacionales e internacionales en derechos de los pueblos y comunidades indígenas, dirigidos a funcionarios militares, policiales y judiciales.

De lo anterior, puede indicarse que el Estado ecuatoriano ha actuado conforme a los parámetros emanados de las decisiones de la Corte Interamericana de los Derechos Humanos para el cumplimiento de estas; y, por ende, de la Convención Americana de los Derechos Humanos, puesto que la ejecución de tales sentencias contempla esfuerzos nacionales e internacionales para la protección debida, real y oportuna de los derechos humanos. Por su puesto, que algunos resarcimientos requieren un compromiso más elevado, pero la responsabilidad de tutela está reflejada. Así, revisten gran importancia las decisiones de la Corte, no solo en cada caso, sino que se proyectan a la sociedad, vinculando las obligaciones de los órganos de protección de derechos humanos internacionales con la eficacia de las instituciones internas de la República del Ecuador.

Conclusiones

Los derechos humanos y su protección deben ser el aspecto central en la interpretación jurídica y las decisiones de los jueces, de la mano de las instituciones nacionales e internacionales garantes de la promoción y tutela de los seres humanos, por tal motivo, existe en cúmulo de instrumentos de derechos humanos, entre ellos, la Convención Americana de Derechos Humanos, la cual aunque no contiene una norma expresa que consagre la obligación de los Estados a resarcir los daños por ellos causados, sostiene en su artículo 25, numeral 1°, que toda persona tiene derecho a un recurso sencillo y rápido o a cualquier otro recurso efectivo ante los jueces o tribunales competentes, que lo amparen contra los actos que violen sus derechos fundamentales; de este modo, cada Estado tiene que mantener vigente recursos para la reparación pertinente.

Por lo anterior, una vez que la Corte IDH decide el resarcimiento, tal decisión es vinculante y obligatoria para el Estado, ello implica una plena restitución de la situación anterior con su correspondiente indemnización por los daños materiales o morales que se hayan causado.

Concretamente, en el caso ecuatoriano, se le otorga preeminencia a los derechos humanos por la recepción suprema otorgada a los tratados de derechos humanos que revistan mayores ventajas que las contenidas en la normativa interna, incluso los implícitamente establecidos; en tal sentido, no existe una lista acabada de derechos humanos, son atributos progresivos inherentes a la persona humana. Así, el Estado ecuatoriano es el obligado principal de su protección, incluso debe asumir las decisiones emanadas de corte internacionales, como es la Corte IDH.

Para lograr sus fines, la Corte tiene diversas funciones: contenciosa, provisora y consultiva; y, una que se extiende hasta la verificación o supervisión del resarcimiento de los daños causados establecidos mediante sentencia, la labor supervisora. Del análisis realizado se desprende que existe real recepción de las decisiones de la Corte IDH por parte de la República del Ecuador, pues su Constitución propende al amparo de los derechos humanos incorporando recursos y órganos necesarios para la consecución de tal propósito, elevando la importancia del ser humano en cada una de las actuaciones del Estado.

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Evolutionary trends in the interpretation of the European Court of Human Rights under the European Convention on Human Rights

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Abstract

The purpose of this Article is to analyse evolutionary trends in the interpretation of the European Convention on Human Rights (ECHR) by the European Court of Human Rights (ECtHR). To achieve this goal, a wide range of general philosophical methods were used. The Article submits that the ECHR has shown a growing commitment to the evolutionary method of interpretation, using the doctrine of a «living instrument», the ECHR, which is particularly important for Member States with specific problems, although this method limits the scope in the discretion of the State. It is concluded that the interpretative methodology used by the ECHR involves the use of its methods, including increasingly developing methods of consensus, efficiency, judicial activism, comparison, innovative interpretation, autonomous method, and «balance» method. This demonstrates, inter alia, the unlimited potential to improve the ECHR's interpretation of conventional standards. In the context of modern transformations in the direction of proactive international justice, judicial activism objectively departs from a formal application of legal norms and reflects the ECHR's desire to protect the fundamental human rights of individuals and communicatethem.

Keywords: evolutionary trends in legal interpretation; European Court of Human Rights; interpretation of rules of international law; consensus method; judicial activism.

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Tendencias evolutivas en la interpretación del Tribunal europeo de Derechos Humanos en el marco del Convenio Europeo de Derechos Humanos

Resumen

Este artículo tiene como objetivo analizar las tendencias evolutivas en la interpretación del Convenio Europeo de Derechos Humanos (CEDH) por parte del Tribunal Europeo de Derechos Humanos (TEDH). Para lograr este objetivo, se utilizó una amplia gama de métodos filosóficos generales. El artículo sostiene que el CEDH ha mostrado un creciente compromiso con el método evolutivo de interpretación, utilizando la doctrina de un «instrumento vivo», el CEDH, que es particularmente importante para los Estados miembros que tienen problemas específicos, aunque este método limita el alcance en la discreción del Estado. Se concluye que la metodología interpretativa utilizada por el CEDH implica el uso de sus métodos, entre los que se están en desarrollo cada vez más los métodos de consenso, eficiencia, activismo judicial, comparación, interpretación innovadora, método autónomo y método de «equilibrio». Lo que demuestra, entre otras cosas, el potencial ilimitado para mejorar la interpretación de las normas convencionales por parte del CEDH. En el contexto de las transformaciones modernas en la dirección de una justicia internacional proactiva, el activismo judicial se aparta objetivamente de una aplicación formal de las normas legales y refleja el deseo del CEDH de proteger los derechos humanos fundamentales de personas y comunidades.

Palabras clave: tendencias evolutivas de interpretación jurídica; Corte Europea de Derechos Humanos; interpretación de normas de derecho internacional; **método de consenso**; activismo judicial.

Introduction

Methods of research and analysis have made it possible to determine that the essential feature of the evolutionary approach in modern international legal reality is its focus on humans as the highest value. International human rights treaties are an integral part of modern international law, but they also have their own characteristics. Their distinctive feature is the origin and the nature of the obligations of parties, as human rights treaties are agreements between states that confer specific rights on persons who are not themselves parties to the treaty and for whom their obligations derive from states.

The results of this article made it possible to determine that, on the one hand, the evolutionary approach in international law can contribute to

its dynamic development; on the other hand, its application can be quite problematic in practice, as there is no exact legal procedure by which to establish its existence. Torp Helmersen (2013) draws attention to the fact that treaties, when concluded, formally remain static; but at the same time the reality in which treaties operate is more complex, it is not static as economic, political, cultural, and technological realities do change. In many areas, the law must be flexible in order to remain relevant and effective; in international law, this flexibility can be provided primarily by the evolutionary interpretation.

This study confirms that, firstly, the evolutionary approach follows from the very meaning of the ECHR as a catalog of human rights, the content of which evolves together with social moral guidelines; secondly, the evolutionary interpretation of law by the ECtHR is closely linked to the teleological interpretation; thirdly, the evolutionary approach involves finding out the consensus of the states parties to the ECHR on the key changes taking place in public life and affecting the content of fundamental human rights; fourthly, the ECtHR recognizes the need for a "cautious" application of the evolutionary interpretation of human rights guaranteed by ECHR, as such an approach could lead to an unjustified extension of obligations of Parties under the ECHR (Kretova, 2015).

1. Methodology

Determining a methodological basis was one of the crucial stages of writing this article. The methodology is based on a comprehensive approach to the analysis of object and subject of research, which covers a wide range of general philosophical, general scientific, special scientific and legal methods. A general methodological basis of the study was the dialectical method of scientific knowledge, which provided a comprehensive study of the integral connection of doctrine with practice.

Among the interdisciplinary methods, a special place occupies the system-structural method, on the basis of which system relations in the system of international and national justice were studied and substantiated. The use of the psychological method in this article made it possible to reveal nature and significance of judicial discretion in the administration of international and national justice. The historical method allowed us to trace the evolution of the formation of rules for the interpretation of international treaties. Established patterns, generalisations and conclusions of the author are largely based on the results of scientific analysis of significant law enforcement practice of the ECtHR, carried out by using the empirical method of research.

A critical methodological principle was the logical method of clear construction of the research, which is based on the need to study the

evolution and development of legal interpretation in international law, emergence, and operation of the ECtHR, which is one of the main subjects of interpretive activity in international law. This logical sequence of examining independent, but inextricably linked issues allowed us to reach a qualitatively new level of reflection of the subject of study and fully solve the tasks set in the article.

Modern methodological approaches such as anthropological and synergetic ones were also actively used in the article. The anthropological method focused on the anthropocentrism of the interpretation process carried out by the ECtHR. The synergetic method allowed to determine basic principles and patterns of functioning of the ECtHR as a subject of interpretation and the formation of its interpretive methodology.

Objectively, the article widely uses legal research methods. In particular, the formal-legal method was used to study treaties and national legislation of Ukraine and to analyse the case-law of the ECtHR and the practice of courts of Ukraine. The comparative legal method made it possible to compare treaties interpretation with other legal interpretations, substantiated the comparative analysis of the peculiarities of European and national justice.

2. Theoretical framework

An analysis of the scientific literature certifies that the discussion of approaches is reduced to the analysis of static and dynamic legal interpretative approaches (Bjorge, 2014). For example, according to A. Orakhelashvsvili (2008), the dominance of the evolutionary approach to the interpretation is noticeable in international practice, which is confirmed by the analysis of the ECtHR, which in interpreting the Convention and its Protocols mainly bases its judgement on the spirit rather than on the letter of interpretation.

Professor Ingo Venzke (2015) also speaks about the dynamism of international law in justifying the need for evolutionary interpretation: "The Achilles heel" of international law doctrine is its static understanding of international law so that an act of interpretation looks like restoration, not creation.

Although the evolutionary approach to interpretation has recently attracted the keen attention of researchers, Inagaki Osamu (2015) notes that its application in the judiciary is not fully clarified. The issue is complicated by the fact that one of the main characteristics of the international legal order is the lack of legislative power as such: in this case, it is not entirely clear how treaties can adapt to new situations that arise after their conclusion. One of the possible ways is to change the treaty, but this process is long, so a more flexible option is to interpret international treaties. As argue

prof. Tymchenko and Kononenko (2012), the evolutionary interpretation provides a gradual development of the content of the international agreement due to changes taking place in society.

In the context of ECHR`s interpretation, it is important to consider certain aspects of such a legal phenomenon as judicial activism. W. Marshall (2002) identifies features of judicial activism. Dothan (2018) explores factors and causes of national systematic bias of judges. Evseev (2015), sharing the position of the retired ECtHR judge A. Kovler, notes that judicial activism occurs when the Court has several interpretations within its case law, but the Court goes beyond that. S. Sherry (2014), emphasizing positive characteristics, underscores that judicial activism in a certain sense of civilization is an attribute of a democratic legal system.

3. Results and discussion

3.1 The object and the purpose of human rights treaties

In general, the object and the purpose of human rights treaties, is to protect the rights of the individual and to play a central and crucial role in their interpretation. In accordance with this task, the interpretation must be carried out consistently and must adhere to certain established principles, among which, first of all, the principle of efficiency, evolution, autonomy. *European Convention on Human Rights* (the ECHR – the Convention) of 1950 was the first mandatory instrument to protect human rights, interpretation of which is carried out by the European Court of Human Rights (the Court – the ECtHR) (Wildhaber, 1998).

The evolutionary approach has become especially popular in ECtHR`s pratice. According to Art. 32 of the ECHR, the Court is called upon to decide all issues of interpretation and application of the ECHR and its Protocols in resolving interstate cases, considering individual complaints, issuing advisory opinions. In fact, ECtHR`s judges are empowered to interpret the ECHR and its Protocols, within the framework of the evolutionary approach, taking into account changing life realities. They use this power in practice - the tendency is called “judicial activity” or “judicial activism”.

Inagaki Osamu (2015) identifies two stages of judicial interpretation in ECtHR`s case-law. In the first stage, as the author notes, it is established whether the term or the provision can be interpreted in the context of circumstances existing not at the time of their application, but at the time of their adoption. If the result is positive, the interpretation proceeds to the second stage, in which the interpretation will be carried out considering various circumstances that have arisen since the conclusion of the treaty. Inagaki Osamu (2015) considers the ECtHR to be the most “interpretive”,

in other words one that prefers the evolutionary interpretation, more often bearing in mind the circumstances that arise after the conclusion of the treaty, not only further development of international law but also further practice.

The interpretation of the legal provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights is characterized by indeterminate dynamics, the presence of socio-cultural determinant spontaneity of the emergence of new social situations (Huralenko *et al.*, 2020).

However, researchers are faced with an important question: is the evolutionary approach in the process of interpreting international law a clear positive trend? It is worth noting that the evolutionary approach cannot completely displace a static approach, as the latter is in a sense a "guarantor" of the rule of law.

Regarding the effectiveness of the mechanism of the Court and the evolution of the organizational structure due to the growing number of cases after the expansion of its jurisdiction to the East, one may primarily pay attention to certain institutional features that affect ECtHR`s interpretational activity.

Initially, the main body to which individuals could file complaints was the European Commission of Human Rights. If the dispute has not been settled, the Commission submitted a report either to the Committee of Ministers, or to the Court. One of these bodies had to consider and solve the case. The case was heard in plenary sessions or chambers (comprising 7 judges). When Protocol No. 11 entered into force, a new single body was set up in place of the Commission and the Court, the European Court of Human Rights, which could deal with complaints on its own and issue decisions in all cases. The admissibility of complaints was determined by committees (comprising 3 judges) and chambers (comprising 7 judges) considering both the admissibility and the cases themselves.

The most important cases concerning the interpretation of the Convention were to be discussed in the Grand Chamber (comprising 17 judges). The incredible workload of the ECtHR and the length of the proceedings led to the adoption of Protocol № 14, which allowed judges to determine the admissibility of cases individually, and committees (comprising 3 judges) were given additional powers to issue decisions in ordinary cases. It is clear that institutional improvements speed things up but reduce the ECtHR's ability to focus on each case. The Parliamentary Assembly of the Council of Europe elects 14 judges for a term of 9 years from among the candidates nominated by each member state. Each judge may serve in its capacity only for one term. The prerequisite is the compliance of candidates with high moral and ethical qualities.

It is also assumed that judges will be politically unmotivated. However, in the literature we find research on the national systematic bias of judges due to certain factors: psychological (patriotic beliefs); economic (expected material reward); selection conditions (adherence to a certain ideology); cultural (education, experience gained in the country) (Dothan, 2018). At the same time, it seems that it would be possible to avoid a biased interpretation due to the careful formation of the composition of judges for consideration of cases. However, scholars observe the formation of coalitions between biased judges through legal reasoning or as a result of leaning in favor of one's own state. "A systemic bias that does not favor a particular state, but rather is a judicial policy" among judges from the former socialist countries, in particular, is stressed as well (Dothan, 2018).

Over the last decade, the ECtHR has formed a research unit that conducts research on issues of comparative and international law, which arise mainly in cases considered by the Grand Chamber. As a result, the ECtHR has at its disposal extremely useful and detailed comparative and international legal information, as well as the collective knowledge of its members, the registers of the Court, and the research of the amicus curiae of non-governmental organizations (Harris and O'Boyle, 2014).

Interpretative rules are an important basis for ensuring the proper exercise of the right to a fair trial at the national level. Interpretative rules applicable to treaties, in general, are also applicable to human rights treaties, as is the undoubted application in such cases of the principles of interpretation provided for by Art. 31, art. 32 and Art. 26 of the ECHR. Namely, *principle of good faith* (the treaty must be interpreted "in good faith"), *principle of literality* (the contract must be interpreted in accordance with the usual meaning of the terms of the treaty, in their context), *principle of systematic nature* systematic view of the whole treaty, teleological *principle* (according to the subject and the purpose of the treaty).

However, the interpretation of human rights treaties requires a special approach and taking into account the specific characteristics of these treaties. Since the ICJ has established that treaties should be interpreted and applied within the legal system that existed at the time of interpretation, and not at the time of preparation or adoption of the text, there is no point in talking about the need to clarify the intentions of their developers. Sometimes ECtHR's decisions run counter to developers' intentions. Thus, the retired judge of the ECtHR prof. Butkevich (2010) emphasizes:

> It is true that the Convention and its Protocols must be interpreted in the light of the conditions which exist today, but the Court can not, just for the purpose of evolutionary interpretation, derive from the Convention a right not originally included therein (2010: 83).

3.2 Method of consensus as a manifestation of the evolutionary approach in the activities of the ECtHR

Jurisdiction of the ECtHR, according to Art. 32 of the ECHR, includes "all matters concerning the interpretation and application of the Convention and of the Protocols". The Court must also give reasons for its decisions (Article 45 § 1), which are binding only for the State party to the proceedings, as the defendant or the applicant.

The ECtHR has repeatedly emphasized that it adheres to the interpretative principles of the ECHR. In its interpretative practice, the Court uses the Convention in different ways: sometimes in a latent form as a common practice. But the same practice shows that the Court uses its own methodology of interpretation, which is based on the method of consensus, in other words, the combination of interpretation of international treaties (the ECHR) with the practice of Member States (national legal system), use of fairly broad standards, analysis of interpretations of Constitutional Courts of the Member States. The consensus method is certainly a manifestation of the evolutionary approach of the Court, which is particularly important for the Member States with similar problems, although it limits the scope of the State's discretion.

Among the reasons for using the consensus method, the judges of the ECtHR single out the following:

1) strengthening the legitimacy of the ECHR in the case of evolutionary interpretation.
2) the need to persuade the Contracting Parties and issue acceptable court decisions.
3) avoidance of arbitrary decision-making (for example, when judges prefer their own moral views).
4) determining the scope of discretion.
5) assisting the Court in resolving new issues of interpretation (of the Convention), issues of special importance or in dispute (Dzehtsiarou, 2015).

Being convinced that "the Court's flexible and non-automatic approach to the European consensus can provide a sufficient guarantee against the abuse of a majority logic in the case-law of the ECtHR" most ECtHR`s judges supported the possibility of conceptualizing the European consensus "as a rebuttable presumption if there are good reasons" (Dzehtsiarou, 2015: 204).

Another feature of the Court's interpretation of the Convention is the use of a self-developed autonomous method, which is based "primarily on the domestic law of the Member States and their international obligations" but is not limited to the meaning of certain concepts within national legal systems, which can significantly expand their content. At the same time, the Court uses the "balancing" technique, which it applies in the following cases:

1) if the Court has found interference with the law, it determines whether such interference was justified (proportionality of purpose and requirements).
2) when the Court decides whether there is unjustified discrimination in the application of Art. 14 of the Covention together with other articles.
3) if the Court recognizes that certain rights also have a positive dimension in the sense that they not only guarantee the absence of State interference but also oblige the State to actively protect those rights (ECHR, 2002);
4) The Court from time to time determines the meaning of very vague terms through a balancing process (Djeffal, 2016).

3.3 "Judicial activism" as a peculiarity of the ECtHR`s interpretation

One of the peculiarities of the dynamics of interpretive activity of the EctHR is its intellectual and creative nature; mechanical transformation of legal rules into individual acts and "standard" use of previous court decisions are not allowed (Huralenko *et al.*, 2020). Another issue is a peculiarity of the interpretation of the EctHR is the tendency to "judicial activism". This term has been used since 1947. Today it is firmly established in the scientific and categorical apparatus of researchers of international and European law, but it is used in different meanings. As a rule, it is used to criticize judges who do not simply interpret or apply the legal text in an active way but decide cases without taking into consideration the rule of law that they intend to apply. Or it is used to accuse judges who do not adhere to the principle of integrity in making decisions.

W. Marshall (2002) identifies the following signs of judicial activism: 1) counter-majority, when courts overturn decisions taken by representative bodies; 2) refusal of courts to comply with the law; 3) refusal of courts to take into account existing precedents; 4) the refusal of courts to comply with the established limits of their jurisdiction; 5) creation of new doctrines

and rights; 6) use of the judiciary power to establish new responsibilities for other branches of government; 7) the use of the judiciary to promote their own interests.

Judicial activism is understood as cases when international courts go beyond the wording of treaties, which define the scope and intentions of states. The discussion on the judicial activism of international courts mainly focuses on their interpretive and law-making activity, which was not envisaged by states when creating a particular international court. The Court of Justice of the EU, which indicated a qualitatively new procedural way to solve a number of doctrinally confusing and practically unsolvable legal problems, is considered to be the most "activist" (Karvatska, 2019).

The activities of the Court in the context of "judicial activism" are manifested in several forms. For example, sharing the position of A. Kovler (2010), a resigned judge of the ECtHR, Evseev (2015) notes that "judicial activism" occurs, firstly, when the Court has several interpretations within its case law, but the Court goes beyond this framework. Secondly, when the Court searches for certain procedural procedures (the author cites the example of the "Katyn case", *Janowiec and others v. Russia* (ECHR, 2013), when the Court did not reject the complaint as not meeting the criterion *ratione temporis* and opened proceedings.

Among the many drawbacks of "judicial activism", the most significant is the reluctance of courts to take into account the will of representative authorities (in cases of ignoring legislation). But, in contrast to the critique of "judicial activism", we agree with the arguments of the American Professor S. Sherry (2014) that the activism is in some civilisational sense a quality of a democratic legal system. As Prof. Savchyn (2016) notes, speaking about peculiarities of the domestic justice system, the judge's discretion is to choose the best solution to a legal case, based on fundamental principles of law, in particular, respect for human rights, the rule of law and democracy. The scholar refers to Lord Bingham's view that in modern requirements of the rule of law, judicial discretion should be exercised cautiously on reasonable grounds, with little freedom of choice, and judges should not be inclined to over-innovate the law, especially when new laws are passed.

The term "judicial activism" is also used to denote limits of treaties interpretation. The requirement not to use undesirable "judicial activity" consists in the fact that the treaty interpreter must respect wording, context and its objective purpose and can not perform law-making functions (create the rule of law). But, at the same time, if the interpreter does not allow himself to carry out "undesirable" judicial activity, then a certain share of activity may not only be permissible, but also, on the contrary, "desirable", for example, in a situation where a certain wording is unclear to the interpreter. It should be noted that "judicial activism" mainly concerns the interpretation of the rules governing disputes. Thus, the main problem

relates to a possible undesirable (or intentional) deviation from the true interpretation of legal requirements.

The phenomenon of "judicial activism" in international justice has its own characteristics. Firstly, regardless of whether an interpretation can be regarded as a judicial activity, it is definitely closely linked to the text of the treaty itself. Secondly, when an international judge issues a decision on a case, he must, at his own discretion, interpret the treaty and, at the same time, not deviate from the general principles of treaty interpretation. Thirdly, international judges must have restrictions on the exercise of their powers. Such requirements include a fair interpretation of the text of the applicable international treaty and a reasoned implementation.

However, in the context of understanding the true nature of judicial discretion, treaty interpretation should not be limited to the actual interpretation of the "letter" of the text of the treaty. A judge may (and should) use the opportunity to fill a gap in the regulation of a treaty, if necessary, to ensure its effect. This issue, like no other, requires balance. We share the position of Taiwan University Professor Chang-fa Lo (2017) that it is inappropriate to treat the term (concept) "judicial activism" only negatively, as its non-recognition may lead to a situation where an international judge will not be able to properly interpret the treaty resulting in failure to fill a gap and, ultimately, in non-performance of the treaty.

A disadvantage of the evolutionary approach is seen in the fact that judicial activism can lead to the fact that the contractual rule may eventually be interpreted quite unexpectedly for the state - a party to the treaty (Zaharova, 2016). An example of the evolutionary interpretation is the judgment in the case of Christine Goodwin v. The United Kingdom, (ECHR, 2002). Guided by the principle of subsidiarity, the ECtHR emphasized that States have a wide margin of discretion to decide which measures are necessary to exercise conventional rights within their jurisdiction and to address practical issues related to the legal implementation of the postoperative gender status of such persons.

The Court attached less importance to the lack of evidence of the existence of the single European approach to legal and practical problems than to clear and unequivocal evidence of an international tendency, which favors not only of an increased public acceptance of transgender people but also a legal recognition of their new sex after surgery. In other words, the Court did not burden itself with seeking consensus and issued a decision on the basis of possible changes (Zaharova, 2016).

Conclusions

A study and an analysis of evolutionary trends in interpretation are important from the point of view of increasing the efficiency and effectiveness of legal interpretation of the ECtHR and national authorities applying the ECHR, what is extremely important for parties recently acceded to the Convention. In legal systems of such member-states mainly technical-dogmatic methods of interpretation still prevail and judges don`t have the necessary skills to use international jurisprudence in the national legal system. The application of ECtHR`s decisions in national practice allows solving not only problems of justice, but ones of a political, economic and social settlement.

Peculiarities of the ECtHR's interpretation are the special nature of international human rights treaties and of the ECHR in particular, what determines the actualisation of their interpretation in the context of the object and the purpose of treaties, in other words paying attention to the protection of individual rights, but not to the intentions of the member-states in concluding the ECHR. There are also peculiarities of interpretation of institutional nature, which created certain differences at different stages of organizational transformation of the ECtHR.

An interpretational methodology developed by the ECtHR involves the use of its own methods, among which the methods of consensus, efficiency, judicial activism, comparison, innovative interpretation, autonomous method, and the method of "balancing" are becoming more and more exploited. The functioning of the ECtHR as a court, its interpretive method of building a holistic system through informal practice and setting standards by comparing the legal rules of member states, seem legitimate enough to define identifying evolutionary standards, and maximally contribute to their establishment and consolidation. The binding nature of ECtHR`s decisions only for parties to the dispute does not preclude, rather even affirms the need for the legislation of the Member States to comply with these standards, which must be sufficiently broad. Otherwise, the Court may be charged with "legislative" decisions. However, too broad standards make it incredibly difficult for the Court to operate.

The ECtHR, in compliance with the standards of interpretation provided for in Art. 31, Art. 32 and Art. 26 of the ECHR, has developed its own system of methods, approaches, principles - the methodology of interpretation, in which most attention is paid to the method of consensus, efficiency, activism.

A consensual examination allows the ECtHR to tie its decisions to the pace of changes in national law, recognising the political sovereignty of the respondent States and, at the same time, legitimising its own decisions against them, adhering to the principles of a democratic state governed by the rule of law.

The ECtHR demonstrates a growing commitment to the evolutionary method of interpretation, applying the doctrine of the "living instrument", but always relies on a thorough study of the domestic law of the Member States, their international obligations and law enforcement practices. A method of the consensus, which the ECtHR mostly uses for interpretation, does not fit into the provisions of paragraph 3 of Art. 31of VCLT rules. Discussions and court decisions often involve a focused approach, primarily to object and purpose, context, and subsequent practice of increasing human rights standards. At times this fact accelerates positive changes in national legislation and sometimes states a regression in domestic law. Regarding the problem of "judicial activism" in ECtHR`s justice, we summarise that, despite heated discussions on this issue, positive "activist" characteristics in its practice include the expansion of judicial competence and new approaches to treaty interpretation. In the context of profound modern transformations in the direction of objective international justice, judicial activism as a way to realise the fair nature of law reflects the trend according to which the Court seeks to increase its activity in protection of fundamental rights and objectively departs from the formal application of legal rules. Examples of ECtHR`s judicial activism encourages to seek to identify within ECHR new potential human rights opportunities.

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Realization of the right to free movement under quarantine conditions: practice of the European Court of Human Rights

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Abstract

Under uncertain conditions, the introduction of a state of emergency and quarantine measures, the scope of human rights may be subject to state interference and some rights cannot be exercised at all. The aim of the work is to examine the problem of the exercise of the right to freedom of movement and personal integrity in the context of COVID-19 through the practice of the European Court of Human Rights ECTHR. The theme of the study is the social relations that arise in the exercise of the right to freedom of movement and personal integrity in the COVID-19 pandemic. Research methods are the dialectical method, the method of system analysis, synthesis, induction, deduction, modeling, comparison, generalization, and formalization. As a result of the study, the problems of the realization of the right to freedom of movement and personal inviolability in COVID-19 were analyzed through the prism of ECtHR decisions. The international experience of regulating the right to circular under quarantine conditions was clarified and suggested ways to solve this problem to protect human dignity.

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Realización del derecho a la libre circulación en las condiciones de cuarentena: práctica del tribunal europeo de derechos humanos

Resumen

En condiciones de incertidumbre, la introducción de un estado de emergencia y medidas de cuarentena, el alcance de los derechos humanos puede estar sujeto a la interferencia del Estado y algunos derechos no pueden ejercerse en absoluto. El trabajo tiene como objetivo estudiar el problema del ejercicio del derecho a la libertad de circulación y la integridad personal en el contexto del COVID-19 a través de la práctica del Tribunal europeo de derechos humanos TEDH. El tema del estudio son las relaciones sociales que surgen en el ejercicio del derecho a la libertad de movimiento y la integridad personal en la pandemia de COVID-19. Los métodos de investigación son el método dialéctico, el método de análisis de sistemas, síntesis, inducción, deducción, modelado, comparación, generalización y formalización. Como resultado del estudio, se analizaron los problemas de la realización del derecho a la libertad de movimiento y la inviolabilidad personal en COVID-19 a través del prisma de las decisiones del TEDH. Se aclaró la experiencia internacional de regular el derecho a la circular en condiciones de cuarentena y se sugirieron formas de solucionar este problema para resguardo de la dignidad humana.

Palabras clave: realización de los derechos humanos; práctica del TEDH; libertad de movimiento; inviolabilidad personal; pandemia de COVID-19.

Introduction

The spread of the Covid-19 pandemic has changed people's lives. People began to travel less, visit crowded places, and, generally, move around. Such activities in November 2020 did not take place voluntarily but as a result of the adoption of a number of legislative acts. In order to ensure the security of the state border and to prevent the spread of coronavirus infection, each state has adopted regulations that have significantly affected the movement of its inhabitants and citizens.

In general, given the growing role of civil society institutions in many countries, it is important to study the issue of legislative provision of human and civil rights and freedoms, among which the right to freedom of movement occupies a special place. Movement is a major element of freedom, self-determination, and a necessary condition for the exercise of many other rights and freedoms.

Different countries regulate the issue of restriction of movement in emergencies, including the Covid-19 pandemic, which necessitates the analysis of theoretical aspects of legal regulation of this right: its concept and content, compliance of Ukrainian legislation on this issue with the provisions of international human rights law, consider the experience of other states on the constitutional regulation of this right and the content of bills on the right to freedom of movement in Ukraine, explore the possibility of restricting this right, and to analyze the case-law of the European Court of Human Rights (hereinafter – ECtHR) on this issue.

1. Analysis of recent research

At present, the question of the implementation of constitutional rights and freedoms of man and citizen in the context of Covid-19 is just beginning to be studied by scientists and is extremely relevant.

To study the problematic aspects of the exercise of the right to freedom of movement and personal inviolability, the works of such scholars, lawyers, and judges as Buchkivska (2013), Vlasenko (2020), Drozdov (2020), Egorova (2020), Kokhanovska (2015), Myshchak (2020), Sukmanova *et al.* (2020), Chervonenko (2020), and Shutko (2020) were analyzed. As it can be seen, in order to write relevant work, we used the most recent articles, research and publications.

Firstly, it should be noted, that Buchkivska (2013) investigated the restriction of individual freedom and inviolability during criminal proceedings, taking into account the case-law of the European Court of Human Rights.

Moreover, in her work, Vlasenko (2020) drew attention to the fact that Kyiv did not limit the effect of the Convention on Human Rights due to the epidemic. Thus, the author notes that under quarantine, which provides for several restrictions for citizens, only eight member states of the Council of Europe have suspended some articles of the European Convention on Human Rights and Ukraine is not among them.

Drozdov (2020) analyzed the criteria for ensuring human rights under Covid-19. The author drew attention to the most popular arguments about the illegality of restrictions on freedom of movement, which is that restrictions on constitutional human rights and freedoms are permissible

only in a state of war or emergency. Thus, Drozdov (2020) drew attention to Part 1 of Article 64 of the Constitution and the fact that rights and freedoms may be restricted in the cases provided for by it. According to Article 33 of the Constitution, freedom of movement may be restricted by law. As to the author, the thesis about the illegality of restrictions and the possibility of imposing them only in a state of emergency or martial law can be questioned. Regarding the proportionality and social necessity of the restriction, the author brings attention to the fact that to be constitutional, the restriction of a right or freedom must not only comply with the law, but also be proportional and socially necessary.

Besides, Kokhanovska (2015) analyzed the problems of exercising the right to freedom of movement in Ukraine, as well as the case-law of the European Court on these issues. She examines the provisions of the Civil Code of Ukraine and the Constitution of Ukraine and the stipulations of international instruments the conditions under which these restrictions are allowed, as well as the right to freedom of movement and the right to free choice of residence are analyzed on practical examples.

Alternatively, Kravets (2020) studied in detail the interference in various human rights during the pandemic. Then, Myshchak (2020) explained the legality of the introduction of quarantine in Ukraine and the compliance of restrictive measures with constitutional guarantees for the protection of citizens' rights. It should be noted that Sukmanova *et al.* (2020) analyzed the strengthening of quarantine measures, namely the restriction of free movement of citizens. Furthermore, Chervonenko (2020) investigated whether quarantine restrictions in Ukraine contradict the Constitution. Shutko (2020) summarized, in his work, all the legislative changes caused by coronavirus disease. What is more, Egorova (2020) emphasizes on how Covid-19 mobilizes and how civil society adapts to change.

Analytical materials on the researched topic from the sites of law firms and public platforms were also used in the work.

The above analysis of the literature confirms that the problem of exercising the right to freedom of movement and personal integrity through the practice of the ECtHR in quarantine is insufficiently studied, which indicates the need for comprehensive research.

2. Methodology

The study of the implementation of the right to freedom of movement and personal integrity in Covid-19 through the practice of the ECtHR used research methods such as dialectical method, method of system analysis, synthesis, induction, deduction, modeling, comparison, generalization, and formalization.

Primarily, the dialectical method made it possible to analyze the dynamics of the ECtHR's decisions on the exercise of the right to freedom of movement and personal integrity and their significance in the context of the need to ensure human and civil rights and freedoms during the quarantine.

Further, the method of comparison was used to study and establish differences between the exercise of the right to freedom of movement and personal inviolability in normal conditions and the conditions of Covid-19, as well as between the implementation of the studied right in quarantine in Ukraine and other countries.

Moreover, the generalization allowed us to identify key issues that reflect the realization of human and civil rights and freedoms in the context of Covid-19. It is also allowed to analyze the necessary changes for the successful implementation of the right to freedom of movement and personal integrity in Ukraine.

The method of abstraction allowed to imaginatively divert attention from the insignificant properties and connections of the exercise of the right to freedom of movement and personal inviolability. It helps to investigate the state of observance and realization of constitutional human and civil rights and freedoms in Ukraine under normal conditions and various restrictions.

What is more, the method of formalization allowed to reflect the problems of exercising the right to freedom of movement and personal inviolability through a formal examination of ECtHR decisions.

Using the method of systematic analysis, it became possible to divide the problem of exercising the right to freedom of movement and personal inviolability through the prism of the ECtHR decisions into its parts, namely: problematic aspects of the implementation of the Convention in Ukraine, problematic issues of legislative enshrinement implementation and problematic issues of application of the case-law of the European Court of Human Rights in Ukraine. The synthesis, in turn, made it possible to unite the individual aspects of social relations that arise, change, and cease during the exercise of the right to freedom of movement and personal inviolability as a whole.

The method of induction allowed us to draw conclusions on the research topic through the general problems of realization of human and civil rights and freedoms in a pandemic. The method of deduction made it possible to conclude by analyzing the peculiarities of the exercise of the right to freedom of movement and personal integrity in quarantine.

Besides, the method of analogy allowed us to analyze the realization of the right to freedom of movement and personal inviolability with the help of knowledge about how other rights are realized in the same conditions in Ukraine.

Finally, the method of modeling allowed to model situations in which the rights and freedoms of citizens will be realized in the conditions of quarantine in full or with the minimum restrictions which will be justified by public necessity.

When writing the article, the current legislation and case-law were analyzed.

3. Presentation of key research findings

3.1. International experience in ensuring the right to movement and personal integrity

The right to movement and personal integrity is one of the rights, affected by state interference during the quarantine. The Convention for the Protection of Human Rights and Fundamental Freedoms (United Nations, 1950) (hereinafter – the Convention) provides for the interpretation of the above rights, and the decision of the European Court of Human Rights (hereinafter – the ECtHR) reflects the mechanism of protection of rights guaranteed by the Convention. The basis of the general the principles of EU law are the priority of the rights of the individual, enshrined in the European Convention, which takes into account the constitutional traditions of European countries.

Concerning the international experience of exercising the right to movement and personal integrity, it should be noted that foreign governments have imposed many restrictions on ordinary life in the member states of the Council of Europe. These restrictions necessarily affect the exercise of rights and freedoms under the Convention, regardless of whether their imposition was accompanied by a notification under Article 15 of the Convention (United Nations, 1950: article 15) on the waiver of obligations by countries such as Armenia, Estonia, Georgia, Latvia, the Republic of Moldova and Romania. However, the undoubted existence of a certain obligation to act to protect life and physical integrity is necessary when assessing the compatibility of possible restrictions on other rights and freedoms. Thus, the articles of the Convention stipulate that the prevention of the spread of infectious diseases is one of the grounds for depriving a person of his or her liberty.

In Enhorn v. Sweden (European Court of Human Rights, 2005), the ECtHR found that it must also be demonstrated that the spread of an infectious disease is dangerous to the health or safety of the population and that the detention of an infected person is the last resort to prevent the spread of the disease because less severe measures were recognized and found insufficient to protect the interests of society. In addition, whenever these criteria are no longer met, the grounds for deprivation of liberty cease to exist.

Restrictions must be necessary for a democratic society and thus proportionate to the legitimate aim pursued. However, in only one case, Kuimov v. Russia (European Court of Human Rights, 2009), the ECtHR emphasizes that the restriction should be a temporary measure that should be lifted as soon as circumstances permit.

However, in the case of Covid-19, it should be borne in mind that the ECtHR considers significant interference with the law when the State has taken action in response to "the existence of an exceptional crisis without precedent".

It is necessary to determine whether the establishment of the peculiarities of movement is a deprivation of liberty or only interference with the freedom of movement. The ECtHR notes that to determine whether a person has been deprived of his or her liberty, it is important to analyze the situation and to consider the type, duration, consequences, and manner of the measure, as the difference between deprivation and restriction of liberty is character or essence.

Therefore, it is essential to prove the need to stop the spread of coronavirus and whether the measure was adopted only when other smaller restrictions did not apply, as well as whether it was not kept longer than was necessary to achieve the goal. Restricting access to certain places, districts, or parts of the country and even to places of residence is considered an interference with the right to freedom of movement.

Currently, there have been changes in the movement of Ukrainians. Thus, during the period of quarantine restrictions, the movement of Ukrainians changed as follows (Table 1).

Travel points	**Change in indicators from the control value during the Covid-19 pandemic**
Retail and recreation	-11%
Grocery stores and pharmacies	+5%
Parks	+3%
Transit stations	-6%
Workplaces	-27%
Residential	+2%

Table 1. The changes in the movement of Ukrainians. Data provided by the Google (2020).

As for the experience of foreign countries in solving the problem of realization of rights and freedoms, it was noted that several member states are deviating from their obligations. Latvia's resignation also implies a possible extension of imprisonment. Derogations from the obligations of

Armenia, Estonia, and Latvia include a ban on entry to all or some persons who are not citizens or legal residents. Armenia prohibits its citizens from leaving the country except for cargo, and a similar result will be achieved by Latvia's order to close international passenger traffic, as well as the requirement to cancel, postpone and not plan all business trips to countries affected by Covid-19, and appeals to refuse from traveling abroad. In their waivers, both the Republic of Moldova and Romania impose indefinite restrictions on freedom of movement. The ability of a person to leave any country, including his or her own, is guaranteed by Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (United Nations, 1963: article 2) but may be subject to restrictions, including health care, if necessary in a democratic society.

The European Union has provided travel recommendations and called for restrictions on "minor travel" – that is, travel other than travel or trips to a pharmacy, hospital, shop, or work. The latter is the most important: the EU and most EU countries believe that restrictive measures can last for a significant period of time – from several months to two years, and therefore should not lead to significant economic problems and social cataclysms. To do this, employers need to determine which employees are present and for how long is critical to maintaining economic activity. Besides, the EU has introduced restrictions on "minor travel" to the Schengen area. Thus, within 30 days, foreign nationals will be able to enter the EU only in exceptional cases. Each country decides individually on measures to control the coronavirus. These restrictions apply to all those who remain in its territory for the period of quarantine.

All mass events are banned in Austria; it is forbidden to gather in groups of more than five people; all bars and restaurants are closed; entry restrictions have been introduced. There are no restrictions on public transport in the country yet.

Estonia has imposed a state of emergency, quarantined, and banned foreigners from entering. At the same time, in Spain, people can go out only to buy medicine and food, go to work if there is an urgent need, and go to medical facilities and banks. Trips to care for children or the elderly are also allowed. You can leave the house to walk your pet. Some rent out their pets for this purpose, others go outside with toys. Spain has closed its borders to foreigners and restricted travel within the country. In Serbia, people over the age of 65 are banned from going outside. For older people living in villages and towns with a population of less than 5,000, the age barrier is slightly higher – the ban applies to anyone over 70 years of age (ICPS: International Centre for Policy Studies, 2020).

Now, it will be appropriate to pay attention to changes in movement in foreign countries (Estonia) (Table 2) and compare it with the experience of Ukraine.

Travel points	Change in indicators from the control value during the Covid-19 pandemic
Retail and recreation	-12%
Grocery stores and pharmacies	+1%
Parks	+3%
Transit stations	-23%
Workplaces	-16%
Residential	+7%

Table 2. Mobility changes in Estonia. Data provided by the Google (2020).

Thus, it can be seen from the Figure 1 (in comparison with the domestic legislator), in Estonia, new restrictive legislative norms work for the benefit of the population more effectively.

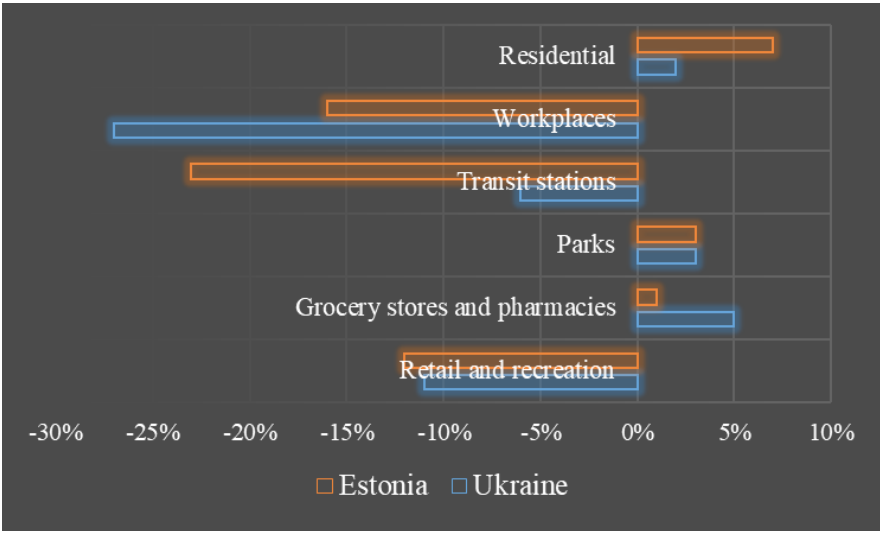

Figure 1. Mobility changes in Ukraine and Estonia: Comparison Chart. Own elaboration.

It should be noted that the extent of any restrictions imposed in response to a pandemic threat will be considered an unjustified interference with the rights and freedoms under the Convention – whether or not there is a reference to a waiver, will depend in particular on the specific situation in the Member State, as well as their degree and duration.

3.2. National legislation concerning the right to movement

According to the provisions of the Constitution of Ukraine (1996), Ukraine is a sovereign and independent, democratic, social, legal state, and man, his life and health, honor and dignity, inviolability, and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state, which is responsible to man for his activities; affirmation and protection of human rights and freedoms is the main duty of the state. The state is responsible to the person for the activity. The rights and freedoms of man and citizen are inalienable and inviolable. Constitutional human rights and freedoms are guaranteed and cannot be revoked.

Art. 29 of the Constitution of Ukraine (1996), everyone has the right to liberty and security of person. Exceptions to this rule are contained in the Constitution itself. Moreover, the article 33 of the Constitution of Ukraine states that everyone is guaranteed freedom of movement. Exceptions can be established only by law, not by-laws.

Under Article 29 of the Law of Ukraine "On Protection of the Population from Infectious Diseases" (2000: article 29) and the Law of Ukraine "On National Security of Ukraine" (2018) in order to prevent the spread of acute respiratory disease Covid-19 caused by coronavirus SARS-CoV-2, the Cabinet of Ministers of Ukraine by Resolution of March 11, 2020, No 211 "On prevention of the spread of acute respiratory disease Covid-19 caused by coronavirus SARS-CoV-2" (2020) (with further changes) throughout Ukraine quarantine (On the establishment of quarantine to prevent the spread of acute respiratory disease Covid-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of mitigation of anti-epidemic measures: Resolution, 2020).

By the provisions of the above resolution, several prohibitions have been established. Thus, it is forbidden:

- To be in public places without wearing personal protective equipment.
- Relocation by a group of persons of more than two persons, except in cases of official necessity and accompaniment of persons under 14 years of age.
- Unaccompanied persons in public places under the age of 14.
- Visiting parks, squares, sports and children's playgrounds, recreation areas, forest parks and coastal areas, except for walking pets by one person and in case of business necessity.
- holding mass events.

- Being on the streets without identity documents confirming citizenship or its special status; arbitrarily leave places of observation (isolation), etc. (On the establishment of quarantine to prevent the spread of acute respiratory disease Covid-19 caused by coronavirus SARS-CoV-2 in Ukraine and the stages of mitigation of anti-epidemic measures: Resolution, 2020).

Such restrictions largely affect the scope of human rights and freedoms in Ukraine. Therefore, given the restrictions, it is important to analyze in more detail the problems of exercising the right to freedom of movement and personal integrity in Covid-19, their legality. Further, attention should be paid to the ECtHR's position on state protection, to explore how ECtHR decisions are used by Ukrainian courts and model possible tools for addressing human rights and fundamental freedoms.

As already mentioned, inviolability and human security are recognized in Ukraine as the highest social value. The combination of the concepts of "freedom" and "personal integrity" is not accidental. They have a history. Freedom is the human right to do everything permitted by law. Under such conditions, a person can have complete freedom, be free to choose a certain course of action within the existing laws of the state. If a society does not ensure the realization of human rights and freedoms, such a society cannot be considered democratic.

Under modern conditions, this right is enshrined in international law and national legislation of Ukraine.

The Constitution of Ukraine stipulates that the Convention for the Protection of Human Rights and Fundamental Freedoms ratified by Ukraine is part of national legislation.

According to Art. 17 of the Law of Ukraine "On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights" (2006: article 17), courts use the Convention and the case-law of the European Court of Human Rights as a source of law.

The provisions of Article 19 of the Convention provide that, for States Parties to comply with the Convention, their obligations under the Convention and its Protocols, a European Court of Human Rights shall be established permanently. The Contracting Parties undertake to comply with the final decisions of the Court in any case to which they are parties.

That is, Ukraine's ratification of the Convention has obliged our state to create reliable and effective mechanisms for enforcing ECtHR decisions and applying the case law of this court as a source of law. In the case-law of the ECtHR, the notion of "freedom and personal integrity" is declared primarily in decisions on violations of Article 5 of the Convention, which enshrines a fundamental human right, namely the protection of everyone

from arbitrary interference by the State with his right to liberty. Any deprivation of liberty, as the Court notes, must be carried out not only under the basic procedural rules of national law but also following the purpose of Article 5, i.e. to protect a person from the arbitrariness of the authorities.

Under Article 5 of the Convention, the right to liberty and security of a person includes freedom from arbitrary arrest and detention, imprisonment only based on "law", the right to be informed of the reasons for arrest, the right to judicial review of arrest and detention, and the right to challenge the legality of arrest and detention, the right to compensation for illegal actions.

At the same time, proclaiming the "right to liberty", the Convention understands personal freedom as the physical freedom of a person.

3.3. The right to movement and personal integrity in ECTHR decisions

Consider how the right to movement and personal integrity is ensured in ECtHR decisions. Thus, the judgments of the ECtHR pursue the general purpose of the Convention – to ensure that no one may be deprived of this liberty arbitrarily (judgment in Engel and Others v. The Netherlands (1976)).

Not all types of deprivation of liberty are prohibited in the Convention. The right to liberty and security of a person within the meaning of the Convention shall be construed as protecting against any procedural or substantive infringement of personal freedom by public authorities. To ensure the rule of law, national authorities are obliged to comply with domestic law, and there should be no abuse of power or dishonesty in the actions of the state.

Thus, in the judgment in Winterwerp v. The Netherlands (European Court of Human Rights, 1979), the ECtHR emphasized that the notion of "lawful" encompasses both procedural and substantive rules. It somewhat coincides with the general concept of "procedure established by law". Compliance with domestic law is directly the responsibility of the State, and the Convention allows the ECtHR to decide whether domestic law has been complied with. Arbitrary deprivation of liberty carried out in violation of the law and without observance of the procedures and guarantees provided for by national law may lead to a violation of Article 5 of the Convention.

The ECtHR noted that the current legislation of Ukraine is imperfect, and it is necessary to adhere to the principle of legal certainty. Thus, in the judgment in Yeloyev v. Ukraine (European Court of Human Rights, 2008), the ECtHR considers that the absence of clearly worded provisions contradicts the criterion of "predictability of the law" for Article 5 § 1 of the Convention.

The ECtHR in Garkavyi v. Ukraine (European Court of Human Rights, 2010) stated that a person may not or may not be deprived of his liberty, except as provided for in the Convention. This list of exceptions is exhaustive, and only a narrow interpretation of these exceptions is in line with the purpose of this provision, which is to ensure that no one is arbitrarily deprived of his liberty. Thus, the right to freedom and security of a person is not absolute and may be limited, but only on the grounds and in the manner clearly defined by law.

Article 3 of the Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine" (2003) stipulates that freedom of movement is the right of a citizen of Ukraine, as well as a foreigner and stateless persons legally staying in Ukraine, to move freely and without hindrance at will in the territory of Ukraine in any direction, in any way, at any time, except for the restrictions established by law.

Thus, the spread of the Covid-19 pandemic has led to several restrictive measures that have restricted the rights of citizens, foreigners, and stateless persons in Ukraine, and the right to freedom of movement and personal integrity cannot be fully realized. However, such restrictions can be considered justified if their public necessity is proved, the legal procedure for imposing restrictions is followed, and such restrictions do not contradict the provisions of the Constitution, the Convention, and other legislative acts.

4. Discussion of the obtained results

As a result of the study, the problems of realization of the right to freedom of movement and personal inviolability in the conditions of Covid-19 through the practice of the European Court of Human Rights were analyzed and the following conclusions were made.

1. The Convention seeks to ensure that no one shall be deprived of his liberty arbitrarily.
2. The Convention does not prohibit all kinds of restrictions but restricts rights not in accordance with the law and without following the procedures and guarantees provided by national law.
3. The ECtHR considers that clear provisions on restrictions on freedom of movement should be provided for in domestic law.
4. Restrictions must be necessary and thus proportionate to the legitimate aim pursued.
5. The restriction shall be a temporary measure which must be terminated as soon as circumstances permit.

Conclusions

Thus, the analysis of the ECtHR's practice on the problematic issues of exercising the right to freedom of movement and personal integrity in Covid-19 and the ECtHR's practice concluded that in quarantine these rights may be restricted, but such restrictions cannot be imposed arbitrarily.

First of all, restrictions on human rights by the state must be proportionate to the legitimate aim. In the case of a coronavirus pandemic, the legitimate aim is to curb the spread of the disease. At the same time, the governments of the world must use all possible measures to implement such deterrence, and only as a last resort - to restrict human rights. Moreover, such restrictions on human rights must be clearly defined in time and cannot be indefinite. In the event of litigation with citizens, the state must prove the justification for the application of restrictions and whether a certain restrictive measure was applied only when other minor restrictions did not apply, and whether it was maintained longer than was necessary to achieve the goal.

An important aspect that can negatively affect the state of protection of human rights in different countries around the world during a pandemic is the right of the state in some cases to derogate from the provisions of the Convention. In particular, the Convention provides for the possibility for a State party to derogate from its obligations under the Convention during an emergency (Article 15). Thus, in the event of war or other public danger threatening the life of a nation, any State Party may take measures which derogate from its obligations under this Convention only to the extent required by the urgency of the situation and provided that such measures do not conflict with its other obligations under international law.

As of mid-2020, the States Parties to the Convention (including Latvia, Romania, Armenia, the Republic of Moldova, Estonia, Georgia, Albania, Northern Macedonia, Serbia, and San Marino) had already notified the Secretary-General of the Council of Europe of their decision to apply the provisions of Art. 15 of the Convention in the context of the Covid-19 pandemic. Some States subsequently reported the extension of the derogation and / or its termination with a full return to the provisions of the Convention. In turn, Ukraine did not make such statements.

Thus, this study is an attempt to analyze the first decisions of the ECtHR on human rights violations during the coronavirus pandemic. However, it is currently not possible to predict the extent of the pandemic infringement cases. The virus continues to spread across the planet, and it is not yet known what other measures the state will take to prevent it.

It is worth taking into account the duration of the formation of the case-law of the ECtHR, as the ECtHR considers cases only after the exhaustion of all national remedies, and the consideration of cases takes some time. Therefore, it is too early to analyze the ECtHR's practice of violating

Convention rights as a result of measures taken by States to prevent Covid-19 or to draw conclusions about the relevant positions of the ECtHR. However, given the use of ECtHR case law by Ukrainian courts as a source of law and the binding nature of ECtHR judgments in cases against Ukraine, the Ukrainian legal community should monitor possible ECtHR decisions in pandemic cases.

Undoubtedly, the problem of restricting the right to move requires further research, especially given the intensive formation of the case-law of the European Court of Human Rights in this area in the future. In particular, it is very crucial to study the mechanisms of restoration of limited human rights and freedoms, because all the possessions of modern human civilization, one of the most important of which is the right to free movement, must be preserved.

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International standards on the rights of convicted persons in places of imprisonment

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Abstract

The relationship between crime and punishment has never been isolated. Under the influence of socio-economic, political, and cultural changes, metamorphoses of the institution of execution of punishments took place; in particular, the rights of convicts were liberalized. Therefore, it is necessary to analyze the historiography of this phenomenon in terms of international standards, as well as the peculiarities of their implementation. The work aims to characterize the implementation of international standards on the rights of prisoners in terms of historiography and legal regulation. The object of research is the norms of international law. The subject of the study is social relations that arise in the implementation of international standards on the rights of convicts in prisons. The research methods were dialectical, systemic, structural, formal-legal, historical-legal, methods of analysis, synthesis, induction, and deduction. As a result, international standards for the rights of prisoners serve as a model, an example of rational social relations in the penitentiary environment. Key aspects that should be universally taken into account by the governments of all countries are identified and described.

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Keywords: prisoner's rights; international law; international standards on prisoner's rights; criminal-executive law; penitentiary system.

Normas internacionales sobre los derechos de las personas condenadas en lugares de prisión

Resumen

La relación entre crimen y castigo nunca ha sido aislada. Bajo la influencia de cambios socioeconómicos, políticos y culturales, se produjeron metamorfosis de la institución de ejecución de los castigos; en particular, se liberalizaron los derechos de los condenados. Por tanto, es necesario analizar la historiografía de este fenómeno en términos de estándares internacionales, así como las peculiaridades de su implementación. El trabajo tiene como objetivo caracterizar la implementación de los estándares internacionales sobre los derechos de los presos en términos de historiografía y regulación legal. El objeto de la investigación son las normas del derecho internacional. El tema del estudio son las relaciones sociales que surgen en la implementación de estándares internacionales sobre los derechos de los condenados en las cárceles. Los métodos de investigación fueron dialéctico, sistémico, estructural, formal-legal, histórico-legal, métodos de análisis, síntesis, inducción y deducción. Como resultado, las normas internacionales sobre los derechos de los reclusos sirven como modelo, un ejemplo de relaciones sociales racionales en el entorno penitenciario. Se identifican y describen aspectos clave que deberían ser tomados en cuenta universalmente por los gobiernos de todos los países.

Palabras clave: derechos del recluso; derecho internacional; normas internacionales sobre derechos del recluso; derecho penal-ejecutivo; sistema penitenciario.

Introduction

The adoption of the Universal Declaration of Human Rights (hereinafter – Declaration) by the United Nations (hereinafter – UN) General Assembly at the Chaillot in Paris, on December 10, 1948, is the fundamental basis and starting point for the institution of international standards for ensuring the rights of prisoners. This international treaty states that all people are equal before the law and have an equal right to judicial protection, protection from discrimination and other unlawful encroachments, established the principle of the presumption of innocence, and a number of other important human rights and freedoms (Romanyuk and Chovgan, 2016).

In compliance with this document, the UN General Assembly adopted the International Covenant on Civil and Political Rights (1967) (hereinafter – the Covenant) and the International Covenant on Economic, Social and Cultural Rights in 1966, which entered into force in 1976. Art. 10 of the Covenant regulates that the main purpose of serving a sentence of persons sentenced to imprisonment is their correction and rehabilitation, as a result of which they may not be subject to restrictions that go beyond those to which they are sentenced by law (Romanyuk and Chovgan, 2016).

The above-mentioned international treaties laid the foundation for the legal status of prisoners, regulating the basic principles of treatment of convicts. For example, in accordance with Art. 5 of the Declaration and Art. 7 of the Covenant, no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. All prisoners also have the right to humane treatment and respect, as required by Art. 10 of the Covenant.

In the context of our study, we must mention the cultural implication of international standards in the analyzed area. To best illustrate it, let us turn to the historiography of criticism and objections to the Universal Declaration of Human Rights (1948). In 1948, Saudi Arabia abstained from voting for the declaration, arguing that the treaty violated Sharia law. Pakistan at one time disagreed, signing the document, as did Turkey, Egypt, and Syria, which are currently the vast majority of Muslims (Langwith, 2008).

Evidence of a divided cultural perception of the declaration is that in 1982, Iran's representative to the UN, Saeed Rayaye-Khorassani, said the declaration was a "secular understanding of the Judeo-Christian tradition" that ran counter to Sharia Muslims' views on human rights. There were also opinions about the bias of the international act in favor of Western civilization (Hassan, 1995).

However, the prospect of using such cultural arguments is a matter of concern, as they may call into question the very nature of human freedom and choice, the protection of which is the goal of international treaties.

The purpose of the article is to study international standards for ensuring the rights of criminals in places of deprivation of liberty and identify their characteristic features in order to establish the specificity of their implementation in national legislation. The article will cover the legal, cultural, and historical aspects of the problem.

1. Methodology

For conducting this research, the following methods were used. The dialectical method has been used to portray the development of the institution of international standards on the rights of prisoners as a

process of quantitative and qualitative change, as well as to overcome the contradictions between past norms and the need to improve them.

Also, the systematic method made it possible to characterize the current limits of permissible behavior in the field of criminal executive law in their relationship with the norms of other legal institutions, including international and constitutional law.

The structural method has been useful for characterizing the construction of regulations governing international standards for the treatment of prisoners, as well as their division into structural units.

Moreover, the formal-legal method allowed the authors to analyze the meaning of legal norms in the field of international standards on the rights of convicts in places of imprisonment, to interpret them in terms of formal legal logic.

The method of deduction helps to study the relationship between changes at the international level and their implementation in the penitentiary system was traced.

In addition, using the historical-legal method, the genesis of the subject of research was characterized, its historiography was described, and the connection between historical events, which eventually led to the formation of a modern institute of international standards for the rights of prisoners, was depicted.

Besides, using the method of analysis, the constituent elements of legal norms were studied, the points of intersection of historical events were found, the meaning of historical processes, and the purpose of modern legal regulation in terms of ensuring international standards on the rights of convicts were characterized.

With the help of induction, the impact of negative phenomena in the field of execution of sentences on the adoption of international treaties governing the standards of the rights of convicts in places of imprisonment was studied.

The analysis of historical facts related to the international legal regulation of the execution of sentences and treatment of convicts (prisoners) was carried out, which served as a necessary basis for assessing and reassessing the compliance of legislation with the standards of civilized civil society, part of which is the penitentiary system, which respects human dignity, rights, and freedoms.

The theoretical-legal basis of the studied phenomenon was also considered and a description of the implementation of international standards in places of imprisonment was given.

2. Recent research and findings

Considering that the article analyzes a certain number of international normative legal acts, the authors decided to analyze the domestic doctrine and the countries of the post-Soviet space.

At different times, the subject of research was reflected in the works of such scientists as Lysoded (2008, 2014), Martynov (2005), Pochanska (2018), Stepanyuk and Yakovets (2007), Romanyuk and Chovgan (2016), Stepanyuk and Yakovets (2008), Yatsyshyn (2010a, 2010b).

In his publications, Lysoded (2008, 2014) thoroughly examines the correlation between national legislation and international standards of execution of punishments. The conclusions imply a positive nature of the changes and the very vector of development of penitentiary law.

Martynov (2005) devoted his attention to the study of the place of the Universal Declaration of Human Rights in the history of the development of international and national law. His works are characterized by an objective description of historical events, their impact on the development of legal regulation.

Morevoer, Pochanska (2018) gave a theoretical and legal substantiation of international penitentiary standards, analyzed their concepts, features, and functions.

In the guidelines for the penitentiary system, Romanyuk and Chovgan (2016) objectively explored the history of the formation and essence of international standards for the rights of prisoners. Moreover, the capacious characteristic of each document of the researched sphere was given.

Furthermore, Ryabykh (2016) gave a legal description of the implementation of international standards on the rights of prisoners. Thus, the synthesized approach outlines the mechanism of action, the content of legal norms, and international recommendations, including their reflection in national legislation.

In their scientific and practical commentary to the Criminal Executive Code of Ukraine (2004), Stepanyuk and Yakovets (2007) draw parallels between national law and international legal regulation of standards for ensuring the rights of prisoners. Thus, they focus on Art. 1 of the Criminal Executive Code of Ukraine, which distinguishes between the tasks and purpose of criminal-executive legislation, which in some way resonates with the European penitentiary rules.

In addition, Yatsyshyn (2010a, 2010b) paid attention to the question of the genesis of standards for serving sentences and the rights of persons sentenced to imprisonment both from the point of view of national law and from the standpoint of international historiography. In his works, the

scientist thoroughly analyzed all known aspects of the studied phenomena, outlined promising vectors of development.

Nevertheless, despite the presence of a large number of works devoted to the rights of convicts in places of deprivation of liberty, the influence of culture, the historical component, the legal system has not been sufficiently studied. That is why the article is aimed at studying these aspects in more detail.

3. Results of the study

The list of documents that regulate the rules of treatment of convicts is larger than it may seem at first glance. In particular, it includes more than 30 items, most of which are acts of recommendation, which, however, serve as a basis for the management of penitentiary institutions and their staff in interactions with prisoners. Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka *et al, 2020)*.

In 1957, the UN Economic and Social Council approved the Minimum Standard Rules for the Treatment of Prisoners. The very idea of introducing such a document belongs to the International Criminal and Penitentiary Commission, which prepared a collection of rules that were approved by the League of Nations in 1934. However, in 1951, this commission ceased to exist and was replaced by the UN (Juja, 2009). Thus, Resolution 663 CI (XXIV) of 31 July 1957 approved the Minimum Standard Rules. They reflect the main ideas and principles that states must adhere to in carrying out their penitentiary activities, as well as the minimum conditions to be provided by the penitentiary system, correctional facilities, and their staff, including the treatment of prisoners (Romanyuk and Chovgan, 2016).

Meanwhile, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) requires States parties to recognize torture as a crime, regardless of the grounds or conditions under which it is committed.

Continuing the theme of the work, it is worth paying attention to the so-called regional acts of legal regulation of the rights of prisoners. In this aspect, the branch of the championship is held by the Council of Europe – an international regional organization of European states, established in 1949 under the influence of the devastating effects of World War II. The goal of its activity was to spread democracy, deepen cooperation between European countries, and protect human rights and freedoms, the environment.

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) is correctly considered to be the

pearl of the Council of Europe law-making. It was signed by ten member states of the Council of Europe in the Italian capital on November 4, 1950. Both copies, in English and French, are recognized in the document as equally authentic.

On September 3, 1953, the Convention entered into force after ratification and deposit of 10 instruments by the signatories.

As a result of the Vienna Summit in 1993, it was decided to replace the European Commission of Human Rights and the European Court of Human Rights (hereinafter – ECHR), which were established after the entry into force of the 1954 and 1959 Conventions, respectively. The purpose of these bodies was to monitor the observance of the rights and freedoms guaranteed by the Convention. Thus, to ensure these tasks, a new body was created – the European Court of Human Rights, which replaced the previous two-component configuration. The new body of the Council of Europe, based in Strasbourg, France, began its work on 1 November 1998.

The rights and freedoms provided for in the Convention are aimed at ensuring the most important aspects of a person's life. In addition to such important rights as the right to life, liberty, inviolability, freedom of movement, freedom of speech, conscience, religion, etc., in the context of the study, we should mention the rights guaranteed by the ECHR as the right to a fair trial, prohibition of discrimination, torture, slavery and forced labor, inadmissibility of punishment without law.

The basis of the general the principles of EU law are the priority of the rights of the individual, enshrined in the European Convention, which takes into account the constitutional traditions of European countries (Kharytonov *et al*., 2019).

At the same time, the ECHR establishes the right of member states to restrict rights and freedoms on various legitimate grounds, as explicitly stated in the text of the document. However, under no circumstances can a person's right to life, the prohibition of torture, slavery, or the inadmissibility of the retroactive effect of the law be violated.

On September 11, 1997, the Convention entered into force for Ukraine. In this way, our state has committed itself to bring its legislation in line with international standards. However, there were difficulties, as in 1999 the Parliamentary Assembly of the Council of Europe almost terminated Ukraine's membership. However, after inspecting the situation on the ground in October 1999, the parliamentary commissioners concluded that there were no grounds for imposing such sanctions.

In terms of regional international standards, the European Penitentiary Rules should also be mentioned. The Committee of Ministers of the Council of Europe adopted a resolution in 1973 recommending that the governments

of the member states of the Council of Europe be guided in drafting new legislation and practice by the principles set out in the Standard Minimum Rules for the Treatment of Prisoners (1957) and report to the Secretary of the Council on the implementation and development of these principles. Thus, on 12 February 1987, the European Penitentiary Rules were adopted, consisting of 108 articles combining the Preamble, the substantive part, and the explanatory note. In 2006, the code was updated (European Penitentiary Rules, 2006).

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in February 1989, was also adopted to comply with international standards on the rights of prisoners. It is based on the 1984 Convention against Torture and provides for the functioning of a specialized body, the European Committee for the Prevention of Torture, which is responsible for profile monitoring and control.

It is also worth mentioning that there are recommendations on the treatment of prisoners adopted by international non-governmental organizations such as Amnesty International (2020), the Howard League for Penal Reform (2020), the International Criminal and Penitentiary Foundation (2020), the Salvation Army and others (2020).

As for the theoretical basis of the study, it can be argued that in the scientific community there is some consensus on the basic features of the concept of international standards for convicts, despite the personal views of scientists on this issue, which is quite natural for the research process. Therefore, international standards of treatment of convicts (prisoners) to imprisonment are proposed to be defined as a set of internationally accepted relevant principles, conventions, recommendations and norms, standards of organization of various spheres of activity of penitentiary institutions (Olefir *et al*, 2016).

Minimum standard rules for the treatment of prisoners define the main essence of punishment as imprisonment (Trubnykov and Shinkaryov, 2008).

Some researchers note that there should be no significant difference that can affect the perception of convicts of socialization inside and outside the prison, as this may have negative consequences in the process of social reintegration (Kolb *et al*, 2016).

The UN Standard Minimum Rules state that the management of correctional facilities must be carried out firmly and decisively, however, within the law and with only the necessary coercive measures. Emphasis is also placed on the separate detention of prisoners, in respect of which European penitentiary rules allow for derogations. UN General Assembly Resolution 45/111 of 14 December 1990, "Basic Principles for the

Treatment of Prisoners", emphasizes the abolition of solitary confinement as a punishment and the restriction of its use (European Penitentiary Regulations: Annex to Recommendation No R (2006)2).

International norms also pay attention to the organization of the life of convicts. In this context, keeping convicts in solitary confinement is considered undesirable, and separate detention of different categories of convicts, on the contrary, is approved as recommended (Analysis of the compliance of the Criminal Enforcement Code of Ukraine with European standards and recommendations of the European Committee for the Prevention of Torture and Ill-Treatment, 2007). It is also noted that the isolation of a convicted person should be used as a last resort when all other measures do not help to correct his / her behavior.

A necessary condition for further re-socialization is to ensure that the sentence is served as close as possible to the place of residence of the convicted person or his family. The relevant recommendation is contained in paragraph 17.1 of the European Prison Rules. Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe also states that "convicts should be placed with a high degree of probability in prisons close to the places where their families live or in the surrounding areas" (Key Council of Europe Conventions and Recommendations, n.d.).

Convicts have the right to regular visits under supervision, the right to correspondence, to information from newspapers, magazines, local penitentiary publications, radio, and other sources under the control of the administration of the penitentiary institution (Trubnykov and Shynkaryov, 2008). European penitentiary rules emphasize the importance of inseparable connection with the outside world as a condition for successful re-education of convicts, their further social reintegration.

As for national legislation, according to domestic and foreign analysts, the subjective rights of all convicts set out in Art. 7 and 8 of the CEC, to a greater extent, meet international standards on this issue (Human Rights in Ukraine. Information portal of the Kharkiv Human Rights group, 2007). And although international acts do not define the very concept of the legal status of convicts, the objectives of respecting the subjective rights of these persons, in particular, mentioned in paragraphs 56, 66 of the Minimum Standard Rules for the Treatment of Prisoners, are fully compatible with those approved by the Ukrainian penitentiary legislation (Stepanyuk, 2005; Stepanyuk and Yakovets, 2007).

Is should be born in mind that according to the Criminal Executive Code of Ukraine, convicts have the right to visit (Article 110), telephone conversations without limiting their number under the control of the administration (Article 110), receiving parcels (Article 112), correspondence (Article 113) without restrictions, short trips outside the colonies (Article

111), receipt or purchase at their own expense of literature, stationery, possession of not more than 10 copies of books or magazines and newspapers in unlimited quantities (Article 109).

However, there is a view that the main difference between the European and post-Soviet paradigms of the penitentiary system can be described as an awareness of punishment, or more simply – as the degree of its dehumanization. Thus, the unequivocal stigmatization of a person sentenced to imprisonment and dehumanization, "impersonal" treatment are still obstacles to effective reform of the penitentiary sector, because this stereotype exists not only in the penitentiary environment but also at the level of legal culture, the mentality of the whole society (Romanov, 2006).

Thus, international institutions reserve the right to state the concept of standards of treatment of prisoners with the content of restrictions, however, defining the limits of such intervention to respect the principles of humanity and respect for human rights and freedoms.

Conclusion

Thus, in the process of bringing legislation into line with international norms begins (which is currently taking place in many countries), the legislator should consider the following aspects.

1. Concerning the genesis of the institute of international standards on the rights of persons sentenced to imprisonment it should be sum up, that International standards for the rights of prisoners date back to the adoption of the Universal Declaration of Human Rights in 1948. The rapid development of this legal institution occurred in the second half of the 20th century. The main documents were adopted mainly under the auspices of the UN and the Council of Europe. The main international legal instruments that contain standards on the rights of prisoners are: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Minimum Standard Rules for the Treatment of Prisoners, Convention for the Protection of Human Rights and Fundamental Freedoms, European Penitentiary Rules.
2. Regarding the theoretical-legal aspects of international standards on the rights of prisoners it should be stated that the standard rules for the treatment of prisoners adopted by the United Nations and the Council of Europe are not intended to create conditions under which they will be binding on other countries against their will. Rather, they serve as a model, an example of rational social relations in the penitentiary

environment. However, signed international legal treaties are binding based on their ratification. International standards for the treatment of prisoners constitute an appropriate institution of legal regulation, which includes ideas, norms, principles, and recommendations, which are designed to ensure respect for human rights, respect for human dignity, rights and freedoms in prison. Appropriate desirable methods of treatment of convicts, conditions of their detention and management of penitentiary institutions serve as a guide in formulating the corresponding acts of national legislation. Respect for human dignity and human rights is a fundamental principle that unites all such documents, both mandatory and recommendatory.

3. Regarding the implementation of international standards in places of imprisonment into legislation of different countries it should be concluded that the peculiarities of the implementation have various aspects such as ensuring appropriate conditions for serving a sentence, the right to correspondence, medical care and services, communication, work, social security, humane treatment, respect for one's dignity, rights, and freedoms. The goal pursued by the implementation of the rules of treatment and detention of prisoners can be described as the successful re-socialization of prisoners. Respect for the dignity, rights and freedoms of prisoners is the guiding principle for this.

Thus, in carrying out their teleological function, the limits of permissible behavior to prisoners approved by the international community are aimed at:

- establishing the minimum necessary principles for the treatment of prisoners, the conditions of their detention, and the management of the penitentiary system.
- encouraging the prison administration to take action under modern principles of humanity and justice.
- improving the professional skills of correctional officers.
- establishing of objective criteria for assessing the state of observance of human rights in penitentiary institutions, real compliance with the standards of detention of prisoners in places of imprisonment.

Thus, these key aspects must be taken into account by the legislatures of different countries, while simultaneously analyzing the absence of cultural and historical contradictions in a particular country.

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Legal protection of vulnerable groups of population: practice of the European Court of Human Rights

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Abstract

The relevance of the problem under study is due to the need to monitoring the general situation to respect to human rights. The establishment, provision and realization of human rights is an important indicator in a state, which indicates its democracy, sociality, as well as the fact that such a state is legal. Purpose of the article in the study the issues of legal protection of vulnerable categories of population in the context of formation of active human rights policy of state aimed at increasing the capacity of socially vulnerable groups and reducing the risks of growing social tensions in society. The leading method for studying this problem is the legal sociological method, which allows us to study the effectiveness of state and legal regulation of human rights protection. The article presents an analysis of the results of the European experience in combating intolerance and discrimination. Its types main determined have been. Highlighted the criteria by which discrimination is prohibited. The legal system of human rights protection mechanisms is analyzed. The article presents scientific categories: discrimination, hate crimes, vulnerable groups. The practical significance lies in the development of proposals for improving domestic legislation.

Keywords: human rights violations; Practice of the European Court of Human Rights; vulnerability, protection of rights; Rule of law.

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Protección legal de grupos de población vulnerables: práctica del Tribunal Europeo de Derechos Humanos

Resumen

El establecimiento, la provisión y la realización de los derechos humanos es un indicador importante en un estado, lo que muestra su democracia, así como el hecho de que dicho Estado es legal. Objeto del artículo es el estudio de la protección jurídica de las categorías vulnerables de la población en el contexto de lo que significa la formación de una política activa de derechos humanos del Estado, dirigida a aumentar la capacidad de los grupos socialmente vulnerables y reducir los riesgos de crecientes tensiones sociales en la sociedad. El método principal para estudiar este problema fue el sociológico-jurídico, que permite develar la efectividad de la regulación estatal y legal de la protección de los derechos humanos. El artículo presenta un análisis de los resultados de la experiencia europea en la lucha contra la intolerancia y la discriminación. Destaca los criterios por los que se prohíbe la discriminación en el contexto del sistema legal de mecanismos de protección de los derechos humanos. El artículo también discute, en la teoría y en la realidad concreta, las categorías científicas de: discriminación, delitos de odio, grupos vulnerables. La importancia práctica radica en el desarrollo de propuestas para mejorar la legislación nacional.

Palabras clave: violaciones a los derechos humanos; práctica del Tribunal Europeo de Derechos Humanos; vulnerabilidad, protección de los derechos; Estado de derecho.

Introduction

Analysis of scientific and practical research in the field of human rights in Ukraine, reports of national, regional, and international human rights organizations, reports of the Ukrainian Parliament Commissioner for Human Rights, suggests that along with the positive results of reforming the legal system of Ukraine, human rights violations remain systemic. A special place in the list of such violations is occupied by vulnerable groups who are unable to counteract effectively illegal actions or to protect and restore their rights in case of their violation. The urgency of the problem is exacerbated by the fact that discrimination, as a manifestation of violations of the rights of members of certain groups (on the basis of age, health, social status, nationality, etc.) causes global negative consequences for society and state. Violation of the rule of law, legality, leveling of the rule of law, negative impact on international image of the state – only a small list of political and legal consequences of discrimination. In the current crisis, the population

of Ukraine is acutely aware of instability – in families, personal security, in social environment, as well as in global politics. The general situation with respect for human rights in the state is reflected in numerous violations of the rights of vulnerable groups, which should cause special attention and concern to public authorities and human rights organizations. In practice, very often due to stigma and marginal characteristics of vulnerable groups, the vast majority of violations of their rights remain hidden from society. In such circumstances, the assessment of the real scale and features of these violations, the development of effective legal mechanisms for counteraction are quite difficult tasks.

Vulnerability is a condition in which a person is deprived or restricted in his/her ability to resist violent or other unlawful acts due to physical or mental characteristics or other circumstances caused by the relevant characteristics. Vulnerabilities can affect individuals, groups of people, communities, organizations, society, and ecological systems. It is expressed in the inability to withstand certain stressful situations. To one degree or another, all people are socially vulnerable to natural disasters or man-made disasters. The vulnerability of population increases during periods of political instability, economic downturn, and legal uncertainty.

Traditionally, vulnerable groups include elderly, sick persons, women, children, members of various minorities and people in temporary need of protection. Within a separate article it is impossible to present the features of protection of all groups, so the subject of the study is the features of protection of the rights of a particular ethnic group, namely the Roma population. The Roma of Ukraine belongs to a national minority that is constantly faced with discrimination in Ukrainian society. It is the Roma who are discriminated against, attacked by extremist groups and persons, they are the least socially protected group of the population and have a much lower standard of living than the rest of the population. Regardless of their way of life (dispersed or compact), Roma are considered one of the most vulnerable groups to stigmatization, as most of them face human rights abuses and are unable to defend themselves. Due to socio-economic, cultural, and historical reasons, most members of this ethnic group belong to the poorest strata of population.

Persistent negative stereotypes of the mass consciousness associated with the Roma exist in Ukrainian society. The tool of influence and formation of perception is often the media, which manipulate stereotypical attitudes, presenting a generalized portrait of the whole nation in a drug dealer and swindler image. Information appears to be an exception in the media, which portrays Roma as victims of racist violence. For example, in February 2014, a group of approximately 15 people attacked four Roma households in Korosten, and in April 2014, a Roma family home was set on fire in Cherkasy.

In August 2016, a riot broke out in Loshchynivka, during which locals robbed and burned several Roma households. More than 300 people took part in acts of violence that resulted in property damage without inflicting bodily harm. Seven Roma families, including 17 children, fled the village after the village council decided to evict them. The European Commission against Racism and Intolerance notes that the central authorities have responded by institution of a criminal investigation into forced evictions and causing material damage (Report of the European Commission, 2017).

Vulnerability is not a clearly defined concept. This term is used by sociologists, demographers, psychologists, economists, ecologists, physicians, lawyers in the context of activities peculiarities in certain areas of public life. The works of leading Ukrainian scientists are devoted to various aspects of the system of legal protection of vulnerable groups in Ukraine, among them: Boychuk and Vovk (2018), Halan (2014), Huz (2012), Zhuravliova (2016), Kravchuk (2018), Ponomariov and Fedorovych (2014), Radchuk (2014), and others. The subject of such research is the problem of legal policy formation, analysis of the causes of low efficiency of legal protection, development of conceptual foundations of organization, search for new and improvement of existing mechanisms for protection of vulnerable groups.

However, the research does not pay enough attention to evaluation and development of new areas of legal support. Particular attention needs to be paid to improve methodological approaches to evaluation of legal programs and entire system of legal support in Ukraine, as well as the interpretation of decisions of the European Court and their use in legal decisions. The theoretical importance and practical significance of these issues led to the choice of topic, purpose, and objectives of research. The purpose of this study is to identify key areas for active legal policy aimed at increasing the capacity of socially vulnerable groups, including the Roma population, and reducing the risk of vulnerability in society. Analyze the European experience in combating intolerance and discrimination and make proposals to improve domestic legislation.

1. Methods

Among the methods that are considered the most effective for the study, the authors should mention primarily the dialectical method, analytical and synthetic methods, system method, activity method, hermeneutic method, concrete-historical method, sociological method, formal-dogmatic method, comparative-legal method, statistical method. In the study of the EU and Ukraine legal systems essence in their relationship, a civilizational approach becomes relevant, which allows to establish legal elements through the prism of the diversity of scientific positions of representatives

of different legal systems and legal cultures. It helps to identify the national legal system features in the field of functioning of law principles and norms, pointing to the uniqueness of legal system of Ukraine and at the same time emphasizing the shortcomings and differences caused by public awareness, law enforcement. The dialectical method of scientific cognition is a general and universal method of forming legal concepts, it is a cognitive strategy and aims to identify the causes, origins and consequences of the studied phenomena, their internal contradictions, connections, and relationships with other phenomena. Thus, with the help of this method it became possible to know the categories' content: "vulnerable groups", "discrimination", "hate crimes" and others.

Analytical and synthetic research methods allowed selecting and analyzing information on the research topic. The need to use the analytical-synthetic method is due to the inadequate parity of dichotomous connection analysis-synthesis. This method, expanding the possibilities of separate tools of analysis and synthesis in understanding the legal factors of reliable assessments, forms the preconditions for improving the legal regulation mechanism of rights' protection of vulnerable groups. The essence of the system method is that the studied phenomena are considered as a certain system that is included in the system of a broader order, performs certain functions in it and is associated with various connections.

Thus, a systematic approach has given us the opportunity to analyze the case law of the European Court of Human Rights on vulnerable groups in relation to other phenomena of legal reality. The application of this method allowed studying the legal status of vulnerable groups, legal procedures, and processes as interdependent systems. The systematic method has played an important role in the study of anti-discrimination norms of international, regional, and national law. Application of the methods analyzed above necessitates the activity method involvement in the methodology of our study, which provides study of relevant legal phenomena through the prism of their effectiveness. It is the activity of law subjects that creates, changes, terminates, and renews certain types of relations. This method is used in assessing the state bodies activities of Ukraine to create legal mechanisms to protect the rights of vulnerable groups.

The hermeneutic method in the legal sphere is based on a set of methods of interpretation and interpretation of legal texts, which take the form of both regulations and law enforcement, and scientific and monographic literature. The application of the hermeneutic method allowed analyzing and clarifying qualitatively the legal texts content in the field of protection of vulnerable groups and their application practice. The use of concrete-historical method contributed to the chronological framework definition of the studied relations, allowed to trace the dynamics of its development. It is determined with the help of the sociological method the social conditionality

of vulnerable groups formation in modern society, as well as the mechanism of their functioning and social interaction as a component of civil society.

The formal-legal method made it possible to study the connection between the internal content and form of international and domestic cooperation of states and state bodies in the field of combating hate crimes and was also used to formulate legal concepts and categories. The comparative law method made it possible to compare the legislation of Ukraine and other States-members, as well as the law of the Council of Europe on combating intolerance and combating hate crimes. The normative basis of legal protection study of vulnerable groups is the acts of current legislation of Ukraine, international acts in the field of protection of human rights and freedoms, as well as the case law of the European Court of Human Rights.

2. Results and Discussion

Based on the topic relevance, the authors emphasize that at the present stage of social evolution, it is very important to raise the issue of legal protection of vulnerable groups and discuss the problem both among scientists and at the level of public authorities, NGOs. The purpose of such discussions is to identify the scale and causes of existing problems, to determine the legal mechanism for the protection of vulnerable groups. The problem of overcoming discrimination is relevant for most modern states, and Ukraine in particular. The implementation of this task is related to ensuring the fundamental human rights and freedoms enshrined in international, regional, and domestic regulations. Recognizing the nature of human rights, Article 1 of the Universal Declaration of Human Rights (1948) states that "all human beings are born free and equal in dignity and rights". And Article 2 states "everyone shall have all the rights and freedoms set forth in the Declaration, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, status or other status". The Constitutions of many countries contain references to this international document and include a number of its provisions. The Declaration is often referred to in the interpretation of national human rights law, as well as in case law.

The International Covenant on Civil and Political Rights (1973) also establishes a general prohibition of discrimination on any basis (Art. 2). The Covenant obliges States to provide in national law not only for the prohibition of discrimination of any kind (Art. 26), but also for any derogation in favor of national, racial, or religious hatred which constitutes incitement to discrimination, hostility, or violence (Art. 20). In addition, Art. 4 of the Covenant provides that in a state of emergency in a state in which the life of a nation is endangered and officially declared, states-parties of the Covenant may take measures to derogate from their obligations under

the Covenant only in to the extent that it is dictated by the severity of the situation, provided that such measures are not incompatible with their other obligations under international law and do not result in discrimination solely on the basis of race, color, sex, language, religion or social origin (1966). There are no special provisions on the rights of national minorities in the International Covenant on Economic, Social and Cultural Rights (1973). However, under Art. 2 of the Covenant, States-parties undertake to ensure that the rights proclaimed in it are exercised without discrimination, in particular as regards race, language, religion and national origin. State-members undertake to guarantee the right of everyone to work and its fair and favorable conditions, the right to form trade unions, the right to social security, the right to protection of families and children and adequate food, clothing and housing, the right to the highest attainable standard, physical and mental health, the right to education, the right to participate in cultural life (1966). Thus, states that have ratified the Covenant recognize and guarantee these rights to every person without any discrimination on these bases, regardless of a person's membership in the majority or minority of the population, his/ her citizenship.

The principle of non-discrimination is also enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) in Article 14, according to which the using of rights and freedoms recognized by the Convention must be ensured without discrimination on any basis (1950). Whenever the European Court of Human Rights examines a possible violation of Article 14, it does so in conjunction with fundamental Convention law. Applicants often complain of fundamental right's violation and, in addition, of a violation of that right in conjunction with Article 14. In other words, interference with their rights, in addition to violating standards of observance of a fundamental right, also constitutes discrimination. Protocol No. 12 prohibits discrimination in the "exercise of any right provided for by law" and therefore has a wider scope than Article 14, which applies only to the rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). It should be noted that the protocol guarantees protection against discrimination primarily by the state, but it also applies to relations between individuals, which are usually subject to state regulation, "for example, arbitrary denial of employment, denial of access to restaurants or services, which may be provided to the public by private persons, such as health services or utilities, such as water or electricity" (2002).

In December 1965, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination (1994), as discrimination on racial basis was recognized as the most common source of political and civil conflict. Racial discrimination is defined as "any distinction, exception, restriction or preference based on race, color, race, national or ethnic origin" that impedes the realization of

human rights and fundamental freedoms. The Convention established for the first time a body to monitor compliance with all approved provisions, the Committee on the Elimination of Racial Discrimination, which consists of eighteen experts of high moral character and recognized impartiality, elected by States-Parties from among their citizens, must perform their duties personally and attention is paid to the fair geographical distribution and representation of various forms of civilization, as well as the main legal systems (1965).

The Framework Convention has historically become the first, legally binding, multilateral, international instrument devoted directly to the protection of national minorities in all spheres of public life. The legal document enshrines the principle that all its provisions are implemented exclusively through the national legislation of each state and its state policy. At the national level, the Constitution of Ukraine (1996) guarantees citizens equal constitutional rights and freedoms and equality before the law (Art. 24) without any privileges or restrictions (1996). The domestic legal system has created a legal framework aimed at combating hate crimes. The negative consequences of hate crimes do not only affect individuals and groups but affect the entire social order and pose a threat to every member of society. It is the duty of the Ukrainian state to protect and ensure the safety of people who are on its territory, regardless of race, nationality, ethnic origin, language, skin color, religion, age, physical ability, sexual orientation, gender identity or other characteristics. In November 2012, the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" № 5207-VI came into force, which defines the organizational and legal framework for preventing and combating discrimination in order to ensure equal opportunities for human rights and freedoms of citizens.

Discrimination is a situation in which a person and/or group of persons on the basis of race, color, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence , linguistic or other features that were, are and may be valid or presumed, is subject to restrictions in the recognition, realization or use of rights and freedoms in any form established by this Law, except where such restriction is lawful, objective a reasonable goal, the ways to achieve which are appropriate and necessary. The law stipulates that manifestations of discrimination are direct and indirect discrimination, incitement and oppression (Law of Ukraine, 2012).

The provisions of the law provide for the prohibition of any discrimination. The only exception may be the so-called "positive discrimination" – actions aimed at eliminating legal or factual inequality in the ability of a person and / or group of persons to realize equal rights and freedoms. Punishment for discrimination on racial or ethnic basis is provided for in the Criminal Code of Ukraine (2001), which contains a number of articles in the General (67)

and Special Parts (115, 121, 122, 126, 127, 129, 294), which provide for more severe punishment for crimes, committed on the basis of racial, national or religious intolerance (which are hate crimes).

Article 161 establishes criminal liability for intentional acts aimed at inciting national, racial and religious hatred and hatred, as well as for discrimination on the basis of an open list of characteristics (2001). However, this article is also rarely used in practice, as it is difficult to prove intentionality in court. In 2009, amendments were made to the Criminal Code of Ukraine, which increased criminal liability for certain crimes committed on the basis of intolerance (Law of Ukraine, 2009).

Rapporteurs of the Council of Europe criticize the imperfection of Ukrainian legislation on discrimination. In particular, the Criminal Code of Ukraine (Law of Ukraine, 2009) does not provide for punishment for incitement to hatred motivated by homophobia, and the law on the principles of preventing and combating discrimination does not mention that sexual orientation may be basis for discrimination. The Verkhovna Rada of Ukraine registered the Draft Law "On Amendments to the Criminal Code of Ukraine" (2019). The bill provoked a wave of protests from the public, the church and religious organizations of various denominations. In our opinion, the bill as a basis is promising, but needs to be finalized, as in its current form the chances of its adoption are low.

In general, the provisions on crimes based on racial hatred are rarely applied in the Ukrainian judiciary, and as a result the number of convictions under these articles is very low. Hate crimes are crimes based on prejudice. Such crimes happen everywhere because no society is safe from the consequences of prejudice and intolerance. Hate crimes send a signal of rejection to entire communities and carry the seeds of potential conflict, as they can increase both quantitatively and given the level of violence. In Ukraine, foreigners, members of different ethnic communities and religious minorities, LGBT communities most often suffer from hate crimes. An indicator of prejudice presence is the fact that gives reason to believe that the crime could have been committed precisely because of prejudice. Such indicators serve as objective criteria for assessing the probable motives of a crime and can help in the preliminary detection of cases of hate crimes.

A. Kravchuk (2018) in his research provides statistics that Ukrainian state institutions register a relatively small number of manifestations of xenophobia. Thus, the Parliamentary Commissioner for Human Rights in 2017 received 37 complaints of discrimination on the basis of race, color and ethnic/national origin. In addition, according to the results of monitoring the media, social networks and other sources of information, 16 proceedings were instituted on the facts of alleged hate crimes and 14 proceedings on hate speech on the above basis. In 2017, independent observers provided the OSCE with 13 cases of racism and xenophobia, 4 cases of Roma-phobia

and 21 cases of anti-Semitism (20 of which were property damage). In 2016, such data included 7 cases of racism and xenophobia (including 5 attacks on people) and 21 cases of anti-Semitism (of which 17 cases of property damage). The author concludes that in official statistics and data from non-governmental organizations, cases of xenophobia and racism are often mentioned together, which makes it impossible to separate crimes and incidents of national hatred from racist ones. At the same time, manifestations of xenophobia against Roma and Jews are mentioned separately from other ethnic/national groups (Kravchuk, 2018).

At the end of the XX-th century, the problem of discrimination against Roma attracted the attention of human rights organizations. Roma activists and defenders received support from the Open Society Institute (New York). In the Council of Europe, the "Roma issue" has become one of the special areas of work: the human rights situation is constantly monitored, seminars and trainings are held for young Roma and lawyers involved in the protection of Roma rights, and open discussions are held on Roma issues. With the participation of human rights defenders from various countries, the European Center for the Protection of Roma Rights was established in 1995, operating in Budapest with offices in many countries in both Western and Eastern Europe. The public of European countries has begun to pay attention to the cases of violence against Roma, which are increasingly occurring by the police. At the time, ECHR practice did not take into account racist motives for violence. While acknowledging the positive obligations of States to conduct effective investigations into forced abductions, torture and inhuman treatment, the Court did not, however, dare to apply the same approach to cases of racial violence.

This approach changes with the decision in the case of Nachova and Others v. Bulgaria: ECHR judgment (2005). The case concerned the deaths of two young Roma men who were shot dead in a Roma settlement where they were hiding after their escape from imprisonment being accused of leaving the military service without permission. During the investigation into the legitimacy of the actions of Major G., who led the search and detention operation and opened fire, one of the witnesses said that shortly after the shooting, Major G. shouted at him: "You are damn gypsies". Referring to the high levels of discrimination and hostility against Roma in Bulgaria, the applicants, relatives of the victims, alleged a violation of Article 14 of the Convention in conjunction with Article 2, pointing out that excessive violence against Roma had been used by the authorities because of their ethnic origin. The value of this decision is that the Court has established procedural obligations under which the state must investigate discriminatory motives for violent crimes if there is a reasonable suspicion of such motives.

The European Court of Human Rights, in its rulings, emphasizes that crimes based on intolerance require a particularly decisive response from the state – "the state must use all available means to combat violence based on intolerance, thus strengthening the democratic principles of tolerance and pluralism" (Nachova and others v. Bulgaria, 2005). The ECHR has repeatedly emphasized that the application of the same methods and approaches to the investigation of intolerance crimes and other violent crimes that do not have such a motive is incorrect, as it means that the state ignores the particularly destructive nature of intolerance crimes.

The first Ukrainian case of discrimination is the "Case of Fedorchenko and Lozenko v. Ukraine" (2012) one, in which the European Court of Human Rights found Ukraine guilty of non-compliance with Article 14 of the European Convention on Human Rights, together with Article 2 of the European Convention, which regulates the right to life and the need for prompt, effective and impartial investigation. The decision on which was on September 20, 2012. The text of the case concerns an attack on a Roma family on October 28, 2001, which resulted in the burning of their homes and the death of five family members, including two six-year-old children. The head of the family accused a police officer, who he and his relative refused to pay a bribe for not being prosecuted for alleged drug trafficking. During the investigation, information on a police officer involvement in the incident was not confirmed, and the prosecutor office refused to initiate a criminal case against him. At the same time, the main suspects were identified: N. and six other persons. Citizen N. was later charged, but no other suspects could be found. The case against N. was repeatedly remanded for further investigation, and on June 22, 2005, it was closed due to the latter's death. The investigation into the other suspects has not been completed. Having examined the case, the European Court of Human Rights concluded that insufficient evidence had been adduced to substantiate or disprove the police officer's involvement in the arson. However, ECHR found a violation: the state authorities limited themselves to basic procedural steps. In addition, the ECHR noted that none of the six suspects (except N.) had been found.

Given the widespread acts of violence and discrimination against Roma in Ukraine, the European Court did not rule out that the decision to set houses on fire was further reinforced by ethnic hatred. However, there is no evidence that the authorities tested the version of the xenophobic motives for the attack. The ECHR found it unacceptable that in these circumstances no significant steps had been taken in the course of the investigation, which had lasted for more than 11 years, to identify and convict the perpetrators. Ukraine was ordered to pay the applicant EUR 20,000 in respect of non-pecuniary damage. This is the first case that Ukrainian Roma has won in the European Court (Case of Fedorchenko and Lozenko v. Ukraine, 2012).

The ECHR pointed to the presence of racist motives in the crime, which would affect future jurisprudence. After all, in Ukraine, such qualifications are usually avoided in cases involving national minorities who have been victims of violence. Also, the rulings of the European Court of Human Rights clearly emphasize that the presence of a violation of human rights and a sign protected from discrimination in the victim of the violation does not mean the existence of discrimination. The decision in the case of the ECHR "Burlya and Others v. Ukraine" (2018) was on November 6, 2018. The events took place in September 2002 in the village of Petrivka, Odessa region. The conflict essence was that after the death of a 17-year-old boy in the village, a group of several hundred of his fellow villagers began to destroy the houses where the Roma lived, with one of whom the victim allegedly had a conflict. The village council decided to evict the Roma ethnic group from the village and cut off the houses from electricity and gas, after which a crowd of several hundred people destroyed the houses of nineteen Roma, damaging their property, and police officers who were present. during the "action", had taken no measures to stop vandalism and preserve property.

The Court concluded that there had been a violation of the right to respect for private and family life, housing, and correspondence (Art. 8 of the European Convention on Human Rights) and the prohibition of discrimination (Art. 14), as well as the prohibition of torture and ill-treatment (Art. 3). According to the ECHR, the damage caused to the applicants' homes amounted to serious and unjustified interference with the applicants' right to respect for their private and family life and home. The European Court of Human Rights has ordered Ukraine to pay 5 million hryvnias in compensation to the victims of the pogrom of the Roma camp in Odesa region (Judgment of Burlya and others v. Ukraine, 2018).

In order to create appropriate conditions for the protection and integration of the Roma national minority into Ukrainian society, ensuring equal opportunities for its participation in the socio-economic and cultural life of the state by the Decree of the President of Ukraine of 08.04.2013 № 201 approved the Strategy for Protection and Integration of the Roma national minority for the period up to 2020 (2013). The main objectives of the Strategy are to promote legal and social protection of Roma, promote their employment, improve education, ensure the health of Roma, improve the living conditions of Roma, meet the cultural and information needs of Roma (The strategy for protection and integration..., 2013). In 2013, the Cabinet of Ministers approved an action plan for the implementation of the strategy for the protection and integration of the Roma national minority into Ukrainian society for the period up to 2020 (The strategy for protection and integration..., 2013), which identifies specific measures aimed at integrating the Roma minority into the Ukrainian society and their executors.

Current state policy of Ukraine, on the one hand, aimed at the inclusion of Roma in socio-economic life of the country, on the other hand, does not always cope with the challenges of Roma-phobia in society, with discrimination against the Roma minority. The report of the European Commission against Racism and Intolerance (ECRI) of the fifth cycle of monitoring on Ukraine of June 20, 2017 shows that legislation and law enforcement practices in Ukraine on combating intolerance and hate crimes are still imperfect and ineffective. ECRI is a special, independent and oversight human rights monitoring body that specializes in issues related to the fight against racism, discrimination based on "race", ethnic/national origin, color, nationality, religion, language, sexual orientation and gender identity, xenophobia, anti-Semitism and intolerance in Europe; it prepares reports and makes recommendations to Member States.

The Commission shall be composed of independent and impartial members appointed on the basis of their moral authority and recognized experience in dealing with racism, xenophobia, anti-Semitism and intolerance. As part of its statutory activities, ECRI conducts country-by-country monitoring, which includes an analysis of the situation in each of the Council of Europe member states on racism and intolerance and makes suggestions and recommendations on how to address the issues identified.

On 2 June 2020, ECRI published its conclusions on the implementation of two priority recommendations provided to Ukraine in 2017. First, ECRI strongly recommended that sexual orientation and gender issues be included in the Criminal Code as basis and considered aggravating. In this regard, ECRI notes that under the Criminal Code, there is no punishment for incitement to hatred or violence motivated by homo/transphobia. In addition, in aggravating circumstances, there are no references to sexual orientation and gender under aggravating forms of certain crimes or in an article of the Criminal Code. ECRI notes only one amendment to the Criminal Code, which came into force in 2019 – the inclusion of basis for "sexuality".

Although the inclusion of a gender issue as an aggravating circumstance is welcome, it does not cover sexual orientation or gender and is therefore not in line with the recommendation, ECRI notes. This means that its recommendation was not implemented. Second, ECRI recommended refusing to hold court hearings on Roma cases seeking to prove their identities in order to obtain personal identification documents. The authorities informed ECRI that the 2012 Court Fees Act provides for deferral of the court fee, reduction in its amount or exemption from payment. ECRI, however, understands that the legislation is unfavorable for Roma seeking to prove their identity, as, paradoxically; there is a requirement to prove inability to pay the fee by providing documentary evidence to the court. In this context, ECRI did not find any indication of the application of this

provision in such cases (News of the European Commission..., 2020). Therefore, the conclusion is that the recommendation was not implemented, because all the information collected indicates that no changes have taken place in this regard. Thus, the Roma national minority is one of the most vulnerable in society. Marginalization, social exclusion and stigma, as well as other social and economic indicators, such as unemployment and poor financial conditions, affect access to legal services and the general legal situation.

Conclusions

Based on the above, it can be concluded that discrimination on racial or ethnic basis is particularly offensive form of discrimination. Discrimination against minorities remains a central issue and affects the realization of all rights. International human rights law prohibits discrimination on the basis of race, color, language, national or social origin, or other status. These human rights standards require States-Parties to take all appropriate measures to eliminate discrimination and ensure that all public bodies and institutions comply with this obligation. It is obvious that the correct solution of the problems related to the situation of Roma in Ukraine requires comprehensive, systematic and long-term program. Hate crimes are the result of cruelty and, without proper legal response, spread to large communities.

The introduction of anti-discrimination law in Ukraine is a prerequisite for its formation as a European state governed by the rule of law. Any victim has the right to seek protection of their rights from the ombudsman and/or the court. At the same time, no court fee is paid for filing lawsuits related to discrimination disputes. Support and implementation of anti-discrimination policy should be provided at all levels of government. The introduction into the national legal system of mechanisms and tools that can stop or reduce hatred and protect human dignity, autonomy and equality of every person, creates the basis for effective protection of fundamental values, humanity and humanism. Only a systemic approach can guarantee overcoming the stereotype, both in the state and in the social perception of the Roma population.

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Model of social protection for war veterans to improve their social well-being and health in the Russian Federation

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Abstract

The relevance of the studied problem is determined by the need to constantly improve the system of social protection of veterans in changing socio-cultural conditions to make it more consistent with the tasks and priorities of social and demographic policy and modern social threats and risks. The objective of the article is to study the Russian experience of social protection of war veterans and to develop practical recommendations for its improvement by updating the model of social protection of veterans to improve their social well-being and health. Research methods: systemic (integrative) method, assuming the need to analyze social, economic, legal, and other measures to support veterans and the elderly; expert survey; modelling. As a result of the study, the authors draw conclusions and offer recommendations on the improvement and implementation of the model of social protection of war veterans to improve their social well-being and health. The practical significance of the conducted study lies in the possibility of using the developed recommendations in the sphere of social policy and social work with veterans and the elderly, social gerontology, and practical activities of social protection institutions for senior citizens.

Keywords: social protection for veterans; social welfare; social health; social support measures; Russian federation.

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Modelo de protección social para veteranos de guerra para mejorar su bienestar y salud en la Federación de Rusia

Resumen

La relevancia del problema estudiado está determinada por la necesidad de mejorar constantemente el sistema de protección social de los veteranos en condiciones socioculturales cambiantes, para hacerlo más consistente con las tareas y prioridades de la política social y demográfica y las amenazas y riesgos sociales modernos. El objetivo del artículo es estudiar la experiencia rusa de protección social de veteranos de guerra y, al mismo tiempo, desarrollar recomendaciones prácticas para su mejora mediante la actualización del modelo de protección social de veteranos para optimizar su bienestar social y salud. Se hizo uso del método sistémico (integrador), asumiendo la necesidad de analizar medidas sociales, económicas, legales y de otro tipo para apoyar a los veteranos y ancianos; encuesta de expertos; modelado. Como resultado del estudio, los autores extraen conclusiones y ofrecen recomendaciones sobre la mejora e implementación del modelo de protección social de los veteranos de guerra para mejorar su bienestar social y salud. La trascendencia práctica del estudio realizado radica en la posibilidad de utilizar las recomendaciones desarrolladas en el ámbito de la política social y el trabajo social con veteranos y ancianos, gerontología social y actividades prácticas de instituciones de protección social para personas mayores.

Palabras clave: protección social para veteranos; bienestar social; salud social; medidas de apoyo social; federación rusa.

Introduction

Veterans are one of the categories of citizens who have traditionally become the object of social protection in the Russian Federation. Firstly, their specific position in society is determined by their special socio-legal status and significant services to the country. It acts as an expression of guarantees to create conditions that ensure a decent life, honor, and respect in society. Secondly, war veterans represent a special socio-demographic group that has certain social, economic, psychological, and other characteristics. It may also be noted here that veterans mostly belong to the senior categories of the population. For them, the issues of preserving health, prolonging active/working age, reducing morbidity and mortality, effective and accessible social rehabilitation, and adaptation, and increasing life expectancy, which have become a priority in Russia's demographic policy at the present stage, are extremely relevant.

Thirdly, veterans are a heterogeneous social group. Several categories of veterans are defined by law. The classification is based on the criteria of special merits in defending the homeland, military, or other public services, as well as significant work contribution (conscientious and long-lasting work). There are also special features inherent in certain categories of veterans. Thus, under Article 1 of Federal Law №5-FL of January 12, 1995 "On Veterans", the following categories of veterans are distinguished: veterans of the Great Patriotic War, combat veterans (who served in the USSR, Russia, or other states), military service veterans, and veterans of labour.

According to Article 3 of the Federal Law of 12 January 1995 № 5-FL "On Veterans", combat veterans are defined as: 1) servicemen; 2) former servicemen dismissed from the reserve or retired; 3) people called up for military service; 4) persons in the rank of regular and superior staff of internal affairs bodies and state security bodies; 5) employees of internal affairs bodies and state security bodies; 6) employees of the Ministry of Defense of the USSR and the Ministry of Defense of the Russian Federation; 7) employees of institutions and bodies of the penal system; 8) other civilians.

As of August 2020, the following categories of veterans are registered in Russia as recipients of social protection (support): former minor prisoners of concentration camps, ghettos, and interned persons (77,578 persons); veterans of the Great Patriotic War, their widows and family members (440,462 persons); veterans of military service (224,737 persons); labour veterans and members of their families (11,271,626 persons); veterans, participants in hostilities, and members of their families (1,621,340 persons); disabled veterans of the Great Patriotic War, disabled veterans of hostilities, persons with equivalent status, and members of their families (272,456 persons); persons awarded the title of "Resident of the Siege of Leningrad" and their family members (99,260 persons); persons who worked in the rear during the Great Patriotic War, participants in the labour front, and members of their families (469,143 persons).

In the Republic of Mordovia, as of 2020, there are 241 veterans and disabled veterans of the Great Patriotic War, 1,726 veteran widows, and 7,633 persons considered equivalent to veterans of the Great Patriotic War — prisoners of Nazi concentration camps, workers of the rear, residents of besieged Leningrad, and others.

The system of social protection for veterans is a set of measures aimed at providing guaranteed living conditions, maintaining their livelihood, and providing social support to ensure a decent standard of living, active work, honor, and respect in society for this category of citizens. The Federal Law of 12 January 1995 № 5-FL "On Veterans" reflects the most important legal provisions regulating the guaranteed social protection of veterans in the

Russian Federation. The federal law also defines a system of social support measures for this category of citizens, which includes provision of housing; pension provision; right to receive a single cash payment and a range of social services; the right to supplementary monthly benefits; medical and prosthetic/orthopedic assistance; the possibility of using social benefits; the right to receive annual payments.

In our view, the state of social health and well-being of the studied social group is an integrative characteristic of the effectiveness of the social protection system for any category of the population. Thus, the heterogeneity of the category of war veterans according to socio-demographic, cultural, psychological, and other characteristics, and the complexity of the existing system of social protection of this category determine the relevance of the study of social well-being and health of war veterans, as it allows us to identify the areas of social tension.

1. Literature Review

The problem of quality of life and social well-being of elderly people and veterans is topical, debated, and, by its nature, interdisciplinary. The object of study is various measures and directions of social policy towards veterans (Obradovic, 2017; Perkins *et al.*, 2020; Ben-Shalom *et al.*, 2016; Bolotova, 2016). Particular attention is paid to veterans' income levels, social and economic practices, the extent to which their life potential is in demand, and the political and cultural processes taking place in society, which are identified as determinants of social well-being.

Social well-being is considered as an integral indicator of adaptation (Krupets, 2003) and as an indicator of the quality of life of older people (Xavier and Ferraz, 2003; Burnell *et al.*, 2017; Swed *et al.*, 2020; Googe, 2020).

In the works of researchers from different countries, we can observe some differences in the interpretation and choice of indicators of social well-being. The terms "subjective well-being" and "perception of the quality of life" used in American socio-psychological and economic research are synonymous to this concept. The structure of the concept includes subjective experiences and states, the nature of social interactions, and psychological well-being (depression, suicide, etc.) (Chen *et al.*, 2020; Utsumieva *et al.*, 2015; Kobozeva *et al.*, 2007; Dushatsky, 2004). The following constructs are called components of social well-being: people's feelings of satisfaction with their health, financial situation, social status, legal security, family's livability, interpersonal relations. These components indicate the state of the political, environmental, socio-economic, and interethnic situation (Londadzhim, 2011; O'Reilly and Dolan, 2017).

The objects of study are the impact of mutual support on the social well-being and issues of social integration and segregation of veterans (Drebing *et al.*, 2018).

Thus, the literature substantiates a set of different socio-economic, demographic, psychological, legal, and other indicators of veterans' social well-being and emphasizes their connection with the level of social security. This determines the necessity to study the types of social services and support measures that make up the social protection system, ensuring a high level and quality of life for those who have special merits to the state and society.

2. Materials and Methods

Based on the Department of Social Work of N.P. Ogarev Mordovia State University, a study, and a series of activities under the regional grant № 18-411-130001 with the financial support of the Russian Foundation of Basic Research (RFBR) and the Government of the Republic of Mordovia on "Transformation of social well-being of war veterans in conditions of Russian reforms at the regional level" were carried out. In 2018-2019, a cycle of empirical studies was conducted.

1. Pilot study "Social well-being of war veterans (combat veterans)" (November 2018-March 2019). The main objective was to identify the social well-being and health indicators of war veterans (combat veterans). War veterans (combat veterans) between the ages of 55 and 65 were interviewed. The research was carried out based on the State Budgetary Institution of the Republic of Mordovia "Saransk Complex Centre of Social Services", the All-Russian Public Organization of Veterans "Battle Brotherhood", the Council of the Mordovian Regional Branch of the All-Russian Public Organization of Veterans (Pensioners) of War and Labour of the Armed Forces and Law Enforcement Agencies (n = 48 people). The type of sampling was targeted.

2. Pilot study "Social support for the elderly in the Republic of Mordovia" (February-December 2018). The objective of the study was to justify the relevance of social and economic support measures and the specifics of interdepartmental interaction in solving the problems of social health of war veterans (combat veterans) in the Republic of Mordovia. The veterans aged 55-65 and over 65 were interviewed. The research was carried out based on the Saransk Complex Centre of Social Services, the All-Russian Public Organization of Veterans "Battle Brotherhood", and the Council of the Mordovian Regional Branch of the All-Russian Public Organization of Veterans (Pensioners) of War and Labour of the Armed Forces and Law Enforcement Agencies (n = 86 people). The type of sampling was targeted.

3. Pilot study "Social health and support measures for war veterans (combat veterans)" (February-December 2019). The objective of the study was to identify the degree of satisfaction of war veterans (combat veterans) with social assistance and support measures in the Republic of Mordovia. The respondents of this study were veterans living in the Republic of Mordovia, aged 55-84, who were registered in the departments of social support under the jurisdiction of the Ministry of Social Protection, Labour, and Employment of the Republic of Mordovia (n = 50 people). The type of sampling was targeted.

4. Pilot study "Comparative analysis of social well-being of the elderly and war veterans (combat veterans)" (October-November 2019). The main objective was a comparative analysis of objective and subjective factors affecting the social well-being of the elderly and war veterans (combat veterans) in Saransk. A questionnaire was administered to the recipients of social services of the Saransk Complex Centre of Social Services aged 60-74 years (n = 150 people). The type of sampling was targeted.

5. Pilot study "Social health of war veterans (combat veterans) as a goal of the functioning of social institutions" (October-November 2019). The objectives of the study were to substantiate the needs of war veterans (combat veterans) in the context of transformational processes of modern society affecting their social health and to highlight the prospects and recommendations for solving the problem of maintaining the social health of war veterans (combat veterans) through interdepartmental interaction of social institutions. Experts were interviewed from the staff of the Ministry of Social Protection, Labour, and Employment of the Republic of Mordovia and its subordinate institutions, the All-Russian Public Organization of Veterans "Battle Brotherhood", the Council of Mordovian Regional Branch of the All-Russian Public Organization of Veterans (Pensioners) of War and Labour of Armed Forces and Law Enforcement Agencies, and the Ministry of Health of the Republic of Mordovia and its subordinate institutions (n = 95). The type of sampling was targeted.

3. Results

According to the answers of social work specialists, war veterans apply to the Saransk Complex Centre of Social Services mainly for material and in-kind assistance (89.0%). Such response options as socio-psychological, socio-legal, and socio-medical assistance and assistance in recreation and leisure activities were mentioned much less frequently. At the same time, as noted by the war veterans, they most often sought support either from the Saransk Complex Centre of Social Services or from social protection agencies (48% and 34%, respectively).

However, as the survey showed, the main problems that concern the elderly, including veterans, were health problems (64%), loneliness (56%), conflicts with relatives (30%), and financial problems (60%) (the respondents could choose more than one answer). Thus, the state of health and the nature of social relations are the most important components of social well-being and act as dominant factors of the level and quality of life, along with material security.

The employees also indicated that the specialists of the Saransk Complex Centre of Social Services can most often help veterans with material problems (50.0%), as well as leisure activities (20.0%). In solving housing, household, socio-pedagogical, and socio-psychological problems (20.0%), they more often stepped in as mediators. At the same time, the social activity and leisure activities of older people were at a fairly high level and were characterized by diversity. Thus, older people watched TV programs and movies, read fiction, played board games and crossword puzzles, and so on. However, some older people did not engage in any type of work activity (48.3%) and lacked social (25.1%) and leisure activities (5.6%). Therefore, this group of older people had low social well-being, which had a negative impact on their livelihood and social health.

However, the process of ageing changes a person's social position, lifestyle, well-being, and social health. 56% of elderly veterans considered themselves lonely. This can be explained by the fact that it is difficult for them to adapt to the changing conditions.

The distribution of veterans' opinions regarding the indicators that primarily determine their social status and standard of living is of particular interest. Among the five most relevant indicators, the veteran respondents chose the following options: 1st place – the absence of war, peaceful sky, socio-economic conditions of living in society; 2nd place – the state of health; 3rd place – personal merits in society, positive evaluation of the veteran's deeds by society; 4th place – the level of social protection and security; 5th place – the social status of relatives, family relations, and social activity.

Thus, a model of social protection for veterans to improve their social well-being and health should consider several levels: status, behavioral, resource, value, identity, and spiritual levels. Each of the highlighted levels contains objective and subjective factors influencing and determining social well-being. The proposed social model helps to explore and propose interventions (social support measures, assistance) to harmonize relations between veterans and society and ensure high social security and satisfactory social well-being.

1. The status level contains factors that determine the position of the veteran in society (development of social legislation, social policy model, and traditions).

2. The behavioral level touches upon the layer of relations and interactions of veterans in society (activity and passivity of veterans, their involvement in social, administrative, and public activities, reactions and actions of the state and society in relation to veterans).
3. The resource level relates to the skills, abilities, strategies, and resources that guide veterans' behaviour to maintain their social well-being and health (psychological, social factors, health status, infrastructure, etc.).
4. The value level determines the beliefs and values of veterans' contributions and perceptions of a decent life (value of veterans' contribution to society, value of health, and orientation towards a healthy lifestyle) as essential circumstances.
5. The identity level examines identity issues in the context of the adequacy of the veteran's perception of their social/material position in society and expectations and life goals (application of categorization to veterans).
6. The spiritual level contains an assessment of attitudes towards the contribution to the development of the society of veterans, the preservation of remembrance, and patriotism as indicators of the level of development of society and its moral "health" (the depth of understanding of social problems and solidarity).

Reforming the system of social protection of veterans to improve their social well-being and health should take place on three levels.

On the macrolevel, changes are required to form a legislative framework, overcoming the existing legislative gaps, which would ensure a high level of social protection for all categories of veterans.

Measures on the microlevel imply solving problems and developing a social protection system for veterans to improve their social well-being and health within municipalities, social protection institutions, and enterprises and deal with enhancing the role of veterans' public organizations.

Conducting work on the microlevel involves resolving or alleviating personal, subjective problems that impede the normal social functioning of veterans. The process of assistance on the microlevel involves both individual counselling and the organization of group work to improve the social well-being and health of veterans.

4. Discussions

Social well-being is directly proportional to the degree of success in solving important social problems and meeting the needs relevant to a

particular category of people. Social well-being is related to the quality of life, the main characteristics of which are material security, health, education and employment, and social status. At the present stage in Russia, the system of social protection for veterans includes:

1. Pension support and measures to improve income levels of veterans: pension provision for veterans, general measures to support income levels of the older generation in the Russian Federation (e.g., social supplement to pensions, indexation of pensions), additional regional measures of social support and assistance to veterans.
2. Improvement of veterans' housing conditions and provision of social support measures for payment of housing and utility services: provision of housing for veterans, capital and current repairs of housing, social support measures for payment of housing and utility services, measures to create a comfortable social environment and infrastructure.
3. Medical care and rehabilitation, provision of medicines and technical means of rehabilitation, sanatorium and spa treatment for veterans, implementation of regional programs, including measures to increase active longevity and healthy life expectancy, development of geriatric care.
4. Tax exemptions concerning income tax, transport tax, property tax, land tax, and state duty.
5. Social services for veterans: individualization and targeting of social services for veterans in the Russian regions, development of medical and social services, hospital-substituting social service technologies, expansion of mobile (interdepartmental) teams to provide various services, and introduction of a long-term care system.
6. Promotion of employment and professional retraining of veterans: vocational training for those of pre-retirement age and implementation of additional employment services.
7. Raising awareness of veterans (including concerning their social rights).
8. Supporting the participation of veterans in social work and upbringing of children and the youth: state support for public associations of veterans, development of the social partnership, education, and patriotic upbringing.

The current system of social protection for veterans in the Russian Federation is multisubject. All subjects can be divided into federal, regional, and local, including the "third sector" (state bodies, social protection institutions, public organizations, etc.) (Bistyakina *et al.*, 2019; Solovyova

et al., 2019). At the same time, the system of social protection of veterans remains open, i.e., in the process of functioning, it is constantly replenished with new elements and subjects.

The institutional mechanisms for the implementation of social protection of veterans include federal targeted (state) programs, which represent a special organized activity of state authorities to implement social support measures for this category of citizens based on targeted budget financing and attraction of other sources. Federal targeted (state) programs include legal, financial, economic, information, analytical, institutional, and organizational components. Particular attention for the establishment and development of the elements of social protection of veterans to improve their social well-being and health is paid in the framework of the federal project "The Older Generation", which provides for measures aimed at ensuring an increase in healthy life expectancy, the proportion of elderly and disabled citizens living in new-type residential social service organizations, the development of medico-social services for veterans, etc.

According to the experts, the development of the social protection system for veterans to improve their social well-being and health should be linked to the solution of the following urgent tasks.

1. The issues of rehabilitation of military personnel with disabilities need to be elaborated and detailed. The social and rehabilitation infrastructure for disabled combatants, especially in rural areas, needs to be developed at the level of municipalities, and there is a need for comprehensive rehabilitation centers for disabled combatants.
2. It is advisable to develop a coherent state (or regional) concept of social protection for veterans and disabled combatants, as well as their family members, with the formation of an appropriate legislative framework for this (through the introduction of amendments and additions to normative and legal acts).
3. The issues of education, vocational training, and employment of persons with disabilities and veterans of combat operations, guaranteeing their social integration and a decent standard of living, are topical.
4. It is advisable to create in the regions a system of social order, social grant, which will significantly facilitate and make more effective the work to solve the numerous social problems of the elderly and veterans, including such acute problems as health, leisure, employment, care for the elderly, etc.
5. It is necessary to share the successful experience of the regions in improving the social well-being and health of veterans and create and implement relevant Internet portals and services that allow for close inter-regional cooperation.

6. Provision of information support to social service institutions and non-profit non-governmental organizations working with elderly people and veterans through the creation and maintenance of internet websites, production of regional newspapers or magazines free of charge for social protection institutions, and resumption of the practice of regular publication of information collections containing the generalized experience of social protection institutions.
7. Expansion of social guarantees and improvement of the welfare of combat veterans and members of their families.
8. Active engagement of veterans and disabled war veterans in local issues – reception of population, work with the youth, administrative, social, and legal, and information and reference work in municipal administrations, bodies/institutions of executive power, public organizations, etc.
9. There is a need to strengthen patriotic social work; it is advisable to create projects aimed at the patriotic education of the Russian youth using examples from the lives of combat veterans.
10. The work with elderly veterans should be as targeted and personalized as possible, with a focus on supporting family ties.

Conclusion

The modern system of social protection of veterans should aim to achieve the favorable social well-being of veterans.

Social protection of war veterans is multisubject; it includes diverse socio-political, socio-legal, socio-economic, socio-medical, socio-psychological, and organizational measures.

The practice of social protection of war veterans as a model of social protection continues to be transformed by demographic, social, legal, economic, and cultural factors. In response to today's social needs, the system of social protection should be more targeted, individualized, oriented towards a high quality of life for people who have rendered special services to the homeland; technologies allowing the normalization of the social and psychological well-being of this category of persons should be widely introduced into social practice.

Reforming the system of social protection of veterans to improve their social well-being and health should consider several levels: status, behavioral, resource, value, identity, and spiritual. Each of the distinguished levels contains objective and subjective factors influencing and determining social well-being; in turn, measures should address all three levels: strategic

level – the level of social policy (macrolevel); the level of organizations and social services (microlevel); individual level (microlevel).

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Juvenile Justitia and the protection of children's rights in Europe: the practice of the European Court of Human Rights

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Abstract

The objective of the research is to analyze the main violations of children's rights within the European Convention on Human Rights to highlight the basic positions of the European Court of Human Rights ECHR on their protection, as well as to determine the advisability of applying the practice of this court by the European states. The methodological basis of the work consists of different methods, such as analysis and synthesis, dialectical, logical-legal and formal-legal. The result of this work allowed identifying the role of the decisions of the European Court of Human Rights as a source of European law and its importance for the protection of the rights of the child, interpreting the legal positions established in the pertinent decisions of the said court and comparing them, to justify the need for your careful observation of the practice of the ECHR in the application of the law. It is concluded that the practice of the ECHR is recognized as a source of law in most states. And although the Ukrainian legal tradition does not recognize the status of judicial precedent as a source of law, such precedents are actively used in everyday legal activity.

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Justicia juvenil y protección de los derechos del niño en Europa: la práctica del tribunal europeo de derechos humanos

Resumen

La investigación tiene como objetivo analizar las principales violaciones de los derechos del niño dentro del Convenio Europeo de Derechos Humanos para resaltar las posiciones básicas del Tribunal europeo de Derechos Humanos TEDH sobre su protección, así como determinar la conveniencia de la aplicación de la práctica de este tribunal por parte de los estados europeos. La base metodológica del trabajo consta de diferentes métodos, como análisis y síntesis, dialéctico, lógico-legal y formal-legal. El resultado de este trabajo permitió identificar el papel de las decisiones del Tribunal europeo de Derechos Humanos como fuente del derecho europeo y su importancia para la protección de los derechos del niño, interpretar las posiciones legales establecidas en las decisiones pertinentes del referido tribunal y compararlas, para justificar la necesidad de su observación cuidadosa de la práctica del TEDH en la aplicación de la ley. Se concluye que la práctica del TEDH se reconoce como fuente de derecho en la mayoría de los estados. Y aunque la tradición jurídica ucraniana no reconoce la condición de precedente judicial como fuente de derecho, tales precedentes se utilizan activamente en la actividad jurídica cotidiana.

Palabras clave: política juvenil; Tribunal Europeo de Derechos Humanos; Convenio Europeo de Derechos Humanos; Convención sobre los Derechos del Niño; realidad jurídica de Ucrania.

Introduction

In today's democratic society, the protection of human rights is one of the most pressing issues. A set of relevant principles was formulated by European thinkers of the Enlightenment in the eighteenth century: humanism, education, equality of all members of society (Shyshka and Tkalych, 2020). The pace of development of society, the growth of quantitative and qualitative human needs has led to an increase in the

types of human rights violations, as well as the backlog of legal regulation of relations arising from such violations. This problem is even more acute in the protection of violated rights of the child, as it can be attributed to more vulnerable social groups, and in practice manifests itself in gaps in legal regulation or unequal interpretation of the law on the rights of the child. Accordingly, modern private law must be transformed and improved to be able to meet the challenges of modernity (Tkalych *et al.*, 2020).

A partial solution to this problem can be considered the European Court of Human Rights (ECtHR), which at the international level guarantees the observance of human rights, including the child, their protection from the violation, or any other encroachment.

Paragraph 1 of the Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention" (1997) (Law 475/97-VR /1997 of July 30), in particular, fully recognizes Article 46 of the Convention fundamental human freedoms of 1950 to recognize the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of the Convention as binding and without the conclusion of a special agreement. Ukraine is moving towards the harmonization of its legislation with the legal framework and the recommended EU standards (Pavlova *et al.*, 2020).

Thus, in recognizing the jurisdiction of the ECtHR, Ukraine has made an unspoken obligation to follow the provisions set out in its decision, which in turn serve as a source of law and are a reference point for legal decisions, in proceedings concerning the rights and interests of minors (children). Other European countries have made the same commitment.

The object of the study is the relationship concerning the protection of children's rights, which is considered through the prism of the decisions of the ECtHR. The subject of research is juvenile justice and its significance in the context of ECtHR decisions.

1. Methodology of the study

The methodological basis of the work was both general and special methods, including analysis and synthesis, dialectical, logical-legal, and formal-legal.

Firstly, the synthesis method, as a rule, complements the method of analysis and allows you to summarize the results obtained by studying the separate elements of a particular phenomenon using the method of analysis (Kharytonov *et al.*, 2021). The analysis and synthesis made it possible to comprehensively describe and characterize the essence of juvenile justice through the prism of ECtHR decisions on the protection of children's rights,

to identify and compare basic positions on the legal regulation of relations related to violations of children's rights. The synthesis also served as a basis for combining original ideas, principles, developments for further effective use of the legal positions of the ECtHR in the development and formation of juvenile justice.

Moreover, the dialectical method revealed the general features, connections, and patterns that arise in the protection of the rights of the child of the ECtHR.

Furthermore, the formal-legal method helped to clarify the essence and content of legal norms, their functions, features of the concepts they define, and the processes they regulate, within the research topic, and the hermeneutic method allowed to study the content of certain legal norms and theoretical provisions in the context of topical issues of juvenile justice based on acquaintance with the texts of normative and doctrinal sources.

Also, the use of the formal-dogmatic method made it possible to reveal the phenomenon of children's rights by covering these rights in the norms enshrined in international legal acts, as well as to determine that these rights must be ensured in compliance with the principle of the best interests of the child.

The axiological method served as a basis for substantiating the value of children's rights and the importance of their observance for the formation of juvenile justice.

Thanks to the comparative law method, it has become possible to compare the main legal positions of the ECtHR, considering the specifics of each case.

The special legal method was used in assessing the effectiveness of the ECtHR's activities to protect the rights of the child and the appropriateness of using the legal precedents of the ECtHR to develop and establish a national system of juvenile justice.

The logical-legal method helped formulate proposals for the use of ECtHR practice in the formation and development of juvenile justice.

Finally, generalization, as a method, made it possible to identify the main problems and vectors of development of the application of ECtHR decisions in the formation of juvenile justice.

2. Analysis of recent research

Many works by domestic and foreign scientists are devoted to the study of issues related to the research topic.

Thus, Opatsky (2012) studied the juvenile policy of the state through the prism of the direction of the activities of the respective subjects, which is the basis for the formation of juvenile justice as one of the means of ensuring the rights and freedoms of children. The author identified the reason for the problematic development of juvenile policy and the slow pace of its pace in the specifics of the historical path of juvenile justice in Ukraine. The scholar also defined the goal of the state's juvenile policy, which can be fully compared with the goals of the ECtHR's activities to protect the rights of the child.

The study by Mendzhul (2020) reveals the meaning and essence of the principle of the best interests of children in the practice of the ECtHR and emphasizes that this principle should be predominant in decision-making by both international courts and national courts. Thus, the author found that the ECtHR uses this principle in various situations, when considering cases of paternity, family reunification, the relationship between the adopter and the adopted child, contact with the child, and the right to communicate with him of the parents who lives separately, or other relatives, deprivation of parental rights, etc.

Krestovskaya (2008) made a significant contribution to understanding the essence of the concept of juvenile justice. The scholar's works examine in detail the paternalistic, protectionist, and autonomist doctrines of juvenile law and their combination in the Ukrainian legal system. Much attention has been paid to the existence of juvenile law as a separate branch, its principles, functions, system, and connection with morality, religion, and politics.

The works of Mamych (2012) analyzed the practice of the ECtHR to protect the rights of children, from mental and physical violence, resulting in the conclusion that children have the same rights as adults to demand from society and the state respect for honor and dignity, protection from violence, enslavement, and exploitation.

It is worth mention, that Dzhuzha's (2013) research is aimed at identifying the main legal mechanisms for detecting and preventing crimes against the sexual integrity of a child, on the example of ECtHR decisions.

In turn, Volkova (2018) focused on the practice of the ECtHR in cases concerning Ukraine and analyzed its impact on the adoption of decisions on the child by national courts. Her work describes certain decisions of the ECtHR in various categories of cases concerning the protection of the rights and interests of the child and concludes that the child is a subject of international law, so the ECtHR and national courts have the right to apply international law rights and interests of the child, even if such acts of children are not directly related.

Given the achievements of scholars and practitioners in addressing these issues, further need to study the problem of forming a generally accepted definition of "juvenile justice", the balance of the best interests of the child and privacy, the relationship between propaganda in ECtHR decisions to maintain parental contact with children in custody and to maintain the normal psychological state of the child, which may be disturbed by the return of the child in custody to biological parents, and the expediency of using ECtHR legal positions by national courts and other bodies directly or indirectly involved in the formation of juvenile justice.

3. Results and discussion

One of the main tasks of every modern democratic and civil state is the protection and defense of human rights. Given that children, due to the extent of their legal capacity, may not always be able to independently violate their freedoms and rights, ie use state protection mechanisms, and their representatives may ignore the obligation to protect children's rights, ensuring the rights of the child deserves special attention from the state both at the national and international levels.

To ensure the above objectives, the state pursues a juvenile policy, which can be defined as part of domestic policy, a special type of social activity governed by international and national law, aimed at effectively ensuring the rights and legitimate interests of minors (Opatsky, 2012).

The juvenile policy should include provisions for the construction of mechanisms and a system of juvenile justice, which is designed to protect the rights and interests of minors in court.

There is currently no consensus among theorists and practitioners on the interpretation of juvenile justice. The most successful, according to the author, is the interpretation of Krestovskaya, according to which juvenile justice is a system of state, municipal, and public, judicial, law enforcement and human rights bodies, institutions, and organizations that based on juvenile law and with the help of medical, social and psychological-pedagogical methods administer justice, prevention and prevention offenses against and against children, protection of rights, freedoms, and interests, as well as re-socialization of children in difficult life situations (Krestovskaya, 2008).

Ukraine, in particular equal to the developed countries of Europe, has also taken certain steps towards the introduction of juvenile justice, as evidenced by the Decree of the President of Ukraine "On the Concept of Criminal Justice for Juveniles" (Decree 597/2011 of May 24,), the Order of the Cabinet of Ministers of Ukraine "On approval of the action plan for the implementation of the Concept of development of criminal justice for

minors in Ukraine" (Order 1039-p /2011 of February 8), as well as the separation in a separate chapter of the Criminal Procedure Code of Ukraine (Law 4651-VI/2012 of April 13) provisions for the conduct of proceedings against minors. At the same time, juvenile justice aims not only to prosecute or re-educate child offenders but also to address other problems of children, those related to the violation of their rights, including those arising from civil, family, or other legal relations.

In view of the above, it can be concluded that juvenile justice institutions in Ukraine are generally developing at a slow pace and rather one-sidedly, ie only within the framework of criminal proceedings against minors, while other offenses committed by third parties against minors are ignored, which entails the inability to create an effective mechanism to protect the rights of children, taking into account their special legal status.

Instead, the protection of children's rights at the level of substantive international law is ensured by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter – the European Convention) and the Convention on the Rights of the Child (1989), developed by the United Nations. At first glance, the Convention on the Rights of the Child is more personal and special, as it specifically concerns the rights of the child. In particular, the above convention stipulates:

- inalienable right to life (Article 6).
- mandatory registration of the child after birth (Article 7).
- ensuring the individuality of the child (Article 8).
- the right to free expression of views (Article 12) and opinions (Article 13).
- the child's right to freedom of thought, conscience, and religion (Article 14).
- protection of the child from all forms of physical and psychological violence, insults or abuse, lack of care or careless and brutal treatment and exploitation through the necessary legislative, administrative, social, and educational measures (Article 14).
- the right of every child to a standard of living necessary for the physical, mental, spiritual, moral, and social development of the child (Article 19).
- the child's right to education (Article 28).
- the child's right to rest and leisure, the right to participate in games and entertainment activities appropriate to his age, and to freely participate in cultural life and engage in the arts (Article 31).

- the child's right to protection from economic exploitation and the performance of any work (Article 32), etc.

From a practical point of view, the European Convention has a greater impact and significance, as it is the material basis of the work of the ECtHR, which in turn within the European Convention is to protect the rights of the child.

At the same time, the ECtHR refers in its decisions not only to the European Convention but also to the UN Convention on the Rights of the Child, thus symbolizing the unity of the principles of establishing guarantees for the protection of the rights of the child. Thus, in the decision A. v. The United Kingdom (23 September 1998) ECtHR mentions Art. 37 and Art. 19 of the UN Convention on the Rights of the Child, which urges States to protect children in the care of parents or others from "all forms of physical and mental violence, including sexual acts". In this judgment, the Court unequivocally points to the State's responsibility to protect children from domestic violence and elsewhere. Thus, the state's disregard for the problems of violence against children in the family or in other private institutions, failure to take appropriate measures to prevent it is seen as a concession to such actions by the state and as a violation of international legal obligations to protect children from torture and other cruel, inhuman, or degrading treatment or punishment (Dzhuzha, 2013).

Thus, the ECtHR can also be considered the highest institution of juvenile justice. In this regard, the states that have signed the European Convention are obliged to strictly follow the positions set out in the decisions of this institution.

According to the author, this commitment is the embodiment of unity, the cohesion of European states around the standards of human rights, including the child. At the inter-European level, the idea of creating a European Civil Code or another act that would extend to European countries has long been nurtured. This idea has not only positive sides but also negative ones, which are primarily related to the problem of ensuring the preservation of the identity of national legislation because the basis of any legal system is legal awareness, which in turn is closely linked to mentality, genesis and the philosophy of law that is inherent in each state.

In this case, the case-law of the ECtHR is a common source of law for European countries, which complements the provisions of the European Convention as a source of law in the form of an international treaty, thus closing gaps in the legal regulation of human rights, including children, each European state.

The practice of the ECtHR as a source of legal influence has the following characteristics:

1) serves as a basis for the actual functioning of the European Convention.
2) is personified in a set of legal positions through which there is a legal influence.
3) exerts informational, psychological, educational, law enforcement, social and regulatory influence on the consciousness and behavior of legal entities.
4) ensures the formation of legal awareness within the framework of human rights.
5) gives rise to legal consequences in case of violation of the articles of the European Convention.

Since the powers and jurisdiction of the ECtHR are unparalleled in the world, a large number of applications are received annually by this court, but complaints concerning violations of children's rights belong to the first category of complaints under the priority policy of the ECtHR (Mamych, 2012). That is, the protection of the rights of the child is a priority over the protection of the rights of other adults. Everyone has equal rights, including the same right to protection, but due to the significant vulnerability of minors, the lack of enhanced guarantees from states to respect their rights at the national level, the ECtHR pursues a chosen policy of priority and recognizes the interests of children.

It should be noted that, unlike the laws of many European countries, the ECtHR does not link the possibility of directly seeking protection with the capacity of a person, ie the applicant may be minors themselves. Nachova v Bulgaria (2005) highlighted a different approach to marginalization and discrimination (applicants belonged to the Roma or Roma ethnic group) and acknowledged the lack of age as a criterion for admissibility of the complaint (the applicant was 3 years old at the time of the complaint). However, in cases in which the applicants are the child's legal representatives, there are many more cases in the ECtHR's practice.

Thus, about the general situation of children's access to justice in 2017, the Child Rights International Network (CRIN) examined how the legal systems of 197 countries allow children to exercise their rights or, conversely, provoke violations that they must fight. In the Global Report on Children's Access to Justice prepared by this organization, Ukraine received 55.4 points and together with Rwanda took 80th place (Pavlichenko and Martynenko, 2017).

According to the author, analyzing the case-law of the European Court of Human Rights on the protection of children's rights, first, it is worth emphasizing the decision of the ECtHR in the case of Marckx v. Belgium (13 de junio de 1979, 1979). Moreover, although the ECtHR considered

this case back in 1979, it should be considered a textbook and one of the fundamental, because in the decision, in this case, the ECtHR equated the rights of children born in wedlock and illegitimate children. Thus, the applicant relied on the fact that the State had established a complicated procedure for establishing legal relations between mother and child in the event of the birth of a child out of wedlock.

As this procedure consisted of the recognition of the child and his / her subsequent adoption, the child did not have any legally established ties at all during this time, which violated his / her rights. In its decision, the ECtHR stated that if the state, within the framework of its domestic legal system, determines the regime of certain family relations, it must act thoughtfully so that the persons concerned could have a normal family life. Besides, the existence of legal guarantees in domestic law that would allow a child to be integrated into the family from birth was made mandatory. The ECtHR also noted that if the state aims to create conditions for the normal development of family relations between an unmarried mother and her child, then the state should not allow any discrimination on the grounds of birth.

And although in most European countries there are currently no restrictions based on the birth of a child in a formal marriage or not, the analyzed decision of the ECtHR is an example of the impact of the ECtHR's positions on the legislative and law enforcement activities of states.

The ECtHR is subject to various cases of violation of the rights of the child within the provisions of the European Convention, and one common feature of such consideration is the ECtHR's adherence to the principle of establishing the best interests of the child in each case. Thus, the scope of the concept of "best interests of the child" covers administrative. For example:

- appeals against decisions of guardianship authorities on determining how to participate in the upbringing of a child of one parent; decisions to consent to the alienation of property.
- decisions to establish the child's residence; the obligation of the subject of authority to take certain actions, namely, to amend the birth certificate of the child, etc.) and civil (in particular, cases of determining the child's place of residence.
- adoption.
- deprivation of parental affairs; establishment of guardianship and custody, and;
- recovery alimony and so on) litigation, the implementation of family law (Klim, 2014).

Indicative in the context of this is the decision M.S. v. Ukraine (11 October 2017), in which the ECtHR emphasized that, in establishing the best interests of the child, it is important to remember:

1) it is in the best interests of the child to maintain his or her ties to the family unless it is proven that the family is unfit or manifestly dysfunctional.

2) in the best interests of the child to ensure its development in a safe, reliable, and stable environment that is not dysfunctional.

However, the interests of the child often do not coincide with the interests of the parents, and the interest of the child in such cases is predominant. This is confirmed by the judgment in Hunt v. Ukraine (7 March, 2006), in which the ECtHR emphasized that there must be a fair balance between the interests of the child and the interests of the parents, and, in striking such a balance, special attention must be paid to the most important interests of the child, which by their nature and importance must prevail over the interests of the parents.

Thus, in the decision in the case Haase v. Germany (08 July, 2004), the ECtHR noted that in the case of a child separated from his parents for a long time and under the care of a new family, maintaining the child's normal psychological state, which may be disturbed by new changes in his family environment, is a more important factor than the interest of parents in the return of the child.

At the same time, the ECtHR in some decisions insists on the need to maintain contact between parents and children in foster care, as any restriction on communication must be justified by grounds directly related to the circumstances of the case and the protection of the rights of such children. The ECtHR emphasizes that in such cases the balance between the restrictions and the purposes for which the restrictions were imposed is particularly important. Thus, in Andersson v. Sweden (14 October, 2004), the applicants (mother and son) challenged the ban on their personal meetings, communication by post or telephone. Although the reason for such a restriction was reasonable reason to believe that the son would try to flee the custody after contact with the mother, which was contrary to the interests of the child, the ECtHR found the reason to be disproportionate and found a violation of the European Convention.

In continuation of this position of the ECtHR, namely the communication of the child with his parents, it is worth paying attention to the decision in the case of Vyshnyakov v. Ukraine (24 October, 2018), which was considered in connection with the mother's improper execution of the court's decision to see the child. Thus, the ECtHR found that the improper implementation of the relevant court decision was the result of insufficiently developed legislative and administrative mechanisms that could accelerate the voluntary compliance with the agreements with the involvement of specialists in the service of children and families. In addition, the existing legislative and administrative mechanisms did not provide for appropriate

and specific measures to enforce the decision to set up appointments following the principle of proportionality.

Besides, the main thesis of the decision Amanalachioai v. Romania (26 May, 2009) is that the interests of children require that family ties be broken only in particularly exceptional circumstances and that all measures should be taken to preserve personal ties and, if necessary, to rebuild the family. In this case, the ECtHR also noted: "the fact that the child could have been placed in a more favorable environment for his upbringing does not in itself justify his removal from the custody of his biological parents." However, in this case, it should be noted that the circumstances of this case concerned the removal of the child from the parents and his placement in the appropriate institution, ie no family ties between the child and another family were established.

Many questions are raised by the above statement as to which circumstances are "particularly exceptional", as the list of such circumstances, or at least the criteria by which such circumstances can be determined and established, is not provided by any legal act. Instead, the case-law of the ECtHR contains some developments in this regard, which will allow to draw parallels between situations and compare the relevant circumstances. Thus, the case of Saviny v. Ukraine (18 March, 2009) concerned the deprivation of a child from parents and deprivation of their parental rights because the parents were blind from birth, which in the opinion of the competent state body meant their inability to provide children with proper food, clothing, sanitation and to take care of children's health and to ensure their social adaptation. The ECtHR criticized this position and recognized the state as violating Art. 8 of the European Convention on deprivation of Sava's parental rights.

Violations of this article, which states that the right to respect for private and family life, are often established by the ECtHR. itself within the framework of interference in family life. Such cases within the framework of "family life" concern the protection of the rights of parents, but in any case, also affect the rights of the child, as the decision is made in full and comprehensive clarification of the circumstances considering the interests of the child. Thus, violation of Art. 8 of the European Convention is found in the decisions of the ECtHR on:

- establishment of paternity (Rasmussen v. Denmark, 28 November 1984, § 87, § 33 and Keegan v. Ireland, 26 May 1994, Series A § 290, § 45).
- deprivation of parental rights (decision in the case of the "Khanty of Ukraine" of December 7, 2006, application No. 31111/04).
- removal of the child (Savin v. Ukraine judgment of 18 December 2008, application No. 39948/06), and;

- determination of the child's place of residence (ME v. Ukraine). [1, 85-86].

According to the authors, the practice of the ECtHR in cases where the interests of children are concerned is somewhat ambiguous and at first glance contradictory. For example, the ECtHR seeks to establish and maintain family ties between a child and his or her biological parents, while in some precedents the ECtHR deviates from its position and favors others, in the court's view, more important factors.

For example, the case of Kautzor v. Germany (24 September, 2012) concerns the establishment of paternity of the applicant in respect of the daughter, who after the divorce remained living with the mother and her new husband, who legally recognized his paternity with the applicant's daughter. By bringing an action before the domestic court, the applicant was denied leave of claim because the child already had a legal father. The ECtHR, considering Kautzor's application, also did not recognize the state's violation of Art. 8 and Art. 14 of the European Convention, referring to the fact that European law does not provide for the possibility of establishing biological paternity without first challenging the paternity of another man. At the same time, this decision once again forms a position concerning which European states are obliged to resolve the issue of compliance of the establishment of biological paternity with the best interests of the child.

It should be noted that the practice of the ECtHR on the establishment of paternity is of particular importance for European states not only as a source of substantive law but also procedural law. Thus, according to the author, in the decision of Kalacheva v. Russia (7 August, 2009), established the priority and importance of DNA examination as one of the most important evidence in this category of cases, as DNA analysis is recognized as the only scientific method of accurate paternity; its probative value significantly exceeds any other evidence presented by the parties to confirm or refute their close relationship.

The ECtHR also considers other cases of violation of the rights of the child granted to it by the European Convention as a person.

Thus, practice shows that the ECtHR actively protects children's rights to education and freedom of conscience. Thus, the applicant in Folgero and Others v. Norway (29 June, 2007) challenged in the ECtHR the refusal to exempt his children from school subjects in Christianity, religion, and philosophy. In the decision, in this case, the ECtHR insists on the violation by the state of Art. 2 of Protocol No. 1 to the European Convention proclaiming the right to education, as the respondent State has not provided adequate conditions for the provision of information and knowledge within the curriculum objectively, critically, and pluralistically. The ECtHR came to this conclusion based on a significant predominance

of Christian themes and motives during study, which the applicant had requested to attend in the interests of his children. The ECtHR also noted that the state is prohibited from having an ideological influence on children, which be disrespect for the religious and philosophical beliefs of parents.

The decision in the case of Hasan Eylem Zengin v. Turkey (2008) is similar in meaning and significance.

Admittedly, even in today's civilized and tolerant society, given that minors are often influenced by adults, sometimes due to their physical weakness and inability to fight back, children still suffer from abuse by adults, usually people close to them: parents, relatives, etc. Examples of such situations abound in the practice of the European Court of Human Rights, which always recognizes the violation of Art. 3 of the European Convention.

Thus, the ECtHR found that the State had violated the above-mentioned Article and Article 13 of the European Convention in E and Others v. The United Kingdom (15 January, 2003) because the negligent attitude of social services had prevented years of abuse of children who because of such abuse received serious post-traumatic mental disorders.

The case of Kontrov v. Slovakia (24 September, 2007) differs from other categories of ECtHR cases concerning the protection of children's rights. According to the case file, on 2 November 2002, the applicant requested the relevant public authority to institute criminal proceedings against her husband for the ill-treatment of her. The applicant later withdrew her application under pressure from her husband and with the assistance of the police. In December of that year, her husband shot their joint minor daughter and son. Although the application to the ECtHR was filed by Kontrova regarding the non-payment of compensation due to her, considering the case of the ECtHR, it was recognized not only as a violation of Art. 13 of the European Convention (the right to an effective method of protection) due to lack of cash benefits to the mother, as well as the violation of Art. 2 of the European Convention, i.e. the right to life, arguing that the State had not taken appropriate measures to save the life of the applicant's children.

There is a practice of the ECtHR concerning the protection of the rights of the child and within the limits of recognizing the violation of the prohibition of slavery and servitude, which is enshrined in Art. 4 of the European Convention. According to the plot of the case Siliadin v. France (26 October, 2005), a fifteen-year-old Togolese citizen was brought by a French citizen to Paris and handed over to a married couple as a worker, which she was for several years. According to the author, this decision is indicative because it expresses the position of the ECtHR on the state of slavery in a broader sense.

Thus, according to the ECtHR, the applicant had not been subjected to physical or mental violence, her case could be equated with forced labor, as she was a minor, was alone in a foreign country and could have been arrested for violating immigration rules, fearing spouses who at the same time promised to legalize her stay. Siliadi's enslavement was expressed in the fact that she was unable to choose a place of work and residence, had no means of subsistence and individual housing, had no freedom of movement, and was entirely dependent on B.'s spouses, who confiscated her passport. The ECtHR thus found a violation of Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees freedom from slavery and forced or compulsory labor.

Conclusions

1. The practice of the ECtHR is recognized as a source of law in most states. And although the Ukrainian legal tradition does not recognize the status of judicial precedent as a source of law, such precedents are actively used in practice.
2. Decisions of the ECtHR are binding on States promoting the ideas set out in the European Convention and can be considered a common source of law for those countries, which certainly ensures a uniform interpretation of the rules on the protection of children's rights and brings their legal systems closer together.
3. The ECtHR considers a large number of applications that directly or indirectly concern children's rights. Thus, the ECtHR makes decisions within:
    - the right to education (Article 2 of Protocol № 1 to the European Convention);
    - freedom of conscience, the right to freedom of expression and freedom of association (Articles 9, 10, 11 of the European Convention);
    - child abuse and neglect (Articles 3 and 8 of the European Convention);
    - restriction of freedom of expression, receipt, and dissemination of information for health and morality (paragraph 2 of Article 10 of the European Convention);
    - protection against discrimination (Article 14 of the European Convention), etc.
4. The above allegations should play a key role in national courts' decisions, as it is extremely difficult to identify completely identical

circumstances and legal relationships in respect of which a particular ECtHR decision has been made and to ascertain that it is appropriate to apply it. Thus, cases related to the rights and interests of minors are characterized by increased attention to detail, which determines their situation. It is for this reason that national courts should carefully rely on the ECtHR's decision-making practice.

5. The decision of the European Court of Human Rights is the basis for the formation, formation, and development of effective juvenile justice, which stands for the protection of children's rights.
6. Further research within the chosen topic should address the prospects of using the ECtHR's practice to protect the rights of the child for the development and establishment of the juvenile justice system in Ukraine, as well as the analysis of violations of children's rights by various European countries, to avoid similar violations by Ukraine in the future.

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Objective conditions for improving the protection of the rights of labour migrants in Ukraine

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Abstract

The research analyses objective preconditions for improving the protection of the rights of migrant workers in Ukraine. The research methodology included the dialectical combination of tools such as documentary observation and legal hermeneutics. Among the main results is that: sand analyzed the statistical materials and standards of current Ukrainian legislation governing the rights of migrant workers. Problems related to the implementation of the rights of migrant workers in Ukraine were determined. Objective prerequisites for improving the protection of the rights of migrant workers in Ukraine were identified. It was noted that the implementation of rights by migrant workers in the country depends on several conditions and, above all, it was the specificity of the legal regulation of this issue. It is concluded that Ukrainian law provides general guarantees to prevent discrimination against immigrants in terms of exercising their right to work. At the same time, the application of the rights of immigrants in our country depends on a number of objective and subjective conditions that should be discussed.

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Condiciones objetivas para mejorar la protección de los derechos de los trabajadores migrantes en Ucrania

Resumen

La investigación analiza las condiciones previas objetivas para mejorar la protección de los derechos de los trabajadores migrantes en Ucrania. La metodología de investigación incluyó la combinación dialéctica de herramientas como la observación documental y la hermenéutica jurídica. Entre los principales resultados destaca que: se analizaron los materiales estadísticos y las normas de la legislación vigente de Ucrania que rige los derechos de los trabajadores migrantes. Se determinaron los problemas relacionados con la implementación de los derechos de los trabajadores migrantes en Ucrania. Se identificaron los requisitos previos objetivos para mejorar la protección de los derechos de los trabajadores migrantes en Ucrania. Se señaló que la implementación de los derechos por parte de los trabajadores migrantes en el país depende de una serie de condiciones y, sobre todo, se trata de la especificidad de la regulación legal de este tema. Se concluye que la legislación ucraniana, ofrece garantías generales para prevenir la discriminación contra los inmigrantes en términos de ejercer su derecho al trabajo. Al mismo tiempo, la aplicación de los derechos de los inmigrantes en nuestro el país depende de una serie de condiciones objetivas y subjetivas que conviene debatir.

Palabras clave: derechos humanos; trabajadores migrantes; políticas migratorias; garantías para la protección de derechos; realidad jurídica de Ucrania.

Introduction

Modern life is characterized by a number of integration and globalization processes, the feature of which is a significant and rapid increase in population migration. Labour migration occupies a special place in migration processes. In an effort to realize their full potential and receive a decent reward for their work, people try to find employment in countries with high economic development and high social standards, in particular, in terms of protecting the rights and legitimate interests of workers. At the same time, Ukraine, represented by its authorities, striving to quickly and

effectively solve the most acute problems in the main spheres of public life, is interested in attracting leading world experts to work in our country. This situation determines the expediency and necessity of introducing effective mechanisms for managing migration processes and ensuring the protection of the rights, freedoms and legitimate interests of labour migrants (Kozin, 2020).

However, the analysis of statistical materials and norms of the current legislation allows to state the fact that today the mechanism for the protection of the rights of labour migrants in Ukraine can hardly be considered flawless. Researchers have repeatedly stressed the need to improve the State policy on immigrants, in terms of ensuring their labor rights, emphasizing that this is a necessary step towards the proper implementation of relevant international legal requirements and standards by our State.

For example, Dyka and Yushko (2019), analyzing the problems of realization of labor rights of foreigners in Ukraine, note that today there are a number of regulations governing the legal status of foreigners and stateless persons in our country, including features of their participation in the domestic labor. At first glance, it seems that such regulation should not cause any problems for foreign citizens willing to find employment in Ukraine, nor for the State, which has provided a clear mechanism for the exercise of labor rights by foreigners and stateless persons. However, having studied national legislation, as well as the practice of its application, one can see that some problems exist. Therefore, the question arises as how to improve the employment system of foreigners in order to attract foreign investments into the economy of Ukraine and improve the conditions for the realization of their right to work.

1. Methodology

To achieve the goal of the Article, the following methods of scientific knowledge were used.

Normative and dogmatic method, as well as the method of hermeneutics, were applied when analyzing legal acts regulating the rights of labor migrants in Ukraine.

Monographic method helped in the analyses of scientific works of different scholars who studied the issue under consideration.

The methods of analysis and synthesis made it possible to determine the problems related to the implementation of the rights of labor migrants in Ukraine.

The method of induction and deduction allowed to specify areas for improving legal regulation of the rights of labor migrants in Ukraine.

Statistical method was useful when considering the data concerning the number of labor immigrants in Ukraine.

The method of generalization was used to formulate the relevant conclusions and suggestions.

2. Literature Review

The issue of protection of the rights of labor migrants were the topic of research in the scientific works of a number of foreign and domestic scholars.

For example, Bohning (1988) studied international labor standards in protecting migrant workers and the members of their families.

Massimo Merlino and Joanna Parkin (2010) emphasize that the problem of labor migration is extremely acute for the EU. Tens of thousands of migrants work overtime in unsuitable conditions to meet their basic needs for food, housing, education, health care, etc. The author examines regulations designed to ensure the rights of migrant workers at three levels: within the EU, at the international level, and at the regional level.

The rights of migrant workers were also investigated within a specific country; for example, Salve (2009) (India), Sönmez *et al.* (2011) (UAE), Kozin *et al.* (2020), Sakharuk *et al.* (2020) (Ukraine).

This issue was also the topic of research of such Ukrainian scientists as Barehamian (2015), Blynova *et al.* (2020), Kelman (2012), Spitsyna (2013), Yatskevych (2015) and others.

However, it is fair to say that the scholars have pointed to the need to improve one or another aspect of protection of the rights of labour migrants in Ukraine, but there was not a comprehensive study on the objective conditions for improving the protection of rights of labour migrants in Ukraine.

That is why the purpose of the article is to clarify the objective conditions for improving the protection of the rights of labour immigrants in Ukraine.

3. Results and Discussion

As of mid-2018, according to the State Statistics Service of Ukraine, the number of immigrants (according to the criteria of Ukrainian legislation) in the country was 273 000 people, which is 0.65% of the average population of the country in January – June 2018. The majority of these are representatives are the representatives of the former Soviet republics, primarily of the Russian Federation (55.4%). Other numerical groups are

citizens of Moldova (6.6%), Azerbaijan (4.5%), Armenia (4.3%), Georgia (3.9%), Belarus (3.3%), Vietnam and Uzbekistan (0.9% each). In fact, in 2017–2018 the number of foreigners in the country returned to the level of 2014. In 2016–2017, the volume of issued immigration permits in Ukraine decreased by an average of 30% of 2014 when it amounted to 21574 permits against 15068 permits in 2016 and 15213 permits in 2017.

The number of foreigners and stateless persons residing in Ukraine was about 95 000 people in the first half of 2018, which is equal to 0.22% of the average population of the country in January – June 2018. Absolute growth of this immigrant population between 2014 and the first half of 2018 are almost 20 thousand people. The majority of these are representatives are foreign students and labor migrants. Immigrant workers are mainly executives and managers (62.5% in 2015), employed in the wholesale and retail trade (23.1%) and processing industry (16.7%). The largest group among them are thr citizens of Russia (18.8%), Turkey (11.4%), Poland (5.5%), Belarus (5%) and Germany (4%). Before the crisis, the number of foreign students in Ukraine grew steadily and in 2013 reached almost 70 000. The most popular is medical and pharmacological education. Almost half of foreign students are citizens of the CIS countries. However, as a result of the war in the East of the country, the arrival of educational migrants began to decline (International Organization for Migration, 2016).

The results of scientific research show that there is discrimination against immigrants in Ukraine. Although Ukraine has developed and implemented regulations governing foreigners' access to employment, education, health care, and housing, this access remains limited due to the ignorance and low level of language proficiency of migrants, as well as the actions of civil servants, employees of health care system, etc.

The main problems in foreigners' access to employment, according to a survey conducted, are the low level of official employment, difficulties in obtaining a business permit and low awareness of services provided by the State employment service.

Preschool and school education for migrant children is generally available (as confirmed by foreigners and leaders of migrant communities, as well as government officials). Difficulties in placing children in kindergarten and schools are usually not related to citizenship or ethnic origin but are typical for Ukraine's educational system as a whole.

There are problems with the recognition of the foreigners' diplomas of education. In particular, the recognition of refugee diplomas often becomes impossible due to the impossibility of applying to their countries of origin.

The language problem is also acute for migrants. According to the survey, only one tenth of foreigners are fluent in Ukrainian, and slightly less than half – in Russian. Today, the network of institutions based on

which Ukrainian language courses operate is insufficient. As for the courses of history and culture of Ukraine, they do not actually exist. No more than a quarter of those who applied to the health authorities reported problems with treatment. In general, the situation with access to health care facilities is assessed by respondents as much better than with access to other facilities.

Almost half of foreigners need support in providing housing. Most tenants are deprived of the opportunity to register at the place of residence due to the reluctance of landlords to register foreigners in their homes. Lack of registration makes it much more difficult for foreigners to access education, health care and administrative services. The survey showed that foreigners often pay more for housing than Ukrainians; half of the respondents said that Ukrainians prefer their citizens in the provision of rental services (International Organization for Migration, 2014).

In the light of the foregoing, it is worth paying attention to the views of scientists on the need to improve the protection of the rights of labour migrants in Ukraine. For example, Barehamian (2015) emphasizes that a number of issues need to be addressed in order to properly ensure the rights of migrants in Ukraine. In particular, in connection with the implementation of the European Social Charter (Council of Europe, 1996) (revised) the following issues still remain unresolved in Ukraine: 1) our State has not acceded to the fundamental paragraph 1 of Art. 4 of the this Charter, which recognizes the right of employees to remuneration that provides them and their families with a sufficient standard of living; 2) the norms on poverty and extreme poverty, their establishing criteria, in order to strengthen the effectiveness of the entire system of social and legal measures in this area; 3) to increase the impact of standard indicators such as the minimum wage and the minimum pension all provisions on the subsistence level should be removed from the law; 4) the government's right to use this tool in preparing the State budget and practical application of this indicator in the measurement of social assistance should be limited; 5) it is expedient to amend the laws of Ukraine by removing the indicator "subsistence level" as one that does not comply with the Constitution of Ukraine; 6) it is expedient to audit the regulatory framework for occupational safety and health and bring it in line with international standards.

Kelman (2012), having investigated the issue of ensuring the right to work of foreigners in Ukraine, note that the problem of improving the legal mechanisms for ensuring the rights and freedoms of citizens, including their right to work, which is recognized as the most important of all socio-economic rights and the prerequisite for the existence of the latter, remains current topic in many studies.

It is worth to note that the right to work is of basic, fundamental nature; other labour rights derive therefrom. Therefore, the issues that arise in the area of employment deserve special attention, because all competent

persons of any country may be subject to the labour relations of our State. Today, the labor market is open to foreigners despite job deficit and unemployment; the number of immigrants is significantly increasing due to the government's desire to raise Ukraine to interstate status and the European level, which significantly affects the socio-economic development of the country as a whole. The established demographic norms and traditions of the population are destroyed to some extent under the influence of such processes, which contributes to the growth of crisis in the social status of the country. The inadequacy of national legislation in terms of restrictions on the work of foreigners, the existence of contradictory norms, adopted depending on the political situation, significantly reduce the effectiveness of their application, the rule of law and legality.

At the same time, there are more and more people willing to work in Ukraine, both legally and illegally. All this justifies the need for proper legislative consolidation of the mechanism for the implementation of labor rights of foreigners and regulation of labor relations with foreigners in Ukraine. The task of the legislation should be to predict and take into account all possible negative factors in the exercise of the right to work by foreigners.

Levenets (2014), having studied the constitutional rights of foreigners in Ukraine, pays special attention to the need to ensure their right to work. According to the lawyer, the foundation for the constitutional and legal status of any person is his / her rights and obligations enshrined in the Constitution and current legislation. Emphasizing the equality of people in the exercise of their rights and freedoms, some of the articles of the Constitution of Ukraine of the second section (which is devoted to human rights and freedoms) assign them to every person, regardless of whether they are citizens of Ukraine. However, the constitutional and legal status of foreigners still differs significantly from the status of citizens of Ukraine, primarily in relation to restrictions on rights in the political, socio-economic, and labor spheres. The urgency of the research is explained firstly by the extent to which such restrictions are justified in the development of a sovereign, independent, and democratic State, and secondly by the extent to which they meet global trends and international standards in constitutional status of foreigners. Thus, labor, socio-economic, and political rights are the most important and problematic rights of foreigners in Ukraine, which should be discussed in more detail.

As for the real provision of labor rights and freedoms of an individual and a citizen, as well as the guarantees of their observance, it is necessary to study theoretical and practical problems of observance of constitutional guarantees of labor rights of foreign workers in Ukraine; to create really effective mechanisms that would ensure the implementation of constitutional and legal guarantees of labor rights of foreigners and stateless

persons in Ukraine; to improve the current labor legislation and bring it in line with the Constitution of Ukraine and international legal acts (Spitsyna, 2013).

Yatskevych (2015) notes that the strengthening of Ukraine's integration processes with the European Union involves intensification of not only public but also private law relations. This applies to the scope of employment of foreigners in Ukraine, as well as citizens of Ukraine abroad. Efficiency, transparency, and simplification of employment of foreign nationals under an employment contract with an employer of Ukrainian jurisdiction should be ensured taking into account national interests of Ukraine and should promote the creation of new jobs, the modernization of production, foreign investment inflows and strengthening the rule of law, in particular through effective legal guarantees of realization of the right to work by both residents and non-residents.

The scientist correctly states that under the conditions of growing investment activity and low unemployment in the country, attracting foreign labor (both skilled and unskilled workers) may result in the expansion of production, and thus in economic growth. Therefore, providing transparent and understandable conditions for legal employment of foreigners will only increase investment in Ukraine's economy. Adherence to the principles of non-discrimination, the rule of law and the protection of the national interests in the employment of foreigners will testify to the establishment of democratic principles in Ukraine, approximation to the European standards in the social sphere. After all, foreigners in Ukraine have the same rights and obligations as the citizens of Ukraine, except for the restrictions established by law. Transparent and motivated legal regulation of these restrictions is one of the important legal guarantees of ensuring the right of foreigners to work. The realization of such right by non-residents of Ukraine through concluding an employment contract in cases specified by law provides for the issuance of work permission for the foreigners, which is part of the legal fact along with the conclusion of an employment contract. Further progress of Ukraine on the path of reforming labor relations provides for the legislative enshrinement of a clear procedure for employment of foreigners in the territory of our State in the future Labor Code of Ukraine.

Kovalenko (2018) emphasize that the strengthening of Ukraine's integration processes with the European Union involves the intensification of not only public but also private law relations and provides greater transparency of Ukraine's labor market to foreign labor, which leads to increased competition between the employees in this market. In turn, this necessitates the implementation of a consistent and balanced State policy in the labor market, which would ensure the necessary balance between the interests of the State, employers and the national economy and the interests of employees. One of the tools for implementing such a policy,

creating the necessary conditions to protect the national labor market is the introduction of mechanisms of State influence in this market and elements of control over the use of foreign labor in Ukraine while fully respecting the interests and equality of Ukrainian citizens and foreigners as employees.

The positions of the indicated authors and several other researchers eloquently demonstrate that the current state of legal regulation of the legal status of immigrants, in terms of exercising their labor rights in Ukraine and their protection, needs improvement, due to the need for proper implementation legal requirements and the needs of economic development of our country.

According to Article 26 of the Constitution of Ukraine (LU 254k/96-VR/1996, June 28), foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms, as well as bear the same obligations as the citizens of Ukraine with exceptions provided by the Constitution, laws or international treaties of Ukraine. This constitutional provision also applies to the right to work guaranteed by Article 43 of the Constitution of Ukraine. According to this article, everyone has the right to work, which includes the opportunity to gain a living by work, which he (she) freely chooses or freely agrees to. The use of forced labor is prohibited. Military or alternative (non-military) service, as well as work or service performed by a person under a sentence or other court decision or in accordance with the laws on martial law and the state of emergency, shall not be considered forced labor. Everyone has the right to adequate, safe and healthy working conditions, to wages not lower than those specified by law. It is prohibited to employ women and minors in jobs that are hazardous to their health. The right to timely remuneration for work is protected by law.

Article 24 of the Constitution of Ukraine should be mentioned in this context as well. It provides that there should be no privileges or restrictions on the grounds of race, color, political, religious or other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other features. Equality of the rights of women and men is ensured: by providing women with opportunities equal to those of men, in public and political, and cultural activity, in obtaining education and in professional training, in work and its remuneration; by special measures for the protection of work and health of women; by establishing pension privileges, by creating conditions that allow women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood, including the provision of paid leaves and other privileges to pregnant women and mothers.

These constitutional provisions are translated in the Labor Code of Ukraine (LU 322-VIII/1971, December 10) and the Law of Ukraine "On Employment". Thus, Article 2 of the Labor Code of Ukraine provides that the State creates conditions for effective employment, promotes employment,

training and retraining, and if necessary, provides retraining of persons released as a result of the transition to a market economy. Employees exercise the right to work by concluding an employment contract with an enterprise, institution, organization or an individual. Employees have the right to rest in accordance with the laws on the restriction of working days and working weeks and on annual paid leave, the right to healthy and safe working conditions, to unite in trade unions and to resolve collective labor disputes in the manner prescribed by law, to participate in the management of the enterprise, institution, organization, to material provision in old age or in the event of illness, full or partial disablement, to financial assistance in case of unemployment, the right to appeal to court to resolve labor disputes, regardless of the nature of the work performed or position held, except as provided by law, as well as other rights established by law.

Besides, Article 2-2 of this Code stipulates that any discrimination in the area of labor is prohibited, including violation of the principle of equality of rights and opportunities, direct or indirect restriction of workers' rights depending on race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspected or present of HIV / AIDS, marital and property status, family responsibilities, place of residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intention to appeal to court or other agencies to protect their rights or provide support to other employees in defending their rights, notification of corruption or corruption-related offenses, other violations of the Law of Ukraine "On Corruption Prevention" as well as assisting a person in making such a report, on linguistic or other grounds not related with the nature of the work or the conditions under which it is performed.

As for the Law "On Employment" (LU 5067-VI/2012, July 05), it enshrines that everyone has the right to freely chosen employment. Forced labor in any form is prohibited. Voluntary unemployment of a person cannot be the ground for bringing him (her) to justice. Employment is provided by establishing relations governed by employment agreements (contracts), conducting business and other activities not prohibited by law. Foreigners and stateless persons permanently residing in Ukraine, or recognized as refugees in Ukraine, or granted asylum in Ukraine, or recognized as persons in need of additional protection, or granted temporary protection, as well as those who have obtained immigration authorization, have the right to employment on the grounds and in the manner prescribed for the citizens of Ukraine. Foreigners and stateless persons who arrived in Ukraine for employment for a definite period are hired by employers on the basis of a work permission for foreigners and stateless persons issued in the manner prescribed by this Law, unless otherwise provided by international treaties of Ukraine recognized by the Verkhovna Rada of Ukraine.

The Law of Ukraine "On International Labour Migration" (LU 761-VIII/2015, November 05) enshrines the rights and social guarantees of labor migrants and members of their families. In particular, the Law provides for the rights of migrant workers to appropriate working conditions, remuneration, recreation and social protection, participation in the system of compulsory State social insurance, pensions, receiving education in Ukraine in accordance with the law, participation in public associations, addressing their national, cultural, educational, spiritual, and linguistic needs.

Despite the positive novelties, some issues important for migrant workers mentioned in the Law are very vague, some are missed altogether. Therefore, the Law "On International Labour Migration" is important, but only the first step towards settling legal relations arising from labor migration. Harmonization of current legislation, as well as the development of new regulations necessary for its implementation is ahead.

In April 2017, the Government approved an Action Plan to ensure the reintegration into society of migrant workers and their families (Order of the Cabinet of Ministers of Ukraine. 2017(1), April 12), developed to implement the abovementioned Law. Unfortunately, it did not specify to the declared norms, as it mostly contained provisions such as promoting the employment of foreigners, studying foreign experience, providing consultations, etc.

In July 2017, the Government of Ukraine adopted the Strategy of State Migration Policy for the period up to 2025 (Order of the Cabinet of Ministers of Ukraine. 2017(2), July 12). The International Organization for Migration and the European Union provided significant assistance in developing the Strategy, advising on the adaptation of best international practices to the Ukrainian legislation. During the development of the document, the latest migration policy strategies of a number of EU countries and the Eastern Partnership (Bulgaria, Georgia, Finland, Hungary, Moldova, Poland, Slovakia) were studied and taken into account.

In contrast to previous attempts to conceptualize the State's migration policy, the Strategy has more profound and comprehensive approach. It contains a number of new and progressive elements, which were practically not mentioned in previous political documents. In particular, the Strategy provides for the involvement of highly qualified foreign specialists in accordance with the needs of economic and social development of the State.

Particular attention is paid to the integration of immigrants into Ukrainian society as a bilateral process involving both migrants and the local population. It is proposed to introduce a mechanism and programs to regularize illegal migrants who have lived in the country for a long time, have families and jobs, have not committed serious violations of the law,

and cannot be expelled for humanitarian reasons. An important place in the Strategy is given to the improvement of accounting, information, and statistical support of migration policy, as well as coordination of the activities of various agencies, which, of course, should be considered as positive features of the document.

To increase the effectiveness of Ukraine's immigration policy for the period up to 2025, the following measures should be taken:

- to do polling of the situation of foreigners.
- to introduce an exchange of information between communities, public organizations, and governmental structures of Ukraine, in particular information on the number and composition of members of migrant organizations, the problems they face, the assistance they need.
- to develop and disseminate informational and educational materials to acquaint immigrants with the mechanisms for the protection against discrimination in their national languages.
- to create conditions for the adaptation of the educational process for migrants and stateless persons who do not have sufficient knowledge of the State language by developing and implementing methods of teaching foreigners and publishing specialized textbooks.
- to study the issues of attracting migrants to Ukraine by developing the relevant migration programs.
- to identify the categories of migrants to be regularized, etc.

Despite the advantages of the Strategy, a number of its provisions raise certain reservations. Firstly, the Strategy of State Migration Policy was approved by an Order of the Cabinet of Ministers of Ukraine, i.e. it is a document whose level hardly corresponds to the severity of migration problems that need to be addressed. The scope of the Strategy is quite large, it formulates 13 goals and numerous tasks aimed at achieving them. As a result, the text is misrepresented in some places by the activities planned by various agencies that participated in its development (Ministry of Internal Affairs, State Migration Service of Ukraine, State Border Service of Ukraine), which is detrimental to the clarity of the State goals and objectives in the area of migration.

Conclusion

The role of migration as a factor of socio-economic development increases significantly under conditions of depopulation (stable excess of the number of deaths over the number of births). Due to the exhaustion of the potential for demographic growth in Ukraine, a further decrease in the total population is inevitable, especially in working age. Maintaining stable population and an acceptable level of the ratio between different age groups in economically developed countries is possible due to the migratory influx of population from developing countries. In this regard, the problem of protection of migrant's rights is of paramount importance.

Summing up the results of the presented research, we can state that in general, Ukrainian legislation on the one hand provides general guarantees to prevent discrimination against immigrants in terms of exercising their right to work in Ukraine. At the same time, the implementation of the rights of immigrants in our country depends on a number of conditions. Firstly, we are talking about the specifics of the legal framework for the employment of such categories of workers.

Besides, the analysis of a number of scientific views and provisions of existing regulations showed that there are a number of gaps and shortcomings in the area of protection of the rights of labour migrants in Ukraine which should be addressed in such directions:

- to strengthen the guarantees of immigrants' labor rights.
- to address inconsistencies in legislation regarding remuneration of immigrant employees.
- to review the problems of social protection of this category of workers (to enshrine clear rules for the provision of pensions for immigrants, to clarify the issue of taxation of migrant workers' wages, to specify the migrants' guarantees in the area of education,).
- to address the issue of the exercise of the voting rights of the immigrants, which is extremely painful for migrants and inevitably escalates during every parliamentary or presidential elections.

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Attorneys of the Volga region and the Urals at the beginning of the judicial reform of 1864

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Abstract

The process of training and development of the Bar Institute at the beginning of the judicial reform of 1864 (Reshetnikova, 2014), dates to the government of Alexander II, on the example of the Volga region and the Urals, discusses the main directions and characteristics of the professional activity of lawyers in the region. It is a documentary and historical study that pays special attention to the formation of the Institute of Defense for a deeper understanding of its essence and its inherent characteristics. Currently, there is an objective need for a comprehensive and comprehensive study of the history of the training and development of the Bar Institute. The judicial system was divided into provincial and county. For the provincial system were the Criminal Cases Chamber of the civil court, provincial court, high provincial court, provincial magistrate, superior punishment; and for county - County Court, lower district court. The results can be concluded that the judicial system of the Russian Empire after the successful reform established a powerful and independent Defense Institute. The judicial reform of 1864 created a completely new professional group, which was very important for the legal future of the Russian Empire.

Keywords: lawyers in the Urals; Institute of Defense; judicial reform; Alexander II; judicial statute.

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Abogados de la región del Volga y los Urales al comienzo de la reforma judicial de 1864

Resumen

El proceso de formación y desarrollo del Instituto de Abogados al comienzo de la reforma judicial de 1864 (Reshetnikova, 2014), se remonta al gobierno de Alejandro II, sobre el ejemplo de la región del Volga y los Urales, se analizan las principales direcciones y características de la actividad profesional de los abogados en la región. Se trata de un estudio documental e histórico que presta especial atención a la formación del Instituto de defensa para una comprensión más profunda de su esencia y sus características inherentes. Actualmente, existe la necesidad objetiva de un estudio integral y completo de la historia de la formación y desarrollo del Instituto de Abogados. El sistema judicial se dividió en provincial y condado. Para el sistema provincial estaban la Sala de Casos Penales Sala del tribunal civil, tribunal provincial, alto tribunal provincial, magistrado provincial, castigo superior; y para el Condado - Tribunal del Condado, tribunal de distrito inferior. Los resultados obtenidos permiten concluir que el sistema judicial del Imperio ruso después de la exitosa reforma configuró un Instituto de defensa poderoso e independiente. La reforma judicial de 1864 creó un grupo profesional completamente nuevo, que fue muy importante para el futuro jurídico del Imperio ruso.

Palabras clave: abogados en los Urales; Instituto de defensa; reforma judicial; Alejandro II; estatuto judicial.

Introduction

More than once in Russian history, the liberalization of politics set in motion the reform of justice and law. Gorbachev's openness and the process of democratization in post-Soviet Russia saw lawyers struggle in Russia to make their courts independent, powerful, and fair. The judicial reforms that resulted from their efforts recalled the era of Great reforms and the adoption by the tsarist leaders of the judicial reform of 1864 (Dorskaya, 2015), for which lawyers and officials fought for half a century. Seventy years of Soviet power passed between these two eras of reform, during which successive generations of Soviet leaders tried to shape the courts and laws in accordance with their interests and visions. To a large extent, they turned back the clock, erasing many of the achievements of the tsarist judicial reform.

The judicial reform of Alexander II, announced on November 20, 1864, in Russian historiography is considered the largest transformation on the way of modernization of the Russian Empire (Savostyanova, 2013). The

Central element of the reform is the introduction of the trial of jurors and attorneys (lawyers). The main result of the reform of the judicial system was to ensure the transparency, adversarial and wordless proceedings.

1. Methods

This article is written using a combination of methods: special-historical and legal, so the study becomes interdisciplinary, conducted at the intersection of legal and historical fields of scientific knowledge. Historical methods have become prevalent, defining the guiding principles, nature, and style of research. Historical-descriptive, historical-comparative, historical-system are used. Special legal methods, such as historical-legal and formal-legal, are also involved.

2. Results and Discussion

Despite the demand in society for such a legal institution as the bar, the Russian state was in no hurry to adopt this direction to protect its citizens. The formation and development of the bar as an independent branch of the judicial system began with a great delay against the background of the development of the whole state.

Legal protection in the sense in which we are accustomed to it, began the path of its formation in ancient Russia. The main cell of society in those days was considered a community (verv). It was her authoritative opinion in disputes and accusations, which often occurred between its members, that was recognized as an axiom. Therefore, the main defenders were considered to be the elder of the family or the father of the family.

Over the long period of its existence, the Russian state has undergone many transformations, including those in the authorities. Suffice it to recall the reformatory activity of Peter I, thanks to the invincible energy, iron will and outstanding talent of Russia in a relatively short time "lost" the appearance of the Eastern state and closer to Europe, becoming a powerful military power, which had to reckon with all its neighbors.

The withdrawal, made in the state and public image of Russia by Peter I, was radical, bold, did not consider the mass opinion of the country and its past. Peter's reforms-independent, not prescribed from above, the evolutionary movement of the then existing society, little changed, but, indeed, political consciousness, morals and faith contributed to its "modernization". The reforms did not penetrate into the depth of the views of the population, were not "imposed" on it, so they gave tangible results only in the sphere of public life, which is amenable to external force. Many of Peter's legislative innovations have not been instilled at all, and a number of novels, mainly under his successors, have been canceled or forgotten.

The complete opposite in relation to their real meaning and influence on the life of society was represented by the state reforms (Berendts, 1915) of Emperor Alexander II — the Tsar-Liberator. We can hardly be mistaken in saying that in the history of mankind there are rarely such magnificent examples of a radical but peaceful transformation of the state - along the path of humanity, education and justice. No wonder this period in history was called " the Era of the great reforms of the reign of Alexander II" (Under the editorship of M. Gernet, 1916).

The General negative attitude to the existing judicial system naturally led to the idea of the need for judicial reform. At first this idea was the property of the few — the most enlightened and understood in the public Affairs of men, but gradually it spread more and by the end of the fifties of the XIX century was the unanimous desire of many developed populations.

Awareness of the need for judicial reform was gradually spreading to the institutions responsible for codifying the legislation in force at that time. Count Bludov in 1843 demanded through the Minister of justice, count Panin, to know the views of prosecutors and chairmen of courts and chambers about the shortcomings of Russian laws in the proceedings.

Already since 1843 a number of committees, including the well-known Commission of count Bludov, established in 1850, worked on the reform of the court, but these works were not successful and served only as material for the Commission formed in 1861, under the actual leadership of Secretary of state Butkov, the Commission that developed "the basic provisions, and then the judicial statutes, which received the highest sanction on November 20, 1864" (Under the editorship of A. Fedichev, 2014).

After the approval of The judicial statutes on November 20, 1864, a full-scale Judicial reform was launched throughout the Russian Empire, which introduced a new judicial system, the institutions of jurors and the bar, and proclaimed the most important principles of justice. The reform came to the middle Volga region in the 70s of the XIX century. After the establishment of magistrate courts in the region, June 26, 1870 Alexander II signed a decree " on the introduction of judicial statutes in the districts of the Kazan And Saratov chambers of justice and in the provinces of Smolensk and Kostroma" (The main trends in the development of the Institute of advocacy in the Middle Volga region in the period from the second half of the XIX century to 1917, 2010: s/p). With the implementation of Judicial reform began the history of attorneys of the Volga region as a legitimate Corporation of lawyers.

On the basis of a comprehensive analysis of extensive factual material on the issues under study, it can be concluded that the development of the Institute of attorneys at law in the Volga region has passed three stages:

The first stage: 1870-1886 Marks the establishment of judicial regulations, the emergence of the foundations for the existence of the Institute and the emergence of the first attorneys. The bar of the region was United during this period, United by the administrative borders of the Kazan judicial chamber.

Phase II: 1886-1904. is Characterized by the separation of the bar of jurisdiction between two judicial chambers, Kazan, and Saratov.

The third stage: 1904-1917. Begins with the establishment of the Kazan Council of attorneys. It ends with the events of the October socialist revolution.

The initial stage (1870-1886) of the development of the Institute of attorneys of the Volga and Ural regions is characterized by the formation of a special Committee of attorneys, consisting of five members elected by the General meeting of attorneys from their environment for one year. In case of illness or temporary absence, the composition was replenished by candidates elected from the total number of attorneys.

The special Committee was charged with: (a) reporting to the attorneys-at-law and their assistants of the district court's orders; (b) presenting to the court considerations on measures that may contribute to the successful discharge of their duties by the attorneys-at-law; and (C) collecting, at the request of the court, preliminary information on the cases of attorneys-at-law and their assistants considered by the court in disciplinary proceedings.

The special Committee of attorneys was charged with the duty to require attorneys and their assistants to provide the necessary information.

The decisions of the special Committee of attorneys came into force only in the presence of all its members.

"The Council has convened a General meeting of barristers, and in the summons, it was stated not only that it is convened on the basis of article 365 Uchr. Court. TSIs., but also noted that this is the second common brother.

For the absence of a legal number of persons, the meeting was declared invalid, but the cash appeared attorneys made a decision on the recognition of the meeting invalid due to non-compliance with the formalities when searching for the agenda, because they did not specify the consequence provided for in Art. 365 of the HRM. Court. TSIs. that is, that if the second brother does not take place, the Council will remain in the same composition until the next election" (The Council of sworn attorneys, 1914).

The conduct of the special Committee's cases was determined independently and reflected in the records, the contents of which could be consulted at any time by the attorneys of the district.

General meetings of attorneys consisted of all attorneys of the Volga region and met: 1) to hear the annual report; 2) for the annual election of members of the special Commission; 3) at the request of the district court on the issue of changing the composition of the special Commission.

The 26th of July 1898 the Council received from attorney Konstantinov telegram of the following contents:

> Now the President of the court has removed me from the protection of the 60 referring to the decision of the General meeting, 1875, are charged under article 129 of the articles asking for vigorous action and for guidance to further my course of action barrister Konstantinov (The Twentieth Anniversary of Moscow Jury Attorneys, 1891: 59).

The frequency of convening General meetings of attorneys was not regulated by the legislation in force at that time.

On September 29, 1870, in our General meeting, the idea was expressed of the need for periodic meetings of attorneys of the judicial district, to participate in the discussion of issues relating to the interests of the entire estate. At the same time, attention was drawn to the fact that the strength of corporate principles and rules peculiar to our rank, then only reach the proper development, when all members will take part in the life of the estate, when among its members there will not be the discord, which, weakening the General idea of the institution, puts forward the right PA fees, personal interest, hardly sufficient to achieve those sought qualities of a lawyer who distinguish him from an ordinary Commissioner.

In view of the fact that 367 art. court. TSIs. along with the law, it recognizes the obligation for sworn attorneys to the established rules, which are not calculated separately in the law. Many have rightly pointed out that these rules are established everywhere by the life of the legal profession itself, in accordance with their needs and requirements. Therefore, in order to enable the latter to speak, it would be necessary to recognize the principle of the right of attorneys to participate in meetings, to discuss General issues... these Arguments could not shake the loud statements about the need for frequent meetings with the above purpose. If the law is positive and does not establish the number of meetings, then it cannot be deduced that they are prohibited.

For the validity of the decisions of the General meeting of attorneys required the presence of at least 2/3 of the total number of attorneys Volga district court.

As candidates for the position of attorneys could apply for persons:

- who had a University or other higher education diploma on completion of a course of legal Sciences or on passed examinations in legal Sciences (external studies).
- at which the length of service in judicial Department at the positions allowing to get practical skills in production of judicial cases made not less than 5 years.

At the same time as candidates for the position of attorney could not qualify:

- persons under 25 years of age.
- foreign person.
- persons with outstanding debt obligations at the time of application.
- persons in the public service.
- person limited in civil cases.
- persons brought to criminal responsibility.

To become a sworn attorney, it was necessary to submit a petition to the Council of attorneys. The application was accompanied by documents confirming education, experience, and other necessary information about the applicant. The Board of barristers, having reviewed the submitted documents and the person "taking into consideration all of the information that recognizes the need" issues an order or the acceptance of the petitioner in the number of barristers, what was issued to him the proper certificate, or were denied it.

3. Summary

The activities of the Institute of attorneys of the Volga region at the initial stage of judicial reform in 1864 had its own characteristics.

First, the formation of the judicial district was very late. Until 1873 in the Volga region justice was carried out in the framework of the proceedings adopted by Catherine II.

In 1873 on the basis of the Decree Of his Imperial Majesty County courts were closed, world judicial institutions were introduced and at the same time was formed from criminal and civil chambers – the United Chamber, which were transferred to the first instance of the case from the former County courts.

The Institute of attorneys consisted of:

- attorneys ' committees of the district courts, prior to the introduction of the Council in the district.
- Council of attorneys of the trial chamber.
- Council of barristers of the district of the Saratov judicial chamber, which is in charge from 1886 was part of Samara advocacy.
- consultations of attorneys at law at Kazan, Simbirsk, and Samara district courts.
- Committee of assistant lawyers at the Kazan district court.

The activities of the Institute of attorneys were regulated by the decree " on the introduction of judicial statutes in the districts of the Kazan And Saratov chambers of courts and in the provinces of Smolensk and Kostroma."

Conclusion

The judicial system of the Russian Empire after the successful reform acquired the Institute of powerful and independent advocacy. The judicial reform of 1864 created a completely new professional group,which was very important for the future of the Russian Empire.

It's about attorneys at law. The bodies of advocate's self-government were the General meeting and the councils of attorneys. Attorneys at law were United in a jury bar - the bar Association, a member of which could only become a member on the basis of professional knowledge, which was to guarantee a high professional level. Attorneys at law were engaged in private practice. The lawyers had assistants.

Because of the rhetoric of brilliant lawyers, they had a special authority in Russia. Trials, which were of a political nature and in which famous lawyers took part, became public events of the first rank. The bar was of great importance as a guardian of the law, as well as a third party to the process. They were one of the few professional groups with a clear interest in statehood.

Judicial reform has created not only a new court, but also a new system of law enforcement, and indeed a new understanding and understanding of the rule of law and justice.

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Egyptian-Israeli Relations during the Government of Mohamed Morsi (2012-2013)

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Abstract

The article highlights the details of the foreign policy of the Arab Republic of Egypt and its impact on the regional security of the state of Israel in between 2012-2013. After the Islamists came to power, they began to dominate expectations that the political force led by Mohamed Morsi would initiate an active anti-Israel policy, however, with active anti-Semitic rhetoric, the "Muslim brotherhood" was able to maintain peaceful relations with Israel. The purpose of this study was to characterize the relationship between M. Morsi's government and the state of Israel during the period 2012 to 2013while revealing the impact of various factors on the preservation of peace in the region, especially in the face of the conflict situation that intensified in neigh boring countries such as Libya and Syria. The main approaches to the study of the problem under consideration were analytical method and content analysis. It is concluded that the article can also contribute to the study of the history of the Middle East within the framework of Arab-Israeli relations against the deterioration of the political situation and the strengthening of religious radicalism in the region.

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Relaciones egipcio-israelíes durante el gobierno de Mohamed Morsi (2012-2013)

Resumen

El artículo destaca los detalles de la política exterior de la República Árabe de Egipto y su impacto en la seguridad regional del estado de Israel entre 2012-2013. Después de que los islamistas llegaron al poder, comenzaron a dominar las expectativas de que la fuerza política encabezada por Mohamed Morsi iniciaría una política antiisraelí activa, sin embargo, con la retórica antisemita activa, la "hermandad musulmana" pudo mantener relaciones pacíficas con Israel. El propósito de este estudio fue caracterizar la relación entre el gobierno de M. Morsi y el estado de Israel durante el período de 2012 a 2013 y, al mismo tiempo, revelar el impacto de diversos factores en la preservación de la paz en la región, especialmente frente a la situación de conflicto que se intensificó en los países vecinos como Libia y Siria. Los principales enfoques para el estudio del problema en consideración fueron el método analítico y el análisis de contenido. Se concluye que el artículo puede contribuir además al estudio de la historia de Oriente Medio en el marco de las relaciones árabe-israelíes contra el deterioro de la situación política y el fortalecimiento del radicalismo religioso en la región.

Palabras clave: Oriente Medio; conflicto árabe-israelí; relación Egipto-Israel; terrorismo en el Sinaí; estudios geopolíticos.

Introduction

After the Arab Spring events in 2011, Islamists came to power in the Arab Republic of Egypt (ARE). Hosni Mubarak, who had been in power since 1981, was stripped of all ranks and taken into custody; until June 2012, the country was being governed by the Supreme Council of the armed forces (SCAF), the former ruling National democratic party being dissolved and outlawed, and its leaders and activists being removed from power. At the election to the legislative authority, held from November 2011 until February 2012, the Muslim Brotherhood won 47.2% of the lower house seats and 56% of upper house seats in the Egyptian Parliament.

Undoubtedly, one of the main reasons for the election victory, won by the Democratic Alliance headed by the Freedom and Justice Party (FJP) of

the political wing of the Muslim Brotherhood (BM), was due to the absence of restrictions on the activities of the Islamic opposition that took place in the previous period.

The history of the "Muslim Brotherhood" movement in the late twentieth and early twenty-first centuries shows that at that time it was the dominant opposition force in the country with an original ideological platform, a well-developed and well-organized network, and a credible social support (The times of Israel, 2012).

After coming to power as an opposition to former President Hosni Mubarak (b. 1928), the FJP criticized the former government on many issues, and the most acute criticism was on the issue of the gas contract between Egypt and Israel. The FJP claimed that the government was seeking to "make Egypt subservient to Israel" because of gas exports at below-market prices[5] (Election program: The Freedom and Justice Party, 2011).

There were a number of concerns and open questions about the new government:

- How Egypt will build relationships with the world leading powers.
- How Egypt will manage domestic security issues.
- What the future cooperation with Israel will be like and whether it will be possible.
- How Egypt will build relationships with the Islamic Republic of Iran in the conditions of cooperation with the Salafists (Haber and Ighani, 2013).

1. Methods

This article uses such research methods as content analysis and comparative institutional analysis. The purpose of content analysis is not just to describe the structural elements of the phenomenon under study but also to clarify the cause-and-effect relationships that underlie the prevalence, dynamics, and stability/instability of this phenomenon. Comparative-institutional analysis studies a set of factors that affect the object of research, identifying among them the main and secondary, temporary, and stable, explicit and latent (hidden), managed and unmanaged ones. These approaches help to reduce the subjectivity in the qualitative analysis process to obtain the information as the result of the study.

5 In 2005, the agreement on the supply of gas from Egypt to Israel was signed (for a period of 15 years). According to experts, the market price of gas was much higher, and that agreement was signed for political reasons. After 2011, deliveries stopped due to terrorists' constant attacks on the pipeline in the Sinai Peninsula.

2. Results and Discussion

The government of the Muslim Brotherhood, which came to power as the result of the "color revolution", sought to support HAMAS, as well as to establish relations with Iran and Islamic fundamentalists, that is, with all those who denied the right of Israel to exist. In response, the government of Benjamin Netanyahu maintained ties with the Egyptian military, which had disagreements with the new political elite of Egypt. These contacts became more active during the period of Morsi's struggle for political power, as in an interview with the Forbes magazine in 2010, the latter described the Jews as a collection of "monkeys and pigs", (Behar, 2013) which naturally could not but cause discontent in Israeli society.

There was no official response from Israel, however, there were concerns in the United States about the future foreign policy of BM, and, consequently, there were suggestions of a possible threat to the freedom of passage of ships through the Suez Canal. After a warning from the United States to reduce financial aid, Morsi said that his words had been "taken out of context" (The New York Times, 2013).

In the video published by Middle East Media Research Institute (MEMRI) in 2010, he stated:

> The Zionists have no right to the land of Palestine. There is no place for them in the land of Palestine. What they took in 1947-48 is looting, and what they are doing now is a continuation of this looting. In no case do we recognize their Green Line. The land of Palestine belongs to the Palestinians, not to the Zionists (The Times of Israel, 2013: s/p).

For that statement, Morsihad to justify himself again. During his visit to Germany in January 2013, he stated that his remarks had been taken out of the context again, insisting that they had been intended as a criticism of Israel's policy towards the Palestinians. Addressing reporters, Morsisaid, "[I] am not against the Jewish faith or the Jewish people. My comments were about the behavior that causes blood to be shed and innocent people to die" (The Times of Israel, 2013: s/p).

After becoming President of Egypt, Morsiattempted to maintain the position of an independent leader of the largest Arab country, using the anti-Semitic rhetoric once again, saying, "It is necessary to distinguish between Judaism and those who belong to it, and violent actions against defenseless Palestinians" (The New York Times, 2013).

Real foreign policy was different from the public rhetoric. Although Morsi acknowledged that he would comply with all international agreements of Egypt, implicitly referring to the agreement of Egypt with Israel at Camp David, however, on the other hand, he called for the restoration of relations with Tehran, stating the need to "change the balance" of Egypt's foreign policy (Ben Gedalyahu, 2012).

The Israeli response was not long in coming; Israeli Prime Minister Benjamin Netanyahu launched a joint diplomatic process with Egypt to find common ground, saying: "we expect to build cooperation with the new government on the basis of our peace treaty" (Spencer, 2012: s/p) As an act of starting a new relationship, Morsi appointed a new Egyptian Ambassador to Israel, Atef Salem (The Times of Israel, 2012).

The act of appointing a new Ambassador had its own cause for concern. The letter of accreditation from the Egyptian President to his Israeli counterpart, Shimon Peres, was not received unambiguously in the Arab world. The text began with the words "Dear and great friend" and ended with the phrase "from a loyal friend of Mohammed Morsi". The letter contained Morsi's desire to develop close relations between the two countries (Alarabiya, 2012). A great number of high-ranking Egyptian officials and representatives of the "BM" claimed that the letter had been falsified, and M. Morsi initially denied sending the letter (The times of Israel, 2012). However, later, the presidential spokesperson, Yasser Ali, told the Egyptian state newspaper "Al-Ahram" that the letter was "100 percent correct" (The times of Israel, 2012).

It is worth noting that not everything was smooth inside the military elite of Egypt that anxiously expected to expand cooperation with HAMAS. The military that has always been part of the country's ruling elite, regarded the rapprochement with the group as a threat to national security. Within the Egyptian elite, there were thoughts that:

> Instability and chaos in the Palestinian territory may flow into Egypt with particularly dangerous consequences in the Sinai. Since HAMAS has been a problem for a long time, the Gaza Strip being the main worry for the entire region, free movement between the Gaza Strip and Sinai would contribute to lawlessness, smuggling of fighters and weapons (Middle East, 2012: s/p).

That view was confirmed by the terrorist attack in August 2012 on the Egyptian-Israeli border. Attacking the border guards, Islamist militants killed fifteen Egyptian soldiers and captured armored vehicles. Later, they intended to cross the border and attack the Israeli boundary post. The Israeli defense Forces' counter-terrorism actions resulted in the killing of seven militants: four of them were killed on the Israeli side and three of them were killed on the territory of Egypt. HAMAS condemned the attack, however, the situation on the Peninsula deteriorated sharply (The Guardian, 2012).

Israel, which supported the democratic changes in Egypt, expected Morsi to start a real dialogue, but the beginning of contacts was not rosy, since the Prime Minister of the Palestinian authority, Ismail Haniyeh, and the former head of the HAMAS Political Bureau, Khaled Mashal, visited Cairo on September 17, 2012. The talks focused on security cooperation, lifting the blockade of the Gaza Strip, and creating a free trade zone in the

border area between Egypt and the Gaza Strip. Perhaps, one of the goals of Khaled Mashal's visit to Cairo was to discuss further reconciliation between HAMAS and FATAH with the Egyptian intelligence leadership. However, judging by the extremely negative reaction of the head of the Palestinian authority, Mahmoud Abbas, to Ismail Haniyeh's trip to Cairo, it was somewhat premature to talk about an early reconciliation (The Times of Israel, 2012).

Moreover, according to some experts, the HAMAS leadership expressed the interest in separating the Gaza Strip from the West Bank and creating an independent state on its territory with the support of Egypt. However, those events could have added an additional complication to President M. Morsi's situation, because, in Washington, the possible strengthening of HAMAS would have been met with extreme disapproval, not to mention the creation of a new state within the borders of the Gaza Strip. In this regard, M. Morsi'sfurther policy in relations with HAMAS was more restrained, although, aimed at intensifying cooperation. The attempt to initiate a dialogue between HAMAS and FATAH was not successful; moreover, Egypt did not have a real material and technical opportunity to reduce the role of the United States and Israel in resolving the intra-Palestinian conflict.

On September 26, 2012, Morsi made a speech at the UN General Assembly, most of which was devoted to the Palestinian issue. "The first issue that the world must make efforts to resolve, on the basis of justice and dignity, is the Palestinian cause," Morsi said. Also, the Egyptian leader recalled the "sacred right of the Palestinians to their own state with its capital in Jerusalem" (Egypt: Speech by President Morsi to UN General Assembly, 2012: s/p).

3. Summary

Eric Trager, an expert on the "Muslim Brotherhood" issues at the Washington Institute for Near East policy, argued that the BM did seek to renegotiate the Camp David Accords, since every member of the organization was imbued with anti-Semitic and anti-Israeli hatred for the Treaty. Moreover, the ideological positions of the Muslim Brotherhood were principally incompatible with the preservation of the Egyptian-Israeli peace (Haber and Ighani, 2013).

Glen Segell, a research fellow at Tel Aviv Institute for National Security, argues that there were more changes in Egyptian-Israeli relations under Mohammed Morsi than Under G. Nasser, A. Sadat and H. Mubarak.[6]The

6 Gamal Abdel Nasser (1918-1970) - President of Egypt (1956-1970), Muhammad Anwar el-Sadat (1918-1981) - President of Egypt (1970-1981), Muhammad HosniEl SayedMubarak (b. 1928) - President of Egypt (1981-2011)

Russian researcher I. M. Mokhova also agrees about it, arguing that the preservation of the Camp David system and restraint towards Israel were largely due to Egypt's domestic realities (Mokhova, 2012).

On the other hand, the Russian researcher Sergey Starkin says that there emerged a radically new method of implementing foreign policy. The choice of the Islamic vector of development implied the development of relationships with the religious leaders of the region. As part of the change in Egypt's foreign policy agenda, the new course was aimed at moving away from "Mubarak's previous, too Pro-Western course, by expanding the number of foreign political partners" (Starkin, 2012: 165).

Attempts at rapprochement between Egypt and the Islamic Republic of Iran were also met with very mixed reactions. It was vital for the government of Mahmoud Ahmadinejad to find a regional ally to counter the blockade by the United States and Israel. Egypt saw its advantage in that, since the signing of the Camp David Accords (1982), Cairo has lost its role and importance among the Arab countries, moreover, it has lost the right of representation in the League of Arab States, among the founders of which was the Egyptian state. Mohammed Morsi sought to restore the country's position through negotiations with Iran, while maintaining established relations with Tehran's opponents. Therefore, at the first meeting in 30 years, only an agreement on expanding tourism was signed, and that allowed the speaker of the Iranian Parliament Ali Larijani to state: "For a long time, Egypt and Iran, as two large Muslim countries, have had close ties and playedthe key role in Islamic civilization" (The Washington Post, 2012: s/p).

Iranian President Mahmoud Ahmadinejad paid a return visit to Egypt only in February 2013, visiting, among other things, Al-Azhar University, which is considered the main religious and educational center in the Islamic world.

All of those steps taken by Cairo in the foreign policy arena could not but cause concern for Israel, whose leadership reacted with restraint to the counter-coup by the Egyptian military on July 3, 2013. Prime Minister Benjamin Netanyahu ordered that members of his Cabinet "should not make public statements or give interviews" on this issue. Israel's Minister for Transport Yisrael Katz said in an interview with Israel's Army Radio: 'This is an Egyptian issue; we have to worry about our own interests' (CBC News, 2013: s/p).

During the period of instability in the Arab Republic of Egypt, radical groups became active in the Sinai Peninsula. If, before the main problem for the stability of the region was the Bedouins, who used the border territories for smuggling goods, kidnapping and slave trade, then, due to the weakening of the centralauthority, the main threat was terrorists, and the

Sinai Peninsula once again became a springboard for supplying the Gaza Strip. In this regard, for Mohammed Morsi, cooperation with the Israeli government did not lose its priority (Khizriyev, 2016).

Egypt acted as a mediator in the negotiation process between Israel and Palestine. The deal demonstrated the pragmatism of President Mohamed Morsi, who combined support for HAMAS with a desire to maintain peace with Israel. In the most critical days, demonstrating solidarity with HAMAS, President Morsi expelled the Israeli Ambassador from Cairo and sent the Egyptian Prime Minister to the Gaza Strip, but kept channels with representatives of the United States and Israel open to participate in the negotiation process (Haber and Ighani, 2013). The President of Egypt, with his diplomatic pressure, sought to achieve a ceasefire, though US Secretary of State Hillary Clinton had the last word. However, Israel, the United States and HAMAS appreciated the mediating role, played by the Islamic government of Egypt (The New York Times, 2012).

Quickly enough, M. Morsi had to switch to events inside the country, where demonstrations against the constitutional Declaration swept through all of the major cities. That is why Morsi's administration took the next step in the foreign policy field only in February 2013, when the smugglers tunnels were flooded, through which, according to the Egyptian authorities, weapons were transported for terrorists in North Sinai. The actions of the Morsi government against the tunnels demonstrated the priority of the national security issue inside the country. However, according to experts, the authorities unsuccessfully tried to solve domestic security problems with that foreign policy decision (The New York Times, 2013).

The attempts to completely block the tunnels were doomed to failure, and only the next regime led by Al-Sisi managed to resist the onslaught of terrorists in the North of the Peninsula by force. The researcher M. A. Sapronova speaks about the unresolved goals of domestic and foreign policy. President Morsi's tactics without a strategy had consequences not only on his career but also on the future of political Islamism in Egypt, which was supported by the country's population, but after a series of setbacks, approved of a military coup in 2013 (Sapronova, 2013).

President Morsi had to interrupt not only the participation in the Gaza-Israel negotiation process, but also new meetings with European leaders. In 2013, Morsi focused on internal issues, but in June of the same year, he declared war on two countries – the Syrian Arab Republic and the Federal Democratic Republic of Ethiopia. First, he broke off relations with Syria and expressed a desire to send Egyptian military and volunteers to help the opposition overthrow Bashar al-Assad (Podtserob, 2017). Doing so, he violated Egypt's long - standing principle of non-interference in the military affairs of other Arab States, which had been developed due to the costly participation in the civil war in Yemen a decade earlier (Gafurov *et*

al., 2019). Second, a security meeting chaired by Morsi raised the issue of participating in air strikes on the Grand Ethiopian Renaissance Dam[7] to prevent the threat of a water crisis that might arise from the Nilewater decrease.

Conclusions

Thus, the period of Egyptian-Israeli relations in 2012-2013 cannot be called threatening to the security of the Jewish state. Having come to power with a reputation as an Islamic fundamentalist, anti-Semite and an ally of the Palestinians, Mohammed Morsi did not destroy the difficult relations that had been established for years between the Arab Republic of Egypt and the state of Israel.

The general security problem forced President Morsi to act in accordance with the national interests of Egypt, which, like Israel, had been repeatedly attacked by terrorists' groups that had taken refuge in the Sinai. In addition, according to the Camp David Accords, Cairo could only increase its military contingent in the Sinai Peninsula after consulting with Tel Aviv. Moreover, the Israeli government provided and continued to provide the operations of the Egyptian army with military support, which needed not only technical equipment but also information, received by the Israeli intelligence community.

An important factor in maintaining relations between the Arab Republic of Egypt and the state of Israel was the close relationship between the ruling Egyptian Muslim Brotherhood party and the Palestinians. Thanks to close contacts and trusting relations, Morsi could have claimed to be a mediator between the two irreconcilable rivals, reducing tensions in the Middle East, which in turn was in the interests of Cairo (Shagalov and Manina, 2016).

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Formation and development of the foreign policy of the Republic of Turkey with the Turkic-speaking states of Central Asia

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Abstract

So far, the country has not had an official document defining the concept of foreign policy of the Republic of Turkey. The relevance of the problem under study lies in the need to define modern approaches to the Foreign Policy of the Republic of Turkey with respect to Central Asian States. The objective of this article is to analyses the evolution of Turkish foreign policy towards Turkish-speaking states since the early 1990swhile determining the role and importance of these states to Turkey. Historical-genetic and chronological methods have been used as tools to support historical study. The historical and genetic method allows to track the dissemination and consistent of changes in the object of this study. In addition, the method of research and presentation of chronological problems contributes to consistent coverage of the peculiarities of significant events of regional and international importance. The study revealed a tendency to transform Turkey's policy towards The Turkish-speaking states of Central Asia, since the collapse of the Soviet Union.

Keywords: International relations; geopolitical regional studies; Turkey's foreign policy; Central Asia; strategic vision.

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Formación y desarrollo de la política exterior de la República de Turquía con los estados de habla turca de Asia Central

Resumen

Hasta ahora el país no cuenta con un documento oficial que defina el concepto de política exterior de la República de Turquía. La relevancia del problema en estudio radica en la necesidad de definir enfoques modernos de la política exterior de la República de Turquía con respecto a los Estados de Asia Central. El objetivo de este artículo es analizar la evolución de la política exterior turca hacia los Estados de habla turca desde principios de la década de 1990 y, al mismo tiempo, determinar el papel y la importancia de estos estados para Turquía. Los métodos histórico-genéticos y de problemas-cronológicos se han utilizado como herramientas de apoyo al estudio histórico. El método histórico y genético permite rastrear la divulgación y consistente de cambios en el objeto de este estudio. Además, el método de investigación y presentación de problemas cronológicos contribuye a una cobertura consistente de las peculiaridades de eventos significativos de importancia regional e internacional. El estudio reveló una tendencia a transformar la política de Turquía hacia los Estados de habla turca de Asia Central, desde el colapso de la unión soviética.

Palabras clave: Relaciones internacionales; estudios regionales geopolíticos; política exterior de Turquía; Asia central; visión estratégica.

Introduction

In 1992, G. Fuller in his work "Turkey Looks East" wrote that the Turkish government was cautious at a time when the status of the "new republics" was not obvious. Turkey tried to avoid any action that could be interpreted as undermining the foundations of the USSR. In Atatürk's legacy, there is a clear warning against all kinds of Panturkist aspirations and big projects that were characteristic of Ottoman Empire politics in its final years. Atatürk called to focus efforts on creating an ethnically homogeneous state within realistic boundaries. In December 1991 after the official collapse of the USSR Turkey's foreign policy changed dramatically (Fuller, 1992). The Turkish academician Sabri Sayari wrote that Turkey had been cut off from the Turkic-speaking regions of the USSR since Stalin's tough policy. During the USSR period, it was impossible to build relations with the Turkic-speaking community (Sayasi, 1994). Indeed, Moscow had the exclusive right to represent the republics of the Union on the international stage.

After the end of the Cold War, it was difficult for Turkey to start building relations with Azerbaijan and the countries of Central Asia, as these countries remained dependent on Russia, their economy was weakened, a large number of internal problems and negative sentiment in society prevented (Karpat, 2003). During the USSR, it was not fully possible to build relations with related nations, after the collapse of the USSR Turkey had a chance to restore cultural and economic ties (Winrow, 1998).

1. Methods

Historical-genetic and problem-chronological methods have been used as supporting tools of historical study. The historical and genetic method allows tracing the consistent disclosure of changes of the object of this study. The problem-chronological method of research and presentation contributes to consistent coverage of the peculiarities of significant events of regional and international importance. The study revealed a tendency to transform Turkey's policy towards the Turkic-speaking States of Central Asia (CA). An important basis of this study is an interdisciplinary approach, which allows combining applied analysis within the framework of the regional scientific tradition, combining it with political analysis. Historicism involves the study of a phenomenon in terms of its development, which is essential for the analysis of inter-State relations at the present stage. This principle allowed us to establish a causal relationship, to find and understand the origins, to highlight important stages of bilateral and multilateral relations.

2. Results and Discussions

In the end of the Cold War Turkey's role has largely declined as the threat of the spread of communist ideology has disappeared. Thus, Turkey has lost a key bargaining chip in building relations with the countries of the West (Çelik, 1999).

With the end of the Cold War and the collapse of the Soviet Union, Turkey's importance to the United States and the West began to weaken. By offering itself as a mediator between Western countries and the newly formed States of the Caucasus and Central Asia, Turkey was given a chance to re-increase its international significance.

Since the 1990s (after the collapse of the USSR), the United States has seen Turkey as a mediator in the Central Asian region (Lancaster and Van Dusen, 2005).

After the collapse of the USSR, as a result of the Belovezh Agreement, the non-Slavic republics were abandoned - such a change in the geopolitical situation was perceived by Turkey as an opportunity to increase their

political and economic influence, to act as a developed state integrated into the world system, to act as an example and point of "assembly" for the Turkic-speaking world.

Iran also declared its ambitions in the region. Competition between Iran and Turkey regarding models of state structure in the countries of CA and Transcaucasia is mentioned in several articles of American and European authors. This topic is devoted to the article of S.B. Druzhilovsky "Politics of Turkey and Iran in Central Asia and Transcaucasia" (Druzhilovsky and Khutorskaya, 2003), which demonstrates that all countries of the region have chosen the Turkish model of development.

Turkey and the Turkish political model, based on the principles of secularism, free market, and parliamentary democracy, are examples of the state structure for the Islamic society of the countries of Central Asia (Bülent, 1999). Many researchers noted that the Turkish model was the most attractive for the countries of the region.

At the initial stage of building relations with the newly independent states of Central Asia, Turkey faced a dilemma - to strengthen its influence in the region on its own or to act as an ally of Europe and, especially, the United States; The second option was chosen (Belokrenitsky, 1996).

Turkey demonstrates to the countries of Central Asia: "An example of the successful functioning of a secular political system with elements of Western democracy, which has succeeded in market transformation in the context of the dominance of Islamic adherents" (Malysheva, 2010: 119).

The Turkish model has become a model of state structure for multi-ethnic and multi-religious countries with a predominantly Muslim population. According to the Turkish model, Islam and political democracy can exist within the same state and society (Winrow, 2000).

Turkish model and its broadcast to the countries - former republics of the Soviet Union, traditionally of interest to the United States, since as early as the 1970s, the Green Belt strategy "YešilKušakprojesi" was an integral part of U.S. foreign policy, Proposed to Brzezin President Jimmy Carter, to support Islamic regimes in the Middle East, In Iraq, Turkey, Iran, Third World countries, etc., to counter Islam to Communism.

Ankara was supported by the United States, the United Kingdom and NATO leadership in establishing close ties with the Central African countries between 1991 and 1992, concerned about Iran's expansion in the region (Winrow, 1995).

Turkish author M. Aydin rightly noted that for the United States, the EU and Russia it was preferable not militaristic (Iranian), but democratic - Turkish model of development of these countries (Mustafa, 2005).

The democratization model was primarily supported by the US and EU countries, which also affected its attractiveness.

In 1992, US Secretary of State James Baker openly called on CA leaders to abandon the Iranian model in favor of the Turkish development model (Winrow, 1995).

According to S. Cornell, Iran has been realistic from the beginning about its capabilities in Central Asia and the Caucasus. Aware of the impossibility of transferring the Iranian model to the countries of the region and not wishing to cede influence to Turkey and the United States in countries near its border, Iran supports Russia 's influence (Cornell, 2015).

At a meeting held in January 1992 in the United States with President J. Bush, Turkish Prime Minister S. Demirel announced Turkey 's change of regional status due to the opportunity to influence the political future of the Muslim republics of the CIS, and that Turkey is able to represent their interests in the West (Egorov, 2000). An important agreement was reached that Turkey would provide direct material and financial assistance to the Turkic-speaking CIS countries, but that it would receive compensation for its costs from the United States and other Western countries. In February 1992, the Minister of Foreign Affairs of the Republic of Turkey went on an official visit to four Turkic-speaking republics (CA and Azerbaijan).

Many researchers note that the "Hundred Years Dream" implies Panturkist designs and the creation of the great Turan. Of course, the geopolitical situation of the early 1990s "opened its head" to representatives of Turkish political circles. But what did the Turks base their ambitions on?

The "Centennial Dream" is related in large part to the perceptions in Turkish society of the collapse of the USSR as the liberation of Turkic-speaking peoples from the "oppression" of Moscow. At the same time, the majority of the Turkic-speaking population never opposed the USSR. Moreover, in 1991, in a referendum on the integrity of the USSR, the overwhelming majority of the population of the "Asian republics" (Lunev, 2007) voted for the preservation of the Union, including in Kazakhstan and Kyrgyzstan.

In the Republic of Turkey, the perception of the state of affairs in the Turkic-speaking republics of the USSR was different, a distinction that was highlighted by both domestic and Turkish researchers.

During the Cold War, Turkey's relations with the regions that later became new states were significantly limited. After the collapse of the USSR, the Republic of Turkey was unable to adjust to new realities in a short time, leading to some uncertainty for strategic purposes.

General understanding and scientific knowledge of the post-Soviet space as a region as a whole for the Turkish intellectual and ruling elite

was limited (Belokrenitsky and Fadeeva, 1997). In many ways, the idea of the USSR as a state in which national regions constantly resist Moscow as a center that operates and surrounds the outskirts was formed in Turkey on the basis of information from representatives of national elites and former national governments that fled the Soviet Union for fear of physical destruction (Saray, 1994).

This information about the state of affairs in the Soviet Union, which had a negative ideological color, was disseminated in a somewhat exaggerated form in Turkish society. It was with such representations that the Turkish authorities came to the post-Soviet space, so they were not ready to meet with the real state of affairs (Yalçın, 1994).

Turkey's ambitious plans of the 1990s, related primarily to Turkic-speaking regions, were disconnected from reality, and often caused rejection in newly formed Turkic-speaking states. Many statements by the leaders of these countries can be cited, confirming the rejection of Turkey 's assertive and unduly ambitious foreign policy of those years.

The most famous and indicative in this regard is the opinion of the President of Kazakhstan N. Nazarbayev, which he expressed in his book "On the Threshold of the XXI Century":

> It seemed to many that Turkey will be able to solve all our problems. But what did it mean in fact? This meant renouncing the independence just gained, breaking traditional relations with neighbors, instead of one "older brother" putting another on his neck (Nazarbayev, 1996: 42).

More rigid was the assessment of the President of Uzbekistan I. Karimov - he called in vain Turkey's hopes "to interfere in our internal life and manage us," while noting: "Turkey wants us to become Turks. We are Uzbek, not Turks" (Basharan, 2018: 58).

All references to Turkey's politics related to Panturkism and Panturanism, Refer to the early 1990s. Such - based on misconceptions about the republics of the USSR, On the departure of the Democratic Party from the principles of kemalism in foreign policy - the activity showed its failure as early as 1992, When, at the first Turkic-speaking summit, the leaders of the participating countries refused to sign documents prepared in advance by the Turkish host country on the establishment of a common bank and any supranational institutions.

Aware of the naivety of the ambitions of Panturkism and the limitations of its political and economic opportunities to realize what it intended, Ankara embarked on a transformation of foreign policy, not wanting to remain a "periphery," as it was during the Cold War. Turkey has applied for the role of regional power (Urmanov, 2014). Despite a number of

failures related to Turkey's overly ambitious policy of the 1990s, and close ties between the Central African regions and Russia, Turkey managed to establish relations with the countries of the region using ethnic, historical, cultural and religious ties (Kemal, 1995).

Conclusion

The violent processes that took place in the Eurasian region in the early 1990s led to two "intellectual" consequences in Turkey. On the one hand, "the sudden rediscovery of almost forgotten peoples of Turkic origin led to inflated hopes and unrealistic expectations from some Turkish officials." However, on the other hand, it was the collapse of the Soviet Union that allowed Turkey to overcome its own "Panturanism complex" and establish relations with Turkic-speaking states, to present the true face of Turkey outside it, the opposite of the aggressive appearance in which it is sometimes depicted.

Political processes in Central Asia since the collapse of the USSR and the formation of new states have aroused great scientific interest among researchers. For domestic historiography, this issue has its own specificity, as the countries that were part of the USSR are traditionally considered zone of Russian geopolitical interests. Therefore, the policy of other States in the region has always attracted special attention from the public and scientific circles, and the active policy of the Republic of Turkey is naturally perceived as competition. This has a bearing on their study of Turkey's policies in the region and is often directly or indirectly focused on possible threats. Thus, Turkey's policy in Central Asia was considered by E.I. Urazova, N.G. Kireev, B.M. Pozhveria, S.B. Druzhilovsky, N.Y. Ulchenko, V.A. Nadin-Raevsky, etc.

Western historiography (G.E. Fuller, S. Cornell, 1999; B.Luis, G. Winrow, S. Komel, F.C. Larrabi, etc.) often addresses Turkey's policy issues in the Central Asian region, the general state and depth of study of the Turkish Republic's policy towards Turkic-speaking countries included in the EAEU should be considered insufficient. In the 1990s, Western researchers were most interested in the general understanding of the processes that took place in these countries after the collapse of the USSR. Modern research emphasizes the strengthening of the Islamic component in Turkey's politics. American historiography focuses on the modern concept of Turkey's foreign policy. Researchers are primarily concerned about the rise of Islamization and the associated risks of Turkey abandoning Western values and moving away from the United States.

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George W. Bush and the Political and Military Integration of the EU (2004-2008)

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Abstract

The aim of the article is to study European integration and the expansion of the European union together with the Atlantic alliance during George W. Bush's second term (2004-2008), for which the historical method was used. Despite the tendency that most researchers in the field of modern history and political science tend to focus on current events, and according to this logic it would be more appropriate to analyze Trump's foreign policy, in order to better understand the contemporary tension between the EU and the United States, today it is imperative to take a look at some contemporary historical processes. It is concluded that, to which George W. Bush's rhetoric has much in common with Donald Trump, he also laid the groundwork for change in U.S. foreign policy during Barack Obama's presidential term (2008-2016). The one-sided approach promoted primarily during George W. Bush's first term went from a gradual transformation of coalition building and the full support of the Atlantic alliance allies for the operation in Afghanistan in 2001, to more controversial rhetoric about "rebel states."

Keywords: International relations; regional studies-foreigners; contemporary political history; George Bush; European integration.

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George W. Bush y la integración política y militar de la UE (2004-2008).

Resumen

El objetivo del artículo es estudiar la integración europea y la expansión de la unión europea junto a la alianza atlántica durante el segundo mandato de George W. Bush (2004-2008), para lo cual se hizo uso del método histórico. A pesar de la tendencia de que la mayoría de los investigadores en el campo de la historia moderna y la ciencia política tienden a concentrarse en los acontecimientos actuales, y según esta lógica sería más apropiado analizar la política exterior de Trump, para comprender mejor la tensión contemporánea entre la UE y los Estados Unidos, hoy en día es imprescindible echar un vistazo a algunos procesos históricos contemporáneos. Se concluye que, aunque la retórica de George W. Bush tiene mucho en común con Donald Trump, también sentó las bases para el cambio en la política exterior estadounidense durante el mandato presidencial de Barack Obama (2008-2016). El enfoque unilateral que se promovió principalmente durante el primer mandato de George W. Bush pasó por una transformación gradual de la creación de una coalición y la obtención del pleno apoyo de los aliados de la alianza atlántica para la operación en Afganistán en 2001, a una retórica más controvertida sobre los "estados rebeldes".

Palabras clave: Relaciones internacionales; estudios regionales-extranjeros; historia política contemporánea; George W. Bush; integración europea.

Introduction

The tension between the two flanks of NATO that has been growing throughout 2000-2002 skyrockets in 2003, which culminates in the Iraq war in 2003, in which France and Germany took strong opposition to the Anglo-American ideas of military actions in Iraq. Nevertheless, despite achieving its goal at the beginning of the operation, it quickly became evident that the Iraq's operation would be more complicated than it has been expected to be.

In such circumstances, the Bush's administration started to reconsider its point of view towards their European allies and seeking their support and strengthening the relationships by realizing that the unipolar world might be only an unrealizable utopia in the 21st century. At the same time, while America was spending millions of dollars for its operation in Iraq and the neoconservative course of George W. Bush's administration became to be less popular, the EU became larger that unequivocally shifted the balance within the transatlantic union towards Brussels.

Thus, George Bush started to change his unilateral policy towards a more cooperative one. However, his neoconservative course, which was based mostly on the ides of *Realpolitik,* was persistent until the end of his presidency, that was only highlighted by the dispute about Membership Action Plan for Georgia and Ukraine in 2008, and future Russian-Georgian conflict which also pointed out the boundaries for the expansion of both NATO and EU and laid down the basis for the Barack Obama's European policy.

1. Methods

The leading method to research this problem is the historical and systematic method allowing understanding the laws of the European integration, trace the consistent patterns and regularities of military cooperation between the EU and the US. The historical and genetic method helps in creating the factual framework for the analysis and to identify how the issues of the European integration are connected with the military cooperation within the Transatlantic alliance and to understand better what legacy Barack Obama will inherit from the administration of the 43rd American president.

2. Results and Discussions

The Iraq War, which began in March 2003, divided the European Union into two camps. The first camp that was led by France and Germany strongly opposed the war. The second camp with such countries as the UK, Spain, and Italy, supported American actions. The Iraq War led to a few more contradictions between the EU and the US even before the beginning of the military conflict, and the alliance with its forces was divided. For instance, in January 2003 Germany, France, and Belgium refused to provide security guarantees for Turkey if the last would have been attacked by Iraq. According to Serfaty, Iraq was a mistake for Europe long before it became to be a mistake for the U.S., because it highlighted the lack of common ground within the European part of the alliance and we can gradually trace it: in 2002 European countries were scared that they were unable to stop the war in Iraq, in 2003 because they did not form a solid position concerning the military operation, in 2004 because they were playing only a secondary and auxiliary role in the liberation of Iraq they were not able to influence the process of its reformation, which was mostly done by the US (Serfaty, 2005). Thus, the Iraq war highlighted the military disbalance between two flanks of the transatlantic union and the unilateral moment of the USA. However, despite this inability to find a shared position in terms of foreign politics, the European integration went further.

The enlargement of the European Union on 1 May 2004. This enlargement was not only the biggest one for the European Union in terms of the number of countries (10 new countries were added), but also in terms of the population because it added 74 million people to the population of the EU, which overall number became 455 million. Candidate countries were gradually fulfilling *acquis communautaire* (Ispolinov, 2010), legislation and legal acts that might put the legal system of candidate countries on par with the same system of old members, and on May 1, 2004, the Czech Republic, Hungary, Estonia, Latvia, Lithuania, Slovenia, Slovakia, Poland, Malta, and Cyprus officially joined the European Union, previously introducing approximately 50000 new laws. After their admission to the European Union those countries continue reforms by creating new financial and legal institutions. Nevertheless, most of these countries were not ready to introduce euros. For instance, Slovenia, Malta, and Cyprus introduced euro in 2007, while Slovakia did the same only in 2009. Further expansion of the eurozone had been paused due to the financial crisis of 2008-2009 (Tibor, 2010).

Due to a significant economic disbalance between the countries of Western Europe and countries of Eastern Europe, we shall take into account political motivation for this. For instance, even in the most economically developed country from these 10 Eastern European countries – Slovenia, GDP per capita was only 68% from an average number of the European Union. The share of the service sector in GDP that is commonly considered to be an essential measure while talking about postindustrial economics which among old members of the EU was around 67% in the Czech Republic was only 53,7%, and in Romania, which joined the EU in 2007 it was even less – 41,7%. Moreover, a share of agriculture in the GDPs of the Eastern European members was much higher in comparison to Western Europe (Batorshina, 2011). Thus, despite enforcing *acquis communautaire* (European Commission, 2019) Eastern European countries still supposed to walk a long road on the way to the economic standards of the western flank of the EU.

To support the new legal foundation for a much bigger union, the European Constitution was created in October 2004. Despite the only legal procedures, this constitution also had a symbolic meaning – the European flag, anthem, and motto were adopted. Furthermore, talking about European political institutions, a typical "governmental" terminology was used. For instance, European law, the European minister of foreign affairs etc. It should have influenced a collective European identity among various European nations. According to Levina, "The constitution recalled for governments and citizens that the European Union is not only a common market but also a system of political governance, which is based on the common values and principles" (2010: 58). Nevertheless, despite the creation of such a Constitution, it had not been adopted, and the next

legal action which would enforce political ideas of this constitution would be the Lisbon Treaty, which was signed in December 2007 and enacted on 1 December 2009 (Levina, 2010).

The next European enlargement happened in 2007, when Romania and Bulgaria joined the European Union, even though it was evident that these countries were not ready to join the European Union. According to Tibor, the European Union had never before integrated countries with such a low average income, which was 3,500 and 4,500 dollars in Bulgaria and Romania respectively. The comparison to the 9,200 dollars of average income for the ten previously admitted Eastern and Central European countries, and especially to the 29000 dollars income among average countries in the European Union, was striking. Moreover, Bulgaria and Romania had problems with corruption and transparency and had a lousy infrastructure (Tibor, 2010). Nevertheless, with the enlargement of the European Union the Schengen area had also enlarged. Thus, in December 2007 Poland, the Czech Republic, Slovakia, Slovenia, Hungary, Malta, Lithuania, Latvia, and Estonia joined the Schengen area. In December 2008 Switzerland joined, which in the same manner as Norway and Iceland, is a member of the Schengen area, but not a member of the European Union (Dragunova, 2008).

Nonetheless, we might also say that during the first decade of the 21st century, Europe was enlarging not only to the East but also to the West. Despite some political conundrum between the USA and the EU, the trade between these two political entities remained to be extremely lucrative. To point out this fact, in 2007 the transatlantic economic integration act was signed between the president of the European Commission, José Manuel Barroso, George W. Bush and Angela Merkel (Nolan, 2012). Therefore, the future of the transatlantic relationships looked bright. For instance, that is how José Manuel Barroso commented on the transatlantic relationships before signing this treaty, "Our political relationship with the US is as close as ever, based on deep ties of kinship. With the international role of the US economy as powerful as ever and with the EU now firmly back on the growth and jobs path, this is the right time to deepen our economic partnership and to further strengthen the transatlantic economy. This agreement will allow us to demolish existing, unnecessary barriers posed by divergent regulations and nip new ones in the bud. With the necessary political commitment and follow up on all sides, the new framework will deliver lower costs for businesses and consumers on both sides of the Atlantic» (European Commission, 2007).

Moreover, with the economic cooperation, the military cooperation was also striving. Western Europe in 2007 held a solid second place among world regions in terms of military spending, by spending 301 billion dollars, which was 22,5% from the world military spending. In addition to

it, Central and Eastern Europe also considerably increased their military spending – by 162% in 2007, which was the biggest increase in military spending among world regions, thus considerably contributing to the European forces. Nonetheless, despite big numbers, European military was still strongly lagging behind the American military because European forces were consisting of 27 different forces that still needed some coordination, which might be extremely complex in terms of communication and at least a universal language.

Additionally, among the member states, these spending's were also unequal. For instance, while Spain was spending in 2007 12,3 billion dollars, the UK spent 59,2 billion dollars. Furthermore, as it had already been shown with the example of the Iraq War, it was extremely complex to find a common political agenda for the various members of the European Union. For instance, the 2008 Kosovo declaration of independence vividly demonstrated it. This declaration was supported by France, the UK, Germany, Italy, and 46 other countries around the globe. Nonetheless, Spain, Greece, Cyprus, Romania, Bulgaria, Slovakia, and other 100 countries, which had problems with ethnic minorities, refused to admit the existence of Kosovo, and Miguel Ángel Moratinos, who was a minister of foreign affairs of Spain, even called it "a violation of international law" (Tibor, 2010: 28).

Nevertheless, Bush's administration was eager to encourage Europeans to spend more on their defense. Bush's administration also had an economic reason for it – by the beginning of his second term due to the "costly war on terror" the 200 billion dollars surplus which George W. Bush inherited from Clinton's administration, was turned into a 400 billion dollars of annual deficit (Rielly, 2008).

Furthermore, in 2008 a new era in relationships between NATO and the Russian Federation had begun with NATO plans for further expansion to the East, and American plans of placing missile defense systems in Poland and the Czech Republic, and military conflict in Georgia. After the end of the Cold War, NATO had considerably expended and after incorporating Latvia, Lithuania, and Estonia was situated on the Russian western borders, which immediately swung geopolitical balance in favor of the Western alliance.

This fact was somehow unpleasant for the Russian political establishment, (Beloglazov *et al.*, 2019) and military conflict in Georgia in 2008, clearly showed boundaries for a further western military (NATO) and political expansion (EU). Furthermore, the issue concerning further NATO extension had separated western allies even before. For instance, during the NATO's summit in Bucharest 2-4 April 2008 George W. Bush was pushing to accelerate the participation of Georgia and Ukraine in Membership Action Plan (MAP), which is considered to be the first step before being fully integrated in the transatlantic alliance. However,

Germany and France decisively blocked this intension by referring to the internal political instability and "frozen conflicts" in South Ossetia and Abkhazia (Noetzel and Schreer, 2009). As the historian of the European Union Martin J. Dedman pointed out, the U.S. and its western allies must have been finally decided how to perceive post-Soviet Russia – as an ally in a fight against global terrorism, or as a geopolitical competitor that should be contained. To perceive Russia from both sides was impossible, which the military conflict in Georgia vividly emphasized (Dedman, 2010).

Conclusion

Therefore, despite all the setbacks of the first Bush's presidency in the euro-American relationships, during the second Bush's term these relationships improved. Nevertheless, as pointed by a professor of international relations at Georgetown University Charles A. Kupchan "Certainly we are not back to where we were during the pre-Bush era, but we also have climbed back from the abyss in relations that surrounded the Iraq war" (Bush Second Term Repairs Damage to European Relations, 2008). Despite the fact that the European integration went further, and the EU became bigger, the Russian-Georgian conflict of 2008 underlined the limits of possible expansion to the East for both NATO and EU.

To sum up, in this article, military cooperation between the EU and the United States during two presidential terms of George W. Bush has been analyzed. At the dawn of the 21st century the relationships between the USA and EU were developing due to potential economic competition, for instance in terms of steel, and some misunderstandings in terms of foreign policies. However, after September 11 attacks, NATO was unified against a common enemy – international terrorism. However, the Iraq War proved to be divisive for the Western alliance and highlighted difficulties of the European Union in terms of finding a common position. Moreover, American foreign policy and especially the Bush Doctrine, which was based on a significantly increased American military and economic might, highlighted the existing imbalance between the two flanks of the transatlantic alliance. However, it did not stop the European integration, with the 5th and the 6th enlargements in 2004 and 2007 respectively. 2008 became to be a quite divisive year for the European foreign policy again with Kosovo declaration of independence and military conflict in Georgia. The last also pointed out possible boundaries for the NATO and EU expansion to the East of the Union. In terms of military, in the end of the Bush's second term the strong economic ties between the European Union and the United States remained to be present, as well as a significant military imbalance between these two political entities, despite the fact that Europe became much bigger in terms of population and active military personnel.

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Heuristic Potential of Sammy Smooha Ethnic Democracy Concept

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Abstract

The article next to the hermeneutic methodology examines the key aspects of a special model of political regime: the «ethnic democracy» of S. Smooha, which is based on the idea of the development of an ethnic nation in a state. According to this author's point of view, the main idea of this form of stability is the absolute control of the ethnic majority over the minority. It examines the reasons for the emergence of «ethnic democracy», the characteristics of its implementation in practice and the conditions of stability. When this model is implemented in practice, the State pursues the objective of central ethnic-national development in the country, as well as its isolation from other ethnic groups. Under the concept of «ethnic democracy» the ethnic minority is granted limited rights, the state constantly monitors its scope, considering the interests of the «main» nation. It is concluded that the implementation of the «ethnic democracy» model deliberately violates the right to self-identification of a part of the population (ethnic minority), therefore «ethnic democracy» is an element of state policy that addresses inequality or a desire for total assimilation.

Keywords: ethnic democracy; ethnic majority; ethnic minority; ethnic-national elite; ethnocracy.

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Potencial heurístico del concepto de democracia étnica de Sammy Smooha

Resumen

El artículo próximo a la metodología hermenéutica examina los aspectos clave de un modelo especial de régimen político: la «democracia étnica» de S. Smooha, que se basa en la idea del desarrollo de una nación étnica en un estado. Según el punto de vista de este autor, la idea principal de esta forma de estabilidad es el control absoluto de la mayoría étnica sobre la minoría. Se examinan las razones del surgimiento de la «democracia étnica», las características de su implementación en la práctica y las condiciones de estabilidad. Cuando se implementa este modelo en la práctica, el Estado persigue el objetivo de un desarrollo central étnico-nacional en el país, así como su aislamiento de otros grupos étnicos. Aunque bajo el concepto de «democracia étnica» a la minoría étnica se le otorgan derechos limitados, el estado monitorea constantemente su alcance, tomando en cuenta los intereses de la nación «principal». Se concluye que la implementación del modelo de «democracia étnica» viola deliberadamente el derecho a la autoidentificación de una parte de la población (minoría étnica), por lo tanto, la «democracia étnica» es un elemento de política estatal que encubre la desigualdad o el deseo de asimilación total.

Palabras clave: democracia étnica; mayoría étnica; minoría étnica; élite étnico-nacional; etnocracia.

Introduction

Due to the accession of Eastern Europe countries and the former Soviet Union countries to the European Union, the institutions of the "old" Europe faced the problems of "new members", which are based on ethnic stereotypes. Excessive politicization of ethnic stereotypes on the part of the ruling elite in these states has a destructive effect on the consolidation of society and leads to the confrontation between the ethnic majority and minority. In the course of this confrontation, the elements of ethnic nationalism are sharpened. It is believed that the ethnic state was a stage in the formation of a civil one (Volkogonova and Tatarenko, 2001). That is, before the nations of the West became civil, they were ethnic (Vakhitov, 2012), which was based on cultural values.

It is also believed that "liberal democracies grew on the substrate of ethnic cleansing, although outside the colonies this took the form of organized coercion rather than mass murder" (Mann, 2005: 590).

Thus, the implementation of a liberal democratic state classical model, based on multiculturalism, has been postponed indefinitely. At the same time, the understanding is ripening that if "one ethnic group dominates in political decision-making, and the other is concentrated on the periphery," then this confrontation can develop into ethnic wars in these countries (Kharitonova, 2016).

1. Materials and Methods

The article uses the method of non-standardized analysis of textual materials regarding the heuristic potential of "ethnic democracy" model by S. Smooha. Within the framework of this method, the search for expert judgments concerning the "ethnic democracy" model is carried out according to the principle of "refutation - support" of the model elements. The scholars focusing on "ethnic politics" were selected as experts. The selection of texts was carried out according to the principle of "refutation - support" coincidence as the elements of this model, which underlie the statements of experts. The use of this method makes it possible not only to fix the content of experts' opinions regarding the elements of "ethnic democracy" model, but also allows to analyze the heuristic potential of the "ethnic democracy" model by S. Smooha.

2. Research Results

An opportunity to avoid the problems of multiculturalization of a multinational society that were experienced by such countries as Great Britain and Australia is one of the projects of the so-called limited democracy in the form of "ethnic democracy" model.

A special model of the political regime - "ethnic democracy" - is based on the formation of one ethnic nation in one state. This concept, in its essence, justifies the dominance of the titular nation and discrimination against all other ethnic groups.

This model, like the term "ethnic democracy" itself, was proposed by Professor S. Smooha in the book published in 1989 (Smooha, 1989). He believes Israel is a classic example of "ethnic democracy." In addition to Israel, he mentions such states as Slovakia, Northern Ireland, Poland, and the Baltic states among the countries implementing the model of "ethnic democracy" (Smooha, 2002).

From the point of view by S. Smouha:

> Ethnic democracy combines the expansion of civil and political rights for all permanent residents with the legalized ethnic domination of the majority group. The ethnic-national elite controls the state of society and uses the nation to achieve its national interests and provides its members with the most favorable conditions (Smooha, 2001: 5).

However, according to the fair remark by M.Kh. Farukshin, "... ethnic democracies constitutionally place "one ethnic group - the indigenous nation - in a privileged position over all other groups within the borders of the state", which unambiguously indicates their ethnocratic nature" (Farukshin, 2015: 46).

S. Smouha identifies the following reasons for the emergence of "ethnic democracy": 1) an independent state revived in a certain territory; 2) the presence of a threat (real or perceived) to the nation; 3) commitment of the ethnic majority to democracy, which can be ideological or pragmatic; 4) control over ethnic minority.

Based on the conditions, the ethnic majority can vary the methods of government from democracy to its restriction. If the minority is disunited, then the ethnic majority builds "ethnic democracy." If the minority is consolidated, then the ethnic majority uses the authoritarian methods of government.

A number of conditions ensure the stability of "ethnic democracy".

1) The main ethnic nation constitutes a demographic majority; therefore, it can manage democratic processes on its own without the political support of "non-mainstream" groups.
2) The "minority" population should be a minority, so it can be ignored.
3) The main core of an ethnic nation must be committed to democracy, if there are few supporters, then "ethnic democracy" is degenerating.
4) The status of the main ethnic nation can be obtained by the persons belonging to this nation, namely those who lived in their homeland and the representatives of the diaspora who returned to their homeland.
5) The remaining representatives of the ethnic majority who make up the diaspora living in other states should actively lobby for the interests of their nation.
6) The representatives of other ethnic groups receive the status of immigrants, so that they can be controlled more easily through the restrictions in their rights and suppress the interference of their historical homeland.
7) The international community should not interfere in the internal affairs of the country, which improves the chances of "ethnic democracy" for survival (Smooha, 2001).

S. Smooha defines eight features that are the main elements of his model of "ethnic democracy":

The first element is the dominance of ethnic nationalism, which asserts the absolute, exclusive, and indivisible right of the main "ethnic nation", legalizing the unequal status between the main ethnic group and the "non-main" ones.

The second element is that the state forms the ethnic-national nucleus in the country and clearly separates it from other ethnic-national groups. The state, first of all, takes care of the "main" ethnic nation from assimilation and depopulation.

The third necessary element is the development of the relationship between the state and the ethnic nation. The state territory is the exclusive homeland of the "main" ethnic nation, the state apparatus is an instrument at the disposal of the main ethnic nation for the advancement of its collective goals, including security.

In the fourth element, S. Smooha suggests that the state must mobilize the main ethnic nation in order to strengthen the national identity of the "main" ethnic nation members, to prevent apathy and assimilation. Thus, within the framework of "ethnic democracy" there is the process of ethnic political mobilization: "...by the means of which an ethnic community is politicized for its collective interests and aspirations and then organized as a collective subject with the resources for political action" (Esman, 1994: 216).

The fifth element of the model assumes that the ethnic minority should be limited in rights, both individual and collective. The state does not recognize the national rights of "non-mainstream" groups, they are not perceived as autonomous national minorities. Restrictions are also imposed on the expression of the national identity of "non-mainstream" groups (identification with an external homeland, school curriculum, national history, and literature).

The sixth point of the model assumes that the state allows "non-mainstream" groups to conduct parliamentary struggle. "Ethnic democracy" makes available various forms of protest: it is allowed to use voting, petitions, media, courts, political pressure, lobbying, demonstrations, strikes and other legal means to change the status of an ethnic minority.

In the seventh element, the author suggests that the state should perceive "non-core" groups as a threat. This perception is consolidated as an integral and permanent part of the system. Threats include demographic growth of an ethnic minority, excessive accumulation of political power, economic superiority, belittling of the ethnic majority national culture, the risk to national security, loyalty to a foreign homeland, subversion, unrest and instability.

The eighth element of his system is that the state imposes some control over "minor" groups. The members of "minor" groups are perceived as a threat to stability, even if they are generally law-abiding people, their potential for disloyalty is assessed through the number of law violations, and this increases suspicion (Smooha, 2001).

S. Smooha admits that "the ethnic principle establishes clear ethnic inequality" and contradicts the democratic principle. He also recognizes the fact of infringement of the minority rights in favor of the majority through state institutions, and the state builds up interaction with the ethnic minority in advance, as with a potential "subversive element" destabilizing the country. Thus, a forceful nature of influence, which does not exclude repression, is laid in the system of governance in relation to the ethnic minority. Therefore, his assertion that, being an incomplete democracy, "ethnic democracy" is closer to democracy than to "undemocratic regime", sounds paradoxical (Smooha, 2001).

Thus, we can assume that, from the point of view of the author of the term, "ethnic democracy" is a kind of transitional state from ethnocracy to a full-fledged democratic regime, where the leading role is played not by a class or a party, but by an ethnos. Such an ethnos is an active political actor striving for democracy due to its cultural superiority, influencing passive actors, namely other ethnic groups, through forced assimilation.

A myth is created in "ethnic democracy" about the denial of discriminatory measures against an ethnic minority against the background of the inferior status of these minorities. In fact, the thesis of the low culture of the ethnic minority is being imposed, which does not allow it to take the advantage of democracy benefits. Only a complete denial of their identity, the "low culture" of their ethnos will allow them to join the family of "civilized peoples".

Conclusions

Summing up, the model of "ethnic democracy" allows the use of authoritarian methods of power and, thus, the violation of the announced rights of an ethnic minority. The aggravation of the ethnic-national issue and its solution in an authoritarian way is supposed. Aggravation of international relations is possible with the states where the minority prevails or has a strong lobby.

Thus, "Ethnic democracy" is an element of state policy that covers up inequality for national unity and for the sake of ending the struggle against assimilation. Within the framework of the "ethnic democracy" model, part of the population is deliberately infringed upon its rights.

The model of "ethnic democracy" by S. Smooha is based on the idea of forming one ethnic nation in one state. The high heuristic potential of "ethnic democracy" concept by S. Smooha makes it possible to analyze the implementation of this model in practice, where Israel is a classic example of "ethnic democracy", and he mentions the Baltic states, Slovakia, Northern Ireland, Poland among the states that have embarked on the path of this model. The conditions for the stability of "ethnic democracy", from the author's point of view, are the provisions, the "red thread" of which is the dominance of the ethnic majority over the ethnic minority.

Within the framework of the "ethnic democracy" model, a part of the population - the ethnic minority - is deliberately infringed on its rights. Thus, in our opinion, "ethnic democracy" is an element of state policy, which is used to cover up inequality for the national unity and for the sake of ending the struggle against assimilation.

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Economic and financial results of the USA and the European Union sanctions war against Russia: first results

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Abstract

As part of this study, the goal is set to assess the impact of sanctions imposed by the United States and the European Union on the economy and financial sector of Russia, to identify the effectiveness of the initial goals of these countries. To achieve the goal, the legal acts concerning the imposed sanctions of the USA and the European Union against Russia were first analyzed, a chronology of events was described, and sanctions were classified. Further, based on the data of the World Bank and the Federal State Statistics Service of the Russian Federation, the results of the sanction pressure on the Russian economy and financial sector were estimated. Then the results of this study were compared with the results obtained by other scholars. The paper concluded that the sanctions of the United States and the European Union did have an impact on the economy and financial sector of Russia, but this influence was not as significant as the leaders of these countries expected. In addition, the impact of the sanctions is gradually decreasing despite the introduction of new sanctions on various pretexts.

Keywords: Sanctions against Russia; economic war; financial pressure for sanctions; economic sanctions; geopolitical economy.

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Resultados económicos y financieros de la guerra de sanciones de Estados Unidos y la Unión Europea contra Rusia: primeros resultados

Resumen

Se estableció el objetivo de evaluar el impacto de las sanciones impuestas por Estados Unidos y la Unión Europea sobre la economía y el sector financiero de Rusia, para identificar la efectividad de los objetivos iniciales de estas sanciones. Para lograr este objetivo, se analizaron los actos jurídicos relativos a las sanciones impuestas por EE. UU. y la Unión Europea contra Rusia, se realizó una cronología de los hechos descritos y las sanciones se clasificaron, de ahí que se hizo uso del método analítico y de la revisión documental. Además, sobre la base de los datos del Banco Mundial y el Servicio de Estadísticas del Estado de la Federación de Rusia, se estimaron los resultados de la presión de las sanciones sobre la economía. Luego, los resultados de este estudio se compararon con los resultados obtenidos por otros académicos. El documento concluyó que las sanciones de Estados Unidos y la Unión Europea sí tuvieron un impacto en la economía y el sector financiero de Rusia, pero esta influencia no fue tan significativa como esperaban los líderes de estos países. Además, el impacto de las sanciones está disminuyendo gradualmente a pesar de la introducción de nuevas sanciones con diversos pretextos.

Palabras clave: Sanciones contra Rusia; guerra económica; presión financiera de sanciones; sanciones económicas; economía geopolítica.

Introduction

Economic warfare is a form of political and competitive struggle in which economic measures weaken or destroy the economic potential of some country. Modern politicians understand that the physical extermination of enemies is not always profitable; it is more advantageous to build a system of economic dependence and, through control over the enemy's resources and its sales markets, make it work for oneself. The economic war has as its alternative goal the "peaceful" conquest and retention of new economic markets (Evsyakova, 2019).

The main principle of economic warfare is the establishment of dependent economic relations, and in the case of resistance, even the inclusion of physical forms of influence, state pressure and extortion under the threat of the use of armed forces. For this, modern developed countries have at their disposal special force, intelligence, ideological, psychological, etc. structures. At the present stage, economic warfare is carried out mainly

in three directions: "brain pumping", economic expansion, and industrial espionage (Titova, 2006). It can also be carried out by using various propaganda slogans such as the struggle for democracy, the environment, the rights of national minorities, and others. In this case, it is closely connected with the information war (Maan, 2014; Meshcheriakova, 2018). In addition, economic warfare is closely linked to big politics, as it is the key to depriving "inconvenient" governments of public support (Martynenko, 2016).

Economic sanctions, suspension of loans from developed countries and major international financial and credit organizations pose great difficulties for the economy of the "delinquent" countries, most often the "developing" ones. The United States and European countries, pursuing an aggressive foreign policy towards developing countries, prefer to avoid using the term "economic warfare". The ruling establishment of the United States and its allies use such neutral words as "economic sanctions", "trade and economic restrictions", "moratorium", "prohibitions", etc. (Kaempfer and Lowenberg, 2007). However, as a rule, all these restrictions, moratoriums, and prohibitions taken together can have a powerful effect, designed to undermine a national economy, provoke social unrest, change of power and political course (Neuenkirch and Neumeier, 2015).

In general, the modern economic warfare is a confrontation between two powers or different blocs against each other or against a separate country using economic sanctions – an embargo on the export/import of new technologies, high-tech goods, partial or complete trade blockade. Methods such as the collapse of the national currency, of the prices of the main exported natural resources (especially oil and gas), and of various industrial and agricultural goods are also used. The totality of economic sanctions that the West imposed against Russia from 2012 to the present can be qualified as full-scale economic warfare.

In Neuenkirch and Neumeier (Neuenkirch and Neumeier, 2015), it was empirically assessed how economic sanctions imposed by the United Nations and the United States affected the GDP growth of sanctioned states. In that study, they analyzed 160 countries, of which 67 were subject to economic sanctions for the period 1976-2012. The authors found that UN sanctions had a significant impact on the economic growth of the target state. On average, the introduction of the UN sanctions reduces the annual growth rate of real GDP per capita in such a state by more than 2 percentage points. These negative consequences last for 10 years and lead to an overall decrease in the national GDP per capita by 25.5%. The comprehensive economic UN sanctions, that is, embargoes affecting almost all economic activity, lead to a decrease in GDP growth of more than 5 percentage points. The effect of the US sanctions is much smaller and less noticeable. The imposition of the US sanctions reduces the GDP growth of the target state

by 0.75–1 percentage point. This detrimental effect on growth persists for 7 years and, together, leads to a decrease in GDP of 13.4%.

The objective of this study is to first assess the impact of sanctions imposed by the United States and the European Union on the economy and the financial sector of Russia, and to identify whether these countries have achieved their initial goals.

To achieve the objective, the following tasks have been set:

1. To reveal the history of the sanctions confrontation between the USA, the European Union, and Russia;
2. To give the main characteristics of the imposed sanctions;
3. To reveal the economic and financial consequences for Russia from the sanctions confrontation.

1. Materials and Methods

While preparing this paper, regulatory legal acts governing the imposition of sanctions were analyzed. These are regulations databases of the US (https://obamawhitehouse.archives.gov/briefing-room/legislation), the EU (https://europa.eu/european-union/law_en), and Russia (http://pravo.gov.ru/ips/). To assess the impact of sanctions on the economies of the countries, the materials of the World Bank (data.worldbank.org/), and the Federal State Statistics Service of the Russian Federation (https://www.gks.ru/) were used. In addition, the paper used materials from academic articles of the ScienceDirect database (https://www.sciencedirect.com/).

The study was conducted as follows:

1. First, regulations on the imposed sanctions by the United States and the European Union against Russia were analyzed, a chronology of events was described, and the sanctions were classified.
2. Further, based on the data of the World Bank and the Federal State Statistics Service of the Russian Federation, the results of the sanction pressure on the Russian economy and the financial sector were estimated.
3. Then the results of the study were compared with the results of studies by other scholars.

2. Results

The history of the sanctions confrontation of the United States, the European Union and Russia

According to the provisions of international law, sanctions are coercive measures of an armed and unarmed nature that are applied by subjects of international law in the established procedural form in response to an offense in order to prevent it, restore the violated rights and ensure the responsibility of the offender. Thus, sanctions are coercive measures applied to a state that violated international legal obligations (Neshataeva, 1992). Sanctions are inextricably linked with the institution of international legal responsibility of states – "the responsibility of states for internationally wrongful acts".

The history of the application of sanctions imposed in the world from 1915 to 2000 totals 174 cases, of which: the USA imposed sanctions in 109 cases, the UN in 20 cases, the European Union in 14 cases, the United Kingdom in 16 cases, the Arab League states and its members – in 4 cases, the Soviet Union and Russia – in 13 cases (Hufbauer *et al.*, 2007).

The modern "sanction warfare" against Russia began in 2012, when the adoption of the Magnitsky Act in the USA formally repealed the Jackson-Vanik Amendment to the US Trade Act. The Act gave the President of the United States the right to set the list of persons responsible for the detention, ill-treatment and death of Sergey Magnitsky and other serious human rights violations in the Russian Federation that are subject to sanctions (the ban on the entry into the United States of such persons; the freezing of assets and the prohibition of any transactions in connection with the transfer of all property and property rights of such persons) (Public law, 2012).

The second wave of the anti-Russian sanctions falls on the period of the political crisis in Ukraine in 2014-2019. In addition, the United States and the European Union imposed sanctions against Russia in connection with the support of the Governments of Venezuela and Syria, cooperation with Iran and the DPRK. One should also recall the scandal about alleged Russian interference in US elections and the Skripals case.

After classifying the reasons for the imposition of sanctions against Russia, they look as follows (according to the US and the EU regulations):

1. The Magnitsky Act of 2012. Large-scale sanctions against Russia began to be introduced in 2013 due to the death of a Russian auditor Sergey Magnitsky. In the West, they believe that his death in 2009 was caused by the exposure of corruption schemes for tax returns, which could have involved Russian officials and security forces. The Magnitsky Act, originally directed against persons who, in the opinion of the American authorities, could have been involved in the death of the auditor, later began to apply to those responsible for violating human rights and the rule of law both in Russia and around the world.

2. The conflict in Ukraine – the situation around Crimea. The most ambitious sanctions are related to the annexation of Crimea to Russia and events in the east of Ukraine.
3. Cyber-attacks. Sanctions for cyber-attacks were introduced by Barack Obama on April 1, 2015. They allow the U.S. Treasury Department to block in the country any assets of individuals suspected of committing cyber-attacks.
4. Opponents of America. On August 2, 2017, US President Donald Trump signed the Countering America's Adversaries Through Sanctions Act (CAATSA). It imposes additional restrictions on Iran, North Korea and Russia.
5. For ties with Syria, Venezuela, and the DPRK. The smallest groups of sanctions against Russia are those for supporting the Governments of Syria and Venezuela and deals with the DPRK authorities.
6. The Skripals case. On August 27, 2018, the sanctions entered into force that do not directly affect individuals or legal entities. They are connected with the poisoning of the ex-colonel of the GRU Sergey Skripal and his daughter Julia in British Salisbury.

The economic sanctions of the USA and Western countries, applied in recent years against Russia, can be regarded only as a return to the sanctions campaign during the Cold War against the Soviet Union. The noted sanctions have become a common foreign policy tool of Western countries, one of the elements of the Russia containment strategy. Moreover, in many respects, the introduction of the sanctions is connected with far-fetched reasons, not confirmed even during investigations, for example, cyber-attacks during the US presidential election.

2.1 Key features of the US and the EU sanctions

According to the type of sanctions, then they can be classified as (Bagheri and Akbarpour, 2016):

1. Personal – sanctions against particular people (officials, participants in conflicts, businessmen, company managers, etc.) who are prohibited from entering the territory of the country imposing sanctions, as well as freezing assets.
2. Against companies/organizations – sanctions against particular companies and organizations that are prohibited from operating in the country imposing sanctions, as well as with its companies and organizations, and freezing of assets.

3. Economic – economic measures of a prohibitive nature in the field of trade and economic cooperation.
4. Financial – a set of prohibitive measures in the field of finance and financial cooperation.
5. Diplomatic – a set of measures of a prohibitive nature in the field of political cooperation.

Classifying the sanctions by the countries that introduced them, the situation is as follows (Table 1).

Country	Sanctions imposed
Australia	Supported the US sanctions, introduced sanctions lists against citizens and companies of the Russian Federation
Albania	Joined the individual and general EU sanctions
Georgia	Canceled several interstate meetings. Refused to impose other sanctions
Israel	Banned the supply of weapons and military technology
Iceland	Joined the majority of individual and general EU sanctions
Liechtenstein	Joined the majority of individual and general EU sanctions
Moldova	Joined the majority of the EU sanctions, banned broadcasting of several Russian TV channels
Norway	Consistently joined the EU sanctions, canceled military and economic cooperation
New Zealand	Introduced personal sanctions, supported Australia in banking sanctions
Ukraine	Joined the majority of individual and general EU sanctions, banned broadcasting of Russian TV channels
Switzerland	Introduced individual and economic sanctions
Montenegro	Supported part of the EU individual and general sanctions
Japan	Stopped visa mitigation negotiations, disputed territory negotiations, introduced individual and economic sanctions

Table 1. Countries supporting the US and the EU sanctions against Russia

Source: (RIA, 2020).

Further, let us consider the list of economic, financial, and diplomatic sanctions imposed by the US and the EU from 2014 to 2020 (Table 2).

Reason/ Type of sanctions	Ukraine/Crimea	The Skripals poisoning
Economic	Licensing of US exports of defense goods and services to Russia terminated in the USA (2014) In the US, it is forbidden to sell high-tech goods to Russia that could enhance the combat readiness of the army (2014) The EU imposed an embargo on the import and export of weapons to Russia, a ban on the export of dual-use goods and technologies for military use (2014) In the USA, the supply of equipment and technologies to the deep oil and gas production, development of the Arctic shelf and production of shale oil and gas reserves to Russia was prohibited (2014) U.S. Department of Defense was banned from allocating funds for military cooperation with Russia (2016)	The supply of foreign aid to Russia, with the exception of emergency humanitarian aid, was terminated. The supply of food and agricultural products, the sale of arms and any defense goods, defense services, design and construction services were stopped. The US also refuses to issue any loans and credit guarantees to Russia. The US may tighten these sanctions if Moscow does not provide guarantees for the non-use of chemical and biological weapons (2018)
Financial	The US investment and military cooperation with Russia frozen (2014) The European Investment Bank stopped financing projects in Russia (2014) A ban was introduced in the EU on investments in the infrastructure, transport and energy sectors, as well as oil and gas production in the Russian Federation (2014) The EU investments in Crimea and Sevastopol (2014) were prohibited.	The US requires international financial organizations not to provide Russia with any international loans or financial/technical assistance. The Government also prohibits any US bank from granting any loans or credits to the Russian government – with the exception of loans or credits intended to purchase food or other agricultural goods or products (2019)

Diplomatic	The EU – Russia Summit canceled (2014) The EU embassies in Russia are forbidden to issue visas to residents of Crimea (2014) The work of the Russian-American Presidential Commission (2014) was terminated	The US and its allies announced the expulsion of Russian diplomats. Twenty-nine countries together expelled more than 150 Russian diplomats and diplomatic representatives. The US expelled more Russians than all, over 60 people, followed by the UK – 23 people (2018)

Table 2. Economic, financial and political sanctions of the US and the EU from 2014 to 2020

Source: (Ageev and Yarmoshchuk, 2020)

As can be seen from the table, the most painful sanctions of the US and the EU are those in the field of technical and scientific cooperation, in the field of banning financing of Russia and companies and organizations from Russia by financial organizations of the West, except for short-term loans.

Next, let us consider the individual sanctions and sanctions against companies and organizations imposed by the US and the EU (Table 3).

Reason for imposing sanctions	Number of citizens of Russia	Number of companies and organizations
The death of Sergey Magnitsky, corruption and violation of human rights	57	1
Annexing of Crimea and events in the east of Ukraine	286	478
Cyber-attacks vs the US	27	11
Sanctions under the Countering America's Adversaries Through Sanctions Act (CAATSA)	32	42
Supporting the Government of Syria	12	6
Supporting the Government of Venezuela	0	3
Sale of goods or weapons to the DPRK, Iran, and Syria	6	11
The Skripals case	4	0

Table 3. The number of legal entities and individuals subject to sanctions (data in the lists may be duplicated)

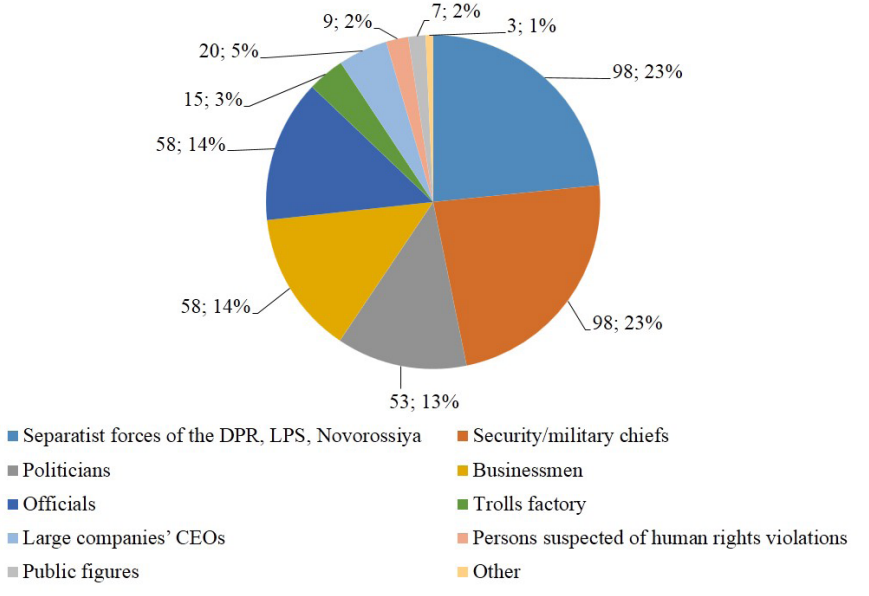
Source: (Sapronova *et al.,* 2020).

More sanctions against people and companies have been introduced due to the annexation of Crimea and events in eastern Ukraine, as well as within the framework of the Countering America's Adversaries Through Sanctions Act.

From April 12, 2013 to January 9, 2017, the US President Barack Obama imposed sanctions against 555 citizens and companies of Russia; from June 1, 2017 to March 12, 2020, US President Donald Trump imposed sanctions against 260 citizens and companies of Russia (Sapronova *et al.*, 2020). More details are displayed in Figures 1 and 2.

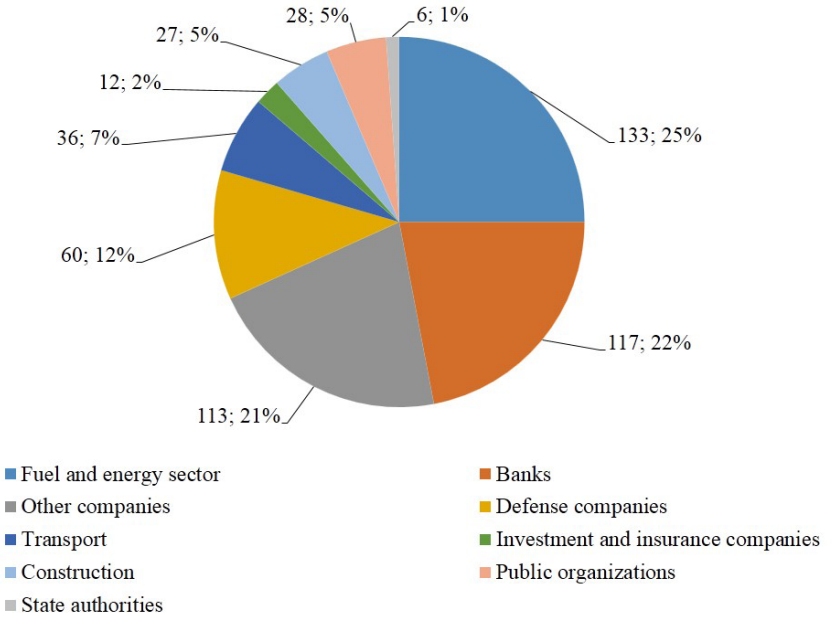
Most of all, the separatist forces of the DPR and the LPR (23%), the Russian security/military chiefs (23%), politicians (13%), businessmen (14%), and officials (14%) fell under sanctions.

Most companies and organizations under the sanctions of the US and the EU are the fuel and energy sector (25%), banks (22%), and defense companies (12%).



Source: (Sapronova *et al.*, 2020)

Figure 1. The structure of citizens subject to the US and the EU sanctions (data given on the number and as a percentage of the total share)



Source: (Sapronova *et al.*, 2020)

Figure 2. Structure of companies and organizations subject to the US and the EU sanctions (data given on the number and as a percentage of the total share).

In general, based on the US and the EU regulations, sanctions against Russia can be divided into blocking (in the USA this is the SDN (Specially Designated Nationals) list and sectoral (in the USA this is the SSI (Sectoral Sanctions Identifications) list.

When subject to blocking sanctions, the assets of individuals and companies, both in the US and in the EU, are blocked. It is forbidden to conduct any business and transactions with them. Sanctioned individuals are prohibited from entering the US and/or the EU.

Sectoral sanctions apply to particular individuals operating in certain sectors of the economy, as well as to companies owned or controlled by such individuals.

Assets of companies included in the sectoral sanctions list are not frozen, unlike those in the SDN list. In the banking sector, getting into such a list

does not imply isolation of these companies from the financial system – only the restrictions on the provision of new financing by the US and the EU companies apply. In practice, this means that, for example, banks that fall under sectoral sanctions will not be able to attract loans from banks and investors, whether it be bonds or credits. Moreover, the ban does not apply to debts for a period of less than 14 days (for the US sanctions) and 30 days (for the EU sanctions).

In the defense sector, persons and companies subject to the US sanctions have been banned from importing and exporting weapons and related materials, dual-use goods and services from/to Russia. For those included in the sanctions lists of the EU members, there is a ban on the purchase, sale, transfer, and export of arms and ammunition to Russia by the EU residents, as well as a ban on the export of dual-use goods (goods that can be used both for peaceful purposes and for creating weapons of mass destruction) and technology for military use.

In the energy sector, persons and companies that have fallen under the US sanctions have been banned from exporting to Russia goods, services or technologies related to exploration and production of oil on the Arctic shelf, deep-sea production, and shale projects (the energy sector). For the EU sanctioned lists, a licensing procedure has been introduced for transactions with Russia in relation to goods and technologies intended for the extraction and exploration of oil and other mineral wealth.

Certain legal acts may provide for exceptions in the form of limiting the effect of sanctions in the implementation of particular operations.

Economic and financial results for Russia of the US and the EU sanctions.

Further, by the example of several indicators, one may study how the sanctions of the US and the EU affected the Russian economy and financial sector.

First, let us consider the indicator of the gross domestic product at current prices and prices in a particular year (Table 4).

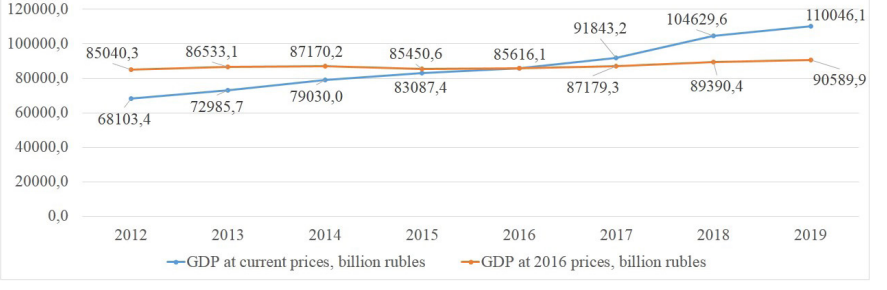
	2012	2013	2014	2015	2016	2017	2018	2019
GDP at current prices, billion rubles	68,103.4	72,985.7	79,030.0	83,087.4	85,616.1	91,843.2	104,629.6	110,046.1
GDP at 2016 prices, billion rubles	85,040.3	86,533.1	87,170.2	85,450.6	85,616.1	87,179.3	89,390.4	90,589.9
Consumer price index for goods and services, %	106.57	106.47	111.35	112.91	105.39	102.51	104.26	103.04

Source: (Rosstat, 2020).

Table 4. Gross domestic product at current prices and prices in 2016, billion rubles

Considering GDP at current prices, its dynamics are positive over the period from 2012 to 2019, the growth being 61.6%. It is also worth noting that during the period of the imposition of foreign sanctions, the dynamics of GDP growth at current prices decreased, but was positive overall. However, GDP at current prices does not reflect the real situation, since in Russia throughout the whole period from 2012 to 2019 there was significant inflation, its fluctuations ranged from 3.04 to 12.91%. In this regard, it is necessary to consider the dynamics of GDP at the prices of a particular year, for example, 2016.

GDP at 2016 prices shows that the dynamics are not so rosy. GDP growth amounted to only 6.5% for the period from 2012 to 2019. In 2015-2016, there was a decrease in GDP. However, in 2017, GDP growth at 2016 prices resumed. This is illustrated more clearly in Figure 3.



Source: (Rosstat, 2020).

Figure 3. Gross domestic product at current prices and at prices of 2016, billion rubles

It should be noted that the decline in Russia's GDP in the indicated period is explained not only by the influence of the foreign sanctions, but also to a greater extent by a decrease in the cost of oil in the world market (Figure 4).

Source: (Rosstat, 2020).

Figure 4. Dynamics of oil prices in the world market from 2012 to 2019

A 2-fold decrease in the cost of oil in 2015-2016 led to a decrease in the export earnings of most Russian oil and gas (Gazprom, as the gas prices in most contracts are tied to the oil prices) companies. However, these losses for the Russian budget were offset by the depreciation of the ruble against the dollar from 39 rubles/$ to almost 80 rubles/$. Modern research boils down to the fact that the decline in Russia's GDP in 2015-2016 was mainly due to a drop in the cost of oil, and not to the imposed sanctions (Korotin *et al.*, 2019).

In general, considering the dynamics of the industrial production index after the introduction of the main effective measures of sanction pressure, the performance of Russia looks more positive than in the countries that imposed sanctions against Russia, especially compared to Ukraine, France, and the UK (Table 5).

	2016	2017	2018
Russia	113.3	115.7	119
Ukraine	83	83	84
Germany	112	116	117
United Kingdom	100.2	102	103
France	100.5	102	103
USA	108	111	115

Source: (Rosstat, 2020).

Table 5. Industrial production indices, %

The most significant measures of sanction pressure on Russia were the sanctions in the field of technological and scientific cooperation, against the business and the financial sector. Let us consider their consequences now.

In the period from 2012 to 2019 in Russia, the share of high-tech and knowledge-intensive industries in the gross domestic product was slowly growing from 20.2 to 21.6%, in 2015 and 2016 there was a slight decrease to 21.1 and 21.3%, respectively. Judging by an increase in highly productive jobs in % compared to the previous year, in 2015 and 2016 there was an outflow, in other years there was an inflow (Table 6). Thus, the effect of sanctions, if it was in 2015 and 2016, then decreased by 2017.

	2012	2013	2014	2015	2016	2017	2018	2019
Share of high-tech and knowledge-intensive industries in the gross domestic product, % of the total	20.2	21.0	21.6	21.1	21.3	21.8	21.1	21.6
Increase in highly productive jobs, % compared to the previous year	12.7	6.9	4.5	-9.1	-4.8	7.1	14.7	5.6

Source: (Rosstat, 2020).

Table 6. Development of high-tech and knowledge-intensive industries in Russia

Further, let us consider the operational performance of medium and large companies in Russia (Table 7).

	2012	2013	2014	2015	2016	2017	2018	2019*
Balance of profit and loss, billion rubles	7,824	6,854	4,347	7,503	12,801	9,037	12,400	15,758
in % to the corresponding period of the previous year	110.8	82.7	68.2	173.6	157.0	69.5	159.6	117.5
Profit amount	9,213	9,519	10,465	12,654	15,823	14,079	18,332	17,696
Proportion of profitable organizations, %	70.9	69.0	67.0	67.4	70.5	68.1	66.9	73.5
Loss amount	1,389	2,665	6,118	5,151	3,022	5,042	5,932	1,938
Proportion of unprofitable organizations, %	29.1	31.0	33.0	32.6	29.5	31.9	33.1	26.5

Source: (Rosstat, 2020).

Table 7. Operational performance of medium and large companies in Russia.

If one considers the overall economic performance of medium and large companies in Russia in 2012-2019, in general there was a positive trend, growth was observed except for 2013, 2014 and 2017. The amount of profit tended to increase. In 2014, a decrease in profitability was visible, which may be caused by the imposed sanctions and a decrease in the cost of oil in the world market, followed by devaluation of the ruble.

Further, let us consider the performance of banks in Russia (Table 8).

	2012	2013	2014	2015	2016	2017	2018	2019
Total profit (+)/ loss (-) received by existing credit institutions, million rubles	1,011.9	993.6	589.1	192.0	929.7	789.7	1,344.8	2,036.8

Profit volume of credit institutions with profit, million rubles	1,021.3	1,012.3	853.2	735.8	1,291.9	1,561.6	1,919.4	2,196.4
Proportion of existing credit organizations that had profit, %	94.2	90.5	84.9	75.4	71.4	75.0	79.3	84.4
Losses volume of credit institutions that had losses, million rubles	9.4	18.7	264.1	543.8	362.2	772.0	574.6	159.6
Proportion of existing credit organizations that had losses, %	5.8	9.5	15.1	24.6	28.6	25.0	20.7	15.6

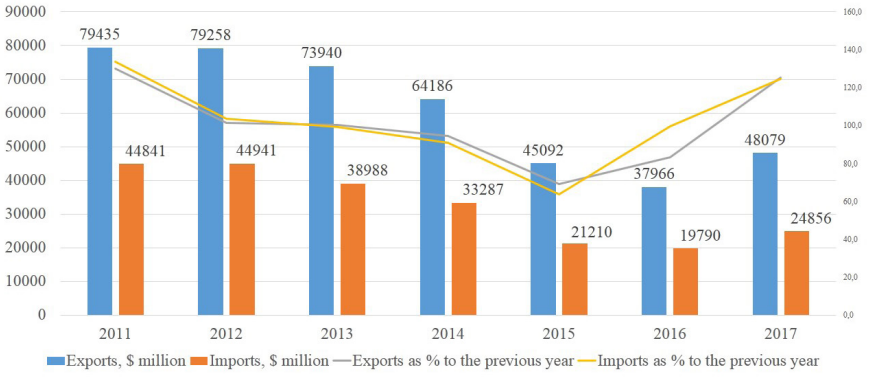
Source: (Rosstat, 2020).

Table 8. Performance of banks in Russia

The impact of the sanctions on the Russian banking sector is clearer. During the period of the introduction of the main sanctions by the US and the EU in 2014-2015, the profitability of banks was sharply reduced (by 5 times in 2015 compared to 2012), but already in 2018 and 2019, it was recovering and sharply increasing (a 2-fold increase on 2012). However, it is too early to talk about the restoration of the banking sector in Russia, since there is still a high proportion of loss-making banks (15.6% in 2019 compared to 5.8% in 2012).

Now, let us consider the dynamics of imports and exports in Russia (Figure 5).

Analyzing the dynamics of exports and imports in Russia, it is worth noting that their decline began back in 2012, and in 2014-2016 it only intensified. The fall in exports and imports is primarily due to the situation in the oil market, the devaluation of the ruble, and the introduction of foreign sanctions. However, the trend has been changing since 2017, when exports and imports growth in Russia began.



Source: (Rosstat, 2020).

Figure 5. Dynamics of imports and exports in Russia

Thus, the impact of sanctions on the economy and the financial sector of Russia was observed only from 2014 to 2016, then this effect was reduced. That is, the effectiveness of the sanction pressure is gradually decreasing despite the introduction of new sanctions under various pretexts.

3. Discussion and Conclusion

The results obtained in this study are similar to those obtained earlier. Thus, in (Nusratullin *et al.*, 2020a, 2020b), during an analysis of industrial and socio-economic development, a decrease in the sanction effect on the Russian industry and the public standard of living was revealed. In addition, somewhat positive trends were identified in the operation of the Russian manufacturing industry. It was concluded in the above studies that today for Russia, the strategic tasks were reduced to overcoming technological backwardness and carrying out technological modernization of the manufacturing industries based on the use of innovative achievements, as well as import substitution of the economy sectors that are sensitive to the foreign sanctions.

(Bayramov *et al.*, 2020), considering the Western sanctions against Russia, attempted to assess the medium-term effects of these sanctions on Russia's post-communist neighbors. In the course of that study, the scholars came to the conclusion that the Western sanctions against Russia had a significant impact on the economy of neighbors – the CIS countries. However, this influence also decreased over time.

Korotin *et al.*, (2019) put that the sanctions imposed against Russia in 2014 coincided with a shock in the oil market. It is believed that both the sanctions and the falling oil prices affected the ruble exchange rate, which depreciated by 2 times compared to the pre-crisis level. The authors, evaluating the effect of the sanctions on the ruble exchange rate, came to the conclusion that there was no direct effect of the sanctions on the ruble exchange rate.

(Dong and Li, 2018) analyzed the US and the EU economic sanctions against Russia and concluded that all countries involved in the sanctions would suffer, but comparatively Russia would suffer more, while the US and the EU would suffer less. The EU sanctions have a greater impact on Russia than the US measures, meantime, the Russian sanctions will have a greater impact on the EU than on the US. From an economic point of view, the optimal choice for the US and the EU is to abandon the sanctions against Russia, while the retaliatory sanctions are Russia's optimal choice when it is faced with sanctions. The countries offside the sanctions will benefit from the trade diversion effect.

(Gurvich and Prilepskiy, 2015) examined the impact of the Western financial sanctions on the Russian economy. Modeling the components of the capital flow (taking into account the influence of other factors, including falling oil prices) showed that sanctions directly affected banks, oil, gas and weapons companies in Russia, severely limiting funding from abroad by reducing the flow of foreign direct investment and worsening the financing conditions. The total negative impact on gross capital inflows for 2014–2017 was estimated at approximately $280 billion. The predicted impact of the sanctions on GDP was estimated at -2.4 percentage points by 2017 compared to the hypothetical scenario without sanctions, but this is 3.3 times lower than the estimated impact of the oil price shock.

(Ankudinov *et al.*, 2017) examined the impact of the sanctions on the Russian stock market. The results showed that for almost all industry indicators, a statistically significant increase in volatility was observed. At the same time, the study does not have sufficient data on structural changes in the stock market. The changes in the stock market cannot be directly related to the sanctions imposed; the latter can be largely caused by higher country-specific risks due to geopolitical tensions and the volatility of oil prices.

Thus, in this study and in the studies by fellow scholars, some results were obtained acknowledging that the sanctions of the US and the EU did have an impact on the economy and the financial sector of Russia, but this impact was not as significant as the leaders of these countries expected. In addition, the impact of the sanctions is gradually decreasing despite the introduction of new sanctions on various pretexts.

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Rethinking the category of organic intellectual of/by Antonio Gramsci in today's world

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Abstract

The attempt to assess the essential functions and aspects of the intellectual establishment in the modern and contemporary world occupies a prominent place in the social sciences and in the political philosophy of the 20th century. Antonio Gramsci was undoubtedly one of the philosophers who made the most heuristic and hermeneutical contributions, from his revisionist Marxist perspective, to understand intellectuals as leading actors and active political subjects, situated in the dilemma of favoring the preservation of the established order, in the case of traditional intellectuals, or in promoting their radical transformation as a program of action of the so-called organic intellectuals, who dedicate themselves at all times to interpret the needs and aspirations of justice and equity of the time and social space of which they are part, to endow it with concrete political content. Consequently, the objective of this scientific article is to examine the role of the critical intellectual with social commitment in the current complex context, marked by the systemic crisis of the current world order. Methodologically speaking, the document presented here was developed through dialectical hermeneutics and the documentary research

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technique. The findings obtained allow us to conclude that critical thinking is key to revitalizing democracies.

Keywords: organic intellectual; traditional intellectual; Antonio Gramsci; critical thinking; systemic crisis of the world order.

Repensando la categoría de Intelectual Orgánico de Antonio Gramsci en el Mundo de Hoy

Resumen

El intento por valorar las funciones y aspectos esenciales del estamento intelectual en el mundo moderno y contemporáneo ocupa un lugar prominente en las ciencias sociales y en la filosofía política del siglo XX. Antonio Gramsci fue sin duda uno de los filósofos que más aportes heurísticos y hermenéuticos efectúo, desde su perspectiva marxista revisionista, para comprender a los intelectuales como actores protagónicos y sujetos políticos activos, situados en la disyuntiva de propender a la conservación del orden establecido, en el caso de los intelectuales tradicionales, o en impulsar su transformación radical como programa de acción de los llamados intelectuales orgánicos, que se dedican en cada momento a interpretar las necesidades y aspiraciones de justicia y equidad del tiempo y espacio social del que forman parte, para dotarlo de contenido político concreto. En consecuencia, el objetivo de este artículo científico consiste en examinar la función del intelectual crítico con compromiso social en el complejo contexto actual, signado por la crisis sistémica del orden mundial vigente. Metodológicamente hablando el documento que aquí se presenta se desarrolló mediante la hermenéutica dialéctica y la técnica de investigación documental. Los hallazgos recabados permiten concluir que el pensamiento crítico es clave para revitalizar las democracias.

Palabras clave: intelectual orgánico, intelectual tradicional; Antonio Gramsci; pensamiento crítico; crisis sistémica del orden mundial.

Introduction

Lato sensu for intellectuals we want to cover, following the contributions of Mansilla (2002), the specialists, technical-organizational of the public administration, in areas as diverse as the economy, the human and social sciences, university professors, public policy makers, planners, philosophers, writers and social communicators, among others. "But

this term is usually designated in a more restricted way to" independent "producers of spiritual values, to creators of meaning who take advantage of the most advanced knowledge of the international cultural community..." (Mansilla, 2002: 430).

The notion of intellectuals is a broad concept in which a set of different activities such as science, culture, literature, art and philosophy, among others, are delimited, in which, beyond their particularities, development creative and cognitive processes as a trade or profession by people who are, strictly speaking, responsible for developing and socializing the ideas and reflections that set the standard, materially and symbolically, in the public opinion of a society that grants them moral-scholarly authority or, simply, to act as specialists in the different human activities in the face of the production of goods and services.

In the case of intellectuals in political activity, their social impact is much greater, without ignoring that even approaches that in principle do not have a concrete political foundation, could ultimately have biased political and ideological uses, as happened, for example, with the theory of evolution of Charles Darwin, which would degenerate into social Darwinism to justify racist policies of social exclusion that sought the predominance of certain ethnic groups over others.

From this perspective, intellectuals have at the time a very important connection with the socio-political realities of which they are part and, therefore, their published work has repercussions, according to their particular bias, either in the preservation of the established order, in the in the case of the so-called traditional intellectuals, or, in promoting their transformation as a program of action, in the case of the so-called organic intellectuals, who, according to Gramsci (1967), are dedicated to interpreting at all times the needs and aspirations of justice and fairness of time and the social space of which they are part, to provide it with concrete political content contrary to the hegemonic interests of the historical bloc[6] (Portelli, 1978).

The objective of this scientific article is to examine the role of the critical intellectual with social commitment in the current complex context, marked by the systemic crisis of the current world order (Villasmil, 2020;

6 Simplifying things, in Antonio Gramsci's terminology the historical block is the symmetry that exists between the infrastructure, that is, for Marxism, the totality of the productive forces that in a time and space determine the existing means and modes of production. , with the superstructure, or more specifically with the culture, the law and the general episteme of a model of society, to respond at all times to the hegemonic project that identifies a dominant class in the exercise of power and justifies or tries to justify and rationalize, in social representations, their domination, symbolic capital and particular privileges as something natural and never as a historical anomaly that benefits some and harms many others. For more information in this regard, we recommend consulting the Gramsci texts that appear at the end in the reference index or the link: https://kmarx.wordpress.com/2012/11/20/el-intelectual-organico-en-gramsci -an approximation/.

Parra, 2020; Arbeláez-Campillo et al, 2019; Arbeláez-Campillo and Rojas-Bahamón, 2020), all within the framework of an inter-ideological political and philosophical debate that seeks to rethink - in the heat of the requirements and challenges imposed by the 21st century agenda - some theories, thinkers and works that, As in the case of certain proposals by Antonio Gramsci (1891-1937), they continue to have an unusual validity beyond the differences of time. As might be expected due to the nature of the subject, methodologically speaking the document presented here was developed through dialectical hermeneutics and the documentary research technique, from a holistic and interdisciplinary vision of political thought.

The work is divided into four particular sections, namely: 1) revised literature, which accounts for the substrate of classical or neoclassical works that, in primary and secondary sources, directly or indirectly address the central role played by the subject of the intellectuals in the work of this remarkable Italian thinker; 2) methodology, section where the interpretive processes used in the organization and reading of the sources collected in the form of printed documents in physical and digital format are succinctly exposed; 3) organic intellectuals in today's world, where the political and ideological implications that in theory and in reality impose the practices of critical, associative and innovative thinking are discussed. Finally, the final reflections and the main research findings are presented in the conclusions section.

1. Literature reviewed

Next, a selective bibliographic balance is made of what, in our opinion, are the main works on the broad and advanced philosophical project of Antonio Gramsci, either due to the depth of his investigation, the appropriate handling of primary sources or for the consistency of his ideas. This documentary archiving was carried out as a condition of possibility to determine the contributions or limitations of the selected anthology that, in theory, would correct this investigation. It should be clarified that the scientific article presented here focused almost exclusively on the question of intellectuals and, furthermore, that the work is subsidiary in its main lines of argument of the imprint of these works with which it dialogues in a hermeneutic and intertextual.

Gramsci is a thinker situated in the rigors of Italy in the second decade of the 20th century (Fiori, 1976); Consequently, he experienced firsthand the transformation of the nineteenth-century world order that would mark the beginning of the end of the British, Ottoman, Tsarist Russia and, ultimately, the construction of the USSR. His particular reading of Marxism allows him to rethink the role of culture, the State and intellectuals in the new order of things that was being born dialectically at the time, from the

deep conviction that the processes of domination develop mainly in the systems of beliefs - ideology and superstructure - that serve as the basis for the law, the institutions of power and all historically existing forms of state and government, since it is not possible for the ruling classes to govern solely through coercive devices of social control, which is why which appeal to the legitimation of their hegemony in the collective imaginary (Díaz-Salazar, 1991).

For Bobbio (1991), roughly the political theory of Gramsci that emerges from his fragmented thought due to the difficulties of his life history, opposes the notions of civil society and the State. Unlike the tradition implemented by contractarians, conditioned by the enlightened liberal tradition, the State is now not the highest incarnation of the social contract to definitively overcome the state of nature, characterized in its course by the irrationality of a type of relationship intersubjective where the will of the strongest predominates at each moment. The Gramsci of the prison notebooks:

> (...) Belongs to this new history in which, to summarize, the State is not an end in itself, but an apparatus, an instrument; He is the representative of interests not universal, but particular; It is not a prevailing entity over the underlying society, but is conditioned by it and, therefore, subordinate to it, is not a permanent institution, but a transitory one, destined to disappear with the transformation of the underlying society (Bobbio, 1991: 340).

For its part, civil society would be the social dimension that is not directly controlled by the State, as a neural point of the hegemonic political system and the constituted powers, in the words of Portelli: "Civil society is the true home and scene of history... civil society encompasses the entire material exchange of individuals in a given phase of development of the productive forces" (1978: 15).

Without wishing to comment on the limitations or weaknesses of this conception of civil society, two preliminary conclusions quickly emerge: on the one hand, the State is not the last stage in the history of the forms of political organization, hence the Marxists postulate the supposed need for its dissolution because it is an instrument of domination that represents the particular interests of the elites in the exercise of power; on the other hand, organic intellectuals set themselves up as a sort of lucid conscience of the revolutionary social forces that bet on the liberation of all forms of exploitation.

According to Buci-Glucksmann (1978), the distinguished Italian thinker was undoubtedly a revisionist Marxist, while his vision of dialectical materialism as a politically situated method of study to interpret the ultimate meaning of the historical movement of human societies and

to build theoretical-practical tools in favor of the definitive liberation of the subordinate groups. Therefore, his work represented a kind of Western alternative to a too economistic or too Leninist Marxism that, by concentrating on the study of social systems and structures, underestimated the analysis of individuals and particular groups that, like intellectuals, movements Students or political parties play a role in the construction, maintenance or destruction of the superstructure and its historical block.

In this order of ideas, the construction of a specific socio-economic formation such as slavery, feudalism or capitalism not only reflects the type of development of the productive forces in their different stages and moments, but also the project of power that specialized intellectuals They make to justify the interests of the ruling classes and make the burden of domination more bearable, hence, since the origins of the first human civilizations, religions have played a leading role in the divinization of the actors and factors of power, to inhibit a priori any form of resistance or subversion of the established order (Gramsci, 1967; 1986). In any case, it is clear that the infrastructure and the superstructure never emerge by chance or providence, but by the deliberate materialization of hegemonic interests, rationalized by theories, ideologies and all kinds of power discourses.

These postulates explain the centrality of intellectuals in Gramsci's thought and its dichotomous organization in the categories of traditional intellectuals vs. organic intellectuals. In the first case, according to Dussel (2001), organic intellectuals have the maximum purpose of collaborating, according to the status and role in which they are located, in the construction of a critical philosophy, that is, a systematic approach based on empirical evidence. that presents the prevailing system of domination as an intolerable reality that can and should be transformed, for which purpose they empathically place themselves in the place of the victims, while proposing viable alternatives to radically improve their historical situation and living conditions in general.

In stark contrast, traditional intellectuals or, according to Dussel (2001), intellectuals functional to the system do not have any ethical conflict with the result of the prevailing order of things, either because they do not have historical and political awareness of reality, think about this point , in the fundamental engineers or technicians for the development of industrial activity in the different productive proceedings that fall into the category of intellectuals or; because they are comfortable with their privileges as a high-level workforce, or; simply because, as traditional intellectuals, who may have been organic at one stage of their life, ideologically assume that the present moment is the obligatory product of historical evolution, insofar as the system of relationships that exists between people, including Dramatic experiences of injustice and inequality represent the best way to divide the valuable goods that emerge from work to maximize the common good (Fontana, 1999).

2. Methodology

Dialectical hermeneutics is constituted in a philosophical tradition that became in the 20th century a research methodology, otherwise useful when it comes to interpreting the symbols and signs that emerge from the relationship between texts and contexts to produce scientific knowledge that values, All other things being equal, the objective and subjective dimension of a reality. In the words of Moreno (2008), the exegetical action develops a dialogue between at least two different horizons: on the one hand, the one that comes from the tradition that identifies the questioned text as an understandable fragment of its time and space and; on the other, the horizon to which the interpreting subject belongs. Many times both horizons are very different, which is why in order to understand the message of a text, one must first understand its context of origin, from its own narrative logic.

On this occasion, each and every one of the sources collected and ordered under the research documentary design protocol, were re-read based on three specific criteria that were formulated in the questions:

1. What political and ideological interests does the questioned author defend?
2. In what way does the work in question reflect the great lines of thought of its time and space of origin?
3. What theoretical or practical utility do the revised ideas, categories or concepts acquire for today's world?
4. What function does Gramsci's theory give to the critical intellectual with social commitment immersed in a general context marked by the crisis of the current world order?

Therefore, with this methodological criterion, the hermeneutical circle advanced by us, as an intertextual dialogue that occurs between texts and different contexts, horizons and knowledge, was oriented to seek answers, even if they are partial, to each of these questions without any intention of arrive at definitive conclusions on the subject or provide knowledge with the claim of universality. Rather, it was a question of qualifying Gramsci's central ideas about intellectuals in order to strengthen at least theoretically, in today's world, the role of the critical intellectual, a bulwark that is certainly not the monopoly of any particular political tendency of the left or right, such as some radical populist speeches have pretended.

3. Organic intellectuals in today's world

Together with the questions formulated in the previous section, it was also investigated: ¿What specific ideas are salvageable from an approach

that originated in a reality very different from that of today's world? How valid can a vision of intellectuals that arises within a philosophy anchored in historical reality have multiple totalitarian experiments in the 20th century? And what characteristics would organic intellectuals have in today›s world? These and other similar questions will try to be answered in this section as a condition of possibility to solve the objective of the research and at the same time promote an academic debate that allows rethinking the organic intellectual establishment and, functional to the system, in the coordinates of the general crisis in full development.

To answer the first question, it is well to reiterate that some theories manage to transcend their epochal context for different reasons, ranging from the validity of their ideas to responding to current problems or because of their intrinsic ability to adapt - without losing their essence - to new ones. or renewed problems imposed by epistemological reflection and reality itself. As will be argued in this section, we believe that this is the case of Gramsci's theory of organic intellectuals, a prelude to all the postmodern planning of critical and counter-hegemonic thinking. In this order of ideas, at least concepts such as: organic intellectuals, traditional intellectuals, the historical bloc and civil society are salvageable, all in the Gramscian sense.

As for the second question, it is clear today that in many crucial respects the experiments of real socialism deviated from the original meaning of classical Marxism. Hence, the dictatorship of the proletariat, where it was implemented, was in practice the dictatorship of the one party to undermine social pluralism and, immediately afterwards, the dictatorship of the one party was really the dictatorship of a caudillo like Stalin or a clique. civic-military closed of the politburo of the communist party. In addition, it should be noted that for Gramsci the last stage of the organization of the classless society was the dissolution of the State, however, for obvious reasons this step was not promoted in practice by any Marxist socialist organization in the exercise of power.

Although many more phenomena of dissonance could be enunciated between the original Marxist proposal and what happened, for example, in China and the Soviet republics, the reality of the case is that in its essence Marxism suffers from a proper democratic theory (Sartori, 2009; 1988) - seminal weakness that the first classical liberalism also possessed -, which does not mean that his contributions to the development of critical and counter-hegemonic thought have not been substantial to leverage later theories such as those formulated by the Frankfurt school, the liberation or Latin American critical philosophy, among others. Hence, even cataloging Marxism as a philosophy close to totalitarian traditions, the validity of many of its contributions, categories of analysis and particular concepts cannot be denied when it comes to explaining the schemes that produce and reproduce all forms of oppression In today's world.

For its part, the third question, what characteristics would organic intellectuals have in today's world? It demands a more weighted response from the knowledge of the great socio-political and economic trends that define the foundations of the history of the current world, marked by the substantial increase in entropy and conflicts of all kinds in the framework of a transition process to a new order of uncertain content (Villasmil, 2020; Parra, 2020; Arbeláez-Campillo *et al.*, 2019).

Indeed, if I had to summarize the major problems that will delimit political agendas at a global level, 5 themes would be tentatively pointed out because of their unusual transcendence and centrality, namely: a) the crisis of representation of contemporary polyarchies beyond the adjective of participatory democracy or grassroots democracy; b) the growing material and symbolic inequalities that relegate huge numbers of people to a life of violence, lack of opportunities to develop their life projects and precarious access to basic goods and services; c) the systematic deterioration of the biosphere throughout the planet due to global warming and the greenhouse effect; d) the international repositioning of authoritarian governments in the East and West that undermine human rights and, finally; e) the absence of a new philosophical system that leads to the emergence of a different political thought that manages to surpass - with novel proposals - the long-established dichotomies of Marxism / liberalism, democracy / autocracy and planned economies / market economies, in order to achieve sustainable development on a planetary scale.

In this order of ideas, the two categories of intellectuals formulated by the author of the Prison Notebook, would find themselves again facing a bifurcated path between: adapting in an accommodative way to the requirements of the status quo, justifying their models, practices and representations , which would imply a traditional / functional intellectual stance or; on the contrary, to take up the banners of struggle of the organic intelligentsia as a condition of possibility to give answers, as a theoretician or entrepreneur[7] in the face of resistance and social organization, to the great challenges imposed by today's world, challenges that translate into in multiple problems that constitute, without a doubt, forces contrary to democracy and the achievement of the good life for the majority.

For Jiménez *et al.*, (2019), the organic intellectual in today's world is identified, in the psychological dimension of being and doing, by an attitudinal profile of an innovative leader who gallantly assumes the demands of the political, social and organizational environment in which it is immersed. In the same way, he is characterized by the display of three transversal qualities or skills in his life: critical thinking, critical behavior and dialogic attitude, consequently:

7 For an interesting work on the development of female entrepreneurship, it is recommended to consult (Pinkovetskaia et al., 2019)

Their interrelation leads to the performance of leaders who are dissatisfied with their world, capable of identifying alternatives in the field of politics to advance in the rational transformation of the structures that support inequity. Their work will be consistent insofar as they involve the affected actors in the search for consensual solutions, for which they have the possibility of reaching agreements through a dialogical process of an intersubjective and rational nature that will not be exempt from contradictions and tensions (Jiménez et al., 2019: 54).

Again, it is interesting to note that the condition of organic intellectual and critical thinker is not exclusive to any particular ideological or partisan tendency, which is why critical thinking attitudes, wayward behavior contrary to dominant conventions and dialogical attitude can be observed. in the most dissimilar characters in the world of ideas that can be located in the ideological spectrum in positions: anarchists, eclectic, moderate or revolutionary, among others.

After the break with colonial ties, an arduous debate arises in Latin America, to define the national identity and at the same time determine the best formulas to order the independent territories and modernize their populations, in accordance with the parameters of the modernity program. politics, in its positivist stage of "order and progress" that tries to emulate the hegemonic societies of the West in the particular realities of the peoples of the South, without paying attention to their specificities, imbrications and miscegenations (multicultural and multiethnic).

In this sense, according to Villasmil and Jiménez (2015), it is common for nineteenth-century intellectuals to group as militants or sympathizers around the postulates of liberal or conservative parties, both with very particular national projects, which defended centralism and the Catholic confessional state, in the case of the conservatives - which will, in fact, be the dominant trend.

In the case of Colombia, for example, liberalism in general and the liberal party in particular, would be until the advent of progressive and postmodern ideas in the country, well into the twentieth century, the main symbolic referent that identifies the organic intelligentsia. According to Martín (2010), it was the Colombian liberals who rose up against the caudillo ideas of some sinister figures who designed custom constitutions to position themselves as life presidents and subject all public powers to their will; It was the Liberals who, while in power, decreed the manumission of the assets of the dead hands and, in this way, they advanced an additive reform that allowed to significantly increase the national agricultural frontier and; Furthermore, it was the liberals who fiercely and systematically defended the secular state model, freedom of worship, expression and thought as pillars of modernization.

In the 21st century, pragmatism has gained ground and it is now the so-called technocratic intellectuals who seek to transcend left-right bipolarity from the tacit or open claim of neoliberalism, neo-conservatism or the third way. However, beyond their ideological camouflage, they are, in essence and existence, traditional / functional intellectuals because they seek to perpetuate the established order at all times and reduce its tensions or structural contradictions exclusively through reform, without ever posing a conducive debate. to the construction of a new model of society, more just and equitable for all.

As Uribe indicates: "The technocratic discourse is associated with the scientific one because it defends a society where those who make the decisions are the scientists or technical experts; these, in addition, support their positions through rational argumentation or critical thinking" (2016: 151). Seen this way, there is no problem in empowering experts in crucial areas of the economy or in the formulation of public policies whose purpose is to provide timely responses to the demands, aspirations and problems of the different communities that make up the national reality; The problem is that science is not, in any case, an ideologically neutral phenomenon; Therefore, in practice the technocratic groups in power have come to prop up a neoliberal agenda that cannot replace citizen intervention in the realization of participatory democracy, nor the collective deliberation of major issues of national interest.

As already mentioned in a previous paragraph, these are specialists, social communicators and experts in different areas who are interested in providing lights for the construction of a new or renewed model of a more just and inclusive society for all, in which, can combine development with social equity to build a sustainable socio-political and economic ecosystem over time; Hence, there are crucial differences between the organic intelligentsia - won to build a new social contract as a condition of possibility to overcome the vices and contradictions of this order of things - and the traditional ones, who seek their prolongation over time. The following table shows the most significant differences that exist between these two categories of intellectuals in the world.

	Political and ideological interests	**Model of economy and society that they defend**	**Social impact of their ideas**	**In tune with the great problems of the country and the world**
Organic Intellectuals	Democratic, inclusive, and participatory conception of the exercise of power.	They promote the construction of less hierarchical societies and economies at the service of human dignity and the ecosystem.	They often constitute theorists of various political parties and social movements that seek to promote processes of emancipation of oppressed and relegated minorities.	They are usually the interpreters of the main challenges and problems of their time and social space. They are usually the interpreters of the main challenges and problems of their time and social space.
Traditional/ functional Intellectuals	Procedural visions of democracy are privileged over the substantive conception that advocates reducing socioeconomic asymmetries.	They defend neoliberalism and social stratification, as a synonym for order and prosperity.	Many traditional intellectuals are advisers to neo-populist or radical populist leaders who tend to personalize political processes to the detriment of democratic institutions. This in addition to being the specialists and technicians of the prevailing economic, political and communication apparatus.	Although traditional intellectuals fully understand the great problems of their time and space, they often make proposals that retard the necessary historical changes through gradualist or reformist solutions to politics and economics.

Table No. 1: Own elaboration based on the referenced literature and the objective of the research.

Although it could be argued that the reality of intellectual work is much more complex than the partial photography offered by the painting, everything indicates that at least roughly the differences between these two opposite ways of exercising the office of ideas are well represented, science

and culture. Without a doubt, organic and traditional intellectuals are moved by the influence of different political and ideological interests.

In this vein, both intellectual estates have up to now defended different economic and social models. For organic intellectuals, the key is to build, materially and symbolically, a less hierarchical and stratified society, in which the great decisions of public interest are not only made by the usual alliance between the political and economic elites with their backs turned to the true national interest. Consequently, they have made an effort to promote economic experiences, such as the orange economy or the social market economy, among others, at the service of human dignity and of all forms of life in general that are now threatened by the systematic predation of their environment (Calvano, 2018; 2019).

For their part, traditional intellectuals continue to defend - until its ultimate consequences - the development of a market economy in accordance with the parameters of the World Bank, the International Monetary Fund and the Organization for Economic Cooperation and Development (OECD), under the assumption that the invisible hand of the market will bring order, prosperity and well-being to all communities and regions, regardless of the empirical evidence against it that it bets for the strengthening of the welfare state.

In this way, the impact of progressive and traditional ideas is also very different in collective representations and insocial imaginaries. In the first case, any attempt to move to a qualitatively higher phase of history implies the democratic transformation of its systems, hence, organic intellectuals often become theorists of various counter-hegemonic political parties and social movements that seek to promote processes of emancipation of minorities oppressed and relegated by the prevailing *statu quo*. In contrast, the traditional ones continue to act as specialists and technicians, without a critical conscience or a dialogic attitude, in the maintenance of the economic, political, educational and communicational apparatus of the state, even advising many neo-populist or radical populist leaders who tend to personalize political processes to the detriment of democratic institutions.

In this common thread, perhaps the most notable difference between the two categories of thinkers, this in the way they connect or tune into the great problems of the world today. Let us remember that for Gramsci (1967; 1986), the organic intellectual stands out for his role within the historical bloc, as a moral force that dares to challenge the hegemony of the ruling class and its control of civil society to propose new horizons and possibilities. But unlike the time of the illustrious Italian philosopher, nowadays there is no attempt to promote an armed revolution leading to the structuring of a socialist society, nothing would be further from the geopolitical reality of the 21st century world.

Rather, it is about making people and communities aware of the central challenges of their time and space and, therefore, promoting places and moments of deliberative and grassroots democracy, for the empowerment of citizens, leading to the achievement of consensus necessary to implement the changes and corrections that cannot be postponed at the structural level. For their part, traditional intellectuals, while fully understanding the major problems of their context, often make proposals that delay the necessary historical changes through gradualist or reformist solutions to politics and economics, favoring the achievement of elites' dominance. in making binding decisions, beyond the democratic and liberal veneer of their proclamations and speeches for mass consumption.

Conclusions

When trying to examine the role of the critical intellectual with social commitment in the current complex context, marked by the systemic crisis of the current world order, a set of findings emerge that strengthen the perspective of Gramsci's thought. In the first place, he urges to defeat the pragmatism and the dominant pessimism about the impossibility of promoting sustainable political, economic and social changes that come to dignify life, without lies and demagogies that do not advance historical processes.

In this sense, it is the organic intellectuals, as Portelli (1978) points out, those who have the responsibility of maximizing the consciousness of civil society that resists - with or without knowledge of it - the hegemony of a determined historical bloc, the pair to reveal its possibilities of action and of fight that are allowed by the objective and subjective conditions in which it is immersed. Ultimately, it is about strengthening the autonomy of people in the self-determination of their worlds of life, within the framework of a new ethic-politics, which, without betting on the absolute equality typical of the totalitarian orders of yesteryear, tends to structure a new social contract in the face of the post-conflict.

Second, the crisis in the representation of the current polyarchists, which translates into the distrust of the majority in the face of the leaders of the day and the capacity of the institutions to satisfy the growing social demands, is not something that can be resolved within the political and epistemological limits of all existing models up to the present, a situation that has precisely driven the crisis of the current world order. Due to this circumstance of exhaustion of the ways of doing and thinking about politics, the creation of a new philosophical system by organic intellectuals with social commitment is urgent, which will take democracy out of its quagmire and definitively prevent the return of authoritarian forms to exercise power.

Finally, the organic intellectuals, through rational arguments, critical thinking and a dialogic attitude - never through violence - are the first force in charge of demonstrating in each place and moment, the unfeasibility of the gradualist and reformist approaches of traditional intellectuals to confront to the challenges imposed by today's turbulent world; in addition to interpreting the needs and aspirations of justice and equity of the context that are part, to provide it with concrete political content in the face of the transforming action of reality. At this point Gramsci is still current.

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Diversification Rate of Energy Balance and Energy Export Demand Risk Impacts on Economic Growth: The Case of Azerbaijan

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Abstract

The objective of the article was to examine the level of diversification of the energy balance and energy export demand, as well as its impacts on economic growth to ensure energy security in Azerbaijan. Forthe research, the Risk Energy Export Demand Index and its four sub-indexes, i.e.,1) export dependence, were used; 2) risk of monopsonium; (3) the risk of transaction costs; 4) Comparative quantitative assessment of the economic importance of different types of energy in the country's energy exports. The Herfindahl-Hirschman index and the Shannon-Wiener index were used for the assessment of the diversification and concentration rate. The OLS method, the ADF test and cointegration were used to assess the relationship between indicators. It is concluded that the share ofenergy obtained from renewable sources in the country's energy balance is very low (about 3%), and the energy obtained from these sources is mainly used for electricity production. Since an essential part of the country's energy balance is in hydrocarbon reserves, the level of diversification is low.

Keywords: energy balance; renewable energy sources; energy security; risk of demand for energy exports; Azerbaijan.

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Tasa de diversificación del equilibrio energético y riesgo de demanda de energía afecta al crecimiento económico: El caso de Azerbaiyán

Resumen

El objetivo del artículo fue examinar el nivel de diversificación del balance energético y la demanda de exportación de energía, así como sus impactos en el crecimiento económico para garantizar la seguridad energética en Azerbaiyán. Para la investigación se utilizó el Índice de Demanda de Exportación de Energía Riesgo y sus cuatro subíndices, es decir, 1) dependencia de las exportaciones; 2) riesgo de monopsonio; 3) el riesgo de los costos de transacción; 4) Evaluación cuantitativa comparativa de la importancia económica de los diferentes tipos de energía en las exportaciones energéticas del país. Para la evaluación de la tasa de diversificación y concentración se utilizaron el índice de Herfindahl-Hirschman y el índice de Shannon-Wiener. Para evaluar la relación entre los indicadores se utilizó el método OLS, la prueba ADF y la cointegración. Se concluye que la participación de la energía obtenida de fuentes renovables en el balance energético del país es muy baja (alrededor del 3%), y la energía obtenida de estas fuentes se utiliza principalmente para la producción de electricidad. Dado que una parte esencial del balance energético del país está en las reservas de hidrocarburos, el nivel de diversificación es bajo.

Palabras clave: balance energético; fuentes de energía renovable; seguridad energética; riesgo de demanda de exportación de energía; Azerbaiyán.

Introduction

Population growth and technical progress have led to increased energy demand globally. The disproportionate distribution of energy between countries and the increasingly rapid depletion of energy sources has made energy security a global problem. On the other hand, the use of hydrocarbons for energy production dramatically increases emissions into the environment and creates additional environmental problems. Countries are trying to use various methods, including alternative energy sources, to sustainably ensure their energy security and a healthy environment.

Studies by the International Energy Agency (IEA), multinational corporations, think tanks on energy issues show that the full use of existing oil, gas and coal deposits will lead the world to energy problems in about 40-50 years. The discovery of new resources is becoming increasingly difficult from year to year. Alternative energy sources, especially renewable energy sources (RES), are still technically imperfect or significantly more

expensive for small countries, including for Azerbaijan (Gulaliyev *et al.*, 2020a).

Azerbaijan is one of the few countries in the world that has a large amount of hydrocarbon reserves and currently does not have a serious threat to energy supply. On the contrary, Azerbaijan plays an important role in the energy supply of several European countries, Ukraine, Israel, Turkey, and Georgia. However, since the main energy reserves around the world, including in Azerbaijan, can be exhausted, the development of alternative energy sources for sustainable energy supply in the near future is important. Reducing the production of hydrocarbon reserves in order to preserve them for future generations is impossible in the existing international and geopolitical conditions, although it is consistent with the concept of sustainable development. However, a certain part of the income received from the extraction of hydrocarbon resources can be considered from an economic point of view as an investment in the development of renewable energy projects.

However, such important economic steps require serious calculations and justification of their effectiveness. First of all, it is important to find answers to several questions: 1) What is the current state of Azerbaijan's energy balance and its dynamics of the past 10-15 years? 2) How can we assess the importance of RES in the energy balance of Azerbaijan? 3) Is there any relationship between diversification or consentration rate of energy balance and economic growth? 4) Is there any relationship between energy export demand risks and economic growth?

1. Literature review

Four different aspects of energy security are highlighted in the economic literature. The Asia-Pacific Energy Research Center (APERC, 2019) calls these aspects: 1) availability of energy resources, 2) accessibility of energy resources, 3) environmental acceptability of the energy resources and 4) commercialization of energy resources. In studies, the presence of energy resources basically means the existence of a large number of proven natural resources. Accessibility of resources (accessibility) implies the possibility of technical extraction of natural resources for use, as well as legal opportunities for the extraction process. Environmental acceptability is related to the environmental impact of energy resources. Thus, the use of nuclear energy is a serious risk to the environment and human life. In addition, the use of coal, oil and gas is the main source of carbon dioxide emissions into the environment, which is why one of the most important political decisions is to reduce the use of these resources. Fourth, the commercialization of energy resources (affordability) refers to the risks associated with the cost of these resources. Since when energy prices are too high, new threats to energy supply arise.

Although energy security has always been the focus of attention both at the state level and at the household level, as a global problem, they have become the center of economic research since the 1970s. The risk of using oil production as an instrument of international political pressure by oil-producing countries has caused serious concern in oil-importing countries amid growing demand for oil. Yergin (1988), who investigated the role of oil in global politics, believed that energy security was possible due to sufficient production volumes and sustainable energy supplies at a fair price. As the problem of energy security worsens, the scope of economic research in this area are also expanding, and currently the problems of supply and demand for all energy sources are the subject of research at different levels.

In their research, Cherp (2012), as well as Hughes and Phillip (2006), evaluated global energy security issues. The increasingly acute global environmental problems require the study of global energy security in the context of resolving environmental problems. Turton and Barreto (2006) believe that geopolitical development and climate change should be taken into account to ensure the long-term sustainability of the global energy system. Some authors, for example, Sovacool and Mukherjee (2011), consider that the availability of energy resources from a financial point of view, the availability of energy sources and their environmental safety are part of energy security. Muñoz *et al.,* (2015) believe that energy security has technical, economic, social, political, environmental and geopolitical aspects.

Energy security must be quantifiable because it has different levels. Quantitative assessment of energy security in the economic literature is carried out through a separate or joint assessment of its aspects. For example, in the studies conducted by Costantini *et. al.,* (2007) the dependence of energy security on imports was studied. As well as dependence problems on market concentration and resource availability was studied by the International Energy Agency (IEA, 2007), dependence problem on market diversification was by Stirling (2009; 1998) identifies three main aspects of energy availability in his research as 1) a variety of categories; 2) the proportion of the distribution between the respective categories; and 3) the quantitative size of the categories. The quantitative variety of categories characterizes the number of existing and available energy resources.

Valdés (2018), Ang *et al*., (2015), Erahman *et al.,* (2016), Apergis *et al*., (2015), Bandura (2008), Gasser (2020) and other researchers have been classified a lot of studies on energy security. Quantitative measurement of energy security and the reliability of such methods remain an important issue in research on energy security. The Herfindahl-Hirschmann Index (HHI) allows us to determine the degree of diversification in the production, consumption, and supply of energy products in any country. If the country is an energy importer, then HHI also allows determining the degree of dependence on

which countries for energy supply. If a country cooperates with more countries in energy supply and diversification of energy supply is higher and concentration is lower, then energy security will be higher. Thus, the weakening of the country's relations with any country that supplies it with energy will pose less of a threat to energy security. As Azerbaijan exports energy, we are more interested in the degree of diversification of the types of energy it produces. Because only one type of energy production, such as oil, can pose a threat to energy security in the future. Thus, in case of oil depletion, the country may have difficulty meeting its energy needs.

Risky External Energy Supply-REES allows you to make a comparative assessment of potential risks to energy supply in the short term. This index assumes that short-term energy import outages cannot be eliminated by the market. It is also taken into account that the intermittent supply of one energy carrier cannot be replaced by others. For this reason, the REEDI is calculated separately for each energy carrier. In this sense, REEDI differs from other energy security indices and is a non-aggregate index.

Research on the effects of energy security on economic growth is common in economic literature. For example, Balitskiy *et al.*, (2014) studied the impact of energy security on economic growth in 26 EU member states from 1997 to 2011. The result of this study is that there is a positive link between long-term economic growth and gas consumption. In the short term, there is a two-way cause-and-effect relationship between these two indicators. Mahmood and Ayaz (2018) explored the link between energy security and economic growth in Pakistan between 1980 and 2012. Here is the difference between supply and demand for energy, such as energy security. The result is that there is a causal link between Pakistan's energy security and economic growth, both in the long run and in the short term. The gap between energy demand and supply has a negative impact on economic growth.

There is little research on the direct effects of energy diversification and the REEDI on economic growth. However, there is a lot of research on the impact of world oil and gas prices on the economies of oil-importing and exporting countries. When world oil and gas prices change, revenues from energy exports decrease. If revenues from energy exports dominate the country's GDP, then the risk of demand for energy exports increases. On the other hand, if the degree of diversification in energy production is high, in the event of a decrease in the world price of one type of energy, the income from the export prices of another can be compensated. However, weak diversification reduces the country's energy security and increases the risk of budget revenues. These problems have been described by various researchers as the impact of oil prices on the income of the exporting country, For example, Alekhina and Yoshino (2018) in the example of European countries, Heidarian and Green (1989) in the example of Algeria,

Al-Moneef (2006) in the example of Arab oil-exporting countries, Dreger and Rahmani (2014) on the example of the Iranian economy, Hassan and Abdullah (2014) on the example of the Sudanese economy, Olayungbo and Adediran (2017) on the example of Nigeriaç Humbatova and Hajiyev (2019) on the example of the Azerbaijani economy investigated this problem.

2. Methodology and data

It is important to assess the energy security of oil-exporting countries, including Azerbaijan, from three aspects. The first is a security and risk assessment aimed at supply to meet current and future demand in the country. Thus, Azerbaijani oil has been produced in large quantities over the past 150 years, and in the coming 30-40 years, it is expected to decline sharply and even pose a threat to domestic demand. However, the presence of large gas fields in the country and the expansion of the exploitation of these fields have a positive impact on the energy balance and can play an important role in ensuring energy security in the future. Second, as an oil exporter, Azerbaijan depends on the volume of demand in oil-importing countries, as well as fluctuations in oil prices on world markets.

The sharp drop in prices has a serious impact on the Azerbaijani economy. Third, are environmental risks. Thus, oil and gas production, refining, and transportation in the country have a negative impact on the environment. Taking these into account, in order to quantify energy security for Azerbaijan, it is necessary to 1) assess the diversify rate of the energy balance; 2) assess the risk to the demand of importers to Azerbaijan oil, and 3) assess the economic growth's dependence on HHI and REEDI. We will use the Herfindahl-Hirschmann and Shannon-Wiener index to assess the diversification rate of energy balance, as well as the Risky Energy Export Demand Index to assess the security connected with energy export demand.

In the general case, the energy balance can be described as a three-stage system. Each stage of the energy balance can be described as a matrix consisting of several sub-stages. In some sources, for example, UN (1982), IEA (2004), Codoni *et. al.,* (1985) these stages are characterized as the stage of "supply", "conversion" and "demand". The role of renewable energy in energy supply and consumption of the country can be understood by determining their position in the energy balance at all stages. The need to invest in the development of renewable energy sources and increase the efficiency of their use requires an assessment of the dynamics of electricity demand in the country. To assess the Herfindahl-Hirschman index we will use formule $HH\dot{I}=\sum^{n}_{i} p^{2}_{i}$ and to assess the Shannon-Wiener index we will use formule $S\dot{I}=-\sum^{n}_{i} p_{i} * ln(p_{i})$.

Risky Energy Export Demand Index (REEDI), developed by Dike (2013), covers four sub-indices as a composite index. These sub-indices are 1) export dependence (X); 2) monopsony risk (M); 3) the risk of transaction costs (D); 4) quantitative comparative assessment of the economic importance of different types of energy in the country's energy exports (E). Dike (2013) used this index to assess the risk of demand for energy exports for 12 OPEC countries. The main assumptions for the application of this index are that the country exports oil and gas, as well as the number of exporting countries, is 3 or more. The REED index assesses current and potential risks for the short term. Azerbaijan is also an oil and gas exporter and has more than three exporting countries. Therefore, we will calculate the REED index for Azerbaijan using this method developed by Dike (2013).

The first sub-index of the REED index, i.e. the dependence of the country's economy on energy exports (X), is calculated as the ratio of energy exports to total exports. The higher this ratio, the higher the risk of the country's dependence on energy exports.

$$X_i = \frac{TEE_t}{TE_t}$$

Where TEE_t- total energy export volume in US dollars, TE_t- total export volume in US dollars.

The second sub-index of the REED index, i.e. the monopsony factor (M), is the share of the total energy exported to the energy importing country. The higher this figure, the higher the monopsony capacity of that country at the export risk of the exporting country. The HH index is used to calculate the monopsony factor (M):

$$M_t = \sum_{i=1}^{n} \left(\frac{EE_{it}}{TEE_t}\right)^2$$

Where M_t- monopcony factor in t-year, EE_{it}- volume of energy export to the i country in t-year, TEE_t- valume of total energy export of the exporting country in t-year.

The third component of the REED index, i.e. transaction costs, includes costs that may arise as a result of disruptions in transport and infrastructure. Here, scores 1-3 are taken for transaction costs, depending on the distance between the capitals of the importing country and the exporting countries. Thus, if the distance is up to 1500 km, transaction costs are between 1, 1500-4000 km, transaction costs are 2, more than 4000 km, transaction costs are considered as 3. The higher the transaction costs, the greater the risks.

$$D_t = \begin{cases} 1, if\ distance\ more\ than\ 1500\ km \\ 2, if\ distance\ is\ betwenn\ 1500 - 4000\ km \\ 3, if\ distance\ is\ more\ than\ 4000\ km \end{cases}$$

The fourth sub-index of the REED index, i.e. the economic importance of exported energy sources, is calculated as the share of the export value of the energy sources (for example, oil and gas) in US dollars in the country's production:

$$E_t = \frac{TEE_t}{GDP_t}$$

Dike (2013) calculates REED index as follows:

$$REED_t = X_t * M_t * D_t * E_t$$

The higher $REED_t$ is higher energy export demand risk of the exporter country.

To assess relationship between energy balance diversification- (or consentration-SI) rate and economic growth ($GDPG_t=\Delta GDP_t/ GDP_{t-1}$), as well as relationship between $REEDI_t$ and economic growth will be used OLS method as follows.

$$\begin{cases} GDPG_t = \alpha_0 + \alpha_1 * HH\dot{I}_t + \varepsilon_t \\ GDPG_t = \alpha_0 + \alpha_1 * S\dot{I}_t + \delta_t \\ GDPG_t = \beta_0 + \beta_1 * REEDI_t + \nu_t \end{cases} \quad (1)$$

To assess these relationships, we will adopt following hipothethis:

1. H_0: There are not regration relationships between $GDPG_t$ and 1) $HH\dot{I}_t$; 2) $S\dot{I}_t$; 3) $REEDI_t$;
2. H_1: rejecting of the H_0, i.e. there are regration relationships between $GDPG_t$ and 1)$HH\dot{I}_t$; 2) $S\dot{I}_t$; 3) $REEDI_t$;

To awoid spurious regression between these indicators we will test time series for stationarity

1. Augemented Dickey-Fuller (ADF) test for three models: a) withour intercept and trend ($\Delta y_t = \gamma * y_{t-1} + \nu_t$); b) with intercept, but without

trend ($\Delta y_t = \alpha + \gamma * y_{t-1} + \nu_t$); and c) with intercept and trend ($\Delta y_t = \alpha + \lambda * t + \gamma * y_{t-1} + \nu_t$).

2. To test for cointegration of independent and dependent variables we will test stationarity ε_t; δ_t; ν_t from equation (1).

When checking the stationarity of time series, the values proposed in Table 1, proposed by Davidson and MacKinnon (1993), will be taken as critical values of τ_c -tau statistics.

	1%	5%	10%
$\Delta y_t = \gamma * y_{t-1} + \nu_t$	-2.56	-1.94	-1.62
$\Delta y_t = \alpha + \gamma * y_{t-1} + \nu_t$	-3.43	-2.86	-2.57
$\Delta y_t = \alpha + \lambda * t + \gamma * y_{t-1} + \nu_t$	-3.96	-3.41	-3.13
Standart kritik qiymtlr	-2.33	-1.65	-1.28

Table 1. Critical values of τ_c -tau statistics for Dickey-Fuller testiing
Source: Davidson and MacKinnon (1993)

The data used in the study on key indicators were obtained from two sources - the World Bank database (WB, 2020) and the official database of the State Statistics Committee of the Republic of Azerbaijan (SSCRA, 2020).

3. Results

3.1 Energy balance dynamics of Azerbaijan

The first component of the energy balance of any country - *the total energy supply* is formed by adding primary energy products to the extraction, the volume of imports and resources, and subtracting from the total volume of exports, the amounts spent on refueling international flights, including refueling ships and aircraft. The excess of exports over imports or a decrease in the share of imports in the total energy supply are important indicators of the country's energy security. That is why the *World Energy Trilemma Index* (WEC, 2019), calculated on the basis of energy security, environmental sustainability and energy efficiency (affordability and energy acquisition), specifically takes into account diversification of the initial energy supply, dependence on imports, etc. of countries. It is worth noting that although Azerbaijan's rating on this indicator is slightly lower than in 2017 compared to 2015 and 2016, in terms of "BBA" scores it ranks

31st among 125 countries and is close to a number of developed countries. Azerbaijan's rating on this indicator is higher than that of some European countries and all countries of the region.

Energy security, which is the first component of the tripartite index of world energy, qualitatively assesses how efficiently the initial energy supply is regulated, as well as the ability of energy suppliers to meet current and future energy needs. Although Azerbaijan has retained a rating of "B" for this indicator over the past 3 years, its rating has slightly decreased. *Energy assets,* which are the second component of the tripartite index of world energy, which qualitatively assesses the availability and possibility of acquiring energy supply among the population. The indicator of Azerbaijan is also close to developed countries in this component. Since over the past three years, Azerbaijan's rating has changed from 47 points to 44 points and is constantly evaluated at the "B" level.

The third component of the tripartite index of world energy - *a sustainable environment* qualitatively evaluates the efficiency of energy production on demand and supply, the possibility of producing energy supply with less carbon emissions. Azerbaijan takes 19th place among 125 countries in this component. This is a rather high indicator, and Azerbaijan has a rating of "A" for this indicator.

The tripartite index of world energy along with the fact that it covers almost all the key stages of the country's energy balance, also makes it possible to evaluate these stages in terms of energy security, social problems, and environmental sustainability. Therefore, the energy balance should not be regarded as a simple matrix of facts, but rather, as a database that allows you to assess social, economic, and environmental consequences and predict them.

İller	Total production	Crude oil (with gas condensate)	Natural gas	Renwable energy sources and waste
1995	641626.3	383552.7	252472	5601.6
1996	626190.4	380998.8	239590	5601.6
1997	612018.2	379784.6	226632	5601.6
1998	696283.6	478300	212382	5601.6
1999	811559.1	578071.5	227886	5601.6
2000	806782.2	586863.8	214396	5522.4
2001	839223.6	624210	210330	4683.6

2002	844747.9	642003.9	195472	7272
2003	847727.7	643971.7	194864	8892
2004	850733.5	651005.5	189810	9918
2005	1158704	930055.8	217816	10832.4
2006	1704950	1350997	344888	9064.8
2007	2,269,031.0	1,835,057.7	421,780.3	12,193.0
2008	2,565,289.7	1,917,618.6	636,110.6	11,560.5
2009	2,818,890.5	2,171,866.6	635,662.8	11,361.1
2010	2,858,233.9	2,190,821.4	651,235.7	16,176.8
2011	2,618,978.9	1,966,215.5	639,076.3	13,687.1
2012	2,553,315.5	1,869,193.6	673,476.4	10,645.5
2013	2,583,691.9	1,872,753.2	698,982.6	11,956.1
2014	2,559,924.2	1,813,210.2	735,363.1	11,350.9
2015	2,557,914.5	1,793,930.0	751,362.1	12,622.4
2016	2,511,579.5	1,769,025.9	731,109.5	11,444.1
2017	2,388,389.4	1,667,237.9	710,345.1	10,806.4
2018	2,434,337.5	1,672,663.4	750,229.3	11,444.8

Table 2. Production of primary energy products (PES) (terajoule)

Note: calculated by the authors by converting “oil equvalent”, metr cube” and KWh to terajoule of the SSCRA (2020) datas

Increasing of the volume of primary energy products in Azerbaijan over the past 20 years in terajoules and the preservation of relative stability ensures that there is no serious threat to energy security in the near future. Particularly, attention is paid to increasing gas production and achieving stability of the total volume in terms of a slight decreasing of crude oil production. Unfortunately, the amount of renewable energy in this volume is very small. Although the volume of RES in 2010 increased to 16,000 terajoules, the average volume of renewable energy over the past decade has been about 12,000 terajoules (Fig. 1). But this is about 0.47% of the total primary energy production (Fig. 2).

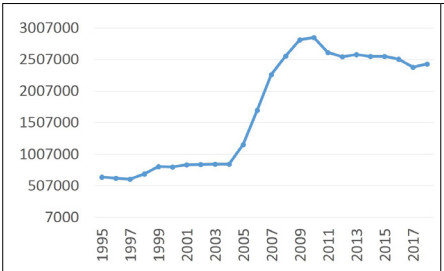

Fig. 1. The dynamics of the production of primary energy product (terajoule)

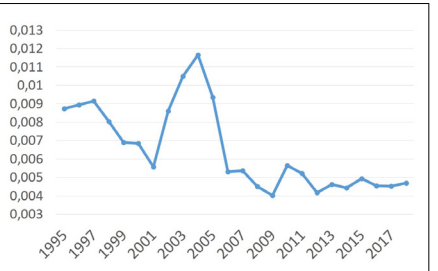

Figure 2. Share of renewable energy in the total production of primary energy product (%)

The country's energy supply, as well as production capacity or the amount of exported valume of energy connected with energy security but cannot be considered as unique indicators of energy security of the country. For example, the energy security level of the countries such as Iran or Nigeria, which occupy leading positions in the export of hydrocarbon resources, is lower than in some countries with lesser resources (Sweden, Estonia, etc.). Under the current conditions of deepening globalization, greater diversification of energy supply increases the energy security level.

Since the bulk of primary energy products (crude oil and gas) are exported from Azerbaijan (approximately 75%), the total energy supply is a small part of the volume of produced primary energy products (about 25%). Over the past decade, imports of energy products have risen sharply. Although this volume does not have much weight in the overall energy supply, its growing dynamics and structure may threaten the country's energy security in the future. Since the bulk of imported energy products are oil products, as well as other types of gasoline and kerosene, including diesel fuel, low sulfur fuel oil, petroleum bitumen, other types of oil products, natural gas, electricity, and other types of fuel. Such import and export operations do not pose a serious threat to regional energy security. However, replacing imported gasoline with domestic products is important for a future sustainable fuel supply.

The share of RES in the total energy supply is very small (Fig. 3) and amounts to about 2%, with the exception of 2010. In 2010, this figure was just over 3%. For comparison, we note that the share of alternative sources and renewable energy sources in the total energy supply in Norway rich in oil exceeds 44%, and in Australia, which is rich in hydrocarbon resources, exceeds 33%.

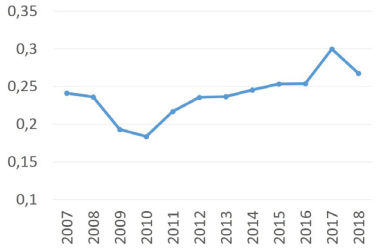

Fig. 3. Shares of energy supply in the amount of primary energy products extraction and import volume (terajoule)

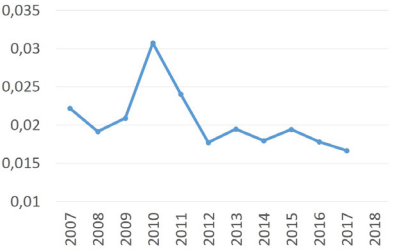

Fig. 4. The volume of renewable energy in the total energy supply (%)

Crude oil is an indispensable product in the production of chemicals, which are important for various sectors of the economy. The burning of such a product to generate electricity significantly reduces the efficiency of its use. That is why in Azerbaijan, crude oil is not used for the production of heat and electricity. For the production of heat and electricity, low sulfur oil and natural gas are used. The volume of thermal and electric energy produced in the country is increasing every year. Of course, the amount of electricity is about 10 times greater than the amount of thermal energy.

The initial energy received from renewable energy is almost completely used in the transformation process. After the transformation process, the amount of energy received from RES and directed to final consumption does not have a large share in the amount of energy directed to transformation. More precisely, modern technological equipment is still not able to increase the efficiency of the renewable energy transformation process to the level of energy efficiency obtained from gas conversion. Since the efficiency for obtaining thermal and electric energy from gas for final consumption is about 33%, and the coefficient of electric energy from renewable energy for final consumption does not exceed 13%.

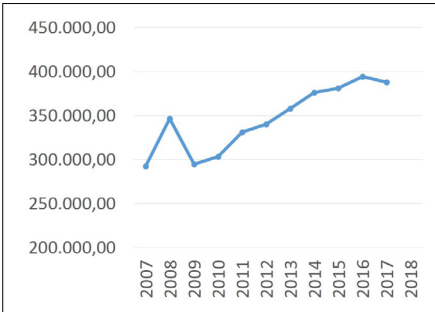

Fig.5. Dynamics of final consumption in the energy balance of Azerbaijan (terajoule)

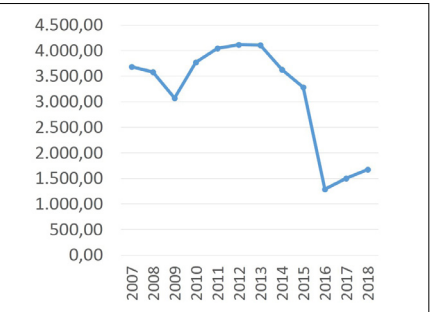

Fig. 6. Volume of final consumption of renewable energy (terajoule)

Oil products, natural gas, renewable energy sources, thermal energy, electric energy and other types of fuel are used as Azerbaijan's final consumer goods. Final consumption is divided into two groups: "final consumption for energy" and "final consumption not for energy". Final consumption for energy purposes is used in such subgroups as industry and construction, transport and in other sectors of the economy. Approximately 17.1% of the energy provided for final consumption is used in subgroups of industry and construction. These industries cover areas such as ferrous metallurgy, chemical and petrochemical industries, non-ferrous metallurgy, non-metallic mineral products, transportation equipment, machinery and equipment, mining, food and tobacco, paper, pulp and printing, wood processing and production of wood products, textile, leather and clothing industry, construction, and other industries.

In 2018, 28% of the energy provided for final consumption is used in the transport subgroup. This subgroup includes road transport, railway transport, inland air transport, inland water transport, pipeline transport and other modes of transport. A significant part of the energy directed to final consumption (approximately 56%) is used in other sectors of the economy, for example, in agriculture, trade and public services, households, etc. A certain part of final consumption (approximately 13%) is used for non-energy purposes.

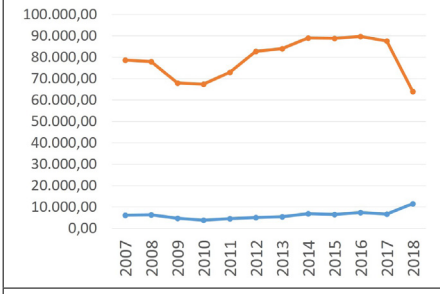

Fig. 7. Dynamics of production of heat (yellow line) and electric energy (blue line) in Azerbaijan (terajoule)

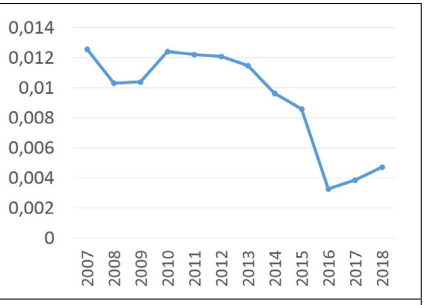

Fig. 8. The share of the final consumption of renewable energy for energy purposes in the total energy consumption (%)

The volume of final energy consumption in Azerbaijan over the past 10 years has been continuously growing. On the other hand, the volume of use of thermal and electric energy among the types of energy directed to final consumption also grows. The share of electric energy obtained from renewable energy sources, not only has a small share in the total energy consumption, but also sharply decreased in recent years (Fig. 8). The current trend in the development of renewable energy suggests that rich oil and gas resources should not interfere with stimulating the use of renewable energy and investing in this area. Since the experience of developed countries shows that the development of renewable energy is important to ensure sustainable energy security. The main reason for the low share of renewable energy in the energy balance of oil-rich countries, of course, is the desire to get energy from hydrocarbon resources in an easier way and to abandon the additional investment in high-tech renewable energy sources. Another serious reason is that the cost of energy from renewable energy sources is still high and monopolistic electricity price is lower (Gulaliyev et al, 2020b).

4. Energy balance diversification (or consentration) rate and Risky Energy Export Demand index of Azerbaijan

Calculation of energy balance diversification (or energy balance concentration) rate, and energy export demand security of Azerbaijan by using HHI, SI, and REEDI consistently, gives the following results (Table 3). Over the past 20 years, all these indicators changed year by year. During 1995-2019 period HHI has a minimum score (0.512) in 1995 and maximum score (0.689) in 2007. This period SI has a minimum score (0.513) in 2007 and maximum score (0.689) in 1995. Both indices indicate that diversification is low. This also means that, despite the high level of

energy security that is currently being ensured in Azerbaijan, the bulk of the supply of primary energy products falls on hydrocarbon reserves, which in turn may create problems in the future if these reserves are reduced. In particular, an alarming fact for energy security is that the proportion of energy from renewable energy sources in the energy balance is low. The level of diversification in the final volume of consumption is low. However, the Shannon-Wiener index in the industry is approximately two times higher than the level of diversification of primary energy production. The Herfindahl-Hirschman index can be said to not have changed fundamentally.

As Azerbaijan is rich with energy resources and there are almost no risks associated with energy supply for the near future, we believe that the main risks are related to the demand for oil and gas exports from Azerbaijan. Therefore, we accept the REED index as one of the indicators for Azerbaijan's energy security.

		Diversification of primary energy production		Share of oil and gaz export in total export-	Share of oil and gaz export in GDP-	Monopsony	Risky Energy Export Demand index
		Indeksi	Indeksi				
1995	-	0.512	0.716				-
1996	0.041	0.517	0.712	66.390	0.132	0.191	5.012
1997	0.247	0.522	0.707	61.448	0.121	0.153	3.412
1998	0.122	0.565	0.659	68.931	0.094	0.116	2.256
1999	0.030	0.586	0.633	78.596	0.159	0.146	5.475
2000	0.151	0.600	0.618	85.081	0.282	0.222	15.935
2001	0.083	0.616	0.596	91.328	0.370	0.342	34.669
2002	0.093	0.631	0.588	88.922	0.309	0.270	22.255
2003	0.167	0.630	0.595	86.011	0.306	0.289	22.867
2004	0.193	0.635	0.591	82.216	0.342	0.223	18.863
2005	0.526	0.680	0.534	76.765	0.443	0.124	12.690
2006	0.584	0.669	0.535	84.591	0.525	0.227	30.233
2007	0.575	0.689	0.513	81.399	0.524	0.085	10.878
2008	0.478	0.620	0.588	97.083	0.608	0.193	34.216
2009	-0.093	0.644	0.559	92.857	0.442	0.108	13.274
2010	0.194	0.639	0.570	94.509	0.473	0.139	18.575

2011	0.247	0.623	0.587	94.747	0.496	0.161	22.650
2012	0.057	0.606	0.603	93.419	0.437	0.090	10.977
2013	0.064	0.599	0.612	92.985	0.397	0.099	11.002
2014	0.015	0.584	0.627	92.638	0.348	0.087	8.381
2015	-0.295	0.578	0.635	88.285	0.276	0.075	5.463
2016	-0.287	0.581	0.631	91.541	0.317	0.131	11.399
2017	0.079	0.576	0.636	91.119	0.345	0.146	13.733
2018	0.153	0.567	0.646	92.222	0.397	0.119	13.047
2019	0.020			91.239	0.380	0.123	12.740

Table 3. Dynamics of Economic groüthç Energy balance diversification rate and Risky Energy Export Demand index of Azerbaijan

Note: calculated by the authors

5. *İmpacts of energy balance diversification rate and energy export demand* on economic growth

The regression relationship between the rate of diversification (or concentration) of the production component of the energy balance calculated by HHI and SI shows that there is a significant relationship between these indicators. Calculations show that there is a similar relationship between economic growth and the Risky Energy Demand (REED) index (Table 4). Thus, an increase in the degree of diversification has a positive effect on economic growth, and an increase in the degree of concentration has a negative effect. The Risky Energy Export Demand Index is also positively related to economic growth. This means that the restriction of the number of importing countries of Azerbaijan oil and gas resources (monopsony), the sharp increase in the share of oil and gas in export and GDP amount have positive impacts on economic growth, but also threatens the country's energy security and increases the REEDI.

	$HHİ_t$	$Sİ_t$	$REEDİ_t$
R^2	0.299645	0.27067	0.169602
Observation	23	23	24
F-significance	0.006861	0.010931	0.045546
α_o			
coefficient	-1.57996	1.626039	-0.01067

Standart deviation	0.578223	0.530787	0.084521
t-statistics	-2.73244	3.063449	-0.12626
p-value	0.012478	0.005899	0.900676
α_1			
coefficient	2.848825	-2.43149	0.010278
Standart deviation	0.950411	0.870972	0.004849
t-statistics	2.997466	-2.79169	2.119746
p-value	0.006861	0.010931	0.045546

Table 4. Relationship between $HH\dot{I}_t$ (or $S\dot{I}_t$), $REED\dot{I}_t$, and economic growth

Note: calculated by the authors

To be sure that these relationships are not spurious we need to test the stationarity of the $GDPG_t$, $HH\dot{I}_t$, $S\dot{I}_t$ and $REED\dot{I}_t$ and time series or to test cointegration between independent and dependent variables.

Stationarity of the $GDPG_t$, $HH\dot{I}_t$, SI_t, and $REED\dot{I}_t$ time series (ADF test)

Note that the maximum lag = 5 will be taken to check the stationarity of the time series of these indicators. As a method, the least-squares method (OLS) is selected, and the Schwartz information criterion is used. The hypothesis H_0 for the time series of the indicators is existing of a unit root. The H_1 hypothesis is the rejection of H_0, that is, the time series does not have a single root. The results of the analysis conducted using the E-Views software package are given in Table 5. It can be seen from the table 5 that none of the time series is stationary in for models.

No intercept, no trend ($\Delta y_t = \beta * y_{t-1} + v_t$)							
		R-squared	coefficient	Std. error	t-statistics	probability	Mac-Kinnon one sided p-value
GDPG (t)	GDPG (t-1)	0.137694	-0.275040	0.146732	-1.874437	0.0742	0.0592

HHİ	HHİ (t-1)	-0.005514	0.002805	0.007984	0.351343	0.7287	0.7780
Sİ	Sİ (t-1)	0.009369	-0.006399	0.008848	-0.723188	0.4772	0.3922
REEDİ	REEDİ (t-1)	0.352115	-0.065425	0.114416	-0.571819	0.5738	0.4579

With intercept, no trend ($\Delta y_t = \alpha + \beta * y_{t-1} + \nu_t$)							
		R-squared	coefficient	Std.error	t-statistics	probability	Mac-Kinnon one sided p-value
GDPG (t)	GDPG (t-1)	0.195392	0.392902	0.173986	-2.258246	0.0347	0.1929
	C		0.057578	0.046920	1.227155	0.2333	
HHİ	HHİ (t-1)	0.153489	-0.189842	0.097288	-1.951339	0.0645	0.3046
	C		0.117139	0.058980	1.986079	0.0602	
Sİ	Sİ (t-1)	0.165144	-0.197806	0.097052	-2.038148	0.0543	0.2697
	C		0.117747	0.059484	1.979491	0.0610	
REEDİ	REEDİ (t-1)	0.476233	-0.534506	0.244970	-2.181922	0.0419	0.2177
	D (REED (t-1)		-0.330260	0.203399	-1.623700	0.1209	
	C		8.859835	4.175423	2.121901	0.0472	

With intercept and trend ($\Delta y_t = \alpha + \lambda * t + \beta * y_{t-1} + \nu_t$)							
		R-squared	coefficient	Std.error	t-statistics	probability	Mac-Kinnon one-sided p-value
GDPG (t)	GDPG (t-1)	0.240454	-0.444174	0.179499	-2.474519	0.0224	0.3361
			0.144750	0.092663	1.562120	0.1339	
			-0.006628	0.006085	-1.089287	0.2890	
HHİ	HHİ (t-1)	0.265847	-0.136742	0.097675	- 1.399978	0.1768	0.8334
	C		0.099487	0.057180	1.739898	0.0972	
	trend		-0.001204	0.000688	-1.749538	0.0955	

Sİ	Sİ (t-1)	0.249166	-0.138972	0.102183	-1.360035	0.1890	0.8454
	C		0.067300	0.066921	1.005659	0.3266	
	trend		0.001210	0.000809	1.496027	0.1503	
REEDİ	Sİ (t-1)	0.375243	-0.708931	0.206834	-3.427531	0.0027	0.0722
	C		12.56449	4.934908	2.546042	0.0192	
	trend		-0.127067	0.282463	-0.449854	0.6577	

Table 5. Stationarity $GDPG_t$, $HHİ_t$, SI_t and $REEDİ_t$ time series

Note: calculation by the authors

Thus, Table 5 shows that ***$GDPG_t$, $HHİ_t$ and SI_t*** time series are not stationary for all three models. $REEDI_t$ time series is stationary only in case of "with trend and intercept" but only by 10% significance. It should be noted that the fact that the time series characterizing the indicators involved in the study are not stationary does not mean that the regression relationship between them is "spurious". Thus, if the ε_{it} residues in the regression relationship between these indicators is stationary, then the regression relationship can be approached as a "truth" relationship, as stationarity of ε_{it} indicates co-integration of the independent and dependent variables. Therefore, we will need to check the stationarity of the ε_{it} residues in each pair of regression relationships from the equation (1).

We will test stationarity of ε_{it} residual time series where ε_{it} can be estimated by three models as following

$$1)\ \hat{\varepsilon}_{it} = y_{it} - b * x_{it};$$

$$2)\ \hat{\varepsilon}_{it} = y_{it} - b * x_{it} - c;$$

$$3)\ \hat{\varepsilon}_{it} = y_{it} - b * x_{it} - c - \delta * t$$

And we will apply ADF test for

$$\hat{\boldsymbol{\varepsilon}}_{\mathbf{it}} = \boldsymbol{\gamma} * \hat{\boldsymbol{\varepsilon}}_{\mathbf{t-1}} + \boldsymbol{\nu}_{\mathbf{t}} \qquad \textbf{(2)}$$

For stationarity ε_{it} residual time series according to equation (2) we will use MacKinnon critical value as in the Table 8.

	1%	5%	10%
1) $y_t = \beta * x_t + \varepsilon_t$	-3.39	-2.76	-2.45
2) $y_t = \beta_1 + \beta_2 * x_t + \varepsilon_t$	-3.96	-3.37	-3.07
3) $y_t = \beta_1 + \delta * t + \beta_2 * x_t + \varepsilon_t$	-3.98	-3.42	-3.13

Table 8. Critical values for cointegration (τ_c)

Source: Davidson and MacKinnon (1993)

As we will use equation $y_t = \beta_1 + \beta_2 * x_t + \varepsilon_t$ for critical values of τ_c will be (-3.96) for 1%, (-3.37) for 5% and (-3.07) for 10% significance.

Testing of residuals stationarity by ADF show that there are cointegration between 1) $GDPG_t$ and HHI_t; 2) GDPG and SI_t; 3) GDPG and $REEDI_t$. But cointegration between $GDPG_t$-HHI_t and $GDPG_t$-SI_t has 5% significance, and cointegration between $GDPG_t$-$REEDI_t$ has 10% significance (Table 9).

	GDP_t-HHI_t	GDP_t-SI_t	GDP_t-$REEDI_t$
$\hat{\varepsilon}_{it} = \gamma * \hat{\varepsilon}_{t-1} + \nu_t$			
R-squared	0.312023	0.299978	0.227594
	-0.618788	-0.592882	-0.461068
Std.error	0.200490	0.197601	0.180898
t-statistcs	-3.086374	-3.000404	-2.548773
probability	0.0056	0.0068	0.0183
MacKinnon one – sided p-value	0.0037	0.0045	0.0133

Table 9. Stationarity of ε_{it} residuals time series by ADF tests

Note: calculated by the authors

Discussion

As one of the rich countries with oil and gas resources, as well as one of the countries whose exports and revenues are mainly related to energy exports, in Azerbaijan, the nature of the impacts of energy diversification rate and the risk to energy exports demand on economic growth are consistent with the impact of oil and gas revenues on macroeconomic

indicators. Thus, in the studies conducted by Alekhina and Yoshino (2018), Hassan and Abdullah (2014), Olayungbo and Adediran (2017), rising of oil prices (that is, increasing in energy demand on the world market) has a positive effect on economic growth by increasing the country's oil revenues.

Conclusions

Azerbaijan is relatively rich in energy resources. Also, stability has been observed in the production and export of primary energy products over the past decades. All this indicates that the country's energy security in the short term is ensured. In the coming years, gas production will increase, while oil production will decrease - this will prevent a significant reduction in the energy balance. Unfortunately, the share of energy received from renewable energy sources in the country's energy balance is small (about 3%). At the same time, the energy obtained from these sources is used mainly for the production of electricity. Given the fact that the bulk of the country's energy balance is hydrocarbons, the level of diversification is low. For this reason, future reductions in hydrocarbon reserves could jeopardize the country's energy security. As a result, we conclude that in order to ensure energy security it is necessary to develop renewable energy sources. There is positive relationship between energy security and economic growth in Azerbaijan. Thus, increasing energy security is stimulating economic growth.

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The Dynamic of Developing of the Relations between Russia and Great Britain during the President Vladimir Putin's Third Term (2012-2018)

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Abstract

The article looks into the features of Russo-British relations in the period from 2012 to 2018 during the third presidential term of Vladimir Putin. During this period, they went through several stages in their development from a period of alienation to almost direct confrontation. The authors reviewed the key events in the period under study in bilateral relations. The factors that played a leading role in the formation of relations at the present stage are also highlighted. The analysis of the position of the two States on various events, including Brexit, was conducted. The research is based on historical-descriptive and intuitive-logical methods. The analysis of the position of the two States on various events was conducted. The results obtained correspond to the conclusions of a number of researchers and expand the existing understanding of the nature of Russia's bilateral relations with leading Western Powers in the second decade of the XXI century.

Keywords: bilateral relations; Russia and Great Britain; foreign policy; relational crises; sanctions and negotiation.

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La dinámica del desarrollo de las relaciones entre Rusia y Gran Bretaña durante el tercer mandato del presidente Vladimir Putin (2012-2018)

Resumen

El artículo analiza las características de las relaciones ruso-británicas en el período de 2012 a 2018 durante el tercer mandato presidencial de Rusia Vladimir Putin. Durante este período, las relaciones aludidas pasaron por varias etapas en su desarrollo desde un período de alienación hasta una confrontación casi directa. Los autores revisaron los hechos clave del período en estudio en las relaciones bilaterales. También se destacan los factores que jugaron un papel protagónico en la formación de relaciones en la etapa actual. Se realizó el análisis de la posición de los dos Estados sobre diversos hechos, incluido el Brexit. La investigación se basa en los métodos histórico-descriptivos e intuitivo-lógicos. Se realizó el análisis de la posición de los dos Estados sobre diversos hechos. Los resultados obtenidos corresponden a las conclusiones de varios investigadores y amplían el conocimiento existente sobre la naturaleza de las relaciones bilaterales de Rusia con las principales potencias occidentales en la segunda década del siglo XXI.

Palabras clave: relaciones bilaterales; Rusia y Gran Bretaña; política exterior; crisis relacionales; sanciones y negociación.

Introduction

Relations between Russia and the UK throughout their history have never been simple. There are several reasons for this. First, countries do not have enough principled foundations for sustained cooperation and genuine trust due to a lack of shared values. The leaders of both countries have different understanding of the meaning of democracy, supremacy of law, human rights, and state sovereignty. The crises in Libya, Syria, and Ukraine show that British and Russian foreign policy interests regularly diverge, and these contradictions may even be irreconcilable. In addition, relations between countries are burdened with a long historical baggage, not always with a positive context. Since 2010, a phase of relative calm in relations between Russia and the UK seemed to have begun after the coalition government led by David Cameron came to power in May this year. There are even positive features in the relations between the two countries. However, this lull did not last long.

In this article, the authors will try to give a retrospective analysis of the development of relations between the two countries, highlighting the stages of their development during the period and try to understand

how significant this negative "baggage" is for the development of bilateral relations in the future.

1. Methods

The research is based on classic methods developed in the theory of international relations, namely historical-descriptive and intuitive-logical methods. They are best suited for solving the research problem set in the article. The source base for the study was made up of official documents of foreign ministries, public statements by the leaders of the two countries, and materials from the leading media.

2. Results and Discussion

As you know, in March 2012, elections were held in the Russian Federation, where Vladimir Putin won. Although British Prime Minister David Cameron congratulated Putin on his election victory over the phone and expressed hope for close cooperation and a way out of the crisis, he was clearly not optimistic about Vladimir Putin's return to the presidency. Nevertheless, Putin's return was marked by meetings and political consultations at the level of ambassadors and employees of MFA of both countries.

The main topics for negotiations in 2012 were issues of bilateral cooperation, energy, increasing trade turnover, and regional issues, but most of the attention was paid to the situation around Syria (Official Website of The President Of The Russian Federation, 2013). It is worth noting that there were serious differences between the two States on the Syrian issue. UK, as a conductor of Western interests, has been actively engaged in diplomatic work with Moscow throughout the conflict, trying to persuade it to look at the Syrian crisis "through the eyes" of the West (RIA, 2012).

The authorities of the UK explained their interest in Syria, primarily to protect the right of the Syrian people for a peaceful democratic existence, which he is not able to provide the regime of President Bashar al-Assad. But the UK undoubtedly had other interests in Syria and the region. Britain tried to use the emergence of training bases for jihadists in Northern Syria to substantiate a threat to its national security. As for the interests that are not publicly advertised, the following trends can be observed. First, there was clearly an interest in the UK and the West as a whole in strengthening their influence on the countries of the Middle East region, the desire to strengthen their military-strategic and geopolitical positions there. Second, resolving the Syrian conflict in favor of the West would increase pressure on Iran, which both the US and the UK were interested. Third, the UK was

interested in access to Syrian oil and control of oil flows passing through the country (Muradyan, 2012).

The UK has been putting diplomatic pressure on Russia to accept Western projects for a Syrian settlement more favourably. However, Russian diplomacy, which has already learned lessons from the Libyan crisis, continued to pursue its strategic line. In General, Russia blocked three UN Security Council resolutions that were fully supported by the British government.

However, all these differences pale in comparison with the Ukrainian crisis, which has so increased the degree of tension in Russo-British relations that it has reached a critical point. The armed conflict in Ukraine caused an extremely wide international response and, most importantly, it was negative for Russia. The situation worsened after the annexation of Crimea by Russia in 2014, which was not recognized by most of the international community (BBC, 2019). The Russian leadership, justifying the fact of annexation of Crimea, referred to the UN Charter and the 1970 Declaration on principles of international law, which enshrined the right of Nations to self-determination. According to the Russian leadership, this was implemented in extreme conditions in a situation where the right to self-determination could not be realized within Ukraine. In addition, Russia appealed to the precedent of recognizing the unilateral Declaration of sovereignty in Kosovo (Official Website Of The Permanent Mission Of Russia To UNESCO, 2014).

The events of 2014 showed that the UK is quietly using sanctions as a tool of foreign policy. The UK was one of the first countries to condemn the annexation of Crimea and put forward charges against Russia for interfering in the Internal Affairs of Ukraine. London suspended licenses for direct deliveries to Russia of military items that could be used against Ukraine, imposed financial sanctions, and banned investment in the Peninsula. Cooperation with Russia in the energy and military spheres was limited. Several companies were also sanctioned, as well as some politicians and businessmen (Kommersant, 2015).

The British government has repeatedly stated that the EU should be more wary of Putin than, for example, ISIL, since Russia's seizure of Crimea was the first forcible annexation of a European country's territory since 1945. Boris Johnson even wrote a special article accusing Russia of violating International Law (Johnson, 2018). Even 5 years after the reunification of Crimea with Russia, the UK continued to criticize Moscow for this step. According to British Foreign Minister, Jeremy Hunt, his country will never recognize the illegal annexation of Crimea (Interfax, 2019).

Since 2016, the UK has become more focused on events taking place inside the country, where dissatisfaction with EU membership has increased

amid the crisis. It is known that the UK decided to leave the EU after the referendum in 2016. It is worth noting that Russia was interested in restoring full-fledged relations with the UK, but the possible problems due to Brexit for European countries were more important to Russia than Brexit itself. According to Putin, the implementation of Brexit will undoubtedly affect Russia in political terms to a minimal extent, but this event will have an impact on the world economy ().

The fall in the value of the pound due to Brexit may attract more Russian companies to Britain, as well as cause an influx of Russian players to the London stock exchange. In this case, it will obviously entail further simplification of visa policy and expansion of business contacts, which may in the future contribute to the improvement of Russian-British political relations. However, Russia may lose its planned foreign exchange earnings, as Gazprom and its Nord Stream-2 project may suffer the most. It soon became clear that the UK was determined to maintain the "Crimean" sanctions against Russia even in the event of Brexit (Deutsche Welle, 2016).

The British government in an ultimatum demanded that Moscow admit to involvement in the attempt or confirm that it had lost control of its chemical developments of a military nature. Russia did not respond to the ultimatum, and Britain later submitted the incident to the UN Security Council for discussion.

But the main blow was already dealt to the already fragile political relations: the complete rejection of high-level contacts and the expulsion of 23 Russian diplomats from the country, after which relations fell to a record low. Moscow's response was to mirror the expulsion of the same number of employees of the British diplomatic mission, revoke consent to open the Consulate General in St. Petersburg and close the British Council in Russia. The UK responded by preparing a package of tough new sanctions (TASS, 2016). In turn, the Russian side offered to conduct a joint investigation of the incident, but, as is known, the UK ignored these initiatives and denied access to the Skripals to Russian diplomats (RIA, 2016).

Unfortunately, 2018 turned out to be quite critical for bilateral relations. In November 2018, Russia was again criticized by the UK over an incident in the Kerch Strait. In October 2018, the European Parliament called Russia's actions a "de facto blockade" of the Strait (The Incident in the Kerch Strait: Who's right?, 2018). As a result, the EU increased sanctions "in connection with actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine" (BBC, 2019).

To sum up, we can conclude that a series of events, undoubtedly dealt a strong blow to the bilateral political relations, which by the end of the third term of President Vladimir Putin was at a very low level. Despite the fact that the economies of both countries were still open to cooperation.

Our results correspond to the conclusions of a number of researchers. As we have already pointed out above, since 2014, UK has actively supported the policy of sanctions. We can agree that this was primarily due to claims to counter the "Russian threat" in the Baltic region, Ukraine and in Syria (Andreeva, 2018). In previous years, the US strategy usually helped to "push" its allies, including the UK, to take a tougher position towards Russia (Penkovtsev and Shibanova, 2015).

As T. N. Andreeva points out, Theresa May strongly opposed D. Trump's agreement with the Russian policy of keeping B. Assad as the head of Syria, which the previous American administration did not agree with for many years (Andreeva, 2018).

Nevertheless, in our opinion, Russia and the UK still have some overlapping vectors of foreign policy interests, for example, in countering the risks of radical Islamism in the Middle East (Beloglazov, 2015).

In our view, the crisis of the UK's political institutions can also have an impact on improving Russo-British relations. O. Kharitonova's research shows a decrease in citizens' confidence in political institutions and political forces in the UK against the background of the protracted process of leaving the EU (Haritonova, 2020). Although this is not currently observed, in the future, the search for answers to the challenges of Brexit may well push the British establishment to find ways to normalize relations with Russia.

Our position is in tune with the results of the study by E. S. Khesin, who stressed that the decision to leave the EU caused a decline in economic growth in the UK, starting in 2017, it creates uncertainties that lend a "window of opportunity" for further technological transformation of the country's economy, which can negatively affect its competitiveness in the world (Hesin, 2018). Increasing competition for markets in developing countries dooms the British economy to search for ways to overcome artificial sanctions barriers in relations with Russia (Glushkova *et al*., 2019). This creates an additional economic interest in establishing normal trade and economic relations with Russia. Economic bilateral relations can theoretically become a kind of "locomotive" that pulls political relations between countries.

Conclusions

In general, we have concluded that, despite the deepest crisis in modern Russo-British relations, we nevertheless see certain opportunities for their normalization in the future, given the impact of the pandemic factor on the world economy. Such potential opportunities are indicated by a number of objective circumstances. The crisis that was going through the bilateral relations in 2012-2018. and the negative consequences of which we are still seeing can be overcome relatively quickly under certain conditions.

In general, the study obtained interesting results about the nature and dynamics of Russian-British relations in 2012-2018, which can be useful for researchers to analyze factors and trends in the development of bilateral relations between Russia and the UK and their prediction in the future.

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Teoría Política

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The Financial Implications of the Coronavirus COVID-19 Pandemic: A Review

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Abstract

The COVID-19 pandemic in 2020 was a real shock to the entire global community. It hit both the health systems of the infected countries and the economies. Border closures, quarantines for citizens and disruption of production caused economic shock to many organizations. First, the tourism and transport industry suffered, followed by agriculture and mining, and then all other industries. However, the economic crisis also caused some problems in the financial sector: increased risks of non-compliance with loans, cash outs of bank deposits, increased pressure on the insurance market, panic in commodity and securities markets. The purpose of this study is to examine the impact of COVID-19 on the financial system of developed countries. As part of this study, a review of scientific research in the field of pandemics and finances was conducted, how the spread of infection affected the economy, banking, financial markets, and government regulation in the financial sector as a whole.

Keywords: COVID-19; pandemic; finance and pandemic; financial impact analysis; political economy.

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Las implicaciones financieras de la pandemia de coronavirus COVID-19: Una revisión

Resumen

La pandemia de COVID-19 en 2020 fue un verdadero shock para toda la comunidad mundial. Golpeó tanto a los sistemas de salud de los países infectados como a las economías. El cierre de fronteras, las cuarentenas para los ciudadanos y la interrupción de la producción provocaron un shock económico para muchas organizaciones. En primer lugar, la industria del turismo y el transporte sufrió, seguida de la agricultura y la minería, y luego de todas las demás industrias. Sin embargo, la crisis de la economía también provocó ciertos problemas en el sector financiero: aumento de los riesgos de incumplimiento de los préstamos, salidas de efectivo de los depósitos bancarios, aumento de la presión en el mercado de seguros, pánico en los mercados de materias primas y valores. El propósito de este estudio es examinar el impacto de COVID-19 en el sistema financiero de los países desarrollados. Como parte de este estudio, se realizó una revisión de la investigación científica en el campo de la pandemia y las finanzas, cómo la propagación de la infección afectó a la economía, el sector bancario, los mercados financieros y la regulación gubernamental en el sector financiero en su conjunto.

Palabras clave: COVID-19; pandemia; finanzas y pandemia; análisis de impacto financiero; economía política.

Introduction

The COVID-19 pandemic in 2020 has led to serious social, economic, and political crises. Since its appearance, the COVID-19 virus has become not just a large health problem, but a cause of change in people's ways of life. In December 2019, the virus was recorded in Wuhan (Hubei Province, China), and in a few months, it had spread to all continents (Huang *et al*, 2020). As of September 30, 2020, about 33.6 million infections, 1 million deaths were recorded worldwide (Google news, 2020).

The relevance of this study is that the COVID-19 pandemic is not the first serious problem of a similar level that humanity has faced in recent decades, for example, an outbreak of H1N1 in 2009, polio in 2014, Ebola in West Africa in 2014, Zika in 2016 and Ebola in the Democratic Republic of the Congo in 2019 (Allocati *et al*, 2016). Later, on January 30, 2020, the WHO announced the sixth public health emergency of the 21st century – COVID-19. These worldwide outbreaks have caused a large number of deaths, diseases and cost billions of dollars (Fan *et al*, 2019). This suggests that despite the initial first signals of a possible global pandemic, few steps have been taken to prepare for it.

Back in 2018, Bloom, Cadarette and Sevilla (2018) warned of the need to prepare for possible future pandemics and epidemics in their study. In their view, pandemics and epidemics will lead to increased costs for the healthcare system by increasing the costs associated with treating the infected persons and fighting outbreaks. In addition, a pandemic, according to Bloom, Cadarette and Sevilla (2018), will contribute to social distancing, disruption of economic ties, a decrease in production volumes, losses in tourism, and a decrease in investment activity, all of which ultimately happened in 2020 because of COVID-19.

Lewis (2001), wrote about the economy during an epidemic; in his opinion, a pandemic can lead to high healthcare costs, a decrease in national economic potential and political instability. Bloom and Canning (2004) argued that epidemics can have significant economic consequences – both in the short and long term, their management and control will require significant investments in national and international health systems. The need for preparing for global pandemics is explained by the fact that they may incur significant human and economic costs. This study makes a contradictory conclusion that, on the one hand, the growth of well-being in countries leads to higher healthcare costs and thereby to preparing for possible epidemics, and on the other hand, globalization leads to increased risks of the spread of a future epidemic around the world, rather than only in any localized territories.

In the same way, Arbeláez-Campillo and Villasmil (2020), also argue that the ravages caused by the COVID-19 pandemic in the first half of 2020, erode in such a way the foundations of the prevailing world order, structured since the aftermath of the Second War world, which already articulates the conditions of possibility for the emergence of a new or renewed international order with uncertain characteristics.

Tam *et al.* (2016), wrote on migration issues and their impact on the economy as a result of future pandemics. Yach, Stuckler, and Brownell (2006), conducted a study on the impact of the global obesity and diabetes epidemic on a state's economy.

The current COVID-19 pandemic, despite the fact that it is only now in full swing, already has a number of negative consequences for health, society and the economy:

1. In healthcare. The range of clinical cases of COVID-19 infection ranges from mild or nonspecific signs and symptoms of acute respiratory failure, such as fever, cough, fatigue, shortness of breath, to severe pneumonia with respiratory failure and septic shock, which are very similar to other coronavirus diseases. More severe forms of COVID-19 affect older people. COVID-19 is becoming one of the main causes of hospitalization and mortality, in particular among

middle-aged and elderly people in affected countries (Backer *et al.*, 2020).

2. In society. Because of the outbreak of COVID-19, in almost every infected country restrictions have been placed on population movements from a few weeks to several months. Local and central administrations around the world have banned the free movement of their citizens outside of their homes to avoid transmission of the virus. Various religious, cultural, social, scientific, sporting and political mass events were canceled. Also, due to the fact that all family members are constantly together, there is a surge in domestic violence (Campbell, 2020).
3. In the economy. The COVID-19 pandemic hit the infected countries economically. In transport; passenger international air, rail, and auto traffic almost completely ceased due to quarantine measures. Following the cessation of population movement, tourism-related sectors (tourism organizations, HoReCa and entertainment) were affected. Cargo freight suffered less. In addition, educational, commercial, sports, and spiritual institutions were closed in countries prone to infection in order to prevent the spread of the virus through crowds of people. In many countries, restrictions on mobility have been introduced, and as a result, the public service sector has practically stopped (Chakrabortya and Maityb, 2020)

As part of this study, the author will conduct a review of research in the field of the pandemic and finance, how infections generally affect the economy, the banking sector, the financial markets, and the government regulation of the financial sector in the pandemic. The topic of the impact of epidemics and pandemics on the financial system of the country and the whole world has previously been seldom considered, so there is not much research in this area. This paper aims to fill this knowledge gap and formulate approximate directions for further research.

1. Materials and Methods

The research base was taken from scientific studies conducted from 2000 to 2020, which relate to the impact of pandemics on the economy as a whole, the banking sector, the financial markets, the government regulation of the financial sector during the pandemic. In addition, the author used the World Bank's data (https://datacatalog.worldbank.org/) regarding the measures taken by different states in the field of finance in order to mitigate the consequences of the COVID-19 pandemic.

2. Results

2.1 COVID-19 and the Economic Crisis

An outbreak of a new coronavirus infection COVID-19 was reported in Wuhan (Hubei Province, China) in December 2019. After hitting China in February-March, the virus began to spread actively in South Korea, Iran, Italy, and then in Europe, the USA, and Russia (Sohrabi *et al*, 2020; Yang *et al*, 2020). As of April 24, 2020, about 2.8 million infections, 0.8 million recoveries, 0.2 million deaths were recorded worldwide as of September 30, 2020, about 33.6 million infections, 1 million deaths were recorded worldwide (Google news, 2020).

Deaths during epidemics and pandemics have always caused some irreparable damage to society, but COVID-19 is different as it has immobilized the entire global economy. In order to limit the further transmission of the disease in society, many of the affected countries decided to completely isolate themselves – closing borders (AL JAZEERA, 2020) and society – self-isolation regimes (for example, (GOV.UK, 2020)). Most international flights were canceled, many local flights and rail transportation were also canceled, and bus and road connections were limited. Of course, all this applies to passenger transportation, cargo freight remained practically unlimited. In almost all countries affected by COVID-19, educational, scientific, sports and spiritual institutions were closed. The sectors of tourism and entertainment were hit hard. In countries where the epidemic is particularly acute, production facilities are temporarily closed. All this leads to an increase in unemployment and a drop in the income level of the population, which can subsequently lead to a protracted economic crisis and recession (Buck *et al*, 2020).

In (Nicola *et al*, 2020), analyzing the news reports, the authors identified the following economic consequences of the COVID-19 pandemic:

- As a result of a global drop in demand from hotels and restaurants, agricultural prices fell by 20%;
- Disturbance of the commodity exchanges operations due to panic in commodities' markets;
- A deficit in the medical and pharmaceutical markets for medical goods and personal protective equipment due to a sharp jump in demand;
- High volatility in the oil market due to lower global oil demand and problems within OPEC;
- High concern from the business community on the situation around the pandemic, the expectation of a decrease in turnover over the next two quarters;

- A decrease in production of the chemical industry worldwide by 1.2%.

Thus, a slowdown in economic development is observed, and in countries particularly affected by the pandemic, economic crises and recession are possible.

2.2 COVID-19 and the Banking System

In the modern world, pandemics and epidemics do not directly affect the banking sector, the effect being more indirect:

1. The development of an epidemic leads to an increase in population spending on healthcare, which leads to a decrease in the size of the deposits with the banks or can lead to their closures (Leoni, 2013). This conclusion was made by Leoni by examining the data on the spread of HIV in developing countries. The population of these countries is forced to pay for individual treatment at the expense of cash on deposits. Since HIV treatment is long and expensive, often people spend almost all of their savings;
2. If people do not have adequate savings for treatment during a pandemic, they apply for loans from microfinance organizations and banking institutions, however, repayment of such loans is associated with great risks, as the situation in the labor market continues to worsen and people simply do not have money to repay loans (Lagoarde-Segot **and Leoni, 2013**);
3. In a banking crisis caused by external unpredictable factors: natural disasters, global crises, and possibly pandemics (this factor is not directly considered in the study), banks pursue more conservative policies in order to restore profitability (Bongini *et al*, 2019). However, such policies during a pandemic may, on the contrary, aggravate the economic crisis, as businesses simply cannot find money to recover, and then through a contagion effect, unemployment increases, individual deposits with banks decrease, risks associated with lending increase, and bank profitability takes an even further drop.

Thus, a pandemic affects the banking sector through the emerging economic crisis. The termination of business cooperation due to the closure of borders, the shutdown of production facilities and services due to quarantine measures, and an increase in healthcare and medical treatment costs lead to a drop in profit for the business community and in the income of the population. In addition, both the business and the public begin to

spend their own savings. All of this leads to increased risks in the banking sector and an outflow of capital from banking institutions.

2.3 COVID-19 and the Insurance System

The pandemic has placed a heavy burden on the insurance system, especially on both the public and private health insurance systems. Local epidemics and pandemics are not capable of causing catastrophic failures in the insurance system, as there are global reinsurance (Tamura and Sawada, 2009). However, studies regarding the impact of the global pandemic on the global insurance system have not yet been conducted; this may be interesting for further studies.

Specifically, for the global insurance system, COVID-19 has become a kind of stability test, one will be able to find out later how successful it was.

2.4 COVID-19 and the Stock Market

Stock market quotes are affected by both current speculative factors and fundamental factors, including those that are difficult to predict. The impact on the stock markets from political events was studied by Bash and Alsaifi (2019) and Shanaev and Ghimire (2019), from natural disasters, for example, by Kowalewski and **Śpiewanowski** (2020), from environmental disasters, for example, by Alsaifi *et al.* (2020) and Guo *et al.* (2020).

There are also some studies on the impact of pandemics on stock markets, for example:

1. Acute Respiratory Syndrome (SARS)outbreak (Chen *et al*, 2007);
2. Ebola Virus Disease (EVD) outbreak (Ichev **and** Marinč, 2018).

The results by Al-Awadhia *et al*., (2020) who studied the effects of COVID-19 on the stock market, are interesting. The results of the study indicate a significant negative effect from the pandemic on all companies included in The Hang Seng Index and Shanghai Stock Exchange Composite Index. It should be noted that some sectors of the economy showed positive results during the outbreak of COVID-19, namely: IT and pharmaceutical companies.

In general, studies of the impact of pandemics on stock markets are inadequate; there are studies of the effects of natural disasters, technological disasters, terrorist attacks, and armed conflicts. However, all these studies are local in nature, and COVID-19 is different, being global in nature. Therefore, its impact on the stock market can be better compared with global economic crises.

2.5 COVID-19 and the Stock Market.

The COVID-19 pandemic is global. However, as many countries have chosen to isolate and have closed their borders, these countries are now fighting against the virus in the financial markets on their own. Next, consider the responses of China (Table 1), the USA (Table 2) and Russia (Table 3) in the financial market to the COVID-19 pandemic.

Financial Institutions	Liquidity/funding
Require banks and insurance companies to ensure the safety, smoothness and efficiency of financial service; Provide fast path for affected operations and businesses The National Development and Reform Commission allowed high-quality small and medium-sized enterprises (SMEs) to issue corporate bonds. This measure enabled businesses to redeem loans and replenish operating assets. Policy banks of China issued 26.5 billion yuan of special bonds at advantageous interest rates to support activities related to epidemic control. They will also provide specialized credit funds of 350 billion yuan to small and medium private enterprises. Loan forbearance encouraged credit institutions to increase lending to companies most affected by the pandemic and ensure flexible repayment conditions until June 30 for micro, small and medium-sized enterprises and households. The State Council announced a series of measures to support medium, small and micro firms (MSMEs) via inclusive financing measures – i) re-discount and relending loan quota will be increased by RMB 1 trn, targeting mainly medium-sized and small banks ii) another targeted RRR cut for these banks has been pre-announced iii) financial institutions are allowed to issue RMB 300 bn financial bonds to support small and micro firms' loan extension iv) the government will window-guide corporate bond financing this year by increasing RMB 1 trn corporate bonds from last year's net level to expand financing channels for private firms and MSMEs and low their financing costs v) the regulators will encourage MSMEs' receivables financing by RMB 800 bn.	The medium-term lending rate was reduced by 10 basis points and amounted to 4.050%; 200 billion yuan (0.2 percent of gross domestic product) were injected into the economy through the medium-term lending facility. Since February 3, RMB 2.8 trillion was injected through open market operation, although most of it was later withdrawn. The re-lending and re-discount facilities were used to support SMEs (RMB 500 billion); the re-lending interest rate was reduced and amounted to 2.5 percent. A re-lending program totalling RMB 300 billion was specially designed for enterprises affected by the pandemic, at a rate of 1.3 percent, subsidized by the Ministry of Finance. The 7-day reverse repo rate was reduced by 20 basis points, to 2.2%.

On February 5, 2020, the People's Bank of China (PBC) published Notices on anti-money laundering/ combating the financing of terrorism (AML/CFT) requirements to respond to the COVID-19 outbreak, intended for its branches. PBC branches were to carry out more pragmatic supervision adjusted to local specifics and ensure guidance to local entities facing problems in meeting regulatory requirements. The PBC also encouraged all regulated entities to prepare contingency programs for complying with the AML/CFT requirements by taking advantage of the full range of tools provided by the Responsible Business Alliance. To support charity and medicine, due diligence measures were simplified for low-risk products and services.	The required reserve ratio (RRR) was reduced by 0.5 percent for rural credit unions, rural, commercial and cooperative banks, and also for city commercial banks operating exclusively in provincial-level administrative regions. It was one of the two planned reductions of 0.5 percent each. The medium-term lending rate was cut to 2.95%. The excess deposit reserve rate was cut from 0.72% to 0.35%.

Table 1. China's Response to the Development of the COVID-19 Epidemic in 2019-2020

Source: (The world bank group, 2020).

China's reaction to the development of the COVID-19 epidemic can be divided into 2 parts: the first is support for financial institutions and regulation of their activities, the second is support for liquidity and pumping money into the economy.

Financial institutions	Liquidity/funding
The composition of capital was changed to comply with Pillar 2 requirements: credit institutions received the right to partially use capital tools not qualified as CET1 capital (a measure earlier scheduled to enter into force in January 2021). It was expected that banks would use the positive impact of these measures to support the economy, not to increase dividends or variable compensation. The Federal Reserve Board introduced temporary changes to its leverage ratio requirements to reduce tension in the treasury market caused by the pandemic and improve banks' abilities to provide loans to individuals and businesses.	The interest rate target range was reduced from 1.00–1.25% to 0.00–0.25%. The primary credit rate of the discount window was reduced from 1.75% to 0.25%. Interim USD liquidity arrangements (swap lines) with nine countries (Australia, Brazil, Denmark, Norway, Mexico, Korea, New Zealand, Singapore, and Sweden) were announced. Within the framework of the quantitative easing policy, the Federal Reserve announced purchases of US treasuries (USD 500 billion) and agency mortgage-backed securities (USD 200 billion).

Since the second quarter of 2020 and until the end of December, a bank having a leverage ratio of 8% or more and complying with some additional criteria can use the community bank leverage ratio rules. For community banks, these rules will be in effect until January 1, 2022, before the requirement for the community bank leverage ratio requirement is again set at more than 9%.

A revised statement was issued concerning the interaction between the interagency statement of March 22, 2020 and the temporary aid provided by Section 4013 of the Coronavirus Aid, Relief, and Economic Security Act signed on March 27, 2020.

The Securities and Exchange Commission announced that financial organizations taking advantage of the Coronavirus Aid, Relief, and Economic Security Act provision allowing the deferral of implementation of two Generally Accepted Accounting Principles (GAAP) would not violate GAAP.

Temporary exemptive relief was ensured for business development companies that obtained the possibility to additionally invest in small and medium-sized businesses.

Capital rules were changed to compensate for the regulatory capital impact of participating in the Federal Reserve's Paycheck Protection Program (PPP) since no market or credit risk is associated with PPP loans.

The Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency announced a temporary regulation to encourage lending through the PPP, specifying that a zero percent risk weight should be applied to loans covered by the PPP for capital purposes.

The Federal Reserve cut the discount rate by 150 basis points with a simultaneous increase in the lending term to 90 days.

The required reserve ratio was reduced to zero.

The programs launched during the Global Financial Crisis were re-introduced, in particular, the Commercial Paper Funding Facility, as well as the Primary Dealer Credit Facility, allowing for more aggressive lending over a longer horizon at the discount rate.

The Federal Reserve also introduced large-scale repo operation with increased terms – one-month and three-month tranches. This could result in additional liquidity of USD 5 trillion, although the actual increase has been much less so far.

An amendment to the Federal Reserve Act was proposed, according to which the Fed would receive the right to buy municipal bonds in certain circumstances.

A new repo facility for foreign and international monetary authorities (FIMA) was introduced. This facility made it possible for monetary authorities having accounts at the Federal Reserve Bank of New York to conclude repurchase agreements with the Federal Reserve, temporarily exchange their U.S. Treasury securities for U.S. dollars and then ensure access to these funds for institutions in their countries. This facility has been available since April 6, 2020 and will be in effect for at least six months.

The Paycheck Protection Program Liquidity Facility was created to extend credit to financial organizations originating PPP loans.

The Federal Reserve announced readiness to provide four-year loans through banks to enterprises with up to ten thousand employees and to extend loans directly to states, counties and cities to help them deal with the pandemic. This measure required about $2.3 trillion. The Securities and Exchange Commission in its statement underlined the significance of robust disclosures and reporting during the pandemic. A rule change was introduced to improve the effectiveness of the Small Business Administration. The Federal Reserve Board temporarily modified rules concerning the PPP to enable certain banks and shareholders to apply for PPP loans for the needs of their small businesses.	The Main Street Lending Program was introduced to provide credits to SMEs with the purchase of up to $600 billion in loans. The scope and scale of the Primary and Secondary Market Corporate Credit Facilities, as well as the Term Asset-Backed Securities Loan Facility, were extended. The Municipal Liquidity Facility was established, providing up to $500 billion of loans to municipalities and states.

Table 2. The USA's Response to the Development of the COVID-19 Epidemic in 2020

Source: (The world bank group, 2020).

The US reaction to the development of the COVID-19 epidemic can also be divided into 2 parts: the first is support for financial institutions and regulation of their activities, the second is support for liquidity and pumping money into the economy. In addition, the US is actively subsidizing businesses and the public during the pandemic.

Financial Institutions	Financial Markets	Liquidity/ funding	Payment systems
For consumers affected by the coronavirus, the Central Bank of Russia (CBR) enabled banks and microfinance organizations to restructure the loans of consumers affected by the pandemic, abandon penalties, and avoid foreclosures on collateral. The CBR expanded its refinancing program for loans to SMEs. The tool aimed at limiting interest rates for borrowers was complemented with a new tool with a refinancing limit of 500 billion rubles to maintain lending to SMEs. For both tools, from March 23, 2020, the CBR interest rate was established at 4%. -For loans refinanced under the previously existing limit of RUB 175 billion, CBR rate was reduced from 6 to 4percent, the final loan rate for the borrower should not exceed 8.5percent, while all industry restrictions on lending to SMEs are lifted." The CBR plans to implement temporary regulatory forbearance measures (through September 30, 2020), which will allow banks to maintain flexibility in loan classification in the most affected sectors such as transport and tourism. The CBR plans to implement temporary regulatory forbearance measures (through September 30, 2020), which will allow banks to lower risk weights on loans to companies in the medical and pharmaceutical industries. Guaranteed the possibility deferral payments on loans for up to six months for citizens/SMEs in difficult economic situations related to the coronavirus pandemic.	The CBR started selling FX on the market for the first time in five years to lower market volatility and suspended daily purchases of FX for state reserves for 30 days to relieve downside pressure on the ruble.	Policy rates were reduced by 25 basis points to 6% on 02-07-2020 On March 19th CBR announced daily sales of FX on the open market, related to the sale of CBR's 50percent equity stake in Sberbank to the National Wealth Fund. Initially, this deal was supposed to result in sale of approx. USD45 bln on the local FX market evenly spread over 3-7 years, however, the sharp deterioration of the global market conditions have lowered the value of the equity stake in question to approx. USD25 bln and led to a prompt action.	In order to simplify online money transfers between individuals, CBR sets the limit value of commissions charged by banks from its customers for transfers between individuals from May 1, 2020.

The CBR introduced some additional measures, which included allowing credit institutions to use assessments made as of January 1, 2020 for balance sheet assets and loan loss provisioning; this measure concerned loans classified under Quality Categories I and II. Credit institutions received the opportunity to apply for risk premiums when restructuring loan debt from March 1 to September 30, 2020, as well as apply previous (lower) premiums when calculating risk ratios. The Bank also announced that it would implement Basel III standards early for retail lending. The scope of support programs for SMEs was extended. In particular, (1) the calculation of debt limits was revised, and (2) the in-person requirement for SMEs to obtain loans related to supporting/ maintaining employment was relaxed. The latter change was in effect from April 6 through July 1, 2020. Measures were taken to simplify loan restructuring. Banks were allowed to assess their financial condition, the quality category of loans, and the quality of debt servicing as of March 1, 2020. This measure concerned all activities not specified in the previous CBR decisions. The CBR also announced its intent to reduce deposit insurance premiums from 0.15% to 0.1% by the end of the year.			

Table 3. Russia's Response to the Development of the COVID-19 Epidemic in 2020

Source: (The world bank group, 2020).

Before the COVID-19 pandemic, the Russian economy and financial system were already under serious pressure (economic crisis and sanctions, see Nusratullin *et al*, 2020a; Nusratullin *et al*, 2020b). But Russia has responded quite successfully to the COVID-19. Russia's reaction to the development of the COVID-19 epidemic can be divided into 4 parts:

1. Support of financial institutions and regulation of their activities (stimulating the restructuring of debts for small and medium-sized businesses, introducing the possibility of tax holidays);
2. Regulation of the foreign exchange market seeking to ease the pressure on the national currency (Ruble);
3. Supporting liquidity by pumping money into the economy;
4. Stimulation for electronic transfers, reducing cash operations.

Since not enough time has passed, the effectiveness of these measures is difficult to assess. All these measures are more about regulation of the financial sector during periods of serious global economic crises. This is understandable, since humanity at the present stage of development, this is the first time that modern society has met a global pandemic face to face.

Conclusion

The COVID-19 pandemic has shown that it can harm the global economy on an unprecedented scale. Unlike natural disasters, terrorist attacks, technological disasters and other factors of economic destabilization, the epidemic is global. The damage that COVID-19 brought and will bring remains to be calculated. The economy can be restored, but human lives are gone. The world scientific community is faced with the task of studying in detail the impact of global pandemics on humanity, including in the financial sphere, in order to develop an effective mechanism to confront it and its consequences.

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International Experience in Assessing the Effectiveness of Law Enforcement Agencies in Crime Prevention

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Abstract

The objective of the investigation was to analyze some international experience in assessing the effectiveness of law enforcement in crime prevention. Methodologically, the dialectic method, typical of materialistic philosophy, was combined with scientific techniques of cognition. It is concluded that the basis for assessing the effectiveness of law enforcement agencies in different countries is based on a set of quantitative and qualitative criteria; sometimes such criteria conflict with each other, as some are beneficial for bureaucratic reporting, while others reflect the public's interests. Public opinion, as one of the main criteria, is becoming increasingly important in assessing the effectiveness of law enforcement agencies in some countries (e.g., the Slovak Republic), and in the US, France, Japan, Austria, and Italy, it is a traditional evaluation tool. Ambiguous is the use of statistics to assess the effectiveness of law enforcement in certain countries and Finally, there are countries where criminal statistics are a priority to determine the effectiveness of law enforcement and in others not.

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Experiencia internacional en la evaluación de la eficacia de las fuerzas del orden en la prevención del delito

Resumen

El objetivo de la investigación fue analizar cierta experiencia internacional en la evaluación de la eficacia de las fuerzas del orden público en la prevención del delito. En lo metodológico se combinó el método dialectico, propio de la filosofía materialista, con técnicas científicas de cognición. Se concluye que la base para evaluar la efectividad de las agencias de aplicación de la ley de distintos países se sustenta en un conjunto de criterios cuantitativos y cualitativos; a veces, tales criterios entran en conflicto entre sí, dado que algunos son beneficiosos para la presentación de informes burocráticos, mientras que otros reflejan los intereses del público. La opinión pública, como uno de los criterios principales, se está volviendo cada vez más importante para evaluar la efectividad de las agencias de aplicación de la ley en algunos países (por ejemplo, la República Eslovaca), y en los EE. UU., Francia, Japón, Austria e Italia, es una herramienta tradicional de evaluación. Ambiguo es el uso de estadísticas para evaluar la eficacia de las fuerzas del orden de ciertos países y; finalmente, hay países donde las estadísticas penales son una prioridad para determinar la eficacia de las fuerzas del orden y en otros no.

Palabras clave: experiencia internacional en orden publico; control y evaluación; agencias de aplicación de la ley; politicas de prevención del delito; criterios de evaluacion de las fuerzas del orden público.

Introduction

The study of the administrative and legal basis for the effectiveness of assessing the activities of law enforcement agencies as subjects of financial and economic security of Ukraine is impossible without a detailed study of the experience of foreign countries in this area. Today, the urgency of this issue is justified by the fact that Ukraine largely imitates the activities of law

enforcement agencies of the EU countries, in particular, in accordance with European models, law enforcement agencies, prosecutors, NABU and DBR of Ukraine have been reformed, however, no attention is paid to assessing the effectiveness of these entities.

In general, researchers note that the assessment of the effectiveness of law enforcement agencies of foreign countries is based on information obtained from the study of the following areas: criminal statistics (number of crimes per person, number of people serving sentences, the number of detected crimes); the results of public opinion polls (the results of surveys of citizens' satisfaction with the work of law enforcement agencies, the results of surveys of victims, representatives of government agencies that interact with law enforcement agencies); the results of control exercised by supervisory authorities; results of public control; reports of the Commissioner for Human Rights; statistics of appeals to law enforcement agencies, the content of these appeals; the level of corruption in law enforcement agencies; establishing the number of law enforcement officers and their ratio to the population; establishing the number of private security structures and their ratio to the number of law enforcement systems (the higher the number of private security structures, the lower the efficiency of the law enforcement system); systems of replacement of positions in law enforcement agencies – appointment or competition; financing system (when assessing the results of work correlate the cost of maintaining law enforcement agencies with the amount of averted or already compensated damage; economic factor (the effectiveness of the law enforcement system can be defined as the maximum reduction in crime for a given budget costs of such activities).

1. Literature review

Based on the above, it is obvious that significant attention is paid to public opinion polls, the results of public control and consideration of citizens' appeals, which indicates the orientation of law enforcement agencies to the needs of citizens. This trend is especially noticeable today in the activities of the police, according to which the police of more democratically developed countries generally prefer the principles of "community policing". Whereas states where democracy has only just begun to emerge (Eastern Europe, Central Asia), whose legislation is transitional and whose mechanism is characterized by the remnants of communism, are more likely to adhere to the principles of "zero tolerance" in policing (Lum, 2009).

Back in 1996, American scientists generalized the benefits of following the principles of "community policing", including:

1. reducing the crime rate;
2. increasing the level of transparency of police activities;
3. increasing the level of citizens' satisfaction with the police;
4. reducing the level of complaints about the activities of police officers;
5. increase the satisfaction of police officers with their work;
6. involvement of the public in the activities of police bodies;
7. improving the efficiency of police activities and the quality of performance of tasks assigned to police officers (McCold and *Wachtel, 1996).*

O. V. Gordeev draws attention to the fact that, despite the different traditions and historical experience in countries such as the United States, France, Japan, Austria and Italy, constant public opinion polls are the main tool for assessing the law enforcement agencies of these countries. Moreover, for such states the issue of improving the forms of social control over the activities of law enforcement agencies as guarantors of respect for universal rights and freedoms remains relevant (Gordeev, 2017).

2. Materials and methods

The basis of the study is philosophical methods: dialectical (the basic principles of which are objectivity, comprehensiveness, concreteness and completeness of knowledge, division of the united and knowledge of its contradictory sides etc.), logical (the main methods of which are analysis and synthesis, induction and deduction, analogy, ascent from concrete to abstract and from abstract to concrete), etc.

Among the scientific methods of cognition are used methods of system analysis (structural, functional, factor, genetic), target, typological, model. With regard to the knowledge of the realization of the human right to protect the law, the method of institutional analysis allows us to justify the contours of the real field of the implementation of the human right to protect the law as a single integrated legal institution, which is very valuable for identifying the laws of its functioning and improvement; classify the funds it contains into organizational and legal ones; to examine each organizational or legal means in terms of its adequacy to the meaning and purpose of the human right to protect the law, as well as its functional orientation to achieve its goal - to eliminate the threat to human rights security or restore it.

3. Results

In the states of Europe and the USA the basic models of law enforcement activity, and accordingly also models of trust of citizens to law enforcement agencies are already formed. In particular, the European model operates in conditions of social tolerance, the American – more focused on the principles and values of social identity. There is also a third model – the Eastern, which traces a system of religious restrictions and taboos (Loshitskyii, 2015).

In particular, in the Slovak Republic, the Minister of the Interior, together with the Institute for Public Opinion Research, developed an official questionnaire to determine the level of public confidence in policing in various fields and to identify the reasons influencing their position, which was called "Social status and role of the police in the opinion of the citizens of the Slovak Republic". This is an example of existing models for finding out the trust of citizens in the police, other law enforcement agencies, etc. However, this is only the first steps of the Slovak Republic in this direction, given that according to a 2017 Eurobarometer survey, the highest level of distrust in the police was observed in the Slovak Republic, which is about 53% of the population who expressed this opinion. For example, the lowest level of distrust in the police among EU countries in Austria, about 11%, although for EU member states the average is 23% (Andriichenko, 2018).

At the same time, such involvement of citizens in the assessment of police activities has a positive effect on cooperation between society and the police, reduces their contempt for each other, as both society and police are interested in reducing crime and improving protection from criminal encroachment.

However, the level of public confidence is not the only criterion for assessing the activities of the police and other law enforcement agencies, and therefore we suggest paying attention to the experience of Canada, where the basis for assessing the police are two indicators:

a) strategic (assessment of the impact of police activities on the state of crime in the state, the level of public confidence in the police).

b) operational (quantitative indicators of police activity contained in annual plans and reports on their activities).

At present, the assessment of police in Canada uses the method of ongoing improvement of service quality, which is used to evaluate all types of government agencies and institutions. This method involves a comprehensive assessment of the environment of a public body or institution, which is a system where leadership, strategic planning, cooperation with citizens, management of available resources and the end results of these bodies and institutions are closely linked (Lelandais and Bodson, 2007).

In the USA, police assessment has the following components: qualitative assessment (individual and police unit) and quantitative indicators. Individual assessment of a police officer's activity is based on an annual attestation, during which the immediate supervisor provides a qualitative assessment of the subordinate's work and his professional progress according to a set of criteria defined by the regulations on the activities of a particular police department. Such criteria are attention and concentration, communication skills, resilience to stressful situations, flexibility and ability to work with different people, knowledge, ability to learn, initiative and more. Not only the scores for each criterion are indicated, but also the descriptive characteristics for each of them.

The USA police departments (separate territorial units within large city departments) are evaluated by two conflicting systems. On the one hand, there are standard statistics that are convenient for bureaucratic reporting; on the other, assessment by locals is becoming increasingly popular with the spread of the concept of "community policing". Accordingly, along with the traditional reporting system, there is a practice of population surveys. They range from basic "community feedback forms" (mostly on websites) to comprehensive surveys that assess local priorities, expectations of the police, compliance of actual police activities with these priorities and expectations, real safety of life in the district and security by feel. Only an indicator adopted by an elected body and announced as an official indicator in advance can acquire the status of an official assessment.

The problem of quantifying the performance of the USA police unit, as well as an individual employee, occurs in the largest police departments, where the number of staff is significant, and the territory of the municipality is divided into sections. Criteria used in the following cases:

a) the percentage of opened cases against registered;

b) the ratio of the number of arrests to the number of registered crimes;

c) the number of detected crimes and the dynamics of their indicators (Krapyvin, 2016).

In France, statistics on police performance are also taken into account when assessing their performance. In particular, in 2002, the French police introduced an approach such as a "culture of result", which significantly changed the way the police generate statistics. According to this approach, the highest police body sets quantitative targets for lower levels, as well as establishes a system of bonuses for achieving them. At the same time, each level of police activity has its own form of statistical data tables, which are the basis of police reports. Accordingly, after receiving the reports, crime statistics are compared with the activities of the police and the resources available to them.

At the same time, this model of activity and assessment of the French police is not supported by all scientists. Among them are those who point out that statistics without independent verification are a questionable indicator of police performance. The lack of an independent audit of statistics at the local level allows the police to be a monopolist in the production of crime statistics and creates the necessary conditions for the manipulation of statistics (Eterno and Silverman, 2012; Nazarova *et al., 2019).*

One form of assessing the effectiveness of law enforcement in the United States is to accredit a law enforcement agency by an independent institution on its own initiative, as accreditation is a right, not a duty, of a law enforcement agency.

This accreditation is conducted by the board of an independent non-profit organization – CALEA, consisting of 21 people, 11 of whom have practical experience in law enforcement. The essence of accreditation is a set of actions aimed at establishing compliance of the organization and activities of US law enforcement agencies with various standards in the main areas of their activities.

These standards, according to I. M. Osyka, help law enforcement agencies:

- to improve opportunities for crime prevention and control of the service area;
- to formalize the basic management procedures;
- to establish a fair and non-discriminatory treatment of staff and normalize relations in the team;
- to improve the level of services provided to the population;
- to change coordination and interaction with other law enforcement agencies;
- to increase the reputation in the eyes of the population and the employees themselves (Osyka, 2015). It is obvious that the accreditation of law enforcement agencies still has its advantages.

At the same time, the accreditation process involves five stages. The first stage involves acquainting the law enforcement agency with information about accreditation and registration for accreditation. After registration, the second stage begins, at which the law enforcement body signs the accreditation agreement and within 24-36 months from the date of its conclusion carries out self-assessment. Upon completion of the self-assessment phase, the law enforcement authority informs CALEA and proposes to set a date for the start of the on-site assessment. The third stage of accreditation involves the assessment of the organization and

activities of law enforcement by a team of CALEA experts on site. That is, a team of experts directly located at the location of the law enforcement agency, analyzes information about its activities, examines the necessary documents, conducts public discussions and formulates final conclusions on the results of accreditation. This is followed by the fourth stage, in which, if the law enforcement agency meets all the standards of organization and activities, CALEA confirms this with an official opinion, which is valid for three years. After receiving this confirmation, the fifth stage begins – the law enforcement agency within three years from the date of accreditation must monitor the compliance of its organization and activities with the standards, provide evidence to support this. In addition, an annual report must be submitted to CALEA.

This experience is undoubtedly progressive, but its implementation is possible only in a democratically developed country, where all the principles of democracy are implemented, and the public takes an active part in law enforcement, in particular, informs the subjects of criminal offenses, provides assistance in identifying and the investigation of certain socially dangerous acts, and the management and employees of law enforcement agencies are also aware of their purpose – to act solely in the interests of society, and their activities are transparent to the public.

Accordingly, in the United States, the accreditation of law enforcement agencies is provided in the form of a right, not an obligation. Unfortunately, in Ukraine it is virtually impossible to implement the US experience in this way today. At the same time, if we talk about the mandatory accreditation of law enforcement agencies, then there are many issues without which it can not be carried out. First of all, we are talking about the development of appropriate standards of law enforcement, as well as the creation of a new entity – a state-authorized body or institution that will verify compliance with law enforcement of Ukraine to certain standards, after they conduct self-assessment. However, given the reality of democracy in Ukraine, as well as reforming the law enforcement system, in particular those that are the subjects of financial and economic security of the state *(*Tamosiuniene *et al.*, 2019; Yankovyi *et al.,* 2020), we consider it impractical to implement the US experience in accrediting law enforcement agencies in Ukraine.

One of the leaders in assessing the effectiveness of policing today is Northern Ireland, which has a Policing Council, an independent public body tasked with ensuring the effective and impartial operation of a police service that is trusted by the entire population. Given the main purpose of this council, monitoring the effectiveness of the police to improve the interaction between the police and society is one of its main responsibilities. Surveys of citizens' trust in the police are conducted by the Police Council twice a year, and their main focus is to find out the level of citizens' trust in the police, which is established not by asking a direct question of trust

or distrust in the police, but focuses on victimization, ie on the attitude of citizens to the police, on the data on how a police officer behaves in an emergency situation, the experience of citizens' appeals to the police and the level of effectiveness of the assistance received. In addition, the results of the sociological study are open to the public (Davis, 2012).

In the United Kingdom (except Scotland), since 1996, the main body that evaluates the work of the police is the Police Inspectorate, which is not part of the government, is not part of ministries or police and reports directly to Parliament, and its inspectors appointed by the monarch. At the same time, policing in the UK is carried out at both national and local levels by Commissioners for Police and Crime. This position is quite specific, as the Commissioners for Police and Crime are elected by the population of the territory served by the relevant police unit. The task of the Commissioners for Police and Crime is to ensure the effectiveness of the relevant police unit, as they annually submit a report on the activities of the police unit, which includes information on the status of achievement of the objectives set by the plan (Sviatokum, 2013).

The UK Police Inspectorate may conduct external and internal surveys to assess police performance at the national level. It should be noted that the external survey is based on the PEEL methodology, according to which police activities are evaluated by:

- the criterion of effectiveness, ie how effectively the police prevent crimes, investigate the facts of crimes committed, compensate for the damage caused by them, as well as fight organized crime;
- the criterion of economy, ie how well the police use their resources to meet the demand for police services, meet the organizational and financial requirements for the police, as well as the financial position of the police in the short and long term;
- the criterion of legality, ie whether police officers comply with current legislation and ethical standards in the performance of their duties, how well-off police personnel are and how they interact with the public and the level of consideration of complaints and appeals by police officers (PEEL Assessment, 2015).

From the above we conclude that the assessment of the effectiveness of law enforcement in the UK (except Scotland) is based on qualitative and quantitative criteria. External and internal surveys also play an important role.

Other countries have taken into account the experience of the United Kingdom, one of which is Portugal. According to the concept of measuring the effectiveness of the Portuguese police, most attention is paid to assessing the results of their activities on the following indicators:

1. a sense of security;
2. a level of fear of crime;
3. a percentage of calls that were answered in the allotted time;
4. a number of complaints from citizens per 1,000 employees;
5. a reasonable percentage of complaints filed by citizens (Gomes and Mendes, 2013).

Although Scotland is part of the United Kingdom, the assessment of the activities of the police in its territory differs from that considered above. The most important feature is another list of criteria for assessing the effectiveness of the police, which is focused on setting and achieving goals and is called the Scottish Policing Performance Framework. This system contains four areas of assessment:

1. quality of services provided;
2. citizens' sense of security and safety;
3. criminal justice and the fight against crime;
4. efficiency of management and activity.

For each group of criteria, strategic goals are defined, the implementation of which is assessed by three groups of indicators: resources expended, measures taken and their results. At the same time, the indicators independently determined by the police are subject to audit by a specially authorized state body in order to establish their reliability.

At the same time, the activities of Scottish police units are also assessed through public opinion polls. Their main task is to supplement the official police statistics by surveying citizens about crimes they became aware of or victims of during the reporting period. First of all, it allows you to identify information about crimes that have not been reported to the police. In addition, the personal opinion of citizens on the effectiveness of the police is investigated (Buhaichuk, 2015).

Given Scotland's experience in assessing the effectiveness of policing, it should be noted that the focus of policing is on statistics, while public confidence surveys not only complement these data but also influence the formulation of conclusions on the effectiveness of the police in carrying out the tasks assigned to it by law.

Conclusion

Thus, summarizing the foreign experience of states in assessing the effectiveness of law enforcement agencies, we can draw the following

conclusions:

1. the basis for assessing the effectiveness of law enforcement agencies of foreign countries is a set of quantitative and qualitative criteria, which are both: a) are closely interrelated;
2. b) conflict with each other, given that some criteria are beneficial for bureaucratic reporting, while others reflect the interests of the public;
3. public opinion as one of the criteria is becoming increasingly important in assessing the effectiveness of law enforcement agencies of foreign countries (eg, the Slovak Republic), and in the US, France, Japan, Austria and Italy, it is a traditional tool for assessing them;
4. ambiguous is the use of statistics in assessing the effectiveness of law enforcement agencies of foreign countries: a) there are countries where criminal statistics are a priority in determining the effectiveness of law enforcement agencies, while questioning its reliability due to lack of mechanisms to combat manipulation of statistics (France); b) in some countries, self-determined by law enforcement criminal indicators are subject to audit, which minimizes the risk of falsification of statistics (Scotland);
5. assessment of the effectiveness of law enforcement agencies in certain areas - the quality of services, a sense of security, the fight against crime, the quality of management (Scotland);
6. the US experience is exceptional, where the assessment of the effectiveness of law enforcement is carried out in the form of accreditation, which is not a duty but a right of law enforcement;
7. the experience of Northern Ireland and the United Kingdom (except Scotland) is positive, where the assessment of police activities is carried out by specially formed bodies – the Police Council, the Police Inspectorate.

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The Subsidiarity Principle and Legal and Economic Aspects of The Decentralization in Ukraine

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Abstract

The research highlights the peculiarities of the decentralization of power in Ukraine in the political and legal implementation aspect of the principle of subsidiarity. The objective of the study was to determine compliance with the political and legal aspects of the decentralization process in Ukraine based on global standards of the use of the principle of subsidiarity, during the implementation of decentralization reform. The research methodology is based on the fact that the principle of subsidiarity is the main feature of the interaction of all levels of power. This premise is recognized in the European Charter of Local Self-Government and therefore means an urgent task in modern Ukraine. Financial decentralization, district consolidation, the creation of different but united territorial communities, changes in the administrative-territorial structure, ensuring the capacities of communities, the provision of public services in accordance with national standards must be based on

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the principle of subsidiarity. The information gathered makes it possible to conclude that the principle of subsidiarity is a barrier to the overly profound centralization of the state body and the separation of power.

Keywords: subsidiarity; political and administrative decentralization; deconcentration of power; local self-government; Ukraine.

El principio de subsidiariedad y los aspectos legales y económicos de la descentralización en Ucrania

Resumen

La investigación da cuenta de las peculiaridades de la descentralización del poder en Ucrania en el aspecto de la implementación política y legal del principio de subsidiariedad. El objetivo del estudio fue determinar el cumplimiento de los aspectos políticos y legales del proceso de descentralización en Ucrania con base a los estándares mundiales del uso del principio de subsidiariedad, durante la realización de la reforma de descentralización. La metodología de investigación se basa en el hecho de que el principio de subsidiariedad es la característica principal de la interacción de todos los niveles de poder. Esta premisa es reconocida en la Carta europea de autogobierno local y significa, en consecuencia, una tarea urgente en la Ucrania moderna. La descentralización financiera, la consolidación de distritos, la creación de comunidades territoriales diferentes pero unidas, los cambios en la estructura administrativo-territorial, el aseguramiento de las capacidades de las comunidades, la prestación de servicios públicos de acuerdo con los estándares nacionales debe fundarse en el principio de subsidiariedad. La información recabada permite concluir que, el principio de subsidiariedad es una barrera para la centralización demasiado profunda del organismo estatal y la separación del poder.

Palabras clave: subsidiariedad; descentralización política y administrativa; desconcentración del poder; autogobierno local; Ucrania.

Introduction

In conditions of the digital transformation, the decentralization in Ukraine has acquired the new significance and importance as a process that leads the country to the principles of interaction between the state and society, recognized in Europe. The main political and legal aspect of this

movement is the interaction of the state with another form of the public power - local self-government. Although the decentralization covers a very wide range of public relations with other spheres of society (such as business, culture, science, education, etc.), but the definition of the activities coordination principles of two most important power structures is the most pressing issue of Ukrainian politics and law enforcement. In this regard, one of the main European principles of the interaction between central and local government is the principle of subsidiarity.

The necessity for its practical implementation in Ukraine in order to fulfil the tasks of the European integration has been recognized widely by experts. However, at the political level, the term "subsidiarity" is used rarely, as in some cases it is associated with the federalization. The discrepancy between the objective meaning of the subsidiarity principle and its subjective perception by political forces requires more detailed analysis and even its promotion among civil servants and the municipal community (Kvitka, 2015).

1. Literature review

In recent decades, a lot of researches on political and legal issues of regional policy and local self-government were conducted. Many reference books and statistical collections have been published (Decentralization in Ukraine, 2020). However, a little attention is paid directly to the problem of applying the subsidiarity principle in the Ukrainian context, especially in the context of the digitalization. Most of materials are based on the European experience and were prepared with the support of international organizations.

First, they explain the importance of the subsidiarity principle, its role for Ukraine's European integration. But these publications provide only general remarks on the specifics of its use in Ukraine. As for specific studies, most of which are conducted on a grant basis, in almost all of them the decentralization and the subsidiarity are offered as the main recipes for overcoming the existing socio-economic problems in Ukraine (Hrubas, 2015). By our opinion, during the last years the best research on these issues have been conducted in the framework of Ukrainian-Canadian projects (MLED, 2020).

In these researches the question of the existence of restrictions on the implementation of the subsidiarity have been raised, especially, for local budgets and local economic development. Despite the rather big amount of publications, the task of defining the clearer criteria and mechanisms for implementing the subsidiarity principle in the everyday work of public administration in Ukraine is still urgent. The biggest problem remains the ambiguity of national standards of public (administrative, communal,

etc.) services, which of them should be provided on the territory of the country. The influence of digital transformation on the peculiarities of the subsidiarity principle's introduction and political and legal aspects of this process are ignored by scientists (Batanov *et al.*, 2014).

The aim of the study is to determine the political and legal aspects of the subsidiarity principle's introduction during the implementation of the decentralization reform in Ukraine in the context of the digital transformation.

2. Results

Subsidiarity (from the Latin Subsidiaries - auxiliary) is the organizational and legal principle, according to which tasks should be solved at the lowest, smallest or the most remoted from the centre level, at which their solution is possible and effective. The idea of the subsidiarity is akin to the decentralization. In the context of decentralization and expansion of the powers of territorial communities, the development of territories takes place, including the creation of conditions for attracting investments in the development of the tourism industry and other spheres of the economy (Koval *et al.,* 2018; Koval *et al.*, 2019; Popova *et al.*, 2020; Yankovyi *et al.*, 2020).

This principle has become a part of the European Union law as one of the main mechanisms to deter the excessive centralization. The very principle of the subsidiarity goes back to the ideas of Plato and Aristotle, as well as to the medieval city law. In Catholic social teaching, this concept became part of the official doctrine after the publication of the encyclical "Rerum Novarum" (1891) by Pope Leo XIII. The initial purpose of the principle was to resolve the conflict between the individual and society, which would avoid the extremes of both individualism and collectivism (Noyhauz, 2005). A further contribution to the theory was made by the encyclical "Quadragesimo Anno" (1931) by Pope Pius XI, where the concept was called "subsidiarity". In particular, it says:

The basic principle of social philosophy, established and unchanged, is that no one should take away from individuals and transfer to the society the opportunities that they can do by their own initiative and efforts. Hence, at the same time the transfer of those functions that can be provided and implemented by the lower and subordinate structures to a larger and more complex community will be injective, grave sin and will become the violation of the proper politics. Since any social activity, by its nature, should serve as a means of helping members of social education, it should never destroy or absorb them (individuality) (Noyhauz, 2005).

According to the principle of the subsidiarity, the government should be as close as possible to the citizens. The state should take the initiative only in those issues where the capabilities of independent individuals and organizations are insufficient. If the task can be solved at the local level as effectively as at the national level, the preference should be given to the local level. This principle works not only for governments, but also for all those in power: parties, corporations, trade unions, leaders of political movements, large business and banking structures.

The subsidiarity principle is based on the autonomy of the individual and their self-esteem. All forms of society - from the family to international bodies - must serve the individual. It is also followed by the fact that the source of the political power is the people. At the same time, the personalism states that people by their nature feel the necessity to communicate and want to be members of the basic units of society, such as the family, the parish, the neighborhood, the professional community, the volunteer organization. These cells act as intermediaries between a person and larger structures and, thus, give them real power. This scheme is reproduced at the level of medium and large public structures. This leads to the conclusion that the delegation of power to higher levels of government should be carried out only if it is really needed. In particular, the state can use its power only to the extent, necessary for the common good.

From an ethical point of view, the subsidiarity obliges the state and society to create conditions for the full development of the individual, including the provision of socio-economic human rights and security (Nazarova *et al.*, 2019). The state is obliged to respect the independence of individuals and organizations, but, at the same time, it should promote the establishment of links between them. Even though it has no right to impose restrictions on the fair demands of individuals, but it must protect some members of society from the harm, connected with the private interests of others.

However, the subsidiarity not only recognizes the limitations of the central government, but also suggests a methodology for determining the scope of local government powers. In 1985, the European Charter of Local Self-Government (1985), going from the subsidiarity principle, assigned local administrations to solve all tasks, except those that they can't overcome. Thus, Article 4, paragraphs 3, 4, 5 and 6 of the Charter states:

> Public powers are performed mainly by those authorities which are the closest to the citizens. The transfer of any function of any power body to another authority should be carried out taking into account the scope and nature of the specific task, as well as the requirements of the efficiency and economy", "As a rule, powers, granted to local governments, should be complete and exclusive. They may be questioned or restricted by any other central or regional authority only within the limits, established by law", "When delegating powers to any central or regional

authority, local governments should have the right to adapt their powers to local conditions as much as possible"," It is necessary to consult with local governments as much as possible in a timely manner, especially in the process of planning and decision-making that affect them directly.

In 1986, the Common European Act divided the powers on the environment issues between the EU and its member countries in accordance with the principle of the subsidiarity. Together with the growth of concerns about the European centralization, the subsidiarity became increasingly attractive as a deterrent factor. In 1992, the Maastricht Treaty limited all EU powers to those areas where action by individual countries was insufficient.

These articles were further developed in the amendments to the Treaty on the establishment of the EU. According to the current version of this document, in areas which do not fall within its exclusive competence, the European Community acts in accordance with the principle of the subsidiarity only if the objectives of the supposed action can't be sufficiently achieved by the Member States and therefore, can be achieved more successfully by the EU.

The subsidiarity in relation to individual states in the world community and in the EU means that public authority in the world community does not aim to limit the scope of public authority of the individual political community (i.e. the state), much less to take its place. On the contrary, its aim is to create a global system, in which the public authorities of each political community, its citizens and their associations at different levels have the opportunity to carry out their tasks, perform their duties and enjoy their rights on a more sustainable basis. Accordingly, in order to implement the principle of the subsidiarity in the European legislation, legal acts must meet two requirements. Firstly, the EU needs a basis for action. Secondly, the scale of its actions should be proportional to the necessity (Noyhauz, 2005). When substantiating the compliance of the suggested measures within the subsidiarity principle, several criteria are used:

- Closeness of government to citizens. Political decisions must be made at a level, which is as close to the population as possible;
- Sufficiency. Is it possible for the set goals to be achieved sufficiently at lower levels (including by the citizens themselves);
- Benefit. Will solving the problem at a higher level be more efficient or profitable.

The newest stage in the development of the local self-government in Europe was based on the subsidiarity principle. At the end of the XX century in most European countries important structural, functional and organizational reforms of the system of local government were made. These reforms were aimed at redistributing functional relations between local,

regional and central governments. They were carried out simultaneously with structural reforms and are linked closely to such concepts as "centralization", "decentralization" and "deconcentration".

Their result was the expansion of the competence of regional and local authorities, i.e. the decentralization of management, which means the transfer of certain powers by the central government to local governments (transfer of decision-making rights to bodies that are not hierarchically subordinated to central authorities and are often elected by the interested citizens).

The decentralization may be accompanied by the deconcentration – the transfer of power from the central level officials to the local level officials, appointed by the central government (organizational technique, which lies in the transfer of important decision-making rights to central government officials, appointed at various administrative districts or public services). There are vertical and horizontal deconcentration. Within the vertical deconcentration, all powers to represent the interests of the central government at the local level are transferred to one governmental official (prefect, commissioner, etc.), and horizontal deconcentration involves the division of responsibilities between several centers of government at the local level on a sectoral basis.

At the same time, it should be kept in mind that the democracy of the political system as a whole is not always directly linked to the level of the decentralization and deconcentration. In democracies, the necessity to decentralize the power may exist not because of democratic principles, some of which are better provided centrally, but because of administrative factors. And in countries where there are no established democratic traditions and the formally existing system of local government does not correspond to the real mechanism of the local government, the decentralization can even reduce the level of democracy in local governments. As the powers, delegated by the central government, are usually aimed at satisfying corporate interests of local elites (Assembly of European Regions, 2015).

Therefore, the excessive decentralization and autonomy of local authorities can't be understood as an absolute benefit from the point of view of democracy. The centralization of power also has a certain positive significance, it provides the benefits of a one government, free from local political disputes and prevents, as noted "an abuse of power by rural tyrants" (Brown *et al.*, 1998). In some cases, the centralization means better coordination of local services and lower costs of services provided by local authorities. Thus, in carrying out reforms in European countries, decentralization and centralization are not seen as diametrically opposed concepts of the local government. The main problem in carrying out reforms is not to choose between decentralization and centralization, but to establish the necessary and appropriate balance between them. This balance should

correspond adequately to the real socio-economic and political conditions of a particular country.

Foreign experience of the local self-government allows us to identify the following trends in its development:

- While maintaining the leading role of the representative bodies of the local self-government (councils) in resolving local affairs, the importance of the executive apparatus is increasing gradually and the influence of municipal officials is growing. This indicates the strengthening of professionalism of the municipal administration. Strengthening of executive bodies can take various forms. In particular, in determining the structure and status of local self-government bodies, an increasing amount of authority's rights is assigned to executive bodies by the law. The representative bodies transfer part of their functions to executive bodies voluntarily (temporarily or on a permanent basis).
- The material and financial foundations of the local self-government are being strengthened. Each community has its own municipal (communal) property, which is necessary for the functioning of vital communal services. Municipalities use economic management methods widely - local taxes, licensing, signing contracts for performance of the municipal functions with private firms, etc.
- All this contributes to increasing the revenue part of local budgets, the development of the municipal economy and the stimulation of the entrepreneurial activity (Bantash *et al.*, 2020). At the same time, in many countries (especially in the "post-Soviet" ones) the problem of forming a sufficient financial basis for the local self-government remains acute.
- The functions of local self-government bodies are changing significantly. This happens due to the following factors: first, there come new functions, the implementation of which was not necessary at the local level before (for example, the environmental ones) and which are now delegated to local governments by the state; secondly, some of the functions that were previously traditionally performed by local governments are transferred to private companies or public associations, bodies of self-organization of the population (for example, cleaning and recycling); third, the role of local governments in addressing social issues is declining.

Urbanization processes and demographic changes help, on the one hand, to reduce the number of rural settlements and to increase the number of urban ones, and, on the other, to deep an urban crisis (the growth of the suburbs leads to the movement of industry and social services from the city center to the periphery and, as a result, the mass relocation of the "middle class" to the suburbs).

Urbanization gives rise to various agglomerations (metropolitan areas), which are a unity of the city itself, its suburbs and the surrounding small towns and villages, which are economically interconnected. There are many different, independent municipal management systems within these agglomerations, and the lack of coordinating bodies makes it difficult to follow a coherent policy within the agglomeration.

The absence of an approach to the agglomeration as a single whole causes the phenomena of territorial mismatch of resources, needs and free consumption. The first phenomenon is connected with the fact that local governments of those communities that are within the agglomeration try to provide the widest possible range of services, which leads to the irrational use of resources (the cost of services increases with the reduction of the number of residents, whom they are provided to).

The phenomenon of free consumption is that certain services are used by those for whom they are not directly targeted to and who do not pay for them. In particular, the inhabitants of suburbs (which are independent municipalities) use some services that the city provides to its residents.

Many municipal services (environmental protection, fire and police services, etc.) cannot be located within a separate agglomeration municipality, it is difficult to quantify and squeeze them into appropriate territorial boundaries in order to exclude outsiders living in other municipal agglomerations from the users of these services.

A steady trend in the development of the local self-government in Europe is the consolidation of administrative-territorial units, the reduction of the number of local authorities, the creation of various regional forms of government. These processes are aimed at forming a sufficient territorial, demographic, material and financial base for the maintenance of modern utilities and other municipal services.

For example, in Italy, according to the Law on the Organization of Local Autonomies, new communes can be created with the presence of at least 10,000 inhabitants, and provinces with 200,000 inhabitants. Significant financial incentives are provided for the unification and subsequent merger of communes with a population of less than 5,000 inhabitants or their accession to larger communes. Radical measures, aimed at the reduction of the number of communes, were used once in Sweden, Belgium, Denmark, Germany and other European countries. For example, in Sweden the number of communes was reduced from 848 to 288, in Belgium – from 2359 to 589.

At the same time, the number of grassroots self-governing units (communes) in some European countries still remains to be quite big: in France – 36,757; Germany – 8,500; Italy – 8,090; Spain – 8,056; Greece – 5,750 (OECD, 2020).

In some European countries (post-Yugoslav states) reverse processes take place, there communes are divided. This happens as the existing communes are too big. For example, in Slovenia, the average commune has an area of 321 square kms and a population of about 31 thousand inhabitants, in Macedonia the average size of the municipality is 850 square kms and the population exceeds 60 thousand people.

In many countries, the solution to the problem of forming a proper material basis for the local self-government is seen not in the consolidation of communes, but in the development of cooperation between individual communes (cooperative approach). Such cooperation is carried out through the signing the contractual agreements on the provision of services and fulfilling joint activities in certain areas by different bodies and levels of the local government (Regional Policy of the European Union, 2018).

Municipalities may enter the contractual relationships with other municipalities or regional authorities in different spheres, such as construction, fire safety, civil defense, health care, disaster management, and so on. There is a practice of creating a confederation of cities, which perform those functions that are beyond the power of the territorial communities of individual cities (Kvitka *et al.*, 2020).

Conclusion

The legal principle of the subsidiarity is one of the most important principles of power institutions' organization. This principle is connected directly to the local self-government. The basic idea of this principle is that the central and regional authorities should interfere in activities of local self-government bodies only to some extent when the territorial community cannot meet its diverse needs by itself.

According to this principle, the distribution of powers between the bodies of different territorial levels should be carried out in such a way that, on the one hand, to be as close as possible to the citizen in the decision-making process, on the other hand, this level should have organizational, material and financial resources to provide the necessary volume and quality of social services, which are supplied to the population in accordance with national standards

The implementation of this principle includes two important aspects. On the one hand, the subsidiarity presupposes that a higher territorial authority can interfere the activity of a lower-level government only to such extent where the latter one demonstrated its weakness. That is, the subsidiarity in this sense is based on the principle of non-interference of state power or local government of a higher territorial level in solving issues of the local importance. On the other hand, the subsidiarity implies

explicitly that higher-level authorities not only have the right, but they must interfere in the sphere of lower-level authorities' power. At the same time, this intervention does not mean substitution, but a certain type of assistance that encourages and empowers the grassroots.

Thus, in accordance with the subsidiarity principle, the transfer of powers from lower-level authorities to higher-level authorities is permitted only to the extent that those powers themselves can be better fulfilled at higher levels. At the same time, the idea that these powers should be performed at a level, which is as close to the citizen as possible, remains unchanged.

Based on the analysis of the relevant articles of the European Charter of Local Self-Government, the principle of the subsidiarity can be studied in its legal and political meanings.

Thus, the legal significance of the subsidiarity characterizes this principle as a certain formula for the division of powers in legislative acts, according to which the lowest level of government receives such powers that the subsequent territorial level of government can't perform more effectively. This division of powers allows, on the one hand, bringing the decision-making process as close as possible to the citizen, on the other - this level must have the appropriate resources. At the same time, the priority of the grassroots level in the distribution of powers should prevent any attempts of territorial organization of power to centralize the power in the system.

The political significance of the subsidiarity principle lies in the fact that it is a kind of tool that should ensure the performance of powers as close as possible to the citizen. These powers are revoked from the state and are transferred only to those authorities that work under the control of elected representatives. Thus, the subsidiarity principle becomes a barrier to the excessive centralization of power by the state body and to the separation of power from the people.

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Chaos Theory: The Case of the COVID-19 Pandemic in Wuhan, China from the perspective of international relations

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Abstract

The objective of the article was to reveal the international imbalances caused by the COVID-19 pandemic through the coordinates of chaos theory. Methodologically it is a critical essay based on documentary observation. To understand the current state of world politics and the balance of power in international relations, it is appropriate to use chaos theory. At the beginning of the article, the origins of chaos theory are an interdisciplinary study, and its basic concepts are introduced. The value of using chaos theory and its great potential for analysis and applications in the study of international relations is shown in the example of the 2019-2020 events in Wuhan is the capital of Hubei Province in the People's Republic of China (PRC). associated with the onset of a COVID-19 viral infection that has spread around the world. At the end of the article, conclusions are drawn and the strengths and weaknesses of the use of chaos theory in dialectical relation to international relations are revealed, both as a field of study and at the same time as geopolitical reality.

Keywords: chaos theory; social change of complex systems; COVID-19 pandemic, criticality; self-organized criticality.

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Teoría del Caos: el Caso de la Pandemia COVID-19 En Wuhan, China desde la perspectiva de las relaciones internacionales

Resumen

El objetivo del artículo fue revelar los desequilibrios internacionales ocasionados por la pandemia de COVID-19 mediante las coordenadas de la teoría del caos. Metodológicamente se trata de un ensayo crítico con base a la observación documental. Para comprender el estado actual de la política mundial y el equilibrio de poder en las relaciones internacionales, es apropiado utilizar la teoría del caos. Al inicio del artículo se consideran los orígenes de la teoría del caos como un estudio interdisciplinario y se introducen sus conceptos básicos. El valor de utilizar la teoría del caos y su gran potencial de análisis y aplicaciones en el estudio de las relaciones internacionales se muestra en el ejemplo de los eventos de 2019-2020 en Wuhan es la capital de la provincia de Hubei en la República Popular China (PRC). asociado a la aparición de una infección viral COVID-19 que se ha extendido por todo el mundo. Al final del artículo, se hacen conclusiones y se revelan las fortalezas y debilidades del uso de la teoría del caos en relación dialéctica con las relaciones internacionales, tanto como campo de estudio y al mismo tiempo como realidad geopolítica.

Palabras clave: teoría del caos; cambio social de sistemas complejos; pandemia de COVID-19, criticidad; criticidad autoorganizada.

Introduction

In modern scientific theory and experience, interdisciplinary knowledge, methods, and research tools are gaining popularity. Researchers apply the concept of inter-disciplinarity in the narrow and broad meaning. In the narrow meaning, interdisciplinary studies are those, which integrate knowledge created within two different disciplines. In a broad sense, interdisciplinary studies include also multi-disciplinary studies – that is, those seeking to integrate knowledge developed within three or more disciplines. International studies as an interdisciplinary field of knowledge seeks integrating achievements of many disciplines. In this article the relevance of use of chaos theory and its interdisciplinary methods in International Relations are covered.

1. Methods

In this study chaos theory and self-organized criticality force were applied to the case of COVID-19. Periodic pandemics in China, including the coronavirus pandemic were figured out under the scope of chaos and epidemic theory. Critical-point in epidemics of COVID-19 in China. Stagnation and further recovery according to chaos theory were presented.

2. Origins of chaos theory

A breakthrough was achieved in 1977, dissipative structures were discovered by Ilya Prigogine. These structures are systems which have no condition of thermodynamic equilibrium, and get acquire the quality of complex, often chaotic structures. Their behavior contradicts the principles of classical mechanics and comply with the principles of the theory of relativity. The concept of nonequilibrium thermodynamics, as well as the idea of the concurrent coexistence of order and disorder (entropy in the language of thermodynamics) were introduced into the study (Prigogine and Stengers, 1986). Innovation of I. Prigogine's theory lies in recognizing the positive role of chaos in physics. The growth of disorder (entropy) in physical systems leads to the destruction of systems, nevertheless it gives prospects for their transformation with qualitatively new system requirements (Prigogine, 1977).

A factor (attractor) determines the choice in the system and acts as a reference point to indicate the way for further change. Such a choice occurs during the bifurcation point by the system. The number of possible ways of developing the system at such a point can be huge and limited only by the number of factors (Prigogine, 1977).

3. Chaos theory in research of International Relations

Such complex systems as international relations are subject to the principle of self-organizing criticality and they evolve to a critical stage at which a minor event triggers a chain reaction that can affect many elements of the system. A stable structure and stability are inside the most visible disorder and non-linear processes. Chaos theory describes the statistical trends of a large number of interacting objects and factors, based on the nonlinear behavior of the system (Prigogine, 1977).

International relations are also an example of a chaotic system. One of the key concepts of chaos theory, such as self-organizing criticality (SOC) is an effective tool for scientific analysis. In the field of national strategy, the use of chaos theory is not only appropriate, but also most effective. Understanding the nature of chaos and adapting the model in political

science can change the way we consider the interaction of actors – the interactive systems constantly bring themselves to a critical state through organization, as in nonlinear analysis – a small event can trigger a chain reaction that can lead to collapse (Shimada and Koyama, 2015).

Chaos theory examines the mechanism of unpredictable (random) phenomena in the so-called nonequilibrium systems, their evolution consists of alternating dynamic and chaotic stages. Chaos plays the most important role for such systems, since it is at the stage of chaos (more precisely, at the exit from it) that new valuable information appears.

Within the dynamic stages, the system can be calculated, and a reliable prediction can be made for it. On the contrary, in the chaotic stage, getting to the point of bifurcation, the state of the system changes extremely rapidly in leaps and bounds. In fact, this is an algorithm that determines the behavior of an object at a bifurcation point, which is a certain subset of the phase space of system states.

Each possible state of the system is a point in its phase space (the space of possibilities of the system). And the trajectory of the system in this space shows the dynamics of the transitions of the system from one state to another. A transformation in the state of the system, initiated at the bifurcation point, can turn out to be unpredictable. In decision-making practice, the situation when it is necessary to make decisions at bifurcation points is called Radical Uncertainty (RU).

4. Chaos theory and self-organized criticality force on the example of COVID-19

The good example how dependent from changes occurred in one place is the COVID-19 pandemic. At the end of 2019, Wuhan became the location for the severe coronavirus that in several months spread to the entire world. By the most common version the virus originated in Wuhan's downtown seafood market.

World Health Organization (WHO) started tracing the growth of COVID-19 cases from the very beginning, organizing global data exchange between states. By the end of January 2020, 20 countries and territories had reported cases of COVID-19. The number grew rapidly to 202 by the end of March. Altogether, there are 3 059 642 cases of infection and 211 028 deaths reported. COVID-19 has spread to all continents except Antarctica, and less than 30 countries, territories and areas have reported no COVID-19 cases (most of them are situated in the Pacific islands) (Committee for the Coordination of Statistical Activities, 2020).

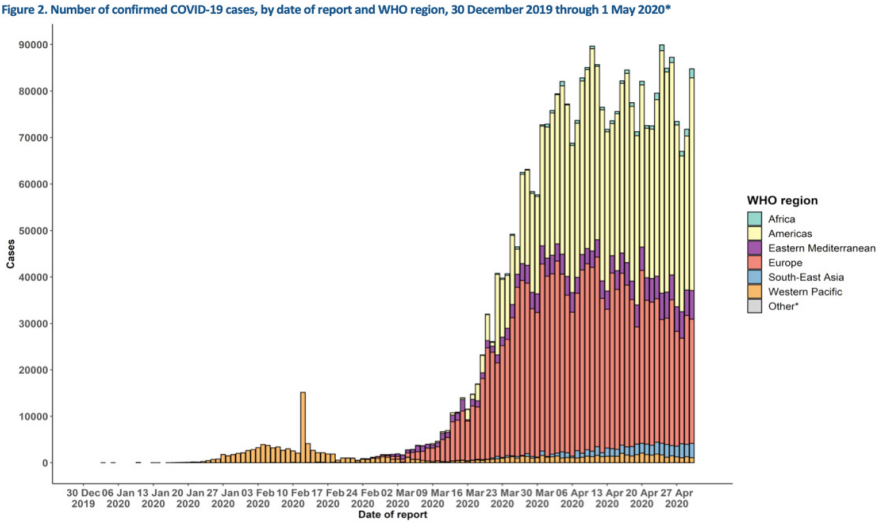

Figure 1: Number of confirmed COVID-19 cases, by date of report and WHO region, 30 December 2019 through 1 May 2020.

Source: World Health Organization (2020a).

For the first two months of 2020, China showed a sharp reduction of output, which can be explained by the celebrations of the Chinese New Year at the end of January 2020 as well as the beginning of the lockdown of Wuhan and other regions to contain the virus at the same time (Third World Network, 2020). It remains to be seen; how fast China will catch up the losses made during the first quarter of 2020.

On January 23, 2020, Wuhan went into strict lockdown in order to stop the spread of the virus. In early February, the outbreak in Wuhan hit its breaking point (Yuan *et al.,* 2020).

The spread of the novel virus is not dictated by the geographical distance from Wuhan in China – as the outbreak in northern Italy shows. The routes of airplanes and cruise ships appear to influence the dissemination of the virus in the early phase. Entangled webs, not concentric circles, are a more appropriate representation of the propagation of the supply shocks in the case of COVID-19 (Baldwin and Weder Di Mauro, 2020).

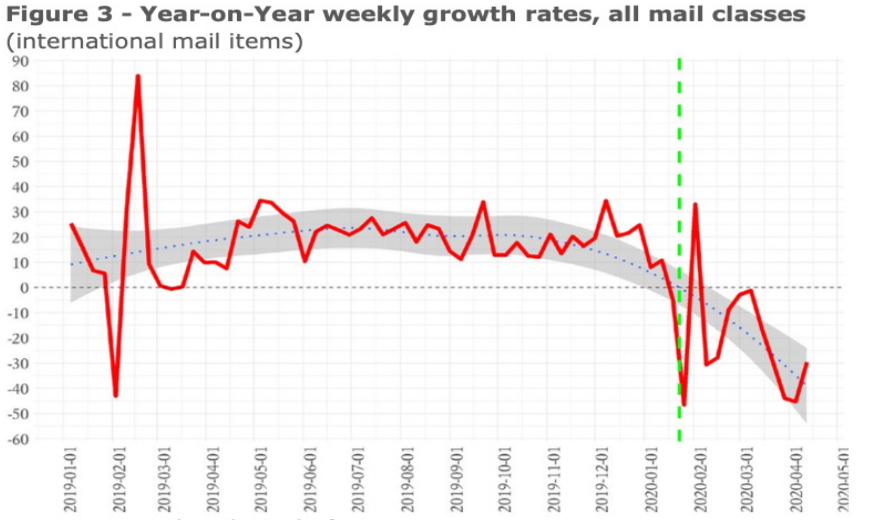

Figure 2: Year-on-year weekly growth rates, all mail classes (international mail items).

Source: Baldwin and Weder Di Mauro (2020).

The dotted line displays the tendency. The dashed vertical line indicates the lockdown of Wuhan international airport. The red line depicts annual growth rates. The spikes in 2019 correspond to seasonal holidays.

The epidemic, began in one of the Chinese provinces, in the short term has caused global disruption in social and economic systems. Under the worst-case scenario, it is estimated that because of COVID-19 by 1 March 2020, the total number of people confirmed with COVID-19 in China had reached 80 174 and a total of 2 915 people had died of the disease, in the world grand total of confirmed with COVID-19 – 7 169; 104 people died (World Health Organization, 2020b).

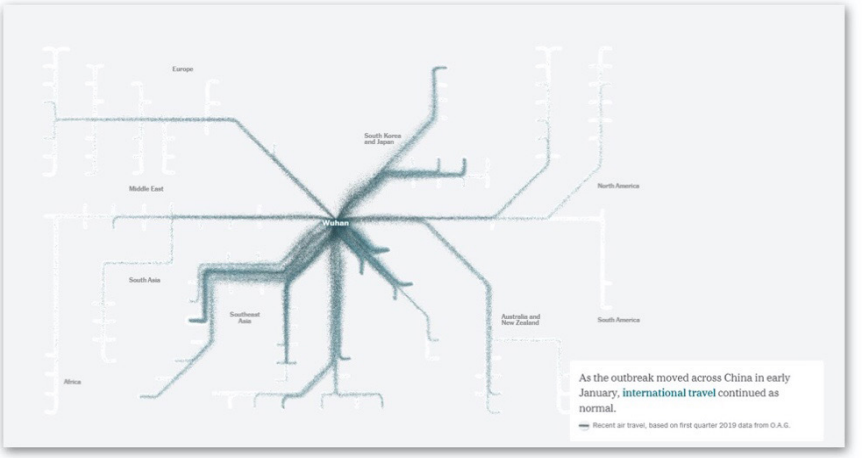

Figure 3: How the Virus Got Out (Wu et al., 2020)

Situation by Country, Territory & Area

Name	Cases - cumulative total	Cases - newly reported in last 24 hours	Deaths - cumulative total	Deaths - newly reported in last 24 hours	Transmission Classification
Global	32 110 656	303 005	980 031	6 316	
China	90 933	15	4 745	0	Clusters of cases

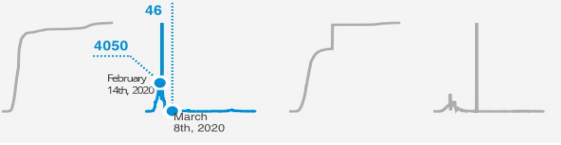

Figure 4: Situation by Country, Territory & Area.
Source: World Health Organisation (2020b).

Millions of people have faced extreme poverty. Sporting, religious, political, and cultural events were delayed or cancelled. It also affected education process because schools, universities, and colleges have been closed. It is obvious that the coronavirus pandemic started in Wuhan affected all social shears across scales from global to national and subnational levels.

The main actors, in the traditional sense, have a decisive influence on the course of events in international relations. Chaos theory and self-

organized criticality force us to reconsider this statement. Both concepts show the disproportionate effects that small actors can provoke. On this basis, every actor, be it governments, organizations, or individuals in political critical systems, produces an active force that provokes a change in the original position and creates a critical state (Byeon, 2000). And the case with coronavirus in Wuhan illustrated that clearly.

5. Chaos and epidemic theory. Periodic pandemics in China

International relations are an aperiodic system. The number of people rises and falls almost regularly, epidemics begin and continue, contrary to human hopes, also in a certain order.

Nevertheless, epidemiologists are well aware that massive outbreaks of diseases appear, as a rule, with a certain cyclicality - regularly or irregularly, go on the offensive and retreat periodically.

The outbreak of the novel coronavirus (COVID-19) in Wuhan shows some interesting parallels to pandemics close to our days with similar symptoms, which also began in China. In February 1957, the world was shocked by the 1957–1958 influenza pandemic, also known as the Asian flu, the starting point of which was the Chinese province of Guizhou. It should be noted that those infected died from the disease within a few days. At first, the symptoms typical of the flu appeared: headache and muscle pain, cough, and fever. And then pneumonia, which arises as a complication, led to death (Viboud *et al.,* 2016).

Later, scientists found out that the "Asian flu" was caused by a new subtype of the virus A (H2N2), originating from strains of avian and human influenza viruses.

During the development of the pandemic, namely from 1957 to 1958, as a result of infection, according to WHO, 1.1 million people died - according to unconfirmed information (Viboud *et al.*, 2016).

By 1957, the disease had stopped spreading, but a decade later, the virus mutated and returned, leading to a new pandemic that did not leave the world from 1968 to 1969. This disease was called the "Hong Kong flu" - its causative agent was, again, a previously unknown subtype of the A (H3N2) virus (Jester *et al.*, 2020). It began in Hong Kong - while initially he only walked by sea, infecting the crews and passengers of ships. And since this is a large port city, it spread rapidly further. Air travel by an estimated 160 million persons during the pandemic facilitated rapid transmission worldwide (Grais *et al.,* 2020).

Since their emergence, influenza A(H3N2) viruses have caused substantial cumulative morbidity and mortality worldwide during seasonal

influenza epidemics, greatly exceeding their impact in the first years of the pandemic beginning in 1968 (Grais *et al.,* 2020).

"Asian" and "Hong Kong" flu disappeared together in 1969, but then they were not defeated by humans, as scientists believe, the viruses themselves died out. Infections caused by the virus have not returned for more than 30 years, so in 2002, no one expected to hear about the Severe acute respiratory syndrome (SARS) coronavirus, which later became the causative agent of a disease called severe acute respiratory syndrome. The first case of severe acute respiratory syndrome was reported in November 2002 in Guangdong, China. SARS was the first known major pandemic caused by a coronavirus. During the epidemic in 2003, 8 096 cases with 774 deaths had occurred in over 30 countries among five continents (Cheng *et al.*, 2007).

6. Critical-point in epidemics of COVID-19 in China. Stagnation and further recovery according to chaos theory

The radical turning point in the COVID-19 epidemic in China can be roughly designated March when Wuhan is at the epicenter of the spread of a new type of coronavirus. It is possible to identify several main reasons why this particular point was chosen and the prerequisites for the fact that the epidemic in the PRC will soon come to naught.

On the one hand, it is significant that by March the last of the 14 mobile hospitals for patients with COVID-19 had been closed. The last one was the Fangcang makeshift hospital converted from the Wuhan Sports Center, in Wuhan, Central China's Hubei Province. The hospital has shown excellent results: it has admitted that 1 124 patients recovered, none of the doctors became infected (including 833 discharged and 291 transferred) (Wei, Keyue, 2020).

The need for mobile clinics has disappeared, since even in Wuhan, the incidence rate has dropped tenfold. If at the height of the epidemic, about 4 000 cases of the disease were recorded daily in China, then on the worst days, February 14 – 4 050, then as of March 8 – only 46, 17 of them in Wuhan. Thus, a downward trend in the incidence rate across the country was clearly demonstrated, and even in the very epicenter of the epidemic (WHO Coronavirus Disease (COVID-19) Dashboard, 2020) (World Health Organization (2020c).

On the other hand, economic activity in the PRC against the backdrop of the coronavirus pneumonia epidemic has been demonstrated. On March 13, the China Ministry of Industry and Information Technology claimed state-owned enterprises and large industrial companies had resumed work at about a 90 percent rate, while small- and medium-sized

enterprises (SMEs) outside of Hubei Province had resumed work at a 60 percent rate. However, a half of 119 companies surveyed by AmCham China reported revenue declines of 10 percent or higher on March 25 (US. -China Economic and security review commission, 2020).

Official data released as of mid-March show a severe decline in output. Industrial output dropped 13.5 percent in January and February of 2020—the largest contraction on record (US. -China Economic and security review commission, 2020). The manufacturing Purchasing Managers' Index (PMI) dropped to an historic low of 35.7 in February, lower than the 38.8 level recorded during the 2008 Financial Crisis. Though it rose to 52.0 in March, China's National Bureau of Statistics cautioned this expansionary figure "more reflects that more than half of the surveyed enterprises had returned to work and production," an improvement over last month, and "did not mean that China's economic operation had returned to normal", but still trends are relatively good.

The COVID-19 had the prospective to shut down the worldwide 'official statistics' industry as national statistical systems faced large disruptions in their business operations. Rather than shutting down – the national statistical system faced the challenges head on – and through innovation, resiliency and international cooperation were able to ensure the continued steady flow of official statistics to its citizens at a time when they needed it the most.

Modern scientific theory of decision making is based mainly on the classical paradigm of rationality. It searches for optimal solutions in the context of known results and their probabilities. However, this paradigm is powerless in the case of radical uncertainty.

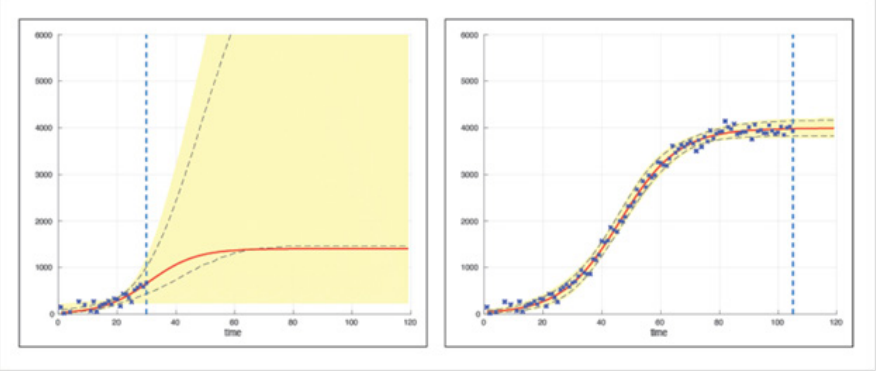

Figure 5: source: (Tuckett *et al.*, 2020).

Left picture. The blue dotted line at time 30 for a limited amount of available data on the situation (blue crosses) calculated the optimal statistical match; red line - process model; the cone of possibilities (colored yellow), due to certain clearly formulated assumptions, turns out to be huge.

Right picture. The same thing, but at the moment of time 105. The huge cone of possibilities has radically decreased, turning into a narrow strip.

Thus, decision makers cannot make the right decision, since such a decision simply does not exist at this point in time. Furthermore, all data are not available, their use to accurately understand what is happening and how the pandemic is developing is unreliable.

7. What did you state chaos theory and what recommendations can be given to decision-makers based on Radical Uncertainty?

In situations like the COVID-19 pandemic, guidance for decision-makers is extremely limited. It is also necessary during the development of the situation not to fall into the area of the bifurcation point, when the decision-making paradigm should be changed.

The first provision is discussed in detail in Post-normal Pandemics: Why Covid-19 requires a New Approach to Science, where, using the example of the COVID-19 pandemic, the futility of attempts to make informed and accurate decisions from the standpoint of the rational paradigm of science is shown.

By March, China had a clear and well-functioning health emergency response system that has made the fight against the virus unprecedentedly effective. The fight against coronavirus allowed to test the effectiveness of the public administration reforms implemented by Xi Jinping. It embraced the entire society of China, starting from the lower levels of self-government, which made it possible to organize effective control over the situation.

When spring 2020 began the situation was getting more optimistic, because help started pouring in from all over the world. The epidemic mechanisms worked out on the example of China can be used in the future in the context of global instability. It became clear: helping Wuhan is helping the World. Thousands of medical workers and countless volunteers arrived from across the country. Japan donated truckloads of food and medicine (Gilead Sciences, 2020). For the seriously ill, American drug remdesivir offered new hope, given by Gilead Sciences, a pharmaceutical company, contributing antiviral expertise and resources to help patients and communities fighting COVID-19 (Biggeri *et al.*, 2020). But unfraternally, remdesivir did not live up to expectations. In the spring of 2020, several clinical trials of remdesivir began in different countries (Norrie, 2020). One

study, which began in China on evidence-based medicine standards, was interrupted early because, according to the authors, they could not recruit the required number of patients. This study, even incomplete, showed no significant therapeutic effect for remdesivir therapy, however, the smaller planned number of patients and early completion of the study did not provide confidence in the result (Wang *et al.*, 2020).

The World Health Organization announced on February 5 a $675 million response plan through April 2020 to further control the virus' spread and to protect states with weak health systems (Albert, 2020).

When the coronavirus has already spread all around Russia produced a vaccine for widespread use against the novel coronavirus. The Ministry of health of the Russian Federation on 11 August issued a registration certificate for a vaccine for the prevention of novel coronavirus infection COVID-19 developed by the National research centre of epidemiology and Microbiology named after academician N. F. Gamalei, Russian Ministry of Health (Logunov *et al.*, 2020).

What happens if you get vaccinated against COVID-19 based on chaos theory? Robert May, one of the founders of chaos theory, was the first to realize that oscillations could be reproduced by a nonlinear model and became interested in what would happen if the system received a sudden impulse - a hindrance, such as mass vaccination. It would seem that the process should smoothly change in the desired direction. In fact, as May discovered, there would be some very tangible fluctuations. Even if the long-term trend is harshly canceled out, the path to new equilibrium will be interrupted by astounding upswings (Gleick, 1987).

Conclusion

All these examples demonstrate that the coronavirus pandemic revealed a high degree of connectivity of humanity, activated small segments of the audience and gave dynamism to the flows in the political system. Physical distancing has robbed us of the many opportunities that arise from in-person interactions, which are crucial during times of uncertainty.

Chaos theory brought new concepts like considered in sufficient detail self-organized criticality (Ermolina *et al.*, 2020). They allow the researcher to develop new aspects of social and political science. It allows to understand that it is expedient to provide not so much a rigid order and stability as a soft, not catastrophic shift in the system. In other words, the concept of chaos theory can be used to improve the regulation of the system in international relations.

COVID-19 and the related economic turmoil has been a reminder that we cannot plan everything. Nonetheless, challenging times often depend on

when we stop the story. For example, if a job falls through, we need to take the long view (Bondarenko *et al.*, 2020). We should attempt to reframe the situation as an opportunity for growth, for reflection, for change, and for developing resiliency.

Because the space between stimulus and response is where our growth and serendipity lie – in the long run.

Chaos theory also brings additional methods, based on quantitative approach, which gives space for analysis of the political systems' dynamic by graphic-based tools. They originate in the phase space of a dynamic system – the attractors and the fractals. The analysis can give practical accompaniments to the traditional scientific methods. More globally, the innovative aspects of the chaotic perspective show a promising scientific potential for analyzing and describing the time-based evolution of public policies and political institutions, actors, and processes.

Despite the fact, that the use of chaos theory has some advantages, but it also has some weak points, which should be admitted. Chaos theory is not very suitable for long-term forecasts; the complexity increases with the number of actors in the system. Nevertheless, the issue of the methodology for the long-term development of international relations is one of the eternal questions of political science.

The question remains open: whether it is possible to predict the development of macro-social systems, a variety of which is the system of international relations.

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Assessment of Business Infrastructure in 2018

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Abstract

The aim of the research is to assess development of entrepreneurship infrastructure of various countries according to opinions of experts from these countries. The elements were: knowledge and technology transfer infrastructure; commercial and professional infrastructure; production and information infrastructure; market infrastructure; institutions providing easy access to existing markets; social and cultural infrastructure. The research is based on methods of economic analysis, analogies, generalizations, classification, system and structural approaches. Information from the Global entrepreneurship monitoring project report for 54 countries was used as input data. The estimation of the distribution of indicator values on the effectiveness of the six main infrastructure elements of business development reflecting the opinions of experts from these countries with the use of mathematic models of normal distribution. During the study we determined the average indicator values characterizing experts ' opinions on the effectiveness of each of the six key infrastructure elements of business development on a scale of ten; the intervals of their changes characteristic for the majority of countries were also considered. New knowledge about the effectiveness of infrastructure elements of business development in various countries has been obtained.

Keywords: enterprise infrastructure; economic policy; entrepreneurship; small and medium-sized enterprises; global monitoring of entrepreneurship.

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Evaluación de Infraestructura Empresarial en 2018

Resumen

El objetivo de la investigación es evaluar el desarrollo de la infraestructura empresarial de varios países de acuerdo con las opiniones de expertos internacionales. Los elementos en consideración fueron: infraestructura de transferencia de conocimiento y tecnología; infraestructura comercial y profesional; infraestructura de producción e información; infraestructura de mercado; instituciones que faciliten el acceso a los mercados existentes; infraestructura social y cultural. La investigación se basa en métodos de análisis económico, analogías, generalizaciones, clasificación, enfoques sistémicos y estructurales. Se utilizó como datos de entrada información del informe del proyecto de seguimiento de la iniciativa empresarial mundial para 54 países. La estimación de la distribución de los valores de los indicadores sobre la efectividad de los seis principales elementos de infraestructura del desarrollo empresarial reflejando las opiniones de los expertos de estos países con el uso de modelos matemáticos de distribución normal. Durante el estudio, determinamos los valores promedio de los indicadores que caracterizan las opiniones de los expertos sobre la efectividad de cada uno de los seis elementos clave de la infraestructura del desarrollo empresarial en una escala de diez; También se consideraron los intervalos de sus cambios característicos de la mayoría de países.

Palabras clave: infraestructura empresarial; política económica; emprendimiento; pequeñas y medianas empresas; monitoreo global del emprendimiento.

Introduction

The development of entrepreneurship is based in most countries on improving competitiveness (Pinkovetskaia *et al*., 2020), economic growth (De Carolis and Saparito, 2006; Kiseleva *et al*., 2019), reducing unemployment, evolving new markets, perfecting people life (Decker *et al*., 2014; Simon-Moya *et al*., 2016; Pinkovetskaia *et al*., 2019). Therefore, one of the most urgent problems solved at the state level in modern national economies is the formation of effective infrastructure elements that ensure the development of entrepreneurship. These infrastructure elements are a set of interconnected objects that serve business activities. These include organizations, enterprises, institutions, and other economic entities, structures, and economic and social systems. Most governments, especially those in developing countries, have made some effort and invested resources in these infrastructure elements of enterprise development. Business associations, universities and public organizations also play an essential function in this.

1. Literature review

The relevance of the problem of creating and functioning of various types of infrastructure elements in modern national economies is reflected in scientific publications. Business entities generate a great part to the economic sector of their countries through the commercialization of research and development. Therefore, one of the most essential items of business at present is the transfer of knowledge and technology. Researcher Sung (2002) in his work considered the features of the process of innovation transfer in modern conditions. He suggested that there are four stages of knowledge and technologies transfer: their creation, exchange, implementation in the context of specific enterprises, and commercialization of innovations. In the article of Gunsel (2015) using the example of 33 Turkish firms, the effectiveness of information exchange and transfer of advanced technologies in developing countries is considered. Dickerhof (2010) drew attention to the need for huge expenditures on the development of technologies and equipment in the field of microsystem technology. Therefore, the opening firms in this industry requires corporations to share their technologies and applied achievements along with their knowledge.

Due to the small number of their teams, entrepreneurs are forced to outsource a number of functions. This includes such functions as accounting and reporting, legal and information and consulting services. Professional consultants are needed not only to help start and manage new businesses, but also to connect entrepreneurs with experts and support systems. This conclusion follows from the article by sh. Robinson and Stubberud (2014) and a research document of the World Bank (InfoDev, 2010).

The work of Obokoh and Goldman (2016) emphasizes the need to provide reliable infrastructure as a key factor in business sphere of countries. This study, based on an analysis of the situation in Nigeria, shows that the lack of production infrastructure negatively affects the performance of entrepreneurs who have to bear high costs for self-sufficiency in electricity and road rehabilitation on their own. The role of advanced information technologies in the activities of enterprises, including small ones, is significant. This is shown in article of Gare and Melin (2011), which examines communication and data transmission systems available in various countries and used by entrepreneurs. Calderon and Serven (2004) conducted a practical assessment of the influence of industrial sector on increase for 100 countries in the period from 1960 to 2000.

The features of small and medium enterprises in rapidly expanding regional markets of South, East and South-East Asia are considered by Vandenberg *et al.* (2016). This monograph shows the effectiveness of free and open markets where no business entity has the right to set prices, were changes in demand cause changes in supply and vice versa. A study by Kemp *at al.* (2003) discovers that exists 37 limits that can avoid firms from

getting in the market, hindering the controversial process. Issues such as the size of barriers, their stability, and methods of measuring barriers are considered. The paper by Panayotis (2010) demonstrates that easy market entry increases supply, lowers prices, and intensifies innovation. This paper describes the 13 most important sources of regulatory barriers and assesses their role.

The results of research by Alvarez *et al.* (2011) and Gaganis *et al.* (2018) show that informal factors, namely norms in culture and social spheres, also the public image of businessmen have a significant impact on the development of entrepreneurship in the European Union.

2. Methodology

As a review of previous research shows, the main infrastructure elements that ensure the development of entrepreneurship in modern countries are:

- knowledge and technology transfer infrastructure.
- commercial and professional infrastructure.
- production and information infrastructure.
- market infrastructure.
- institutions that provide easy access to existing markets.
- social and cultural infrastructure.

The aim of our research was to assess the effectiveness of the main infrastructure elements of business development in various countries, according to experts from these countries. At the same time, the tasks of identifying countries with high and low levels of effectiveness of each of the main elements, as well as the medium indicators of the analyzed values and their intervals of change, typical for most of the countries under consideration, were solved.

Surveys of experts in various countries are devoted to studying the features of entrepreneurship in modern national economies, the results of which are combined in a General report on the Global entrepreneurship monitor project (2019). Our research based on the data of discussing report for 2018, reflecting the opinions of experts on the effectiveness of the main infrastructure elements of business development. For each country, the monitoring process identified the views of at least 36 highly qualified experts. Experts assessed the level of efficiency of the six infrastructure elements of entrepreneurship mentioned above on a ten-point scale. A value equal to 1 corresponded to a very low level of efficiency, while a value equal to 10 corresponded to a very high level. The average indicators for

experts living in each country are presented in table 11 of the above report on the Global enterprise monitoring project.

This report provides data for 54 countries. It contains the opinions of experts from 21 European countries, 14 Asian countries, 11 Latin American countries, 6 African countries and 2 North American countries. Mentioned countries are distributed by income level as follows: 32 states have high incomes, 14 countries have medium incomes, and 8 countries have low incomes.

In the course of our research, we considered indicators that characterize the opinions of experts on the effectiveness of each of the six infrastructure elements of business development in all 54 countries.

Three hypotheses (H) were checked in the process of our study:

- H1 - at the moment, there are great contrasts in the indicators that characterize the effectiveness of infrastructure elements of business development in the countries under consideration.
- H2 - stage in the income of population is not influence on maximum and minimum size of six indicators.
- H3 - territorial position of countries is not influence on maximum and minimum size of six indicators.

The checking of such hypothesis was made with mathematical modeling practical information on the base of density indicators of the countries (Pinkovetskaia, 2015). Elaborated models were consumed for establishment of parameters for approximating the practical data. During elaborating the mathematical models, we applied the practical information provided in table 11 of the Global enterprise monitoring.

3. Results

As indicated above, the assessment (on a ten-point scale) of the distribution of indicators that characterize expert opinions was based on the development of appropriate models that approximate the initial empirical data. The developed economic and mathematical models describing the patterns of regional distribution of performance indicators of the above six infrastructure elements of business development in 54 countries have the following form:

- knowledge and technology transfer infrastructure

$$y_1(x_1) = \frac{37.13}{0.96 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_1 - 4.39)^2}{2 \times 0.96 \times 0.96}}; \quad (1)$$

- for commercial and professional infrastructure

$$y_2(x_2) = \frac{27.77}{0.78 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_2 - 5.46)^2}{2 \times 0.78 \times 0.78}}; \quad (2)$$

- on production and information infrastructure

$$y_3(x_3) = \frac{46.29}{1.05 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_3 - 7.04)^2}{2 \times 1.05 \times 1.05}}; \quad (3)$$

- by market infrastructure

$$y_4(x_4) = \frac{42.43}{1.04 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_4 - 5.77)^2}{2 \times 1.04 \times 1.04}}; \quad (4)$$

- for institutions that provide easy access to existing markets

$$y_5(x_5) = \frac{32.38}{0.82 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_5 - 4.71)^2}{2 \times 0.82 \times 0.82}}; \quad (5)$$

- on social and cultural infrastructure

$$y_6(x_6) = \frac{50.14}{1.13 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_6 - 5.39)^2}{2 \times 1.13 \times 1.13}}. \quad (6)$$

Econometric analysis using Kolmogorov-Smirnov, Pearson, and Shapiro-Wilk checks demonstrated good quality level models (1)-(6).

4. Discussion

Applying the mathematical models (1)-(6), we achieved that were revealed indicator values that describes the opinions of experts on the effectiveness of implementation of each of the six areas of public policy in different countries (table). The medium values are in columns 2 and 3 of this table describes the intervals of change in the indicator values for most (68%) countries.

Infrastructure elements of business development	Medium values	Typical for most countries
1	2	3
1. Knowledge and technology transfer infrastructure	4.39	3.43-5.35
2. Commercial and professional infrastructure	5.46	4.68-6.24
3. Production and information infrastructure	7.04	5.99-8.,09
4. Market infrastructure	5.77	4.73-6,81
5. Institutions that provide easy access to existing markets	4.71	3.89-5.53
6. Social and cultural infrastructure	5.39	4.26-6.52

Table. Values of indicators that characterize the opinions of experts (on a ten-point scale)

Note: Achieved by the authors

According to the data from the table, experts from 54 countries considered that the highest level of development was characteristic of production and information infrastructure. The corresponding average value of the indicator on a ten-point scale exceeded 7. Average values from 5 to 6 units occurred in 2018 for such elements of the business infrastructure as market, commercial and professional infrastructure, as well as social and cultural infrastructure. The least developed elements in 2018 were, on average, institutions that provide easy access to existing markets, as well as knowledge and technology transfer infrastructure.

The average value of the indicator for knowledge and technology transfer infrastructure in 2018 was 4.39. The stage of this indicator more big than the upper limit of the interval (from 5.52 to 6.41) given in column 3 of the table was observed in such countries as Japan, Qatar, Taiwan,

Indonesia, Luxembourg, the Netherlands, Switzerland, and Iran. These countries are located in Asia (Qatar, Japan, Taiwan, Indonesia, and Iran) and Europe (Luxembourg, the Netherlands, and Switzerland). They showed high (Luxembourg, the Netherlands, Switzerland, Japan, Qatar, Taiwan), medium (Iran) and low (Indonesia) incomes. Here and further, data on household income in 2018 were taken based on the data provided in the report on the Global entrepreneurship monitoring. Values of this indicator that are lower than the lower limit of the interval occurred in Mozambique, Morocco, Egypt, Angola, Saudi Arabia, Russia, Sudan and Cyprus. These countries are located in Asia (Saudi Arabia), Africa (Mozambique, Morocco, Egypt, Angola, and Sudan) and Europe (Russia, Cyprus). They had high (Saudi Arabia, Cyprus), medium (Russia) and low (Mozambique, Morocco, Egypt, Angola, Sudan) incomes.

The medium value of the index for commercial and professional infrastructure in the countries under review was 5.46. Maximum level of the index (from 6.29 to 6.77) was in following countries Taiwan, Qatar, China, Greece, Indonesia, Iran, Switzerland, the United States, Austria, Canada, the Netherlands. These countries are located in Asia (Taiwan, Qatar, China, Indonesia, and Iran), North America (Canada, USA) and Europe (Greece, Switzerland, Austria, and the Netherlands). They had high (Taiwan, Qatar, Canada, USA, Greece, Switzerland, Austria, the Netherlands), medium (China, Iran) and low (Indonesia) incomes. Low values (from 4.62 to 3.89) were observed in Mozambique, Ireland, Cyprus, Saudi Arabia, Chile, Panama and Peru. These countries are located in Latin America (Chile, Panama, and Peru), Africa (Mozambique), Asia (Saudi Arabia) and Europe (Cyprus, Ireland). They had high (Ireland, Cyprus, Panama, Chile, Saudi Arabia), medium (Peru) and low (Mozambique) incomes.

The medium value of the index for the production and information infrastructure of entrepreneurship in 54 countries was 7.04. Values of this indicator above the upper limit of the range (from 8.09 to 9.03) were observed in such countries as Chile, Japan, Colombia, Austria, Germany, the Netherlands, Switzerland, and Taiwan. These countries are located in Asia (Taiwan, Japan) Latin America (Chile, Colombia) and Europe (Austria, Germany, the Netherlands, and Switzerland). These countries (except Colombia) had high incomes. In Colombia and Indonesia, the income of the population was at an average level. Values lower than the lower limit of the range (from 5.99 to 4.37) were found in Lebanon, Angola, Puerto Rico, Madagascar, Mozambique, Israel, Sudan, and Italy. These countries are located in Latin America (Puerto Rico), Europe (Italy), Asia (Lebanon, Israel), and Africa (Madagascar, Mozambique, Sudan, and Angola). They had high (Puerto Rico, Italy, Israel), medium (Lebanon), and low (Madagascar, Mozambique, Sudan, and Angola) incomes.

The medium value of the index describing the market infrastructure and the effectiveness of state programs for business development in the countries under review was 5.77 in 2018. Values of this indicator above the upper limit of the range (6.81) were observed in such countries as Turkey, Russia, Qatar, Indonesia, Iran, Colombia, Poland, Japan, South Korea, and Sudan. Six countries are located in Asia (Indonesia, Qatar, Turkey, Iran, Japan, and South Korea), two in Europe (Poland, Russia), one in Latin America (Colombia) and Africa (Sudan). There are countries characterized by high (Qatar, Japan, South Korea, Poland), medium (Turkey, values of the indicator less than the lower limit of the interval (from 4.73 to 4.14). Low indicators occurred in such countries as Uruguay, Luxembourg, India, Panama, Croatia, Canada, Israel, and Peru. They are located in Europe (Croatia, Luxembourg), Asia (India, Israel), North and Latin America (Canada, Uruguay, Peru, Canada, Uruguay, and Panama). These countries had high (Croatia, Luxembourg, Canada, Panama, Israel) and medium (Uruguay, Peru,) and low (India) incomes.

The medium value for the countries under review for institutions that provide easy access to existing markets was 4.71. The highest values of the indicator (from 5.60 to 6.67) took place in 2018 in such countries as Israel, Greece, Luxembourg, Indonesia, Iran, the Netherlands, Qatar, Austria, Taiwan. These countries are located in Asia (Taiwan, Israel, Indonesia, Iran, Qatar) and Europe (Greece, Luxembourg, the Netherlands, Austria). They had high (Taiwan, Israel, Qatar, the Netherlands, Greece, Luxembourg, the Netherlands, Austria) and average (Iran) incomes. Values lower than the lower limits of the range (from 3.73 to 3.30) were observed in seven countries: Mozambique, Morocco, Cyprus, Madagascar, Russia, Sudan and Panama. They are located in Latin America (Panama), Africa (Mozambique, Morocco, Madagascar, and Sudan) and Europe (Russia, Cyprus). They had high (Panama, Cyprus), medium (Russia) and low (Mozambique, Morocco, Madagascar, Sudan) incomes.

The average value of the social and cultural infrastructure indicator for 54 countries was 5.30. Values above the upper limit of the interval (from 6, 69 to 8.08) was noted in countries such as Colombia, UAE, Netherlands, Iran, Qatar, Lebanon, China, USA. These countries are located in Asia (UAE, Iran, Lebanon, Qatar, and China), North and Latin America (USA, Colombia) and Europe (Netherlands). They had high (USA, Netherlands, Qatar, UAE), average (Iran, Lebanon, Colombia, China) incomes of the population. Values lower than the lower limit of the interval (from 4.21 to 3.05) were found in Mozambique, Slovakia, Cyprus, Brazil, Bulgaria, Uruguay, Italy, Japan, Slovenia and Madagascar. These countries are located in Europe (Bulgaria, Italy, Slovakia, Slovenia, and Cyprus), Asia (Japan), Latin America (Brazil, Uruguay) and Africa (Mozambique, Madagascar). They had high (Italy, Slovakia, Slovenia, Cyprus, Japan), medium (Brazil, Uruguay, Bulgaria) and low (Mozambique, Madagascar) incomes.

Information demonstrated in column three of the table indicated considerable contrast of the level six indexes by country. That is why hypothesis 1 was affirmed. The analyzing of the roster of countries with maximum and minimum level for the six indexes demonstrates that relationship between territorial position and incomes of population in the countries does not confirmed. So we can make outcome on confirming hypotheses two and three.

Conclusion

The research has achieved its goal. Novelty and originality of our study include:

- the medium level index and their intervals of change describing the ten-point scale of experts' opinions on the effectiveness of business development infrastructure were determined for most countries.
- the countries with maximum and minimum values for six indexes were calculated.
- it is demonstrated that the highest medium value for countries is marked by an indicator that, according to experts, characterizes the efficiency of production and information infrastructure.
- it is proved that the lowest medium value for countries is typical for such an indicator as the efficiency of knowledge and technology transfer infrastructure.
- it is shown that the values of each of the six indicators under consideration are significantly differentiated across 54 countries.
- relationship between maximum and minimum indexes values and territorial position and incomes of population in the countries did not confirmed.

The calculated mathematical models can be consumed in following research. The revealed new information can be applied in the pedagogical work of universities. Results of research are of interest for the state management in the formation and realization of development of the entrepreneurship.

Further research may be related to the study of the effectiveness of the implementation of six elements of the enterprise development infrastructure according to the Global entrepreneurship monitoring project in the following years.

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Principles of Proper Procedure Formation for the Provision of Administrative Services in the Field of Health Care

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Abstract

The article bases and determines the principles of the formation of appropriate procedures for the provision of administrative services in the field of health care. The deductive methodology used ensures the formation of non-conflict statements on the principles built on European democratic values. The desirability of classifying these principles into three groups has been demonstrated according to the criterion of the limits of the formation of the fundamentals (principles) of regulation: general legal principles, regulatory principles of good governance. Improving existing legislation underpins the importance of taking into account the principle of legal certainty, which stipulates the need to avoid the priority of regulating procedures for the provision of administrative services in general and in the field of health, in particular through the use of statutes. It is concluded that the further development of e-government is proposed as one of the implementing directions of the European experience, as well as the experience of the United States and Great Britain in organizing the provision of administrative services in the field of health care.

Keywords: administrative law; health care; e-government; experience European; principles.

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Principios de la formación de procedimientos adecuados para la prestación de servicios administrativos en el campo de la atención de la salud

Resumen

El artículo fundamenta y determina los principios de la formación de procedimientos adecuados para la prestación de servicios administrativos en el campo de la atención de la salud. La metodología deductiva utilizada asegura la formación de enunciados no conflictivos sobre los principios construidos sobre valores democráticos europeos. La conveniencia de clasificar estos principios en tres grupos se ha demostrado de acuerdo con el criterio de los límites de la formación de los fundamentos (principios) de la regulación: principios generales legales, normativos de buen gobierno. Para mejorar la legislación vigente se fundamenta la importancia de tener en cuenta el principio de seguridad jurídica, que estipula la necesidad de evitar la prioridad de regulación de los procedimientos para la prestación de servicios administrativos en general y en el ámbito de la salud, esto en particular mediante el uso de estatutos. Se concluye que el mayor desarrollo del gobierno electrónico se propone como una de las direcciones de implementación de la experiencia europea, así como la experiencia de los Estados Unidos y Gran Bretaña para organizar la prestación de servicios administrativos en el campo de la atención médica.

Palabras clave: derecho administrativo; sanidad; gobierno electrónico; experiencia Europea; principios.

Introduction

The necessity to study the problem of substantiating the principles of the proper procedure for providing administrative services in the field of health care is determined by the factors of theoretical, normative and practical content. From the theoretical perspective of the formation of a single, non-conflictual approach in the context of different scientific schools, there was the necessity to create a model of the proper administrative procedure. This model is a sort of a "marker" assisting to analyze the existing administrative procedures in the field of health care involving the authority bodies, the main of which is the Ministry of Health of Ukraine. The analysis has to determine first of all, the extent and degree of observance of citizens' rights and freedom, legal entities' rights and legitimate interests, as well as the effectiveness in solving the tasks by authority bodies (Allalyev, 2019).

From the normative point of view, the necessity to establish the principles of proper procedures for providing administrative services in the field of health care is due to the existence of a significant number of

changes to the current legislation, which are mostly situational in nature. Under such circumstances, the principles of the proper procedure serve as a theoretical and legal, methodological basis for the construction of a regulatory model for the provision of administrative services with its subsequent implementation into current legislation. The practical factor affecting the existence of the identified problem lies in the necessity of creation of all administrative procedures in the field of health care involving the authority bodies on the unified, normatively established principles, based on the developed model of the principles of the proper procedure for providing administrative services (Avtonomova *et al.,* 2019).

The fifth paragraph of the preamble of the Constitution of Ukraine (1996) sets the irreversibility of the European and Euro-Atlantic course of Ukraine, which determines the need to apply European experience in the provision of administrative services in the field of health care and outlines the ways of its implementation in Ukraine. The relevance of the abovementioned points follows from the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, which was signed between Ukraine and the EU (Ratified with the statement by Law of Ukraine, 2014) No. 1678-VII) (hereinafter referred to as the Agreement), in which Article 2 states that the main elements of the Agreement are respect for democratic principles, human rights and fundamental freedoms, as well as respect for the rule of law principle (Law of Ukraine, 2014).

In addition, it is important to apply the methodological approach to the selection of the principles under consideration, which should be based on the perception of the administrative procedure as a definitive system with a completed character, with a definite interaction of its constituents. The expediency of substantiating the principles of the proper procedure for the provision of administrative services in the field of health care is based on a methodological basis, including the statements of Parts 1, 2 of Article 104 of the Agreement, which indicates the condition of licensing – its compliance with the criteria that eliminate the possibility of application the competent authorities of discretionary powers (Association agreement between the European Union and Ukraine, 2014). This condition is applied to health issues (Part 6 of Article 104 of the Agreement (Law of Ukraine, 2014).

The methodological approach to determining the principles of proper procedures for the provision of administrative services in the field of health care involves conducting a study using the methodology, from the general to the specific approach, which ensures the formation of non-conflictual statements about the principles built on democratic European values (Gordadze *et al.,* 2018).

The selection of the principles of the proper procedure for providing administrative services in the healthcare sector is based on the

systematization of scientific approaches regarding the essence of the administrative procedure. Thus, scientists consider the administrative procedure as the administrative and procedural form of positive administrative activity (Mykolenko, 2010); the statutory sequence of purposeful and consecutive actions for the consideration and resolution of administrative affairs (Lagoda, 2007); a purposeful activity of administrative bodies regarding the provision of administrative services, the adoption of administrative acts, the conclusion of agreements (Lagoda, 2007; Shemshuchenko *et al.,* 2010); a part of the process as an independent integral entity (Kuzmenko, 2004).

To solve the problem of developing the principles of the proper procedure for administrative services provision in the healthcare sector, a non-conflictual approach is required among researchers: the approach which considers the purposeful, consistent nature of the administrative procedure. In addition, the selection of the principles of the proper procedure should be based on the scientific investigations devoted to the principles of law. However, there is no consensus of scientific opinion about the list of principles of law and principles of administrative law, as well as there are different opinions in defining the principles of proper administrative procedure in its general meaning and taking into account the subject of scientific analysis (Guliyev *et al.,* 2018; Guliyev *et al.,* 2017).

The aforementioned points allow taking into account the achievements of other scholars, but at the same time, they require drawing independent conclusions about determining the principles of the proper procedure for the provision of administrative services in the healthcare sector. The purpose of the study is to substantiate and determine the principles of proper procedure formation for providing administrative services in the field of health care.

1. Analysis of general legal principles of administrative services in the healthcare

Researchers fairly emphasize such concept as legal awareness among the sources of modern understanding of the principles of the law. They indicate the connection between certain legal ideas, the notions in the consciousness of the members of society and regularities of formation of the appropriate society, which, in turn, get legal consolidation. Under such circumstances, the principles of law appear to be certain legal ideas, notions about the regularities of development of the particular society at a certain stage of social development and are fixed in the consciousness of the members of this society. Thus, it is possible to specify the spontaneity of the transformation of the principles of legal awareness into the principles of law.

In this aspect I.P. Bakhnovska (2011) points out that the principles of law contribute to the creation of the impression of legal imperatives, respect for the law, and are the condition for their recognition by the majority of society, as well as the recognition of the authority of legal regulation.

The investigation into the modern scientific works defining the principles of law has shown the absence of a unified sense of this category. In spite of the unity of the idea of understanding the essence of the principles as certain ideas fixed in the norms of positive law, it is possible to trace the ambiguity of scientific positions about such defining characteristics of the principles of law as their features, sphere of action, the way of influence on the regulation of social relations, etc. This complicates the formulation of the theoretical basis for further study of the principles of law, including the sphere under investigation.

However, the understanding of the principle of law in the juridical sciences, in the field of administrative law, is relatively stable. Today, the category of principle in administrative law is widely investigated. Scientific investigations in the indicated field, as a rule, follow the general approach to understanding the principle of a fundamental, constitutional, increasing rule that characterizes the content of the administrative law, reflects the regularities of development of the field and defines the directions and mechanisms of administrative and legal regulation of social relations (Averyanov, 2007).

Another starting point for this study is the notion of the proper procedure for administrative service provision. The state of scientific development of this concept, in particular about the medical sector, cannot be considered complete today. It is possible to point out the investigations into the administrative procedures in general without proper consideration of the peculiarities of specific areas they are applied, or the provision of administrative services in certain areas of public life or by certain entities: the provision of these services by local government (Dembitska, 2010), public order police (Legeza, 2011), administrative services in the public finance management (Obolensky and Gorbatyuk, 2013) and others where the particular problems of administrative procedures for their provision are analyzed. Among the PhD theses devoted to the general issues of the procedures for providing administrative services, O.K. Turkova's study (2013) is worth mentioning.

The topicality of the problem of selecting the principles of the proper procedure for providing administrative services in the health care is also caused by the inconsistency of the legislative norms on the determination of the principles of activity of public authorities for providing administrative services. According to Article 4 of the Law of Ukraine (2013) "On Administrative Services", the rule of law together with the legality and legal certainty take the first place among the principles of state policy

on the provision of administrative services. Such principles also include stability, equality before the law, openness and transparency, efficiency and timeliness, availability of information and at the same time personal data security, optimal document flow, justice, and accessibility (Law of Ukraine, 2013).

Recognizing the approving definition of the rule of law in this area at the legislative level, one can point out at the same time the progressiveness of the approach to indicating the principles of legality and legal certainty precisely in the interconnection (Sopilko *et al.,* 2019). Thus, the requirement of part 2 of Article 19 of the Constitution of Ukraine (1996) regarding the obligation of the subject of public authority to act exclusively within the limits defined by law can be properly carried out only in the light of the requirements of legal certainty, which provide clarity, predictability in the performance of their activities, applying the specified regulatory provisions.

In other words, the requirement of legal certainty complements the principle of legality regarding the activities of an entity of public authority. Such a legislative approach fully considers the specifics of the provision of administrative services as such, which creates conditions for the realization of individual rights and freedoms. On the other hand, it is possible to point out that the sequence of the legislator in defining these principles in the Law of Ukraine "About administrative services" was not fully preserved when building industry legislation defining features of the provision of administrative services in certain cases.

Thus, within the framework of elaboration of the principles of the administrative services provision in the field of health care, it is appropriate to take into account specific principles to which it is necessary to include those, which are defined in the Law of Ukraine (2005) "About authorization system in the field of economic activity" No. 2806-IV and the Law of Ukraine (2015) "About licensing of types of economic activity" No. 222-VIII. Taking into account the fact that both laws concern the grounds, limits and procedures for the activities of authorized entities in the same field – the field of economic activity.

In Art. 3 of the Law of Ukraine "About authorization system in the field of economic activity" the following principles of the state policy on the authorization system in the field of economic activity are specified:

1) Protection of subjective rights, the legitimate interests of society, territorial communities, individuals, the lives of individuals, environmental protection, state security.
2) The development of competition;
3) the transparency of the procedure for authorization issuing.
4) Compliance with the requirements regarding equality of rights of economic entities when authorization issuing.

5) The responsibility of service and officials of authorization authorities, of administrators and economic entities in connection with violations of the requirements of the law for authorization issuing.

6) Reducing the degree of state regulation of economic activity;

7) the definition of unified requirements regarding the procedure for authorization issuing (Law of Ukraine, 2005).

Article 3 of the Law of Ukraine "About licensing of types of economic activity" identifies the following principles of state policy on licensing:

1) Unified state licensing system.

2) Territoriality.

3) Legality.

4) The priority of protecting the rights, legitimate interests, human life and health, the natural environment, protecting the limited resources of the state and ensuring the security of the state.

5) Equality of rights of business entities.

6) Openness of the licensing process (Law of Ukraine, 2015).

By comparing the list of principles cited in these laws, it can be stated that they regulate activities of a similar nature. Under such circumstances, the norms of the Law of Ukraine "About administrative services" should be determined general with respect to the norms of the Law of Ukraine "About authorization system in the field of economic activity" and the Law of Ukraine "About licensing of types of economic activity". However, theses on this ratio have not found a sufficient level of scientific analysis in the pages of scientific literature yet. Proceeding from the above, as a basic concept for further research, principles in law can be defined as certain initial principles, ideas according to which a certain system should be built. This meaning can be considered decisive in relation to the further study of the principles of proper procedure for the provision of administrative services in the field of health care.

2. Features of the concept of public administration

The next level of scientific synthesis is the theoretical position on the definition of the system of principles of administrative services provision in the field of health care. Among the scientific works devoted to the problems of determining the principles of activity of power entities, we can distinguish the work of Koliushko and Tymoshchuk (2006), which highlight the principles of activity of public administration entities:

1) The rule of law, which is the priority of rights and freedoms of a person and a citizen, the basis of humanism and justice in the functioning of individual of public authority.
2) The legality, which is the functioning of the specified individual in accordance with the powers, and in accordance with the procedure provided by law.
3) Openness, which is public disclosure and transparency of data on the functioning and decisions of public administration entity, the provision of public information at the request of a private person.
4) Proportionality that is imperative regarding limiting the decisions of public authority entity by the goals to be achieved, the circumstances of their receipt, as well as the obligations of the public authority to take into account the results of their own decisions, actions, inaction.
5) Efficiency, that is the duty of the public authority to achieve the desired results in the implementation of their tasks, while using public potential economically.
6) Accountability, which is the inseparability of internal and external control over the functioning of the public authority, including the judiciary one.
7) Responsibility, that is the obligation of the of public authority to experience legal responsibility in connection with the decisions, actions, inaction. This concept takes into account relevant current trends (in particular, regarding the definition of the principle of the rule of law by a key operating principle), the provision for these principles is not contradictory, the concept is consistent with the law on administrative services provision. In addition, this concept can serve as a basis for the study of certain features of the of administrative services provision in the area under study (Pogosyan *et al.,* 2018; Pogosyan *et al.,* 2019).

In particular, the understanding of the principle of legality, proposed by the authors, adequately corresponds to the key provision on the inadmissibility of undue intervention of a public authority in medical services provision, the creation of artificial obstacles in the implementation of relevant activities. On the other hand, such basis as information openness on administrative services provision is important to ensure the quality of the health care provision. Therefore, the concept formulated by Koliushko and Tymoshchuk (2006) is considered as the basis for further research.

The concept of public administration reforming provides progressive principles of its functioning: rule of law, legality, openness, impartiality, proportionality, and others (The Concept of Reforming Public Administration, 2020). However, some scholar's express proposals for the

adding such principles as: democracy, professional competence, planning (Kravtsova and Solonnar, 2010), which truly reflect modern key priorities in the activity of public authority.

Petovka's (2014) research is defined another subject. The scientist highlights the principles of the quality management system among the executive authorities by provoking the administrative services in particular areas. These principles determine: the balance of public interests and the interests of the recipient of the service; streamlined procedures for the provision of administrative services; proper staffing for the provision of these services; the administrative services provision based on the requirements of the principle of legality; detailed regulation in legislative procedures for the administrative services provision; the systematic nature of the management approach to the administrative services provision; the constant nature of improving the quality of these services; making decisions, actions based on facts.

The combination of general and special principles for the administrative services provision in the study of Petovka (2014) makes it possible to distinguish internal and external aspects of their provision. This makes it possible to single out the internal and external aspects of the functioning of the subject of administrative services provision, and also to point out the possibility of identifying a common denominator in the perception of legal relations in the administrative services provision, regardless of the scope of their provision, educational or other activities. Taking into account the administrative services provision in general and in the field of health care in particular, it is possible to point out their common basis – these are external public service relations that reflect the relationship of a public authority and a private person on public services provision. Petovka's (2014) position deserves support, as the principles reflect the regularities of both the interaction of the public authority with the recipient of public services and the internal activity of the individual of public authority regarding its provision.

The characteristic of relations in the provision of administrative services in general and in the health care field as a public service, actualizes the issue of introducing the experience of the countries of the European Union, The USA, The UK regarding e-government, which guarantees accessibility, transparency, efficiency of procedures, including licensing. The experience of Germany and Poland indicates the effectiveness of the implementation of the model of a single office for citizens (Holovaty, 2008). In Ukraine, there are Centers for the provision of administrative services, in accordance with the Law of Ukraine "About administrative services", Resolution of the Cabinet of Ministers of Ukraine (2013) No. 118 "About approval of the model provision for the administrative services center".

The Single Window Administrative Services Center operates in the Ministry of Health of Ukraine, but the issue of further implementing the e-government system in terms of licensing in the health care field as one of the types of administrative services requires further solutions at both the regulatory and organizational levels. This refers to the possibility of information interaction with the centers providing administrative services that are already functioning, to approach the recipient of the service, ensuring accessibility. However, it should be also pointed out, the expediency of introducing procedures that guarantee the awareness of the recipient of the service at the stage of its provision. This proposal is aimed at improving the procedures for the provision of administrative services in the field of health care with a view to their further implementation based on such principles as ensuring efficiency, approaching the recipient of the service, operability, effectiveness and transparency.

3. Specifics of legal regulation of administrative services

Returning to the previously listed positions expressed by Koliushko and Tymoshchuk (2006), considering the specifics of the administrative services provision in the field of health care, it is possible to express separate author's remarks. Basing on the established doctrinal position regarding the perception of the principle of "rule of law", its perception of the combination of such values as "justice", "humanism", it is possible to agree with researchers regarding the promising use of these values in the activities of the entities of public authority, first – when providing administrative services. On the other hand, the allocation of certain principles is seen to be quite controversial. Specified above applies to such a principle as the efficiency in the activity of the public authority regarding the provision of administrative services. Researchers come out of the necessity of combining in the activities of the public authority entities such principles as economy, and at the same time convincing achievement of the results provided by law.

However, it is necessary to talk about the need to provide an administrative service or the refusal to decide, and not about its effectiveness or quality of the process. As it has already noted in previous subdivisions, the consumer value of administrative services is its result, but not the process of its delivery. The cost-effectiveness of the use of available resources is a separate principle of activity, as it is provided by completely different means. Considering the above-stated provisions concerning the inappropriateness of the principle of effectiveness as an independent principle of the activity of the public authority regarding the provision of administrative services in the field of health care. The above-mentioned point may be characterized as a determining characteristic of the activity of the specified entity, but it provides for proper implementation of the other principles of its activity.

The logic of this study, the specific scope of its subject determines the need for attention to such principles, identified by Koliushko and Tymoshchuk (2006), as a control over the activities of the public authority and its responsibility in connection with the implementation of its activities. The definition of the principle of accountability is due to its immanent in relation to the activities of public authorities in general and in the sphere of granting of any kinds of administrative services. In the sphere of providing administrative services, this additionally becomes actuality due to the specific nature of this activity – creation of conditions for the implementation of subjective rights, freedoms, and legitimate interests.

Thus, in the healthcare sector, it is necessary to indicate the order of the Ministry of Health of Ukraine (2017) No. 1366, which approves a unified form of an act drawn up based on the planned (unscheduled) state supervision (control) measure on compliance with the subject management of the requirements of legislation in the field of economic activity in medical practice subjected to licensing. This legal act stipulates not only the actual definition of the form of the relevant act, but also the list of issues related to state supervision (control), which is complete.

The principle of responsibility is defined as the duty of public authority to incur legal liability in connection with the executed decisions, actions, inactivity. However, its definition is not justified, given that the allocation of the principle of accountability and ownership is a prerequisite for the analysis and evaluation of the functioning of the public authority, which result is legal liability- in case of revealing of the functioning failure.

Returning to the topic of defining the principles of the activities of public authorities and generalizing existing scientific developments, it can be pointed out that such principles as participation of the recipient of an administrative service in the process of providing it, and efficiency should be considered in the general context of the activity of public authorities in the field of health care. Such principles as impartiality, legal certainty, and transparency have a significant peculiarity of implementation in the context of providing administrative services in the area under investigation. Therefore, it is advisable to consider them in the context of the principles of legalization of the provision of administrative services in the healthcare field.

In spite of the above-mentioned inexpediency of a separate definition of the principle of the effectiveness of the public authority's activity in providing administrative services, one should admit that the key character of ensuring the conformity of the result of the provision of the administrative service, the indicators of the activity itself (the timeframe, the quality of consideration of the issue) cannot be ignored for the public inquiry, expectations of the person applying for the administrative service In the conditions of the introduction of the priority of the rights of a private person in all spheres

of public life, the compliance of the entity of public authority with specified criterion may be the basis for recognizing its activities as effective (despite the conditional nature of this method of determining efficiency).

The introduction of the principle of participation in the decision obliges the public authority to work out and continuous improvement of the forms and means of cooperation with the recipients of the administrative service. The specified should be achieved due to proper regulation in the rules of administrative law of the procedure for the participation of recipients of administrative services in the relevant procedures. At the same time, there is a situation of a certain passivity of public authorities in matters of improvement their own activities, cooperation with the subjects of acquiring administrative services, which is determined by the improper state of legal regulation of the provision of administrative services. In addition, it should also be noted that taking into account the provisions on the rule of law and the rule of human rights, the definition of the subject matter of the principles of the public authority activities determines the expediency of complementing the principles of the provision of administrative services in general and in the field of health care, the principle of taking into account acquirer interests of administrative service.

Conclusion

The conducted research allowed to formulate the following conclusions. The doctrinal basis for determining the principles of the proper procedure for the provision of administrative services in the field of health care is the principles of the functioning of public authorities in providing administrative services. The general principles of the functioning of the public authority, including the Ministry of Health of Ukraine (the main subject of the provision of administrative services in the field of health care), should be defined as follows: 1) the rule of law; 2) legality; 3) legal certainty; 4) openness, which provides for promulgation in accordance with the procedure established by law, ensuring availability of data for individuals regarding the functioning and decision of the public authority, the provision of public information at the request of a private individual; 5) proportionality, which requires definite goals due to the public administrative authority, which have to be achieved, public administrative authority responsibilities to assess consequences of actions and inactions. In addition to the above principles, it is well-founded to supplement the list of principles with the new ones provided by Article 4 of the Law of Ukraine (2013) “About Administrative Services”.

Analyzed scientific positions Koliushko and Tymoshchuk (2006), Petovka (2014) and other researchers concerning the principles of organization and activity of public authorities allow to also formulate the

principles of the provision of administrative services by the Ministry of Health of Ukraine in the investigated sphere, which should be based on the concept of proper governance. Rule of law, accountability, transparent nature of activity, adequacy and proportionality of responses, effectiveness, equality of rights of service providers are defined by the relevant principles. It is also necessary to consider the need to supplement the list of principles for the provision of administrative services in the field of health care, taking into account the interests of the recipient of the administrative service. The above list of principles for the provision of administrative services in the field of health care should be systematized according to the criterion of the limits of the basis formation (principles) of regulation: general principles of law, regulatory principles, principles of proper governance.

Perspective directions of further research are: 1) the special attention should be given to the introduction of the principle of legal certainty in the activities of public authorities in the provision of administrative services in the field of health care. The indicated principle directs such entities to ignore regulations of proper procedures by bylaw acts and active improvement of procedure nature; 2) the introduction of European experience, the experience of the United States, Great Britain in organizing the provision of administrative services in the healthcare field should be based on the principles of the proper procedure for the provision of administrative services, among which the principles of proper governance which necessitates the further development of e-government system. One of the directions of such development is the introduction of forms and means of information interaction between the Center for Administrative Services "Single Window" at the Ministry of Health of Ukraine and the Centers for the Provision of Administrative Services. Implementation of this proposal requires the development of certain normative and organizational propositions.

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Function of Criminal Analysis in Modern Models of Police Activity

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Abstract

The objective of the article is to conduct a study of the role of criminal analysis in modern models of police activity. To achieve this objective, several methods were used, namely: analysis of official documentation, scientific literature, logical analysis, concrete-historical, dialectic, or empirical methods. The article presents the most common classifications of police models today, as well as the interpretation of criminal analysis in them. It is concluded that a relatively new model of intelligence-led surveillance needs to be implemented in the police. Within the police model of social orientation, specific ways of solving various problems are carried out by carefully and detailed analysis of the causes of such problems, actors, and characteristics of the area, as well as the prevention of serious crimes through the approach of police work in places of concentration of minor infringements (model of "broken windows"). It was noted that Comp Stat focuses on street crime and in series with short-term responsibility for addressing new criminal challenges; for its part, the intelligence-led surveillance (ILP) model includes a long-term strategic component that can be applied to transnational organized crime operations.

Keywords: information-analytical activity; analytical theoretical work; management decision-making; law enforcement; model of police action.

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Función del análisis criminal en modelos modernos de actividad policial

Resumen

El objetivo del artículo es realizar un estudio de la función del análisis criminal en modelos modernos de actividad policial. Para lograr este objetivo, se utilizaron varios métodos, a saber: análisis de documentación oficial, literatura científica, análisis lógico, concreto-histórico, dialéctico y métodos empíricos. El artículo presenta las clasificaciones más comunes de los modelos policiales en la actualidad, así como la interpretación del análisis criminal en ellas. Se concluye que es necesario implementar en la policía un modelo relativamente nuevo de vigilancia dirigida por inteligencia. Dentro del modelo policial de orientación social, se llevan a cabo formas específicas de resolver diversos problemas mediante el análisis cuidadoso y detallado de las causas de dichos problemas, los actores y las características del área, así como la prevención de delitos graves mediante el enfoque del trabajo policial en los lugares de concentración de infracciones leves (modelo de "ventanas rotas"). Se señaló que Comp Stat se centra en la delincuencia callejera y en serie con responsabilidad a corto plazo para abordar los nuevos desafíos delictivos; por su parte, el modelo de vigilancia dirigida por inteligencia (ILP) incluye un componente estratégico a largo plazo que se puede aplicar a las operaciones contra la delincuencia organizada transnacionales.

Palabras clave: actividad de información-analítica; trabajo teórico analítico; toma de decisiones gerenciales; aplicación de la ley; modelo de actuación policial.

Introduction

Given the history of criminal analysis and the emergence of the profession of criminal analyst, which began in the 1800s, when the London City Police began to use statistics, “hot spots”, “crime schemes”, and from the second half of the nineteenth century the first law enforcement concept, the model of policing, the modus operandi (method of committing a crime) (Fosdick, 1916), had already begun to be separated. And later the classification of offenders and crimes was formed on its basis, policing began to acquire different models that are constantly evolving and require an extremely complex balance in the field of public safety, crime prevention, community engagement and timely response. Police models cover both functional and administrative functions, which usually include certain aspects of problem identification, information flow, and analytical work for effective modern crime control.

Today, only with a clear strategy of functioning and development, the police will be able to proportionally repel modern challenges and threats, primarily hybrid, which are due to the influence of a complex of socio-demographic, economic, political, legal, psychological, and technological factors. Moreover, the role of analytical work of police units in combating crime is currently being strengthened, as stated in the Strategy for the Development of the System of the Ministry of Internal Affairs of Ukraine until 2020 (Order of the Cabinet of Ministers of Ukraine, 2017). Thus, in the framework of combating crime, attention was paid to the low level of use of analytical tools by police in combating crime and forecasting relevant threats, to overcome which, the same Strategy states that it is necessary to implement the concept of the Ministry of Internal Affairs based on various sources of information (Intelligence Led Policing (ILP)), comprehensive implementation of modern criminal analysis systems, including the EUROPOL methodology (Order of the Cabinet of Ministers of Ukraine, 2017).

International experience in the use of preventive measures, which is currently used by law enforcement agencies, shows that criminal analysis is a key tool for national security. The essence of criminal analysis is to identify and determine as accurately as possible the internal links between information (information, data) relating to criminal offenses, and any other data used in the interests of operational and investigative and investigative activities, their analytical support, as well as the development of tactical and strategic measures to combat crime. From a methodological point of view, criminal analysis is a set of methods used to collect, evaluate, analyze, and implement information in the investigation of criminal offenses, as well as to use them in developing tactical and strategic principles in combating crime (Korystin *et al.,* 2016).

Today we are already observing the creation of new analytical units of the National Police of Ukraine (Criminal Analysis Department of NPU) and the gradual transition of other police units to the use of modern information-analytical software and investigative methods (SOCTA), which certainly improves the effectiveness of the activities of police bodies and units during the execution tasks for the protection of human rights and freedoms and combating crime. Thus, implementing a model of proactive activity that replaces the dominant paradigm of reactive policing. Thus, with the introduction of new modern information technologies and highly intelligent software into police activity, a new field is emerging, where the issue of ensuring human rights and freedoms in the model of Intelligence Led Policing (ILP) is not yet discussed enough at the scientific level and at the legislative level, that is why this issue becomes relevant today (Ismailov, 2019). The purpose of the article is a comprehensive analysis of the function of criminal analysis in various modern models of policing.

1. Literature Review

Before we move on to consider the function of criminal analysis in different models of policing, let us briefly find out what scientists and practitioners invest in the concept of policing. Yes, K.S. Belskyi emphasizes that policing in a broad sense should be understood as a special type of public administration activity aimed at protecting public order, ensuring public (as well as any other) security, and related to the use of state coercion (Belskyi, 2004). According to V.M. Shadrin, policing is a special type of social, public administration activity carried out based on law and in the interests of society, aimed at protecting and maintaining public order, ensuring public safety by means of coercion (Shadrin, 2003). O.S. Pronevich proposes to consider policing as a coercive activity to restore public order and ensure the safety of citizens (Pronevich, 2009).

The Declaration on the Police (1979) adopted by the Council of Europe Assembly on 08.05.1979, states that the meaning of policing is to protect citizens and society from violence, robbery, and other socially dangerous acts, and pays special attention to the priority of in-depth training of police personnel, on social issues, democratic rights and human freedoms. As we see, all these definitions of policing are based on the general principles of protection of human rights and freedoms based on law and further in the text, but they do not contain a specific model (form) of law enforcement or several complementary law enforcement models.

Other scholars note the following, Professor A.V. Movchan in his writings analyzes the current problems of implementation in the bodies of the National Police of Ukraine model of intelligence-led policing (Movchan, 2018). In the monograph "Organizational and legal support of analytical work in the system of the Ministry of Internal Affairs of Ukraine (law enforcement and security aspects)" Professor O.Ye. Korystin examines the fundamental rights, principles, and content of basic elements in the system of analytical intelligence (Korystin *et al.,* 2019).

To fully disclose the question of what function criminal analysis plays in the activities of various modern models of policing, as well as how exactly criminal analysis can be used in each of these models, we present several of their classifications. And here it should be noted that the following models do not have clear boundaries, as each of them has different strategic goals, strengths and weaknesses and can complement others and be used simultaneously. Thus, researchers in the methodology of law enforcement reveal five models of policing (Bell and Congram, 2013; OSCE Guidebook Intelligence-Led Policing, 2017; Korystin *et al.,* 2019): Traditional Policing; Community Policing or Community-oriented Policing; Problem-Oriented Policing (POP); Computer Statistical Model (CompStat); Intelligence Led Policing (ILP).

In its training materials, the International Association of Criminal Analysts (IACA) in describing the terminology, concepts and processes of criminal analysis provides the following classification of police (law enforcement) business models (Bruce *et al.,* 2004): law enforcement activities based on operational data; law enforcement activities based on forecasts; Data-Driven Policing (DDACTS); Accountability model; law enforcement activities focused on the needs of communities; Problem-Oriented Policing (POP); prevention of serious crimes by concentrating the work of the police in places of concentration of minor offenses (model "Broken Windows"); Crime Prevention Through Environmental Design (CPTED); centralized and decentralized models.

There are other classifications of policing models given by both national experts and international organizations and scholars, which have slightly different names but are similar in content. Therefore, we do not set the task to distinguish between different concepts in form and the same content, as this will go beyond our study, so some models of policing will have different names.

2. Materials and Methods

The study was conducted on the example of the organization of professional activities of police officers of the Department of Criminal Analysis of the National Police of Ukraine, as well as the implementation of the educational process in higher education institutions with specific training conditions that train police officers. The tools used included analysis of relevant theoretical and methodological sources, as well as generalization of experience in managing the educational process as Head of the Department of Cybersecurity and Information Support and Head of Research Laboratory on Criminal Analysis, Head of Forensics, Head of Department of Police Administration of Odessa State University cases on preparation of educational materials and teaching disciplines: "Information technologies", "Criminal analysis", "Information support of professional activity", "Information-analytical support of law enforcement activity", "Criminalistics" to applicants for higher education. And considering the experience gained during the accreditation of the educational (professional) program "Criminal Analysis" of the second level of higher education, Master's degree in 124 "System Analysis" in the field of knowledge 12 "Information Technology".

To achieve this goal, a number of methods were used, namely: theoretical – for the study and analysis of official documentation, scientific and methodological and educational literature, generalization of information to determine the theoretical and methodological foundations of the study; logical analysis – to formulate the basic concepts and classification;

concrete-historical – to demonstrate the dynamics of the development of the function of criminal analysis in different models of policing; dialectics – to establish the content and features of the constituent elements of the implementation and application of criminal analysis in policing; empirical methods – to summarize practical experience, observation and discussion.

3. Results and Discussion

Traditional policing is the best-known model of policing and remains the standard style of law enforcement. This applies to the reactive and incidental style in which police officers respond to crime and provide services or respond accordingly. Answering calls, receiving complaints, patrolling public places, creating the appearance of a police presence, and uncovering crimes that have occurred in the past or are only being committed are the essence of traditional policing. Because the traditional policing model views security issues and public safety as a police task, community policing focuses on the partnership between the police and the public, actively addressing security issues (OSCE Guidebook Intelligence-Led Policing, 2017).

The use of criminal analysis is carried out mainly in combating organized crime, especially economic, transnational crime, and cybercrime. Thus, today the traditional model of policing faces the fight against modern dangers and threats with increasing mobility and migration, rapid technological and communication changes, free movement of goods and services and growing income inequality. In addition, violent extremism and radicalization leading to terrorism, as well as terrorist acts in recent years, emphasize the need to share, integrate and centrally analyze relevant data and information (operational materials) at all levels in accordance with national legislation, international human rights standards and OSCE commitments. Therefore, the most modern, promising and most integrated in various models of policing is the model of law enforcement based on operational data (model of policing based on operational data and information), or a more modern and meaningful definition of this activity – policing, guided by Intelligence Led Policing (ILP).

Intelligence Led Policing is an organizational model and management philosophy in which criminal analysis and criminal intelligence are key tools in achieving a goal by implementing an objective and effective countermeasure decision-making mechanism and preventing crime through strategic management and effective law enforcement, techniques aimed at neutralizing particularly dangerous crimes for society (Kardashevskyi *et al.,* 2019; Allalyev, 2019).

The model of policing based on operational data and information is designed in response to these growing problems, based on and with the

help of which it is possible to reorient law enforcement activities from the traditional response to anticipation. It has proven to be an effective tool for combating organized crime, more rational use of resources and targeted identification and solution of priority tasks. A proactive and forward-looking approach helps to prevent, reduce, and eliminate crime. A key element in the model is the systematic collection and analysis of information and data related to the prevention, reduction, prevention, and elimination of crime, which is the development of operational data. On this basis, sound and promising policy and management decisions can be made and resources allocated to the most pressing security issues, threats, types of crime and criminals.

Thus, criminal analysis plays an important role in this model, helping to bring critical information to the attention of decision-makers so that they can properly dispose of their forces and means. Analysts in the law enforcement environment work with a variety of data based on operational data, which is systematically and quickly synthesized into useful information for operational and investigative units. Also, the actions of analysts are aimed at anticipating, stopping, and deterring criminal activity. Analytical-driven policing is increasingly being used to strengthen socially oriented policing by providing specific processes, communication procedures, and governance structures for the collection, analysis, and dissemination of data and information.

Next, we will consider a socially oriented model of policing, which aims to strengthen trust and strengthen communication between the police and the public, conditionally includes such law enforcement models as: law enforcement activities focused on the needs of communities; law enforcement activity, which is focused on certain issues. Although these models are intertwined, they are not identical. Community-oriented law enforcement is a broader organizational philosophy that incorporates the principles of community-based law enforcement and provides for the development of external partnerships with community stakeholders. Community policing programs include the creation of community forums involving representatives of various community groups and institutions, where security issues are discussed and addressed, including offenses and individual crimes in the region.

During problem-oriented policing, identification and analysis of the "problem" is carried out, which is the focus of police work, and not a specific crime, case, challenge, or incident. In this model, special attention is paid to the problem of crime and security in general. The police are actively developing preventive strategies, in an attempt to solve the problem, rather than simply responding to its harmful effects (OSCE Guidebook Intelligence-Led Policing, 2017).

Criminal analysis plays an integral role in community-based law enforcement – it is a source of information needed for better understanding of the various community problems that arise in communities. From an operational point of view and depending on the level of technical equipment, criminal analysis is a source of statistics on crime and public disorder, which can be used to interpret data at certain geographical levels, such as census districts, groups of census districts, neighborhoods, street sections that need increased attention from the police. Criminal analysts may recommend organizing police meetings with a specific community, during which the police can visually demonstrate information about the criminal situation in the area and provide additional information on police actions in the specified criminogenic situation (Bruce *et al.,* 2004).

Criminal analysis in problem-oriented law enforcement addresses common crime issues, response measures and tools used in practice, such as graffiti, burglary, forgery of prescriptions, car theft and car theft in parking lots, teenage hooliganism in public. The problem considered by the analyst is medium-term, so the information analysis phase is crucial before acting. Because solving a problem in one area, such as increasing patrol routes, can lead to crime moving to another area or a return to the problem after the transfer of police resources to another part of the city. As part of a problem-oriented law enforcement model, specific ways to address a range of different police issues arise through careful and detailed analysis of the causes of such problems, stakeholders, and local characteristics. The model prevents the commission of serious crimes by concentrating the work of the police in places of concentration of minor offenses related to antisocial behavior, violation of public order (model "Broken Windows / Broken Windows").

The role of criminal analysis in the "broken windows" model is to focus on minor incidents of public disorder that can lead to an increase in organized crime. Minor offenses include graffiti, vandalism, antisocial behavior, and drug possession. Police efforts include working more closely with the community to disrupt public order, as well as ensuring greater community participation in the proper maintenance of public facilities and private property and planning a set of measures to prevent the spread of criminal activity and its spread in the territory of abandoned households.

Crime Prevention Model: Crime Prevention Through Environmental Design (CPTED). This model focuses on managing physical planning and the use of a man-made environment to reduce crime and fear of crime, as well as improve quality of life. The elements of the model are access control in the form of closed entrances, surveillance in the form of video surveillance cameras, territorial delimitation in the form of fencing of certain objects and structures (Movchan *et al.,* 2018).

The function of criminal analysis in the crime prevention model by changing the surrounding infrastructure is not to study where crimes take place or who commits them, but rather to consider the following questions: "what?" and "why?". That is, why do crimes happen in one place and not in another? What elements of the environment contribute to attracting criminal activity? What changes can be made in the immediate and environment to reduce violations of public order. As for the technologies that an analyst can use, it is 3D mapping that dynamically imagines the crime rate from a multidimensional point of view (Rengert *et al.,* 2001).

The computer statistical policing model or "comparing statistics" (CompStat) is a management system that develops a model in which minor crimes are an element in reducing more serious ones. As part of a performance management system that includes analysis of data on crime and public disorder, strategic tools, and a clear accountability structure (Wakefield and Fleming, 2009). The model emphasizes the dependence on accurate and timely analysis to identify patterns of crime and problems with the subsequent rapid allocation of personnel and resources to take targeted response measures.

Criminal analysis is critical to the CompStat model because it depends heavily on accurate and timely statistics and information. Although the emphasis on statistics is detrimental to the proactive component of criminal analysis and problem solving, the CompStat model helps police officers keep pace with the most pressing issues of crime and disorder, which are assessed through geospatial analysis.

It should be noted that what is the unit of criminal analysis of law enforcement agencies – centralized or decentralized, affects the quantity, quality and volume of analytical products needed by other police units. If the unit is centralized, then all analysts are gathered in one department, usually located in the central office of law enforcement, and all requests pass through this department. In the case of a decentralized unit of criminal analysis, analysts are based in the relevant territorial units or units in activity to which they are assigned.

Properties that are inherent in a centralized unit of criminal analysis: located in a clearly defined place; higher level; regular interaction between the analyst and the command and administrative staff of the police; ease of gaining new knowledge about technology and modern software; working together, analysts can share knowledge from different fields and acquire additional skills; there will be no duplication of work. Instead, the decentralized model provides for the appointment of analysts to various units in the law enforcement agency, which provides the necessary analytical support. The decentralized model is usually used in large units, divided by territory. Analysts in the decentralized model are fully aware of the affairs of their units, including types of crime, demographics, hotspots and more.

Conclusion

The study presents some of the most common classifications of police models today, as well as reveals the functional features of criminal analysis in each of these models. Thus, in the plane of normative uncertainty of the basic concepts of information-analytical activity, such as "analytical work", "analytical activity", "analytical document", "criminal analyst", this activity does not cease to exist in the professional activity of law enforcement agencies. Given the modern informatization of all processes in society, the traditional model of policing can no longer provide a high level of public safety, especially against the encroachments of stable organized groups, so it is necessary to introduce a relatively new model of policing, guided by analytical intelligence, a key element of which is systematic collection and analysis of information and data related to the prevention, reduction, prevention, and elimination of crime.

As for the model of computer statistical policing, it is based on the analysis of statistics of crimes committed at the local level and the development of early response measures. It should be noted that Compstat focuses mainly on street and serial crimes with short-term accountability in the process of solving new criminal challenges, and the model of policing led by analytical intelligence includes a long-term strategic component that can be applied in operations to combat transnational organized crime, that is Compstat focuses on crime, and ILP – on the identification of threats.

When considering the socially oriented model of policing, which aims to strengthen trust and strengthen communication between the police and the public, it was found that it includes such law enforcement models as: law enforcement focused on community needs and law enforcement activities focused on specific issues. Within the socially oriented model of policing, specific ways to solve various problems are carried out by careful and detailed analysis of the causes of such problems, stakeholders, and characteristics of the area, as well as prevention of serious crimes by concentrating police work in places of concentration of minor offenses (model "Broken windows"). All these policing models do not have clear boundaries, as each has different strategic goals, strengths and weaknesses and can complement and be used simultaneously. The materials presented in the article will be useful for acquaintance and study by students, cadets, graduate students, associate professors, teachers, judicial and law enforcement officers.

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Administrative-Legal Support of Business Entities: New Quarantine Realities

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Abstract

The Covid-19 coronavirus pandemic has affected the world. The government is stepping up quarantine measures in its countries for the second time. Strict quarantine is beginning to be introduced in more and more countries around the world. Quarantine restrictions significantly affect businesses and limit their rights. In this regard, the issue of protection of business rights remains relevant. The purpose of the article is to study the administrative features of protection of the rights of economic entities in quarantine. The subject of the study is the social relations that arise in the protection of business in quarantine conditions. The research methodology consists of the dialectical method, historical method, system method, modeling and abstraction methods, as well as induction, deduction, analysis, synthesis and comparative law methods as a special research methods. The authors came to the conclusion that the state took decisive measures to ensure the rights of economic entities, by they significantly reflected on guarantees for entrepreneurs and in general, in particular, their ability to operate, which significantly affects the economies of countries.

Keywords: legislation; business entities; legal support; administrative law; pandemic quarantine.

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Apoyo administrativo-legal de las entidades comerciales: nuevas realidades cuarentenarias

Resumen

La pandemia del coronavirus COVID-19 ha afectado al mundo. El gobierno está intensificando las medidas de cuarentena en sus países por segunda vez. La cuarentena estricta está comenzando a introducirse en más y más países de todo el mundo. Las restricciones de cuarentena afectan significativamente a las empresas y limitan sus derechos. En este sentido, la cuestión de la protección de los derechos empresariales sigue siendo relevante. El objeto del artículo es estudiar las características administrativas de la protección de los derechos de las entidades económicas en cuarentena. El tema del estudio son las relaciones sociales que surgen en la protección de empresas en condiciones de cuarentena. La metodología de investigación consta del método dialéctico, método histórico, método de sistema, métodos de modelado y abstracción, así como métodos de inducción, deducción, análisis, síntesis y derecho comparado como métodos especiales de investigación. Los autores llegaron a la conclusión de que el Estado tomó medidas decisivas para asegurar los derechos de las entidades económicas, al reflejarse significativamente en las garantías para los emprendedores y en general, en particular, su capacidad para operar, lo que afecta significativamente las economías de los países.

Palabras clave: legislación; entidades comerciales; soporte legal; derecho administrativo; pandemia cuarentena.

Introduction

The World Health Organization has confirmed that the epidemic of the Covid-19 virus has reached the level of a pandemic and called on states to take immediate action to prevent the spread of the virus. Unfortunately, the pandemic did not end with the first wave of infection. For the second time, the government is stepping up quarantine measures. Strict quarantine is beginning to be introduced in more and more countries around the world. Quarantine restrictions significantly affect businesses and limit their rights. In this regard, the issue of protection of business rights remains relevant.

The economies of countries that have not recovered from the consequences of the first quarantines, as a matter of urgency is becoming a strict quarantine. Forced transition to telecommuting, prohibition of dismissal, reduction of working hours, granting paid leave – this is a list of state requirements for business, and this is just “the tip of the iceberg”.

Ukrainian businesses felt the impact of the pandemic since March 17, 2020, as from that date they began to actively implement quarantine measures that significantly affected business rights.

Thus, the issue of introduction and functioning of quarantine is regulated by the Law of Ukraine "On Protection of the Population from Infectious Diseases" (2000), which stipulates that quarantine is established and abolished by the Cabinet of Ministers of Ukraine which can establish temporary restrictions on the rights of individuals and legal entities and establish additional obligations imposed on them. The quarantine measures also give additional powers to local governments.

Following the Resolution of the Cabinet of Ministers of Ukraine No 211 of March 11, 2020 "On prevention of the spread of coronavirus Covid-19" (with further changes) quarantine was established in Ukraine and it is forbidden to visit educational institutions, hold mass events (except for measures necessary to ensure the work of public authorities and local governments).

Also, the Ukrainian authorities adopted decisions restricting the activities of some business entities and imposing sanctions for violating quarantine measures.

The above-mentioned acts in Ukraine introduced such a special regime as quarantine and emergency, which are ensured by the introduction of restrictions on the rights of economic entities. Therefore, it is important to analyze how the regime introduced to limit the spread of Covid-19 has affected the rights of businesses in Ukraine, as well as their administrative-legal support.

1. Methodology

The methodology of research of administrative-legal support of the rights of business entities in the conditions of Covid-19 consists of general and special scientific methods.

Thus, a dialectical method is used to learn the essence of administrative-legal support of the rights of economic entities. Moreover, the historical method was used in the analysis of the patterns of the formation of the rights of economic entities. Further, the system method was used in the analysis of administrative and legal support of the rights of entrepreneurs as a systemic phenomenon.

What is more, the methods of modeling and abstraction were used in the process of formulating proposals to the current legislation of Ukraine.

Besides, the study also used general epistemological methods of cognition – induction, deduction, analysis, and synthesis, which allowed investigating the administrative-legal support of the law of economic entities in the context of Covid-19 comprehensively.

Finally, the comparative legal method was used to compare the norms of national legislation and foreign legislation on the regulation of administrative-legal support of the rights of economic entities in Ukraine and the world.

2. Theoretical framework

At present, the administrative and legal provision of the rights of business entities in the context of Covid-19 has not been studied, as this topic is completely new in the legal environment.

Therefore, consider the work of scientists who have developed a general theoretical basis for this topic. In particular, Derevyanko and Turkot (2019) in their work analyzed the protection of the rights of economic entities. Moreover, Humin and Pryakhin (2014) analyzed different approaches to defining the concept and structure of administrative and legal support. In addition, Ierusalemova (2006) studied the mechanism of administrative-legal support of human and civil rights and freedoms. Besides, Zagnitko (2001) in his study analyzed the protection of the rights and interests of economic entities in the legal system of Ukraine. Furthermore, Kolos (2020) spoke about the rights of business entities in the conditions of Covid-19.

Also, Krivorot and Martynenko (2020) considered human rights interference during a pandemic. Besides, Nikolenko (2017) analyzed the protection of the rights and interests of economic entities in the context of legislative reform and identified key issues that should be addressed.

It should be noted that Marchenko (1998) provided general theoretical provisions on which the research is based. As well as Paliyuk (2003) considered the place of the Convention for the Protection of Human Rights and Fundamental Freedoms in the legal system of Ukraine, as well as its impact and use in the protection of the rights of economic entities.

Tsvik *et al.* (2002) developed the general provisions of the theory of state and law, which allowed to conduct research using different definitions of the concepts of administrative-legal support and the rights of economic entities. In addition, Shishkina (2005) considered some aspects of the legal nature of the decisions of the European Court of Human Rights and their impact on the protection of rights in Ukraine.

Also, the information used in the study is posted on the websites of various law firms, communities, including the Baykovets community

(2020), and NGOs (Public space, 2020), and Newspapers (Legal Internet resource Protocol, 2020; Online edition Yuridichna Gazeta, 2020). Thus, from the above sites, an explanation of the activities of business entities during quarantine and how administrative liability is applied in Ukraine for violating the conditions of quarantine.

From the above analysis of the literature, we can conclude that the scientific study of administrative and legal support of business rights due to the second wave of quarantine was not conducted, but in a short period of time great interest in this topic from scientists and lawyers shows that this topic is relevant.

3. Results and discussion

Having analyzed how the rights of entrepreneurs are respected during the pandemic in Ukraine, it is important to consider how such rights are respected in foreign countries.

For example, in the United States, businesses have been allocated $ 1.8 billion in a payroll protection program to cover wage costs, and provided that all jobs for the company are retained during quarantine, the borrowed money may not be repaid.

In Germany, there are emergency financial assistance programs for businesses that have suffered the most from quarantine.

Poland has approved a package of legislative changes to support small businesses and employees, namely: tax deferral; exemption for 3 months from the payment of the contribution to the state social insurance of small enterprises, which employ no more than nine people; compensation to selfemployed persons for termination of the activity.

Thus, EU member states direct financial resources to support entrepreneurs.

Given the above, Covid-19 significantly restricts the rights of businesses, and the state has a wide range of legislative mechanisms to combat the spread of coronavirus, which provide for the introduction of special restrictions on business.

Before analyzing the administrative-legal support of business entities in the context of Covid-19, it is important to define administrative-legal support and the rights of business entities.

The notion of “administrative-legal support” is one of the important categories of the science of administrative law. Thus, administrative-legal support is considered as one of the types of legal support, which act purposefully on the behavior of people and public relations through certain

legal means. In general, the field of legal support covers a set of rules of management, which can and should be regulated by law and legal means, namely, security can be considered as the support of state-authorized bodies to perform their functions and as a result of this activity, expressed in the actual implementation of legal regulations, rights, and freedoms of citizens.

Regarding the administrative-legal support of the rights of economic entities, we can say that this is a complex, multifaceted, complex concept, the main content of which is the state's activities to create appropriate legal conditions for the rights of economic entities, especially in Covid-19, by the establishment of appropriate regulatory support. In this case, administrative-legal support should take place in three main areas: legal, scientific, and information.

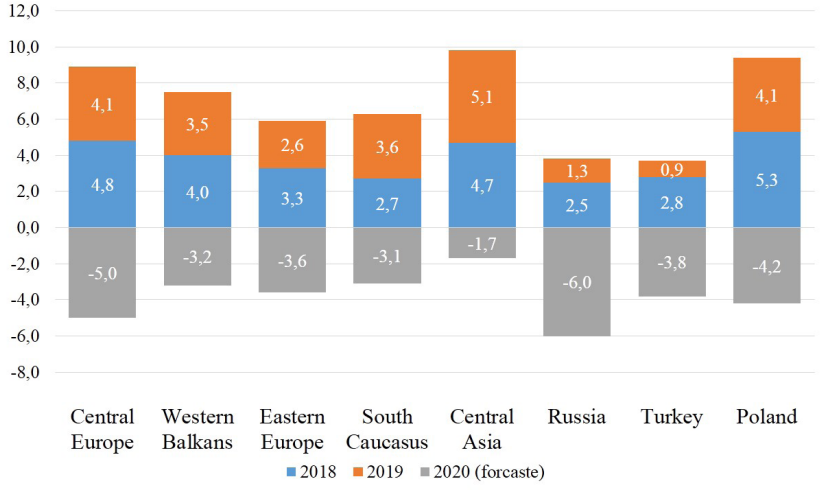

Fig. 1. Changes in GDP per capita in Europe and East Asia (2018-2020) (due to the application of quarantine measures).

Data provided by the World Bank (2020).

Fig. 1 shows the change in GDP per capita due to the impact of coronavirus infection and quarantine measures. Thus, South Caucasus includes Armenia, Azerbaijan, and Georgia; Eastern Europe includes Belarus, Moldova, and Ukraine; Western Balkans includes Bulgaria, Croatia, Hungary, Poland, and Romania; Central Europe includes Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia; and Central Asia includes Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan. Thus, as we can see on the fig. 1, there is a

negative trend with regards to the economy of many countries, therefore, in the time of quarantine, state support for business is necessary.

As for the rights of business entities, Article 47 of the Commercial Code of Ukraine provides guarantees for entrepreneurs (Public space, 2020). Thus, the state has undertaken to provide all entrepreneurs, regardless of their chosen organizational forms of entrepreneurial activity, equal rights and equal opportunities to attract and use logistical, financial, labor, information, natural and other resources. In this case, the logistics of the entrepreneur, which are centrally distributed by the state, is carried out to perform supplies, works, or services by the entrepreneur for priority government needs.

Damages caused to an entrepreneur as a result of the violation of his property rights by citizens or legal entities, public authorities or local governments shall be reimbursed to the entrepreneur under the Commercial Code of Ukraine (2003) and other laws.

Also, the state guarantees the inviolability of property and protects the property rights of the entrepreneur, and the seizure of state and local authorities from the business entity of fixed and working capital, other property is allowed by Article 41 of the Constitution of Ukraine (1996) on the grounds and in the manner prescribed by law.

In addition, there are social guarantees, namely that an entrepreneur or citizen who works for an entrepreneur for hire, in cases provided by law, may be involved in the performance of state or public duties during working hours, with compensation to the entrepreneur of the corresponding losses by the body which makes such decision, and disputes on the compensation of losses are resolved by the court.

The rights of quarantined businesses are subject to state interference. Therefore, it is important to analyze the administrative and legal support of the rights of entrepreneurs.

The above-mentioned Resolution prohibits the work of the vast majority of service entities during the quarantine period, which provides for the reception of visitors, including catering establishments, shopping and entertainment centers, other entertainment establishments, fitness centers, cultural institutions, trade, and consumer services. Such a ban effectively deprives them of the opportunity to earn a living to meet the basic needs of them and their families, without providing any alternatives for employment or other legitimate sources of income. The conditions created by such actions of the government make it impossible for citizens to use a number of fundamental rights provided by the Constitution of Ukraine (1996), in particular, such as the right to entrepreneurial activity, which is not prohibited by law, the right to work, which includes the opportunity to earn a living by work that he freely chooses or agrees to, the right to a sufficient

standard of living for himself / herself and his / her family, including food, clothing, housing.

Therefore, it is necessary to analyze whether this is a violation of the rights of the business entity in the sense of international legal protection.

Article 17 of the Law of Ukraine "On the enforcement of judgments and application of the Case Law of the European Court of Human Rights" (2006) stipulates that courts use the Convention and the case-law of the European Court of Human Rights as a source of law when considering cases.

Thus, according to Art. 9 of the Constitution of Ukraine (1996), the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Ukraine (hereinafter – the Convention) (1950), is part of national legislation.

Article 19 of the Convention provides that, in order to ensure compliance by the States Parties to the Convention, their obligations under the Convention and its Protocols, a European Court of Human Rights shall be established and shall function on a permanent basis. The Contracting Parties undertake to comply with the final judgments of the Court in any case to which they are parties. Under the Convention, freedom may be restricted for good reason. The articles of the above-mentioned Convention provide for interference with fundamental rights in cases where this is necessary in a democratic society to protect the health of the citizens. Article 15 of the Convention also provides for a derogation from certain rights, but only to the extent required by the provision and provided that such measures do not conflict with its other obligations under international law.

The European Court of Human Rights in its explanations on the application of Art. 15 of the Convention stated that due attention was paid to such factors as:

- the nature of the rights affected by the waiver, the circumstances giving rise to the emergency and its duration;
- whether the legislation already adopted in the country would be sufficient to overcome the threat posed by public danger;
- whether the measures are a real response to the emergency;
- whether the measures were used for the purpose for which they were authorized;
- and whether there were guarantees against abuse by public authorities.

Many scholars, both from the adversaries and from the supporters of Western civilization, pay attention to the problems with which it faced at the present stage of its development. Thus, criticized "excessive"

democracy, the uncertainty of the boundaries of freedoms (Kharytonov *et al.*, 2019). Nevertheless, humanity has not created a better type of social system than democracy. Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka and Tkalych, 2020).

Therefore, in the context of restricting the rights of entrepreneurs, it is necessary to establish whether there was indeed a public danger, whether adequate measures were taken concerning the threat and whether national legislation was sufficient.

Consider the state of administrative-legal support of the rights of economic entities in terms of Covid-19.

The state takes measures to ensure the rights of economic entities. Thus, under Covid-19 and the restrictions imposed during the quarantine period, the state introduced tax holidays, exemption of natural persons entrepreneurs from paying a single social contribution, as well as exempt from land tax, tax on non-residential real estate, rent for land; it is forbidden to carry out inspections of economic activity (except for the group with a high degree of risk); fines for violations of tax legislation were abolished and the deadline for filing an annual declaration of property and income was extended.

Concerning the fulfilment of obligations under contracts, during the quarantine period, it is prohibited to increase interest on the loan (including, but not limited to, the consumer's delay in the period from March 1, 2020, to May 31, 2020 fulfilment of payment obligations). However, such prohibition does not apply to cases of application of a variable interest rate, at which the lender independently, with the frequency specified in the loan agreement, has the right to increase and is obliged to reduce the interest rate under the terms and conditions established by the loan agreement. The obligation to fulfil the main obligation secured by the mortgage is also suspended, and foreclosure on the subject of the mortgage is not allowed for the period of quarantine or restrictive measures related to the spread of coronavirus disease.

In addition, until May 31, 2020, it is prohibited for state supervision (control) bodies to carry out planned measures for state supervision (control) in the field of economic activity, except for state supervision (control) of high-risk economic entities in the field of compliance requirements for the formation, establishment, and application of state-regulated prices and the field of sanitary and epidemiological well-being of the population.

It is equally important that in order to support business, the Government is improving the mechanism of the state program "Affordable Loans 5-7-9%", expanding its functionality and the range of entrepreneurs who will be able to use it.

As for the quarantine itself, it can be considered a force majeure for the fulfilment of obligations under the contracts. The basis for the certification of force majeure is the presence of one or more force majeure (force majeure), as well as determined by the parties to the contract, contract, agreement, model agreement, legislative, departmental and/or other regulations that affected the obligation in such a way as to make it impossible to perform it within the period stipulated by the agreement, contract, agreement, model agreement, legislative and/or other normative acts, respectively.

Regarding the rent, following Part 6 of Art. 762 of the Civil Code of Ukraine (2003), the lessee is exempt from payment for the entire period during which the property could not be used by him / her due to circumstances for which he is not responsible. Subsequently, the legislator found that at the time of the relevant restrictive quarantine measures introduced by the Cabinet of Ministers of Ukraine to prevent the spread of coronavirus disease in Ukraine (Covid-19), circumstances for which the employer (tenant) is not responsible under part two of Article 286 Of the Commercial Code of Ukraine (2003), parts four and six of Article 762 of the Civil Code of Ukraine, there are also measures introduced by the subjects of power, which prohibit certain types of economic activity with the use of pits leasehold or measures which prohibit access to such property to third parties.

Besides, the state ensured the rights of natural persons-entrepreneurs and members of the farm who did not pay insurance premiums during the quarantine period and included these periods in the insurance period.

Thus, to ensure the rights of economic entities, the following conditions must be met:

1. Surveillance measures taken to combat Covid-19 shall be lawful, necessary, and proportionate.
2. Ukraine shall follow the principles of transparency regarding the measures taken to examine them and, if necessary, amending, revoking, or repealing them.
3. All information on changes in the rights of economic entities should be publicly available.
4. Any measures should include mechanisms for reporting and protection against abuse, and citizens should, in turn, be able to become aware of actions and challenge any Covid-19-related measures to collect, aggregate, store and further use their data.

Conclusions

As a result of the study, the rights of business entities under Covid-19, and their administrative-legal support were analyzed.

Thus, concerning administrative-legal support the following should be stated:

Hence, concerning the fulfilment of obligations under contracts, during the quarantine period, it is prohibited to increase interest on the loan. However, such prohibition does not apply to cases of application of a variable interest rate, at which the lender independently, with the frequency specified in the loan agreement, has the right to increase and is obliged to reduce the interest rate under the terms and conditions established by the loan agreement. The obligation to fulfil the main obligation secured by the mortgage is also suspended, and foreclosure on the subject of the mortgage is not allowed for the period of quarantine or restrictive measures. In addition, many countries consider quarantine as a force majeure for the fulfilment of obligations under the contracts.

As for the administrative-legal support, the introduced tax holidays, exemption of natural persons entrepreneurs from paying a single social contribution, as well as exempt from land tax, tax on non-residential real estate, rent for land; it is forbidden to carry out inspections of economic activity (except for the group with a high degree of risk); fines for violations of tax legislation were abolished and the deadline for filing an annual declaration of property and income was extended. Besides, the state ensured the rights of natural persons-entrepreneurs and members of the farm who did not pay insurance premiums during the quarantine period and included these periods in the insurance period.

Nevertheless, the analysis of administrative-legal support of business entities under Covid-19 showed that, to avoid the spread of coronavirus, the state took decisive measures, but they significantly reflected on guarantees for entrepreneurs and in general, in particular, their ability to operate, which significantly affects the economies of countries.

Additionally, it should be noted that the topic analyzed in the article requires further research. Thus, it is necessary to analyze the peculiarities of the quarantine regime and further weaken measures for entrepreneurs through the prism of ensuring their rights, as well as the legality of such a regime, to analyze the possibility of minimizing business losses during quarantine and their administrative-legal support by state and local bodies, taking into account foreign experience, in order to make appropriate positive changes in the legislation of Ukraine and ensure the rights of economic entities at the appropriate level.

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The substrate of criminal-legal influence

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Abstract

The aim of the article is found on the idea of measure as a substrate of criminal-legal influence. The publication proposes to consider the measure as a substrate of external forms of legal influence and criminal-legal measure as a primary element of all external forms of criminal-legal influence (in connection with the commission of a criminal act). The analysis allows us to conclude that the substrate of legal influence is a basic element of socio-legal regulation (which substantively combines a system of techniques and methods of influence used to obtain a positive and socially significant result). It should be understood that a criminal-legal measure is a system of techniques and methods of coercive and rehabilitation-encouraging influence of the state on criminal practices (criminal offenses, objectively illegal acts, abuse of law) and lawful post-criminal behavior, which is carried out by the law, determined by the socio-cultural environment. It is concluded that such ideas of Leonardo Polo as coexistence, the abandonment of mental limit, his thoughts on ethics, knowledge, and law can be applied successfully when the criminal-legal measure is characterized by several features that distinguish it from measures of the legal influence of another industry.

Keywords: sociocultural environment; substrate of criminal-legal influence; criminal-legal measure; coercive and incentive influence methods; judicial discretion.

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El sustrato de la influencia penal-legal

Resumen

El objeto del artículo se encuentra en la idea de medida como sustrato de influencia penal-legal. La publicación propone considerar la medida como sustrato de formas externas de influencia jurídica y la medida penal-legal como elemento primario de todas las formas externas de influencia penal-legal (en relación con la comisión de un acto delictivo). El análisis permite concluir que el sustrato de la influencia jurídica es un elemento básico de la regulación sociojurídica (que combina sustantivamente un sistema de técnicas y métodos de influencia utilizados para obtener un resultado positivo y socialmente significativo). Debe entenderse que una medida penal-legal es un sistema de técnicas y métodos de influencia coercitiva y de fomento de la rehabilitación del Estado sobre las prácticas delictivas (infracciones penales, actos objetivamente ilegales, abuso de la ley) y conductas posdelictivas lícitas, que se lleva a cabo por la ley, pero determinada por el entorno sociocultural. Se concluye que ideas de Leonardo Polo como la convivencia, el abandono del límite mental, su pensamiento sobre la ética, el conocimiento y el derecho pueden aplicarse con éxito cuando la medida penal-legal se caracteriza por varios rasgos que la distinguen de las medidas de la legalidad.

Palabras clave: entorno sociocultural; sustrato de influencia criminal-legal; medida penal-legal; métodos de influencia coercitivos e incentivadores; discreción judicial.

Introduction

Law, as a unique social phenomenon, arises with the emergence of the state, because an indispensable attribute of any legal norm is the possibility of using state coercion in case of non-compliance with its instructions. On the other hand, it is with the help of legal norms that states are able to perform their functions properly (Tkalych *et al.*, 2020). Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka and Tkalych, 2020). In civil society, citizens are not the subjects of political-power relations and public law, but private individuals with their interests, subjects of private law, participants in civil-legal relations (Kharytonov *et al.,* 2019).

In the modern criminal-legal doctrine, several complex and actual problems are under the attention of scholars. We can mention here three of those problems. First, the need to severely limit the scope of criminal law

exclusively to those public relations that allow state intervention through the use of the criminal-legal method and to ensure regulation exclusively within the framework of criminal law (focuses on the need to treat criminal law as a basic or as the only source of criminal law). Secondly, the permanent problem of criminal law should be recognized as the objective principles of determining the grounds for application (criminalization), or refusal to apply (decriminalization) of criminal-legal influence. Third, the search for effective and acceptable (from the standpoint of humanity) forms of criminal-legal influence.

The last problem is complex, where the issue of sentencing (penalty) or waiver of punishment (depenalization), while remaining central, increasingly give way to the search for alternatives to punishment measures of legal influence, and those that ensure the effectiveness of the latter in the process of simultaneous punishment application. The solution of the outlined problems, related to the implementation of proper criminal-legal influence requires the study of the basic element – the substrate of criminal-legal influence, which is a criminal-legal measure, and the substrate of the latter is a measure. It should be noted that recently only the first attempts are made to determine the substrate of criminal-legal influence, which is the basis for all statutory external forms of criminal-legal influence.

Current criminal-legal studies need to be taken into account. It should be noted that scholars mostly focus on the analysis of certain types of criminal-legal measures (Vecherova, 2012; Yermak and Kuts, 2018; Krizhanovsky, 2019), their classification (Yaremko, 2014; Ponomarenko, 2020), and problems of application (Yashchenko, 2014; Provotorov, 2018), which gets us to assist that recently only the first attempts are made to determine the substrate of criminal-legal influence.

The article is aimed at defining the substrate of criminal-legal influence, its objective and subjective features through the philosophical prism, particularly, Polo's heritage, the substantive features of which are inherent to ontological, epistemological, and ethical dimensions of the subject of our study.

1. Historical context for the formulation of the concept of substrate of criminal-legal influence

In some sense, it is a grace that cultural and philosophical studies on criminal-legal influence, which takes form in criminal-legal measures, are possible nowadays in Ukraine, even though USSR fell apart almost 30 years ago. By mentioning that, we would like to emphasize, that it is impossible to separate the subject of our research from the historical context of its formation. In this regard, it is essential to point out that the place for an individual in the Soviet Union was far from acceptable in a civilized society.

As it was mentioned by Polo (2008), the right to move freely was grossly violated in the Soviet Union. Moreover, research for any philosophical foundation of the criminal law and corresponding legislature were primitively reduced to the Marxism-Leninism ideology, the dialectical materialism of Marx, and the dictatorship of the proletariat (Berman, 1948; Pipes, 2011). It will not be a surprise to say that these ideologies had little sympathy for a certain class of people, as well as for the law or legal system built on the rule of law, private property, and liberties respect (Pipes, 2003).

All that fit perfectly into the outline that public administration was a single possible form of government power-given supposedly from the people of the USSR. In case of state violation of the law or its inability to ensure human and civil rights, even those enshrined in the Soviet Constitution, citizens did not have the possibility of legal remedy (Berman, 1979). Accordingly, the role of courts was reduced to the announcement of the verdict, which was predetermined in the highest power structures. State lawyers had no choice but to play their part in this scheme, which practically meant that one could only dream of any effective defense. In this way, it is difficult to name the Soviet law system anything other than misanthropic and inquisitorial. Thereby, its influence on Ukraine's jurisprudence can be acknowledged as hazardous, although it is hard to object that our legislature has not left some harmless acquirements of it. Nonetheless, as we have mentioned that the problem of finding a substrate of criminal-legal influence has little research base even nowadays, it is valuable to take an effort of its philosophical substantiation as our country is moving towards Euro-Atlantic integration.

For example, in 1922 (after the revolution) corruption, about the fight against which the Bolsheviks talked so much, did not go away. Literally in the very first days after the creation of the extraordinary commitment of Dzerzhinsky, it turned out that two of its investigators took bribes for the termination of cases and the release of those arrested. After that, what could one say about ordinary militiamen, investigators and members of the tribunals, not endowed with high political trust? (Romanova, 2019).

Although, in Ukraine, a criminal legal tradition started partially in the Soviet Union authors, we do not consider that this part of the law should be understood in a misanthropic and inquisitorial, but in a more rational way with the objective of achieving the common good or human flourishment.

2. Results and discussion

2.1 Terminological basis of the study

Before we move on to direct analysis of the research results, it is necessary to clarify what is meant by certain expressions. We shall start

with the explanation of some crucial points, first of which should be the substrate of criminal-legal influence.

The substrate, or the root cause, the foundation of the criminal-legal influence may be fully comprehend as an essential humane characteristic, i.e., human nature. Hence, that is an unchanging set of properties, which affect all men thoughts and actions. Thereof, it also has an impact on a larger scale, which has its representation through a group of people, society, civilization, humanity and the Universe itself. This idea provides us the basis to refer our study to the area of interest of criminal law theory, philosophy of law and philosophical (transcendental) anthropology as well.

As Polo (2015) stated: "All men are of the same nature, but we are not all the same person" (2015: 44). We can also find a justification to our vision of human essence in the continuation of this line of thought by Polo: "If one accepts human essence, then with more reason one must say that there is a human nature, because the essence is the culminating consideration of nature" (2015: 78).

There is also an appearance of the terms "criminal-legal influence" and "criminal-legal measure" throughout the article. Here we will leave a hint to their better understanding. By doing so, it should be bear in mind that criminal-legal influence has its external representation in criminal-legal measures, while its internal part contains legal awareness and legal culture. For example, ethical norms can form criminal-legal sanctions that have the force of law, and this will be the representation of legal awareness and legal culture of a society in the state. While they are certainly exercised on a broad scale of citizens, ethics and morality are still not the criminal-legal measures; rather, they influence the algorithms of applying the criminal-legal measures, but not reduced to them. That is why criminal law is not about applying penalties and punishments only. That means the influence and the measure are correlated as a whole and a part. Criminal-legal measures are applied only when a person commits a crime.

However, criminal liability as a part of criminal-legal measures is not always applicable, since there are some exclusions to it. For example, when a minor or insane commits a crime, there are rules, which exclude their criminal liability, although criminal-legal measures such as detention or involuntary hospitalization still can be applied. Other manifestations of criminal-legal measures can be listed. They include measures such as (house) arrest, place of stay change ban, expatriation (citizenship revocation (loss) and expulsion), forced community service, confiscation, fines, the prohibition to hold certain positions or perform certain work, the prohibition of communication with or approaching certain people, freedom restrictions, imprisonment, etc. Overall, this conceptual scheme is investigated in more detail in the second half of the article with regard to the criminal-legal implications.

It is also worth mentioning what do we mean by the usage of the word "transcendental". In the context of our paper, it is referred to as a substantively higher level of being to the level subordinate to it. Wherefore, something transcendental occurs in the process of transition, or transcendence, which can be determined by ascendence and descendence, insofar as they have vectors in time and space.

The history of such terms like aforementioned can be traced far back in time. For example, Saint Augustine of Hippo (1996) used to popularize them in *De Vera Religione*: "Noli foras ire, in te ipsum redi. In interiore homine habitat veritas. Et si tuam naturam mutabilem inveneris, transcende et te ipsum. Sed memento cum te transcendis, ratiocinantem animam te transcendere. Illuc ergo tende, unde ipsum lumen rationis accenditur" (1996: 39-72).

> Do not go outward. Return within yourself. In the inward man dwells truth. If you find that you are by nature mutable, transcend yourself. But remember in doing so that you must also transcend yourself even as a reasoning soul. Make for the place where the light of reason is kindled (Hippo, 1959: 39-72).

Finding everlasting beauty, truth and harmony was essential for the Christian philosopher in the process of ascendence from sensual to intelligible (Cambronne, 1982; O'Donnell, 1992).

We will also not be mistaken if we say that before proceeding to a detailed examination of the subject of research, we should briefly characterize Polo's approach to questions of law, that is, jurisprudence. It should be emphasized here that it was important for him to focus on ethical norms initially, which in general constituted his approach for determination of law. As we remember, ethics according to Polo (2008) consists of not only goods, but also virtues and moral norms, which are the norms of the law as their expression. Therefore, the law has only a formal nature as we understand it when we say, for example, that this is a specific legislature. Nevertheless, its true meaning is of the constitution of a moral norm, which is, so to speak, the forerunner of jurisprudence itself.

Polo (2008) notes that the existence of exclusion rules is a capacious formulation of what is definitely undesirable, thus cuts off what is not worth doing both for society and for man and nature as such, an incorrect and unhappy act. The reason – is unhappy lies in the fact that true happiness is worth seeking only in following pure duty, not in replacing it with pleasure. Polo (2008), like Kant and Aristotle, draws an important axiological line between them. It would be much more difficult, Polo (2008) notes, to summarize or to count finitely of what should be done than to outline the opposite, and we cannot but agree with this. Thus, the aforementioned conceptual schemes serve as axiological support in the study of the issue of law, the branch of criminal law, and the problem of criminal-legal influence in this article.

2.2 Philosophical acknowledgements concerning the issue

To formulate a point of view on the possibility of penalization or, conversely, the depenalization of an act, it should be noted that significant in this context is the idea of transcendence of the social environment. In general, it can be described as the process of going beyond the prior state, the abandonment of former condition. However, it is necessary to turn to the remarks, the essence of which is to characterize the features of the very construction of what is meant by the transcendence of the social environment (transcendental social environment). Wherefore, there is also a need to answer the question of why is it so important to call it an environment instead of just naming it a "transcendental society" and what does it mean for a society to be transcendental. Moreover, the role they play in the essence of criminal-legal influence, or criminal law *per se*, should be considered as well.

First of all, we would like to emphasize that we as individuals, as humans, live and develop in connection with each other. Here is important to consider Polo's notion of coexistence and the idea that only a free society can outgrow itself (Polo, 2008; 2015). By postulating that insight, he leads the argumentation that to emerge means to be in cooperation with others, which takes a voluntary decision of a free (and a good) will, wherefore the concept of freedom comes into play. On the contrary, he admits, isolated systems lack evolution, in so far as they have no such options as a free choice, therefore they are not free by themselves (Polo, 2008). Inasmuch as the idea of coexistence is integral for society and by changing itself society impacts everything around (which happens to be a reciprocal influence), we would like to operate within the term "transcendental social environment". With that being said, we can now move on to the philosophical implications of the subject of our research, which enable criminal-legal influence to arise.

We found five prerequisites for the effectiveness of the criminal-legal influence:

First one is that it takes time for the social environment to change and transcendence to occur. From this point of view, a time difference is necessary to re-evaluate the compliance of measures of social-legal influence with the goals and objectives of society, which are built to achieve the positive result of multi-sectoral transformations.

The second reason for the criminal-legal influence to occur is quantitative and qualitative changes between the prior and the following conditions of the social environment. Their essence is the interconnection and correlation with each other and their carriers are individuals. Likewise, this process takes place both at the micro- and macro- levels. They are the consciousness and self-awareness of each individual, and the social environment, respectively.

The meaning of such metamorphoses is to rethink ideas, principles, positions, knowledge from a new point of view through the prism of social necessity and expediency of applying a criminal-legal influence, which in turn crystallizes based on the intention of positive change. However, do to so, we need to take an attempt to know one's max capacity of thought and ability to overcome the mental limits, wherefore, one should find its own cognitive restrictions to overcome them. In other words, this process can be called rational reasoning, as well as rational knowledge by virtue of cognitive act. Here it is important to mention the term from Polo's philosophy, which is named "the abandonment of the mental limit". Briefly, this method can be explained as "the detection of the mental limit and conditions such that it can be abandoned" (Polo, 2015: 10).

The third prerequisite of criminal-legal influence is the coexistence. In this way, the fulfillment of self is possible in society only. As an example, various scholars (Mulgan, 1974; Kullmann, 1991; Yack, 1993; Miller, 2017) point out the famous idea of man as a political animal, the original concept of which belongs to Aristotle. Indeed, as we feel the need of communication with others, we seek their help, understanding and support. Hence, this is one of the factors of social organization. Accordingly, a man knows oneself not in the pursuit of the categorical imperative, but in interaction within society, which allows distinguishing one's being from the being of other people (Polo, 2015; Vdovina, 2019). The factor of freedom is also important to consider in this regard.

The fourth issue that has to do with the reasons of criminal-legal influence is the levels of its occurrence. One way or another, but changes in the social environment are possible only based on the experience gained at the level of self-awareness. Polo used to deal more with conscience as its ethical dimension. In this way, moral consciousness was of his particular interest as well. We, in turn, want to emphasize that the solution of the questions of whether this or that phenomenon corresponds to the very concepts of good and evil is taken individually, in no way denying that ethical issues exist objectively. In so far as it is natural for a person to choose between, roughly speaking, A and B, decision-making and the responsibility for it lies on the individual. Nevertheless, the choice itself does not exalt the role of decision-maker, rather hints at the objective existence of good and evil, which are represented as A and B correspondently.

We can find similar implications in Polo (2008: 129): "Ethics moves between the alternative of the ethically positive and the ethically negative: virtues and vices, good and evil". However, for him, the concept of freedom goes beyond the voluntary acts or the freedom of choice as it is more of a principal characteristic of freedom being transcendental than the derivative from the metaphysical being of a person (Polo, 2015). The reason for this is that a person co-exists with being, neither grounded in it nor grounds it (Polo, 2015).

In this way, the ethical dimension as the fifth characteristic of the transcendental social environment must be taken into account. Polo (2008) wrote on this issue:

> The human spiritual tendency, the will (the same thing happens with the intellect), does not derive its purpose from the species, but from complete happiness, which can only be obtained through the virtuous adherence to the true and highest good. The human species is neither the end nor the highest good, as the humanism closed to transcendence claims (2008: 104).

Thus, we have characterized the main qualities that determine the substrate of criminal-legal influence from a philosophical perspective. Now we will consider in more detail the general picture with the help of the synthesis of all reasons for the subject, and through the prism of Polo's ideas, which demonstrate their effectiveness in the framework of our study.

In the initial point of Polo's (2005) system of transcendental anthropology the postulates that human nature is equally to being, the cosmos, or anything metaphysical in this regard. At the same time, the philosopher leaves the right to metaphysics to take on fundamental roles, however, in the issue of primacy, he insists that man is neither a foundation nor founded, but the same primary principle, which gives rise to the system of transcendental anthropology (Polo, 2010). This is a significant idea for our research, since human nature lies in the substratum of criminal-legal influence. This, in turn, means that the issue of criminalization or decriminalization of an act will be resolved both at the individual and at the general social, or collective level. That implies it is necessary for the members of society to have a sufficient level of legal culture, which is achieved by their own thoughtful efforts and unswerving adherence to ethical norms. Here Polo's ideas of coexistence and the abandonment of the mental limit are applicable and their consideration is possible both at the individual and at the collective levels, which enables us to deal with the notion of transcendental social environment.

As we have already hinted above, it makes sense to talk particularly about the notion of environment, since society itself is in interaction with everything around. By that, here we mean nature, architecture, technology, etc. This implies reciprocity, a mutual impact. Thus, it is important to consider namely the notion of the social environment here, as humans are the members of society and the driving force of that effect. From this perspective, it makes sense to assume that in characterizing society as a transcendental environment, one can talk about the coexistence of man and society, of human and being, and in this regard, to highlight the human coexistence with nature (environment).

At the same time, these transformations do not always have positive or ethically welcomed results. We can find the same acknowledgment of this insight in Polo (2008). There, he assessed that in so far as human societies

are generally free systems, it enables either their flourishing or decadence and this is a normal state of affairs as soon as a free system has options. Here it is essential to trace the demarcation between the natural order of things and the influence of man on this order. In this way, a person can act contrary to the natural order of things. Polo (2008) notes that the will as such can be considered as *voluntas ut natura* and *voluntas ut ratio*. While the latter is part of the former and is purely humane, the former exists objectively and does not depend on human decisions. Therefore, Polo (2008) continues, that *voluntas ut natura* is a radical act of desire, a characteristic of a person. Hence, a person cannot influence it, insofar as it is his attribute. Polo (2008) agrees with ideas of Aristotle and Aquinas and insists that it is natural for a person to strive for happiness, and this trait is exclusive to the natural will of a person, as one cannot strive for anything else but happiness.

Polo's ideas of the abandonment of the mental limit and the coexistence are significant to consider while dealing with the appearance of criminal law and criminal-legal influence. He firstly described his methodology of the abandonment of the mental limit in his book *"El acceso al ser"* [Access to Being], in which he formulated, that by following this line of thought four consequences, or themes, can be achieved (Polo, 1964a). They are extra-mental being and extra-mental essence on the side of metaphysics, and human coexistence and human essence on the side of anthropology (Polo, 2015). For him, to use this approach means to deal with the unicity, which express itself in the form of mental presence. In turn, mental presence exists as mental operation and this is the precise limit, described by Polo (2015). He notes, that the act of knowing is an immanent operation: "I see what I see while I see, I think what is thought (the object of thought) while I think" (2015: 20). Therefore, to abandon it means to put a division between personal being and metaphysics, which enables transcendental anthropology to arise. According to this conceptual scheme, human essence is the central point of considering the application of criminal-legal influence, and coexistence figures out to be its habitable sense.

3. Theoretical-legal justification of applied approach to transcendental anthropology in order to define the concept of criminal-legal influence and its measure

To some extent, it is especially exciting to study the relationship between Polo's ideas and jurisprudence, since he was related to it directly at the beginning of his philosophical path (Franquet, 1996; Yepes Stork, 2006; Selles and Esclanda, 2015). Thereof, Polo as a lawyer is rather a potential that has fully revealed himself in the broader hypostasis of Polo as a philosopher. In this section, we will touch upon his achievements of thought in the area of law, as well as the purely legal theoretical constructions in the sphere of the penal law.

Thereby, some of the questions that have their consideration below arise in this regard. For example, is the emergence of criminal law norms dictated by nature or by rationality? Alternatively, how do we know what are their origin and background? In this way, to comment on them requires an acceptance of the fact that both of the mentioned factors play a role in the existence of criminal law norms. However, the main point here is the natural reason, or ethical principle, by which criminal-legal influence appears. What is called rationality rather affects the form, while expressing it mechanically as the technical legal language. At the same time, moral norms, which are an attribute of the essence of law, rather than an instrument, fill these norms with meaning. We can claim also, that Polo (2008) characterized normativism and ethical rationalism as a way to consider ethics reductively (Polo, 2008).

Here is what Polo (2008) himself thought about the notion of law in its correlation with moral norms:

> Law and cultural customs are norms derived from ethical norms. What we call ethical norms are the laws most distinctive of the human being, most exclusively his, because their fulfillment is free. And since freedom is responsible for this, they are not mechanisms; rather, freedom can decide not to fulfill them (2008: 34).

At the same time, such transcendental as love figures out to be the main positive norm, when dealing with natural law, according to Polo (Polo, 2010; Pia Tarazona, 1999). In this regard, the concept of *synderesis (*classically is an innate habit of the intellect, that judge what is good to do, and evil to avoid) is crucial for natural law. It can be described as the fundamental element of the human act of knowledge of ethics by nature (Vanney, 2007). Polo (2008) preferred to formulate it simply this way: "Do good, act; act as much as you can and improve your actuation" (2008: 106). In addition, classical authors also used to pay attention to the synderesis. For example, Saint Thomas Aquinas used it in his works (Aquinas, 2020).

Following the more legislative side of the issue, we can state that for Polo (1984), laws are something formally fictional, meaning they are not given to a man by nature; rather, they are invented by man as a tool in order to make it easier to resolve conflicts and disputes. In this sense, Polo used to treat the concept of law as *nomos* (Polo, 1984). By that was meant the Ancient Greek word (νὸμος), which described laws governing human behavior mainly for the just distribution and rewards in case of litigation (Encyclopaedia Britannica, 2017; about the polian notion of the law as a strong fiction, Polo, *Quién es el hombre*, 1991; cf. *also* Riofrio, 2020, *pro manuscrito*). Moreover, the law as such can be considered as a strong fiction, meaning that its action prolongs physical reality, or objectivity, but does not have sole power, because, roughly speaking, it does not have a body (Polo, 1991) gives an example of a wall that does not exist in fact; instead, there is a "no trespassing" sign). Thus, for Polo (1991), the law is a cultural phenomenon and has an empowering effect on man.

In his early works, Polo tends to consider law as a normative system, which aspires to shape the order of things (Polo, 1964b). His attitude to law among other activities, or techniques, as he called them, is such that it is an art rather than science, although it has scientific features in it (Zegarra, 1991). In this way, he proposed to place law at the level of second techniques, which are higher than agriculture, military, handicraft, etc. (Polo, 1984). At the same time, politics for him is art even more subtle among the above-mentioned techniques, that is, the superior art, when compared to techniques (Polo, 1984).

It is necessary to note also that the question of coercion presence in law influences its validity. At the same time, it is not an obligatory component in order to characterize the law as such:

> The law has a coercive companion. Some have even said that the essence of law is coercion and that if there is no coercion, there is no law. It is not like that, but the coercion is a sign that it is not a fiction in the sense of fantasy (Polo, 1991: 123, own translation).

This remark has strong connotations with the subject of our research, inasmuch as the criminal-legal influence implies the same idea of coercion, which overall expresses itself in the criminal-legal measures, but not reduced to them.

Herein, let us consider some theoretical legal acknowledgments of what has been expressed above. First of all, a criminal-legal influence must undergo several institutional changes to appear. It needs to be both socially acceptable and of an adequate measure. In the meantime, penalties must be closely linked to ethical considerations, which, in turn, are open to the knowledge of the person, which is always an act, according to Polo (2008). All of that requires responsible cognitive work. That means criminal-legal norms must be carefully thought out so they have a straightforward and direct, exceptional effect. In legal theory, it is called the principle of legal certainty (Panov, 2015). The rule of law also needs to be emphasized (Waldron, 2016).

Aquinas in *"Summa Theologiae"* stated that the law is "an ordinance of reason for the common good, made by him who has care of the community, and promulgated" (Aquinas, 2020). This formula has four parts (four elements, or causes) in it. They are the form (ordinance), the aim (the common good), the support (reason), and the agents of authority or community. Whereof, we will try to follow this scheme of argumentation in the same reasonable fashion if we are to define what the concepts of the substrate of criminal-legal influence and criminal-legal measure are.

Focusing on the definition of substrate of social-legal influence, it should be noted that it is appropriate to understand it as an element of regulation, which substantively combines a system of techniques and ways of exercising

coercive and incentive influence, which are used to obtain a positive and socially significant result (Kozachenko, 2011). Thus, its measure, as an external manifestation of the socio-legal influence, has the following three features:

Firstly, it is defined (in the legal sphere) or perceived (outside the legal regulation) as an independent socio-legal phenomenon used to regulate the behavior of participants in public relations (Kozachenko, 2016).

Secondly, each social-legal measure is formed based on a combination of techniques and methods of permissible influence. Traditionally, there are two independent ways of social and legal influence – coercion and encouragement. In this case, the first is used indifferently to the person's desire to be exposed to a certain influence, while the incentive depends on such a desire. In turn, coercion and encouragement from two possible patterns of behavior of the subject of influence: coercive and voluntary behavior of the person. Given the fact that the paradigm of modern socio-legal regulation is based on the principles of anthropology, which elevates human interests to the level of the core factor of social life in various forms of its existence (Kozachenko, 2011), it is necessary to emphasize the priority of encouragement over coercion (Kozachenko, 2011). Thus, the measure of social-legal influence should contain either only encouragement to a certain type of behavior, or encouragement and coercion, and the latter method of regulation is used only if the subject fails to perform his duties voluntarily (Kozachenko, 2011).

However, a detached theoretical question regarding the line between encouragement and coercion arises. In famous Milgram Experiment (Milgram, 1963), the subject was given a choice between ceasing and continuing the process of what one thought to be a study of interconnection between pain and memory, but was the trial of the subject's obedience de facto. The method of this experiment included a gradual increase of electric shock hits up to 450 V for continual wrong answers with the involvement of the instructor, the subject as a "teacher" and the actor in the role of a "student", who was actually just pretending to take shock hits as they were fake, which subject was not aware of (Milgram, 1963).

In addition, an unconditional reward for participating was provided. The group of undergraduate students showed the same results without any participatory payment whatsoever. The continuation of the experiment could be halted by the subject's demand (Milgram, 1963). Instead, under the instructor's influence, the subjects continued to strike other participants with an electric shock. If we are to use the results of the experiment in our study, it seems appropriate to emphasize that encouragement will take place in any mechanism of criminal-legal influence where there is authority as a sociopsychological figure or stimulus.

Additionally, we need to point out that there are some sorts of criticism (Sontag, 1981; Kalmykov, 2018) regarding the idea of anthropology, the meaning of which we can trace back and find it in the works of Kant (1974; 1998) and explorers of his legacy (Sussman, 2001; Cohen, 2010). We can also find its understanding as to the justification of man in Ukrainian philosophical literature (Andros, 2002; Khanzhy, 2018a, 2018b). Nonetheless, for our study, this concept should be understood as the primacy of the human element among the principles of legal reasoning.

The third feature of the socio-legal measures is that they are aimed at exercising such regulatory influence, which brings to certain social relations (micro-level) and society and its institutions (macro-level) a positive, concrete, and public benefit (Kozachenko, 2011).

In addition, there are several approaches to understanding the notion of criminal-legal measures. The first is based on the radical denial of the criminal-legal measures independence (Grishchuk, 2007; Havronyuk, 2013). Merits of this approach lie in the fact that its use emphasizes the possibility of applying only those criminal-legal measures provided by law. However, the problems of features and properties of such measures remain unresolved.

Another is the "selfsame" approach, that is, to characterize a criminal-legal measure through the same category that is to be defined. For example, Gutorova (2014) suggested that criminal-legal measures should be understood simply as measures established by criminal law. They are applied in the case of an act provided by the Criminal Code and consist of the deterioration of the legal status of a person. Under this approach, the main task of features characterization is not scientifically substantiated either.

Other representatives of the criminal-legal doctrine suggest defining the category of "measure" by choosing a certain basic element (Vecherova, 2011; Yashchenko, 2013; Lozinskaya, 2014). This position is subject to criticism, insofar as in the process of its application, the definition does not become specific, as abstract concepts are used in its formulation.

Overall, by giving the definition of criminal-legal measures, it should be considered as a system of techniques and methods of coercive and rehabilitation criminal law practices of the state, which is carried out on the basis of the law determined by the cultural environment (Musychenko and Kozachenko, 2015) that has developed in the specific historical conditions of society (Kozachenko, 2016). These techniques and methods should be set up in a rational way for the happiness of the person (as a "an ordinance of reason for the common good" as Aquinas said), using the best active part of the person, his creativity, as Polo said. The idea of a transcendental social environment is applicable here all the more so.

4. The essential characteristics of the criminal-legal measure as a substrate

The Ukrainian doctrine has studied in deep the characteristics of the criminal-legal measures, taking into account the Soviet doctrine. According to this doctrine, the following features are inherent for the criminal-legal measures.

Firstly, the criminal-legal measure is appointed and implemented exclusively by the state. This function lies in the state authorized bodies and officials. It is possible only on a normatively defined basis, which is expressed by law or judicial precedent. This feature is also present in the case of concluding a conciliation agreement, as such an agreement requires further approval by a court (Kozachenko, 2016). The main idea about this feature is that criminal-legal measure application is public in nature. Looking ahead, it should be noted that the last feature focuses on clear adherence to the procedure for applying criminal-legal measure.

Secondly, criminal-legal measures are subject to appointment only if the grounds provided by law are established. In turn, they have general and special features. For example, the general feature is committing a crime, and special is an abuse of rights, improper post-criminal behavior, etc. (Krizhanovsky, 2019).

Thirdly, the system of criminal-legal measures is formed on a cultural and ethical basis, which explains a certain variety of types of such measures in the criminal law of different countries (Musychenko and Kozachenko, 2015; Kozachenko, 2016). The implications of that were investigated in the first half of the article.

In addition to these properties, each criminal-legal measure is characterized by features that determine its structure. They can be divided into those that are objective and which are subjective (Kozachenko, 2016).

Basically, the objective features of criminal-legal measures have to do with their purpose. Generally, it occurs as social justice, something that Finnis (2011) described as “the fulfillment of all human persons in all societies” (2011: 451). Polo (2013) expands this consideration by the acceptance of the fact that law is justified by the need to entitle people, hence, it belongs to the moral order. In his opinion, that is why coercion is intrinsic to the law (Polo, 2013).

In this way, the enforcement of criminal-legal measures requires strict compliance with the rule of law, which is expressed in the correspondence between:

1. socially dangerous acts and coercive measures.
2. damages and restitution.

3. positive post-criminal behavior (rehabilitation) and incentives.
4. personal, community and state interests (Musychenko and Kozachenko, 2015).

In addition, it must be noted that more than one major criminal-legal measure cannot be applied at once (Kozachenko, 2016). Although, some subsidiary measures, for example, confiscation (Yermak and Kuts, 2018) or certain activity ban, can occur.

Substantive features of a subjective nature have to do with individuals to whom the measures are applied (Yermak and Kuts, 2018). Noted, that the subjective composition of criminal-legal measures is characterized by the presence of either 1) general subject, which coincides with the characteristics of the subject of the crime, or 2) special subject, which represents its additional properties, or unique subject, that lacks certain features of the subject of the crime (Yermak and Kuts, 2018).

Finally, the subjective properties of criminal-legal measures are expressed in the procedural component, which ensures the application of a particular criminal-legal measure, taking into account the characteristics of both the act itself and the person who committed it (Yashchenko, 2014; Krizhanovsky, 2019). That aspect is reflected in judicial discretion, that is, the activity of the judge as an arbiter (Kozachenko, 2016). According to Aquinas it is a matter of "reason," but not any reason, but the reason in service to achieve the common good. According to Polo, discretion is possible because law is fiction, but fiction for the sake of the person and his coexistence on society.

All in all, the application of criminal-legal measures should be carried out responsibly in order to ensure the necessary and sufficient influence (Ponomarenko, 2020). In turn, its nature is determined by the inner convictions of the relevant procedural law, which is formed as a result of impartial, objective and fair establishment of all the circumstances (Kozachenko, 2011). Criminal-legal measures are a system of normatively defined measures of influence, and are focused on punishment, correction, prevention, re-education, medical care and treatment of persons, and criminal restitution. The basis for criminal-legal measures is considered to be the commission of an act crime and encroaches on the system of social values, which is formed based on the indisputable nature of the definition of natural human rights and freedoms and the changing nature, determined by the level of development of the nation and culture.

Conclusions

Hence, the discovery of correspondence between the philosophical heritage of Leonardo Polo and the theoretical implications of criminal law

grants access to the possibility of defining the criminal-legal measures as a substrate. In turn, its basic element should be considered as a humane characteristic. It permits us to study this issue in the field of transcendental anthropology, by means of which the role of man becomes equally significant to explore, likewise its coexistence in society, and with being. Additionally, it should be emphasized that Polo's concepts of the abandonment of the mental limit and the coexistence are interconnected, and play a crucial role in the subject of our study. Thus, while abandoning the mental limit, one acquires transcendental freedom, which is coexistence, as only a free person can genuinely co-exist with others and with being. Thereof, Polo's transcendental anthropology is an attempt to balance anthropology and metaphysics in such a way of putting a person on an equal footing with being, allowing humans to reach the level of personal existence.

Inasmuch as the essence of law deals with moral norms, the issue of criminal-legal influence arise inevitably. It is connected to ethics since obligations and prohibitions are concerned. That brings us to the legal awareness and legal culture, which constitute the internal structure of criminal-legal influence. Furthermore, its external action is expressed in the form of criminal-legal measures. Influence includes measures, but not reduced to them. The primary element of criminal-legal measures should be recognized as a legal measures of appropriate nature. That means the system of techniques and methods of coercive and rehabilitation criminal law practices of the state, which is carried out on the basis of the law determined by the cultural environment that has developed in the specific historical conditions of society.

It is concluded that a criminal-legal measure is characterized by several features that distinguish it from measures of legal influence used in other areas of both public and private law. The selected features of both objective (purpose, grounds) and subjective (the subject of application, judicial discretion) nature indicate the suitability of the proposed approach for the definition of criminal-legal measures with further use at the doctrinal, regulatory, and law enforcement levels.

At the same time, the proposed research supplements the basis for further investigation of both criminal-legal influence and criminal-legal measures in the area of transcendental anthropology and the philosophy of law, as well as for the practical application of its results.

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Role of the Philosophy of Law in the process of unifying the legal systems of the members of the European Union in the context of the Common Framework of Reference Project

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Abstract

The study discusses the role of the philosophy of law in the process of unifying legal systems through the prism of the principles of the Draft Common Framework of Reference in Europe. The application of the philosophy of law in unification processes is also a necessary condition for the implementation of these processes about human rights and the sovereign interests of the State, which implements the unification of the legal order. Hence, the issue of European integration determines the strategic direction of the state, and this leads to the unification of law. The study aims to identify the role of the philosophy of law in the processes of unifying the legal systems of the European Union and its importance in the use of principles in these processes, justifying the need to use the philosophy of law in any process of transformation. It is concluded that the philosophy of law is a bridge harmonized with the legal sphere of operation of both individual states and supranational associations.

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Keywords: philosophy of law; unification processes; principles of the common framework of reference; adequacy of legislation; national sovereignty.

Papel de la Filosofía del derecho en el proceso de unificación de los sistemas jurídicos de los miembros de la unión europea en el contexto del proyecto de Marco Común de Referencia

Resumen

El estudio discute el papel de la filosofía del derecho en el proceso de unificación de los sistemas jurídicos a través del prisma de los principios del Borrador del Marco Común de Referencia en Europa. La aplicación de la filosofía del derecho en los procesos de unificación es además una condición necesaria para la implementación de estos procesos con respecto a los derechos humanos y los intereses soberanos del Estado, que implementa la unificación del ordenamiento jurídico. De ahí que el tema de la integración europea determina el rumbo estratégico del estado, y esto, conduce a la unificación del derecho. El estudio tiene como objetivo identificar el papel de la filosofía del derecho en los procesos de unificación de los sistemas jurídicos de la Unión Europea y su importancia en el uso de los principios en estos procesos, justificando la necesidad de utilizar la filosofía del derecho en cualquier proceso de transformación. Se concluye que la filosofía del derecho es un puente armoniza con la esfera legal de funcionamiento tanto de los estados individuales como de las asociaciones supranacionales.

Palabras clave: filosofía del derecho; procesos de unificación; principios del marco común de referencia; adecuación de la legislación; soberanía nacional.

Introduction

In today's world, in the international arena, much attention is paid to the unification, cohesion of the parties. This is explained by the fact that in resolving certain issues and facilitating the implementation of planned tasks is of great importance the support of other full participants in this relationship, which allows to achieve the goal. At present, in the international community, the role of such a participant in legal relations is played, in particular, by the European Union (hereinafter – the EU).

Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka and Tkalych, 2020).

The conceptual foundations of the philosophy of European integration are as follows:

1. to develop theoretical and conceptual principles of European integration.
2. implement the legal framework, which should be pro-european.
3. public authorities must be adapted to function in terms of membership in the European Union.
4. the method of exercising the powers of state authorities in the process of implementing European integration policy must be democratic, legal, and humane (Voronkova, 2006).

Currently, Ukraine is pursuing a course of European integration, which, in turn, determines the features of state policy in all spheres of public life and ways to implement it. This integration and the legal sphere, which is based on the legal system of the state, have not escaped. Thus, the reform of the legal sphere will, in the future, facilitate the process of integration of all other vital areas, as it will serve as a kind of platform for them, the basis for integration.

Legal consciousness, as an organic part of the spiritual reality, acquires an independent spiritual and cultural status among the foundations of social and legal life (Kharytonov *et al.*, 2019). It is clear that the main task of the moment for humanity is to survive and successfully overcome the global crisis caused by the pandemic. However, in the fight against the virus, the ideological and cultural achievements of Western civilization must not be lost (Tkalych *et al.*, 2020).

The work aims to analyze the importance of the philosophy of law in the unification of the legal system taking into account the principles of Draft Common Frame of Reference (hereinafter – DCFR) (2009), as well as to establish the need to apply the philosophy of law in integration processes to preserve the identity of the legal system and sovereignty of the state.

1. Methodology

The methodological basis of the work consisted of both general and special methods, including, in particular, analysis and synthesis, dialectical, systemic, and logical-legal methods. Thus, the analysis made it possible to study the philosophy of law within the principles of DCFR and European

integration processes, which are interrelated. Synthesis served as a basis for combining original ideas, principles, developments for the effective use of the philosophy of law in unification processes. Moreover, the dialectical method was used to establish the truth in modern unification processes that take place when a country becomes a member of the European Union, by identifying the role of the main ideas of the philosophy of law in European integration using the principles of DCFR.

That is more, the systematic method allowed us to identify the general properties, connections, and patterns that arise when applying the principles of DCFR through the prism of the philosophy of law, as well as to identify the dependence of DCFR principles on the fundamental principles of philosophy of law within the unification of legal systems. Further, the formal-legal method has become indispensable in interpreting the content of basic concepts, their fundamental characteristics, as well as legal norms relating to the concepts used. Besides, generalization, as a method, made it possible to draw conclusions and identify the main problems and vectors of the application of the philosophy of law in European integration processes. Finally, the logical-legal method is reflected in the formulation of proposals for further improvement of the process of unification of the legal systems of the Member States of the European Union.

2. Analysis of recent research and publications

A large number of works by domestic and foreign scholars, both within the philosophy of law and comparative law, the law of the European Union, is devoted to the study of issues related to the research topic. Thus, Vyshnyakov (2012) studied the issues of international integration, emphasizing the existence of integration law, within which he considered, in particular, integration levels and methods of creating integrated norms.

Besides, Voronkova's (2006) works outline the idea of the existence of the philosophy of European integration, which is manifested in the paradigm of European integration policy, as well as define the conceptual foundations of the philosophy of European integration, its "historiosophy".

Kharytonov and Kharytonova (2015) co-authored a detailed analysis of the principles of civil law enshrined in Ukrainian law and the principles of DCFR, identified their features in the objective meaning and fundamental content, explored the definition and essence of private law.

Thanks to Blazhivska (2015), issues related to the possible unification of European private law and harmonization of civil law of the member states of the European Union have reached a new level of research. Thus, the scientist studied the purpose of the formation and implementation of the principles of DCFR, considered the prospects for the unification of European private law, in particular within the unification of legal systems.

Equally important was Akimenko's (2019) study, which examined the principles of the DCFR through the prism of harmonizing the private law of the European Union and the private law of the member states of the association. In the framework of the above work, the factors of the process of further integration of European private law were identified, and the "Project of the Common System of Approaches (DCFR)" was analyzed.

Peculiarities of the process of unification were studied by Nevmerzhytska (2014), who, in her work, outlined the interpretation of the concept of unification, its goals, and the order of implementation of unification processes in the state. In addition, the scholar also focused on the need to improve legislation, in particular, by unifying the structural elements of its system; the need for unification has been identified.

These scientific works were aimed at studying certain issues related to the unification of law, taking into account the philosophical thought and principles of DCFR, but, currently, the importance of philosophy of law within the unification processes of legal systems through the prism of DCFR principles is insufficiently studied.

3. Results and discussion

The integration of legal systems should take place, in particular, through their unification. Unification should be understood as the process of approximation, the entry into each other of the legal norms of one legal system to similar in purpose norms of another system. Thus, with the help of unification you can achieve the following goals:

1. eliminate duplication of law;
2. to fill the existing gaps in the legislation, and;
3. to achieve certainty and prediction of results both in rule-making and in the regulation of controversial issues (Nevmerzhytska, 2014).

The authors are also convinced that unification is, perhaps, the most important step towards achieving ideal legal relations at the level of international law, which will ensure unconditional observance of the interests of each state, as well as human and civil rights and interests within national law within states.

Unification should be considered activities related to the creation of the same type of regulation of relevant social relations through the adoption of similar rules of law that will legally eliminate existing gaps in legal regulation and heterogeneity of the latter.

The unification of the legal system, first of all, means the unification of national legislation as its main component.

In the case of the creation of an international association, issues of unification play an important role, because in the regulation of relations that have a legal relationship with the legal systems of two or more countries, there may be a conflict of legal systems of states with which subjects or objects legal relations, or legal facts that influenced their emergence, change or termination (Atamanchuk, 2018).

At the same time, the approximation of legal systems should not be chaotic, ie it should meet certain standards developed and agreed by all participants in the relevant unification. Thus, through the prism of this, the EU can be considered a model, because facilitating the tasks of EU member states, as well as those countries seeking to join the international community, the EU has developed and generalized principles, concepts, and models of private European law. A platform has been created for member states to unify national legislation within, first of all, private law. These principles, concepts, and model norms are contained in the DCFR – a project specifically developed by EU working groups on legal issues.

The value of DCFR, in our opinion, is that it does not claim to create a "single-faith" universally binding rule of law that will establish legal conduct and the limits of its regulation. The adoption of the DCFR pushed into the background the idea of creating a European Civil Code or other acts that would extend to European countries. On the contrary, this project aims to preserve the identity of national legislation, as the basis of any legal system is legal awareness, which in turn is closely linked to the mentality, genesis, and philosophy of law, which is inherent in each individual state.

Currently, the role of philosophy of law in unification processes, according to the authors, is insufficiently assessed and balanced, as the philosophy of law is theoretical, but the basis for this area are both past and present relations and those that should serve as a guide for improving the legal system. Within the philosophy of law should be studied reality, the current state of affairs, in terms of the interaction of everyday life with the normative systemic world, ie norms, laws, rules, regulations, prohibitions, etc., which should regulate its behavior and therefore to some extent form the boundaries of its existence. It is this interaction that determines the legal reality, which is based on the general principles of existence, understanding, knowledge, and change of legal reality.

Thus, in the implementation of any modification of the usual reality, including legal, it is impossible to do without the application of postulates developed by the science of philosophy of law.

Thus, the philosophical substantiation of law aims to apply the achievements of philosophical thought, combining the rule of law with fundamental values that should form the foundation for the legal system of each state, including the values of freedom, justice, equality.

Philosophy of law expands the scope of jurisprudence by seeing the general picture of the world, allows jurists to ask and solve a much wider range of issues compared to traditional issues. Jurisprudence concretizes the idea of legal philosophy about the general picture of the world, about the legal space, about the human dimension of law (Shemshuchenko, 2003).

Given that philosophy examines the law in terms of ontological rethinking of its place and role in the formation and development of each individual and society as a whole, the implementation of any transformational processes within legal systems, including their unification when entering the or other supranational unions, without using the achievements of the philosophy of law should be considered incorrect, because, in this case, there is a risk of overturning the balance between the national legal system and the so-called European law.

According to the authors, each legal system has its own idea, integrity, and identity. The sovereignty of the state, in particular, is based on these three aspects, as it testifies to the existence of the foundation of its internal independence and autonomy, the origins of which lead to external independence. Thus, the unification of legal systems may result in the loss of their individuality, which in turn will entail the possibility of dependence on the prevailing principles and norms that became the basis for unification, but failed to adapt to the peculiarities of public life in a particular historical territory and its legal regulation. In the event of a delineated situation, it is not possible to achieve a balance between unified norms of law and generally accepted norms of morality, legal and other customs, rules of coexistence in a particular society, and hence legal consciousness. That is why the philosophy of law in its application in the process of unification of legal systems is designed, in particular, to preserve the identity of each legal system, taking into account the common heritage and fundamental values that represent the core of the philosophy of law.

The philosophy of law allows for a deep understanding and perception of the transformations of the legal system following the real social needs and challenges of today. The authors believe that there must be a certain balance between personal and public interests in the state, and the tendency to satisfy personal interests, which implies libertarianism, will inevitably lead to the weakening and subsequent disappearance of the state. Thus, the EU has different countries in size, by the number of population, and the amount of and economic resources, so they have different models of government, but none of them has absolute libertarianism as the dominant ideology and absolute freedom. Therefore, it is necessary to define in the state those limits of freedom that cannot be crossed.

A prerequisite for legal integration is a certain state of the legal system. Thus, continental European civil law, similar systems of constitutions and economics, allow us to come to the idea of a real possibility of unification

in the field of contract law, property law, company law, competition law, as these norms follow not so much from the historical and cultural features of individual nations, but from the needs of ensuring the functioning of the economy, consolidation of customary international law in the economic sphere as a source of law, the formation of scientific beliefs common with experts from other European countries (Vyshnyakov, 2012). And in this way, a lot has been done in Ukraine, because civil law has included such a principle as freedom of contract, included new types of contracts, including rent, leasing, factoring, and others, which enriched the legal system of Ukraine.

Joining the European Union is accompanied by several mandatory changes, including within the framework of legal regulation. At the same time, there is no need to talk about forcing member states or states aspiring to join the union to unify legal systems, as the Copenhagen criteria, approved by the European Council in June 1993, do not provide for a direct commitment to unification. Along with this, the third criterion is the ability to take on the obligations of membership, i.e. the obligations arising from accession to the EU, including strict adherence to the objectives of the political, economic, and monetary union (the criterion of membership) (Falaleeva, 2017).

The analysis of the content of this criterion shows the need to adapt the legislation of the state to the requirements of the European Union, as only a state that has a strong legal basis for the undertaken obligations can meet the criterion of membership. Thus, the confirmation of this is, in particular, the focus of state policy on the approximation of national law to the rules of so-called European law. The same policy is supported by Ukraine to bring closer the possibility of joining the European Union, and therefore as a result may be a step towards possible further unification of the legal system (Law Ukraine, 2004).

As noted earlier, the European Union has proposed DCFR to facilitate the adaptation of legislation under private law.

Private law means a set of concepts, ideas, principles, and norms that determine based on dispositiveness, legal equality and initiative of the parties, the grounds for acquisition, and the implementation and protection of rights and obligations of individuals who are not in power (subordination to each other) and freely establish their rights and responsibilities in the relations arising from their initiative (Kharytonov and Kharytonova, 2015). Thus, DCFR offers assistance in the adaptation processes of the area of law that does not involve direct participation in the relationship between the state and its public authorities and, therefore, gives the EU member state unlimited rights to determine and establish ideas, principles, and norms of public law.

It should be noted that the adaptation of legislation is not aimed at full unification of the legal system of the state, but, in essence, DCFR is a factor of unification, as it presupposes the existence and adoption of common origins and ideas, which in the future may lead to the creation of a common legal system for all Member States of the European Union.

The authors are convinced that the creation of a single unified legal system will lead to the loss of identity and sovereignty of member states and make them too vulnerable to change within the European Union, i.e. will not allow any manifestations of independence in matters of legal regulation within the state and at the level of international cooperation. Besides, the level of opposition to the European Union itself as a governing body, which has its own shortcomings, will decrease. According to the authors, such shortcomings include excessive interference of European officials in the economy of certain countries to prevent domestic competition, etc., and this affects the level of the economy of certain countries, the sphere of production, and employment.

As the practice of law enforcement shows, modern attempts to harmonize private law have led not to the exclusion of national jurisdictions, but the continued operation of European and national legislation. This necessitates the need to address which of the rules are more important – enshrined at the European or national level (Bar, 2013).

At the same time, the DCFR can be considered a starting point for the formation of private law of the European Union, the development and operation of which in general seems to be a rather controversial process; perceived very ambiguously by various institutions of the European Union and the Member States (Akimenko, 2019).

At the same time, DCFR is characterized by positive features. Thus, the purpose of DCFR as a standard rule, based on a comparative analysis of the laws of the European Union, is not to provide recommendations for resolving a conflict in the law, but to create the most comfortable conditions for resolving conflicts in the legal field, which is to offer an alternative intermediate way to reach an agreement in contentious situations. At the same time, as practice shows, it is quite difficult to decide which rule is better to apply in a given case. This means that law enforcers must act at their discretion and be guided by their own interpretation of these norms (Blazhivska, 2015).

In this context, the philosophy of law is important because it allows you to compare approaches to the settlement of similar or related institutions of law using a rule, to perceive the legal logic and vision of the situation when applying the relevant comparable rules, which allows developing our own position on perception or deviation of certain legal norms to settle a particular dispute.

DCFR serves as an indicator of the level of similarity of national private law systems, which can be considered as a regional manifestation of the common European heritage, in connection with which DCFR has the opportunity to understand and promote collective discussion of private law in Europe (Bar, 2013).

According to the authors, the principles of DCFR are a clear example of the application of the philosophy of law in the practical dimension, which is manifested in the fact that the principles represent the quintessence of philosophical developments. In particular, according to one of the authors:

> The last basic principle of DCFR is the principle of efficiency, which is considered here in two areas: efficiency for the parties to the legal relationship and efficiency for society. Effectiveness for the parties is ensured, in particular, by the establishment of minimum formal and procedural restrictions (Didkovska, 2012: 26).

The norms that establish information responsibilities, regulate the protection of consumer rights, are considered to be conducive to efficiency for broad public purposes. That is, perceiving this principle, in general, as a positive one, each country must decide and regulate the minimum of formal and procedural restrictions. Thus, notaries can be perceived as a formal and procedural restriction on the effectiveness of contract law, because without a notarization of the contract the parties could settle their rights faster and cheaper, but not so reliably. Therefore, in many EU countries, the notary exists and is developed, and in other countries, it performs minimal functions. The best way to develop the legal system of the state should be determined taking into account all the important criteria, and this can be done only from an objective standpoint, which should ensure the philosophy of law.

The differentiation of DCFR princes into basic and priority ones speaks of focusing on the main goals set by the developers of these principles. This means that for the implementation of such a division, a lot of work has been done to study the content of the principles of DCFR, which is impossible to imagine without the use of techniques and ideas of the philosophy of law.

Thus, the basic principles are the principle of freedom, security, justice, and efficiency. The priority principles of the DCFR include, in particular, the principle of protection of human rights, promotion of solidarity and social responsibility, preservation of cultural and linguistic diversity, protection and improvement of the welfare of citizens and entrepreneurs (Kharytonov and Nekit, 2017).

The development of these principles, in turn, indicates a high level of application of the philosophy of law for their separation and consolidation, as they are the result of the study of the mutual impact of the law on individual.

Conclusions

To summarize the above, it is worth emphasizing that due to the philosophy of law it is possible to understand the value of law, which is manifested, in particular, in the transformation processes that take place at the request of relevant subjects of supranational law, including the European Union. Thus, by signing an association agreement, the state recognizes the operation of the "legal system of the European Union" on its territory, which to some extent risks the sovereignty and independence of its own legal system. Therefore, each country must determine the extent to which it will apply these principles, anticipate the risks it will have in their implementation in the legal system, but taking into account the mentality of the people, etc., and this is a task for the philosophy of law.

Thus, only with the use of the philosophy of law of modification of rights, its unification with the legal system of the European Union is possible with minimal loss of identity and uniqueness of the legal system of a particular state. Philosophical substantiation of law allows us to analyze the content of paradigms, principles, models of law in general, and each individual legal norm, in particular, within the framework of its implementation in the national legal system. With the philosophy of law comprehension and awareness of the meaning of law in its integrity and at the same time the effectiveness of the impact of the law on man and his development reaches a new level and therefore is an indispensable factor in decision-making to unify the legal system of the European Union.

The importance of the philosophy of law for the unification of legal systems is also manifested in the ideas underlying the principles of DCFR. Thus, the consolidation into a single universally binding act of a norm that would be accepted by all member states of an international organization, without the application of philosophical ideas aimed at mitigating the convergence of different national legal systems, is difficult to imagine in practice.

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Public and Private Interests in the Sphere of Administration of Vaccination in a Pandemic

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Abstract

COVID-19 has posed challenges to the global community at large and to jurisprudence in particular. In the current context, it is of paramount importance to find the best possible solutions in the field of legal regulation that help minimize the harmful effects of the global multisectoral crisis, save lives and restore the well-being of society. The work aims to clarify the theoretical problems in the legal status of medical innovations in the context of the COVID-19 pandemic. The subject of research is anticoronavirus innovations in the medical field. The research methods used were the dialectical method, the system method, the formal-legal method, the historical-legal method, and the structural method. As a result of this work, the current state of legal regulation of anti-ronavirus medical innovations was analysed, in particular the international legal framework, as well as national legislation in this area; contradictions in the observance of the balance of public and private interests under the conditions of a pandemic are revealed and, consequently, some ways of resolving them are suggested.

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Intereses públicos y privados en el ámbito de la administración de la vacunación en una pandemia

Resumen

El COVID-19 ha planteado desafíos a la comunidad mundial en general y a la jurisprudencia en particular. En el contexto actual, es de suma importancia encontrar las mejores soluciones posibles en el campo de la regulación legal que ayuden a minimizar los efectos nocivos de la crisis multisectorial global, salvar vidas y restaurar el bienestar de la sociedad. El trabajo tiene como objetivo esclarecer los problemas teóricos en el estatus legal de las innovaciones médicas en el contexto de la pandemia de COVID-19. El tema de la investigación son las innovaciones anticoronavirus en el campo médico. Los métodos de investigación empleados fueron el método dialéctico, el método del sistema, el método formal-legal, el método histórico-legal y el método estructural. Como resultado de este trabajo, se analizó el estado actual de la regulación legal de las innovaciones médicas anticoronavirus, en particular se caracterizó el marco legal internacional, así como la legislación nacional en esta materia; se revelan las contradicciones en el aspecto de la observancia del equilibrio de los intereses públicos y privados en las condiciones de una pandemia y, en consecuencia, se sugieren algunas las formas de resolverlos.

Palabras clave: innovación medicas; propiedad intelectual; crisis sanitaria internacional; COVID-19; administración pública.

Introduction

The right to health is one of the fundamental human rights. However, during the pandemic, the problem of access to medicines for all social groups becomes extremely relevant. In particular, as of now, vaccination has already begun, mainly in the richest countries in the world. While citizens of poor countries do not currently have access to the vaccine.

On the other hand, there is the problem of the cost of medicines. In particular, the world's leading pharmaceutical companies seek to make money on their innovative products, so their products are often too expensive.

The high cost of medicines, however, is quite justified – the investment of pharmacological companies in the development and testing of the drug forces the manufacturers of original products to set such a price. The production of cheaper analogs is impossible until the expiration of the patent for the original drug.

Since the outbreak of the COVID-19 pandemic, this problem has become increasingly important, as the speed of overcoming the disease depends on the availability of drugs. Obviously, restricting the rights of patent owners without fair compensation in favor of the public interest is not the best solution. Therefore, there is a need to develop and implement mechanisms that will end restrictions on everyone's right to health care and offset the negative effects of such restrictions on the intellectual property rights of patent holders of medicinal products.

However, such mechanisms should be developed and implemented as soon as possible. After all, every day without a vaccine costs thousands of lives around the world. Accordingly, all governmental and non-governmental actors involved in the vaccination process should join forces to provide the vaccine to every inhabitant of the planet who wishes to use it.

1. Results and discussion

1.1 Review of International and National Legislation Concerning Legal Regulation of Innovations in the Medical Field

The Universal Declaration of Human Rights (United Nations, 1948) in Article 25 emphasizes the importance of the connection between an adequate standard of living, medical and social security for the health and normal development of the individual and individual's family. In part 2 of Art. 29, there is a caveat, which postulates that in the exercise of their rights and freedoms, everyone can experience only such restrictions as are necessary to respect the rights and freedoms of others, public morals, the welfare of a democratic society.

Subsequently, the International Covenant on Economic, Social, and Cultural Rights (United Nations, 1966) in Art. Article 12 enshrines the right of everyone to the highest attainable standard of physical and mental health, and, to exercise this right, States Parties have established the obligation to create all necessary conditions for the provision of medical care and in the case of illness.

In 1994, the Declaration on Patient Rights Policy in Europe was adopted, which establishes the right of everyone to receive health care commensurate with his or her health, including preventive and curative care. Moreover, the provision of medical services must correspond to the financial, human,

and material resources of a particular society and ensure the constant availability of the necessary medical care for all equally, without any discrimination (World Health Organization, 1994).

The main normative legal act of the Ukrainian people (Constitution, 1996) in Article 3 enshrines the duty of the state to take care of the main social value – the person, its health, honor, and dignity; prioritizes the approval of its rights. In Art. 27 of the Constitution, the legislator explicitly prohibits the deprivation of human life, establishes the obligation of the state to protect it. Article 49 of the Constitution of Ukraine affirms the right of everyone to health care, medical assistance, and insurance. These constitutional provisions are detailed in the Fundamentals of the Legislation of Ukraine on Health Care.

Thus, the right to life and health as inalienable natural rights of everyone is reflected in international legal treaties and national regulations. Ukraine is moving towards the harmonization of its legislation with the legal framework and the recommended EU standards in civil protection (Pavlova *et al.*, 2020).

On the other hand, international and national regulations protect intellectual property, including innovations in the medical field. In particular, the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of March 20, 1952, enshrines the right of individuals and legal entities to peacefully possess their property, and this provision protects also intellectual property. However, intellectual property rights began to be regulated long before that. As Ponkin (2013) indicated in his work "History of the development of intellectual property law. The first regulations concerning copyright issues", the need to consolidate intellectual property rights has long been discussed by scientists and lawyers as a way to protect the results of intellectual activity. Even in the VI century BC, in ancient Greece, there was a rule according to which a chef who first prepared a new dish had an exclusive monopoly on cooking it for a certain period.

The oldest registered codified normative act, which contained the basic provisions on patent law, is the Venetian Patent Statute, dated 1474. This act is unique because it established the first patent system in Europe (Samyuta, 2020). However, already in 1812, the first patent law on the territory of the Russian Empire was signed – the Manifesto "On the privileges of various inventions and discoveries in crafts and arts." It established the procedure for obtaining, at that time, privileges for inventions, terms of their validity, and exclusive rights of the owner (Presidential Library, 2020).

The next stage in the development of patent law was determined by the signing of numerous Conventions, Declarations, and Treaties in this area at the international level. Extremely important provisions concerning the

protection of patents, including the provisions on compulsory licensing, were enshrined in the Paris Convention for the Protection of Industrial Property of March 20 (World Intellectual Property Organization, 1883).

Subsequently, for the development of the patent system on June 19, 1970, the Patent Cooperation Agreement was adopted. The agreement was designed to harmonize many of the then existing patent systems by establishing a set of rules for filing and processing patent applications.

The subsequent adoption of international regulations, which detailed and updated the provisions of previous treaties, was also extremely important. For example, the Patent Law Treaty of June 1, 2000, established the basic requirements for patent applications, the grounds for revocation of a patent. Chapter Five of Part Two of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (World Trade Organization, 1994) addressed general patenting issues.

To harmonize Ukrainian legislation and bring it in line with international standards, the Constitution of Ukraine enshrines the right of everyone to engage in scientific and technical creativity, approves the protection of intellectual property. The general provisions governing the fundamental issues of protection and enforcement of intellectual property rights were established in the Civil Code of Ukraine (2003). In particular, Chapter 39 defines the concept of subjects of intellectual property rights to an invention or utility model, outlines the basic intellectual property rights to an invention or utility model, and sets the validity of such rights.

Issues of the legal protection of inventions and utility models, the procedure for obtaining, invalidation, termination of a patent and other important issue related to this area were regulated by the Law of Ukraine "On protection of rights to inventions and utility models" (1993). It is also impossible not to note the presence of a large number of bylaws that in one way or another relate to this area of legal regulation. For example, the Order of the Ministry of Education and Science of Ukraine "On Approval of the Regulations on the State Register of Patents of Ukraine for Inventions" of April 12, 2001 No 291, establishes the main provisions concerning the maintenance of such a Register, the procedure for granting a patent for an invention.

With regard to the wider context of the development of world processes, it is thanks to globalization, as a deliberate policy of the developed countries of the world, aimed at the gradual integration of economic, political, socio-cultural and other systems, that any person can satisfy his needs in any sphere (Shyshka and Tkalych, 2020).

Thus, there is no doubt about the importance of protecting both the right to health care and intellectual property rights, in particular patents for inventions in the medical field. This is evidenced by the history of adoption

and the number of extremely important international regulations. However, despite such a variety of legal documents, there has been a debate for many years about balancing the public interest of the public with the right to health care and the private interests of pharmaceutical companies, which appeal to the importance of intellectual property rights and protection of patents for medicines. Outbreaks of new diseases, such as COVID-19, keep the controversy going and force states and the international community to find solutions. New innovative products are created for the implementation of inventions, and therefore it is important to understand how innovations in the medical field are regulated in the legislation, and what problems arise due to the shortcomings of the existing legal regulation.

1.2 Legal Regulation of Innovations in the Medical Field and Related Problems

Legal regulation of innovation in the medical field has long been under the close supervision of scholars and lawyers, which is not surprising because the legislation in this area is actively updated in accordance with international standards. However, sometimes, insufficient legal regulation of certain issues leads to significant economic and legal problems.

The Law of Ukraine "On Innovation" (2002) in Part 1 of Art. 1 defines the concept of innovation as products or services, as well as organizational and technical solutions of production, administrative, commercial, or other nature, which significantly improve the structure and quality of production and (or) social sphere.

From the legislative definition of the concept of innovation the following features can be distinguished:

1. it is a thing, information, or process.
2. its mandatory attribute is novelty – such a quantitative and qualitative characteristic that gives reasonable grounds to consider a thing, information or process different from the level of development that preceded them.
3. a prerequisite is the improvement of technological, scientific, etc. level of development due to the emergence of innovation.
4. focus on improving the production and/or social sphere.

According to Art. 4 of this Law, the objects of innovative (aimed at the use and commercialization of research results and developments and which determines the release of new competitive goods and services) activities are:

1. innovative programs and projects.
2. new knowledge and intellectual products.
3. production equipment and processes.
4. production and business infrastructure.
5. organizational and technical solutions of production, administrative, commercial or other nature, which significantly improve the structure and quality of production and (or) social sphere.
6. raw materials, means of their extraction and processing, and;
7. marketable products; mechanisms for the formation of the consumer market and sales of marketable products.

An innovative product is the realization (implementation) of an object of intellectual property, in particular, an invention, utility model, or industrial design. Thus, to develop a certain innovative product in the medical field, it is necessary to acquire intellectual rights to the invention, which, following Art. 462 of the Civil Code of Ukraine, certified by a patent.

According to the general rule provided for in Part 3 of Art. 465 of the Civil Code of Ukraine, the term of validity of exclusive intellectual property rights to the invention expires twenty years from the date of filing the application for the invention. Original medicines (innovative medicines) are also subject to patenting, which, unlike generic drugs (analogues of original drugs) undergo many pre-clinical and clinical trials before entering the market. It is clear that the synthesis of a new formula, the manufacture of drugs, the above tests are expensive for the manufacturer, and therefore, after such a procedure, the manufacturer has the right to certify its exclusive property right to this invention by patenting it.

Given all the effort and material resources that a patent owner has to obtaining a patent, after entering the market, the cost of such an original drug should be quite significant. That is why there are much cheaper generic drugs, which, however, cannot be produced until the expiration of the patent on the original drugs. Such a legal approach, taking into account the above reasons, is quite justified, objective, and fair. However, the imperfection of domestic patent law has caused the abuse of patenting by certain manufacturers.

We are talking about the so-called "evergreen patents" – a statement that describes the process of obtaining several patents for different forms of active substance and its use of the same drug for a long time. Thus, the release of alternative generic drugs on the Ukrainian market is suspended, and the price of the original drug does not change (Ilyk, 2018). If we turn to the statistics of the World Intellectual Property Organization (1883), it

becomes clear that the real number of scientific discoveries in Ukraine does not correspond to the number of patents issued in the field of medicine.

Abroad, the main driving force in the fight against "evergreen patents" is to give certain entities the right to challenge manufacturers' patents. In the United States, for example, a special law has been passed that provides a "reward" for a generic company that is the first to challenge such a patent – the ability to sell a generic drug exclusively by that company for a short period of time (Orlova, 2019). This problem has always provoked heated discussions in the domestic legislation, and the ways to solve it have been constantly worked out by many researchers, but until the outbreak of the coronavirus pandemic it was not solved, which negatively affects the speed of overcoming the disease.

However, despite such steps by the US legislature, it should be noted that patent law in the US is developing in a positive direction for patent owners. In particular, amendments were made to the legislation, which provided for the possibility of extending the validity of a patent for medicinal products. Such changes are because the patent owner usually loses a significant part of the term of the patent in order to obtain permission from the regulatory body for commercial marketing and use (Androschuk and Rabotyagova, 2018).

Indian legislation, on the other hand, has long changed in line with the priority of ensuring the public interest. In 1970 an act was issued according to which the inventors of innovative medicines had the right to obtain only a patent for the process of production of such a means. This allowed several companies to produce the same drug at the same time, changing the production process. This has led to lower drug prices and increased access to them (Gupta, 2011).

However, under pressure from the world community, changes were made in 2005 that still gave inventors the right to obtain a patent for the drug itself, and not just for the manufacturing process (Buletsa, 2020).

Thus, we can talk about the different priorities of states in solving the problem of balancing private and public interests in this area. Unlike the United States, where patent law is evolving to protect the intellectual property rights to medical inventions. India, despite global pressures, seeks primarily to ensure that everyone's right to health care is respected and to create a competitive market. The numerous changes in Ukrainian legislation, which are designed to introduce mechanisms for balancing private and public interests in this area, which will be discussed below, also bring Ukraine closer to declaring the priority of public interests. However, the imperfection of the legislation eliminates the possibility of creating an optimal balance.

Problems of Legal Regulation of Innovations in the Medical

2. Sphere and Ways to Overcome Them in a COVID-19 Pandemic

The beginning of 2020 was such a shocking year for many countries of the planet. In early 2020, an outbreak of acute respiratory illness caused by the new SARS CoV-2 coronavirus was reported in Wuhan, Hubei Province, China. The new disease is called COVID-19. On March 11, 2020, the WHO declared the situation with the spread of the pandemic infection.

No matter how much the epidemiological situation caused by the new coronavirus infection, has a negative impact on the world economy, the social sphere, and the collapse of large cultural projects, clever doctors, engineers and scientists are developing inventions that give hope for a global fight against the crisis. Therefore, of special scientific and legal interest are innovations that have become extremely relevant against the background of opposition to the expansion of the disease. To combat the coronavirus, human civilization must mobilize all available resources and develop a common strategy of action, which should be based on a new ethics of relations in the plane of «man-man» and «man-state» (Tkalych, 2020).

Nevertheless, this raises the question: how should medical innovations related to the spread of the new coronavirus be regulated in the legal field? This work tries to find a solution to this problem.

Intellectual property and health care are two interrelated areas when it comes to the coronavirus pandemic.

The fact is that the right holders of medicines used in the fight against COVID-19 may refer to the new use (scope) of their drugs or indicate the exclusivity of the properties of the active substance as a basis for penalties for probation in such categories of cases, indicate unfair commercial use of their intellectual property under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as the basis of their claims. In this case, from a moral and ethical point of view, how to assess the restriction of public access to medicines during a pandemic and how will pharmaceutical companies behave after its cessation, when social pressures begin to weaken?

Fortunately, there are arguments in the legal field that give hope that possible disputes will be resolved without harming health care or drug manufacturers.

First, Art. 39.3 of the TRIPS Agreement stipulates that the parties to the agreement, "requiring, as a condition for obtaining marketing authorization for pharmaceuticals or agrochemicals using new chemicals, the provision of undisclosed test data or other data that requires considerable effort. Besides, members shall protect such data from disclosure, except when necessary to protect the public or if no measures are taken to protect such

data from unfair commercial use." It should be noted here that if patent holders appeal for the protection of trade secrets, are the new chemicals listed in the drugs whose use is disputed? Did the data of the original trials of these drugs remain undisclosed? The last sentence of the mentioned article allows us to use it directly in denying the claims of patent owners because if no measures have been taken to protect trade secrets or public access to information is justified by the urgent need to protect life and health, the obligation to ensure the observance of intellectual property rights does not apply to the signatory state of the TRIPS Agreement, as these are exceptional cases specified in Art. 39.3 of the Agreements.

Secondly, Art. 27.2 of the Agreement TRIPS authorizes WTO members not to allow the patenting of inventions whose commercial use is detrimental to public order or public morals, including the life and health of the population, provided that such prohibition is not limited to restrictions which contained in national law, and paragraph "a" of Art. 27.3 of the Agreement TRIPS provides an opportunity for signatory countries to prohibit the patenting of diagnostic, therapeutic, and surgical treatments for humans or animals. Similar principles are contained in Art. 53 of the European Patent Convention. It is very likely that the German government was guided by these rules, limiting the patenting of some objects under the influence of the pandemic.

As an example of such a restriction, we can cite changes to the German Law governing patent relations. Such changes were proposed in connection with the announcement of the COVID-19 pandemic and provided for the possibility for the state to impose restrictions on the validity of patents for medicines if the state recognizes the existence of the so-called "epidemiological situation of national importance." However, the proprietor of a patent which has been restricted in this way is entitled to receive fair compensation, the amount of which may be challenged in court (Musmann, 2020).

It can be assumed that in the near future the number of cases of compulsory licensing will increase significantly. For example, Canada has already taken advantage of the flexibility of such a legal algorithm. Compulsory licensing is permitted by the relevant Canadian Bill, however, the Act has recently been amended to expedite the issuance of such licenses. Such innovations, as specified in the bill, will work only for the period of the current crisis in the health care system. Such steps indicate the readiness of states to use this method in the fight against a pandemic (Silverman, 2020).

In this regard, a bill was introduced, which should provide such an opportunity. The pharmaceutical community has long been discussing the draft law No 2089 "On Amendments to Certain Legislative Acts of Ukraine to Increase the Availability of Medicines for Citizens" (2020), which was sent for revision by the decision of the relevant Verkhovna Rada

Committee. In particular, among its shortcomings, the problem of the lack of a quality control mechanism for new drugs is rightly emphasized (Pharmacy Professional Association of Ukraine, 2019).

Conclusions

The main problem, in the context of the subject of the study, is the conflict of private interests of large pharmacological companies – patent holders and the public interest of society in the context of the right to health care. On this background, there are conflicts between such companies and small manufacturers who seek to compete in the market of coronavirus drugs with maximum speed and minimum production costs. It is clear that to solve these problems it is not enough to limit the rights of pharmacological companies-patent holders. Therefore, to maintain the optimal balance of interests, certain legal mechanisms, the implementation of which in Ukraine, in the absence of proper legal regulation, can cause serious problems were analyzed.

In particular, the following conclusions were drawn as a result of the study.

1. Abuse of the right of patent owners to certify their property rights to inventions by constantly obtaining new patents for different properties of the same drug delays cheaper analogues to entry into the market. The solution to this problem, which has been vital for our society for a long time, can only be reforming the legislation, which will eliminate the possibility of such abuse. By analogy with many foreign countries (including the United States), it is necessary to allow certain entities to challenge patents of manufacturers.

2. The use of a compulsory licensing mechanism, according to many researchers, is currently risky. Due to the lack of court precedents and explanations of the relevant state bodies, such conditions as the groundlessness of the patent owner's refusal to grant a license, the terms of such compulsory licenses, and the proportionality of compensation are estimated. It will be a good idea to ask the state or the judiciary to publish official explanations that will provide answers to such questions.

3. The main problem with the introduction of the parallel import mechanism in Ukraine is the possibility of certain negative consequences, in particular, an increase in the flow of counterfeit products. To mitigate such effects, it is necessary to prescribe at the legislative level the entire procedure for parallel imports, up to the admission of such drugs to the market. As one of the solutions to the situation of the distribution of counterfeit products, we can propose the creation of specialized customs posts for such importers.

4. The mechanism of accelerated filing by manufacturers for registration of generic versions of patented drugs is quite positive but does not seem effective enough in counteracting the coronavirus pandemic, as some patents have only entered into force and will not expire for a significant period of time.
5. The conclusion of controlled access agreements, due to their confidentiality, is accompanied by certain corruption risks. To solve this problem, by analogy with countries such as Sweden and the United Kingdom, it is possible to create appropriate registers of controlled access agreements with open information about drugs for which such agreements have been concluded. Also, there is always a problem of lack of funds in the state and local budgets for the purchase of drugs under such agreements.
6. Besides, one of the possible solutions to the main problem of maintaining the balance of private and public interests may also be the conclusion of exclusive long-term contracts with pharmaceutical companies for the use of their means to combat coronavirus, which will provide appropriate legal support and royalties in the long run. Another possible vector of development is the reform and increase of funding for the field of national pharmacology, which will aim to create high-quality drugs at affordable prices from the manufacturer.

Therefore, to prevent restrictions on the right of everyone to health care we consider it necessary to introduce the above-mentioned mechanisms. However, in order not to affect the intellectual property rights and interests of patent owners, it is important to properly and accurately regulate them in the legal field. This will not only protect the interests of all stakeholders, but also prevent abuse.

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Historia y actualidad del Régimen Legal del Sistema Presupuestario Público Venezolano

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Resumen

El estado como estructura jurídico política de gran importancia para la sociedad, requiere de instrumentos sobre planificación y control para mantener sus fines esenciales para el cual fue creado, entre esos instrumentos se encuentra el presupuesto público, el cual es una herramienta administrativa así como operativa para la toma de decisiones del gobierno, con el fin de lograr la consecución o fines del estado a través de los planes de desarrollo y en fin, poder impulsar para propiciar la satisfacción de necesidades básicas de la población. La presente investigación tiene como finalidad desarrollar los aspectos más relevantes de la historia y actualidad del régimen legal del sistema presupuestario venezolano, donde se enfatiza que se cuenta con un extenso material entre documentos y libros, los cuales puntalmente se han seleccionado para limitar con los aspectos más relevantes. Así mismo es importante señalar que este estudio se limita a la evolución histórico doctrinario mas no así a su disertación en relación con sus fases, ejecución y evaluación. Para la investigación fue utilizada como instrumento de recolección de datos la observación directa de leyes, portales oficiales del estado y doctrina venezolana.

Palabras clave: Presupuesto público; estado venezolano; historia jurídica-institucional; régimen legal; Venezuela.

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History and current affairs of the Legal Regime of the Venezuelan Public Budget System

Abstract

The state as a political structure of great importance for society, requires planning and control instruments to maintain its essential fines for which it was created, among these instruments is the public budget, which is an administrative as well as an operational tool for decision-making by the government, in order to achieve or obtain fines from the state through the development plans and, finally, to be able to promote the satisfaction of the basic needs of the population. The purpose of this research is to develop the most relevant aspects of the history and current affairs of the legal regime of the Venezuelan budgetary system, where it is emphasized that there is extensive material between documents and books, which have occasionally been selected to limit the most important aspects. relevant. Likewise, it is important to point out that this study is limited to the doctrinal historical evolution, but not to its dissertation in relation to its phases, execution, and evaluation. For the investigation, direct observation of laws, official state portals and Venezuelan doctrine was detected as a data collection instrument.

Keywords: Public budget; Venezuelan state; legal-institutional history; legal regime; Venezuela.

Introducción

El conjunto de elementos administrativos que hacen posible la captación y aplicación de recursos para la consecución eficiente y eficaz de objetivos, así como metas de la gestión gubernamental, se ha denominado administración financiera del sector público (Paredes, 2011); en este sentido, el presupuesto público constituye uno de los compendios empleados de que se vale la acción del gobierno para alcanzar sus metas, fines y objetivos. Por lo tanto, la obtención de ingresos, la ejecución de gastos, el financiamiento para cubrir déficit y la inversión de excedentes de liquidez, constituyen el proceso de trabajo que se ha denominado administración financiera pública.

Esta investigación no pretende realizar estudios comparativos entre instrumentos plurianuales de presupuesto, ni tampoco el análisis de sus partidas o la magnitud de los gastos en relación con inversión de sus ingresos. La misma se limitará al estudio histórico normativo del sistema presupuestario, su evolución como institución jurídica contable y los avances o retrocesos en la política venezolana de estos últimos años de acuerdo con el periodo constitucional del último presidente electo para la fecha que se escribe este trabajo: Nicolas Maduro Moros.

1. Fundamentación Teórica: Generalidades del presupuesto público

El tema del presupuesto público y del derecho presupuestario se ha enmarcado como una rama del derecho financiero junto al tributario, los cuales han realizados aportes pertinentes que entre los que destacan los trabajos de (Duverger, 1980), el cual expresa que el presupuesto público se enmarca en actos de previsión y además de autorización de ingresos, así como los gastos.

Por otro lado, (Fariñas, 1986) afirma que el presupuesto público es un documento que tiene forma especial de ley y en el cual se estiman los ingresos disponibles en una entidad pública durante un periodo futuro y determinado, generalmente un año, se autorizan los gastos que esta entidad pública pueda efectuar hasta cierto límite en ese periodo, a los efectos de cumplir con una finalidad en el especificada, en el sentido de que constituye a la expresión contable del plan de la nación en aquellos aspectos que exigen por parte del sector público, captar y asignar recursos conducentes al cumplimiento de las metas del desarrollo económico, social e institucional del país.

Es importante hacer mención de la visión jurídico-contable que se tiene del instrumento, por cuanto el mismo debe cumplir con diferentes niveles y procesos para su aprobación por el poder legislativo, se constituyen una ley especial en él se reflejan las partidas monetarias de ingresos y gastos de la nación en un periodo determinado.

Asimismo, es pertinente señalar lo relacionado al concepto sobre el derecho presupuestario, el cual de acuerdo con (Fariñas, 1986) está formado por el conjunto de normas referidas a la confección, discusión, aprobación y fiscalización del presupuesto. Esta doctrina es una rama del derecho financiero sumamente importante, por cuanto se refiere a la vida misma del estado como tal.

2. La génesis presupuestaria

En los antiguos imperios que surgieron como Egipto y Babilonia se conformaron gobiernos centralizados, con administraciones dotadas de una organización capaz de emprender grandes obras materiales, donde la programación de gastos en relación con los ingresos no podía estar ausente. De igual manera ocurrió en Roma donde se logró implementar una verdadera tributación con el perfeccionamiento del censo, pero ni en la república ni en el imperio se establecieron presupuestos en el sentido moderno de la expresión (Rachadell, 1993).

El presupuesto ha tenido importancia desde los inicios de la humanidad, se puede evidenciar en las diferentes civilizaciones humanas tuvieron que

implementar elementos los cuales ayudaron para predecir cuales serían las expectativas para el próximo año, quizá expresando de una manera más sencilla y no con la tecnicidad o importancia jurídicas-contable que amerita.

Se afirman que es en la ciudad de Génova, Italia, en el siglo XIV, donde se empieza a reflexionar sobre el manejo del presupuesto con la familia Massari, quien, en el año 1340, propone una forma de asignación y control de recursos; en 1494, el fraile Luca Paccioli, sistematiza la partida doble, lo cual da pie al surgimiento de lo que se conoce como contabilidad. Dos siglos más tarde, el monje Benedictino Ángelo Pietra, se ubica como el primer autor que se preocupa por la previsión de los ingresos y los gastos ocurridos. Un siglo después, *Lodovico Flori, se convierte en el primero en escribir sobre presupuesto (1636).*

En relación con el origen del término Presupuesto (Andara, 2012) se refiere a la palabra *budget,* derivada al parecer de una antigua palabra denominada *bouget*, la cual significaba bolsa o cartera, se le aplicó durante mucho tiempo a la gran cartera de cuero en que el tesorero del rey en Inglaterra, más tarde *The Chancellor of the Exchequer*, llevaba los documentos financieros al parlamento. La frase perdió su significado, pero la expresión *opening the budget* llegó a convertirse en el lenguaje oficial parlamentario para indicar la apertura de la discusión presupuestaria en Inglaterra.

Es, en Inglaterra en el siglo XVIII, donde surge el presupuesto como parte de un proceso como medida de ejecución y control, el cual tiene su origen en el ramo gubernamental con el llamado presupuestos por programas para el control de los gastos del reino, el cual el parlamento examinaría y discutiría anualmente, esto a la par del desarrollo de la revolución industrial. En 1820 Francia adopta el sistema en el ramo de gobierno y un año más tarde Estados Unidos lo trae a América como medida de control del gasto público, donde el principal objeto iba encaminado al eficiente funcionamiento de las actividades.

El establecimiento del estado de derecho y el surgimiento del derecho presupuestario se producen en Europa trayendo como consecuencia que este último sometido al estado derecho el mismo se discutiera en las cámaras y se estableciera principios o garantías para lo que no estuviere establecido en la Ley o Carta Magna o como se le conoció en Inglaterra el *Bill of Rights* no pudiera ser cobrado al ciudadano.

Puede observarse que el presupuesto ha sido resultado político de luchas por la supremacía libradas entre el soberano y el representante del pueblo. Estos últimos consiguieron, primero, hacer admitir al rey que ningún impuesto podía ser establecido si el consentimiento de los representantes del pueblo y, segundo, controlar el empleo del fondo que había votado, o sea, los gastos públicos (Villegas, 1975).

3. El presupuesto en Venezuela: consideraciones históricas y jurídicas

Antes de iniciar con el estudio documental sobre la historia presupuestaria en Venezuela, se hace necesario explicar brevemente lo que se conoce o se entiende como hacienda pública, por cuanto, en la mayoría de los textos y según los diferentes autores, se utilizan expresiones, tales como; hacienda o finanzas públicas, cuando se refieren al régimen jurídico del patrimonio del estado. Para (Rodríguez, 2014) se puede entender por hacienda pública el conjunto de bienes, ingresos y deudas que forman el activo y el pasivo de la nación, así como todos los demás bienes y rentas cuya administración corresponde al poder nacional.

Es lógico e importante señalar que el ramo y estudio de la hacienda pública tuvo un interés por los gobernantes por cuanto allí se concentraban los haberes del estado. La reglamentación, origen y desarrollo de esta es extensa y basta, pero se podría sintetizar con el aporte que realizo el libertador Simón Bolívar con el decreto del 8 de marzo de 1827, en el cual se estructuran las bases económicas del país en los primeros años de vida republicana, en él se establecían claramente el desarrollo de instituciones como una dirección de rentas y un tribunal de contaduría de cuentas entre otras importantes para el desarrollo de la nación.

Del mismo modo, (Cabrera; 1988) expresa que, iniciada la colonización de Venezuela, con el arribo de los Welser en 1528 por un lado, y por el otro con la fundación de la ciudad de Coro en 1529, se organiza la estructura administrativa. Así mismo se realizan los registros de las cuentas de la real hacienda a cargo de oficiales reales en calidad de factor veedor, tesorero y contador, con lo cual se ponen en práctica los primeros procedimientos de control fiscal en lo concerniente al resguardo de los recursos del monarca.

Como se mencionó anteriormente, muchos han sido los instrumentos normativos para el resguardo de los recursos fiscales, al decreto del 8 de marzo de 1827 se le realizaron algunas reformas y estuvo vigente hasta el año 1830, luego le suceden la ley del 28 de mayo de 1837, el decreto del 15 de octubre de 1856 y el del 24 de junio de 1858, la Ley Orgánica del Tribunal de Cuentas del 6 de junio de 1860, el Código de Hacienda de 1873 y las sucesivas reformas a este último instrumento jurídico de ocurridas en 1884 y 1899 (Rodríguez, 2014).

En fecha 31 de mayo de 1899, bajo el gobierno del general Ignacio Andrade, se pone en vigencia un nuevo Código de Hacienda, el cual deroga al anterior aprobado en 1873 y que contempla varias actividades de la hacienda pública referidas al control de los ingresos, egresos y al funcionamiento administrativo del estado. Allí comienza por definirse lo que se entiende por hacienda nacional, igualmente se establecía que la centralización de todos los datos e informaciones relativas a ella serian ubicados en un organismo

denominado la Contaduría General. Se incorporan definiciones referidas a los bienes nacionales, del fisco, funciones y atribuciones del ministro de hacienda, normativas relativas a la recaudación, entre otras.

Posteriormente, en el año 1912, se aprueba un nuevo Código de Hacienda que repite gran parte de las atribuciones y alcances del anterior. El 4 de junio de 1918 se aprueba la Ley Orgánica de la Hacienda Nacional, instrumento jurídico impulsado por el Doctor Román Cárdenas, ministro de hacienda desde 1913, quien había propuesto un conjunto de reformas hacendísticas en procura de mejorar los mecanismos de obtención de la renta, administración de los recursos estatales y elevar la eficiencia en el funcionamiento del despacho ministerial a su cargo. Esta ley deroga el Código de Hacienda de 1912 y les da una nueva dimensión jurídica y política a las actividades hacendísticas.

En este aspecto es importante destacar que de acuerdo con Salcedo (1979) citado por Rodríguez:

> Con Gómez fue importante la labor-1914-1918- de su ministro Román Cárdenas, reorganizador de la administración de los ingresos públicos, ya que la Ley Orgánica de la Hacienda Nacional -1918- contiene lo fundamental de la reforma de la reforma cumplida: creación de la renta interna, unidad del tesoro, declaración obligatoria de los impuestos, normas para el presupuesto, inicio de la contabilidad nacional y la reorganización de los tribunales especializados (2014: 393).

Entre los años 1926 y 1928, se aprueban nuevas leyes orgánicas que reforman algunos aspectos de las anteriores, pero en lo sustancial mantienen la misma orientación de las precedentes. Por último, se sanciona la Ley Orgánica de la Hacienda Nacional en 1934, y ratifica el carácter dependiente de los órganos de fiscalización y examen en relación con el poder ejecutivo como una limitante del ejercicio del estudio preventivo y correctivo del gasto fiscal. Criterio este que se mantuvo hasta 1938, cuando se procede a crear la Contraloría General de la Nación dentro de la Ley Orgánica de Hacienda, otorgándole un sentido independiente con respecto al ejecutivo.

De tal manera, la Ley Orgánica de la Hacienda Pública Nacional se promulga el 15 de julio de 1938 y en su título VI establece la creación de la que para ese entonces se llamó la Contraloría General de la Nación, señalando expresamente en su artículo 149:

> La fiscalización suprema de todos los ingresos y egresos del Tesoro Nacional, así como la centralización, el examen y el control de todas las cuentas y operaciones fiscales y de bienes nacionales, inclusive materiales y efectos adquiridos por oficinas nacionales, correrán a cargo de un organismo administrativo autónomo, que se denominara Contraloría General de la Nación (Cabrera, 1988: 26).

Dicha ley fue objeto de otra reforma en fecha 15 de julio de 1948, estando vigente hasta el día 11 de julio de 1974, cuando fue modificada

sustancialmente con la aprobación de la Ley Orgánica de la Contraloría General de la República, en fecha 18 de diciembre de 1974, la cual entro en vigor a partir del 6 de enero de 1975 y que vino a derogar la Ley Orgánica de la Hacienda Pública Nacional en los aspectos referentes a esta materia.

Por otra parte, muchas de las disposiciones de la Ley Orgánica de la Hacienda Pública Nacional, en el aspecto presupuestario fueron derogadas por la Ley Orgánica de Régimen Presupuestario (1976). Igualmente, la Ley Orgánica de Contraloría General de la República (1975), derogó las disposiciones relacionadas con el control fiscal sobre la ejecución del presupuesto. Igualmente, lo referente a la tesorería nacional y el sistema de crédito público fue derogado por la Ley Orgánica de la Administración Financiera del Sector Publico (2006).

Así mismo en Venezuela se crea en 1941, el Consejo Nacional de Presupuesto. Hasta 1962 se formula el presupuesto de ingresos por ramos de origen y el de gasto de acuerdo con su naturaleza u objeto (presupuesto tradicional), por cuanto, para este año se elaboró un instrumento por programas que se presentó como documento anexo a la Ley de Presupuesto.

Por otro lado, (Esteves, 2005) expresa que hasta 1941, el presupuesto lo elaboraba el ministro de hacienda tomando en cuenta los presupuestos parciales de ministerios y departamentos. Luego a partir de ese año, se creó el Consejo Nacional de Presupuesto que era un organismo extraño por cuanto había representantes del congreso nacional, y al mismo tiempo, el congreso tenía que aprobar ese presupuesto: “pero luego se subsano esa irregularidad, cuando se creó la dirección general del presupuesto en 1948”, más tarde denominada Dirección Nacional de Presupuesto, organismo dependiente de del ministerio de hacienda, cuyo primer director fue el doctor Héctor Hurtado.

4. Marco jurídico normativo vigente del sistema presupuestario: avances y retrocesos Jurídicos-Políticos

A partir del año 1971, se modifica el sistema presupuestario tradicional, es decir se le dio carácter de ley a un documento que durante nueve (9) años se estuvo presentando como anexo. No obstante, no existía un instrumento legal que normara de manera específica, el proceso presupuestario en el sector público. Para llenar este vacío legal, en 1976 se promulga la Ley Orgánica de Régimen Presupuestario, la cual fue reformada parcialmente en varias oportunidades.

En 1978, con la puesta en vigencia de la Ley Orgánica de Régimen Presupuestario, se crea la Oficina Central de Presupuesto como organismo rector del sistema presupuestario. Sin embargo, la referida depende de la presidencia de la república. Siendo el ministerio de hacienda hoy finanzas,

el responsable de presentar el presupuesto general de recursos y egresos ante el congreso de Venezuela.

Diversos autores señalan que a finales del siglo XIX y comienzos del siglo XX, existían limitaciones en lo referente a la eficacia y disciplina de la hacienda pública nacional, Esta indisciplina administrativa es un producto no solo de la debilidad económica, sino de la debilidad política de la sociedad venezolana, que concurría para reducir la capacidad fiscal del Estado Venezolano del siglo XIX y comienzos del presente.

De allí que, desde hace algún tiempo, debido a la ausencia o la falta de integración entre las diferentes leyes que han recogido la administración de la hacienda pública en Venezuela, ha sido preocupación de muchos gobernantes la modernización de la administración financiera del sector público, con el fin de lograr una eficiente gestión fiscal.

Para ello han sido dictadas numerosas disposiciones con el objetivo de regular directamente el sistema presupuestario, en los ámbitos nacional, estatal o municipal. Entre ellas se pueden mencionar:

- **Ley Orgánica de Régimen Presupuestario**, aprobada en 1976, con la cual se le da una base sólida al principio de la programación y se crean los diferentes mecanismos a fin de vincular los presupuestos públicos con los planes de la nación, cuando señalaba en su artículo 2: Los presupuestos públicos expresan el plan de la nación en aquellos aspectos que exigen por parte del sector público, captar y asignar recursos dirigidos al cumplimiento de las metas de desarrollo económico, social e institucional del país.
- **Ley Orgánica de Administración Financiera del Sector Publico** (2000) (LOAFSP), para ser aplicada a partir de la elaboración del presupuesto 2002, derogó la Ley Orgánica de Régimen Presupuestario, Ley Orgánica de Crédito Público, algunas disposiciones de la ley Orgánica de la Hacienda Pública Nacional, en lo que al presupuesto se refiere. En el título II, artículo 9 de la referida ley se trata lo relativo al sistema presupuestario, el cual está integrado por el conjunto de principios, órganos, normas y procedimientos que rigen el proceso presupuestario de los entes órganos del sector público. De igual manera, en la referida ley en su artículo 10, se establece que los presupuestos públicos expresan los planes nacionales, regionales y locales elaborados dentro de las líneas generales del plan de desarrollo económico y social de la Nación, aprobadas por la asamblea nacional, en aquellos aspectos que exigen por parte del sector público captar y asignar recursos contundentes al cumplimiento de metas de desarrollo económico social e institucional del país.

La Ley Orgánica de Administración Financiera del Sector Publico (2006) incorporó, entre otros aspectos:

- La elaboración de los presupuestos plurianuales.
- La creación de la Oficina Nacional de Presupuesto, (ONAPRE) que viene a sustituir la Oficina Central de Presupuesto (OCEPRE).

En relación al régimen legal presupuestario, es importante señalar otra normativa que contiene una serie de principios que deben regir la gestión fiscal de los entes del sector público, como lo es la Ley Orgánica de la Administración Pública (LOAP, 2008), en su artículo 1, el cual tiene por objeto establecer principios y bases que rigen la organización y funcionamiento de la administración pública, los principios y lineamientos de la organización y funcionamiento de la administración pública nacional y de la administración descentralizada funcionalmente; así como regular los compromisos de gestión, crear mecanismos para promover la participación y control sobre las políticas y resultados públicos; y establecer las normas básicas sobre los archivos y registros públicos.

De igual manera en su artículo 16, se establece que:

> Para la creación de órganos y entes administrativos se sujetará a los siguientes requisitos... Previsión de las partidas y créditos presupuestarios necesarios para su funcionamiento. En las correspondientes leyes de presupuesto se establecerán partidas destinadas al financiamiento de las reformas organizativas que se programen en los órganos y entes de la Administración Pública.

En su artículo 17, por su parte, establece el principio de la responsabilidad fiscal cuando expresamente señala:

> No podrán crearse nuevos órganos o entes en la Administración Pública que impliquen un aumento en el gasto recurrente de la República, los estados, los distritos metropolitanos o de los municipios, sin que se creen o prevean nuevas fuentes de ingresos ordinarios de igual o mayor magnitud a la necesaria para permitir su funcionamiento.

Del mismo tenor, para dar cumplimiento a lo pautado en el artículo 187 de la LOAFSP, que enuncia: "...La administración pública antes del 31 de diciembre del año 2002 ajustara sus estructuras y procedimientos a las disposiciones de esta ley". Asimismo, el ejecutivo nacional dictara los reglamentos necesarios, antes del 15 de marzo de 2001, fue aprobado el Reglamento Nº 1 de la Ley Orgánica de la Administración Financiera del Sector Publico (2001), con el objeto establecer normas complementarias para el desarrollo del proceso presupuestario que cumplirán los órganos y entes sujetos a la Ley Orgánica de la Administración Financiera del Sector Publico.

- Reforma Parcial del Reglamento No 1 de la Ley Orgánica de Administración Financiera del Sector Publico sobre el Sistema Presupuestario (2002), en el cual se destaca un nuevo capítulo que se agrega al citado reglamento, concerniente a la liquidación y cierre del presupuesto de la república.

- **Reforma Parcial del Reglamento N° 1 de la Ley Orgánica de la Administración Financiera del Sector Publico sobre el Sistema Presupuestario** (2005), el cual se aprobó con el objeto de desarrollar los aspectos inherentes a la nueva técnica de elaboración del presupuesto por proyectos y acciones centralizadas.

Es importante señalar que las disposiciones en materia presupuestaria, aplicables al estado, puede regir a los estados, al Distrito Metropolitano de Caracas, los distritos y municipios, toda vez que la Constitución de la República Bolivariana de Venezuela (1999) establece que los principios y disposiciones establecidas para la administración económica y financiera nacional regularan la de los estados y municipios en cuanto sean aplicables (art. 311).

A tenor de lo antes expuesto, se puede afirmar que el proceso presupuestario de los estados, distritos y municipios se regirá por las leyes estadales, la Ley Orgánica del Poder Público Municipal y las ordenanzas municipales respectivas, pero se ajustaran en cuanto sea posible a las disposiciones técnicas que establezca la Oficina Nacional de Presupuesto. A estos fines, las disposiciones que dicten estas entidades en esta materia deberán ajustarse a los principios constitucionales y a los establecidos en la Ley Orgánica de Administración Financiera del Sector Publico para su ejecución y desarrollo (arts.62 y 64 LOAFSP).

Del análisis de las leyes anteriormente citadas, se desprende que las actividades que realizan los órganos y entes que integran el sector público, relacionadas con el manejo del patrimonio de la nación y de las finanzas públicas en general, están regidas por numerosas normativas que armonizan unas con otras, a fin de lograr la ejecución de una gestión fiscal que deberá estar basada en los principios de eficiencia, solvencia, transparencia, responsabilidad y equilibrio fiscal, tal como lo contempla la carta magna.

Ahora bien, lo que respecta al el presupuesto de la nación dejó de pasar por el control político administrativo de la asamblea nacional desde 2016, un hecho que marcó el quiebre de la democracia como forma de gobierno de la república violando el precepto constitucional como lo es el **artículo 187** de la **Constitución** vigente establece que es **atribución del Poder Legislativo** “discutir y **aprobar el presupuesto nacional** y todo

proyecto de ley concerniente al régimen tributario y al crédito público".[2] El mismo fue aprobado en el año 2016, 2017 y 2018 por el Tribunal Supremo de Justicia en vista de que el ejecutivo nacional no cuenta con una mayoría adepta a sus ideales político y por tanto con una mayoría opositora, recurriendo al órgano de justicia el cual no es competente para la evaluación, discusión, sanción y aprobación de instrumento jurídico contable. Todo esto fue sostenido por la teoría del desacato de la asamblea nacional que entro en funciones en el año 2015[3]

Para la fecha que se escribe este trabajo (Presupuesto anual del 2019) el presupuesto de la nación fue discutido y aprobado por la Asamblea Nacional Constituyente, convocada en fecha 1 de mayo de 2017 por el presidente de la república, la cual fue cuestionada por la mayoría política opositora del país. La misma no es reconocida por una gran cantidad de estados y no goza de legitimidad suficiente. Para finalizar se debe acotar lo que respecta a las fases de aprobación de las leyes, las cuales no se han cumplido porque este último para la fecha de la investigación, aún no se había publicado en gaceta oficial y sus partidas no son conocidas, por tanto, se concluye que su fases para la elaboración y estimación no fueron estudiadas así como preparadas por expertos en la materia, causando incertidumbre en el soberano y reflejando transparencia en los proceso de recaudación de recursos y egresos del estado.

2 La constitución de la República Bolivariana de Venezuela desarrolla un título completo en relación con el Sistema Presupuestario:

Artículo 311. La gestión fiscal estará regida y será ejecutada con base en principios de eficiencia, solvencia, transparencia, responsabilidad y equilibrio fiscal. Esta debe equilibrarse en el marco plurianual del presupuesto, de manera que los ingresos ordinarios deben ser suficientes para cubrir los gastos ordinarios.

El Ejecutivo Nacional presentará a la Asamblea Nacional para su sanción legal un marco plurianual para la formulación presupuestaria que establezca los límites máximos de gasto y endeudamiento que hayan de contemplarse en los presupuestos nacionales. La ley establecerá las características de este marco, los requisitos para su modificación y los términos de su cumplimiento.

El ingreso que se genere por la explotación de la riqueza del subsuelo y los minerales, en general, propenderá a financiar la inversión real productiva, la educación y la salud.

Los principios y disposiciones establecidas para la administración económica y financiera nacional regularán la de los Estados y Municipios en cuanto sean aplicables.

Artículo 312 "…La ley especial indicará las modalidades de las operaciones y autorizará los créditos presupuestarios correspondientes en la respectiva ley de presupuesto."

Artículo 313. "La administración económica y financiera del Estado se regirá por un presupuesto aprobado anualmente por ley. El Ejecutivo Nacional presentará a la Asamblea Nacional, en la oportunidad que señale la ley orgánica, el proyecto de Ley de Presupuesto. Si el Poder Ejecutivo, por cualquier causa, no hubiese presentado a la Asamblea Nacional el proyecto de ley de presupuesto dentro del plazo establecido legalmente, o el mismo fuera rechazado por éste, seguirá vigente el presupuesto del ejercicio fiscal en curso…"

Artículo 314. "No se hará ningún tipo de gasto que no haya sido previsto en la ley de presupuesto…"

Artículo 315. …" El Poder Ejecutivo, dentro de los seis meses posteriores al vencimiento del ejercicio anual, presentará a la Asamblea Nacional la rendición de cuentas y el balance de la ejecución presupuestaria correspondiente a dicho ejercicio."

3 Véase Sentencia en relación disponible en línea: http://historico.tsj.gob.ve/decisiones/scon/octubre/190792-814-111016-2016-2016-897.HTML

Conclusiones

El estudio del sistema presupuestario, comprende una gran labor histórica, dogmática así como legal para estudiosos de las ciencias económicas, jurídico financieras y contables, por cuanto el mismo, es el instrumento mediante el cual el estado estructura, proyecta sus ingresos y gastos de manera anual, el mismo es formulado por el ejecutivo nacional con asesoría de su órgano ministerial como lo es el ministerio de finanzas, respectivamente debe pasar de acuerdo a lo indicado en la constitución por el órgano legislativo como lo es en el caso venezolano la asamblea nacional. En este paseo histórico normativo se pudo ver su evolución legislativa con relación a la importancia que, para el desarrollo de la nación, para precisar aspectos relevantes en la organización de la ley y sobre la construcción en Venezuela del derecho presupuestario, como tal.

Sin embargo, se enfatiza que Venezuela debe promover mayor estudio en las disciplinas financieras para culturizar a la sociedad en temas de derecho financiero y presupuestario, con el fin de evitar los abusos de poder e interponer los recursos jurídicos para no transgredir los principios constitucionales y democráticos de la sociedad venezolana establecidos en los referidos sistemas de la nación.

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Objects of intellectual property rights created by artificial intelligence: international legal regulation

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Abstract

In modern conditions of development of public relations, the creation of objects of intellectual property rights by artificial intelligence is becoming more widespread. With this in mind, it is important to analyse the international legal experience of regulating the use of artificial intelligence as the author of intellectual property, to further borrow it for domestic laws, as well as to pay attention to problematic aspects of such regulation and make proposals to resolve inconsistencies. The study clarifies the international legal regulation of intellectual property rights created by artificial intelligence, as well as analyses the problematic issues of regulation of artificial intelligence by international law and the features of such regulation in Ukraine and presents positions on the development of artificial intelligence systems and prospects, as well as the prospects for its impact on world society.

Keywords: artificial intelligence, objects of intellectual property law, international legal regulation, robotics, Berne Convention.

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Objetos de los derechos de propiedad intelectual creados por inteligencia artificial: regulación legal internacional

Resumen

En las condiciones modernas de desarrollo exponencial de las relaciones públicas, la creación de objetos de derechos de propiedad intelectual mediante inteligencia artificial se está generalizando. Teniendo esto en cuenta, la presente investigación analiza la experiencia legal internacional de regular el uso de la inteligencia artificial como sujeto autor de la propiedad intelectual, para tomarla como referencia para las leyes de Ucrania. Además, interesó prestar atención a los aspectos problemáticos de dicha regulación, y hacer algunas propuestas para resolver sus inconsistencias. En lo metodológico se hizo uso del análisis documental. Se concluye que los derechos sobre obras creadas artificialmente pueden reconocerse por el propietario del programa informático (generalmente grandes corporaciones), sus desarrolladores o usuarios. Es decir, la cuestión principal no es el reconocimiento de la autoría de la inteligencia artificial, sino la definición legal de la persona que será propietaria de los derechos de propiedad del objeto creado por el programa con capacidades creativa autónoma (ya que el componente financiero juega un papel importante en el avance de la investigación en esta área).

Palabras clave: inteligencia artificial; objetos de derecho de propiedad intelectual; regulación legal internacional; robótica; Convenio de Berna.

Introduction

The rapid development of scientific progress has created all the conditions for the transition of technology to the category of tools, with which the creation of new intellectual property (IP) objects becomes possible, and, in some cases, to the category of tools capable of creating objects of intellectual property regulation without human intervention.

Intellectual property legislation was not prepared for such challenges, and, therefore, questions arose as to whether intellectual property objects, created by artificial intelligence (AI), can be protected by intellectual property laws. And another question is how to reform intellectual property legislation so that this kind of relations can be properly regulated, and the balance of private and public interests is maintained.

Today, the world community is discussing the objects of intellectual property rights created by artificial intelligence. Thus, the British start-up

Jukedeck has developed artificial intelligence, which is able to write music. In 2016, the world saw the project "The Next Rembrandt" – a portrait created by a computer based on the analysis of 346 paintings by the artist.

But despite the creation of intellectual property objects by artificial intelligence, there is no proper legal regulation of such objects in domestic legislation in many countries. International norms provide guidelines governing the use of artificial intelligence in the creation of intellectual property rights and are even prepared to recognize a computer program as an artist. Therefore, given the growing number of intellectual property objects created by artificial intelligence, it is important to analyse the legislation governing this issue.

The purpose of the work is to analyse the international legal regulation of intellectual property rights created by artificial intelligence. Moreover, the object of research is the international legal regulation of intellectual property rights created by artificial intelligence. Finally, the subject of the study is the social relations that arise in the international legal regulation of intellectual property rights created by artificial intelligence.

1. Analysis of recent research

Legal regulation of the use of artificial intelligence is of interest to many researchers, so in order to study the doctrine on intellectual property objects created by artificial intelligence the works of the following authors were analysed: Volina (2018), Vasilieva (2019), Karchevsky (2020), Krivetsky (2020), Lavrenova and Abramovich (2019), Milonenko (2018), Militsyna (2019), Pozova (2017), Svitlichny (2016), Semkiv and Shandra (2015), Harina (2019). All the works analysed below, in one way or another, influenced the formation of this article and the argumentation of the statements made by the authors at the end of the study.

Thus, Volina (2018) in her work entitled "It is difficult to be a robot" came to the conclusion that now in most countries (for example, UK, New Zealand, India, Hong Kong) are quite skeptical about the recognition of the work as the author of the work. Besides, Vasilieva (2019) studied copyright protection for artificial intelligence. Thus, as a result of the study, she concluded that the author of works (given the general world practice), created by artificial intelligence is still a man, not a program. Moreover, Karchevsky (2020) drew attention to the main problems of legal regulation of the responsibility of artificial intelligence. He focused on a promising problem related to the emergence of the rights and obligations of robots. Also, the issue of "mixed justice" ("justice of artificial intelligence") was studied, which will solve the issue of threat to humans from artificial intelligence. Further, Krivetsky (2020) analyzed the problems of legal regulation of artificial intelligence in Ukraine. The scholar raised the question of the need for the legislator to

determine the path of development of the legal framework for regulating issues related to the use of artificial intelligence: whether to recognize it as a subject that has rights and responsibilities or not

In addition, Lavrenova and Abramovich (2019) in their work asked an important question: "Are the object of intellectual property rights works created exclusively by artificial intelligence without human intervention?" And according to the results of their research of international experience (legislation, doctrine, and judicial practice), the authors ware favoured to conclude that works created by artificial intelligence are not the object of intellectual property rights.

In the study Milonenko (2018), the prospects of recognizing artificial intelligence as a subject of international law are analyzed. The researcher identifies several approaches to defining the range of subjects of international law and notes that until the middle of the twentieth century there was a "classical" concept, according to which only states were subjects of international law, and the modern doctrine of international law expands the composition of the subjects of international law, gives a detailed division. Besides, the author notes that at the moment it is advisable to recognize artificial intelligence systems as special subjects of international law because the level of interaction of intelligent machines with humans already needs regulation.

Militsyna (2019) compared the legal regulation of objects created with the help of artificial intelligence and artificial intelligence directly in Ukraine and the United States. Thus, the researcher pointed out that the question of the legal personality of artificial intelligence is on the agenda and that there are theories that insist that artificial intelligence already has manifestations of cognitive processes, so it has a consciousness that is similar to humans. Also, the researcher analyses the views of various scientists and notes that some of them believe that if you compare artificial intelligence with legal entities, artificial intelligence should also acquire legal personality. However, such theories have been sharply criticized and cannot be called dominant in the United States, as objects created with artificial intelligence and artificial intelligence directly remain unguarded in the United States. In conclusion, the author assumes that in the United States today, the author and the ability to create are identified with the man. This, in turn, is a reason to deny protection to objects created with artificial intelligence and artificial intelligence directly. Exceptions are cases where artificial intelligence remains a means. In this case, the author will be the person who used this technology. Given the existing proposals for improving copyright for such objects, we can say that the dominant trend is to maintain the anthropocentrism of copyright.

Finally, Pozova (2017) clarified the prospects of legal regulation of artificial intelligence under EU law. Thus, the author found that although

European Parliament resolutions are not legally binding and do not enshrine any rights or obligations but are a kind of beacons that show those areas that require legislative regulation at the European level. Union, and determining the prospects for such regulation. The researcher also emphasized that the introduction of legal regulation of relations in the field of robotics in connection with the creation, circulation, use of robots is necessary, and the development of certain European legal standards for robotics and artificial intelligence will promote the development of the industry and ensure respect for human rights in the formation of new social relations with the participation of autonomous devices.

Thus, the analysis of the above literature shows that the study of artificial intelligence is a topical issue among scholars, but a comprehensive study of international legal regulation of intellectual property rights created by artificial intelligence has not been conducted. Therefore, there is an urgent need to conduct research on the international legal regulation of intellectual property rights created by artificial intelligence with the aim to create a proposition for the improvement of domestic legislation.

2. Methodology

The authors used different methods to study the international legal regulation of intellectual property objects created by artificial intelligence, such as the historical method; analytical method; method of analysis of legal documents, articles, and monographs; methods of classification; method of generalization; comparison; synthesis; as well as modelling.

Thus, firstly, the historical method allowed us to analyse the evolution of the international legislation governing the use of artificial intelligence and intellectual property in different time periods and in different historical conditions.

Secondly, the analytical method made it possible to consider in detail the regulations of both international and national legislation on AI and IP and to identify their main ideas, provisions, guidelines for development.

What is more, the method of analysis of legal documents, articles, and monographs was used in the study of legislation and scientific works of scholars on the research topic. Thanks to this method, it was possible to comprehensively study the work of many scholars and identify the main principles of regulation of artificial intelligence in different countries (legal systems).

The generalization method allowed to combine the general provisions on the use of artificial intelligence and regulation of intellectual property objects (taking into account the existing international legal acts regulating these issues). For example, the provisions of the Berne Convention (1886)

have generalized the provisions on the guidelines governing the creation of intellectual property objects; the Civil Code of Ukraine (2003) allowed to analyse and generalize how the objects of intellectual property rights created by artificial intelligence in Ukraine are regulated; the provisions of the legislation of various European countries made it possible to understand the approach to regulating the creation of objects by artificial intelligence in Europe.

The method of comparison allowed us to compare the regulation of intellectual property objects created by artificial intelligence in different countries. This helped for a comprehensive study, namely: to see the differences in legal regulation, to identify legal gaps, and to investigate how the problematic issues can be resolved in different countries.

Furthermore, the method of synthesis was used to study certain regulations governing relations in the field of intellectual property and the use of artificial intelligence in the creation of works, programs, compositions, etc. in order to form coherent vectors of development and improve such regulations.

Finally, the use of the modelling method allowed to model how to further develop relations in the field of legal regulation of intellectual property objects created by artificial intelligence and how it is necessary to reform the domestic legislation so that it can be in harmony with international law and meets the requirements of time and social development.

When writing the article, much attention was paid to international and domestic law. The following legislation on the topic was analysed:

- Berne Convention for the Protection of Literary and Artistic Works, approved by the World Intellectual Property Organization (1886).
- European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL).
- Directive No 2001/29/EU of the European Parliament and of the Council of 22 May 2001.
- Copyright, Designs, and Patents Act of 1988.
- The judgment of the United Nations International Court of Justice (ICJ) in the case of Nottebohm (Liechtenstein v. Guatemala) of 1955.
- Universal Copyright Convention of 1952.
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of 1995.
- The Constitution of Ukraine of 1996.

- Civil Code of Ukraine of 2003.
- Law of Ukraine "On Ukraine's accession to the Berne Convention for the Protection of Literary and Artistic Works" (1995), and;
- Law of Ukraine "On Copyright and Related Rights" (1994).

3. Presentation of key research findings

3.1. Provisions of international legislation on the regulation of the creation and use of the objects of IP created by AI

Thus, first of all, it is necessary to analyse the provisions of international legal regulation of the creation, use of intellectual property rights, and the use of artificial intelligence products. Thus, concerning international legal regulation, the guidelines of intellectual property law are contained in the Berne Convention (1886). The Berne Convention became the first multilateral international copyright treaty. It establishes uniform minimum rights for intellectual property. The principles of the Berne Convention form the basis of the Universal Copyright Convention (1952), reaffirmed and extended in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1995). According to the Berne Convention and Universal Copyright Convention, the term "author" can be understood as both individuals and legal entities under the national legislation of the participating countries.

The development of robotics and artificial intelligence and related legal and ethical issues led to the adoption by the European Parliament of the Resolution of February 16, 2017 with proposals to the European Commission on civil law on robotics. The Resolution emphasizes the need to address the issue of civil liability for damage caused by robots at the European level to ensure equal efficiency, transparency, and consistency in addressing this issue in the EU member states. Besides, the resolution is based on the fact that in the long run, the capabilities of artificial intelligence may exceed human capabilities, so they will be able to enter into contractual relationships, choose contractors, discuss the terms of contracts, enter into and execute them. What is more, the Resolution also focuses on safety and liability issues related to the operation of robots. In particular, it is envisaged that drivers of autonomous vehicles should be able to take control of the car as quickly as possible when needed. Thus, at this stage of the study, it would be logical to say that works created exclusively by artificial intelligence can be objects of intellectual property rights.

European Parliament Resolution 2015/2013 (INL) of 16 February 2017, which includes the Charter on Robotics, stipulates that robotics is subject to the current system of legal regulation of intellectual property issues, to intellectual property rights – a neutral approach from the standpoint of

technology. In particular, legal protection of objects created by artificial intelligence systems should be provided taking into account the neutral legal personality, because behind the artificial intelligence systems, first of all, there is a person.

In April 2019, the European Commission published a Directive on an ethical approach to the development of artificial intelligence (draft) for study by industry. The main provisions of the document are that artificial intelligence should be created to support human subjectivity, and artificial intelligence systems and the results of their activities should be "human-centred, aimed entirely at serving humanity and the common good, to help improve the conditions of human existence and freedom".

In May 2019, the Organization for Economic Cooperation and Development, which unites 36 economically developed countries, together with six countries (and then in June 2019, the Ministers of Economy of the G20 countries) defined the principles of dealing with artificial intelligence. It was based on two principles:

- in order to increase trust in technology and realize its full potential, it is necessary for a person to be at the centre of the use of artificial intelligence.
- systems must be stable, secure, and reliable throughout the period of their use, and must not carry any unacceptable risks.

From a legal point of view, the recommendations of the Organization are not binding. However, they are designed to form a unified approach to the interpretation of the criteria for the protection of the performance of artificial intelligence in different jurisdictions.

Also noteworthy is the 1955 decision of the United Nations International Court of Justice in Nottebohm (Liechtenstein v. Guatemala). This decision was motivated by Part 1 of Article 15 of the Universal Declaration of Human Rights of 1948, which clearly states that "everyone has the right to a nationality". Citizenship is recognized as an element not only of the exclusive legal personality of individuals but also of artificial intelligence systems. In view of the above, the question arises about the mandatory international delictual capacity of artificial intelligence systems.

It is also important to note the interpretation of EU Directive 2001/29/EU on certain aspects of copyright. It is stated that a computer program must be protected if it is original in the sense that it is the author's intellectual work. This is justified by the fact that any literary and artistic works, or any other intellectual works must be protected by copyright. This applies, in particular, to databases.

On September 27, 2019, a discussion organized by WIPO on the impact of artificial intelligence on the intellectual property took place. The discussion

considered various issues related to the impact of artificial intelligence on almost all processes related to the implementation of copyright. The influence of Artificial Intelligence on patent law was also discussed, but we are interested in the position on authorship. As a result of the discussion, the participants came to the conclusion that the legislative process and changes in legislation take a long time. Therefore, if necessary, the issue of recognizing artificial intelligence as the author of the work may be left to the discretion of the court. Moreover, participants agreed that with the development of information technology, it is becoming increasingly difficult to determine who created a work: human or artificial intelligence (Conversation on Intellectual Property (IP) and Artificial Intelligence (AI), 2019).

Additionally, the attention should be paid to the program called "Bot Dylan" (2020), which has created a large number of musical works for which no authorship has yet been established. The program used generated a piece of music so that it is impossible to recognize who was the original author. Moreover, this project also does not have copyright protection.

Thus, even at the supranational level, there are different positions on the issue of recognizing artificial intelligence as the author of a work that is protected by intellectual property rights. If we put the supranational assets, listed above, in chronological order, we can reverse the tendency to gradually expand the potential expansion of possible rights attached to artificial intelligence.

In most cases, supranational regulations are of a recommendatory nature. That is why there is a need to address the national level of regulation of this issue in different countries. Why the next section of the article will be devoted?

3.2. Regulation of the objects of intellectual property rights created by artificial intelligence in foreign countries (national level)

Let's briefly consider how the objects of intellectual property rights created with the help of artificial intelligence in foreign countries (at the national level) are regulated.

Thus, in the United States, the Copyright Office will register an original copyrighted work if it was created by human. This position is in line with the law, which states that copyright protects only the object of intellectual work, the foundations of which are the creative abilities of the mind. This position is also supported by Australian legislators.

Meanwhile, the US legal doctrine also has positions on the recognition of authorship by artificial intelligence. Hence, it is believed that artificial

intelligence already has manifestations of cognitive processes, so it has a consciousness that is similar to humans. Comparing artificial intelligence with legal entities, some researchers believe that it is logical that artificial intelligence should also acquire legal personality (Yanisky-Ravid, 2017). In addition, artificial intelligence can create works under contract as a worker (work for hire). In this case, the author of the work will be the employer (Hristov, 2017).

In Japan, it was decided to start developing regulations to protect copyright in creative products generated by artificial intelligence. This step is taken to support companies working to create and implement innovations.

In the United Kingdom, the Copyright, Design and Patent Act (1988) states that in the case of a computer-generated literary, dramatic, musical, or artistic work, the author will be the person through whom the activities necessary to create the work are carried out. The same provisions are contained in the legislation of Hong Kong, South Africa, and New Zealand. The position that the originality of work (according to the legislation of most countries) is the result of the expression of the author's personality opposes the position on the recognition of artificial intelligence as the author of the work. This criterion cannot yet be applied to artificial intelligence. Most copyright laws require the awareness of the creation. A machine does not have that conscience (Conversation on Intellectual Property (IP) and Artificial Intelligence (AI), 2019).

In India, there is a basis for recognizing artificial intelligence as the author of a work. If we consider the case law, the position of the Indian courts is that creativity must be respected wherever it comes from, so artificial intelligence has the right to acknowledge authorship. Even taking into account the outdated norms of the law, the courts interpret these norms broadly and skilfully apply them to information technology. Indian courts note whether the creation of a work by artificial intelligence took place under human supervision, or whether artificial intelligence created it without human intervention. This is a key factor. Meanwhile, if we turn to the legal framework and adhere only to the law, then currently the author of the work can only be a person.

Thus, the analysis of international legal regulation of the objects of intellectual property rights created by artificial intelligence shows that despite the short period of creation of this objects by works and other means of non-human origin, states (including international organizations legislate the regulation of such objects) taking into account the specifics of such objects and the legal traditions of the states themselves.

3.3. Domestic (Ukrainian) regulation of intellectual property issues

Article 41 of the Constitution of Ukraine (1996) stipulates that everyone has the right to own, use, and dispose of the results of their intellectual and creative activity.

According to Art. 420 of the Civil Code of Ukraine (2003), the objects of intellectual property rights include literary and artistic works; computer programs; data compilation (database); implementation; phonograms, videograms, broadcasts (programs) of broadcasting organizations; scientific discoveries; inventions, utility models, industrial designs; layout (topography) of integrated circuits; innovation proposals; plant varieties, animal breeds; commercial (brand) names, trademarks (signs for goods and services), geographical indications; trade secrets.

Objects of copyright in accordance with the Law of Ukraine "On Copyright and Related Rights" (1994: article 5) are works in the field of science, literature and art, namely: literary works of fiction, journalism, scientific, technical or other nature (books, brochures, articles, etc.); speeches, lectures, and other oral works; computer programs; databases; musical works with text and without; dramatic, musical-dramatic works, pantomimes, choreographic, and other works created for stage performance and their staging; audio-visual works; works of fine art; works of architecture, urban planning and landscape art; photographic works, including works made in a manner similar to photography; works of applied art, including works of decorative weaving, ceramics, carving, foundry, art glass, jewellery, etc.; illustrations, maps, plans, drawings, sketches, plastic works relating to geography, geology, topography, engineering, architecture and other areas of activity; stage adaptations of the works, and arrangements of folklore suitable for stage performance; derivative works; collections of works, collections of folklore, encyclopaedias and anthologies, collections of ordinary data, other compiled works, provided that they are the result of creative work on the selection, coordination or arrangement of content without infringing copyright on the works included in them as part; texts of translations for dubbing, sounding, subtitling in Ukrainian and other languages of foreign audio-visual works; other works.

The subjects of intellectual property rights are the creator (creators) of the object of intellectual property rights (author, performer, inventor, etc.) and other persons who own personal non-property and (or) property intellectual property rights (Civil Code of Ukraine, 2003: article 318).

That is, in Ukrainian law, the subject of intellectual property rights is the creator and other persons. It is stated that the creator is exclusively an individual. Legal entities under civil law cannot be creators, but they can become the primary subjects of intellectual property rights by law. Thus,

artificial intelligence under Ukrainian law cannot be a subject of intellectual property rights, and there is no legislative regulation on the issue of intellectual property rights created by artificial intelligence.

Conclusions

As a result of the study of international legal regulation of objects of intellectual property rights created by artificial intelligence, we came to the following conclusions:

1. In the international community, the majority holds that rights to artificially created works can recognize by the owner of the computer program (usually large corporations), its developers, or users. That is, the main issue is not the recognition of authorship of artificial intelligence, but the legal definition of the person who will own the property rights to the object created by the program (as the financial component plays an important role in advancing further research in this area).
2. In the case of defending the position on which artificial intelligence (robot) can be recognized as a subject of intellectual property rights, it should be borne in mind that artificial intelligence operates according to an algorithm and often generates new works as a result of processing and analysis of existing ones. In this case, to provide a work of legal protection, it is necessary to establish the criteria of originality in the newly created work.
3. At present, there are developments in the regulation of international law of objects of intellectual property rights created by artificial intelligence. However, such developments are not applied by states due to conflicts and non-recognition by many foreign states of the legal personality of artificial intelligence, which leads to inconsistencies and lack of a unified approach to the recognition or non-recognition of artificial intelligence as a legal entity.
4. Ukrainian legislation does not set the legal basis for the use of works created without human participation. Thus, the legislation of our state does not yet give grounds to recognize the authorship of intellectual property by artificial intelligence. However, given the discussion in the international arena of the status of robots, including the possibility of recognizing them as “electronic persons”, this situation may change in the near future.

Therefore, the research topic requires further research, namely a detailed analysis of bills and theoretical developments and doctrines on consolidating artificial intelligence at the legislative level and giving it legal personality, as well as litigation on the recognition of artificial intelligence as a subject of intellectual property rights.

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Institution of Complicity in a Crime: Comparative-Legal Interpretation

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Abstract

The objective of the study was to identify the design patterns and distinctive features of the institution of complicity in a crime in certain criminal laws. The methodology was based on the use of legislative interpretation operations and techniques such as the hermeneutics of criminal texts, which allows to identify the structural, constructive, and substantive features of the rules on complicity in a crime. The scientific novelty of the work lies in the textological approach of the criminal-legal regulations of the institution of complicity. This approach allows to interpret the standards in a comparative aspect, taking into account the deep level of their construction. Among the results obtained are:(1) the inclusion of complicity rules in other criminal law institutions is an unjustified design technique; (2) the absence of a complex of titles in the institution of complicity reduces the level of quality of this institution; (3) the presence of definitive rules in the institution of complicity significantly increases its quality; (4) the differentiation of accomplices in crime should not be excessive and arbitrary; (5) the rules on attempted complicity in a crime increase the preventive potential of criminal law.

Keywords: institution of complicity in a crime; criminal design traits; differentiation of accomplices; innovative legislative and textual approach; comparative legal interpretation.

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Institución de la complicidad en un delito: interpretación jurídica comparada

Resumen

El objetivo del estudio fue identificar los patrones de diseño y rasgos distintivos de la institución de la complicidad en un delito en las ciertas leyes penales. La metodología se bas**ó** en el uso de operaciones y **técnicas de interpretación legislativa** como la hermenéutica de los textos penales, lo que permite identificar los rasgos estructurales, constructivos y sustantivos de las normas sobre complicidad en un delito. La novedad científica del trabajo radica en el abordaje textológico de la normativa penal-legal de la institución de la complicidad. Este enfoque permite interpretar las normas en un aspecto comparativo, teniendo en cuenta el nivel profundo de su construcción. Entre los resultados obtenidos destacan: 1) la inclusión de las normas sobre complicidad en otras instituciones de derecho penal es una técnica de diseño injustificada; 2) la ausencia de un complejo de títulos en la institución de la complicidad reduce el nivel de calidad de esta institución; 3) la presencia de normas definitivas en la institución de la complicidad aumenta significativamente su calidad; 4) la diferenciación de cómplices en el delito no debe ser excesiva y arbitraria; 5) las normas sobre tentativa de complicidad en un delito aumentan el potencial preventivo de la legislación penal.

Palabras clave: institución de la complicidad en un delito; rasgos de diseño de la penal; diferenciación de cómplices; enfoque legislativo y textual innovador; interpretación jurídica comparativa.

Introduction

A crime that is recognized as a complex social phenomenon may be committed by an individual or several individuals. The problem of complicity is one of the key issues in criminal law. There is no doubt about the need to reform legislation concerning the technological revolutions taking place in recent years, which have a direct impact on all spheres of life in society (Kirillova *et al*., 2020), as well as political, cultural, social, and economic changes.

Complicity is one of the most important institutions of criminal law and, at the same time, the most complex in the framework of law enforcement. Complicity is a special phenomenon in criminal activity when several individuals combine their efforts to achieve a single socially dangerous result (Suonpää *et al*., 2020). As can be seen from the definition, the main criterion by which complicity may be identified is the presence of willful guilt

of all participants in the commission of a crime. Each accomplice realizes the socially dangerous nature of the act, foresees criminal consequences, and wishes or deliberately allows them, pursuing criminal goals and having common intentions. At present, based on the analysis of the norms on the institution of complicity in criminal law, it can be concluded that it is important to apply it correctly. The theory and practice of criminal law know various forms of joint participation of several persons in criminal activity — complicity, indirect execution (or infliction), careless complicity, involvement in a crime, joint participation in a crime of persons in the absence of joint intent (mutual awareness) between them (Gunadi, 2020).

The value of the institution of complicity lies in ensuring effective criminal legal protection of public relations from group criminal encroachments, as well as creating an effective legal mechanism for the individualization of responsibility and punishment of members of criminal groups. Based on the above, it should be recognized that one of the strategic directions of modern criminal law policy is to further improve the legislative structures of the institutions of complicity in the criminal laws of states to counteract group crime more effectively.

1. Methods

The legal method was used in this study, including legal and technical methodology and methods of interpretation of the law. The legal and technical method was used in the analysis of rulemaking. The system of the code and each of its articles must comply with certain rules for constructing the disposition and sanction of norms to be clear, direct, and logically consistent. The interpretation of the law is possible in the way of understanding the meaning and legal form – grammatical, logical, and comparative and in terms of volume – authentic, expansive, and restrictive.

The criminal-statistical method was widely used, which is characterized as the knowledge of the qualitative originality of criminal-legal phenomena and concepts through quantitative indicators. This method was used to generalize and quantify, for example, norms, their dispositions and sanctions, the structure of punish ability, and criminal records.

The study used a systematic method that allowed researching criminal law phenomena and concepts as systems, i.e., an integral set consisting of subsystems and elements. The method was used in the analysis of lawmaking, law enforcement and construction theory, knowledge, application of such system institutions as criminal law, principles of law, crime, guilt, multiple crimes, complicity, exemption from criminal liability, and punishment. The principle of consistency should correspond to the location of sections, chapters, and norms in the text of the code. The criminal code is the macro system. The microsystem is a norm, the disposition of which describes the corpus delicti, and the sanction is the type and amount of punishment.

An important place was given to the comparative-jurisprudential (comparative) method, which was used when comparing the codes of various legal systems and states.

2. Results

The use of the comparative-legal method of researching the legislative structures of institutions of complicity in the criminal laws of states makes it possible to note the features of the design of the corresponding criminal law regulations (Troncoso and Weber, 2020). These features are correlated with several requirements of legislative technique and legal textology:

1. *Institutions of complicity structure*. The legislative practice of structuring the institutions of complicity in the criminal codes of states is very different:

   – the norms on complicity are presented in the Criminal Code of the Federal Republic of Germany in the form of an independent institution "Execution, incitement, aiding and abetting", the Criminal Code of the Netherlands "Participation in a criminal offense", the Criminal Code of the Republic of Bulgaria "Complicity", the Criminal Code of Japan "Complicity", the Law of the Republic of Iran "Co-executors and accomplices of a crime", the Criminal Code of Spain "Persons subject to criminal liability for crimes and misdemeanors", and the Criminal Code of China "Complicity in a crime";

   - in conjunction with the rules on preparation and attempt, the rules on complicity are grouped in the criminal laws of the Republic of Poland "Forms of committing a crime" and Denmark "Attempt and complicity".

   – the rules on complicity are in one chapter with the general criminal law provisions (Criminal Code of France "General provisions").

Rulemaking recognizes the structure of the institution as a source of information creation of the institution itself. The inclusion of rules on complicity in chapters containing rules of a general nature or other institutions is an unjustified method of constructing criminal law institutions (Boduszek *et al.*, 2020). At the same time, clarity of presentation is violated, and differentiation of legal prescriptions is difficult; there is a confusion of norms that are different in their legal nature and an unclear expression of legislative intent.

2. *Article titles*. Lawmakers of different states have different attitudes towards the article titles:

- article titles containing provisions on complicity are available in the Criminal Code of the Federal Republic of Germany, the Criminal Code of Japan, and the American states of New York and Pennsylvania;
- article titles are absent in the Criminal Code of the Republic of Poland, the Criminal Code of Denmark, the Criminal Code of the Netherlands, the Criminal Code of the Republic of Bulgaria, the Criminal Code of Spain, the Criminal Code of France, the Law of the Republic of Iran, and the Criminal Code of China.

From the standpoint of legislative technique, as well as criminal law textual criticism, article titles improve the structure of the law, facilitate the finding of the necessary norms, their interpretation, and comparison with each other, and discipline the drafters of the norms. The absence of article titles hinders quick access to the necessary information about the structure of the criminal law, the system relations of its institutions and criminal law regulations, their mutual location, and content (Fernández-Campoy and Aguilar-Parra, 2017).

3. *Articles structuring*. An analysis of the criminal legislation of states indicates that there is an ambiguous approach to the rubrication of prescriptions in lawmaking practice within the framework of articles and paragraphs. Legislators use a variety of ways to structure articles:
   - articles are divided into parts in the Criminal Codes of the Netherlands, Spain, and the Republic of Bulgaria.
   - criminal-legal regulations in the articles are highlighted as paragraphs in the Criminal Codes of Japan, France, and the Republic of Iran.
   - as a structural component that differentiates the article into independent norms is a paragraph in the Criminal Codes of the Republic of Poland, Germany, Denmark, New York, and Pennsylvania.
   - the legislator uses paragraph literation as a compositional-graphic device in the Criminal Code of China.

Differentiation of an article into its constituent parts using structural components increases the consistency of the presentation of regulatory prescriptions. Compositionally, the criminal law is a special text, which must have digital and alphabetic literation of articles, divided into parts, as well as the division of criminal law provisions using paragraphs (Hewitt *et al*., 2020). Multi-stage gradation of articles improves the quality of the interpretation of criminal law orders by updating (highlighting) the most important segments of the normative text, which contributes to increasing the efficiency of law enforcement practice.

4. *Content of legislative mandates*. The content of criminal legislative mandates should: firstly, accurately express the meaning of criminal law concepts; secondly, adequately reflect the behavior model of actors of the norm; thirdly, consistently set out in the normative text; fourthly, have the maximum clarity, distinctness, and consistency.

4. Discussion

Following the guidelines of the legislative design technique, the provisions of legislative textual criticism, and the position of German researchers of criminal law-making (Hernández, 2019), the following can be noted:

- firstly, there are no definitive norms on complicity in the institutions of complicity in the studied criminal codes, which excludes the possibility of clearly expressing the meaning of this concept and reflecting the signs of the existing criminal law phenomenon known as complicity in a crime.
- secondly, there is no uniform differentiation of accomplices into types in the legislation. The Criminal Codes of Germany, the Republic of Bulgaria, and Japan recognize the perpetrator, instigator, and accessory as accomplices; the Criminal Codes of France and Spain – the perpetrator and other accomplices; the Criminal Code of the Netherlands – the main participants and accomplices; the Criminal Code of the Republic of Poland – the perpetrators, organizers, instigators, and accomplices. The Criminal Code of the Republic of Iran recognizes accessories and three categories of accomplices; the Criminal Code of China singles out the main criminal as accessories, which includes the organizer, the leader of the criminal group, the person playing the main role in a joint crime, instigator, and accomplice. Accomplices in the criminal laws of the US states are the person guilty of a crime, as well as another person (New York), an accomplice of another and a person guilty of incitement (Pennsylvania).

The absence of the term's "perpetrator", "instigator", and "accomplice" in several criminal codes of states reduces the quality of legislative texts. However, the legislative technique obliges lawmakers to fully use legal terminology, since, with the help of the corresponding term, the concept is fixed as a legal category, which is later used in theory and practice.

- thirdly, prescriptions on complicity in the codes of states for the most part do not contain a direct indication of the form of the guilt of persons committing a crime with complicity and the subjective side of the crime, as the legislators imply that complicity

is committed with intent. Along with this approach, the criminal codes of some states contain provisions recognizing the possibility of complicity with an unintentional form of guilt (the Criminal Code of the Republic of Poland) and complicity through negligence (the Criminal Code of Denmark).

- fourthly, German and American legislation contains specific provisions on liability for attempted complicity. Thus, the Criminal Code of the Federal Republic of Germany distinguishes four types of attempted complicity: 1) an attempt to persuade another person to commit a crime; 2) an attempt to incite to commit a crime; 3) expression of readiness to commit a crime; 4) acceptance of a proposal to commit a criminal offense. The legislator criminalizes attempted incitement and attempted execution by highlighting these types of assassination. When an attempt is made to persuade or incite another person to commit a crime, an attempt at incitement takes place. Expression of readiness to commit a crime or acceptance of an offer to commit a criminal offense is punished for attempted execution.

In addition to recognizing the possibility of attempted complicity, the German legislator formulated a rule on the voluntary refusal of attempted complicity. The law has identified three categories of persons who can be recognized as voluntarily renouncing attempted complicity (Vaughn, 2020). However, the law establishes the punishment of a person for an unfinished crime, if the person has not made voluntary and persistent efforts to prevent the crime. The Criminal Code of the Republic of Poland also contains a provision based on which a person can be prosecuted for attempted incitement or aiding if they tried to commit a criminal act. If such an attempt was not carried out, then extraordinary mitigation of punishment is applied to the person or the punishment is not imposed at all;

- fifthly, legislators formulate instructions on the influence of the personal qualities of an accomplice on the exclusion, reduction, or increase of the punishment (the Criminal Codes of the Federal Republic of Germany, Denmark, the Republic of Bulgaria, the Republic of Poland, Japan, and others). Personal qualities are considered only concerning the owner of these qualities. However, individual national codes, for example, Art. 65 of the Criminal Code of Japan, allow spreading the influence of personal qualities on the amount of punishment of accomplices who do not possess the specified qualities.
- sixthly, several codes (the Criminal Codes of Poland, Bulgaria, and Denmark) contain instructions on the voluntary refusal of accomplices to a crime. Based on the law, an accomplice is not

subject to a penalty when committing such anti-criminal actions as refusing to continue participating in the commission of a crime and preventing the occurrence of a criminal result. At the same time, the Danish and Polish legislators address the prescription to all accomplices, the Bulgarian – to the instigator and accomplice.

- seventhly, the considered institutions of complicity contained in the criminal codes do not prescribe the forms of group commission of a crime. Criminal conspiracy orders are only available in the Pennsylvania Criminal Code.
- eighthly, the legislation lacks uniformity in regulating the punishability of the actions of accomplices. The German legislator prescribes that each accomplice should be charged with special personal characteristics when imposing punishment. The same penalty is imposed on the perpetrator and other accomplices following the Criminal Codes of France and Denmark. The institution of the complicity of the Criminal Code of Spain does not contain normative prescriptions on the punishment of the actions of accomplices. According to the Criminal Code of the Republic of Bulgaria, punishment is imposed taking into account the nature and degree of everyone's participation in achieving a criminal result. The Polish legislator obliges the court to punish within the limits of intent and unintentional fault of the accomplices of a criminal act (Aizpurua *et al.*, 2020). The Criminal Code of Japan provides for equal liability of the perpetrator and the instigator; the punishment for the accomplice is lighter than for the perpetrator. The law of the Republic of Iran considers the commission of a crime by two or more persons to be an aggravating circumstance. Each perpetrator is given an equal amount of punishment. Along with punishment, an accomplice may be subject to disciplinary measures, and they are held accountable even if the perpetrator is not subject to criminal liability by virtue of the law. The Criminal Code of China contains privileged prescriptions providing for the imposition of punishment on an accomplice, in contrast to the main criminals (Evans *et al.*, 2021).

An analysis of the criminal law norms of the codes of some states, taking into account the requirements of legislative technology, allows noting that legislators, in the presence of fundamental theoretical developments in the technique of constructing norms, do not fully embody them in laws. This is especially evident in the absence of definitions and uniform terms, the formulation of titles, and the compositional-graphic construction of the normative text (Ramakers *et al.*, 2020). At the same time, theorists of the German legislative technique believe that the structure of a normative text is determined by its content and conceptual definitions. Indeed, the

norms – definitions make it possible to clarify the complexity of normative prescriptions governing criminal law relations. Legislative definitions should be considered as the fundamental core of the set of legal norms that form the criminal law institution of complicity in a crime.

Legislative technicians guide rule-makers along the path of eliminating long and complex legal structures (Durrant, 2020). As a general rule, they should be divided into separate short sentences, since such a construction greatly facilitates the perception of the normative text. Despite the existing rules, elongated structures are found in the legislative texts of the Criminal Codes of France, Denmark, Australia, Iran, and others.

The goal of the law's creators should be clear to everyone; the accessibility and clarity of the text are assessed according to the following criteria: simplicity, brevity, clarity, systematicity, and consistency, as well as clarity, distinctness, accuracy, certainty, optimal capacity, and compactness of legislative formulations. However, these criteria are not always implemented in criminal and penal codes. In particular, the brevity and clarity of the prescriptions are absent in the Criminal Codes of France, Bulgaria, and Iran; the systematic nature of the Criminal Codes of the Netherlands and Denmark is violated; the sequence of the presentation of regulatory prescriptions in the Criminal Code of Denmark is not always observed; the titles of the paragraphs do not correspond to the text of the criminal law orders in the Criminal Code of Pennsylvania.

Conclusion

Based on the results of the study, the following conclusions can be drawn:

- the inclusion of rules on complicity in other criminal law institutions is an unjustified construction technique.
- the lack of a title complex in the institution of complicity reduces the quality level of this institution.
- the presence of definitive norms in the institution of complicity significantly improves its quality.
- differentiation of partners in crime should not be excessive and arbitrary.
- the norms on attempted complicity in a crime increase the preventive potential of criminal legislation.

Legislative definitions should be considered as the fundamental core of the set of legal norms that form the criminal law institution of complicity in a crime.

Also, the content of criminal law prescriptions should: firstly, accurately express the meaning of criminal law concepts; secondly, adequately reflect the behavior model of actors of the norm; thirdly, be consistently stated in the normative text; fourthly, have the maximum clarity, distinctness, and consistency.

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Fiscal mechanism in public administration of social risks

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Abstract

Through a critical document-based methodology, the research analyses the essence of social risks as the object of public administration, proposes their classification, tests the need for interconnection of social and fiscal policies, bases the structure of the financial and budgetary mechanism for public management of social risks and, consequently, proposes to improve it by increasing investment in human capital to prevent social risks. It is concluded that the orientation of the social protection system to countervailing measures in relation to certain groups of the population seeks to solve the problem of poverty by strengthening tax distributional processes, increasing the amount of social spending on total state spending, but if it fails to increase the effectiveness of social programmers, the main social problems will not be solved. It is established that the main direction of improvement of the public social risk management tax mechanism should be the minimization of the compensatory nature of the financial provision of the consequences of social risks and, the activation of the application of investment tools for the prevention of their occurrence.

Keywords: fiscal policy; social policy; fiscal mechanism; investment in human development; social justice.

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Mecanismo fiscal en la administración pública de riesgos sociales

Resumen

Mediante una metodología critica de base documental, la investigación analiza la esencia de los riesgos sociales como objeto de la administración pública, propone su clasificación, prueba la necesidad de interconexión de las políticas sociales y fiscales, fundamenta la estructura del mecanismo financiero y presupuestario de la gestión pública de los riesgos sociales y, en consecuencia, propone mejorarlo aumentando la inversión en capital humano para prevenir riesgos sociales. Se concluye que la orientación del sistema de protección social a medidas compensatorias en relación con ciertos grupos de la población busca solucionar el problema de la pobreza mediante el fortalecimiento de los procesos distributivos fiscales, aumentando el monto del gasto social en el gasto total del estado, pero si no logra aumentar la efectividad de los programas sociales no se resolverán los principales problemas sociales. Está comprobado que la principal dirección de mejora del mecanismo fiscal de gestión pública de riesgos sociales debe ser la minimización del carácter compensatorio de la provisión financiera de las consecuencias de los riesgos sociales y, la activación de la aplicación de herramientas de inversión para la prevención de su ocurrencia.

Palabras clave: política fiscal; política social; mecanismo fiscal; inversión en desarrollo humano; justicia social.

Introduction

Changes that are rapidly spreading in the modern society, in addition to undeniable positive results, generate socio-economic and socio-political instability, cause difficulties in managing society in unpredictable, extreme situations that potentially can lead to certain social risks in the field of human development. The problem of public management of social risks is complicated by the fact that the mechanisms of its implementation, which were developed in previous years, no longer correspond to the global social changes in society at large. Social risks are caused by the ambiguity of social processes and extremely diverse in their manifestations.

Affiliation of risks to a certain social sphere primarily affects the nature of their consequences, which entails the necessity of developing appropriate administrative mechanisms, the presence of which can testify to the existence of a real state social policy. However, the current problems of methodological and methodical nature remain unresolved regarding the state regulation of human development and its mechanisms, especially budget ones, with the purpose of harmonizing the activities of all branches

of government and ensuring the nation-wide priorities of social policy at all levels of government.

The purpose of this study is to substantiate the essence and structure of the fiscal mechanism of public management of human development social risks on the basis of clarification of the subject and object of management, the definition of general principles, methods, tools, logical schemes of the functioning of this mechanism with the allocation of managerial techniques they are based on (Golub *et al.*, 2020a).

The theoretical and methodological basis of the research became the works of Ukrainian and foreign scientists in the field of public administration, management, economics, finance, sociology, risk studies and so on. In foreign scientific literature, research on social risks is carried out in the context of theoretical foundations of risk. They are implemented in the writings of Arrow and Chichilnisky (1999), Beck (2010), Giddens (1991), Douglas (1993), Lucas and Sargent (1981), Luhmann (1991), Knight (2003), and others.

Some aspects of the essential components of the mechanism of public management of social risks of human development are the subject of research by many Ukrainian scholars, among them: Boretskaya (2001), Hnybidenko *et al.* (2006), Libanova (2010), Nadraga (2015), Sadova (2009), Semiv (2013), Romanyuk (2009) and others. The assessment of the impact of social risks is mainly carried out in the context of social security and social protection, with insufficient attention paid to the study of the mechanisms of public management of social risks in the field of human development as a complex phenomenon.

Problems of financing the social sphere were dealt with by Beskid (1998), Bukovinsky (2001), Bolshakov (1999), Vasylyk (2000), Kravchenko (1999), Romanenko (2004), Chugunov (2003) and others. However, there was no combination of human development and budget issues in their works. Therefore, it is necessary to develop the methodological foundations of a unified system of coordinates of social and fiscal policies, which requires a scientific rethinking of the concept and function of the budget from the standpoint of determining its role as a regulator of human development.

Methodical basis of work consists of a number of modern methods of scientific research, among which: dialectical method – to determine the essential characteristics of social risks; generalization method, comprehensive and systematic approaches – to substantiate the scientific principles of public management of social risks; methods of observation, comparison, analysis and synthesis – for analysis of subject-object relations in the system of public management of social risks and characteristics of fiscal tools for the implementation of state social policy; an integrated approach, methods of induction and deduction, abstraction, and formalization –

to substantiate directions for improving the fiscal mechanism of public management of social risks in Ukraine. The information base of the research was the results of research conducted by leading Ukrainian and foreign scientists, information resources of the Ministry of Finance of Ukraine, the Ministry of Social Policy of Ukraine, scientific and statistical Internet resources.

1. The Essence of Social Risks and Their Types

Under social risks, as a rule, we understand the dangers and threats that restrict economic independence, social well-being and cause negative changes (deterioration) of the social situation of a person. The social situation, in turn, is determined by a combination of socio-labor, economic, legal, and other parameters inherent to a social group or an individual. The basic parameters of social status include quality and standards of living; relation to property; access to power; social infrastructure (services in the field of education, health care, culture, social protection); place in the social and labor sphere, etc. (Golub *et al.,* 2020b).

Social risks by their nature can have an economic, social, political, natural, man-made, etc. nature. As a rule, risks are closely interrelated, and in most cases, it is difficult to draw a clear line between them. In a broad sense, all these risks are social, because they have, in general, social mass character. Undoubtedly, there are risks of worsening of the social situation of the individual, when risks acquire a personal character, when the cause of human danger is himself: his behavior, way of life, attitude toward society. Research on social risks in Ukraine is mainly based on the principles of a realistic direction, gradually acquiring an industrial dimension.

Thus, Sadova (2009), Romanyuk (2009) consider social risk problems from the standpoint of national security, studying them as certain threats to human and social development, which turn into dangerous events. Semiv (2013) focuses mainly on migration risks, which can potentially lead to a loss of human resources in quantitative and qualitative terms, due to the underestimation of labor costs in the national economy, the simplification of the visa regime with other countries, and so on.

The result of the research of social risks in the labor sphere, carried out by Nadraga (2015), was the allocation of them into a separate system, because according to the author it is this type of risk that is inherent to human economic activity (including periods before and after productive employment). The author determines that social risks in the labor sphere can have both a positive and a negative effect of the consequences of implementation. Along with this, for the labor sphere, the study of the negative consequences of their implementation is extremely important. From a legal point of view, social risks are considered primarily as insurance.

In particular, the Fundamentals of the Ukrainian legislation on compulsory state social insurance define the insurance risk as the circumstances in which citizens and/or members of their families may lose their livelihoods temporarily or permanently and need financial support or social services on compulsory state social insurance.

In a special study, conducted by scientists at M.V. Ptukha Demography and Social Studies Institute of NAS of Ukraine (Libanova, 2010), social risks are considered from the standpoint of human development. Accepting its basic conceptual position regarding the impossibility of the existence of social risks in an ideal form, we should note that each of them is closely related to phenomena and processes in other spheres of society. According to the results of this study, the most well-defined definition of social risks was given – a threat that arises and manifests itself within the social sphere of society, has negative social consequences, influences the livelihoods of individuals, social groups, and society as a whole. The wording of the definition of social risk, according to the authors, should be based on several prerequisites:

- rely on a general definition of risk since social risk is one of the individual cases of general perceptions of the risk category.
- highlight the features of the content of social risk, distinguishing it from other types of hazards (natural, man-made, etc.).
- include rational components of risk definition, appearing in literary sources, legislative acts, etc.

Considering the stated requirements, the following definition is proposed: the social risk of human development is a separate type of risk, representing a measurable share of the potential danger of deviations from social norms in the system of social relations, processes, and activities. It should be noted that the very concept of social risk is only at the initial stage of development and implementation in the legislative field. Unlike Ukrainian, Western jurisprudence has been working on social risk issues for quite some time. As a rule, the general concept of "risk" in the legal science of the West is interpreted in the broad sense, that is, as any undesirable phenomena for society. For the most part, these are those that directly threaten the life or health of a person.

Social risk, like any other social phenomenon or process, has a complex system of interconnections with other processes, and therefore, the manifestation of causal relationships is multifactorial and multidimensional, which necessitates a specific classification of social risk. Its purpose is to clearly determine the place of each type of social risk in accordance with the defined criteria. In this context, we can draw two approaches: for the first, all social risks are classified into four groups:

- economic nature (unemployment, low income, migration).
- physiological nature (temporary or persistent disability, pregnancy and childbirth, old age, death).
- professional nature (occupational injury, occupational disease).
- demographic and social character (multi-member families, single parenting, orphancy).

The second approach is based on possible ways to compensate for social risks:

- insurance, which provides for a special mechanism for economically justified amounts of insurance premiums and related insurance payments.
- non-insurances, which underlie the organization of the system of state social assistance to certain categories of citizens. The amount of benefits depends on the degree of need of a citizen.

In the aggregate, social risks are the basis for the construction and functioning of the state system of social protection, financial and material mechanisms, which are designed to ensure the implementation of the right to social security for any person who needs it (Kostruba, 2018a; Kostruba, 2018b).

Social policy is a set of measures of state and non-state nature, aimed at identifying, meeting, and reconciling the needs and interests of citizens, social groups, and territorial communities. The main component of social policy is ensuring equal access of the population to social services of the proper quality. The content of the concept of "social services" is not limited to social protection and social security of the population, but extends to the protection of health, spiritual and physical development and education, housing.

This also includes the solution of the state problems related to employment, communal infrastructure, ecological status of human habitats. In determining of priority directions of social policy by the state, the main attention is paid to cases where, under certain conditions, the welfare of a society or its separate groups is reduced. Moreover, the concept of "well-being" can include decent housing, work conditions, and also the ability to work, the level of the disease. Naturally, all these concepts are aspects of human development.

In modern Ukrainian practice, in most cases, social policy is the answer to the emerging social problems. Such problems can become serious threats to the society; therefore, they require a quick and effective solution. But there are also problems, such as the aging of the population, which, firstly,

poses a threat to the future, and secondly, their resolution requires time. Thus, understanding the essence of risks and problems and the causes of their emergence is extremely important for justifying social policy, as it helps to find adequate ways to solve them.

The analysis of the causes of existing problems, the demographic and economic situation in the country, enables us to model the prospects for socio-economic and human development, and, therefore, to anticipate possible threats in the future. Therefore, social policy should be aimed at preventing possible problems in the medium and long term. Such a task of social policy must be ensured by appropriate instruments of economic regulation, among which one of the most important are budgetary mechanisms.

Adoption of the Budget Code of Ukraine in 2001 caused fundamental changes in the whole budget system of Ukraine and became the first step in its reform in accordance with the Constitution of Ukraine and EU norms and standards. From the point of view of human development regulation, it is important that the Budget Code clearly lays down, on a long-term basis, revenues and expenditures between the linkages of the budget system on the basis of the differentiation of powers on the provision of public services financed from budget funds between different levels of government and local self-government, and a distinction in the budget process participants functions is made.

The differentiation of expenditures in the Budget Code of Ukraine on education, health care, social protection and social security, housing and communal services, between budgets of different types makes it possible to identify levels of government and, consequently, those parts of the budget system that have the greatest impact on one or another component of human development. An analysis of the consolidated budget expenditure structure makes it possible to determine the type of budget that is most closely related to a specific aspect of human development, which in the future allows to predict the emergence of social risks associated with the imperfection of funding mechanisms used at various levels of the executive branch more accurately (Skydan, 2009).

Budget expenditures should improve the welfare of the society and increase the quality of life of the population; therefore, they should promote the expansion of human development opportunities, by preventing or minimizing social risks. However, to achieve this goal, there is a need to resolve the methodological issue – how to ensure the maximum impact of future taxes and fees and budget expenditures on human development at the stage of budget planning, and at the stage of budget implementation, monitoring and evaluating the effectiveness of changes in the state of human development in the country caused by these costs. The basis for developing such a methodology on regulating human development through

budget mechanisms is the scientific rethinking of the concept and essence of the budget by defining its role in shaping human development based on state social policy.

The realization of the social policy goals can be achieved through the application of various mechanisms for solving social problems. The effectiveness of social policy is achieved through the choice of priority social problems at all stages of development of the economy, which are then reflected as the main tasks of the economic, including budget, state policy. Thus, social priorities refer not only to quality and standard of living, health care, education, culture, and ecology, but also to quality and level of financial support.

2. The structure of the fiscal mechanism of social risks public management

The fiscal mechanism of public management of social risks is proposed to interpret as a means of consistent implementation of organizational and economic actions based on objective laws, basic principles, target orientation, functional determinacy, using appropriate financial and budgetary methods and tools aimed at achieving the goal, which is to prevent and minimize the effects of social risks of human development. In other words, it is a system of financial methods, levers and tools used by public authorities to directly and indirectly influence society as a whole and individual social groups, along with appropriate regulatory, organizational and information support. The components of the mechanism are presented in Table 1.

Table 1. The structure of the fiscal mechanism of social risks public management

Components	Content
Goals	Prevention and minimization of the social risks' consequences for human development
Objects of management	State and local self-government bodies
Subjects of management	- Society as a whole - Separate social groups

Tasks	- Providing social assistance to those members of society who are not able to support themselves - Social insurance in case of illness, unemployment, etc. - Production and acquisition of those material goods and services, which the state is responsible to provide
Principles	- Rationality - Efficiency and effectiveness of using budget funds - Addressing assistance - Subsidiarity - Coherence of budgetary and social policy goals - Harmonization of the compensatory and investment nature of financial support
Methods	- Direct budget financing - Program budgeting - Budget financing of social sectors - Strategic planning - Compulsory state social insurance
Tools	- Direct impact: state social standards (poverty line, minimum wage), state social guarantees, monetary benefits, allowances, subsidies, targeted programs, targeted subventions to local budgets. - Indirect impact: budget expenditures on education, health care, culture, subventions, national social insurance, insurance premiums

Let us examine the features of individual components of the financial and budgetary mechanism of public management of social risks. The implementation of social policy by the state or local authorities is based on the application of state guarantees, standards, as well as rules and regulations, which makes their use an integral part of the social policy. These state guarantees and standards are established at the legislative level in the laws on the state budget for each year, that is, they are the basis for the formation of the social component of state and local budgets. At the same time, in the formation of an active social policy in the field of human development in modern Ukraine, there is a need not only to determine the budget resources based on standards and guarantees, but also to develop budget mechanisms, without which it cannot be activated both at the state and at the regional levels (Skydan, 2011).

Budget policy is one of the most effective tools of state regulation of socio-economic development of the country. The purpose of fiscal policy, like any other, is a specific result, different from that already exists, or one

that promotes the improvement, development and increase of the efficiency of the process or the final product/service. Considering the above, many countries have now begun to use methods of budgeting focused on socially meaningful results. In each country, the methods of budgeting can be called differently – for example, result-based budgeting, performance or productivity management, program-target method. However, all of them have a common goal, which is to achieve a specific, usually long-term result, which best meets the needs of society. And since such a result should also be sufficiently objective, measurable and predictable, a distinctive feature of such methods of budgeting is a system for assessing the quality of budget services and the effectiveness of fiscal policies in general.

All this makes it possible to assert that budgetary tools, namely direct expenditures, centralized purchases, intergovernmental transfers, etc., are regulators of social and economic development. In addition, taking into account that the main components of human development, such as education, health care, social protection and social security, belong to the main budget spheres in Ukraine (i.e., their expenditures are almost entirely formed at the expense of budgetary funds), some aspects of human development can be effectively regulated through the use of special budget mechanisms and tools, in particular, potential social risks can be influenced.

Budget expenditures are capable of actively influencing human development through, first, supporting the socially unprotected sections of the population, financially ensuring the functioning of institutions and conducting research, in particular in the areas of health care, education and ecology. At the same time, this influence is conditioned by the budget structure, that is, the structure of the budget system and the functional links between its elements. In turn, the budget structure, in particular the system of local budgets and their relations with the state budget, are determined by the state structure and the administrative-territorial division of the country.

According to the budgetary system, in Ukraine financial support for the expansion of human development is carried out both from the state budget and from the local budgets, which determines the need to study the degree of influence and the relationship between the level of the budget, which finances, and the amount of funding and human development. But it is necessary to consider the theoretical basis of the budget impact on human development based on determining the relationship between the budget and social policy in general. The budget significantly affects the state of the socio-cultural sphere: education, health care, housing and communal services, social protection and social security and culture. It is these areas that provide the most basic preconditions for human development, which prevents the emergence of social risks. The tasks solved in the direction of spending public funds, can be divided into three groups:

- providing social assistance to those members of society who are not able to provide themselves independently. For example, the allowances paid to disabled children.
- provision of social insurance in case of illness, unemployment, etc. For this category of expenses, unlike the previous one, the essence of the process is not limited to redistribution, there is a peculiar pre-accumulation of funds, including personal, insured for the purpose of the next payment with the occurrence of the insured event.
- production and acquisition of material goods and services, which the state assumes the responsibility for.

In this context, "social expenditure of the budget" is not only a system of financing, but also a system of social rights and guarantees of the population, expressed by a set of relevant state standards and budgetary mechanisms to ensure these rights, and guarantees. The Constitution of Ukraine, adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996 is the basic document in which the rights of citizens to social protection, a sufficient standard of living for themselves and their families, health care, medical care and health insurance are secured.

According to Art. 46 of the Constitution of Ukraine, citizens have the right for support in the event of full, partial or temporary disability, loss of breadwinner, unemployment due to circumstances beyond their control, and also in the case of aging. The Constitution provides that this right is guaranteed by compulsory state social insurance at the expense of insurance premiums of citizens, employers, as well as budget and other sources of social security (Skydan *et al.,* 2019).

Consequently, the social policy of the state should take into account the demands of all social strata of the population, promote the establishment of an optimal balance between the incentives of the economic activity of the able-bodied population and the social protection of those who need it, between measures aimed at solving promising and current social problems. Thus, the principle of rational social policy is the need for a reasonable, economical and at the same time effective spending of limited social resources at the state level, and at the level of regions and enterprises. The principle of the effectiveness of the budget system determines that when drafting and executing budgets, all participants in the budget process must strive for achievement of the planned goals with the attraction of the minimum amount of budget funds and achieve maximum results with the use of the budget determined by the amount of money.

The principle of targeting – the most urgent in the modern social policy of Ukraine. The impossibility of providing state support to the entire population is explained by resource constraints and the expansion of the spectrum of priority social services. Privileges for certain categories of

the population that the government seeks to distinguish from the general population are provided on a professional or service basis to certain categories of citizens. The limited budget resources put the state in the position of refusing general support of the entire population and providing specific assistance to the socially vulnerable groups of the population (large families, people with disabilities, refugees, etc.) who urgently need it. At the same time, there is a question of cutting off the social security system of those strata of the population that have economically succeeded and no longer need this support.

This principle is closely linked to the principle of subsidiarity of the budgetary system, according to which the distribution of types of expenditures between the state budget and local budgets, as well as between local budgets, should be based on the greatest possible approximation of the provision of public services to their immediate consumer. Therefore, the lack of implementation of one of these principles of social policy causes the corresponding negative consequences for budgetary policy. Ensuring targeting of payments from the budget is realized in two aspects:

- from the point of view of horizontal efficiency, combating poverty is effective when assistance is provided to all who need it.
- from the point of view of vertical efficiency, to maintain cost growth, assistance should be provided only to those who really need it.

In the area of social policy, it is, first of all, about vertical efficiency, since it directly relates to budget expenditures for assistance. At the same time, horizontal efficiency is also important, because the impact of poverty eradication depends on it. Therefore, the basis for effective interaction between the budget and social policy is the solution of how the state should establish and ensure social standards and guarantees for citizens in need, in the face of limited budget funds. According to the law, the definition of the right to assistance for all social programs should be based on the subsistence minimum (SM).

In addition, this indicator should become a peculiar benchmark for the establishment of other national minimum social standards, such as minimum wages, minimum old-age pensions, unemployment benefits, other types of social allowances and benefits. In this regard, two important parameters are important: the SM value itself and the correction coefficient, which will determine the amount of the total income of the family, which gives the right to receive social assistance (the level of provision of SM). When determining the value of SM, it must be taken into account that it must ensure the implementation of constitutional guarantees to the citizens of Ukraine, and the appointment of social assistance (in particular, the definition of the level of provision of SM) must be financially justified.

However, only the focus of the system of social protection on measures of compensatory nature in relation to certain groups of the population, attempts to solve the poverty problem by increasing fiscal distributive processes, increasing the amount of social expenditures in the total expenditure of the state without increasing the effectiveness of social programs will not solve the main social problems. After all, an increase in the volume of budget expenditures directed towards the needs of social protection does not yet testify to the success of social policy. There may be a number of negative phenomena in the form of ineffective management and bureaucratization of the social protection system, the abuse and fraud of some recipients of social benefits, injustices, disparities in assistance to low-income people living in different regions and having different demographic and economic characteristics.

Way out of this situation may be in changing the ideology of the budget process from the implementation of social expenditures of the budget to the implementation of budget investments aimed at human development. Such a transition should be based on the definition of the essence of investment in human development. Determining the subject and the subject of investment is the basis of understanding the essence of investment in human development. The object of such investments is the social sphere and housing and communal services in the form of specific industries, enterprises, organizations, and people, which constitute the social structure of society.

Education, health care and welfare are the most important spheres in the structure of human development. These directions in the structure of the budget correspond to expenditures on education, health care, social protection and social maintenance of the population and housing and communal services as an industry that is associated with the creation of decent living conditions and work of a citizen. Therefore, the relationship between the use of budgetary funds and the state of human development should be considered in the context of these industries.

In our opinion, the main direction of improving the financial and budgetary mechanism of public management of social risks should be minimization of the compensatory nature of financial provision of consequences of social risks and activation of the use of investment instruments for preventing their occurrence. In view of this, harmonization of social and fiscal policies is mandatory on the basis of real forecasts of socio-economic development and the introduction of medium-term budget planning. In this context a great importance is turned to the Budget Declaration – a strategic document that should agree the basic principles of fiscal and social policy.

To date, the Budget Declaration is not a complete strategic document, since it does not contain a link to the macroeconomic forecast, the analysis

of the level of achievement of goals proclaimed in the previous year, as well as the analysis of the potential impact of the proposed budget decisions on the country's socio-economic situation in the medium-term perspective, on expanding the capabilities of human development. Therefore, it is necessary to restructure the Budget Declaration and thereby conceptually change its role in the budget process, giving it the status of a full budget document, which will mean completion of the first stage of the budget process. Therefore, to ensure effective regulation of human development, the structure of the Budget Declaration should contain separate sections that will reflect:

- an estimation of the relationship between budget expenditures and achieved indicators of human development over the past year.
- existing strategic goals of social policy, regarding human development, which need to be addressed through implementation of budgetary policy measures.
- proposals for solving these problems (directions of fiscal policy in clear correspondence with the strategic goals of social and economic policy of the state and mechanisms for its implementation in each direction.
- forecast of the main parameters of the budget for the planned year and the medium-term perspective. Such a forecast should include a generalized structure of budget revenues and a detailed structure of budget expenditures according to functional classification, intergovernmental fiscal relations and a list of budget programs aimed at human development.
- an assessment of the regulatory impact or expected social outcomes, including changes in the human development situation as a result of the medium-term implementation of the budget policy measures envisaged in the declaration.

Thus, in addition to establishing the political component of the budget process, the distribution of the projected amount of budget resources for the planned year and the medium-term perspective according to the branches and main programs for human development should be carried out at this stage. The methodological approach should be based on the assessment of existing current budgetary commitments and social guarantees of the state to citizens (a certain level of wages, social benefits, pensions). Such an assessment, in turn, should be based on determining the future value of the budget service, taking into account the impact of all factors that may increase this value, among which: the projected amount of inflation, increase or decrease in the payroll, increase or decrease of certain social criteria that are the basis for the calculation of wages, transfers to the population (the size of the subsistence minimum, the minimum wage, etc.).

To take full account of the financial needs for measures aimed at achieving certain goals, in social policy, such goals can be reflected in the form of established standards for the provision of social services to the population. But if we consider the whole budget system rather than its separate components, this approach seems rather complicated, which takes a lot of time to develop and test the methodology for determining the standards, and then the methodology for calculating the corresponding need for financial resources. Therefore, without diminishing the relevance of the introduction of social service standards as an important component of fiscal policy, it is necessary to consider human development standards as a necessary component of fiscal policy, starting with the first stage of the budget process.

Conclusion

Social risk of human development is a separate type of risk, representing a measurable share of the potential danger of deviations from social norms in the system of social relations, processes and activities. Social risks can have economic, physiological, occupational demographic and social character. Depending on the compensation method, social risks may be insurance and non-insurance. In the aggregate, social risks are the basis for the construction and functioning of the state system of social protection, financial and material mechanisms, which are designed to ensure the implementation of the right to social security for any person who needs it.

It is proved that effective interaction of the budget and social policy will solve the question: how the state should establish and provide social standards and guarantees to the citizens who need them, in the face of limited budget funds. The research substantiates the essence and structure of the fiscal mechanism of public management of social risks of human development, specifies the subject and object of management, defines the general principles, methods, tools, logical schemes of the functioning of this mechanism with the allocation of management techniques on which they are based. It was determined that the orientation of the system of social protection to compensatory measures in relation to certain groups of the population, attempts to solve the problem of poverty by strengthening fiscal distributive processes, increasing the number of social expenditures in the total expenditure of the state without increasing the effectiveness of social programs will not solve the main social problems.

The main direction of improvement of the fiscal mechanism of public management of social risks should be minimization of compensatory nature of financial provision of social risks consequences and activation of investment tools application for prevention of their occurrence. In view of this, harmonization of social and fiscal policies is mandatory on the basis

of real forecasts of socio-economic development and the introduction of medium-term budget planning. In this context the Budget Declaration, a strategic document that should harmonize the basic principles of fiscal and social policy, is therefore important.

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Reflections on the respect of the rights of citizens during judicial decisions of execution

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Abstract

The objective of the article was to analyze the problematic aspects of the judicial executive process, considering its properties and the classification of its stages. The methodological basis of the study are the general and special methods of scientific knowledge (inductive, analytical, hermeneutic, systemic and others). The results of the study include the analysis of scientific approaches to the essence, properties, classification of stages of the executive process and argumentation of theoretical proposals and informed practices. Moreover, the authors' conclusions on certain topics are set out, a new original definition of «stages of the executive process" and their original new classification is based. The practical importance of the results is that the conclusions and proposals made significantly enrich procedural science during the implementation of judicial decisions; it will be useful for the subjects of enforcement proceedings (implementing agents, parties to enforcement proceedings) in the exercise of their procedural rights and the performance of their procedural functions. The conclusions presented based on the analysis can be used to generalize executive practice.

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Keywords: judicial executive process; stages of the executive process; attributes of the stages of the executive process; classification of the stages of the executive process; active citizenship.

Reflexiones sobre el respeto de los derechos de los ciudadanos durante las decisiones judiciales de ejecución

Resumen

El objetivo del artículo fue analizar los aspectos problemáticos del proceso ejecutivo judicial, atendiendo sus propiedades y la clasificación de sus etapas. La base metodológica del estudio son los métodos generales y especiales del conocimiento científico (inductivo, analítico, hermenéutico, sistémico y otros). Los resultados del estudio incluyen el análisis de aproximaciones científicas a la esencia, propiedades, clasificación de etapas del proceso ejecutivo y argumentación de propuestas teóricas y prácticas fundamentadas. Por lo demás, se exponen las conclusiones de los autores sobre ciertos temas, en particular, una nueva definición original de « etapas del proceso ejecutivo y se fundamenta su nueva clasificación original. La importancia práctica de los resultados es que las conclusiones y propuestas formuladas enriquecen significativamente la ciencia procesal durante la ejecución de las decisiones judiciales; será de utilidad para los sujetos de los procedimientos de ejecución (en particular, los agentes de ejecución, las partes en los procedimientos de ejecución) en el ejercicio de sus derechos procesales y el desempeño de sus funciones procesales. Las conclusiones presentadas con base en el análisis se pueden utilizar para generalizar la práctica ejecutiva.

Palabras clave: proceso ejecutivo judicial; etapas del proceso ejecutivo; atributos de las etapas del proceso ejecutivo; clasificación de las etapas del proceso ejecutivo; ciudadanía activa.

Introduction

There are many reforming processes in Ukraine just now. One of them is the reform of executive process. Introduction the institute of private executors, improving the procedure of executive process, making this process clearer are only one of remedies that have already been done during the transformation of executive process of Ukraine. Is it mean that Ukrainian executive process has become excellent? Not at all, but just now

we can see the progress in this sphere. For example, in some cases creditors can choose the system of compulsory execution: either governmental system of compulsory execution or private system of compulsory execution. If the creditor has chosen private system of compulsory execution, he \ she can choose private executor inside the executive district. This factor stimulates the rivalry between governmental system of compulsory execution or private system of compulsory execution, telling exactly, between governmental executors and private executors. This fair rivalry is determined by The Strategy of Reformation the Judicial System, Judgement and Adjacent Legal Institutes for 2015-2020 (approved by the Order of the President of Ukraine № 276/2015 20.05.2015). This remedy is one from the list of effective remedies for reorganization the system of court decisions execution and improving the effectiveness of executive process.

Among these remedies also as follows: assembling solid mechanism of functioning the system of compulsory execution bodies; development of private executors institute, especially because of stating gradual system of self-government, the mechanism of entering the profession; implementation the system of control under the activity of private executors, implementation the insurance of professional civil responsibility of private executors; abidance the balance between the competence of governmental executors and private executors; revision of the mechanism of forming the remuneration of executors for stimulating rising the real execution of court decision; optimization of stages of executive process and terms of making executive acts etc.

The effectiveness of the protection of violated rights, freedoms, interests of persons mediated by the decision of the relevant jurisdiction is directly related to its implementation. In the vast majority of cases, these are court decisions, most of which involve enforcement. In particular, under Part 2 of Article 21 of the Criminal Procedure Code of Ukraine, a sentence and court decision that have entered into force in the manner prescribed by this Code are binding and subject to unconditional execution throughout Ukraine. Other procedural codes are also binding on the court. Meanwhile, the adoption of a court decision and its further implementation is carried out by different entities (respectively – the court and the executors), not subordinate to each other, moreover – it happens in different jurisdictions (for example, a court decision can be made in civil, criminal, administrative, commercial litigation, and its implementation – within the enforcement proceedings). The actual and direct restoration of violated rights, freedoms, interests is connected with the execution of a court decision, so it is difficult to overestimate its significance in the mechanism of their restoration (The case of Hornsby v. Greece, 1997; The case of Romashov v. Ukraine, 2004; The case of Yuriy Mykolayovych Ivanov v. Ukraine, 2009).

As a jurisdictional process, the enforcement process has its stages. At the same time, in the scientific and methodological literature the term "stage" is mostly used for procedural branches (criminal procedural, civil procedural, economic procedural, etc.) usually associated with the term "process", in particular, civil process stages, economic process stages (Fursa *et al.,* 2008). It is difficult to talk about the relevant jurisdictional process, bypassing its stages. This appears to be related to temporal (temporal) and substantive unity and the simultaneous differentiation of the relevant jurisdictional process. Procedural stages are, according to Shcherbak (2011), a characteristic of the dynamics of the legal process. Stages of enforcement proceedings, continues this author, form a structurally determined sequence of enforcement actions, which reflects the progress of the requirements of the enforcement document, and the separation of logically related stages.

Of course, staging is closely related to a certain sequence of actions, so it is a question of a certain chronology of actions – which action follows. However, it would be premature to ignore the fact that staginess, in addition to the temporal dimension, also has a substantive dimension – the content of the acts themselves that must / may be committed during enforcement, and the vector dimension – the commission of such acts has a specific direction, and it is to achieve the solution of certain tasks in the appropriate time (for example, sending the executor requests for the presence of the debtor's property is aimed at solving the problem of finding such property, which will later be able to recover).

1. Methods

The methodological basis of the study is a system of general and unique methods of scientific knowledge, which allowed to fully and comprehensively explore the topic of the article, to achieve the goal of this study. The inductive method allowed to separate the main issues of the topic from the array of discussion aspects of the modern executive process. With the help of this method of scientific knowledge, the main scientific works of legal scholars who study this issue were selected. The analytical method allowed to identify the state of scientific development of the topic, the main scientific approaches to the concept of stages of the executive process, their properties, classification. The method of analysis revealed the most substantiated theses in the scientific developments of legal scholars who study the problems of the executive process, which was laid in the theoretical basis of this scientific article.

The analysis of scientific works, which cover the topics of the executive process, allowed to have a reasoned scientific discussion during the writing of the work – taking into account existing developments to formulate their

conclusions and judgments on this issue. Also, the method of analysis allowed to identify the properties of the stages of the executive process. The hermeneutic method of scientific cognition made it possible to comprehend the prescriptions of the main legal acts, judicial practice on the subject of the stages of the executive process. With the help of this method, the main gaps in the legislation governing the scope of the enforcement process were identified.

The systematic method of scientific cognition was used in interpreting the provisions of regulations governing the stages of the executive process, forming comments on the wording of such regulations and proposals to improve the legal regulation of the stages of the executive process. With the application of the systematic method of scientific cognition, conflicts were revealed in the normative-legal regulation of the sphere of the executive process, in particular, its stages. This method made it possible to formulate the conclusions of scientific work, in particular, in the context of the proposed author's classification of stages of the executive process.

The comparative method of scientific knowledge was used in elaborating the views of legal scholars on the concept of stages of the executive process and its classifications. The method of synthesis made it possible to generalize the most common in the science of the executive process approaches to determining the stages of the executive process, their classification. In particular, with the help of this method, it was summarized that the most common classifications of stages of the executive process are classifications with four elements of such stages. The modelling method was used in the formation of its concept of classification of stages of the executive process. This method allowed to form the author's model of classification of stages of the executive process: with its division into contextual stages, substantiation of the separateness of each stage, and, at the same time, with substantiation of close inseparable connection of all stages of the executive process reflecting internal integrity and dynamism of executive process as phenomena. The application of this method made it possible to propose a new original author's model of classifications of stages of the executive process.

The dialectical method of scientific cognition was used, most of all, in the study of classifications of stages of the executive process. It allowed to study the structure of each stage of the executive process in its unity with the task of the corresponding stage and its inseparable connection with other stages of the executive process. The application of the dialectical method of scientific cognition was reflected, inter alia, in the study of the stages of the executive process as a dynamic and multifaceted legal phenomenon. This method was used in the study of the properties of the stages of the executive process and made it possible to explore and propose a new conceptual view of their structural and elemental composition.

2. Results and Discussion

2.1 The concept of "stage of the executive process"

Examining the concept of "stage of enforcement proceedings", it should be noted that the term "enforcement proceedings" and its categorical apparatus are currently in the process of formation. Ihonin (2007) under the stage of enforcement proceedings understands a set of interdependent procedural actions of the subjects of enforcement proceedings aimed at achieving a certain stage goal regarding the enforcement of enforcement documents. It is worth agreeing with the position of this scientist on the essential reduction of the stages of enforcement proceedings to the procedural actions of its subjects. Instead, the statement that such actions are interdependent is subject to critical consideration, because 1) the legislation on enforcement proceedings does not always prerequisite the performance of the relevant enforcement proceedings by a particular subject of enforcement proceedings another enforcement action of the same or another subject of the process; 2) a significant number of such actions may or may not be committed at the will of the subjects of enforcement proceedings, as they are related to the exercise of their rights. For example, the claimant has the right to submit a written request for the return of the enforcement document without enforcement, exercising his right without prior correlation with the procedural actions of other subjects of enforcement proceedings. These actions and decisions can be fully considered as a manifestation of dispositiveness in the executive process.

For these reasons, the proposal of S. Fursa and S. Shcherbak to consider the stages of enforcement proceedings through a set of actions of certain entities, according to which the stage of enforcement proceedings should be understood as a set of procedural actions of the state executor, other subjects of enforcement proceedings aimed at achieving a certain procedural goal (Fursa and Shcherbak, 2002). However, if the substantive component of the stages of the enforcement process, which is formed by certain actions of its respective subjects aimed at achieving the relevant goal, is properly reflected in the above definition, then to fully understand the concept of stages of enforcement proceedings their chronological aspect is the sequence of such actions in time.

The executive stages of this, writes Makushev (2017), are certain internal results, but they always remain their own, separated by one of the simultaneous decisions that adhere to a certain set, which is implemented, and have to adhere to important results. If suggested, on the other hand, this study very aptly emphasized that the stages were performed by the power of a certain known one of the other, which is constantly changing in the process. The language can be solved by publishing a written letter (a decision confirming the decision made by confirming the text is recorded in the paper), as the decision is not formally used (required to address the

need for making records for a variety of property on the jacket an arrest must be made, and he considers that the legislation that is not used has been complied with in the relevant documents).

At the same time, from the aspect of the criminal process, it is necessary to ask the question about the most common term "stage", which is performed during the work, which is exposed to itself, when it is necessary to make a separate stage during the analysis. In particular, in the legislation of Ukraine and the theory of criminal procedural law, the term "stadium" exists only concrete and detailed: it is a select place that has to be used by inherent users and they serve known prices and used tomorrow criminal trust (Tatsii *et al.,* 2013); using only those that, also, are different stages of criminal proceedings, adhering to trusted actions, specialized circles of subjects who must comply with the form and summarizing the decision (Kovalenko *et al.,* 2013).

To address the relationship between the concepts of "stage" and "stage", it is advisable to be guided by their content load. In the Great Explanatory Dictionary of the modern Ukrainian language, the concept of "stage" is defined as a certain moment, period, stage in life, development, which have qualitative features (Busel, 2003). One of the meanings of the term "stage" is a separate part of something (Busel, 2003). Therefore, we believe that it is appropriate to define the stage as a separate period of proceedings, which includes the execution of court decisions. Instead, certain areas of such enforcement should be defined as stages aimed at achieving the objectives of enforcement proceedings. However, in the science of the executive process, civil, administrative processes is more commonly used to apply the concept of stages of these processes. Because of the above, we propose to continue to talk about the stages of the executive process. Given the above, it seems reasonable to define the concept of "stage of the executive process" as a set of procedural actions of the subjects of the executive process (subject aspect), aimed at performing certain (certain) situational (situational) tasks (tasks) within the executive process (vector aspect), occurring in the appropriate sequence (time aspect).

2.2 Properties of stages of the executive process

In essence, the stages of the enforcement process consist of procedural actions of its subjects, which have / can be committed during the enforcement of decisions. In defining them, the vast majority of scholars reduce them to the actions of the subjects of enforcement proceedings. Of course, their actions meaningfully fill each of the areas of this activity. However, an important component is the inaction of their subjects in accordance with the requirements of the law on enforcement proceedings. For example, the unconditional obligation of the debtor to refrain from actions that make it

impossible or difficult to enforce the decision (paragraph 1 of part 5 of Article 19 of the Law of Ukraine "On Enforcement Proceedings" (On Enforcement Proceedings, 2016) will be inherent in the direct enforcement of property (e.g., property search – no to hide property, not to destroy it, etc.; similarly, during its description and arrest – not to damage such property, etc.). If we analyse the whole procedure of enforcement of decisions, we can find that in general it is built on the principle of its observance by all parties, which implies that they do not take action to violate it. And in case such a violation still took place (inaction is not observed), the law provides for a compensatory mechanism.

For example, the law does not contain an obligation for the debt collector not to interfere with the enforcement agent in carrying out enforcement actions. However, the provisions of paragraph 4 of part 1 of Article 47 of the Law of Ukraine "On Enforcement Proceedings" determine that if the claimant still commits such actions, the executor will return the enforcement document without execution. Therefore, throughout the enforcement proceedings, the claimant has, in effect, a duty of inaction to prevent the enforcement agent from carrying out enforcement actions. Similarly, it is possible to speak if the debtor interferes with the execution of the decision on his eviction – the state executor imposes a fine on him in the manner prescribed by part 6 of Article 66 of the Law of Ukraine "On Enforcement Proceedings" (here the compensatory mechanism is just such a fine). Actions that are the subject of the relevant stage of the enforcement process are characterized by the fact that they: a) must be performed by the relevant subjects in terms of performance of procedural duties); or b) may be committed at one time or another during the enforcement of decisions (it is a question of realization of the corresponding procedural rights by separate subjects of executive proceedings), or c) essentially provide inaction.

Within the stages of the enforcement process perform certain situational tasks, to achieve which the subjects of enforcement proceedings take appropriate actions / refrain from them. Thus, the implementation of such tasks is a kind of vector of action of these actors (vector aspect of the stages of the executive process). Subject aspects of the stages of the executive process are determined by the tasks to be performed on the timeline of the executive process. The situational of the tasks is that they are relevant to the solution for the appropriate stage of the executive process. This can be illustrated by the following example. Before initiating enforcement proceedings, it is first necessary to decide whether such a process will be initiated at all: whether there are factual and legal grounds for enforcement of a particular decision by the authorized entity to which it is enforced, or whether there are obstacles. The solution of the specified task is actual at the presentation of the executive document to compulsory execution.

After establishing that the executive document meets all the requirements specified by law, the decision based on which it was issued, is enforceable and has entered into force, there are no obstacles to enforcement (for example, no delay), the executive document submitted by the subject, authorized to present it for enforcement, the executive document presented in compliance with the requirements of the law for the enforcement of the entity authorized to carry out such enforcement, the executor will open enforcement proceedings. However, it may also be established that the factual and / or legal grounds for the enforcement of a particular decision by the entity to which it is presented for enforcement are absent or there are obstacles to enforcement.

If the enforcement document is presented for enforcement, does not meet the requirements of the law for enforcement documents or enforcement of the decision does not provide for enforcement measures, the enforcement document will be returned to the claimant without acceptance for enforcement, and enforcement proceedings will not be opened. However, even in this case, there is a legal relationship of enforcement proceedings between the executor and the applicant. Given the above, the first stage of the enforcement process is to determine the presence of the enforcement document for enforcement, as the opening of enforcement proceedings may not occur after the presentation of the enforcement document for implementation (the enforcement document may be returned to the claimant without acceptance).

The stages of the executive process are characterized by a certain time sequence. This is due, firstly, to the fact that the procedure for enforcement proceedings is determined by law, and secondly, the time sequence of actions by the subjects of enforcement proceedings is characterized by logic (for example, first you should open enforcement proceedings, and then directly enforce decisions; you need to find the property and then evaluate it). The temporal measurement of the stages of the executive process is the sequence of performance of the relevant actions by the authorized subjects of the executive process, therefore, it is a question of a certain chronology of actions and determination of the procedure for carrying out the necessary actions.

2.3 Classification of stages of the executive process

Examining this question, Shcherbak (2011) notes that there are two grounds for classifying the stages of the legal process: functional and logical. According to the functional classification, it distinguishes the stages of violation of the legal process, preparation for consideration, consideration of the case and decision-making based on the results of consideration of the case. The logical classification of stages plays a similar functional but

slightly different role and traditionally has the following stages: clarification of the facts of the case; clarification and determination of the rule of law to be applied; making a decision based on the results of these two stages (Shcherbak 2011). The application of such a classification seems justified to the stages of the executive process. However, they are characterized by both functional (demonstrates the movement of the process from its beginning to completion) and logical (shows the rationale for the content of each component of enforcement proceedings) classification.

In the legal literature, the most common classifications of stages of enforcement proceedings are four-component classifications. Fursa and Shcherbak distinguish among them: the opening of enforcement proceedings, preparation for execution, taking enforcement measures against the debtor, the final (Fursa and Shcherbak, 2002). Similarly, Bilousov (2005) also notes the four components of the levels of enforcement proceedings: the opening of enforcement proceedings, preparation for enforcement, taking measures to enforce the decision, the end of enforcement proceedings. Sometimes you can find another classification:

1) the opening of enforcement proceedings.
2) enforcement proceedings.
3) completion of enforcement proceedings.
4) appeal against decisions, actions, or inaction of officials of the State Executive Service (Kalinin, 2013). It seems that the latter component should be considered rather as a complication in the legal relationship of enforcement proceedings, as an appeal can take place at any stage of the enforcement process as a guarantee of the rule of law and legality of enforcement proceedings.

Instead, Ihonin (2007) adheres to a three-part structure and notes the opening of enforcement proceedings; enforcement proceedings; the final stage of enforcement proceedings. A significant number of scholars express the position that the first stage of enforcement proceedings is its discovery. However, this statement cannot be fully accepted for several reasons. First, as it was substantiated earlier, before initiating enforcement proceedings it is necessary to apply to the ICE body/person acting in its interests with a request to initiate enforcement proceedings for enforcement of the decision, which is the basis for specific procedural legal relations between such applicant, on the one hand, and the subject of enforcement, on the other.

Such legal relations are not always transformed into legal relations between the debt collector and the executor, as enforcement proceedings may not be opened, in particular, if the enforcement document is returned to the debt collector without acceptance for execution. Therefore, the initial

stage of the enforcement process, in our opinion, should be determined by the presentation of the enforcement document for enforcement, and not the opening of enforcement proceedings.

Secondly, there are views that the civil process can begin with the submission of a statement. For example, in the work of Komarov (2011) and some other scholars gave one of the classifications of stages of civil proceedings, the first of which is the stage of applying to the court. Here it is appropriate to conclude Yu. Osipov (1978) that the application of civil procedural law, as well as the rules of any branch of law, in terms of the internal logic of this activity, includes three main elements of law enforcement: establishing the facts of a particular procedural situation, which allows to apply this or that norm of civil procedural law; selection and analysis of the applicable law; authoritative decision of the procedural issue, application of the relevant rule of law and adoption of a judicial act. Therefore, at any stage of the jurisdictional process, including enforcement, the relevant subject will establish the facts of the case, which allows the application of the relevant rules of law, the choice of such rules, their application and appropriate registration of such application of the law. This correlates with the logical classification of stages of the legal process, as discussed earlier.

Third, in the legal literature, the opening of enforcement proceedings is not always considered solely as a stage of enforcement proceedings. For example, Krupnova (2017) defines the opening of enforcement proceedings as an administrative procedure, which itself has its stages. However, when analysing the filing of an application for the opening of enforcement proceedings, it would be erroneous to claim that there is a factual confirmation of the validity of the claims of the debt collector, as well as the obligations of the debtor (Krupnova, 2017), as the question of the validity of the claims of the person named as the debt collector in the enforcement document in respect of the person listed there as a debtor, arises when making a decision, which should then be enforced.

It seems that when presenting an executive document for enforcement, the main task is to establish whether there are factual and legal grounds for enforcement of a particular decision by the entity to which it is addressed. In the absence of such grounds for enforcement of a particular decision, the subject to whom it is presented for enforcement, as well as in the presence of obstacles to enforcement will be grounds for returning the executor of the executive document without acceptance for execution, the executor makes a decision. Under such conditions, it is further a question of completion of enforcement proceedings. On the contrary, in establishing the existence of factual and legal grounds for enforcement of a particular decision by the entity to which it is presented for enforcement, the absence of obstacles to enforcement will be grounds for initiating enforcement proceedings.

The opening of enforcement proceedings takes place subject to the establishment of legal and factual grounds for enforcement upon presentation of the enforcement document for enforcement. Meanwhile, it would be premature to claim that the stage of the enforcement process is limited solely by the issuance of the enforcement order to initiate enforcement proceedings. It should be emphasized that the decision to initiate enforcement proceedings is both one of the documents that finalizes the first stage – the presentation of the enforcement document for enforcement and begins the next – the actual opening of enforcement proceedings.

The above characterizes the progressive stages of the enforcement process and its integrity as a jurisdictional activity. From this moment the executor necessarily enters in the Automated system of executive proceedings information on carrying out of all executive actions and acceptance of procedural decisions as before actually it was a question of registration in this system of incoming and outgoing correspondence, and before the opening of executive proceedings it was not known at all. , whether it will be opened or the executive document will be returned to the claimant without accepting it for execution (Order Of The Ministry Of Justice Of Ukraine, 2016).

Characterizing the opening of enforcement proceedings, T. Minka and several other scholars note that its content is to send the executor of the relevant resolution on the opening of enforcement proceedings, including the parties (Minka, 2017). In fact, according to Article 28 of the Law of Ukraine "On Enforcement Proceedings", the executor notifies the parties of the decision to initiate enforcement proceedings and takes immediate priority measures that will make possible / more effective further enforcement. In particular, it is a question of seizing the debtor's funds, if the debtor's statement indicates the debtor's accounts in banks and other financial institutions; checking in electronic state databases and registers the existence of property rights or other property rights of the debtor to the property and seizure of it, if the statement of the collector indicates the specific property of the debtor (part 7 of Article 26 of the Law of Ukraine "On Enforcement Proceedings"). It should be noted that until there is a full search for the debtor's property, the executor only takes immediate priority measures for the property, which he was notified by the debt collector, related to further enabling/increasing the efficiency of enforcement proceedings.

Taken together, it is reasonable to state that during the opening of enforcement proceedings its main task is to establish an information and security basis (to inform the parties that the execution of the decision has already begun, to take immediate measures to ensure it) further enforcement. However, it is difficult to determine the documents that

would summarize the results of these actions regarding the commencement of enforcement proceedings, as there may be many of them depending on the categories of enforcement proceedings.

For example, they may be decisions of the executor on the seizure of the debtor's property, which was announced by the debt collector in the application for enforcement proceedings: at the same time, these documents will be final for the stage of opening enforcement proceedings and mark the beginning of the next stage – security. to describe and arrest him. Instead, in several cases, the legislation does not provide for the execution by the executor of separate procedural documents to complete the actions aimed at initiating enforcement proceedings. For example, during the execution of decisions on eviction of the debtor, the decision to initiate enforcement proceedings must indicate the need to execute the decision within 10 working days, after which the execution must be verified.

During the precautionary stage of the enforcement process, conditions should be created for further enforcement, depending on the category of enforcement proceedings and specific enforcement proceedings. For example, to ensure further recovery from the debtor in favour of the debt collector should be carried out: search for the debtor's property, including his money, property/money belonging to the debtor from others; determining whether the foreclosure can be made on this property; valuation of such property/determination of its value; resolution of other issues on which further effective enforcement depends (for example, resolution of the issue of determining the debtor's share in the property that is jointly owned by the debtor and other persons), etc. A significant part of scientists defines these procedural actions as preparation for enforcement (Fursa and Shcherbak, 2002; Shcherbak, 2011).

For example, Yu. Bilousov (2005) refers to the preparation for the enforcement of the actions of the state executor, aimed at establishing the place of residence of the debtor, his work, finding out the amount of wages, proposals to execute the decision voluntarily, creating conditions for further execution of the decision, including compulsorily. At the same time, taking into account the definition of enforcement proceedings given in Article 1 of the Law of Ukraine "On Enforcement Proceedings" (where enforcement proceedings are defined in essence as enforcement) and the provisions of Article 26 of this Law on enforcement, we note that all enforcement proceedings is a process of enforcement. Therefore, it seems that the stage of the enforcement process at which the task of ensuring the implementation of further specific measures to implement the decision, provided by the executive document, should be called accordingly – security.

After that, it is quite possible to move to the completion of enforcement proceedings. Such a situation may arise when the debtor has no property that can be recovered, the measures taken by the executor to search for him

were ineffective to the debt collector. The final documents for this stage of the executive process are quite diverse. For example, they may be: decisions of the executor on the description and seizure of the debtor's property, on the seizure of the debtor's property, which he found in response to the competent authorities/persons to the executor's inquiries regarding the debtor's property; resolutions of the state executor, by which he informs the debtor about the day and time of forced eviction determined by him (Article 66 of the Law of Ukraine "On Enforcement Proceedings". Although the legislative provisions do not mention the need to make a decision forced eviction, he informs the debtor with the appropriate resolution).

2.4 Formation of a holistic and effective enforcement process

The task of the stage of direct enforcement is to take direct measures to enforce the decision. It is worth agreeing with the definition of enforcement measures proposed by I. Zelenkova (2017), which she means the powers of the executor to enforce the decision provided by law, as well as measures to influence the debtor, which should encourage him to enforce the decision and not create obstacles to it performance. Indeed, on the one hand, the direction of such measures is clearly defined – enforcement. On the other – the emphasis is on the fact that it is also a measure of influence on the debtor, because sometimes without them it is impossible to talk about the effectiveness of enforcement. The provisions of Article 10 of the Law of Ukraine "On Enforcement Proceedings" determine the types of enforcement measures. However, this list is supplemented by the blanket norm of paragraph 5 of part 1 of Article 10 of the same Law, which refers to other forms of the Law of Ukraine "On Enforcement Proceedings", without detailing them. Therefore, there is a need to determine whether certain measures taken by the executor belong to the measures of enforcement of decisions.

As an example of resolving this issue, we will consider foreclosure on funds, securities, other property (property rights), corporate rights, intellectual property rights, objects of intellectual, creative activity, other property (property rights) of the debtor as enforcement measures. Part 1 of Article 48 of the Law of Ukraine "On Enforcement Proceedings" stipulates that such treatment of the debtor's property consists in his arrest, seizure (write-off of funds from accounts) and enforcement.

The fact that the seizure of the debtor's property is defined in the context of foreclosure, namely foreclosure – as a measure of enforcement, does not mean that security actions during enforcement proceedings (namely in this context, property seizures were previously considered) merges with direct enforcement. First, the seizure of the debtor's property may be precisely the measure to be taken in enforcement proceedings, i.e. the direct subject of

enforcement in the case of enforcement of a court order securing a claim by seizing the debtor's property. Secondly, the stages of the executive process are progressive and form a holistic inseparable process – the end of one stage at the same time can mean the beginning of the next.

To form a holistic and effective enforcement process, it is possible to superimpose them on each other, for example, if part of the debtor's property has already been found, assessed within the security stage and transferred for sale (this is direct enforcement), however, it is obvious that due to the sale of the property it will not be possible to satisfy all the requirements of the debt collector, to collect the enforcement fee, etc., then there should be a parallel search for other property of the debtor, assessment of the found property. Here we see flexibility in the question of the unity of the stages of the enforcement process, which is fully correlated with the need for full, timely and impartial execution of the court decision.

Withdrawal of property (write-off of funds from accounts), forced sale of the property is characterized as direct enforcement, in particular, in the case of execution of decisions to recover in favour of the debt collector from the debtor: this can happen by writing them off from the debtor's bank accounts (if the executor such accounts identified and available funds), and by seizing the property and transferring it for sale to third parties with the subsequent direction of proceeds from the sale first to the account of the executor / State Enforcement Service, and from him – the collector and the executor/body of the State executive service.

There are a significant number of final documents, depending on the category and specific enforcement proceedings, that would finalize this stage of the enforcement process. For example, this may be an act of electronic bidding on which the property is sold; decision on the transfer of property to the debt collector to repay the debt and the act of such transfer, if the debt collector agreed to receive at the expense of debt repayment property that was not sold in electronic bidding. Based on whether and to what extent enforcement measures have been taken and their results. The executor must establish whether direct enforcement of the decision has been carried out. However, even if for some subjective (for example, the claimant interferes with the execution of the decision) or objective (when the enforceable court decision is revoked) reasons for direct enforcement did not lead to its actual full execution, it is not always appropriate to continue enforcement proceedings. Therefore, it is worth talking about the completion of the enforcement process.

According to R. Kalinin (2013), the completion of enforcement proceedings is the final stage of enforcement of decisions of jurisdictional bodies, covering three types of administrative procedures: the procedure for terminating enforcement proceedings, the procedure for returning the enforcement document to the court or other body (official) that issued it,

and the procedure of returning the executive document to the collector, the purpose of which is the adoption of the state executor as a subject of public administration of an individual administrative act – a resolution to terminate the enforcement proceedings or return the executive document (Kalinin, 2013).

The last proposed statement related to the drafting of the relevant resolution cannot be fully agreed within view of the following. Firstly, the adoption of the relevant document should be considered as the finalization of the relevant stage of the executive process, a formal generalization of the state of achievement of the objectives of each of them. Secondly, the executor during the enforcement proceedings does not solve the task of accepting certain documents as an end in itself. Depending on the tasks of each stage of the enforcement process that need to be solved (for example, during the direct enforcement – taking measures to enforce the decision), the finalizing documents summarize the status of their implementation.

Also, the return of an enforcement document without enforcement at the request of the court or other body (official) that issued it is the basis for the termination of enforcement proceedings, therefore, should be considered in this context. In this regard, the provisions of Part 1 of Article 40 of the Law of Ukraine "On Enforcement Proceedings", which refer to the termination of enforcement proceedings, and separately – the return of the enforcement document to the court that issued it, although its return without execution at the request of the court or other body (official) that issued the enforcement document is one of the grounds for termination of enforcement proceedings (paragraph 10 of part 1 of Article 39 of the Law of Ukraine "On Enforcement Proceedings"). At the final stage, the executor decides on the termination of enforcement proceedings depending on the circumstances of the case (Fursa and Shcherbak, 2002).

It seems that the task of this stage of the enforcement process is relatively final establishment of the achievement of the general task set before the enforcement body / private executor – full, timely, impartial enforcement of the decision, or impossibility to achieve it for one reason or another; taking measures related to the completion of enforcement proceedings (lifting of arrests, etc.). Therefore, we are talking about the following possible procedural actions:

1. Return of the executive document to the debt collector without acceptance for execution. This correlates with the first stage of the enforcement process, if it was established the absence of factual and legal grounds for enforcement of a particular decision by the entity to which it is presented for enforcement, the presence of obstacles to enforcement (for example, if for objective or objective reasons it is impossible to initiate enforcement proceedings). The grounds for returning the executive document to the claimant without acceptance

for execution are provided by Articles 4, 5 of the Law of Ukraine "On Enforcement Proceedings", the executor shall issue a relevant resolution.

2. Return of the writ of execution to the debt collector takes place if due to subjective (for example, the debt collector prevents enforcement actions) or objective (for example, the debtor has no property specified in the writ of execution, which he must transfer to the debt collector in-kind) the proceedings can no longer continue, but the tasks facing the enforcement body – timely, complete, impartial enforcement of the decision – remained unfulfilled/incomplete. In this context, it is correct to note S. Fursa, E. Fursa, S. Shcherbak, that the collector is returned the executive document, which was accepted by the state executor for execution, for which the recovery was not carried out or was carried out in part (Fursa *et al.,* 2008).

Yu. Bilousov (2005) notes that the return of the executive document to the claimant – a form of termination of enforcement proceedings without execution of the decision, according to which the recovery was not carried out or was carried out in part on the initiative of the collector to implement the principle of dispositiveness. However, this statement cannot be fully accepted, as the termination of enforcement proceedings is an independent type of completion of enforcement proceedings, has its grounds, among which the return of the enforcement document to the claimant is absent. The grounds for returning the executive document to the claimant are provided by Article 37 of the Law of Ukraine "On Enforcement Proceedings", the executor shall issue a relevant resolution on such a decision.

3. Completion of enforcement proceedings. Although Article 39 of the Law of Ukraine "On Enforcement Proceedings", which defines the grounds for termination of enforcement proceedings, refers to "termination", it is worth agreeing with the position of several scholars proposing to replace the term "termination" with "closure". apply terminology that has a wider application in practice and is used in other similar regulations, such as the Civil Procedure Code (Fursa *et al.,* 2008).

Not only in the Civil Procedure Code of Ukraine, but also the Commercial Procedural Code of Ukraine, in the Code of Administrative Procedure of Ukraine, in the Criminal Procedure Code of Ukraine in this particular case operate the concept of "closing" proceedings, not "termination". Bilousov (2005) defines the termination of enforcement proceedings as an act of the state executor, which consists in the completion of enforcement actions in a certain enforcement proceeding, according to a certain executive document. Indeed, at the end of the enforcement proceedings, the enforcement actions are completed, but they are also completed when the enforcement document is returned to the debt collector. It seems that the main difference

between the return of the writ of execution to the claimant and the end of the enforcement proceedings, in addition to the various grounds for each of these types of termination of enforcement proceedings, is as follows.

Upon return of the enforcement document to the claimant, he has the right to re-submit the enforcement document for execution within the period of submission of enforcement documents for enforcement, i.e., enforcement proceedings may be reopened; Enforcement proceedings, which were completed by returning the enforcement document to the debt collector, may be resumed if the executor's decision to return the enforcement document to the debt collector is declared illegal by the court or revoked. Instead, for completed enforcement proceedings, the law does not provide for the possibility of re-initiating its commencement; completed enforcement proceedings may be resumed only if the enforcement order is terminated or annulled by the court (see Articles 37 and 41 of the Law of Ukraine "On Enforcement Proceedings"), as well as in cases expressly provided by law. The grounds for termination of enforcement proceedings are determined by Article 39 of the Law of Ukraine "On Enforcement Proceedings", the executor shall issue a relevant resolution.

However, in several cases provided by law, the end of enforcement proceedings occurs without full actual execution of the decision and contains a precursor to the possible beginning of another jurisdictional process – criminal. In particular, the provisions of Article 63 of the Law of Ukraine "On Enforcement Proceedings" provide for the procedure of execution of decisions under which the debtor is obliged to take certain actions or refrain from committing them: the debtor is given a period of execution, after which the executor checks If the debtor does not execute the decision without good reason, the executor imposes a fine on the debtor, demands execution of the decision and warns of criminal liability, after which he re-checks the state of execution of the decision by the debtor.

In case of repeated non-execution of the decision by the debtor without valid reasons, if it can be executed without the debtor's participation, the executor sends to the pre-trial investigation body notification of the debtor's criminal offence and takes enforcement measures provided by the Law of Ukraine "On Enforcement Proceedings". In case of non-execution by the debtor of the decision which cannot be executed without participation of the debtor, the executor sends to the body of pre-judicial investigation the notification on commission by the debtor of a criminal offence and decides on the termination of executive proceedings (paragraphs two, third of part 3 of Article 63).

As mentioned earlier, one of the tasks of this stage of the enforcement process is to resolve issues related to its completion, including lifting arrests, excluding information about the debtor from the Unified Register of Debtors, other actions related to the completion of enforcement (e.g.

termination of search of vehicles). It is worth agreeing with the position expressed in the legal literature, according to which the provisions of the law on the consequences of the completion of enforcement proceedings should be taken in two areas: legal consequences that arise under objective conditions and actions of the state executor necessary to complete enforcement proceedings.

For example, simultaneously with the end of enforcement proceedings and receipt of the relevant resolution, the debtor, whose property was described and remained in his custody, is again considered the owner of such property, and acquires the right to dispose of it in full (Fursa *et al.,* 2008). Given the above, it seems reasonable that the decision to terminate the enforcement proceedings should indicate not only the lifting of the seizure of property (funds), but also the termination of other measures taken during the enforcement of the decision. If for some reason this decision was not specified, the executor has the right to issue a decision as a separate procedural document to terminate the measures taken during the enforcement of the decision.

General issues of the executive process are considered in the scientific works of Fursa, Fursa, Shcherbak (Fursa *et al.,* 2008); Ihonin (2007), Makushev (2017), Bilousov (2005). Some issues of certain stages of the enforcement process are considered in the works of Kalinin (2013) (in particular, the completion of enforcement proceedings), Krupnova (2017) (in particular, the opening of enforcement proceedings). The issues of the procedure of recovery of the debtor's property in the enforcement process were considered by I. Zelenkova (2017). However, some scientific studies of the stages of the executive process through the context of this concept, its properties and classification are almost absent. Which determines the relevance of a scientific article on this topic.

Conclusions

Because of the above, the concept of "stages of the executive process" can be defined as a set of procedural actions of the subjects of the executive process (subject aspect of the stages of the executive process) aimed at performing certain (certain) situational (situational) tasks (tasks) within the executive process. vector aspect of the stages of the executive process), occurring in the appropriate sequence (the temporal aspect of the stages of the executive process). The properties of the stages of the executive process are that:

1) substantive stages of the executive process consist of procedural actions of the subjects of the executive process, which have / can be committed at one time or another during the enforcement of decisions.

2) within the stages of the executive process certain situational tasks are performed.

3) the stages of the executive process are characterized by a certain time sequence.

Stages of the enforcement process can be classified as follows:

1) presentation of the enforcement document for enforcement.

2) opening of the executive process.

3) the security stage of the executive process.

4) stage of direct enforcement.

5) completion of the enforcement process.

Stages of the executive process play an important role in ensuring its integrity and effectiveness as a jurisdictional activity, while differentiating this process structurally. At the same time, the executive process may be characterized by complications that significantly affect its dynamics, which will be noticeable in terms of its stages. The results of the research will be useful to procedural scholars, in particular those working on the subject of enforcement proceedings; executors, parties to enforcement proceedings (debtor, debt collector) during the enforcement of decisions. Analytics and generalizations can be used in generalizations of executive practice. The results of the research were tested at law schools, round tables and conferences, master classes.

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Legal linguistics as a promising field of knowledge

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Abstract

The relevance of the article is stipulated for the necessity to study a new and promising field of knowledge – legal linguistics. The purpose of the article is to study legal linguistics as a promising field of knowledge. Achieving the goal of the study necessitated processing the scientific literature on legal techniques, hermeneutics, linguistic interpretation, public speaking, and legal linguistics. The main method while studying these issues is the hermeneutic method, which is programmed for a new approach to understanding and interpreting the language of law and the language of laws, legal language formation and allowed to understand the text as a process of interpretation. The problems of linguistic field, interaction of linguistics and law are revealed, the specific functioning of language in the field of law is analyzed. Prospects of combining legal and linguistic competence, interpretation of texts of laws, speeches of judges and lawyers, and legal translation are studied. The article emphasizes the necessity to single out such a field of knowledge as legal linguistics and the prospects for its development are outlined.

Keywords: language of law; legal technique; legal field; jurisprudence; legal linguistics.

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La lingüística jurídica como campo de conocimiento prometedor

Resumen

La relevancia del artículo está estipulada por la necesidad de estudiar un nuevo y prometedor campo de conocimiento: la lingüística jurídica. El propósito del artículo es estudiar la lingüística jurídica como un campo de conocimiento prometedor. El logro del objetivo del estudio requirió procesar la literatura científica sobre técnicas legales, hermenéutica, interpretación lingüística, oratoria y lingüística legal. El método principal en el estudio de estos temas es el método hermenéutico, que está programado para un nuevo enfoque de comprender e interpretar el lenguaje del derecho y el lenguaje de las leyes, la formación del lenguaje jurídico lo permite comprender el texto como un proceso de interpretación. Se revelan los problemas del campo lingüístico, la interacción de la lingüística y el derecho, se analiza el funcionamiento específico del lenguaje en el campo del derecho. Se estudian las perspectivas de combinar competencia jurídica y lingüística, interpretación de textos de leyes, discursos de jueces y abogados y traducción jurídica. Se concluye enfatizando en la necesidad de destacar un campo de conocimiento como la lingüística jurídica y se esbozan las perspectivas para su desarrollo.

Palabras clave: lenguaje del derecho; técnica jurídica; ámbito jurídico; jurisprudencia; lingüística jurídica.

Introduction

Law, being a social phenomenon, is undergoing constant change. For example, new generations of human rights are being emerged (Ivanii *et al.*, 2020a). The development of the legal system of Ukraine is conditioned by the rejection of the normative understanding of law, which has long been characteristic of domestic legal science and practice, and this significantly affects the contents of law itself (Kuchuk *et al.*, 2019). At the same time, the processes of international integration, unification and harmonization of legal regulation require improvement of forms of expression of law, in particular, solving linguistic and technical issues in the field of legal regulation, developing a system of science-based requirements, technical and legal rules, techniques and methods.

The well-known German theorist of law rightly states: "The quality of law directly depends on the quality of the language in which it is expressed and through which it is communicated to the addressee" (Shablii, 2012: 52). Unfortunately, not enough attention is paid to the connection between linguistics and jurisprudence. But this aspect objectively exists and is a crucial subject of linguistics:

> Since language is a social phenomenon, there is a tendency to compare it with some aspects of public life. Thus, the institutional nature of language, in which the phenomenon of norm is of great importance, prompted linguists to compare language with legal regulations (Aleksieiev, 1982: 35).

Recently, an increasing number of scientists are beginning to study the outlined phenomenon, namely: Pradid (2001) (legal linguistics), Baltaji (2008) (legal language of law enforcement acts), Liubchenko (2012) (legal terminology). However, there is a need to emphasize once again the issues solved by legal linguistics, to outline the basic directions of linguistics and law field to substantiate the necessity to separate legal linguistics into an independent promising science.

Legal language has traditionally been considered within the framework of an instrumental concept, as a result of which researches possessed purely applied nature. There was a lack of system within relations between lawyers and linguists, which did not contribute to the scientific solution of language issues in theoretical and practical jurisprudence. Lawyers have long ignored the "language issue", and the issue of legal language belonged to the competence of linguists. Therefore, the researches, carried out in recent years, have been mostly in the field of philology. Quantitative and qualitative parameters of legal practice development have led to significant changes in the attitude towards legal language. The analysis of legal texts opens the possibilities of studying the language of law not only as a legal or linguistic concept, but also as a reflection of the linguistic consciousness of the participants of communication within the legal field (Baltaji, 2008).

Legal linguistics is now actively being developed, but recently most studies of the language of law have gradually changed the emphasis, namely not only formal studies of a special language in terms of its terminological composition are on the first place, but they are replaced by interdisciplinary studies. The problems that legal linguistics deals with are multifaceted and complex. Legal linguistics requires both legal and linguistic competence at the same time. The state of legal linguistics research as a science is at the stage of active scientific studies of the language of law around the world.

1. Methods

The processes of the European and international integration, harmonization of legal regulation require the improvement of forms of expression of law, in particular, the solution of linguistic and technical issues in the field of legal regulation. Legal linguistics is called for solve a variety of problems of the linguistic field, not only the issues of legal technique, which is of great attention in Ukraine, but also other areas such as linguistic examination of legal documents; legal terminology; theoretical and practical researches in the field of legal translation; speeches of practitioners (judges,

lawyers); interpretation of legal texts. Thus, the authors consider legal linguistics not only as a branch of linguistics or jurisprudence, but as an individual science performing its own tasks, and possessing an arsenal of concepts, methods, and terminology. The methodological basis of the article was the scientific literature on legal techniques, hermeneutics, linguistic interpretation, public speaking, and legal linguistics.

In the research the following methods were used: hermeneutic method, the method of prediction, and a systematic approach. The hermeneutic method programmed for a new approach to understanding and interpreting the language of laws, legal language forming, and allowed to understand the text as a process of interpretation. It revealed the concept of legal linguistics not only through the interpretation of legal texts but also the semantic bases of legal discourse, which is the system of legal knowledge expressed in language, the language of the law. The method of predicting provided an opportunity to outline the trends of legal linguistics in the future and allowed to determine the prospects for the development of legal linguistics on the basis of existing scientific researches.

A systematic approach allowed a fuller, deeper understanding of the role of language in the legal field, its internal structure with law. Also, using this method was forming an idea of the necessary structuring of legal information, to consider the nature of relationships and interactions between the constituent elements of law and language, the integrity of the system, environmental factors that affect the formation of the language of the law. A systematic approach allowed to justify the essentiality of distinguishing legal linguistics as an individual field of knowledge.

2. Results and Discussion

Active integration processes, harmonization of legal regulation in the world in general, and in Ukraine in particular, have led to the urgency of linguistic and technical issues in the field of lawmaking, law enforcement, legal acts interpretation and systematization, which leads to the formation of new scientific directions. The language of law, jurisprudence and practice is one of the indicators of the development level of society legal system. Law can be an effective regulator of social relations only when its internal and external forms meet not only the highest standards of legal technique. The implementation of the principles of law and human rights is impossible without the certainty, clarity and unambiguity of legal provisions, which enshrines the rules of law. The language of regulations and other legal acts, legal science and practice is one of the indicators of the development level of the society legal system. The state should be interested in legal language, understandable to all its citizens, which will be a reliable means of communication in the process of legal regulation, management, and

legal proceedings. Because the imperfection of legal language negatively affects the formation of legal consciousness, contributes to legal nihilism manifestations (Liubchenko, 2012).

There are two opposing views as to the language of law: some researchers believe that the language of law cannot be defined as a special one, because it is close to the common language in the field of vocabulary. But the other distinguish the language of law as a professional language that is as an alternate of common language to define special subjects, concepts, serving for communication within one professional group. In Ukrainian science, a new nature of legal terminology study was formed in connection with the formation of legal linguistics as one of the relevant areas of study of the general principles of the language of law functioning in the modern world. To form and define any scientific field, it is important to determine the subject of its study. Pradid (2001) emphasizes that the subject of legal linguistics is to study the role and functions of language and speech in the jurisdictional process both historically and at the present stage.

Language used in the fields of law and law enforcement, legal proceedings and notary, legal documentation, legal science and education, legal information and legal journalism is the subject of study of legal linguistics. It defines the functions and specifics of the language of law, its main varieties and genres, the system of rules for making and interpretation of legal texts. Special attention is paid to language issues of law-making and law enforcement. In this connection the following applied directions of scientific and linguistic analysis of legal categories as legislative stylistics, legislative technique, textology, legal terminology, syntax of legislative text, legal hermeneutics, linguistic examination of bills, expert examination assessment of conflict texts, in particular in documentary and information disputes are being developed (Piholkin, 1990).

M.I. Liubchenko (2012) notes that one of the important aspects of the language of law which lacks studies is legal terminology, the accuracy, clarity and intelligibility of which conditions the state of the language of law in general. However, to reduce legal linguistics to the interpretation of texts of normative and legal acts is incorrect. One of the issues of legal linguistics is the question of interpretation of the texts of laws. A special place among a number of legal linguistics' directions development is occupied by the issues related to the study of the quality of court speeches, such as the speeches of the prosecutors, judges, and lawyers.

The language of law is characterized by a set of certain linguistic and stylistic parameters, which also serve as requirements for modern legal text at the same time. They are: formality, clarity, accuracy, unambiguity, completeness, logical sequence, argumentation, exactness of structure, directive nature of legal requirements, codification, generalization, sever normativeness at all language levels, a high degree of standardization,

stylistic homogeneity, neutrality, stability of means of expression, lack of individual authorial features. Western European scholars also structure legal language according to the relevant functional branches (structures) of law:

- W. Otto (1981) – the language of laws (legislative, abstract legal norms assigned by the legislator for both professionals and no lawyers); language of legal science and examinations (comments and discussions of special issues by specialists for specialists); the language of departmental written communication (forms, memos, agendas, etc.); administrative jargon (informal discussion of special issues by specialists).
- L. Eriksen (2002) – legislation, administration, legal proceeding.
- P. Sandrini (1999) – lawmaking (contracts, statutes), administration of justice (court decisions, testimonies, examinations, lawsuits), administrative texts (departmental language and the language of departmental correspondence).

The hermeneutic aspects of law and language, in particular the style of legal documents, their reading and interpretation by non-specialists in the field of law is subject of research by the American and English lawyers and linguists (Diomidova, 2014). Legal technique allows ensuring the systemic, structural, and meaningful literacy and unity of both acts of lawmaking and interpretation of law norms, and acts of law enforcement, aimed at individualizing the regulatory impact of legal norms on a particular life situation and specific subjects.

In our opinion, legal techniques, its scientific development, and implementation into practice ensure the uniformity, quality, and interaction of legal documents, which together constitute a system of legislation, a system of acts of law enforcement, a system of acts of interpretation of law norms. However, legal technique should not be equated with legal linguistics. Although the effectiveness of the legal impact on the life of society depends not only on the semantic literacy of the norm, but also on the "quality" of its design in the form of a legal act.

It should be noted that the institute of legal technique in scientific sources is usually considered in the context of lawmaking as one of its elements or tools used by relevant subjects. It (legal technique) is a system of rules, methods, tools and techniques for preparing the most advanced in form and structure of draft regulations, which provide the fullest and most accurate compliance with the form of regulations of their content, as well as the availability and simplicity of regulatory material. These include requirements for the form of the act, change or cancellation of the adopted act, registration of a new version of the document, as well as formal details, the specifics of the language of legal regulations, definition of terms and special means of ensuring the rules.

Making a logical and stable system of legal acts, which would correspond in its contents to the trends of social development, is one of the most important legal prerequisites for the implementation of public policy into public and state life. In our opinion, issues of legal and technical execution of legal acts, including acts of law enforcement, arise from the moment of appearance of the acts, which requires their adequate documentation in order to achieve the maximum social effect, which was determined by the author of the document. The relationship between law and language is complex, as both of these categories have an ideal and material embodiment: language is embodied through speech, and law – through a law. Language as a product of human mental activities, a way of forming an opinion, shows the existing connection between language and law, and reveals the essence of the influence of the language factor on the processes of lawmaking and laws making.

According to Maksymova and Matsiupa (2015), it is language, as a means of legislative technique and law enforcement activities, that ensures functioning of the state and its institutions. Thus, the synthesis of linguistics and jurisprudence is necessary to solve a number of issues that require both linguistic and legal knowledge, as language is the only and main material for the design of legal categories. The issue of translation is no less important. We can speak on the example of the translation of the decisions of the European Court of Human Rights (ECHR) and, if necessary, the involvement of an interpreter and the scope of the translation. We would like to pay special attention to the practice of the European Court of Human Rights, because in accordance with Art. 17 of the Law of Ukraine "Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights" (2006) courts apply the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the practice of the European Court of Human Rights as a source of law.

However, the ECHR's findings in the judgment of the European Court of Human Rights of 28 November in Case of Luedicke, Belkacem and Koc v. Germany (1980), which states that the right to an interpreter/translator concerns, both oral speeches and documentary materials of criminal proceedings. As to the scope of the translation of the written documents, Case of Kamasinski v. Austria (1989) made clear: "Article 6, paragraph 3(e) of the Convention cannot be considered to require a written translation of all written evidence or official documents, subjoined to the proceedings. The assistance of an interpreter should be such as to ensure that the defendant understands the case against him and his defense, in particular through the fact that with the help of the interpreter he (defendant) can put forward his version of events".

However, there are questions to solve with the official translation of ECHR's judgments in cases where Ukraine was not a party, since a number

of ECHR's judgments do not currently have an official translation into the state language. The courts should use the official translation of the Court's decision, which is published in an official publication or, in the absence of a translation, the original text. But working with the original text of the decision of the ECHR is quite challenging without proper philological training, and no one will check the correctness of the translation by the judge and, accordingly, the application of such a decision of the ECHR.

National courts mainly appeal to the prescription of a legal act, which they use as an argument for their own decision, without resorting to the interpretation of this prescription. The European Court of Human Rights, applying the provisions of hermeneutics, takes a different view of the text of the Convention for the Protection of Human Rights and Fundamental Freedoms, considering it possessing implicit nature. And this raises the issue of the adequacy of understanding of each other by lawyers – representatives of various legal traditions. Thus, legal linguistics is designed to solve a variety of issues of the linguistic field, namely: linguistic examination of legal documents; making recommendations for the development of texts of laws and other regulations; legal terminology (unification and harmonization); theoretical and practical research in the field of legal translation; speeches of practitioners (judges, lawyers); interpretation of legal texts; legal technique.

Conclusions

Language is an integral part of the legal system with certain traditions, functions, features and properties. Language is the national basis for reforming the legal system, so the separation of the language of law into an independent science, based on the synthesis of linguistics and jurisprudence, will have a positive impact not only on the language of law but also on legal practice in general. Legal linguistics is necessary to improve the efficiency of the language of law and the quality of legal documents by developing linguistic and stylistic principles and rules of lawmaking, finding the optimal use of language tools in various areas of legal communication. Legal linguistics should be considered not only as a branch of linguistics or jurisprudence, or an interdisciplinary phenomenon, but as a separate independent and promising science.

The urgency of further research is stipulated for the necessity to generalize the work of Ukrainian and foreign scholars on the formation and development of legal linguistics, the study of problems of linguistic and law field – those that are at the intersection of law and linguistics; substantiation of the status of legal linguistics as a separate science; selection, specification and detailing of the main directions of scientific research; effective use of linguistic knowledge in law-making, law enforcement and judicial practice.

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Criminal Liability for Organization of Illegal Migration

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Abstract

The article discusses the criminal responsibility for illegally organizing migration, using a comparative documentary-based methodology. Constant changes in public life suggest the need to improve states' criminal policy in the field of establishing responsibility for organizing illegal migration, both nationally and internationally. An analysis of the provisions of international criminal law makes it possible to consider various legal approaches to the criminalization of acts in the field of migration. The document underpins the need to develop a unified approach to determining the characteristics of the crime in question, as it is transnational. It is concluded that, regardless of the different approaches of States to recognize illegal population migration, the organization of this illegal activity, in the presence of certain particular signs, should be recognized as a crime. At the same time, the organization of illegal migration is defined as the commission by a criminal group

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(association of criminal groups) of actions aimed at creating the conditions for the illegal movement of foreign nationals across the state border or their illegal presence in each country.

Keywords: Illegal migration; criminal organization; criminal liability; transnational crime; organization of illegal migration.

Responsabilidad penal por organización de la migración ilegal

Resumen

El artículo analiza la responsabilidad penal de organizar la migración de forma ilegal, mediante una metodología comparada de base documental. Los constantes cambios en la vida pública sugieren la necesidad de mejorar la política criminal de los estados en el campo de establecer la responsabilidad de organizar la migración ilegal, tanto a nivel nacional como internacional. Un análisis de las disposiciones del derecho penal internacional permite considerar diversos enfoques legales para la penalización de actos en el ámbito migratorio. El documento fundamenta la necesidad de desarrollar un enfoque unificado para determinar las características del delito en cuestión, ya que es transnacional. Se concluye que, independientemente de los diferentes enfoques de los Estados para reconocer la migración ilegal de la población, la organización de esta actividad ilegal, en presencia de ciertos signos particulares, debe ser reconocida como un delito. Al mismo tiempo, la organización de la migración ilegal se define como la comisión por parte de un grupo delictivo (asociación de grupos delictivos) de acciones encaminadas a crear las condiciones para el movimiento ilegal de ciudadanos extranjeros a través de la frontera estatal o su presencia ilegal en un país determinado.

Palabras clave: Migración ilegal; organización criminal; responsabilidad penal; crimen transnacional; organización de la migración ilegal.

Introduction

The relevance of the study of criminal law measures to combat illegal migration is predetermined by the fact that today one of the first threats to the national security of the state is the intensification of the activities of cross-border criminal groups organizing channels of illegal migration. This creates a danger for the normal development of states in the economic

and social spheres of public life, infringes on public security. Criminal organizations illegally take socially unprotected people out of their countries with the aim of being involved in committing terrorist crimes, drug trafficking, arms trade, prostitution, etc. The approach to organizing illegal migration at the international level differs significantly from the understanding of this phenomenon in many countries of the world. An analysis of the provisions of the national criminal law systems showed that in most countries responsibility for organizing illegal migration is not associated with obtaining material benefits, a person should be held accountable if he pursued other goals of organizing illegal migration.

1. Materials and methods

When studying the illegal organization of migration, special attention should be paid to the historical analysis of the development trends of this legal institution, which makes it possible to reveal its essence, to identify the conditionality of the legal consolidation of the rules of behavior in accordance with the characteristics of the emerging social relations at a particular historical stage.

An analysis of the current state of legal prohibitions regarding the establishment of criminal liability for illegal organization of migration will make it possible to formulate a criminal-legal characteristic of the crime in question. A comparative legal study of legal regulation in the field of establishing responsibility for organizing illegal migration in different countries provides an opportunity to formulate a general global trend in the criminalization of acts in the field of illegal migration. Generalization of the experience of different countries is a necessary condition for finding the optimal model of criminal law regulation in terms of the research topic.

2. Results and discussions

Many studies show that the majority of "illegally migrating are enslaved" (Zhang, 2009). Yu. A. Kuzmenko claims, referring to the International Organization for Migration, that the organizers of illegal migration receive from 5 to 7 billion dollars a year (Kuzmenko, 2006). To effectively counter such criminal activity, it is necessary to analyze the legal signs of organizing illegal migration. "The integration of legal and economic activities in modern states, the globalization of various aspects of technology and human capital is the main characteristic of modern civilization" (Smirnov *et al.*, 2018: 415).

Historical analysis of the development of criminal legislation in the field of legal regulation of migration allows us to assert that the consolidation of the prohibition on the commission of certain acts in the field of migration

is directly related to the economic, social and political transformations in the country. One and the same act at different historical stages could be recognized as socially useful and socially dangerous. It seems that this specificity of the social relations under consideration distinguishes the illegal organization of migration from the majority of crimes, which at all times are recognized and recognized as socially dangerous (murder, theft, high treason, etc.).

Purposeful legal regulation of Russia's migration policy began in the 17th century. During this period, it was not limited, but rather encouraged the resettlement of foreigners and the development of new territories. This direction of the migration policy is reflected in the regulatory document, which can be considered one of the first acts regulating migration processes in the country. So, on April 27, 1702, Peter I signed the Manifesto "On the exportation of foreigners to Russia, promising them freedom of religion." "The reason for inviting foreigners is banal - the lack of people to carry out the colonization of the gigantic empty lands of the Russian Empire" (Kirov, 2001: 200).

By the end of the 18th and the beginning of the 19th century, the migration of foreigners to Russia stopped, which was a natural consequence of the Russian-Japanese war and the First World War.

During the reign of Nicholas II, a number of laws were issued, in accordance with which the eviction of migrants from the territory of Russia was organized (Pakhalyuk, 2013).

After the revolution that took place in Russia in 1917 and the establishment of Soviet power, the second of the previously identified stages in the development of criminal legislation in terms of establishing responsibility in the field of organizing population migration began.

Accordingly, the changes that have occurred in all spheres of society have led to a change in the understanding of the public danger of illegal resettlement of foreign citizens to the territory of the country, as a result of which such an act began to be recognized as socially dangerous and deserving severe punishment.

The Criminal Code of the Russian Federation (The Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ (hereinafter referred to as the Criminal Code of the Russian Federation) adopted in 1996, similar to the criminal legislation of the Soviet period, established responsibility for crossing the state border of the Russian Federation without established documents and appropriate permission (Art. 322 of the Criminal Code of the Russian Federation).

With the further development of legislation in the field of organizing migration processes, the number of acts that were recognized as criminal in this area also increased.

At the beginning of the 21st century, Russian legislation in the field of organizing and controlling migration processes began to develop quite actively.

There have also been changes in Russian criminal legislation, primarily related to increased liability for illegal entry of foreign citizens into Russia. In 2004, Art. 322.1 "Organization of illegal migration of the Criminal Code of the Russian Federation (The Criminal Code of the Russian Federation, 1996).

The considered changes in the state policy in the field of migration are predetermined by the existing need to prevent negative consequences for the country from spontaneously and uncontrollably developing migration processes.

The public danger of the act under Art. 322.1 of the Criminal Code of the Russian Federation, is that when organizing illegal migration, the procedure for regulating migration processes established in the territory of the Russian Federation is violated, and also complicates the demographic situation in the country. Subsequently, these factors lead to the emergence of interethnic conflicts, undermine the economic and national security of the state. This creates additional obstacles in the fight against transnational crimes.

In accordance with the current Russian criminal law, the organization of illegal migration as a crime is a guilty socially dangerous act, expressed in the organization of illegal entry into the territory of the country of foreign citizens or stateless persons, their illegal stay in the country or organization of illegal transit through the territory of the state, specified persons.

Stricter responsibility for organizing illegal migration is provided for in Part 2 of Art. 322.1 of the Criminal Code of the Russian Federation, for organizing illegal migration by a group of persons by prior conspiracy, or by an organized group, as well as for the purpose of committing a crime on the territory of the Russian Federation, or the commission of a crime by a person using his official position. The maximum penalty in this case is imprisonment for a period of 7 years.

An analysis of judicial practice has shown that most mistakes in qualifying acts as organizing illegal migration are made due to the difficulties in delimiting the crime under Art. 322.1 of the Criminal Code of the Russian Federation from administrative offenses described in the Code of the Russian Federation on Administrative Offenses (Code of the Russian Federation on Administrative Offenses, 2001).

Part 3 of Art. 18.9 of the Code of Administrative Offenses of the Russian Federation establishes administrative responsibility for "the provision of housing or a vehicle or the provision of other services to a foreign citizen

or stateless person who is in the Russian Federation in violation of the established procedure or rules for transit through its territory."

In this case, both an individual and a legal entity are held liable. For persons who committed the described offense using their official position, a penalty is provided in the form of a fine of up to 50,000 rubles, for other individuals - up to 5,000 rubles. Legal entities for committing these actions are punished with a fine of up to 400,000 rubles.

In Art. 18.15 of the Code of Administrative Offenses of the Russian Federation is recognized as an administrative offense "involving a foreign citizen or stateless person in labor activity in the Russian Federation in the absence of a work permit", which entails the imposition of an administrative penalty. For individuals, the punishment is similar to that indicated above, and legal entities are punished more severely - with a fine of up to 800 thousand rubles or suspension of activities for up to 90 days (Code of the Russian Federation on Administrative Offenses, 2001

These actions can also be considered as a manifestation of the organization of illegal stay on the territory of Russia of foreign citizens.

It seems that in this case the delimitation of actions constituting an administrative offense from a criminal offense should be carried out in accordance with the establishment of the fact that it is legal or illegal to be in the territory of Russia a migrant. In the first case, there is a basis for criminal liability, and in the second, administrative.

In the countries of the so-called post-Soviet space, the approach to establishing criminal liability for organizing illegal migration is similar to the provisions of Russian legislation.

In the criminal laws of Azerbaijan, Georgia, Uzbekistan, Turkmenistan, Kyrgyzstan, there is no norm providing for criminal liability for organizing illegal migration. At the same time, unlike Russia, they establish criminal liability for illegal movement across the state border if this act is committed in the presence of aggravating circumstances, for example, committed with the use of violence (with the threat of its use) or committed by an organized group (Skhimnikova, 2015).

For example, for the aforementioned actions under the Criminal Code of Uzbekistan for illegal travel abroad or illegal entry into the Republic of Uzbekistan, a penalty of imprisonment for a period of three to five years is established (Article 223) (The Criminal Code of the Republic of Uzbekistan, 1994).

Interesting, at the same time, is the legislator's approach to differentiating criminal liability for illegal movement across the border, taking into account the identity of the perpetrator. So, in accordance with the Criminal Code of Uzbekistan, punishment in the form of imprisonment for up to 10 years

is established for moving across the border of the Republic of Uzbekistan in violation of the established procedure, if this act was committed by a dangerous repeat offender or an official whose travel abroad, without special permission, is prohibited (The Criminal Code of the Republic of Uzbekistan, 1994)

Spain became one of the first European states to face the fact that the unauthorized migration of foreigners on its territory gives rise to a number of social and economic problems, including an increase in crime and the use of migrant labor without state control. Consequently Skhimnikova (2015):

> Spanish legislation has detailed issues related to creating conditions for combating illegal migration, especially with organized forms of crime in the migration sphere. In accordance with the "Law on Foreigners" in Spain, criminal punishment is provided for such actions as facilitating the creation or participation in criminal organizations involved in the delivery of illegal immigrants to the country or using its territory as a transit (Article 50) (2015: 101).

Compared to Russian criminal law, illegal migration is punished quite strictly in Bulgaria. In accordance with the Criminal Code of Bulgaria, a person who crosses the border of the country without the permission of the relevant state organizations should be punished with imprisonment for up to five years (Article 279) (Lukashov, 2001). As an aggravating circumstance, responsibility for the indicated crime is provided for the commission of such an act a second time, for which responsibility is imposed in the form of deprivation of freedom for up to six years.

The Criminal Code of Bulgaria established responsibility for preparing illegal movement across the state border, which is punishable by imprisonment for up to two years (Skhimnikova, 2015).

The liability of persons organizing the unauthorized crossing of the state border of Bulgaria by other persons is provided separately in Art. 280 of the Criminal Code of Bulgaria (Lukashov, 2001).

Of greatest interest are the circumstances established in the Criminal Code of Bulgaria that aggravate the responsibility for organizing illegal migration.

Up to 10 years of imprisonment is punishable by organizing the movement of a person across the state border if the person being displaced: has not reached 16 years of age; is not a Bulgarian citizen; did not know that he was being illegally transported across the border (Lukashov, 2001).

Indeed, these circumstances significantly increase the degree of public danger of organizing illegal migration, primarily due to the fact that they infringe not only on the management order, but also on the interests, personal rights and freedoms of the displaced person.

As a circumstance aggravating responsibility for organizing illegal migration, in Bulgaria it is indicated that such an act was committed using mechanical, air or other transport. Special confiscation is provided for by Part 3 of Art. 280 of the Criminal Code of Bulgaria, which stipulates that in these cases, the transport, if it belongs to the culprit, is recovered by the state (Lukashov, 2001).

Criminal liability is also increased if the transportation was organized by groups of persons or the grouping of groups or the transportation was carried out with the participation of an official who used his official position.

In the Criminal Code of the Federal Republic of Germany in section 18 "Punished acts against personal freedom", in paragraph 234 "Forcible removal of people abroad" criminal liability is established for moving a person across the border of Germany, against his will. In addition, the preparation of such a transfer is in itself recognized as a punishable act. Paragraph 235 of the Criminal Code of the Federal Republic of Germany, as a more severe act, provides for the commission of these actions in relation to a minor (Shestakov, 2003).

In the Criminal Code of the PRC, the system of criminal-legal prohibitions in the field of organizing illegal migration includes legal prohibitions that criminalize various manifestations of unauthorized migration of the population and are aimed at preventing its organization. In accordance with Art. 318 of the Criminal Code of the PRC, the organization of illegal migration can be punished not only by imprisonment for a certain period, but also by life imprisonment (Korobeyev, 2001).

However, criminal liability under this provision does not arise in all cases of illegal organization of migration, but only if:

- the person is the leader of the group organizing the illegal crossing of the state border.
- the organization of illegal migration was carried out repeatedly.
- as a result of illegal migration, harm to life or health was caused to persons whose migration was organized.
- migration was carried out with the use of threats and violence.
- the presence of other aggravating circumstances, serious violations in the implementation of migration organized by a person (Korobeyev, 2001).

According to, Hanson (2007): "Immigration reform is one of the most controversial issues facing US policymakers" (2007: 12). The growth in the number of illegal immigrants in the United States is of great concern, therefore, the country pays great attention to suppressing the organization

of illegal migration, including by eliminating its primary cause, which is seen in the possibility of using migrant labor by American corporations.

The tougher punishment for illegal migration is associated with the events of 2001, namely with the terrorist attack on the World Trade Center (Singer and Golan, 2019), one of the reasons for not preventing which the US government saw in uncontrolled migration.

The study showed that of 94 foreign terrorists who operated in the United States, about two thirds crossed the border illegally (Kephart, 2006). Fillipenko says:

> In October 2001, a Mexican citizen of Iraqi descent confessed to smuggling hundreds of Syrians, Iraqis, Palestinians, Jordanians, and other citizens of Arab countries into the United States, each of whom paid from 10 to 15 thousand dollars to move from their homeland to the United States. and most of this money went to the "coyotes" - mafia organizations that specialize in smuggling illegal goods and undocumented persons from Mexico (2015:180).

In the United States, the following categories of persons are distinguished as subjects of crimes in the field of illegal migration:

- employers who illegally use migrant labor.
- the migrants themselves who are in the United States illegally.
- persons organizing illegal migration.

The importation of any foreigner into the United States for the purpose of prostitution or any other immoral purpose is prohibited (The Immigration and Citizenship Act (INA)) was passed in 1952. The text contains those laws that entered into force on May 20, 2020. For persons who organize the illegal entry of foreign nationals into the United States for these purposes or his stay in the United States, under Title 18, a penalty of a fine(s) or imprisonment for up to 10 years is provided. At the same time, even a failed attempt to commit the described act is recognized as a criminal offense.

If these actions are associated with the infliction of grievous bodily damages or with the threat of their commission, then for the organization of illegal migration a term of imprisonment of up to 20 years is provided. In the event of a person's death, life imprisonment may be imposed.

It seems reasonable that the repeated or systematic commission of the described acts is provided as a circumstance aggravating criminal liability for helping a foreigner to illegally enter the United States or stay in the United States.

The number of migrants against whom a crime is committed also affects the severity of the punishment (Bokovnya *et al.*, 2019; Begishev *et al.*, 2020; Begishev *et al.*, 2019; Bokovnya *et al.*, 2020; Begishev *et al.*, 2019; Bokovnya *et al.*, 2020; Bokovnya *et al.*, 2020; Bokovnya *et al.*, 2020; Khisamova *et*

al., 2019; Bokovnya *et al.*, 2020; Begishev and Khisamova, 2018; Begishev *et al.*, 2020; Khisamova and Begishev, 2019; Khisamova *et al.*, 2019).

Thus, illegal transportation of foreigners by groups of more than 10 people is punishable by imprisonment for up to 10 years, while for committing similar actions against a smaller number of people, imprisonment cannot be imposed for more than 5 years (US Immigration and Citizenship).

3. Summary

Summing up the study of the provisions of the criminal law of different countries of the world, in terms of countering illegal migration, it should be noted that in those countries in which such responsibility is provided, in most cases the legislator differentiates responsibility for organizing illegal migration.

Organization of migration is an activity that involves the involvement of many persons acting by prior agreement (officials of regulatory bodies, carriers, security guards, etc.)

It seems that the activities of these persons should be considered with their participation in the organization of illegal migration as co-execution in the commission of the crime in question.

Responsibility for organizing illegal migration should be stricter in cases: organizing illegal migration for the purpose of committing serious crimes (terrorism, slave trade, involvement in prostitution, drug trafficking, etc.) and in cases when it is associated with causing serious harm to health or death of a person.

In many countries, stricter criminal liability is established by specifying circumstances related to the characteristics of the identity of the perpetrator or person illegally transferred across the state border.

Many issues related to illegal migration have long gone beyond the boundaries of any territories and can rightfully be considered global, which means that their solution is possible only with the interaction of all countries of the world.

For example, as the International Organization for Migration emphasizes, “during the COVID-19 pandemic, the vulnerability of migrant workers increased significantly, as many of them found themselves in an irregular situation, expired their work visas, could not pay off debts accumulated through recruiting or supporting families at home” (IOM, Migrant Forum in Asia Partner to Promote the Rights of Migrant Workers in International Supply Chains, 2020). And this problem has affected all countries today.

According to Art. 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime (United Nations Convention against Transnational Organized Crime, the organization of illegal migration should be understood as "the smuggling of migrants in order to obtain, directly or indirectly, any financial or other material benefit from illegal entry to any State of any person who is not its citizen or does not reside permanently on its territory" (Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementary to the United Nations Convention against Transnational Organized Crime, 2000)

Thus, the approach to organizing illegal migration at the international level differs significantly from the understanding of this phenomenon in many countries of the world. An analysis of the provisions of the national criminal law systems showed that in most countries responsibility for organizing illegal migration is not associated with obtaining material benefits, a person should be held accountable if he pursued other goals of organizing illegal migration.

Conclusions

I would like to draw attention to the need for a more thorough international regulation of migration processes. Violations in this area are undeniably transnational in nature. Many global problems of our time are associated with illegal migration require joint efforts of states in their solution.

A distinction should be made between offenses and crimes in the field of migration. If the issues of administrative and legal regulation of migration processes in each country depend on the peculiarities of the social system that has developed in this state and predetermined by the historical features of development, then the composition of offenses expressed in violation of the migration regime will be quite diverse. At the same time, most countries take a similar position in the establishment of criminal responsibility for organizing illegal migration.

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Criminal Aspects of Robotics Applications

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Abstract

Direct and indirect criminological risks of the use of robotics are analyzed and issues of responsibility of the manufacturer (developer)and/or owner (user) of robotics are discussed for acts committed with their participation. This essay discusses promising areas of legal research related to robotics and its corresponding legal regulations. The definition of robotics is based and proposed as all categories of robots in their broadest sense, regardless of their purpose, degree of danger, mobility or autonomy, as well as cyber-physical systems with artificial intelligence in any form. It is proposed to recognize socially dangerous acts committed with the use of robotics as crimes committed in a generally dangerous way, if there are grounds for doing so. It is concluded that the commission of acts through robotics is capable, in certain cases, of creating a plurality of crimes in the form of a real aggregate. The expanding powers of State security bodies, which can

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carry out the functions of state policy development, legal regulation, control and supervision in the field of robotics application, have been verified.

Keywords: robotics; digital technologies; legal regulation; criminal liability; Artificial intelligence.

Aspectos criminales de las aplicaciones robóticas

Resumen

Se analizan los riesgos criminológicos directos e indirectos del uso de la robótica y se discuten las cuestiones de responsabilidad del fabricante (desarrollador) y/o propietario (usuario) de la robótica por los actos cometidos con su participación. Este ensayo discute las áreas prometedoras de la investigación jurídica relacionadas con la robótica y su normativa legal correspondiente. La definición de robótica se fundamenta y propone como todas las categorías de robots en su sentido más amplio, independientemente de su finalidad, grado de peligro, movilidad o autonomía, así como los sistemas ciber-físicos con inteligencia artificial en cualquier forma. Se propone reconocer los actos socialmente peligrosos cometidos con el uso de la robótica como delitos cometidos de forma generalmente peligrosa, si existen fundamentos para ello. Se concluye que la comisión de actos mediante la robótica es capaz, en determinados casos, de crear una pluralidad de delitos en forma de agregado real. Se ha comprobado la ampliación de las competencias de los órganos de seguridad del Estado, que pueden llevar a cabo las funciones de desarrollo de la política estatal, la regulación legal, el control y la supervisión en el campo de la aplicación de la robótica.

Palabras clave: robótica; tecnologías digitales; regulación legal; responsabilidad penal; Inteligencia artificial.

Introduction

Robotics both around the world and in Russia, directly correlates not only with the introduction and use of digital technologies in production, but also opens up new opportunities for the spread of threats to law and order and national security. The progress of digital technologies is an order of magnitude faster than the reaction of legislation and prevention from law enforcement agencies.

In our opinion, a special advantage for committing criminal offenses with the use of robotics is a triad of reasons, including:

- simplicity and ease of use of robotic devices.
- anonymity or lack of physical contact between the subject and the instrument of the crime - the robot.
- the speed of implementation and operation of robotic devices.

Why do we emphasize speed? In answering this question, we will probably refer to a professional in his field, the most "media person" in the field of robotics - Elon Musk, the founder and head of Tesla: "Speed is the perfect weapon. And I don't mean the speed of my cars. It is about the speed of robots and the speed of their creation and renewal" (Forbes, 2018: s/p). In this regard, it is difficult to disagree with this opinion, since now no one is impressed by robots - vacuum cleaners and window cleaners, since the creation of absolutely anthropomorphic or, from a physiological point of view, humanoid robots is coming to the fore.

1. Materials and methods

The materials for the work were articles posted in scientific journals and on sites on the Internet.

The methodological basis of the study is a systematic approach to the study of complex, multidimensional phenomena, which is traditional for Russian researchers. When processing the factual material, a set of scientific research methods were used, namely abstract-logical, comparison, content analysis and correlation analysis.

2. Results and discussion

The problem of criminal-legal regulation of relations in the field of application of robotics both in foreign countries and in the Russian Federation remains unresolved at the moment. In this regard, it is necessary to develop a set of measures to prevent negative, socially dangerous manifestations of the use of robotics and the norms governing the state response to them.

Based on the foregoing, we believe it is necessary to supply the following problem in this area: are there mechanisms for legal regulation of robotics? (Begishev and Khisamova, 2018).

Let us analyze attempts to legislatively regulate robotics issues.

Science fiction writers and various scientists since the last century have made attempts to "write the laws of activity" of robotics. The most famous of them are A. Azimov with his "Three Laws of Robotics" (Asimov, 1942), one of the leaders of the world famous Microsoft company - S. Nadella

and its "Ten Laws Of Artificial Intelligence" (Boyle, 2016) and, in fact, K. Chapek - the creator the word "robot" (Čapek, 1920). From the point of view of the latter, for example, the relationship between humanity and robotics will have to be regulated by some international judicial organization that equally recognizes both the robot and the person as a subject of law.

Their ideas, many of which are controversial, are very important for understanding the problem, but have not received legal development. And social reality, in particular the field of robotics, needs regulation, including criminal law.

There have also been attempts at self-regulation by scientists who are directly related to the creation of robotics. So, in 2017, when it became obvious that the issue requires regulatory legal regulation, almost four thousand scientists in this field signed the so-called "Twenty-three Azilomar Principles" (Asilomar AI Principles, 2017) of the International Institute for Future Generations, among which, for example, the following: benefit, controllability, reliability, rejection of the "arms race" with the help of robotics, safety for others and ethical responsibility of the creator.

This concept of principles, of course, does not carry any normative content, however, this is still a laudable attempt by the creators of robotics to develop common approaches, as well as to draw attention from government authorities to the need to resolve these issues. As a result, there began, albeit a Brownian, movement on the part of various states towards a normative legal understanding of new phenomena.

In the same year, bills on the issues under consideration appear in four states at once. The leaders are the Russian Federation, the People's Republic of China, the Federal Republic of Germany, and the Republic of Estonia. The latter, in our opinion, very hastily decided to become a pioneer in this area and gained a bitter experience by legalizing the rules "On the movement of robots – couriers"[7]. As a result, quite soon, the Baltic police had to identify and suppress the activities of robots - drug couriers.

Among international organizations, the first, at the beginning of 2018, to develop the project "On Robotics and Artificial Intelligence" began the advisory body of the European Union - the European Parliament, which in a couple of months adopted the corresponding Resolution[8].

The legal personality of this body is very specific, since, despite the use of the word "Parliament" in its name, its acts are always advisory in nature, since only the European Commission has normative powers, which

7 Courier robots law. Estonian Law on Amendments to the Road Traffic Act. URL: https://robopravo.ru/estonskii_zakon_o_robotakhkurierakh

8 European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). URL: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0051_EN.html

did not react to this Resolution in any way, citing the fact that its exclusive competence of the Member States of the European Union.

The most acceptable from the lawmaking and law enforcement point of view for the Russian Federation, albeit with certain reservations, are two initiatives in this area. First, this is a draft federal law prepared by D.S. Grishin, the founder of Grishin Robotics, one of the leaders of the Mail.Ru Group[9] company, and secondly, this is the Model Convention on Robotics and Artificial Intelligence from the Research Center for Problems of Regulation of Robotics and AI[10]. The basis for these developments was the three "laws – principles" of robotics A. Azimov formulated in the last century:

1. A robot cannot harm a person or, by its inaction, allow harm to a person;
2. The robot must obey all orders given by a person, except for those cases when these orders are contrary to the First Law;
3. The robot must take care of its safety to the extent that it does not contradict the First or Second Laws (Asimov, 1942).

Based on the analysis of these proposals, we see that their authors propose the following - the creation on the basis of the three named rules new ones concerning the interaction of robots and robotics with other objects and subjects.

Comparing the animal and robotics, they point to the possibility of the latter to perform certain independent actions, declare that creation of a Unified State Register of Robotics, application of legal liability norms to the owner and (or) user of a source of increased danger in the event of a tort from robotics. However, at the same time, the question is debatable, according to what criterion this or that robotics will be classified as sources of increased danger.

The authors identify the following forms of possible options for the activity of robotics, which seems to be socially dangerous:

- designing a killer robot specifically for committing an offense;
- disabling software and hardware functions that block the possibility of harm to humans;
- designing a robot that can harm a person;
- designing a robot without realizing that it can be used to harm humans[11].

9 Grishin law. URL: https://robopravo.ru/uploads/s/z/6/g/z6gj0wkwhv10/file/My74kFFZ.pdf

10 Model convention. URL: https://robopravo.ru/uploads/s/z/6/g/z6gj0wkwhv10/file/phjic35g.pdf

11 Dmitry Grishin, co-founder of Mail.ru Group, developed the concept of a law on the legal status of robots. URL: https://habr.com/en/post/369981/

In this regard, we also consider it important to cancel that some issues related to the regulatory regulation of robotic devices are already being resolved at the state level[12].

A particular example of robots - unmanned aerial vehicles (hereinafter referred to as UAVs) are already regulated by law, which is good news. So, for example, in case of violation of the rules for the use of UAVs and UAVs, administrative liability is provided, and in cases of photo and video filming with the help of these robotic devices, one can become accused in cases of high treason and the like.

However, this is only the first step in the framework of criminal regulation of aspects of the use of unmanned vehicles (robotic vehicles) (Korobeyev and Chuchaev, 2018; Chuchaev, 2019; Korobeyev and Chuchaev, 2019; Chuchaev and Malikov, 2019).

We also consider it necessary to note that the issue of amending the legislation on the issues under consideration is already ripe. A more detailed and in-depth regulatory regulation of the issue is needed than is done in the already existing regulatory legal acts and their projects. From an engineering point of view, metrics and standards should be developed to determine the level of intellectualization of robotics.

From a legal point of view, including from a criminal law point of view, it is necessary to work out a number of issues, among which the most important are the following:

1. conceptual and categorical apparatus of robotics;
2. mechanism for resolving issues of responsibility for committing socially dangerous acts using robotics;
3. criminological risks of using robotics;
4. identification, suppression, disclosure and prevention of socially dangerous acts related to robotics;
5. identification and identification of persons who have committed or are preparing these acts.

With regard to the terminological apparatus, we propose to amend the international standard ISO 8373: 2012 “Robots and robotic devices – Vocabulary”[13] and the national standard of the Russian Federation adopted in accordance with it GOST R 60.0.0.4-2019 / ISO 8373: 2012 “Robots and

12 Resolution of the Government of the Russian Federation of May 25, 2019 No. 658 “On approval of the Rules for accounting for unmanned civil aircraft with a maximum take-off weight of 0.25 kg to 30 kg imported into the Russian Federation or manufactured in the Russian Federation” // SZ RF. 2019. No. 22. Art. 2824.

13 ISO 8373:2012. Robots and robotic devices – Vocabulary. URL: https://www.iso.org/standard/55890.html

robotic devices. Terms and definitions"[14]: to replace the concepts of robot and robotic devices with one more comprehensive category of robotics - all categories of robots (including smart robots, UAVs, UAVs, robotic agents, robotic mechanisms and cyber-physical systems, including those with artificial intelligence) in their broadest sense, regardless of their purpose, degree of danger, mobility or autonomy, as well as cyber-physical systems with artificial intelligence in any form, regardless of the presence of an indication in the name of the concept of "robot" and related (Naumov and Neznamov, 2017).

The use of a general category to designate the specified list of mechanisms seems to be useful for jurisprudence, since it clearly defines the scope of the required legal regulation, which is characterized by a certain isolation and autonomy. In our opinion, it will also be in demand in criminology, since it is able to isolate a segment of crime, which has great specificity. In addition, the above standards were put into effect in 2012 and changed only once - in 2016, although the most intense peak in the development of robotics began in 2017. Based on this, it is easy to understand that the field of robotics has "gone" far ahead of these standards.

There are two approaches to legal liability and issues related to the liability of robotics:

1. Objectively imputed responsibility - the ability to bear robots of a high level of development - with the legal status of an electronic person, responsible for the tort caused by them when they make decisions autonomously or otherwise independently interact with third parties (Khisamova and Begishev, 2019).
2. Risk management approach (responsibility of a person who could minimize risks). Responsibility should be proportional to the actual level of instructions given to the robot and the level of its autonomy. This is complemented by compulsory insurance of robot users and the creation of a compensation fund (Khisamova and Begishev, 2019).

In our opinion, approaches of this kind associated with a departure from the classical domestic system of recognition of robotics and artificial intelligence as a subject of law, and attempts to endow these phenomena with legal personality in the near future have no prospects for practical implementation (Sukhodolov *et al.*, 2020; Bikeev *et al.*, 2019; Khisamova *et al.*, 2019; Begishev *et al.*, 2020; Simmler and Markwalder, 2019; Khisamova *et al.*, 2019; Simmler, 2019; Hallevy, 2010; Kirpichnikov *et al.*, 2020).

14 GOST R 60.0.0.4-2019 / ISO 8373: 2012. Robots and robotic devices. Terms and Definitions. URL: http://docs.cntd.ru/document/1200162703

The actualization of issues related to criminal liability for committing socially dangerous acts with the use of robotics, unfortunately, correlates with the already existing real practice of causing harm to society. The first example was the collision of a woman with an unmanned vehicle (hereinafter - BTS) of the UBER company in early 2018 in the United States of America (Hallevy, 2015). Among the most widespread use of robotics for committing crimes, both in terms of the number of units and the damage caused, is the example of the use of UAVs and UAVs by illegal armed formations of the Republic of Yemen for the massive bombing of oil refineries - strategic and critical facilities of the Kingdom of Saudi Arabia[15].

This example shows how and how, at minimal cost, a criminal can get the most beneficial effect for himself. In this example, the entire oil production of the Kingdom of Saudi Arabia, which is strategically important and budget-forming for it, was cut by half for a week. In addition, this attack caused damage to other objects: there were human casualties, other material losses.

We also agree with the fear expressed by the director of the FSB of Russia A.V. Bortnikov, which states that international terrorist and other extremist organizations in the near future will more intensively use robotics to achieve their goals (Bergen and Newcomer, 2018).

The following methods of relatively primitive use of robotics also pose significant dangers:

1. the use of BTS for the implementation of a terrorist act - hitting pedestrians in crowded places by initial programming it, for example, a car.
2. violation of information and other infrastructure.
3. the use of already existing anthropomorphic robots purchased both legally and on the black market.
4. the use of military or converted from civilian into military exoskeletons.
5. other cases of illegal use of robotics.

Based on the above examples, it is worth recognizing that robotics is a very specific instrument for committing crimes. Since robotics is recognized as a source of increased danger, we consider it necessary to recognize

15 Attack on oil facilities in Saudi Arabia: what we know. URL: https://www.bbc.com/russian/news-49709610

socially dangerous acts[16] committed with the use of robotics as crimes committed in a generally dangerous way. This approach will directly affect the qualification of crimes, for example, under Part 2 of Art. 105 of the Criminal Code of the Russian Federation, in which this method is directly named in the disposition as a qualifying feature of the act.

If there is no indication in the norm of this method, we propose, when imposing punishment by the court for intentional crimes committed with the use of robotics, to take this circumstance into account as an aggravating feature under clause "k" Part 1 of Art. 63 of the Criminal Code of the Russian Federation: "committing a crime using specially manufactured technical means", regardless of who and when the robotics was created.

Taking into account the fact that digital technologies are used in robotics, then for certain manipulations with it, responsibility under Art. 274 and 274.1 of the Criminal Code of the Russian Federation (Egorov, 2018).

The presence in the criminal law of separate norms providing for liability for crimes in the field of computer information (Ibragimov and Suragina, 2017), in our opinion, should not exclude the possibility of criminal prosecution for committing socially dangerous acts with the use of robotics, since situations may arise in which there will be multiplicity of crimes in the form of a real aggregate.

It should be noted that many crimes can be committed using the capabilities of robotics:

- socially dangerous acts infringing on human life and health.
- socially dangerous acts that infringe on the constitutional rights and freedoms of man and citizen.
- socially dangerous acts that infringe on public relations, protect the economy from criminal encroachments.
- socially dangerous acts that infringe on state power, service, and their interests.
- socially dangerous acts that infringe on public safety and public order.
- socially dangerous acts that infringe on the foundations of the constitutional order and the security of the state, etc.

When deciding who should be responsible for harm caused by the use of robotics, we believe unequivocally that the manufacturer (developer) and

16 Resolution of the Plenum of the Supreme Court of the Russian Federation dated January 26, 2010 No. 1 "On the application by courts of civil legislation regulating relations on obligations due to harm to the life or health of a citizen" // Rossiyskaya Gazeta. 2010. No. 24.

(or) the owner (user) of robotics will be liable, of course, only in cases of subjective imputation of guilt.

However, already today, robotics of a new generation has a rather complex technological architecture, consisting of many software and hardware complexes, or it can be created using open-source codes (Begishev and Bikeev, 2020). In the situations considered, establishing the manufacturer (developer) and owner (user) of robotics is increasingly difficult. To overcome these difficulties in law enforcement, it seems possible to establish a system of standardization and certification of activities for the creation and commissioning of robotics (Tsukanova and Skopenko, 2018).

It is believed that the basis for resolving these issues will be the expansion of the powers of the Federal Security Service of the Russian Federation, namely, such a subdivision as the Service of Special Communications and Information, which will also carry out the functions of developing state policy, regulatory and legal regulation, control and supervision in the field of the application of robotics, the preparation of legislation in the field of the creation and use of robotics, the development of legal models for preventing the criminal behavior of robotics, in particular, the determination of the criminological risks of its use (Begishev and Khisamova, 2018).

We argue for this provision by the fact that in the practice of foreign countries, for example, in the United States of America, the rule on the control and regulation of issues related to robotics and artificial intelligence is already widely applied. Service of Special Communications and Information and the National Security Agency - a division of the US Department of Defense, which is part of the intelligence community as an independent intelligence agency, engaged in electronic reconnaissance and protection of electronic communication networks - are very identical bodies from a general functional point of view, we believe that the regulation of such relations in the Russian Federation on the part of the Service of Special Communications and Information will be fully justified and correspond to the meaning of the existence of this structure (Khisamova and Begishev, 2019; Bokovnya *et al.*, 2019; Begishev *et al.*, 2020; Begishev *et al.*, 2019; Bokovnya *et al.*, 2020; Begishev *et al.*, 2019; Bokovnya *et al.*, 2020; Bokovnya *et al.*, 2020; Bokovnya *et al.*, 2020).

3. Summary

Having analyzed the trends in the field of creation and use of robotics, we came to the conclusion that it is necessary to highlight two criminological risks inherent in this activity - direct (direct) and mediated (indirect) (Begishev and Khisamova, 2018).

1. The immediate criminological risk of using robotics is a risk that directly correlates with the effect on a person and a citizen of a particular danger caused by the use of robotics.

These risks include:

- intentional commission of a socially dangerous encroachment on human life and health by a robotic device; freedom, honor, and dignity of the individual; constitutional human and civil rights and freedoms; public safety; peace and security of mankind, which entailed socially dangerous consequences, as well as other public relations protected by criminal law from criminal encroachments.
- deliberate actions with software, which is an integral and integral part of the use of a robotic device, resulting in socially dangerous consequences.

2. Indirect criminological risk in the use of robotics - the risk associated with unintended hazards in the context of the use of robotic devices.

These risks include:

- random errors in the software of the robotic device (errors made by the manufacturer (developer) of robotics);
- errors made by a robotic device in the course of its operation (errors made by robotics).

Proceeding from the foregoing, the thesis put forward by a number of scientists about the existence of high criminological risks of the use of robotics, consisting both in the intellectual technology itself and in the weak theoretical elaboration of the issue both in jurisprudence as a whole and in the sciences of the criminal cycle (Begishev and Khisamova, 2018), is confirmed.

Conclusions

Summing up the research carried out, we will formulate its main final provisions.

The promising areas of legal research related to robotics and the corresponding legal regulation are highlighted.

The definition of robotics is substantiated and proposed as all categories of robots in their broadest sense, regardless of purpose, degree of danger, mobility or autonomy, as well as cyber-physical systems with artificial intelligence in any form, regardless of the presence of an indication in the name of the concept of “robot” and related to it ... The use of this category

seems to be useful for jurisprudence, since it clearly defines the specific area of the required legal regulation. In our opinion, it will also be in demand in criminology, since it is able to single out a separate segment of crime.

It is proposed to recognize socially dangerous acts committed with the use of robotics as crimes committed in a generally dangerous way, if there are grounds for that.

It is concluded that the commission of acts using robotics is capable, in certain cases, of creating a plurality of crimes in the form of a real aggregate.

Expansion of the powers of the Service of Special Communications and Information, which can carry out the functions of developing state policy, legal regulation, control and supervision in the field of robotics application, has been substantiated.

The direct and indirect criminological risks of using robotics are analyzed, and the issues of responsibility of the manufacturer (developer) and (or) owner (user) of robotics for acts committed with its participation are discussed.

At the same time, we consider it important to note that other legal aspects of the regulation of robotics issues, such as the identification, suppression, disclosure and prevention of socially dangerous acts related to robotics, as well as the identification and identification of persons who committed or prepare these acts, form a new model legal regulation of public relations in the area under consideration, as well as enrich from a theoretical and practical point of view the science of the criminal cycle: criminal law, criminology, operational investigative activities, criminalistics, prosecutorial supervision, penal law and criminal procedure.

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Principles of Law and Electronic Constitutional (Statutory) Justice in the Constituent Entities of the Russian Federation

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Abstract

This article discusses constitutional (statutory) electronic justice in the constituent entities of the Russian Federation as a method of organizing judicial activity based on information technologies, which aims to ensure the operation, mainly, of the principles of publicity and openness, transparency, and accessibility of information from constitutional (statutory) legal procedures as a variety of the latter in the Russian Federation. In the methodological of use the technique of documentary observation. Indeed, electronic (statutory)constitutional justice in the constituent entities of the Russian Federation has a multifaceted nature and characteristic, as it can be considered in several contexts, including the attribution to the group of additional constitutional guarantees of human and civil rights. It is concluded that electronic constitutional justice brings spaces of justice closer to individuals and communities, making it easier to exercise their rights and duties.

Keywords: principles of constitutional law; constitutional (statutory) courts; constitutional (statutory) justice; subjects of the Russian Federation; electronic justice.

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Principios de derecho y justicia constitucional electrónica (estatutaria) en las entidades constitutivas de la Federación de Rusia

Resumen

Este artículo analiza la justicia electrónica constitucional (estatutaria) en las entidades constitutivas de la Federación de Rusia como método de organización de la actividad judicial basada en las tecnologías de la información, que tiene por objetivo asegurar el funcionamiento, principalmente, de los principios de publicidad y apertura, transparencia y accesibilidad de la información de procedimientos legales constitucionales (estatutarios) como una variedad de estos últimos en la Federación de Rusia. En lo metodológico de empleo la técnica de la observación documental. En efecto, la justicia constitucional electrónica (estatutaria) en las entidades constitutivas de la Federación de Rusia tiene una naturaleza y características multifacética, ya que puede considerarse en varios contextos, incluida la atribución al grupo de garantías constitucionales adicionales de derechos humanos y civiles. Se concluye que, la justicia constitucional electrónica acerca los espacios de justicia a personas y comunidades, lo que facilita el ejercicio de sus derecho y deberes.

Palabras clave: principios de derecho constitucional; tribunales constitucionales (estatutarios); justicia constitucional (estatutaria); sujetos de la Federación de Rusia; justicia electrónica.

Introduction

The general idea of electronic justice as a kind of synthesis of the ongoing technological, legal and institutional changes in the information society and affecting material and procedural legislation does not disclose direct and reverse links between legal principles and processes of informatization of the judicial branch of government. The same can be noted in relation to the normative definition that discloses e-justice as a way of carrying out legal procedural actions based on information technologies in the activities of the judiciary, including their interaction with each other, as well as with individuals and legal entities in electronic (digital) form (Resolution of the Presidium of the Council of Judges of the Russian Federation, 2015).

At the same time, there is a different understanding of electronic justice, according to which the emergence of electronic tools has a direct impact on the implementation mechanism, first of all, of the constitutional principles of regulating the organization of legal proceedings.

1. Materials and Methods

The work uses both general scientific methods of cognition (analysis, synthesis, generalization, comparison) and private scientific methods: formal legal, comparative legal, systemic and structural. The formal legal method of cognition makes it possible to establish the sources of consolidation of legal principles and norms that are significant for the organization of electronic constitutional (statutory) justice in the constituent parts of the federal state. The comparative legal research method is aimed at identifying general and specific signs of the formation of electronic justice in various subsystems of the judiciary, including the institution of specialized judicial constitutional control. The systemic-structural approach to the knowledge of electronic constitutional (statutory) justice allows us to determine its internal structure at this stage of the development of legal proceedings.

2. Research Results

Most of researchers consider that the aim of electronic justice as a method of organizing judicial activity based on information technology is to ensure the operation of the principles of openness, openness and accessibility of legal proceedings, openness and transparency of proceedings, openness, accessibility and transparency of legal proceedings (Globa, 2015), etc.

In addition, as some authors believe, the introduction of an electronic justice system has an impact on the traditional principles of legal proceedings, including the principle of equality of the parties (Isaeva, 2016), discretion, the principle of combining oral and written language of court proceedings, immediacy of court proceedings (Medimorec and Parycek, 2011).

However, information technologies affect not only the organizational and procedural principles of judicial activity; they also affect the foundations of the legal status of an individual (Serbena, 2015).

Thus, the legal literature notes that the informatization of justice should ensure the protection of human and civil rights and freedoms in the context of Article 18 of the Constitution of the Russian Federation (Rudneva and Kavkaeva, 2018).

The protection of human and civil rights and freedoms, having the status of a general principle of law and constitutional law is, on the one hand, one of the criteria of the principle of guaranteeing rights and freedoms, and on the other, the principle of their direct action, established constitutionally.

In turn, the principle of direct action of human and civil rights and freedoms, interpreted as a main, stable, fundamental requirement of an abstract, constituent and general nature, generalized expressing the basic laws of the formation, provision and unhindered realization of human

rights, regardless of the presence of special conditions and procedures and implemented in legal relations on lawmaking in the field of human rights, realization and protection of human and civil rights and freedoms, acts, according to the Constitutional Court of the Russian Federation, one of the principles of the rule of law (Resolution of the Constitutional Court of the Russian Federation, 2004).

As for the principle of security of human and civil rights and freedoms, the informatization of judicial activity, as the experience of foreign countries with a decentralized judicial system shows (9), is designed to influence the mechanism of its implementation.

In this regard, the formation and development of electronic justice as a way of implementing constitutional (statutory) justice in the constituent entities of the Russian Federation, which can be considered in various aspects, including as an additional guarantee of ensuring and protecting human and civil rights and freedoms in the constitutional legal proceedings.

At the same time, this additional guarantee is of particular importance for the direct implementation of a number of constitutional rights and freedoms expressing the information freedom of an individual (the right to freely seek, receive, transfer, produce and distribute information in any legal way, the right to get acquainted with documents and materials affecting his rights and freedom, unless otherwise provided for by law, the right to apply personally, as well as to send individual and collective appeals to state bodies, which, within their competence, are obliged to consider these appeals, make decisions on them and give a reasoned response in accordance with the procedure established by law), which serves as the basis for other informational rights and freedoms.

The use of tools of electronic justice in the activities of constitutional (charter) courts is not limited to the recognition of its guaranteed nature. The fact is that the introduction of automated information systems and services in the procedures of constitutional proceedings means a significant expansion of the legal basis for the organization and operation of constitutional and statutory courts in the constituent entities of the Russian Federation by introducing acts of federal legislation into their composition.

We are talking primarily about the Federal Law No. 149-FZ of July 27, 2006 «On Information, Informatization and Protection of Information», which provides, inter alia, the right to receive information from a state body, its officials, concerning the rights, freedoms and duties of a person and a citizen, the denial of access to which can be appealed in court, Federal Law No. 262-FZ of December 22, 2008 «On Providing Access to Information on the Activities of Courts in the Russian Federation», securing the right of access to information on the activities of courts, without justifying the need to obtain the requested information about their activities, access

to which is not limited, the right to appeal in the prescribed manner the actions (inaction) of officials violating the right to access information on the activities of the courts and the established procedure for its implementation, Federal Law No. 63-FZ of April 6, 2011 «On Electronic Digital Signature», etc.

In addition, the introduction of the above federal laws into the legal framework for the organization and operation of constitutional and statutory courts means a complication of the system of principles that determine the organization of their internal activities, aimed at ensuring the formation of an electronic format of constitutional legal proceedings. In particular, the legislation of the constituent entities of the Russian Federation on constitutional (statutory) justice refers to such basic principles of providing access to information on the activities of constitutional and statutory courts, established by the federal legislator: openness and accessibility of information about their activities; reliability of information about their activities and its timely provision; freedom to search, receive, transfer and disseminate information about the activities of courts in any legal way; observance of the right of citizens to privacy, personal and family secrets, protection of their honor and business reputation; observance of the rights and legitimate interests of participants in legal proceedings, etc.

The transition to electronic constitutional (statutory) justice is not reduced to the emergence of new legal principles; it entails the need for a legal regulation of new social relations on their basis, and hence the appearance in the structure of the constitutional institution of regional specialized judicial constitutional control of additional legal education (subinstitution), which determines the access of subjects of appeal (complaint, request, petition) to court materials using information and communication technologies.

3. Summary

The use of information technologies in constitutional (charter) legal proceedings does not contradict the requirements of the Constitution of the Russian Federation, since, as the Constitutional Court of the Russian Federation believes, a constituent entity of the Russian Federation has the right, along with the basic guarantees of the rights of citizens enshrined in federal law, to establish in its law additional guarantees of these rights and freedoms aimed at specifying them, creating additional mechanisms for their implementation, taking into account regional characteristics (conditions) and in compliance with the constitutional requirements on the consistency of the laws of the constituent entities of the Russian Federation with federal laws and on the inadmissibility of restricting the rights and freedoms of a person and citizen in a form other than a federal law; implementing such legal regulation, the legislator of a constituent entity

of the Russian Federation should not introduce procedures and conditions that distort the essence of certain constitutional rights, and reduce the level of their federal guarantees enshrined on the basis of the Constitution of the Russian Federation by federal law, as well as introduce any restrictions on constitutional rights and freedoms, since such - within the purposes and limits determined by the Constitution of the Russian Federation - can be established only by the federal legislator (Resolution of the Constitutional Court of the Russian Federation, 2012).

Conclusion

The elements that form the system of electronic constitutional (statutory) justice in the constituent entities of the Russian Federation include:

1) the presence of the official website of the constitutional and statutory court in the Internet with an indication of the e-mail address to which the user of the information can send his request;
2) posting of information on the activities of the constitutional and statutory court as part of the information portal of the constituent entity of the Russian Federation, which acts as a state information system that unites the official websites of state and local authorities on the Internet;
3) an electronic document as one of the legitimate forms of obtaining documented information about the activities of the constitutional and statutory court;
4) the creation of an electronic reception, as well as the possibility of submitting applications, requests and petitions in electronic form through the official website of the constitutional and statutory court in the Internet (for example, the Constitutional Court of the Republic of Tatarstan has the Rules for submitting applications in electronic form through the «Appeal to the Constitutional Court of the Republic of Tatarstan» in the «Feedback» section of the official website of the Constitutional Court of the Republic of Tatarstan);
5) broadcasting of open sessions on radio and television and in the Internet in the Statutory Court of the Sverdlovsk region;
6) placement in electronic form of information about cases in the proceedings of the constitutional and statutory courts, as well as about judicial acts adopted by the constitutional and statutory court (for example, according to republican legislation, it is subject to mandatory posting on the official website of the Constitutional Court of the Republic of Sakha (Yakutia) decisions, rulings and opinions, as well as messages on the state of constitutional legality in the Republic

of Sakha (Yakutia), data from judicial statistics on citizens' appeals for consideration of cases in the Constitutional Court of the Republic of Sakha (Yakutia));

7) information systems of the constitutional and statutory court (in particular, an information system has been created in the Statutory Court of the Kaliningrad region containing databases on laws and other regulatory legal acts of the Russian Federation, the Kaliningrad region and other constituent entities of the Russian Federation, decisions of the Statutory Court of the Kaliningrad region, decisions of the Constitutional courts of the Russian Federation and other constitutional (charter) courts of constituent entities of the Russian Federation);

8) electronic placement of samples of documents for appeal to the constitutional and statutory courts (in the Statutory Court of St. Petersburg - these are samples of complaints from citizens, requests for compliance with the Charter of St. Petersburg with laws and other regulatory legal acts of St. Petersburg, on the interpretation of the Charter of St. Petersburg);

9) electronic information on the procedure and schedule for personal reception of citizens by judges of the constitutional and statutory courts (on the official websites of the Constitutional Court of the Komi Republic and the Statutory Court of the Sverdlovsk Region).

Other elements of the system of electronic constitutional (statutory) justice in the constituent entities of the Russian Federation, practiced by constitutional and statutory courts, include maintaining an electronic archive of reviewed cases, electronic support for court proceedings and an electronic register of normative acts recognized by a constitutional or statutory court as inconsistent with the constitution or charter of a constituent entity of the Russian Federation.

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Criminal-legal ensuring of freedom of religion in modern conditions: a comparative analysis

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Abstract

The article conducts a comparative criminal law investigation to ensure freedom of religion in Ukraine and some countries. The subject of the study is a person's right to freedom of religion guaranteed by the Ukrainian Constitution. In conducting this research, a comparative legal method was widely used, which allowed a two-tier analysis (empirical and theoretical) of the legal systems of Ukraine and some foreign countries in terms of ensuring freedom of religion under criminal law, to identify the originals and specific manifestations of such support, to determine the patterns of development of each country's criminal law. As a result of the investigation, some gaps and advantages of Ukrainian law were identified in terms of criminal law guaranteeing the right to freedom of religion. Itstates that Ukraine's modern criminal law generally complies with international standards for the protection of citizens' constitutional right to freedom of religion, but there are some shortcomings in terms of unequivocal understanding of the elements of crimes that violate freedom of religion, which are worth discussing.

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Keywords: religious discrimination; criminal liability; legal phenomenon; human rights; cultural diversity.

Garantía penal-legal de la libertad de religión en las condiciones modernas: un análisis comparativo

Resumen

El objetivo del artículo fue analizar el derecho penal comparado en lo que respecta a la libertad de religión en Ucrania y algunos países. El tema del estudio es el derecho de una persona a la libertad de religión garantizada por la Constitución de Ucrania. En la realización de esta investigación, se utilizó ampliamente un método legal comparativo, que permitió un análisis de dos niveles (empírico y teórico) de los sistemas legales de Ucrania y algunos países más en términos de garantizar la libertad de religión por el derecho penal, para identificar los aspectos centrales y manifestaciones específicas de dicho apoyo y para determinar las pautas de desarrollo de la legislación penal de cada país. Como resultado de la investigación, se identificaron algunas lagunas y ventajas de la legislación ucraniana en términos de derecho penal que garantiza el derecho a la libertad de religión. Se concluye que el derecho penal moderno de Ucrania en general cumple con las normas internacionales para la protección del derecho constitucional de los ciudadanos a la libertad de religión, pero existen algunas deficiencias en términos de comprensión inequívoca de los elementos de los delitos que infringen la libertad de religión, quien vale la pena debatir.

Palabras clave: discriminación religiosa; responsabilidad penal; fenómeno legal; derechos humanos; diversidad cultural.

Introduction

Freedom of religion is a fundamental human right guaranteed by the Constitution of Ukraine (1996), defined by international acts and is a component of human status. Undoubtedly, religion is for everyone who professes it, one of the main elements of his worldview (Resolution of the general assembly No. 36/55, 1981). The well-being of a particular person, as well as the state and society as a whole, depends on the possibility of exercising the right to freedom of religion in many cases. Attitude to religion determines a person's attitude to other values, people, state, and society, determines his behavior. Abuse of religious freedom is a violation of this right, which often leads to significant negative consequences (Sereda, 2017).

Religious beliefs are one of the most vulnerable areas of human life. It is worth mentioning the manipulations and provocations that took place in Ukraine and the world. For example, the provocative American film "Innocence of Muslims", which was perceived around the world as an insult to Islam. It sparked a wave of protests in Cairo, where about 2.000 Egyptian Muslims surrounded the US embassy. The American consulate in Benghazi was later attacked in Libya. An armed group of Islamists fired grenade launchers at the building and set it on fire. As a result, the American ambassador to Libya, Chris Stevens, a member of the press service of the State Department, Sean Smith, as well as two Marines, who were probably guarding the ambassador, were killed (Pravda, 2012). Another example is the attack on the editorial office of the French satirical weekly "Charlie Hebdo" for its cartoons against Islamists, which have led for the death of 12 people (Paraszczuk and Drachuk, 2015).

There are often accusations of state interference in the church. For example, supporters of Montenegro's pro-Serbian opposition walked out to the streets of the Montenegrin capital, Podgorica, to protest the passage of a law on religious associations that could deprive the Serbian Orthodox Church of its property. The Serbian Church in Montenegro, which owns 66 mostly medieval monasteries, dozens of churches, and other real estate, believes, that the state wants to confiscate its property (Protests erupt in Montenegro, 2019).

In Ukraine, at first glance, there are no serious grounds for confrontation between interfaith denominations. However, this is not the case. According to the Institute for Religious Freedom, by the beginning of 2020 the number of religious organizations in Ukraine reached 36.796. Among all religious organizations in Ukraine, 97% belong to Christian denominations, including 53.7% – Orthodox, 28.9% – Evangelical (Protestant) churches and 14.3% are Catholic (Statistics from The Ministry of Culture, 2020). The situation in Ukraine at the end of 2018 was quite critical, when the Ukrainian Orthodox Church (This church is often called the Ukrainian Orthodox Church of the Moscow Patriarchate to distinguish it from the Ukrainian Orthodox Church of the Kyiv Patriarchate). According to the official registration, the Ukrainian Orthodox Church of the Moscow Patriarchate is The Orthodox Church (and in this article, it will be mentioned in this way) published a resolution of the Council of Bishops that it refuses to join the process of creating an autocephalous Ukrainian Orthodox Church. Mass summonses of priests for interrogation began in the framework of criminal proceedings opened on the fact of treason and incitement to inter-religious hatred (Demyanov, 2018); authorized investigative actions of the head of the Kyiv Holy Dormition Caves Lavra, Metropolitan Pavlo (Lebid) in the framework of criminal proceedings under Part 2 of Article 161 of the Criminal Code of Ukraine (2001). The head of the Lavra stated that he was under pressure (Mazurenko, 2018).

Judicial practice is faced with the need to forcibly terminate the existence of organizations whose activities are aimed at inciting national and religious hatred. In particular, the NGO "Direct Way", which promoted the ideology of the Islamic fundamental movement of the Wahhabis of Saudi Arabia, whose members and followers use radical political means against members of other religions and denominations, was suspended. The lawsuit states that the head of the organization and its members are distributing a brochure, the content of which, according to the religious opinion of the State Committee of Ukraine for Nationalities and Religions, contradicts current legislation and cannot be distributed in Ukraine. In addition, during a search of the defendant's office, conducted as part of a criminal case against the leaders of the NGO "Direct Way", explosives related to ammunition were found and seized (Resolution of the Odessa district administrative court, case No. 1570/2775/2012, 2012). And these are not isolated cases (Resolution of the district administrative court of Kyiv, case No. 826/19616/13-a, 2014).

We can state that the violation of the fundamental right of every citizen to freedom of religion, guaranteed by the Constitution of Ukraine, occurs quite often. In this regard, it requires a number of measures of immediate legal and constructive response to these violations, including criminal law, as the state of protection of this right determines the principles of a democratic and legal state.

1. Materials and Methods

Thanks to the general scientific method of generalization, it was possible to identify the general features of the mechanism of criminal law protection of freedom of religion in various legal systems, to identify common signs of certain elements of crimes encroaching on the specified benefit, under the criminal legislation of certain foreign countries. The method of abstraction made it possible to separate the specific manifestations of crimes against freedom of religion and focus on the main, most characteristic features of this group of encroachments. It should be noted that generalization and abstraction were used in combination, which made it possible to more thoroughly analyze and investigate the object of scientific research.

When making proposals for improving domestic legislation in terms of criminal law provision of freedom of religion, methods of modeling and analogy were used. When analyzing and selecting the necessary information about the state of ensuring freedom of religion at the international level, the method of specific sociological research was used. We paid attention on the analysis of international standards for the protection of human and civil rights and freedoms, official reports of authorized persons on the state of compliance and cases of violation of freedom of religion, study of materials

of judicial practice, public opinion on the state of protection of freedom of religion in Ukraine and the world. An important contribution to this research was made using the method of content analysis. This method made it possible to study the conceptual and categorical apparatus, collisions and paradoxes of a group of unlawful acts encroaching on freedom of religion, the study of the criminal legislation of Ukraine and certain foreign countries that establish responsibility for these acts.

When detecting the dynamics of crime in the sphere of violation of freedom of religion, officially documented information that gives a quantitative characteristic of social mass events and phenomena, the method of legal statistics was used. This method allowed using quantitative data to analyze the factors influencing this legal phenomenon. Thus, a variety of religious organizations in Ukraine has been identified and established, which gives rise to confrontation between some of them and leads to a violation of freedom of religion.

Particular attention is paid to the logical-legal method, which includes the means and methods of studying and interpreting law based on the methods of formal logic. With the help of this method, it was possible to avoid contradictions and inconsistencies in the construction of this scientific research, to illustrate the mechanism for constructing criminal law norms establishing responsibility for violation of freedom of religion in certain foreign countries and to propose effective changes to the current Criminal Code of Ukraine.

When using the method of alternative analysis in this scientific study, a comparison was made of opposing, contradictory and inconsistent approaches to understanding individual evaluative categories that are signs of crimes against freedom of religionIn carrying out this research, a comparative legal method was widely used, which allowed for a two-level analysis (empirical and theoretical) of legal systems of Ukraine and some foreign countries in terms of ensuring freedom of religion by criminal law, to identify original and specific manifestations of such support, to determine the patterns of development of criminal legislation of individual countries and to establish relations with international standards for the protection of religious freedom. In addition, the formal-legal method was used, which made it possible to classify and systematize the studied criminal law norms, and the method of interpretation, which allowed to clarify the content of certain legal norms.

Analyzing recent research in this area, we can state that this problem enjoys the attention of researchers. In addition, the focus is not only on defining the key concepts of the analyzed constitutional law, but also on the mechanisms and methods of its legal support, including the means of criminal influence. Thus these issues were covered by Alonkin (2010), Bilash (2015), Lashchuk (2005), Lykhova (2006), Malyshko (2005),

Marysyuk (2003), Markin (2012), Paliy (2002), Pankevich (2010), Fisun (2005), Shvydchenko (2009), Yarmol (2003), Ostrovsky (2014) and others.

2. Results and Discussion

2.1. Freedom of religion is a fundamental human right guaranteed by the Constitution of Ukraine

The term "freedom of conscience" is a multifaceted interdisciplinary legal phenomenon that cannot be defined by enumerating its constituent elements. Given the different views on the content of freedom of conscience and religion, we agree with scholars who believe that freedom of religion is a person's right to accept or not to accept any worldview systems, religious beliefs, to profess individually or together with others any religion or not to profess any, to freely choose, change, disseminate and express religious or other beliefs and to act in accordance with them, without being persecuted or discriminated against by the state and society.

The legal concept of freedom of conscience means the right of everyone allowed and guaranteed by the laws of the state to think and act in accordance with their beliefs, and freedom of religion – to determine their own attitude to religion and action while maintaining law and order and legality. The essence of freedom of conscience is reduced to the presence of legitimate opportunities for a person to do without coercion, as he deems it necessary in accordance with his beliefs, provided that the established order, and freedom of religion – the ability to openly profess the chosen religion (Pchelyncev, 2012). Modern Ukrainian legislation uses the term "freedom of religion", which corresponds to international legal acts ratified by Ukraine and international standards in the context of human rights protection.

Malyshko (2005) points out that the enshrinement at the constitutional level of the human right to freedom of thought and religion, in contrast to the right to freedom of conscience, should be understood as the ability of a person to have worldviews, profess any religion or not, the ability to perform religious cults, rites and to conduct religious activities in accordance with the Constitution and legislation of Ukraine. In this context, we agree with Lykhova (2006), who draws attention to the fact that the concept of "freedom of religion" is broader in meaning than religious rights and points out that the importance of recognizing this freedom by the state is to establish a system of legal guarantees, where criminal protection of legal relations, the content of which is the right to freedom of religion, is provided by the rules provided for in the provisions of Articles 178, I79, 180, 181 of the Criminal Code of Ukraine.

Universal human rights instruments concerning freedom of religion include the UN Charter (1945), the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976), and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or beliefs (1981), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), Convention on the Rights of the Child (1989), Convention against Discrimination in Education (1960), Declaration of Principles on Tolerance (1995), etc. According to Article 18 of the Universal Declaration of Human Rights (1948)

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Similar provisions are contained in the International Covenant on Civil and Political Rights (Part 1, Article 18, 1976). In addition, the Covenant (1976) states that

> No one shall be subjected to coercion which undermines his freedom to have or to adopt a religion or belief of his choice. Freedom to practice one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, as well as the fundamental rights and freedoms of others (Parts 2 and 3 of Article 18).

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is one of the most important international documents that protects religious rights and prohibits intolerance or discrimination that may occur in religion or belief (Dejvys, 2006). The declaration is only of a recommendatory nature, does not entail legal obligations in case of non-compliance with the recommendations contained in it, does not provide a mechanism for monitoring the implementation of these principles. However, the Commission on Human Rights has appointed a Special Rapporteur to ensure compliance with the provisions of the Declaration, who is required to report annually to the Commission on freedom of religion and belief worldwide (Roun, 2003). The Resolution of The General Assembly No. 36/55 (1981) emphasizes the special role of freedom of religion and belief, as ignoring or violating these fundamental rights "is a direct or indirect cause of wars and severe human suffering". Duplicating the fundamental principles (Article 1), the Resolution Of The General Assembly No. 36/55 (1981) reveals the meaning of the concept of "intolerance and discrimination" on the basis of religious beliefs, which proposes to understand "any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis" (Part 2,

Article 2).

Having analyzed these and other international documents, we can identify several key problems: 1) the lack of terminological unity and clarity in defining the conceptual apparatus in international documents raises a similar problem in the implementation of these rules in national legislation; 2) the lack of a unified approach to the settlement of numerous contradictions in the field of religious freedom, which are dictated by various contradictions both in religious dogmas and in the procedures of rituals, observance of rules of tolerance to persons professing another religion, etc.; 3) the lack of an effective mechanism for monitoring the implementation of provisions containing international instruments. They in most cases are declarative and recommendatory in nature, devoid of imperative.

2.2. Legal provision of freedom of religion under the criminal law of certain foreign countries

A comparative analysis of the criminal law of some foreign countries in terms of protection of religious freedom will highlight the main trends in the legal regulation of this issue and analyze the experience of foreign countries in solving major problems. Having analyzed the experience of legal regulation and ensuring the right to freedom of religion, we can conditionally distinguish the following groups of countries depending on the scope of criminal law provision of freedom of religion:

1. A detailed approach to the criminal law of freedom of religion is observed in the member states of the European Union, Israel, the Republic of San Marino, in particular, the Criminal Code of the Republic of Poland (1997) provides a separate Chapter XXIV which contains only the components of crimes against freedom of conscience and religion (Borzenkov and Komyssarov, 2002): restriction of human rights due to their affiliation with a religion or non-affiliation to any religion (Article 194); malicious obstruction of the religious activity of a church or other religious union that has a regulated legal status (paragraph 1 of Article 195); malicious obstruction of burial, festive or mourning rites (paragraph 2 of Article 195); insults to the religious feelings of others, public insults to objects of religious worship or places that are intended for public religious ceremonies (Article 196). Comparing with the domestic Criminal Code, it should be noted the advantages of the analyzed Criminal Code in terms of ensuring the right of atheists to freedom of religion, detailing the manifestations of the objective side by indicating the types of rites, objects at the crime scene. Instead, there is no rule on liability for damage to religious buildings, places of worship and religious shrines. As can be seen, in the Criminal Code of Poland, the norms

guaranteeing freedom of religion are structurally separated, which makes it possible to establish a common generic object of crime. This approach deserves approval.

In the Criminal Code of the Federal Republic of Germany (1971) this issue is devoted to Chapter XI "Punished acts affecting religion and worldview". Thus, paragraph 166 of the Criminal Code of Germany provides for responsibility for the image of religion, religious organizations, and ideological associations. Insult may consist of public contempt or dissemination in any way of written material that contains an insult to the religious beliefs and worldviews of others, which leads to a violation of public order. Part 2, paragraph 167 of the Criminal Code provides for liability for offensive atrocities in a place designated for worship of a religious community, and paragraph 167a of the Criminal Code – for obstructing the funeral, paragraph 168 of the Criminal Code provides liability for desecration of the grave.

A similar position has the Criminal Code of the Republic of San Marino (2008), where Chapter II provides for liability for "Crimes against religion and feelings with regard to the dead". Thus we are talking about mockery of religion (Article 260), violation of religious freedom (Article 261), violation of worship (Article 262), mockery of the corpse (Article 263). Attention is drawn to the legislator's clear and consistent description of violations of religious freedom that may be committed through "violence, or threats to prevent another person from practicing a religion, promoting or participating in a public cult, or in a private religion". As we can see, the violation of this right is quite specific and devoid of evaluative concepts.

The Criminal Code of Belgium (1867) details criminal liability for coercion or obstruction by violence or threats to perform religious rites, to be present at such rites, to celebrate certain religious holidays, to observe certain days of rest (to close workshops, shops, etc.) (Article 142). In addition, if persons obstruct, delay or interrupt the performance of a religious rite in a place normally designated or used for that purpose by causing disturbance or disorder, or during the solemn ceremonies of this rite, they are subject to increased criminal liability (Article 143). Not only religious rites are subject to criminal law protection, but also objects of religious significance and used for the performance of rites (Article 144). A separate rule provides for liability for insulting a priest during a religious ceremony. Such insult can be expressed in actions, words, gestures, and in case of hitting the priest, the responsibility increases (Article 145).

Specially qualified composition is contained in Article 146 of the Belgian Criminal Code (1867), it may be charged if such a blow causes bleeding, injury or disease. Thus, we can state a very specific and detailed approach of the Belgian legislator to ensuring freedom of religion. The analyzed norms contain specific manifestations of the objective side of the encroachment,

ignore the evaluative and difficult to concretize the concept of «believers' feelings» and rely on specific factual circumstances in determining the degree of public danger of the act, noting their specific manifestations in the Criminal Code. It is seen that such an approach to the formulation of a rule on criminal liability for violation of the right to freedom of religion is more successful, specific and characterized by legal certainty.

The Penal Law of Israel (2010) pays special attention to the protection of religious rights and freedoms. A separate chapter "Insult of religious feelings and traditions", which has six articles, is devoted to this issue. Article 170 establishes the most severe type of imprisonment for a term of three years for insulting the faith, which may consist in destroying, damaging or insulting a place designated for religious worship or an object sacred to the community of people, and does so with the intention of embarrassing their faith or realizing that they may see in such an act an image of their faith. As we can see, the legislator regulates the subjective side of this act in great detail and this helps to avoid misunderstandings on the part of law enforcement officers. In addition, the analyzed Law contains a number of norms that establish criminal liability for intentionally intentionally obstructing the practice of religious worship (Article 171); entry without permission to places of religious worship or burial in order to offend the feelings of the person or to shame his faith (Article 172).

A separate rule provides for liability for the insult of religious feelings, which may be manifested in such actions as: 1) the dissemination of materials that cause a gross insult to the religious feelings of others or grossly insult their faith; 2) utterances in a public place and within the audibility of another person of a word or sound which cause a gross insult to the religious feelings of that person, or grossly insult their faith (Article 173). The law also contains specific rules on the responsibility for giving a reward to tempt to convert to another faith (Article 174a) and for receiving a reward for converting to another faith (Article 174b). Both of these norms make it possible to punish not only the active perpetrator of these actions, but also the instigator who "tempts" another person to convert to another faith.

The Criminal Code of Georgia (1999) contains a *general* rule that ensures the constitutional right to equality of all people regardless of race, color, language, sex, religion, etc. (liability arises for violation of equality of citizens, which significantly restricts human rights) (Article 142) and *special*, which establishes liability for unlawful obstruction of religious rites or customs with the use of violence or with the threat of its use, or combined with the insult of religious feelings of believers or clergy (Article 155). When committing the specified act with the use of official position is a qualified type of the analyzed crime (Part 2, Article 155). A separate norm provides for liability for persecution of a person, including in connection with his religion or religious activity (Article 156).

We observe a similar approach, analyzing the Criminal Code of the Republic of Azerbaijan (1999), the Criminal Code of the Republic of Kazakhstan (1997), the Criminal Code of the Kyrgyz Republic (1997), the Criminal Code of the Republic of Moldova (2002). Article 154.1 of the Criminal Code of the Republic of Azerbaijan (1999), Article 141 of the Criminal Code of the Republic of Kazakhstan (1997), Article 134 of the Criminal Code of the Kyrgyz Republic (1997), Article 176 of the Criminal Code of the Republic of Moldova (2002) contain a general rule on liability for violation of equality of citizens. The special norms quite succinctly establish liability for illegal obstruction of religious rites (Article 167 of the Criminal Code of the Republic of Azerbaijan, 1999), for obstruction of the right to freedom of conscience and religion (Article 146 of the Criminal Code of the Kyrgyz Republic, 1997; Article 149 of the Criminal Code of Kazakhstan, 1997).

The responsibility for the establishment of a group under the pretext of spreading religious denominations and performing religious rites is defined separately, if such a group violates public order, harms the health of citizens or violates the rights of citizens regardless of the form of violation, and distracts citizens from performance of the duties established by the law, as well as leadership of such a group (Article 168.1 of the Criminal Code of the Republic of Azerbaijan, 1999; Article 147 of the Criminal Code of the Kyrgyz Republic, 1997; Article 185 of the Criminal Code of the Republic of Moldova, 2002). Active participation in the activities of such a group, as well as systematic propaganda aimed at committing the above actions determines the qualified corpus delicti (Part 2 of Article 147 of the Criminal Code of the Kyrgyz Republic, 1997).

The Criminal Code of the Republic of Belarus (1999), in addition to the general rule ensuring equality of citizens (Article 190), contains provisions on responsibility for the organization or management of associations, including religious, encroaching on the person, rights and responsibilities citizens (Article 193), illegal organization of activities of a religious organization or foundation or participation in their activities (Article 193.1) and obstruction of lawful activities of religious organizations or religious rites, if they do not violate public order and are not violated, freedoms and legitimate interests of citizens (Article 195). Such an expanding clarification, in our opinion, is excessive.

2. Ensuring freedom of religion in a simplified (laconical) form. Article 140 of the Danish Criminal Code (2005) establishes the responsibility of any person who publicly ridicules or insults the dogmas or worship of any religious community operating legally in the country. It should be noted that the legislator protects only those religious organizations that are legal. At the same time, dogmas, and rites, but not the feelings of believers, fall under criminal law protection. In

addition, the emphasis is on the objective side of the crime – an act manifested in insult or ridicule is the basis of criminal liability, not the manifestation of the subjective side (the purpose is to offend the feelings of citizens in connection with their religious beliefs).

According to Article 150 of the Criminal Code of the Republic of Latvia (1998), direct or indirect violation of the rights of persons, the creation of certain benefits for persons in connection with their attitude to religion, except for activities in religious institutions, as well as insults to religious feelings or incitement to hatred over religion or atheism. Intentional obstruction of the performance of a religious rite, if it violates the law and is not related to the encroachment on the rights of the person, entails liability under Article 151 of the Criminal Code of the Republic of Latvia. Thus, the Latvian criminal law establishes legal guidelines for the delimitation of related crimes, which, in fact, greatly simplifies law enforcement practice.

The Criminal Code of Spain (1995) contains a number of rules that ensure freedom of religion, they are scattered according to the code unsystematically. In Article 172 of the Criminal Code of Spain contains a general rule prohibiting obstruction to commit certain acts or coercion to commit certain acts that are not prohibited by law, and if coercion prevented a person from exercising his fundamental rights and freedoms, liability is increased, except when such an act is punished more severely in accordance with a special article of the Criminal Code. Such special rules are Article 314 of the Criminal Code of Spain, which establishes liability for "serious discrimination" on the grounds of ideology, religion, beliefs, ethnicity, race or nationality, etc.; Article 510 of the Criminal Code of Spain, which contains responsibility for causing discrimination, hatred or violence against groups and associations for these reasons and for disseminating information that is offensive to certain groups or associations in connection with their ideology, religion, beliefs, etc.

Article 511 of the Criminal Code of Spain, in which criminal protection covers restrictions or deprivation of certain services in connection with religion. Thus the civil servant for such actions is appointed punishment closer to the upper limit of the sanction; Article 522 of the Criminal Code of Spain (1995) provides for severe punishment for the use of violence, intimidation, use of force or other unlawful coercion in order to prevent a member (members) of any religious denomination to perform religious rites in their denomination or be present at them; more severely punished is anyone who violates, threatens, organizes riots or insults by obstructing or obstructing or interfering with an action, solemn act, ceremony or demonstration of any religious denomination registered with the Ministry of Justice and Interior (Article 523); Article 524 of the Criminal Code (1995) establishes responsibility for insulting the feelings of believers; Article 525 provides for liability for public abuse of dogmas, beliefs, rites or insults of

those who profess or carry them out; Article 526 prevents mockery of the memory of the dead.

The Criminal Code of the Republic of Bulgaria (1968) succinctly establishes responsibility for preaching hatred on religious grounds orally, in writing or by action or otherwise (Article 164). If the obstacle to professing the faith or performing religious rites that do not violate public order and generally accepted rules of conduct, is carried out by violence or threat, the responsibility arises under Article 165 of the Criminal Code (1968). In addition, Bulgarian criminal law prohibits the establishment of political organizations on religious grounds, the use of a church or religion for the purpose of propaganda against the authorities or measures organized by the authorities (Article 166).

The Swiss Criminal Code (1937) contains a separate rule establishing liability for violations of freedom of religion and belief. Article 261 of the Criminal Code (1937) provides for liability for 1) public and in the general form of insulting the religious beliefs of another person, especially faith in God, or mocks them or disgraces the objects of religious worship; 2) with malicious intent to interfere with a religious act guaranteed by the Constitution, interfere with it or publicly ridicule it; 3) with malicious intent, disgraces a place or object that is intended for a religion guaranteed by the Constitution or for such a religious act.

3. Freedom of religion is ensured through complex legal structures that cover cases of violation of the right to freedom of religion. According to Article 4 of Chapter 16 "On Violations of Public Policy" of the Swedish Criminal Code (1962), a person who obstructs or attempts to obstruct a religious service or other public pious celebration, wedding, funeral or similar ceremony is subject to criminal liability, a court hearing or other state or local duty or a public meeting to discuss, teach, or listen to a lecture that commits such acts with violence, loud noise, or the like. Thus, the Swedish legislature accumulates in one rule liability for actions that may restrict the right to freedom of religion and actions aimed at violating public order in any form that impede (may impede) the exercise of judicial, state, or local authority.

4. Freedom of religion is ensured indirectly by specifying general rules on non-discrimination. In the French Criminal Code (1994), freedom of religion is ensured by general rules prohibiting discrimination. Article 225-1 of the French Criminal Code establishes criminal liability for discrimination, which consists in any distinction between individuals on the basis of origin, sex, marital status, health status, physical disabilities, customs, political beliefs, trade union activities, belonging to a particular ethnic group, nation, race or religion (Part 1 of Article 225-1 of the Criminal Code of France, 1994).

The Criminal Code contains a similar prohibition on discrimination against legal entities (Part 2 of Article 225-1). Article 225-2 of the French Criminal Code (1994) establishes increased liability for discrimination manifested in refusal to provide property or services, in obstruction of any economic activity, refusal to hire, punishment or dismissal of a person, stipulates the provision of property or services or work on demand based on any of the grounds specified in Article 225-1 of the Criminal Code (1994). However, the Criminal Code warns of cases where liability for discrimination does not arise. These include, in particular, discrimination on grounds of health in cases where there is a risk of death, violation of the physical integrity of a person or infliction of incapacity for work or disability; on discrimination on the grounds of health or physical disabilities, if it consists in refusal of employment or dismissal, which are due to medical unfitness; in the matter of hiring a person of a certain sex, when belonging to a certain sex is a requirement to perform work or professional activity in accordance with current French legislation (Article 225-3 of the Criminal Code of France, 1994).

The Criminal Code of the Netherlands (1881) establishes liability for public (oral, written or pictorial) statements that discredit persons (Article 137c), public incitement to hatred or discrimination against persons or violence against these persons or their property (Article 137d) on racial, religious grounds or because of their personal beliefs or sexual orientation. The grounds for prosecuting a person who makes a public statement that is knowingly offensive to a group of persons on the grounds of their racial affiliation are set out in detail, religion or personal beliefs or their sexual orientation, or incites hatred or discrimination, or violence against such persons or against their property on the basis of these characteristics, except in cases of providing factual information.

Persons who disseminate items containing information of a discriminatory nature are also criminally liable (Part 1 of Article 137e of the Criminal Code of the Netherlands, 1881). If a person commits these actions in the framework of his professional activity, he may be deprived of the right to engage in this professional activity (Part 2 of Article 137e). In addition, a separate rule regulates the liability of persons who participate in or finance activities aimed at discriminating against persons on the grounds of religion, race, personal beliefs or sexual orientation (Article 137f).

The Criminal Code of the Republic of Lithuania (2000) contains a separate chapter XXV “Crimes and criminal offenses against equality of person and freedom of conscience”. Article 169 of the Criminal Code (2000) contains a cumulative provision on combating discrimination on the grounds of nationality, race, sex, origin, religion or other group of people. It should be mentioned, that the list of grounds for discrimination is not exhaustive. Manifestations of the objective side may consist in preventing

a person from enjoying rights and freedoms on equal terms. Separate legal regulation was given to acts expressed in public statements orally, in writing or using the media, which contain bullying, humiliation, incitement to hatred against persons because of their sex, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or views (Part 1 of Article 170). Increased criminal liability is borne by persons who call for violence, physical violence against the specified group of people, or financing of such activities (Part 2 of Article 170). Article 171 of the Criminal Code (2000) provides for liability for obstructing a religious rite through obscene language, immoral acts, threats, bullying or other obscene acts.

The Criminal Code of the Argentine Republic (1984) contains a general rule prohibiting insults and discrediting a person (Article 110), a special rule guaranteeing freedom of religion, the Criminal Code of the Argentine Republic does not contain. The Criminal Code of the Republic of Korea (1998) contains a rule on liability for violations of the funeral service or similar actions. This includes the creation of obstacles to the conduct of funeral services, rituals, worship or sermons (Article 158). There is no special norm in the analyzed normative legal act that provides for liability for violation of religious freedom. The Norwegian Criminal Code (1981) classifies as minor crimes against public order the commission by a person in the performance of professional duties or similar activities of denying another person goods or services on terms provided to others due to religious preferences, race, color, etc. (paragraph 349a).

Art. 251 of the Criminal Code of the People's Republic of China (1979) contains an official crime that establishes liability for unlawful deprivation of an employee of public authorities of the right to freedom of religion, it is assumed that the average employee can not infringe on freedom of religion. The criminal law of Japan (1907) provides for freedom of religion only in certain denominations. The Criminal Code of Japan (1907) provides for liability for disrespect for the place of worship, obstruction of preaching, prayer or funeral rites of a Shinto or Buddhist temple (Article 188).

Thus, we note the different approach of the legislator in some foreign countries to the scope of criminal law regulation of religious freedom from detailed descriptions of crimes in criminal codes to a fairly concise and laconic legal regulation within the prohibition of discrimination.

2.3. Ensuring freedom of religion in Ukraine

The Report on the Human Rights Situation in Ukraine from February 16 to May 15, 2019 (2019a) of the Office of the United Nations High Commissioner for Human Rights noted that in the process of transition of parishes and religious communities from the Ukrainian Orthodox Church to the newly established Orthodox Church of Ukraine conflict situations

that "in some cases were accompanied by violence from supporters of both churches. The OHCHR documented nine cases involving violence by supporters of the Orthodox Church of Ukraine in Kyiv and Rivne oblasts. OHCHR is concerned about the involvement of non-religious actors, including local authorities and far-right groups, in the process of such a transition, as well as the inaction of the police during the above-mentioned incidents. In six cases, OHCHR documented constant intimidation and threats against clergy and parishioners of the Ukrainian Orthodox Church even after the community's lost control of the church premises. In addition, in at least ten documented cases, the police did not respond to or facilitate violence, threats and intimidation during incidents.

The next Report on the Human Rights Situation in Ukraine (2019b) states that OHCHR is concerned about the lack of progress in the investigation of past religious violence. Despite the general trend of declining tensions between religious communities, there have been several cases of violence related to the transition during the reporting period. On June 20, 2019, three supporters of the Ukrainian Orthodox Church were injured in one such incident. For the first time, OHCHR recorded an incident that may have taken place in retaliation for violence previously committed by supporters of the conversion of one of the parishes to the Orthodox Church of Ukraine: on June 1, 2019, supporters of the Orthodox Church of Ukraine were forcibly evicted from the meeting room". According to the police, in 2018 under Article 161 of the Criminal code of Ukraine (2001) 27 cases were opened. Only for the first five months of 2019, the police qualified the actions under Article 161 in 43 cases (Report on the human rights..., 2019b). Instead, in her annual report (2019) on the state of observance and protection of human and civil rights and freedoms in Ukraine in 2019, the Verkhovna Rada Commissioner for Human Rights Lyudmila Denisova did not mention the problems of ensuring the human right to freedom of religion.

Legislative regulation of religious freedom in Ukraine is carried out at the appropriate level. Article 35 of the Constitution of Ukraine (1996) guarantees the inalienable right to freedom of thought and religion. This right includes the freedom to profess any religion or not to practice any religion, to perform religious cults and ritual rites individually or collectively, and to conduct religious activities. The mechanism for exercising this right is defined by the 1991 Law of Ukraine "On Freedom of Conscience and Religious Organizations" (Kryvenko, 2014).

As researchers have repeatedly noted, the right to freedom of thought and religion is much broader than provided for in the Constitution of Ukraine (Lykhova, 2006; Fisun, 2005; Yarmol, 2003). This statement is correct, as the Constitution cannot and should not regulate in detail all issues of public and state life of the country, it should contain only the basic fundamental

rights and freedoms that fall under the protection of criminal law and are regulated in detail by the Law of Ukraine "On Freedom of Conscience and Religious organizations" (1991). The Criminal Code of Ukraine acts as a legal guarantee for the realization of a person's right to freedom of religion. The Criminal Code of Ukraine contains a number of norms that provide criminal protection of religious freedom. Thus, there are three levels of criminal law regulation of public relations in the field of religious freedom:

1. *General level.* In accordance with paragraph 3 of Article 67 of the Criminal Code of Ukraine (2001), the commission of a crime based on religious hatred or discord is a circumstance that aggravates the punishment. The general provision of the criminal law applies to all corpus delicti contained in the Special Part of the Criminal Code. Thus, the commission of any crime on the grounds of religious hatred or discord will be considered by the court as an aggravating circumstance.

2. *Qualified level.* Some articles of the Special Part of the Criminal Code of Ukraine contain norms that establish increased criminal liability for committing a crime based on religious intolerance. Thus, the qualified composition of the encroachment on the territorial integrity and inviolability of Ukraine are intentional actions committed to change the boundaries of the territory or state border of Ukraine in violation of the Constitution of Ukraine, as well as public appeals or dissemination of materials calling for such combined actions. with incitement to religious hatred (Part 2 of Article 110 of the Criminal Code of Ukraine, 2001).

Crimes against the life and health of a person committed on the grounds of religious intolerance – premeditated murder (paragraph 14 part 2 of Article 115 of the Criminal Code, 2001) become qualified; intentional grievous bodily harm (Part 2 of Article 121 of the Criminal Code, 2001); intentional moderate bodily injury (Part 2 of Article 122 of the Criminal Code of Ukraine, 2001); intentional task of hitting, beating or committing other violent acts that caused physical pain and did not cause bodily harm (Part 2 of Article 126 of the Criminal Code of Ukraine, 2001); torture, (Part 2 of Article 127 of the Criminal Code, 2001); threat of murder, if there were real grounds to fear the implementation of this threat (Part 2 of Article 129 of the Criminal Code, 2001).

3. Special level. The Criminal Code of Ukraine provides for a number of crimes, which are special components in the field of ensuring freedom of religion. They include:

   – violation of equality of citizens depending on their race, nationality, religious beliefs, disability and other grounds (Article 161 of the Criminal Code of Ukraine, 2001).

- damage to religious buildings or places of worship (Article 178 of the Criminal Code of Ukraine, 2001).
- illegal maintenance, desecration or destruction of religious shrines (Article 179 of the Criminal Code of Ukraine, 2001).
- obstruction of a religious rite (Article 180 of the Criminal Code of Ukraine, 2001).
- encroachment on human health under the pretext of preaching religious beliefs or performing religious rites (Article 181 of the Criminal Code of Ukraine, 2001).
- import, production or distribution of works that promote religious intolerance and discrimination (Article 300 of the Criminal Code of Ukraine, 2001).
- genocide, i.e., an act intentionally committed for the purpose of total or partial destruction of any national, ethnic, racial or religious group by depriving the members of such group of life or inflicting grievous bodily harm, creating for the group living conditions designed for its full or partial physical destruction, reduction of childbearing or prevention in such a group or by forcible transfer of children from one group to another (Article 442 of the Criminal Code of Ukraine, 2001).

The most common in Ukraine in terms of practical application is a crime under Article 161 of the Criminal Code of Ukraine (2001), which establishes responsibility for intentional actions aimed at inciting national, racial or religious hate and hatred, humiliation of national honor and dignity, or insulting the feelings of citizens in connection with their religious beliefs, as well as direct or indirect restriction of rights or establishing the direct or indirect privileges of citizens on the grounds of race, color, political, religious and other beliefs, sex, disability, ethnic and social origin, property status, place of residence, language or other characteristics. Within the outlined topic, we will dwell only on those features of the crime that encroach on freedom of religion: incitement to religious hate or hatred; insulting the feelings of citizens in connection with their religious beliefs; direct or indirect restriction of the rights or establishment of direct or indirect privileges of citizens on religious grounds.

Clarification and detailed interpretation require a terminological reversal of "insulting the feelings of citizens in connection with their religious beliefs", as it contains evaluative concepts. Article 161 of the Criminal Code and the Law of Ukraine "On Freedom of Conscience and Religious Organizations" of April 23, 1991 (Kryvenko, 2014) does not provide an explanation and interpretation of this terminological appeal. There is currently no consistent case law that would help resolve this issue.

The phenomenon of "feeling" is the object of study of psychology. According to experts, "the everyday meaning of the term "feeling" can not be guided in research, because it is so broad that it loses its specific meaning. The concept of "feeling" is associated with feelings, with intellectual processes, with the psychological state of man, but by its nature belongs to emotions" (Ilyin, 2008), they are characterized by duration and stability, in contrast to the elementary emotions that arise "here and now". Feelings arise on the basis of social and spiritual needs (Maklakov, 2000).

Religious should be considered a person's reverent attitude to the fact that according to religious beliefs a person is sacred to him, such as religious beliefs, dogmas of religion, personalities to the actions of saints, as well as sacred images and texts, other objects of religious veneration (pilgrimage). However, it should be noted that the range of feelings of believers can be quite diverse. Thus, for representatives of one denomination, certain behavior in places of religious worship is acceptable, and representatives of other denominations, it is assessed as an insult to the shrine. Such conflicts can arise even from the dogmatic postulates of various denominations. It is seen that constructing such a rather "unreliable" mechanism of criminal-legal protection of religious freedom, taking into account the feelings of one denomination and leveling another, is quite dangerous.

The object of criminal protection is the feelings of citizens in connection with their religious beliefs. That is, the victim of this crime can only be a person who has religious beliefs, regardless of what religion he professes. This clarification requires appropriate procedural evidence, as it should be established that the victim does profess a particular religion. It is obvious that a formal approach to the issue of proving the fact of harm to the victim in the form of insults to religious feelings only on the basis of the testimony of the victim, is unacceptable, because to establish this circumstance it is necessary to prove that the victim is really a believer, i.e. adheres to religious norms, as well as the fact of strong emotional feelings about the fact that his system of views, beliefs, values was abused due to cynical actions of the subject (Aryamov *et al*., 2014). However, the legislator ignores the feelings of persons who do not profess any religion (atheists) or the feelings of persons who are convinced of the impossibility of knowing the presence or absence of God (agnostics), although the Constitution guarantees equality in the rights of all such persons.

Legal uncertainty in this matter may complicate the process of proof, as it is not clear what circumstances should indicate the presence of feelings of citizens associated with religious beliefs, how these feelings may manifest themselves within the objective side of the crime. Feelings associated with religious beliefs can be defined as experiences related to the system of views, ideas, beliefs, values, attitudes dictated by a particular religious teaching and contribute to the formation of a religious worldview (Aryamov *et al*., 2014).

Obviously, based on the psychological understanding of feelings, these experiences of believers should be manifested in the effort to defend the religious system of views, adhere to religious norms, perform religious rites, other religious activities, participate in religious ceremonies and so on. Religious feelings, like any other, are characterized by stability, depth, duration of experiences and thus differ from emotions that are not long and lasting. The objective side of the crime under Article 161 of the Criminal Code of Ukraine (2001), is characterized by public action, which is expressed in 1) incitement to religious hate and hatred, 2) insulting the feelings of citizens in connection with their religious beliefs, 3) direct or indirect restriction of rights or establishment of direct or indirect privileges of citizens beliefs.

When it comes to the manifestations of the objective side of the crime under Article 161 of the Criminal Code of Ukraine (2001), we must pay attention to the actions from which a person must refrain from the threat of criminal punishment. That is, there must be a clear list of rules, norms, principles, dogmas of religious content, violation of which may cause insult to the feelings of citizens in connection with their religious beliefs. With the existing wording of Article 161 of the Criminal Code of Ukraine, the legislator establishes liability for acts that have no legal meaning. To understand and qualify the act as offending the feelings of a citizen in connection with his religious beliefs, it is necessary to refer to the sources and norms of religion, which describe these norms, rules for performing certain rites, rules of conduct in places of religious ceremonies, etc. However, confessional norms are not part of the legislation and legal system of Ukraine, so the assessment of the image of a citizen's feelings in connection with religious beliefs is in the realm of subjective assessment and perception.

This situation is contrary to the principles of justice and legality. It is seen that criminal law can take under protection only those social relations that have a legal meaning, have certain legal boundaries. The object of criminal protection must be meaningfully accurate and understandable. Before pointing to the object of criminal law protection, it should be given legal meaning within the regulatory branches of law, because the criminal law can protect only those relations that are already regulated by positive branches of law (Bondarenko, 2014).

Violations of the right to freedom of religion can be manifested, for example, in certain cynical actions with objects of religious worship (burning of sacred books, overthrow of the cross), cynical inscriptions, drawings, other images, insulting statements about religious beliefs, and so on. It should be emphasized that these are public actions, i.e. those that take place in public places (in parks, shops, on the street, etc.), or information posted on websites, social networks, published through the media, etc., i.e. information is communicated to an unlimited amount person.

There is a fine line between violating the rights of others and expressing one's views. It should be noted that the signs of this crime do not include the expression of their own opinions, views, judgments, even their public expression among believers, dictated by the rejection of certain religious teachings, but what is expressed in an acceptable form does not offend the religious feelings of others. violates generally accepted norms and rules of conduct. Quite dangerous in this context is the provision of paragraph 3 of Article 37 of the draft Law (2019; 2020) "On Media in Ukraine" No. 2693 of 27.12.2019 and 2693-2 of 29.05.2020, which proposes to note that on the territory of Ukraine (including media entities) it is prohibited to disseminate statements that are discriminatory against individuals and their groups on the basis of ethnic origin, nationality, race, religion and belief, age, sex, physical disabilities, health status, sexual orientation or other grounds. Once again, this bill is submitted to the Verkhovna Rada, but it returned for revision.

If such a law is passed, none of us will be able to freely express a critical attitude towards people who have a non-traditional sexual orientation, profess a religion based on certain "specific" dogmas and contradict our own beliefs, including religious organizations that preach and support the creation of a traditional family, traditional family values. This provision contradicts the constitutionally guaranteed right to freedom of thought and speech, to free expression of one's views and beliefs (Article 32 of the Constitution of Ukraine, 1996). In this case, the expression of one's own religious beliefs in any way should not offend the religious views of another person, ie should not contain an insult to any religious beliefs or religion in general, or signs of any crime or threat to commit it, as well as exclude incitement to committing a crime based on religious intolerance or hatred.

The subjective side of this crime is characterized by direct intent. The subject is aware that he is committing public actions aimed at violating religious freedom. As demonstrated above in this article, the criminal law of some foreign countries clearly and unambiguously defines the subjective side of the crime, which encroaches on freedom of religion, which makes it possible to avoid errors of law enforcement. It is emphasized that this act is committed not only with malicious intent, but also has a specific purpose – to insult the feelings of citizens in connection with their religious beliefs (for example, Article 170 of the Criminal Code of Israel, 2010).

Currently in Ukraine at the law enforcement level it is determined that the obligatory sign of the subjective side of the analyzed corpus delicti is the goal - to incite religious hatred, offend the feelings of citizens in connection with their religious beliefs, restrict rights or establish direct or indirect privileges of citizens. religious beliefs. It is difficult to set a goal, because it is the actual result that the subject of the crime wants to achieve by committing a socially dangerous act. The goal must be manifested in specific actions

aimed at achieving it. Therefore, researchers recommend determining the goal taking into account not only the testimony of the person, but also the objective characteristics of his actions. Regarding the algorithm for determining the purpose of offending the feelings of citizens in connection with their religious beliefs, scientists suggest evaluating any action taken at the place of religious rites and contrary to the established and acceptable rules of conduct, if it is aggressive and cynical. The combination of the content of the action and the place of their commission clearly indicate the purpose (Fedotova, 2016).

The absence of signs in the law that characterize the image of feelings cause inaccuracy in the understanding of this terminological phrase. Insult should be understood as an openly expressed, cynical, immoral form of communication that is humiliating for a person. In the context of insulting the feelings of citizens in connection with their religious beliefs, the image should be understood as a humiliation of values, ideas, views of the believer, expressed in an obscene manner. The presence of this goal can be detected not only from the testimony of the victim, but also through the nature of the acts committed (cynical, rude actions that express a clear disrespect for the views and ideals of the believer). The motive does not affect the qualification, so criminal acts can be committed not only in connection with the disgust or rejection of a religion, ie on the grounds of religious intolerance, but for other reasons (for example, hooliganism, racial or national intolerance).

The *subject* of the crime can be any natural sane person who has reached the age of criminal responsibility Public desecration of religious or liturgical literature, objects of religious worship, signs, emblems, symbols or attributes or their damage or destruction, committed for the purpose of insulting the religious feelings of believers, are also liable under Article 161 of the Criminal Code of Ukraine (2001). Summing up, it should be noted that Article 161 of the Criminal Code of Ukraine needs improvement. Unclear legislative wording causes problems in qualifying the feelings of citizens in connection with their religious beliefs, and the lack of standard approaches to the responsibility of representatives of different denominations indicates a violation of the most important constitutional principle of equality before the law. In the literature, there were proposals to supplement the Criminal Code with rules on criminal liability for disclosing the secrecy of confession, forcing a priest to give evidence or testimony, etc. (Marysyuk, 2003).

Emphasizing that the disposition of Article 161 of the Criminal Code of Ukraine (2001) contains a number of evaluative concepts such as "incitement to religious hate and hatred", "insult to the feelings of citizens in connection with their religious beliefs", etc., some scholars have proposed to supplement Part 1 of Article 161 of the Criminal Code on the grounds of "causing significant harm to the rights, freedoms and interests of individuals or citizens". As V.M. Pankevych points out, significant damage

is material and intangible and is determined taking into account all the specific circumstances of the case (2010). The argument in favor of such an innovation is an attempt to specify the degree of public danger of this crime. However, it should be noted that the very concept of "significant damage" also belongs to the category of evaluative and therefore can not perform the expected function of specifying the degree of public danger of the crime under Article 161 of the Criminal Code of Ukraine (2001). Instead, the transformation of the corpus delicti from formal to material will complicate the already difficult procedure of proving, will lead to the introduction of the measurement of this damage, which is usually intangible.

Conclusions

Thus, the current version of Article 161 of the Criminal Code of Ukraine (2001) contradicts the rules of legal technique and legal certainty, as it contains specific explanatory categories not explained by the legislator. This problem can be solved by specifying a list of specific manifestations of criminal behavior, considering the specifics of the subjective side. A wide range of such options can be borrowed from the criminal law of some foreign countries, as analyzed above. In addition, the concepts of "religious feelings", "insult of citizens' feelings in connection with their religious beliefs", "religious beliefs", "religious enmity", "religious hatred" should be defined and enshrined in a special law, taking into account the system of life values that a person is guided by in connection with belonging to a particular religious teaching.

The very feeling of belonging to this religious culture should be the basis for defining religious feeling. The insult to the feelings of citizens in connection with their religious beliefs can be defined as a negative assessment of their religious teachings, which is expressed in obscene degrading form, accompanied by gross violations of public order, expresses a clear disrespect for the generally accepted rules of conduct and morality, but with respect for the freedom of the individual to freely express their views and beliefs. It should be emphasized that there is an organic combination of both of these signs □ images of feelings in connection with the religious beliefs of citizens and gross violations of public order on the grounds of obvious disrespect for society. It is mandatory to establish direct intent to commit these actions and a special purpose.

To ensure the integral and systematic provision of the right to freedom of religion, special norms on criminal liability for violation of freedom of religion should be systematically separated into a separate section of the Special Part of the Criminal Code of Ukraine. This will make it possible to identify a common generic object of these encroachments, to establish a conceptual apparatus for this specific group of criminal offenses, to

harmonize them with international standards. These shortcomings of Article 161 of the Criminal Code of Ukraine (2001) lead to significant difficulties in law enforcement practice.

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Study of The Transformation of Social and Labor Relations in The Conditions of Pension Reform: Aspect of Digital Axiology

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Abstract

He was intended to understand the process of transforming social and labor relations in the context of the implementation of pension reform in Russia, taking into account the axiological aspects, in particular «digital axiology». Its objective is to identify the impact of digitization on changes in industrial relations in the context of pension reform. The theoretical and methodological basis of research is based on an interdisciplinary system approach and generational value theory. An economic analysis is performed, along with the grouping of empirical data and digitization rates are presented. A survey of more than 6,000 people was also conducted, the theme of which was to assess the impact of the Russian Federation's pension reform on social and labor relations, economic growth and the quality of life of the population. The article examines cardinal changes in the social and employment relationships of people of pre-retirement age in the context of digitization. It is concluded that the main problems of the development and formation of digital axiology among the pre-retired demand a set of political transformations.

Keywords: digitization; digital axiology; digital economy; transformation of social and labor relations; planned reform.

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Estudio de la transformación de las relaciones sociales y laborales en las condiciones de la reforma de pensiones: aspecto de la axiología digital

Resumen

El estudio tuvo el propósito de comprender el proceso de transformación de las relaciones sociales y laborales en el contexto de la implementación de la reforma de las pensiones en Rusia, teniendo en cuenta los aspectos axiológicos, en particular la "axiología digital". Su objetivo es identificar el impacto de la digitalización en los cambios en las relaciones laborales en el contexto de la reforma de las pensiones. La base teórica y metodológica de la investigación se basa en un enfoque de sistema interdisciplinario y la teoría de valores de generaciones. Se realiza un análisis económico, junto a agrupación de datos empíricos y se presentan índices de digitalización. Se realizó también una encuesta a más de 6.000 personas, cuyo tema fue evaluar el impacto de la reforma de las pensiones de la Federación de Rusia en las relaciones sociales y laborales, el crecimiento económico y la calidad de vida de la población. El artículo examina los cambios cardinales en las relaciones sociales y laborales de las personas en edad de prejubilación en el contexto de la digitalización. Se concluye que los principales problemas del desarrollo y formación de la axiología digital entre los prejubilados demandan de un conjunto de transformaciones políticas.

Palabras clave: digitalización; axiología digital; economía digital; transformación de las relaciones sociales y laborales; reforma previsional.

Introduction

Modern trends in the economy are characterized by large-scale digitalization processes. Digitization is radically changing the business landscape in all industries. To stay competitive, companies around the world are increasingly investing in digital transformation. Most large companies and holdings have developed programs and concepts for digitalization. For example, PJSC Rosseti is planning to carry out digital transformation of all business processes in the amount of more than 1.3 trillion rubles. (The Concept of Digital Transformation of Pjsc Rosseti 2030, 2018). In addition, digitalization extends to the system of social and labor relations. An example is digital HR platforms aimed at automating employee relationship processes and all HR management processes implemented by large enterprises and organizations. The global nature and significance of digitalization processes for Russia is indicated in the Decree of the President of the Russian Federation of July 21, 2020 No. 474 "On the

national development goals of the Russian Federation for the period up to 2030" (Decree Of The President Of The Russian Federation, 2020).

The ongoing digital transformation of socio-economic processes, aimed at economic growth and improving the quality of life, determines fundamental changes in the content and nature of labor, which leads to the transformation of social and labor relations, the emergence of new remote, non-standard forms of labor relations. These processes lead not only to the development of a new employee value system, but also to the formation of a new axiology in economics - "digital axiology" (Timofeev, 2019). A new meaning is given to business procedures, the relationship between an employee and an employer, production and technological, economic, social and communication processes are accelerated.

Digitalization processes in Russia are superimposed on fundamental institutional changes in the pension system in terms of raising the retirement age, which is due to the aging of the labor force. Thus, according to international (Bersin and Chamorro-Premuzic, 2019) and Russian studies (GKS, 2019; Statistical Handbook, 2019), next year the number of people aged 60 and over will exceed the number of children under the age of five, and by 2025 it is expected that 25% of workers in Europe, the United States and Russia will be over 55 years old. That is, this group of workers is the fastest growing in almost all countries.

The noted tendencies cause certain problems and contradictions in the social and labor sphere. So, on the one hand, the digital economy requires mobile creative workers who are ready and able to work in a highly dynamic digital environment, possessing the necessary digital competencies, for which information and digital technologies are one of the basic instrumental values (values-methods). On the other hand, the pension reform keeps the older generation on the labor market, who have different basic instrumental values. Are pre-retirees ready and able to change in the context of digitalization and how economically feasible is the "digital transformation" of working pre-retirees?

A number of Russian and foreign studies indicate that enterprises (employers) do not want to enter into labor relations with older workers and pre-retirees. Thus, according to research by the Deloitte agency, which surveyed more than 10 thousand large companies, more than two-thirds of companies considered old age a competitive disadvantage, two-thirds of people aged 45 to 70 years old faced age discrimination (Bersin and Chamorro-Premuzic, 2019). That is, workers over 50 years old are considered by most enterprises to be less capable, less flexible (able to adapt) or less ready to innovate and digitalize than younger employees, which is confirmed by the authors' studies. A survey of business leaders conducted by the authors of this study revealed employers' preferences for hiring employees under the age of 50. According to employers, workers

over 50 years old have low motivation to perform labor operations, have low or no digital skills and competencies, and are also prone to professional burnout.

Accordingly, these debatable questions about the possible transformation of the labor values of older workers, about the formation of the "digital axiology" of pre-retirees determine the relevance of the research topic.

1. Literature Review

The ongoing transformation of the value space in social and labor relations is a consequence of institutional changes in the social sphere and turbulence of socio-economic development, and, from our point of view, directly affects the quality of life of the population and the strategic stability of the country's socio-economic system (Legchilina, 2019).

It should be noted the pluralism of theories of transformation of socio-economic systems (the theory of neocapitalism, the theory of staged economic growth, the theory of industrial, post-industrial information society, the theory of convergence, the theory of the technotronic era, new institutionalism, the theory of quality of life, and others).

Problems of social and labor relations and their transformation are presented in the works of Russian scientists and foreign studies Polovinko V.S. (Polovinko, 2015), Medvedeva T.A. (Medvedeva, 2013), Nehoda E.V. (Nehoda, 2013), (Legchilina, 2019), Buchele, R., Christiansen J. (Buchele and Christiansen, 1999), (Howe, 2017) and many others.

There is a diversity and pluralism of research in the field of labor values (Cutcher-Gershenfeld and Isaac, 2018), (Helfen *et al.*, 2018) and others. The problems of pension reform, the positive effects and the likely risks of raising the retirement age are considered in the works of Russian scientists and foreign studies Yu. M. Gorlin, T.M. Malevoy, V. Yu. Lyashok (Gorlin *et al.*, 2018), A.K. Soloviev (Soloviev, 2015), I. F. Zhukovskaya (Zhukovskaya, 2018), A. Albanese, B. Cockx (Albanese and Cockx, 2019), S. Etgeton (Etgeton, 2018), J. Geyer, P. Haan, A. Hammerschmid, M. Peters (Geyer *et al.*, 2020), M. Sánchez-Romero, J. Sambt, A. Prskawetz (Sánchez-Romero *et al.,* 2013), T. Vigtel (Vigtel, 2018).

The theoretical and methodological foundations of the research were based on an interdisciplinary approach, including theories and methodologies of axiology, labor economics, etc. (Rokeach, 1973). In social and labor relations (SRT), values-goals are internal final motivational semantic tasks that the parties wish to achieve. Values-methods in SRT are considered as means of achieving value-goals. That is, for example, "the result of labor" refers to the value-goals, the means of labor and the form of SRT - to the values-methods. In accordance with this theory, values-goals

are decisive, system-forming in social and labor relations and are more resistant to changes. Values-ways are determined by the development of society and the socio-economic system. Therefore, in the context of digitalization, within the framework of this study, we will consider changes in values-methods in the context of the formation of a "digital axiology" of labor in the social and labor relations of pre-retirees. Then we will take A.V. Timofeev as a basis for the study (Timofeev, 2019), which defines "digital axiology" (digitalization as a value) as a new nature and structure of values in cultural, socio-economic reality, which is based on the digitalization of the economy and society. At the same time, the concept of "value" is considered by the authors in classical dialectics as the significance of phenomena and objects of reality.

2. Materials and methods

Digitalization not only changes the structure of the labor market and causes the emergence of some professions and the exit from the market of others, but also leads to an increase in labor productivity due to the automation of labor processes, and a reduction in personnel. On the other hand, there is an increase in the life expectancy of the population and the burden on the pension system, which forces employers to keep jobs for workers of pre-retirement and retirement age. The retirement age for men and women has been raised.

According to Russian legislation (Federal Law "On Employment of the Population in the Russian Federation"), persons of pre-retirement age are now considered citizens for five years before the onset of the age that gives the right to an old-age insurance pension, including those assigned ahead of schedule.

To make the innovations carried out as painlessly as possible into the life of Russians, the Government of the Russian Federation has strengthened the legal position of pre-retirees at the legislative level.

The efforts of all branches of government: legislative, executive, judicial, are currently aimed at protecting the rights of this category of persons. Local self-government bodies also play a huge role.

For this category of workers, measures of state support and protection are provided.

The Ministry of Labor and Social Protection of the Russian Federation has developed special program activities that include retraining and advanced training courses that allow people of pre-retirement age to master new professions, while remaining in demand on the market.

In 2019, within the framework of the RFBR grant, a survey was conducted of about 6,000 respondents, the purpose of which was to assess the impact of the pension reform of the Russian Federation on social and labor relations, economic growth, and the quality of life of the population (Apenko *et al.*, 2019).

Research methodology. The field qualitative and quantitative research was carried out by a survey method using a questionnaire developed by the authors, consisting of 18 questions in paper form and by reference in the online mode. The formulated purpose of the survey is to assess the impact of the pension reform of the Russian Federation on social and labor relations, economic growth and the quality of life of the population.

For the survey, the general population was selected - the economically active population of the Russian Federation. The sample was formed from the general population in a random way. The number of respondents included urban and rural residents of both sexes, economically active population, with different income levels and without it, representatives of different social statuses.

When analyzing the data, the following tools were used: arithmetic mean, minimum and maximum values, metric scales, fashion, frequency, valid percentage, variance.

The conclusions obtained in the course of the study made it possible to assess the opinions of people regarding the pension reform of the Russian Federation, labor values and satisfaction with working conditions, labor behavior during the period of active digitalization, as well as the socio-psychological climate in the work collective towards persons of pre-retirement and retirement age. The authors' interest lies in expanding the scientific concept and views in the field of building a model for transforming social and labor relations that affect the quality of life of the population and economic growth within the framework of the system-axiological approach.

In addition, a survey was conducted of workers of pre-retirement age in a number of divisions of the Russian Railways holding company. A total of 760 people were interviewed, including 515 workers, 245 specialists and employees. The survey was conducted from April to September 2019.The source of the questionnaire for the respondents was the place of work / study (90%), employment centers (2.6%); Pension fund branches (2.5%), Internet (1.9%), acquaintances (2%), MFC branches (about 1%). The majority of the survey was women. The average age of the respondents is 39 years. In terms of employment status, they are mostly specialists (41.3%). The average monthly income of the respondents is 19 thousand rubles. The geography of respondents is represented by urban and rural residents of the Russian Federation.

3. Results and discussion

This study focuses on workers who are five years or less before retirement, that is, relative to 2020 and taking into account the pension reform, these are men born in 1960-1963 and women born in 1965-1969. Let's call this category pre-retirees. The authors of the designated problematic in the study of digital axiology passed it through the Strauss-Hove theory (Kulakova, 2018). Note that, in accordance with the value system of Strauss generations, pre-retirees occupy an intermediate position between "baby boomers" and generation X, for whom digitalization is more of a necessity than a value. Thus, this generation, which does not attach importance and importance to computer and information technologies, is ready to adapt to a rapidly changing environment, including digitalization. The labor axiology of pre-retirees was formed in the post-war years, characterized by numerous reforms, disasters, transformations and wars (bipolar world, Chernobyl accident, Afghan war, restructuring to market relations, default, privatization and many others) (Ozhiganova, 2015; Stepanova and Trishina, 2019). Accordingly, this generation is characterized by a willingness to change, technical literacy, the ability to rely only on themselves, and the ability to adapt to a changing world (Shamis and Antipov, 2016). These conclusions are confirmed by the author's research.

As noted above, a survey was conducted in 2019 aimed at assessing the impact of the pension reform of the Russian Federation on social and labor relations, economic growth and the quality of life of the population. According to the survey, in the case of the introduction of digital technologies, modern information software based on digital, at the workplace, 5,065 people are ready to undergo training and continue to work. (85.2%); will stop working and retire (in case of retirement age) - 655 respondents (11%); will change the place of work - 215 people. (3.6%) (Apenko *et al.*, 2019).

Thus, after the survey, the following conclusions were made.

Half of the respondents (49.9%) are fully aware of the pension reform of the Russian Federation, the essence of which is the increase in the retirement age, a little less (46.7%) have heard, but do not know the details.

According to the respondents, the main goal of the pension reform proposed in the questionnaire is to increase the income of the state budget through tax payments of working citizens (40.8%). With the aim of the reform "improving the quality of life of citizens, since the income of working citizens is higher than the size of the pension of pensioners", 43.8% of respondents fully disagree.

When introducing information technologies, modern software and digitalization elements, 85.2% of respondents are ready to undergo training and continue to work. The remaining 11% of respondents will either stop working and retire or change their place of work (3.6%).

For the respondents - people of pre-retirement age and working pensioners - labor relations with employers have not changed. Such answers are 80%. Transferred to a fixed-term employment contract - 8.7% of responses. Other answer options (dismissal, layoffs, reduced job responsibilities) take less than 2%.

Respondents - people of pre-retirement age / working pensioners assessed a positive attitude towards themselves - 34.8% of responses; rather positive - 22.6%; indifferent - 33%; rather negative, tension is felt - 2.5%; negative because of obstacles to the career of other employees - 3.4%.

90.9% of the respondents did not change their attitude to their official duties since the beginning of the pension reform. Summing up, it should be noted that the data presented demonstrate a clear tendency of ambiguous opinions of residents of the Russian Federation regarding the increase in the retirement age and the goals of the pension reform. The attitude of people of different generations to the pension reform does not have a pronounced negative connotation. The change in social and labor relations affected only a part of employed citizens of pre-retirement and retirement age. A positive trend is the desire for advanced training in the context of the digitalization policy.

In addition, a survey of workers of pre-retirement age in a number of divisions of the Russian Railways holding company made it possible to draw the following conclusions. Thus, more than 37.4% of respondents spoke about the likelihood of digitalization of the workplace in the next two years. All respondents (100%) expressed the likelihood of changes in the labor situation in connection with the digitalization of the workplace. Opinions were distributed as follows: 17.1% expect a demotion; 42.4% see the need and are ready to master new digital competencies through advanced training; 9.4% are ready to change their profession; job losses are expected to be about 10.7%. Only 9.1% of the respondents expressed their readiness to switch to flexible forms of social and labor relations, including self-employment. Only 15.5% of respondents expect higher wages from digitalization of the workplace in excess of the bonuses provided for by the collective agreement.

Accordingly, it can be concluded that pre-retirees are ready to learn digital technologies, to form digital competencies, and to develop digital literacy. On the other hand, employers are not ready to invest in the training of pre-retirees and the formation of their digital axiology, giving preference to generation Y workers. The “digital axiology” of generation Y workers is being formed much faster, since it is this generation that creates digital technologies. Skepticism and inability to obey, the desire for immediate reward and interesting work are characteristic of the “gamers”.

The subject of modern discussions in the field of formation and development of digital axiology of pre-retirees is the problem of the value of intelligence, work experience and digital competencies. It should be noted that the foundation of digitalization, digital economy and artificial intelligence was laid by pre-retirees who strive to adapt and survive in difficult socio-political and economic conditions. On the other hand, pre-retirees do not have sufficient digital literacy and digital competencies. Foreign researchers also conduct research on age discrimination among employees (Carlssona and Eriksson, 2019).

Digital competencies are defined in this study as well-trained, deeply rooted procedures for using digital devices, communication applications, and networks to access and control information. Digital competencies include the effective use of various modern computing tools; confident use of software and hardware to search, extract, copy, interpret and exchange digital data; analysis of digital data; creation and application of computing tools for processing industry data for the purpose of making decisions; using online tools for team projects.

A number of scientists are concerned about the problem of weakening and even devaluation of natural intelligence in favor of artificial intelligence. According to experts, this problem mainly affects generations Z and Y, which, thanks to the development of artificial intelligence, may lose motivation for development E. Shamis, A. Antipov (Shamis and Antipov, 2016), T. Stepanova, O. Trishina (Stepanova and Trishina, 2019).

In addition, studies of the digital axiology of pre-retirees have shown the existence of a "digital barrier", which is caused by the presence of socio-economic inequality, low incomes of a number of categories of pre-retirees and rural areas, which limits access to digital technologies (for example, lack of a computer and access to the Internet (for example, about 40% of pre-retirees do not have access to the Internet; leads to anxiety when interacting with new digital technologies due to the lack of digital literacy and skills, etc.

The digital literacy index of Russians in the 1st quarter of 2020 was 58 points on a scale from 0 to 100 (the index was calculated using the Digcomp methodology). Only 31% of Russians - one in four - have digital skills. It should be noted that the annual internal costs for the development of the digital economy in Russia amount to 3.6–3.7% of GDP. Russia ranks 45th in the world in terms of the development of information and communication technologies (ICT). The Business Digitalization Index (hereinafter referred to as the Index), developed by the Institute for Statistical Studies and Economics of Knowledge of the Higher School of Economics, characterizes the speed of adaptation of organizations to digital transformation. The index is calculated for organizations in the business sector of Russia, Turkey, Japan, the Republic of Korea, as well as European countries. According to

the National Research University Higher School of Economics, the Index in Russia is one of the lowest among the countries included in the study. In 2018, the Index was 31% against 28% in 2017 (Fig. 1).

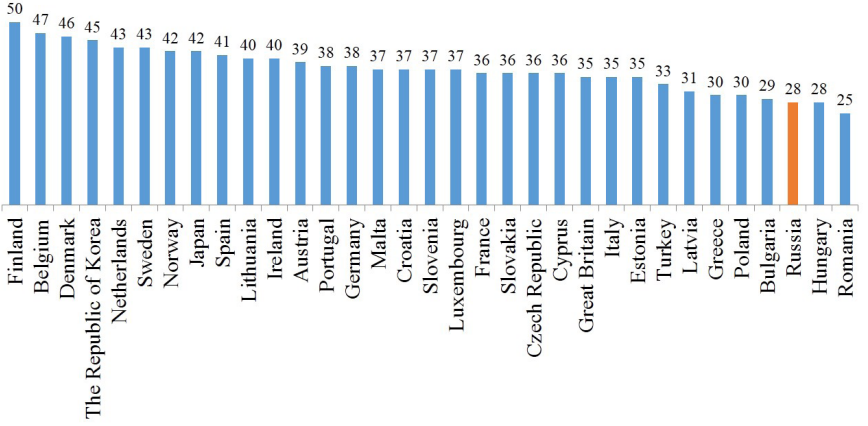

Figure 1. Business digitalization index in Europe and Russia

Source: (National, 2018).

Analysis of the intensity of the use of digital technologies in Russia taken into account when calculating the Index shows that broadband Internet access is used by 86% of organizations, cloud services - 27.6%, ERP systems - 21.6%, e-commerce - 19.9%. RFID technologies - 6% (Table 1).

Business digitalization index		Broadband internet		Cloud services		RFID technology		ERP systems		Electronic commerce	
2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
28	31	82	86	23	27,1	6	6,8	19	21,6	12	19,9

Table 1. Business digitalization index in Russia in 2017–2018

Source: (National, 2018).

It should be noted that the international index of the digital economy of society in Russia also remains at a fairly low level. In 2019, it amounted to 0.45 pp (Fig. 2).

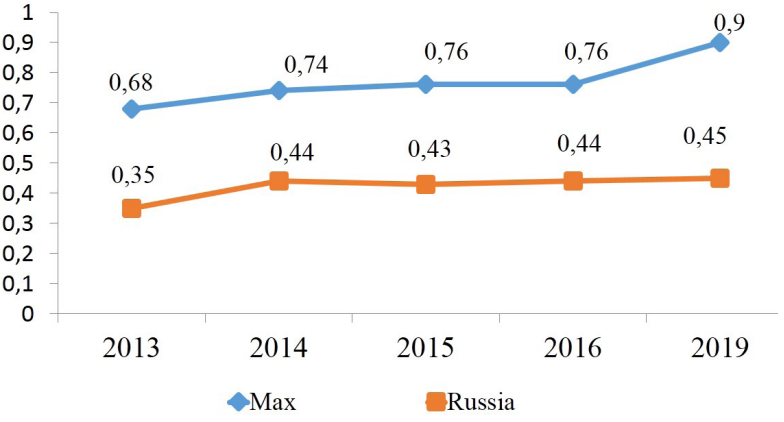

Figure 2. Dynamics of the international index of the digital economy of society

(Bakumenko and Minina, 2020).

Thus, the research results have shown the underdevelopment of digital technologies in Russian society, respectively, "digital axiology" in Russian society is at the stage of formation, in particular among people of pre-retirement age. In addition, studies have shown the reluctance and unwillingness of employers to invest in solving this problem, especially in relation to pre-retirees.

The authors note that numerous international studies of innovative transformations in various fields speak of the need for "team thinking". The vast majority of innovations, scientific advances are the result of coordinated, human activities or people working together as a whole. Maximizing the effectiveness of teamwork is an increase in cognitive diversity (Anshina, 2019). The results of these studies indicate the need to attract older workers to develop innovative products.

Taking into account the global trends of population aging, the extension of the retirement age, according to the authors, is economically justified for the country. The authors believe that the formation of "digital axiology" among pre-retirees should be based on the balance of interests of the parties in social and labor relations. That is, in order to extract the maximum value that pre-retirees can bring to the enterprise, companies need to transform social and labor relations. The author's approach to the formation of "digital axiology" within the framework of the transformation of the system of social and labor relations is based on the concept of lifelong learning and the

formation (change) of values for several generations. Based on the works of L. Gratton and E. Scott, the authors recommend moving from a three-stage life, consisting of education, career and retirement, to a multi-stage path, forming a communicative and analytical axiology. The authors' conclusions are confirmed in the forecasts of the Pew Research Center (Lloyd, 2018) and in the studies of Russian scientists (Stuken and Korzhova, 2019), who say that the most valuable skills in the future will be those that machines cannot easily reproduce, for example, creativity, critical thinking, emotional intelligence, adaptability and collaboration.

Conclusions

Thus, the "digital axiology" of pre-retirees is formed under the influence of the corresponding economic and political situation, leading to a change in the digital culture of pre-retirees as a condition of "existence" in the workplace and in society. The formation of a digital axiology of pre-retirees determines their labor behavior. Therefore, we can make a statement about the transformation of social and labor relations arising under the influence of digitalization. Successful implementation of this task requires adaptation of pre-retirees to the constantly changing conditions of digitalization.

In general, studies have shown that, in comparison with generations Z and Y, digitalization is not one of the basic values (values-ways) among pre-retirees but is another change in the environment to which it is necessary to adapt and adapt. Accordingly, the digital axiology of pre-retirees is in the stage of formation.

To implement the outlined institutional reforms in Russia, it is necessary to continue the outlined course for the development of digital literacy and digital skills, especially for workers of pre-retirement age, thereby forming a digital axiology of pre-retirees.

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Investigation of sexual crimes against children

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Abstract

Through a documentary methodology close to legal hermeneutics, the article reveals the main problematic aspects of the detection, investigation, and combat of crimes against sexual freedom and the inviolability of children, as well as highlights the main positions of the European Court of Rights in this regard. Ukraine is currently actively discussing the prospect of a comprehensive and stable juvenile justice system, so protecting the rights of the child from the usurpation of sexual freedom and inviolability is an important part of ensuring its functioning. The work aims to establish the characteristics of detection, investigation, and prevention of crimes against the freedom and sexual inviolability of the child and, suggest ways to solve the main problems. The result of this work is to identify specific features of the detection, investigation, and combat of crimes against the freedom and sexual inviolability of the child, while determining the importance of investigative and preventive actions considering the psychological characteristics of children, proposing ways to improve the existing system of protection of sexual crimes. It is concluded that the prevention of these crimes requires multidimensional legal and political action.

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Keywords: juvenile justice; offences against the sexual freedom and inviolability of the child; research actions; preventive measures; justice in Ukraine.

Investigación de delitos sexuales contra niños

Resumen

Mediante una metodología documental próxima a la hermenéutica jurídica, el artículo revela los principales aspectos problemáticos de la detección, investigación y combate de los delitos contra la libertad sexual y la inviolabilidad de la niñez, así como resalta las principales posiciones de la Corte Europea de Derechos al respecto. En la actualidad, Ucrania está debatiendo activamente la perspectiva de un sistema de justicia juvenil amplio y estable, por lo que proteger los derechos del niño de la usurpación de la libertad e inviolabilidad sexuales es una parte importante para garantizar su funcionamiento. El trabajo tiene como objetivo establecer las características de detección, investigación y prevención de los delitos contra la libertad e inviolabilidad sexual del niño y, sugerir formas de resolver los principales problemas. El resultado de este trabajo es lograr identificar rasgos específicos de la detección, investigación y combate de los delitos contra la libertad e inviolabilidad sexual del niño, determinando al mismo tiempo la importancia de las acciones investigativas y preventivas teniendo en cuenta las características psicológicas de los niños, proponiendo formas de mejorar el sistema existente de protección de delitos sexuales. Se concluye que la prevención de estos delitos requiere de una acción multidimensional jurídica y política.

Palabras clave: justicia de menores; delitos contra la libertad sexual e inviolabilidad del niño; acciones de investigación; medidas preventivas; justicia en Ucrania.

Introduction

The state, which positions itself as legal, democratic, and social, must direct the vectors of policy development to ensure decent living conditions for people and citizens regardless of their age. However, given that the child, due to the extent of his legal personality, in particular, legal capacity, cannot adequately protect his rights and freedoms without the assistance of legal representatives, the state should be focused on creating an effective mechanism for protection of rights and interests of the child.

Noting in Article 3 of the Constitution of Ukraine (Law 27-IX /1996) that a person, his life and health, honor and dignity, inviolability, and security are recognized in Ukraine as the highest social value, the state has committed itself to all available legal means and ways to protect the person, including the child. The Basic Law provides for the state protection of children, the equality of children in their rights, regardless of origin, or whether they are born in or out of wedlock, and states that any violence against and exploitation of a child is prosecuted. Part 1 of Article 10 of the Law of Ukraine "On Child Protection" (Law 2402-III/2001) states that every child is guaranteed the right to liberty, the security of person, and protection of dignity.

The topic of protection of children's rights is also widespread in the international community. Thus, a special place in the regulation of children's rights is occupied by the 1989 UN Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms (United Nations, 1950) (the Convention), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual the rights of the child concerning child trafficking, child prostitution, and child pornography.

Thus, Article 19 (1) of the UN Convention on the Rights of the Child (United Nations, 1989) provides that States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (United Nations, 2000) provides that each State Party shall ensure that, at least, the offer, transfer, or receipt by any means of sexual exploitation children; offering, receiving, transferring or providing a child for the purposes of child prostitution as defined in Article 2; the production, distribution, import, export, supply, sale or storage for the above purposes of child pornography as defined in Article 2 are fully covered by criminal law, whether committed at the national or transnational level or individually or in an organized manner.

This indicates a high level of interest of the international community in establishing the most accurate regulation of violations in the field of sexual exploitation of children in order to prevent them.

Include in a paragraph the objective of the article and the importance of the research.

1. Methodology of the study

Various methods of scientific cognition were used to write the article. Thus, the dialectical method revealed the general properties, connections, and patterns that arise in the detection, investigation, and prevention of crimes against sexual freedom and inviolability of the child.

Further, the formal-legal method helped to clarify the essence and content of legal norms, their functions, features of the concepts they define, and the processes they regulate, within the research topic.

The analysis and synthesis made it possible to provide a general description and characterization of the features of detection, investigation, and prevention of crimes against sexual freedom and inviolability of the child, to identify and compare basic positions on the legal regulation of relations related to violations of children's rights. The synthesis also served as a basis for combining original ideas, principles, developments for their further effective use in legal relations arising from the crimes of a sexual nature against children.

Moreover, the hermeneutic method allowed, based on acquaintance with texts of normative and doctrinal sources, to investigate the maintenance of separate legal norms and theoretical provisions in the context of actual questions of protection of the rights of the child to inviolability and sexual freedom. Thanks to the comparative-legal method, it has become possible to compare the main legal positions of the ECtHR, considering the specifics of each case.

Generalization, as a method, made it possible to identify the main problems and vectors of development in ensuring the protection of children's rights within the formation of juvenile justice. The logical-legal method was used to formulate proposals for the further development of juvenile justice, taking into account the counteraction and investigation of crimes against sexual freedom and inviolability of children.

All research methods were interconnected and complementary.

2. Analysis of recent research

Some works by domestic and foreign scientists are devoted to the protection of the child's rights arising from the commission of crimes against sexual freedom and inviolability. Thus, Dudorov (2018) paid much attention to the general characteristics of crimes against sexual freedom and inviolability of the person, and the coverage of the main features of each specific crime within the relevant category.

Dzhuzha (2009) focused on the prevention of sexual crimes, primarily by law enforcement. The researcher noted that preventive measures should be taken with potential offenders, children, as well as their parents / legal representative.

A joint study by Denisovskyi and Fedchak (2018) was aimed at identifying the main shortcomings of the existing system of preventive measures to commit sexual crimes against children and suggest ways to overcome them, in particular, through appropriate methodological and financial support.

At the same time, Ortynskyi *et al.* (2018) studied the general aspects of crime investigation in Ukraine.

At the same time, the reasons for the high level of latency of crimes against sexual freedom and inviolability of the child, the application of the practice of an international judicial institution, the peculiarities of investigative actions in the examination of these crimes, and the establishment of a system of bodies and measures to prevent child sexual abuse character.

3. Results and discussion

Global trends in the development of criminal law on liability for sexual crimes are both its consistent liberalization (manifested in the decriminalization of adultery, seduction, voluntary homosexuality) and the elimination of gender inequality, and strengthening criminal protection of children from various forms of sexual violence and sexual exploitation.

It should be noted that the sexual freedom and/or sexual integrity of a person are subject to many crimes under current criminal law. Some of them concern exclusively the commission of appropriate actions concerning a minor, others do not have a specially identified victim.

Thus, sexual freedom and inviolability are generic objects of the following crimes:

- rape (Article 152 of the Criminal Code of Ukraine (hereinafter – the Criminal Code (Law 2147a-VIII/ 2001).
- sexual violence (Article 153 of the Criminal Code).
- coercion to have sexual intercourse (Article 154 of the Criminal Code).
- sexual intercourse with a person who has not reached the age of sixteen (Article 155 of the Criminal Code), and;
- depravity of minors (Article 156 of the Criminal Code).

Besides, violations of sexual freedom and inviolability are also accompanied by such crimes as an encroachment on morality (Articles 301–303 of the Criminal Code), coercion to engage in prostitution (Part 1 of Article 303 of the Criminal Code), trafficking in human beings (Article 149 of the Criminal Code), committed for sexual exploitation, etc.

Dudorov (2018) notes that sexual freedom should be understood as the right of a person to independently choose a partner for sexual intercourse, a form of such intercourse, and not to allow any coercion in this area. An adult (in the context of the Criminal Code, is a person who has reached the age of 16, not a person who has reached a certain age for marriage) and a mentally healthy person determines with whom and in what way he will satisfy his sexual needs.

If sexual freedom is associated with a person's ability to control himself or herself in the area of sexual intercourse, then sexual integrity means a legally protected condition that prohibits sexual intercourse with a person who for certain reasons (for example, under the age or mental illness) is not a carrier of sexual freedom. Sexual integrity, being an absolute concept, means that certain interests of an inviolable person cannot, under any circumstances, be violated by another subject, and sexual acts committed against him/her are recognized as criminally punishable.

Thus, sexual freedom and sexual integrity of a person are concepts-antipodes that are independent in nature and do not intersect.

There are significant problems in Ukraine with the detection of such crimes, resulting in the classification of crimes against sexual freedom and inviolability as latent. According to the author, a significant percentage of latency of sexual crimes is due to several reasons. The first, and unconditional, reason should be considered the lack of the child's necessary capacity to protect their violated rights. Thus, a child can turn to one of the legal representatives who are obliged to represent the interests of the child, in which adults often do not accept the child's stories and consider them fictional, and therefore do not take the necessary measures, including not resorting to appropriate state-authorized bodies.

There are likely cases of adults committing crimes against children due to Soviet and, in some cases, post-Soviet upbringing, when reporting sexual violence, especially in the family, was inconvenient and embarrassing because it increased public condemnation.

The psychological and psycho-emotional development of a child who suffers from sexually motivated crimes also plays an important role in detecting sexual crimes where the victims are children. Thus, depending on age, development, and upbringing, the child may not understand the nature of the actions committed against him/her and therefore may consider the situation of sexual violence to be normal.

It should be agreed with Shapovalov (2017) that the pre-trial investigation begins from the moment of registration of information about the fact of the committed crime in the Unified register of pre-trial investigations. However, the grounds for initiating criminal proceedings may be both the victim's appeal and the materials of the operational units. Until the start of the pre-trial investigation, law enforcement officers are taking several measures to identify the facts of criminal activity.

Thus, the key point in detecting crimes against sexual freedom and the inviolability of the child is the close cooperation of law enforcement agencies with teachers of educational institutions, guardianship authorities and other bodies called upon to monitor the rights of the child.

A negative consequence of the development of modern society has been the rethinking of many things, including the modification of consciousness regarding the perception of the child as such. The rapid pace of adulthood, which is currently observed in modern society, according to the author, leads to an increase in the number of offenses against sexual freedom and inviolability of children.

Investigations of crimes against sexual freedom and the inviolability of the child are also characterized by certain features. It should be noted that such crimes have a negative impact on the psychological state of the child, and therefore it is necessary to carry out appropriate investigative actions, taking into account the circumstances of the situation.

Thus, an important place among the priority investigative actions is occupied by the interrogation of the injured child.

In accordance with part 1, 2 of Article 226 of the Criminal Procedure Code of Ukraine (Law 4651-VI/2012 of April 13), the interrogation of a minor or a minor is conducted in the presence of a legal representative, teacher, or psychologist, and if necessary – a doctor. The interrogation of a minor may not continue without a break for more than one hour, and in general for more than two hours a day.

Given the specificity of the crimes committed against the child, the interrogation should take the form of a conversation with the child, a survey. In this case, if there is a possibility of a crime against the child by one of the legal representatives, their presence should be excluded. The need to talk to the child is explained by the fact that mainly the child's statements and behavior are the main means of determining whether sexual violence has occurred.

Human (2016) emphasizes that to create a trusting atmosphere of a child's conversation with a law enforcement officer, such a conversation should take place in a place that the child considers "safe." It is important that in some Belarusian cities there are already children's bar associations,

and in the Baltic States there are special offices where children victims of violence in comfortable psychological conditions have the opportunity to tell in detail, to show with toys what happened to them. A video of such a consultation will be broadcast later during the court hearing.

According to the author, it is also possible to change the person who will conduct the interrogation, as the creation of favorable conditions for establishing the circumstances of the case depends on personal relationships and friendly children to the interrogator.

It is also important to remember that the child's interrogation should be as concise and meaningful as possible. The fact is that with each subsequent story of the child about violence against him increases the risk of confusing testimony and distortion of facts, which devalues the quality of interrogation as an investigative action. Conducting timely and high-quality interrogation will help minimize the number of interviews with the child in the future, record the child's testimony within the statutory period, protect the child's psyche from re-emotional experience of the crime and provide an opportunity to begin rehabilitation with the child as soon as possible.

It is also important to conduct a medical examination of the child. Views on the appropriateness of medical examination have changed significantly in recent years. Experts had many reservations about the appropriateness of medical examinations of children who have been sexually abused because of their ability to harm the child and because the likelihood of favorable medical conclusions was generally remote.

However, the author is convinced that a medical examination is necessary, because in its absence to claim a full and comprehensive investigation of the crime, the collection of all possible evidence is not possible, which contradicts the requirements and objectives of criminal proceedings.

Parents or other legal representatives who are constantly with the child should also be interviewed to gather additional information about the alleged crime, to find out their role in prompting the child to make or deny the charges, to determine whether one of them is involved in the crime, and so on. Besides, a conversation with legal representatives will help to learn about the normal behavior of the child, which when applied to violence changes, because it has clear signs of psychological abuse.

It is not uncommon for a child to know the person who committed the crime. In this case, it is important to immediately detain and interrogate the potential offender.

Also, in the investigation of crimes against sexual freedom and the inviolability of the child, a mandatory risk assessment should be carried out. If professionals determine that a child is at risk of future sexual, physical, or emotional abuse, then a plan must be developed to protect him/her.

It is not an exception to use investigative actions in the investigation of the above-mentioned crimes, such as presenting a person for identification, presenting things for identification, investigative experiment, but due to the special psychological subtext, they should be carried out carefully and in exceptional cases.

At the same time, the ineffective pre-trial investigation and trial of cases of sexual offenses against children become grounds for the European Court of Human Rights to recognize violations of the provisions of the Convention by States. Cases, related to the need to protect children from sexual violence, have generally had a major impact on the development of ECtHR practice, which covered both the scope of Article 8 of the Convention and the concept of positive obligations of the state in connection with the signing of this international treaty.

Thus, in X. and Y. v. The Netherlands (26 March, 1985), the ECtHR gave a detailed description of the scope of Article 8 of the Convention, according to which the concept of "private life" refers to a person's physical and moral integrity, in particular his or her sexual life.

Also, this case should be considered indicative, as it can be considered as one of the driving forces for the revision of the national laws of the signatory states to the Convention. Thus, X. and Y. v. The Netherlands concerned sexual abuse of a mentally handicapped 16-year-old girl, and the complaint lodged by her father was upheld by the police but was subsequently rejected by the court because the relevant article of national law could be applied only if directly to the victim. The ECtHR acknowledged that the protection provided by Dutch law was insufficient in the case of such an unlawful act to which Y. was subjected, and after analyzing the criminal law in force at the time, the ECtHR stated that the State did not provide adequate – practical and effective – protection and found a violation of Article 8 of the Convention.

The ECtHR recognizes sexual crimes committed against children as serious acts that threaten the basic values and aspects of private life. Moreover, even in cases where there has been no actual physical violence, the ECtHR dares to establish that the domestic law of a State party to the Convention complies with the provisions of the Convention itself.

An example of such a finding is the judgment in Soderman v. Sweden (12 November, 2013), which was taken following an application by the applicant alleging a breach by the State of its positive obligations in connection with the signing of the Convention. The applicant insisted that the State party had failed to provide her with adequate protection against the violation of her inviolability as a result of her stepfather's attempt to film the applicant naked at the age of 14. The ECtHR agreed with the respondent State's position that the stepfather's actions did not involve physical violence or

corruption, but that the applicant's inviolability had nevertheless been violated. The aggravating circumstances of the ECtHR acknowledged that the offense had been committed against a minor by a close person at her home, that is, in a place where the applicant should have felt safe.

The case-law of the European Court of Human Rights has played an important role as a catalyst for crimes against sexual freedom and the integrity of the child that has taken place in educational institutions. In this context, the case of O'Keeffe v. Ireland (28 January, 2014), in which the ECtHR concluded on a complaint of sexual violence suffered by the applicant during her studies at a state-funded school but administered by the Catholic Church, is illustrative. In resolving the case, the ECtHR found that the State had violated the provisions of the Convention because, in the ECtHR's view, the respondent State should have been aware of the potential risks of sexual violence in schools and ensured effective monitoring of teachers' behavior towards children.

In some cases, complaints to the ECtHR relate to an imperfect criminal investigation mechanism. Thus, in the decision in the case M.C. and Others v. Bulgaria (4 March, 2003), the ECtHR found the defendant in breach because the law, case law, and investigation were imperfect.

Unfortunately, the ECtHR did not stay away from the attention of Ukraine, which was the defendant in the case M.S. v. Ukraine (11 october, 2017). Although the case concerned the determination of the child's place of residence, it touched on issues of violation of sexual freedom and inviolability. The ECtHR acknowledged the pre-trial investigation into the sexual abuse of the applicant's child, who had suffered from the pressure and behavior of the mother's roommate. In its judgment, in this case, the ECtHR noted numerous violations of Ukraine's obligations under the Convention due to the ineffectiveness of the pre-trial investigation:

- it was not thorough, as evidenced by numerous referrals for further investigation following the reversal of the closure decisions.
- late, as certain investigative actions, in particular a forensic psychiatric examination, which led experts to conclude that the girl could have given true testimony (acknowledging that she did not understand the significance of what was happening due to her age), were carried out approximately 2 years later, after the event and for such delays, there were no excuses, and;
- the length of the proceedings was excessive.

Analyzing the practice of the ECtHR, we can conclude that the state is not an exception when the state is condemned for gaps in the legislation that do not allow children to fully feel the protection of their rights.

According to the author, the protection of children's rights to their sexual freedom and inviolability includes the implementation of preventive measures aimed at stopping the commission of an offense.

Article 34 of the UN Convention on the Rights of the Child (United Nations, 1989) states that States parties have an obligation to protect the child from all forms of sexual exploitation and sexual abuse. To this end, States Parties shall take at the national, bilateral, and multilateral levels all necessary measures to prevent:

a) inducing or forcing a child to engage in any unlawful sexual activity.

b) the use of children for exploitation in prostitution or other unlawful sexual practices, and;

c) the use of children for the purpose of exploitation in pornography and pornographic materials.

In view of the above, as well as given the main objectives of the policy in the field of protection of children's rights, preventive measures to prevent violations of sexual freedom and inviolability of the child should be aimed at exposing:

- the abduction of children, even by parents and parents; sexual exploitation of children.
- organizations involved in child trafficking.
- Internet networks and enterprises engaged in the production, trade, distribution and/or sale of child pornography.
- child sex tourism (international sexual travel for children); production of child pornography, including coercion/enticement of a minor.
- trafficking in child pornography.
- distribution of child pornography.
- possession of child pornography, etc.

It is also important to establish and ensure an organized and clear mechanism for responding to reports of a crime concerning sexual freedom and inviolability of the child, and well-established tactics and sets of investigative actions that will lead to an effective and rapid investigation of these crimes.

Denisovskyi and Fedchak (2018), conducting research, found that scientists and practitioners indicate that the results of operational prevention of crimes against morality are unsatisfactory. This is, primarily, due to the lack of interest of law enforcement officers in such work, as the

prevention of criminal intent and the use of preventive measures is difficult to confirm, especially in terms of reporting.

Another negative factor is the lack of an effective mechanism for interaction and coordination of measures taken by law enforcement agencies among themselves and with international law enforcement agencies, international and non-governmental organizations. An equally significant problem in this context is the lack of material and technical support for the prevention of crimes against sexual freedom and sexual integrity, in particular, the sexual freedom and sexual integrity of minors and juveniles of our society.

It is worth noting that the psychology of a criminal's behavior is related to situations that arose long before he committed the crime. In this regard, the prevention of crimes against sexual freedom and the integrity of the child is the responsibility not only of law enforcement agencies but also of other authorities, educational institutions, enterprises, institutions, and organizations dealing with children.

Thus, the positive dynamics in the prevention of crimes against sexual freedom and the inviolability of the child will be provided by the identification and prior active work with disadvantaged families in which a situation may arise that would lead to a violation of the rights of the child.

According to the authors, it is also necessary to introduce sex education lessons in schools to help identify children suffering from sexual violence or its initial manifestations, to instill in children an understanding of normal sexual relations, which in the future in the case of encroachment on sexual freedom and inviolability the child will have the ability to understand the illegality of the actions. Periodic conversations with children about how to act in such situations should also be mandatory to avoid negative consequences and prevent the commission of the crime itself.

As children of all ages suffer from sexual crimes, prevention of the above-mentioned crimes should be carried out with the parents or legal representatives of the children, regardless of the social status of the family.

Dzhuzha (2009) emphasizes that many parents are unaware of their legal rights and freedoms, the procedure for processing applications and appeals of citizens by law enforcement agencies. Combined with the mental shock they typically experience when their children become victims of crime, this leads to law enforcement allegations that law enforcement officials do not always report child abuse. Because of this, there is an urgent need to create specialized centers where child victims of crime and their parents could receive free timely qualified psychological and legal assistance.

The above indicates the need to create a strong system of juvenile justice in Ukraine, which, according to Krestovska (2008), is a system of

state, municipal and public, judicial, law enforcement and human rights bodies, institutions, and organizations based on juvenile law and with the help of medical, social and psychological-pedagogical methods administer justice for children, prevention and prevention of offenses against and against children, protection of rights, freedoms, and interests, as well as resocialization of children in difficult life situations

Law, as a system of mandatory rules of conduct introduced or sanctioned by the state, is the most effective regulator of public relations. No other social norms, such as traditions, customs, norms of morality, etc., can regulate and ensure the protection of various social relations as the rules of law do (Tkalych *et al.*, 2020). The creation of the EU was a triumph for the principles of liberal democracy. Postwar Europe has become one of the most developed regions and for many years has been a magnet for people from all over the world (Shyshka and Tkalych, 2020). Ukraine's path to membership in the European Union is constitutionally enshrined. Nevertheless, to be a member of the EU, it is necessary to comply with the requirements of the Union and to harmonize legislation (Pavlova *et al.*, 2020). Currently, juvenile justice institutions in Ukraine are generally developing at a slow pace and rather one-sidedly, i.e. only within the framework of criminal proceedings against minors, while other offenses committed by third parties against minors are ignored, which entails the inability to create an effective mechanism for the protection of children's rights, taking into account their special legal status.

In particular, as a result, the representative of the Verkhovna Rada Commissioner for Human Rights for the Rights of the Child and Family, Filipishyna during a round table in the Committee on Law Enforcement, held by video conference on September 22, 2020, stated that the percentage of crimes of sexual the nature of the violation of the rights of the child is unsatisfactory. Thus, the representative noted that according to the Office of the Prosecutor General during January-August 2020, 147 children were victims of rape. Instead, for the whole of 2019, the number of children affected by this crime was 148. Filipishyna also noted that as of August 2020, 44 criminal proceedings were registered under Article 155 of the Criminal Code of Ukraine "sexual intercourse with a person who has not reached sexual maturity" (Law Enforcement Committee, 2020).

Conclusions

Protection and defense of the rights of the child is one of the primary tasks of the state. At the same time, the level of crime, which is subject to sexual freedom and inviolability, has recently been unsatisfactory, so there is a need to develop clear mechanisms for detecting, investigating, and preventing these crimes.

The case-law of the ECtHR is currently replete with precedents concerning children's rights, in particular to sexual freedom and inviolability, indicating a low level of protection and protection by many States.

The problem of detecting sexual crimes against children is the default of children, parents, or other authorities and persons who have learned the relevant information, the reluctance of parents to report the crime due to the possible condemnation by society, and potential future consequences for the child in the event of accidental disclosure of information about the crime.

Investigations of crimes against the sexual freedom and inviolability of children should be carried out taking into account the specifics of the crime and the psychological characteristics of the child. Therefore, it is of great importance that the authorized person of law enforcement agencies understands the psychology of the child and the ability to create a trusting atmosphere when carrying out appropriate investigative actions, in particular, the interrogation of the child.

Effective prevention of crimes against sexual freedom and inviolability of the child can be achieved by creating an extensive system of juvenile justice, clear consolidation of their powers and responsibilities, focusing law enforcement on the prevention of such crimes, proper material, technical and methodological support of relevant bodies, institutions and organizations that work with children, sex education of children, periodic interviews with parents / legal representatives.

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Regulatory framework for the fight against corruption in the National Police of Ukraine

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Abstract

The objective of the article is to analyze the main international regulations on overcoming corruption in the police, as well as the laws of Ukraine aimed at combating this phenomenon in the National Police. The theme of the study is the analysis of the legal framework for combating corruption in the police. The research methodology includes the following general and special legal methods: dialectical, logical, system-legal, normative-dogmatic, comparative-legal, and legal modeling method. The results of the investigation indicate the most effective means of combating corruption in the police of the most developed countries. By way of conclusion and with practical significance, Ukrainian anti-corruption legislation against police officers has been shown to be repressive, so it cannot be effective without measures to encourage law-abiding behaviour and the sense of anti-corruption of law enforcement officers. Emphasis is placed on the need to take measures to encourage the anti-corruption behaviour of police officers and to enshrine these provisions in relevant regulations.

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Keywords: anti-corruption; corruption in the police; Ukraine's national police; international anti-corruption legislation; legal dissipations.

Marco regulatorio para la lucha contra la corrupción en la Policía Nacional de Ucrania

Resumen

El objetivo del artículo es analizar las principales regulaciones internacionales sobre la superación de la corrupción en la policía, así como las leyes de Ucrania destinadas a combatir este fenómeno en la Policía Nacional. El tema del estudio es el análisis del marco legal para combatir la corrupción en la policía. La metodología de investigación incluye los siguientes métodos legales generales y especiales: dialéctico, lógico, sistema-legal, normativo-dogmático, comparativo-legal y método de modelado legal. Los Resultados de la investigación indican cuales son los medios más efectivos para combatir la corrupción en la policía de los países más desarrollados. A modo de conclusión y con significado práctico, se ha demostrado que la legislación ucraniana de lucha contra la corrupción contra los agentes de policía es represiva, por lo que no puede ser eficaz sin medidas para fomentar el comportamiento respetuoso de la ley y el sentido de anticorrupción de los agentes del orden. Se hace hincapié en la necesidad de tomar medidas para fomentar el comportamiento anticorrupción de los agentes de policía y consagrar estas disposiciones en las regulaciones pertinentes.

Palabras clave: lucha contra la corrupción; corrupción en la policía; policía nacional de Ucrania; legislación internacional anticorrupción; disipaciones legales.

Introduction

The fight against corruption in Ukraine is one of the main tasks of law enforcement agencies (Shcherbakovskyi *et al.,* 2020). The National Police of Ukraine is an executive body whose main tasks are the protection of human rights and freedoms, the fight against crime, the maintenance of public safety and order. To perform these and a number of other functions, police officers must act lawfully, transparently and impartially. Unfortunately, the population often faces manifestations of unscrupulous behavior of law enforcement officers, as evidenced by numerous appeals of citizens to the relevant authorities.

The level of corruption in law enforcement agencies is growing every year. Thus, in 2020, 175 employees of the National Police were included in the Register of Corruption; 12 of them have been prosecuted for corruption offenses: 5 police officers – for accepting an offer, promise or receiving an illegal benefit, 7 police officers – for abusing influence, i.e. accepting an offer, promise or receiving an illegal benefit for themselves or another person for influencing a decision. 156 employees of the National Police were brought to administrative responsibility for late submission of property declarations (National Agency on Corruption Prevention, 2020).

International treaties play a particularly important role in preventing and countering corruption, given the global nature of the problem of corruption (Bondarenko *et al*., 2020). There are a number of international instruments, on which the relevant legislation of the Member States is built, to prevent and combat corruption in the police. That is why anti-corruption measures in foreign countries are overwhelmingly similar. This is also explained by the processes of integration of legislation, active intergovernmental coordination of measures to combat offenses with signs of corruption, and the exchange of experience in conducting specific anti-corruption measures.

To a greater extent, this applies to EU countries, although each country still has specific features given the peculiarities of their development, legal traditions, mentality and degree of activity of citizens (Grigorenko, 2014). Therefore, within this article we will consider the main international regulations on corruption prevention in the police agencies, which became the basis for the development of relevant legislation of Ukraine in this area, as well as regulations of our State aimed at corruption prevention in the National Police of Ukraine.

1. Methodology

The methodology of the Article is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, and subject of research. Axiological method was applied to substantiate the importance of international and domestic regulations in the prevention of corruption offenses committed by the police. The method of hermeneutics was used in the process of studying international and domestic legal acts regulating the issue under consideration with their further interpretation. The method of analysis and synthesis helped to clarify the content of legal mechanism for preventing corruption offenses committed by police officers. The method of induction and deduction allowed to specify areas for improving legal measures for preventing corruption offenses committed by police. Legal and comparative method was used in order to compare the measures to prevent corruption offenses committed by police officers in

Ukraine and in some other countries. The method of generalization helped to draw conclusions and suggestions.

2. Literature Review

The problems of corruption in the police have been studied by a large number of foreign and domestic scientists. For example, Moran (2002) examines anti-corruption strategies used by police in some areas of the United States and England. The author also studies the risks of corruption, compares different methods of combating this negative phenomenon and analyzes the role of specially authorized bodies to combat corruption.

Arrigo and Claussen (2003) believe that testing individuals before they are employed as police officers is an effective means of preventing corruption offenses, but it is currently used with a number of errors. Instead, researchers propose an authors' method of conducting a preemployment screening of law enforcement personnel, which should provide an appropriate level of assessment of trends in the behavior of future law enforcement officers and their propensity to corruption.

According to Punch (2000), corruption accompanies police activity constantly, and it is not a phenomenon that is so easy to eradicate. This requires a number of measures (management control, anti-corruption strategy, appropriate standards of conduct, effective methods of investigating such offenses), which must be harmoniously combined. To determine the most effective measures to combat this phenomenon, the author examines the experience of the 4 most progressive countries – USA, Great Britain, Belgium, and the Netherlands. The article uses the scientific works of such domestic scientists as Grigorenko (2014), Khan (2019), Kubaienko (2017), as well as a number of international and domestic regulations governing the relevant issues in this area.

3. Results and Discussion

In 1979, the Parliamentary Assembly of the Council of Europe adopted the Declaration on the Police (Parliamentary Assembly, 1979). It sets out the rules of civil service in the police, defines the procedure for execution of orders and the procedure for issuing orders from superiors to subordinates, as well as ethical provisions to be followed by police officers of different countries. These standards are aimed to ensure the integrity, incorruptibility and ethical conduct of law enforcement officers when performing their functions, to promote the development of measures necessary to prevent, detect, punish, and eradicate police corruption, and bring corrupt police officers to responsibility. According to the provisions of the Declaration, a police officer should act honestly, impartially, with a sense of personal

dignity, refrain from corruption and resolutely oppose it; the police officer must carry out instructions duly given by his superior, but he (she) must refrain from following the instructions if he (she) is aware or should be aware that they are illegal; no criminal or administrative punishment may be applied to a police officer who refuses to carry out an illegal order; the police officer must bear personal responsibility for his (her) actions, as well as for illegal actions or omission committed on his instructions; a manager who will be responsible for the actions or omission of an employee should be appointed.

Given the urgency of ensuring the protection of the law enforcement system from corruption, the Global standards to combat corruption in police forces/services (Interpol, 2002) were adopted at the 71st session of the General the Interpol Assembly in Cameroon. These standards are aimed at ensuring honesty, integrity and ethical conduct of police officers when performing their functions, assistance in developing the necessary measures to prevent, detect, punish, and eradicate corruption in the police of each Interpol member country, as well as to bring corrupt police officers to justice.

The concept of "corruption", given the above standards, covers all forms of abuse of power or official position, misuse of authority, bribery and other abuses (unlawful dissemination of confidential or restricted information, participation as organizer, performer, co-executor, instigator or accomplice in any of these acts, etc).

In order to prevent and combat corruption in the activities of police officers, the General Standards provide for the following measures (Article 4):

- use of disincentives to bribe individualswho perform or participate in the exercise of police functions or related functions.
- making every effort to ensure that mechanisms and systems for preventing, detecting, punishing, and eradicating corruption in the exercise of police functions or related functions in police forces/ services are in line with current practice recognized by the Interpol General Assembly.
- existence of an effective system that obliges police officers to report corruption and to protect those who report such facts in good faith.
- establishing mechanisms to encourage the participation of civil society in activities to prevent corruption in police forces/services.
- establishing and ensuring procedures for declaring and registering income, assets and commitments of police officers and the members of their families.

The provisions of international legal acts are reflected in the relevant legislation of the signatory countries. Our State has implemented these norms in the Law of Ukraine "On Corruption Prevention" (LU 2014, **October 14**). At the same time, the special Law – the Law of Ukraine "On the National Police" (LU **580-VIII/2015, July 02**) does not contain specific provisions on preventing or overcoming corruption in the police agencies. Therefore, when determining the range of anti-corruption measures in these agencies, one should first refer to the provisions of the general law "On Corruption Prevention", which state that the police officers are the subjects covered by this Law. A similar provision is contained in Part 1 of Article 61 of the Law of Ukraine "On the National Police", the provision of which states that "Police officers are subject to the restrictions set by the Law of Ukraine "On Corruption Prevention" and other laws of Ukraine".

Thus, the current legislation includes the measures to prevent corruption in the police:

1. Restrictions on the use of official powers or the position (Article 22 of the Law). A police officer is prohibited from using his or her official authority or position and related powers to gain an improper benefit for himself (herself) or others, including the use of any State or municipal property or funds in the private interest.

2. Restrictions on receiving gifts (Article 23 of the Law). It is prohibited to demand, ask for, and receive gifts for themselves or their relatives from legal entities or individuals directly or through other persons.

3. Restrictions on combination police activity with other activities (Article 25 of the Law of Ukraine "On Corruption Prevention" and Article 66 of the Law of Ukraine "On the National Police"). Police officers are prohibited from engaging in any other paid (other than teaching, research and creative activities, medical practice, instructional and judicial practice in sports) or entrepreneurial activities, be the members of the board, other executive or supervisory bodies, the supervisory board of the enterprise or organization with the purpose to receive the profit (except for cases when persons exercise management of shares owned by the State or territorial community, and represent the interests of the State or territorial community in the council (supervisory board), the audit commission of the business organization).

4. Restrictions on joint work of close persons (Article 27 of the Law). Police officers may not have direct control over persons close to them or be directly subordinate to them in connection with the performance of duties by persons close to them. When hiring, a police officer is obliged to inform the management of the body in which he (she) is applying for the position of persons close to them, who are working in this body.

5. Restrictions after the cessation of activities related to the performance of functions of the State and local self-government (Article 26 of the Law). Police officers who have resigned or otherwise terminated activities related to the performance of State functions are prohibited from: - concluding employment agreements (contracts) or entering into transactions in the area of entrepreneurial activity with legal entities of private law or natural persons-entrepreneurs within a year from the date of termination of the relevant activity, if police officers exercised control powers, supervising or preparing or making appropriate decisions regarding the activities of these legal entities or natural persons-entrepreneurs;
6. disclosing or otherwise using in their interest's information that has become known to them in connection with the performance of official duties, except as provided by law; - representing the interests of any person in cases (including those before the courts) in which the other party is the body, enterprise, institution, organization in which (which) they worked on the moment of termination of the specified activity within a year from the date of termination of the relevant activity. 6) Prevention and settlement of conflicts of interest (Article 28 of the Law). Police officers are obliged to take measures to prevent the occurrence of real, potential conflict of interest, to notify the immediate superior about actual or potential conflict of interest no later than the next working day from the moment when the person learned or should have learned about the conflict of interest, to take measures to resolve real or potential conflict of interest. Police officers may not directly or indirectly encourage subordinates to make decisions in any way, commit acts or omissions contrary to the law in favor of their private interests or the private interests of third parties.
7. Financial control (Section VII of the Law), which provides for the following actions: submission by police of declarations of persons authorized to perform the functions of the State or local self-government; accounting and publication of such declarations; their control and inspection by the National Agency of Corruption Prevention; establishing the terms for submission of declarations; monitoring the way of life of the declaring subjects (in order to establish the conformity of their standard of living to the property available to them and their family members and the income received by them in accordance with the declaration of the person authorized to perform the functions of State or local self-government); additional measures of financial control (the obligation of police officers to notify the National Agency of Corruption Prevention on the opening of foreign currency account in a non-resident bank by them or the members of their families, the receipt of income, acquisition of

property or expenditure in excess of 50 subsistence minimums for employable persons as of January 01 of the respective year by by them or the members of their families, features of financial control measures in relation to certain categories of persons.

8. Prohibition on the receipt of benefits, services, and property by the National Police.
9. Special inspection (Article 56 of the Law of Ukraine "On Corruption Prevention" and Part 3 of Article 50 of the Law of Ukraine "On the National Police"). Information on the person applying for the position of a police officer is subject to special verification, in particular on: the existence of a court decision that has entered into force, according to which the person is prosecuted (including for corruption offenses), as well as the presence of a criminal record, its removal or expunging; the fact that the person has been previously subjected to administrative penalties for corruption-related offenses; the accuracy of the information specified in the declaration of the person authorized to perform the functions of the State or local self-government; the fact that a person is holding corporate rights; medical condition (in terms of a person's registration in psychoneurological or narcological health care institutions); education, availability of a scientific degree, academic title; a person's attitude to military service; the access to the State secret, if such admission is required in accordance with the qualification requirements for a particular position; prohibition of a person from holding relevant position provided by the provisions of the Law of Ukraine "On the clearance of the authorities".
10. Restrictions on service in the police. The Law of Ukraine "On the National Police" (Article 61) stipulates that a person who has been subjected to administrative or criminal liability for committing an offense related to corruption cannot be a police officer.

Disciplinary measures under Ukrainian law are also deterrent measures for police officers from committing corruption offenses. Thus, according to paragraph 9, Part 1, Art. 77 of the Law of Ukraine "On the National Police" a police officer is dismissed from service in the police, and the service in the police is terminated due to direct subordination to a close person. According to paragraph 10 of the same article, a police officer is dismissed from the police service in case of entry into force of a court decision to prosecute a police officer for an administrative offense related to corruption or a criminal offense (including corruption).

Additionally, according to Part 5, Art. 17 of the Law of Ukraine "On the disciplinary Statute of the National Police" (LU 2337-VIII/2018, March 15) during the trial of the case of corruption, administrative or criminal offense of a police officer, the latter may be suspended from office.

In addition, administrative or even criminal measures may be taken regarding the police, guilty of committing corruption offenses. Indeed, according to the provisions of the Code of Ukraine on Administrative Offenses (LU 1984, December 07), law enforcement officers are prosecuted for the following administrative corruption offenses: violation of restrictions on holding a job or combining it with other activities (Article 172-4); violation of statutory restrictions on the receipt of gifts (Article 172-5); violation of financial control requirements (Article 172-6); violation of the requirements for the prevention and settlement of conflicts of interest (Article 172-7); illegal use of information that has become known to a person in connection with the performance of official duties (Article 172-8); failure to take measures to combat corruption (Article 172-9).

Criminal sanctions for police officers guilty of committing criminal corruption offenses are enshrined in the Criminal Code of Ukraine (LU 2001, April 05).

Such offenses are: misappropriation, embezzlement or conversion or property by malversation (Article 191); use of budget funds by an official contrary to their target allocation or in amounts exceeding approved expenditure limits, and also failure to comply with requirements related to proportional decrease of budget expenses or proportional financing of expenditure items of budgets of all levels pursuant to applicable budget legislation, where large amounts of budget funds are involved (Article 210); stealing, appropriation or extortion of firearms, ammunition, explosives or radioactive material, or obtaining them by fraud of abuse of office (Article 262); stealing, appropriation, extortion of narcotics, psychotropic substances or their analogues, or acquisition of same by fraud or abuse of office (Article 308); stealing, appropriation, extortion of precursors, or acquisition of precursors by fraud or abuse of office (Article 312).

Stealing, appropriation, extortion of equipment devised for making of narcotic or psychotropic substances, or their analogues, or acquisition of such equipment by fraud or abuse of office, and other unlawful actions involving such equipment (Article 313); violation of rules related to circulation of narcotics, psychotropic substances, their analogues or precursors (Article 320); bribery of an employee of an enterprise, institution or organization (Article 354); stealing, appropriation, or extortion of documents, stamps and seals, or acquiring them by fraud or abuse of office, or endamagement thereof (Article 364); abuse of power by an official of a legal entity of private law, regardless of the organizational and legal form (Article 364-1); abuse of power by persons providing public services (Article 365-2); acceptance of an offer, promise or receipt of an illegal benefit by an official (Article 368); illicit enrichment (Articles 368-2); bribery of an official of a legal entity of private law, regardless of the organizational and legal form (Article 368-3); bribery of a person providing public services (Articles 368-4); offer,

promise or provision of illegal benefit to an official (Article 369); abuse of influence (Articles 369-2); stealing, appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special enginery, or other munitions, or abuse of office, by a military serviceman (Article 410).

Taking into account the above stated, one can see that Ukrainian anti-corruption legislation against police officers is of repressive nature, as most corruption offenses are criminally liable.

The repressive mechanism cannot give an effective result without the introduction of measures to encourage obedient, anti-corruption behavior of police officers. Such measures are preventive in nature and aimed at leveling the desire of employees to violate anti-corruption legislation (Khan, 2019).

And we completely agree with this opinion. For example, the US police have set a high pension for employees who have a perfect track record. It all starts with careful selection, because it depends not only on the professionalism and competence of police officers, but also their resistance to moral temptations. Particular attention is paid to maintaining a high level of prestige of the police profession in society: each candidate has education, knowledge of a foreign language, impeccable biography not only of the candidate but also of his (her) family members, high degree of stress resistance, moral and volitional qualities, etc. (Grigorenko, 2014: 167).

Besides, the level of corruption in the police is significantly affected by the low level of material support of law enforcement. We consider this a serious mistake of the State, as the lack of financial motivation does not encourage police to cherish the service and refuse bribes. At the same time, it is important not only to increase salaries, but also to provide them with personal and medical insurance, to grant preferential conditions for the purchase of personal housing, access to free higher education, and so on.

Thus, the salaries of US police officers were significantly increased in the 1980s, as well as there was an introduction of additional social benefits. And if American policemen used to be from the lower middle class, now they belong to the upper middle class.

Anti-corruption education, to which our country pays little attention, also takes an important place in prevention of corruption offenses. At the same time, this measure is actively used and proves its effectiveness in many countries around the world.

For example, in the Financial Police of Italy, anti-corruption prevention issues are studied in special courses. Anti-corruption workshops are common in the law enforcement agencies of the United Kingdom, Denmark, Moldova, and Poland, during which special attention is paid to preparing

police officers for actions in case of provoking bribes or forcing them to commit other illegal acts (Grigorenko, 2014).

The main goal of anti-corruption education is, firstly, to train professionals who will have the necessary professional skills and will be able to participate in the work of anti-corruption bodies; secondly, anti-corruption education will help to increase the level of legal culture and culture of public relations, devoid of elements of corruption, contribute to the conscious rejection of the phenomenon of corruption and its manifestations; thirdly, anti-corruption education is a component of anti-corruption propaganda and educates a person in the spirit of non-acceptance of corruption; fourthly, it facilitates access to reliable information on the phenomenon of corruption. Anti-corruption education is provided in educational institutions in the form of teaching special courses on anti-corruption issues. Such activities can be carried out both by training police cadets and by working with current police officers within relevant trainings, seminars, etc. (Khan, 2019).

Much attention is also paid to the selection of candidates for the position of police officer. For example, in Canada, a police screening of a job applicant begins with the collection of information about a person after reaching the age of 12 (the State considers that it is the period of a person's personality formation), his (her) contacts at the place of previous and current residence, work or service (Kubaienko, 2017).

In the United States, police departments pay special attention to the issue of their staffing. High moral standards and fairly strict rules of conduct and discipline have been set for job candidates, as well as for police officers at all levels. Strict selection of candidates for the service has been introduced, which provides for a lie detector test. The Federal Bureau of Investigation, whose main task is to fight corruption, is constantly moving staff from one place to another to reduce the possibility of merging with local authorities and organized crime. Besides, there is a special department of internal investigations in the FBI's Main Directorate, which checks information about abuses of its employees (Grigorenko, 2014).

Besides, the United States monitors the well-being of police officers and their families by verifying declarations, monitoring credit card balances, valuing property owned by them, etc.

Conclusions

Thus, the National Police of Ukraine is a central executive body that implements State policy in the area of protection of human rights and freedoms, the interests of society and the State, combating crime, maintaining public safety and order.

Despite the fact that the National Police is one of the specially authorized entities in the area of anti-corruption, the cases of corruption offenses in the police are not isolated, as evidenced by numerous complaints from citizens and relevant statistics.

To overcome this problem, Ukraine has implemented the provisions of international regulations on the prevention and fight against corruption in the police in its own legislation. Although the special Law "On the National Police" does not enshrine the relevant provisions, it refers to the Law "On Corruption Prevention", which directly prescribes measures to prevent corruption in the police.

The Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses enshrine corruption offenses for which criminal or administrative liability arises, as well as provide for appropriate sanctions. The Disciplinary Statute of the National Police provides for disciplinary liability for law enforcement officers guilty of committing corruption offenses.

Ukrainian anti-corruption legislation against police officers is of repressive nature, that's why it cannot work effectively without measures to encourage law-abiding, anti-corruption behavior of police officers.

This issue is addressed somewhat differently in progressive States: preference is given to anti-corruption education, careful selection of candidates, monitoring of their lifestyle, determining their susceptibility to corrupt behavior, creating a system of incentives for impeccable record, ensuring an adequate standard of living for police officers and their families.

Therefore, despite the fact that Ukrainian legislation in this area generally meets European standards, we, based on international experience, still need to move away from the repressive mechanism and implement measures to encourage anti-corruption behavior aimed at leveling the desire of police officers to violate anti-corruption legislation, and enshrine these latter in relevant regulations.

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To the issue of identifying some objects of operational protection by criminal police units of the National Police of Ukraine

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Abstract

The subject of the investigation are the operational maintenance objects of the machine-building complex and the recreational-tourism sphere by criminal police divisions. The research methodology includes the following methods: general and special legal: monographic method, method of analysis and synthesis, comparative legal method, classification method, statistical method, abstract-logical method. Scientific approaches to operating service definition are considered. An analysis of the machinery construction complex and the tourist and recreational field was carried out to achieve high standards of its operational service. As a practical dignified facility of the machinery construction complex and the tourist and recreational sphere were ordered in appropriate groups to identify those in need of operational maintenance. It is concluded that the regulations of the Ministry of the Interior and the National Police of Ukraine do not contain provisions that clearly define the content of the institution of operational services and its place in the system of operational and investigative units to combat crime.

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Respecto a la identificación de algunas instalaciones operativas por unidades de la policía criminal

Resumen

El tema de la investigación son los objetos de mantenimiento operativo del complejo de construcción de máquinas y la esfera recreativa-turística por parte de las divisiones de la policía criminal. La metodología de investigación incluye los siguientes métodos: legales generales y especiales: método monográfico, método de análisis y síntesis, método jurídico comparado, método de clasificación, método estadístico, método abstracto-lógico. Se consideran enfoques científicos para la definición de servicio operativo. Se efectuó un análisis del complejo de construcción de maquinaria y el ámbito turístico y recreativo para lograr altos estándares de su servicio operativo. Como significado práctico las instalaciones del complejo de construcción de maquinaria y la esfera turística y recreativa se ordenaron en grupos adecuados para identificar a quienes necesitan mantenimiento operativo. Se concluye que el reglamento del Ministerio del Interior y de la Policía Nacional de Ucrania no contiene disposiciones que definan claramente el contenido de la institución de los servicios operativos y su lugar en el sistema de unidades operativas e investigadoras para combatir la delincuencia.

Palabras clave: instalaciones operativas; policía nacional de Ucrania; complejo de construcción de maquinaria; balneario-recreativo; derecho penal.

Introduction

The strategic investigation units of the National Police of Ukraine set themselves the goal of achieving two interrelated goals in the process of operational protection of economic sector:

a) organization of systematic monitoring of objects and industries in respect of which there are reasonable suspicions about the possibility of illegal actions.

b) establishing strong operational positions on the territory under the jurisdiction of the separate strategic investigation unit of the National Police of Ukraine.

Our analysis of scientific research on the problems of operational service of certain sectors of the economy showed that today the problems of operational protection of priority sectors of the economy by criminal police units are not sufficiently studied; scientifically sound proposals for such services are provided only in certain areas of activity of criminal police units, namely:

a) operational protection of agricultural processing enterprises.

b) detection of criminal offenses related to the manufacture, import and distribution of dangerous food products.

c) investigative counteraction to obtaining illegal benefit in the agro-industrial complex.

d) detection and prevention of activities of organized groups in the area of housing and communal services.

e) investigative counteraction to criminal offenses in the sphere of household waste circulation.

f) investigative counteraction to criminal offenses in the sphere of economy committed at the railway transport enterprises.

g) investigative counteraction to criminal offenses in the sphere of economy, which are committed in the course of highways construction.

h) investigative counteraction to criminal offenses related to trafficking in scrap metal.

At the same time, the issues of operational protection of the machine-building complex and the resort-recreational sphere by the units of the criminal police remain unexplored.

Based on the above stated, today there is a need to identify the objects of operational protection of the machine-building complex and the resort-recreational sphere by the criminal police units.

1. Methodology

In order to achieve the goal of the Article, the following general and special methods of scientific knowledge were used.

Monographic method helped in the study of scientific works of scholars, who examined the problem of operational protection of economic objects.

The methods of analysis and synthesis made it possible to analyze the views of different scientists on the problem under consideration.

Comparative and legal method allowed to compare various approaches of the scholars to the concept of operational protection of economic objects by criminal police units.

The method of classification was applied for the assignment of the branches of the machine-building complex, as well as the objects of the latter to the relevant groups in order to achieve high standards of their operational protection. The same method was used for identifying the entities of the resort-recreational sphere.

Statistical method was useful when considering the most significant data related to the machine-building complex and resort-recreational sphere in Ukraine.

Abstract and logical method was used to formulate the relevant conclusions and suggestions.

2. Literature Review

Since operational and search activities are specific, carried out mainly by covert means and methods, the activities of operational units should be referred to as operational protection, which is a kind of branch of social services that performs specific tasks to ensure legality and rule of law in the fight against crime. After all, the effective organization of operational services of the territory (facilities, industries, economic entities, etc.) contributes to the successful implementation of the principle of social justice in a specific area of legal relations, as it allows to ensure maximum timeliness, completeness and objectivity of the investigation; the inevitability of punishment; the fullest possible compensation for the damage caused to the State and citizens; investigation of crimes and bringing to justice those who committed them.

Some authors understand the term operational protection as the organization of covert work in a designated area, facilities and in the places where stolen items are sold. This preliminary conclusion can be reached by analyzing the position of Professor Lekar (1981), who claims that the operational protection of the sectors and objects of the economy should be understood as a system of operational and investigative and other measures carried out where disguised crimes towards the State assets are committed or may be committed, for the purpose of their timely detection, prevention or disclosure, identification of all persons involved in such crimes, and ensuring the possibility of bringing them to justice. Operational services are based on the untransparent awareness of criminal police units; therefore the latter should focus on the selection, placement and effective use of undercover agents in combination with other forces, means and methods of operational and search activities on previously identified and studied economic entities.

Atmazhytov and Illichov (1986) hold the same opinion on the definition of operational protection. According to them it is the set of measures for the optimal distribution of forces and means that ensure both the receipt of operational and investigative information in the designated areas, at individual objects, among various categories of persons of operational interest, and its timely use to effectively combat crime.

However, according to Berlach (2002), is not only methodically impractical, but also unprofessional to limit the flow of information to unofficial sources. The scholar proves that economic crime due to its latency and material nature of leaving traces in accounting documents can be stopped only in case of a comprehensive flow of information.

We believe that operational service cannot be of high quality if it is based only on information coming from undercover agents. After all, information that covers the situation at the economic object cannot be comprehensive without the use of other sources and opportunities, as each undercover agent acts autonomously, so his (her) intelligence capabilities are limited. At the same time, one should not forget that an undercover agent is somewhat limited in his (her) actions; the importance and volume of information he (she) can get depends on his (her) physiological characteristics, professionalism, position, social status, etc. In addition, all information received from each undercover employee requires careful analysis, systematization and verification. Only in this case, and only to a certain extent, can we talk about an objective assessment of the processes taking place in a particular economic object.

In the light of the foregoing, we should agree with the definition provided by Ilnytskyi (2009), who believes that operational protection is a system of constantly carried out organizational, tactical and operational and search measures aimed at obtaining (from open and secret sources) objective, reliable, real information about the state of operation of the object, which is used to prevent criminal activity, detection and investigation of crimes.

Note that operational protection is not a common concept, which can be given a complete, logically correct definition.

3. Results and Discussion

The machine-building complex is a basic branch of the economy, its system-forming element that determines the state of production potential and defense capabilities of the country. The functioning of all other industries largely depends on the results of its activities (Kravchenko and Uvarovskyi, 2017). The machine-building complex of Ukraine includes more than 20 branches, 58 sub-branches, in which 11,267 enterprises work (146 large, 1,834 medium, 9,287 small enterprises), which employ about 1.5 million workers (Amosh, 2017).

The machine-building complex of Ukraine covers more than 20 specialized branches, i.e. practically all branches of mechanical engineering. Depending on which market the products of the machine-building complex are focused on, they can be conditionally grouped into five groups:

1. Investment (heavy) engineering – a group of industries, the development of which is determined primarily by the investment activity of metallurgical, construction, energy, and transport complexes.
2. Tractor and agricultural machinery – a group of industries whose development depends on the capacity to pay of agricultural producers and processors of agricultural products, as well as partly on public demand.
3. Railway engineering is aimed at meeting the demand of the railway industry of the country.
4. Automotive industry the production of which is focused on the demand of final consumers (production of cars), as well as the needs of enterprises, firms and executive authorities (production of trucks and buses).
5. Electrical engineering, instrument making, machine building is the group of science-intensive industries, so-called components developing in line with the needs of all other industries, including mechanical engineering (Pihul and Pihul, 2018).

The study shows that the most important results in the process of combating crimes in the machine-building complex can be achieved by organizing high-quality operational protection of machine-building complex objects, which can be divided into:

- heavy engineering enterprises.
- agricultural (tractor) engineering enterprises.
- railway engineering enterprises.
- enterprises of the automobile industry.
- enterprises for the manufacture of electrical engineering, instrument-making, and machine tools.

Besides, employees of strategic investigation units of the National Police of Ukraine should take into account the location of machine-building complex facilities, focus on those sectors of the economy that are most represented in certain regions when planning activities for the operational protection of machine-building enterprises. Thus, today the main centers of mechanical engineering are located in the following cities of Ukraine:

Heavy engineering – Kharkiv, Dnipro, Kryvyi Rih, Mariupol, Kyiv, Lviv, Drohobych;

Electrical industry – Zaporizhzhia, Kharkiv, Odessa, Kiev, Khmelnytskyi, Berdyansk, Poltava, Kamianets-Podilskyi;

Transport engineering – Kharkiv, Dnipro, Kremenchuk, Mariupol, Mykolayiv, Kherson, Kyiv, Zaporizhzhia, Lviv, Odesa, Lutsk, Melitopol;

Machine tool construction – Kharkiv, Kyiv, Berdychiv, Odesa, Cherkasy, Dnipro;

Instrument engineering – Kyiv, Kharkiv, Ivano-Frankivsk, Lviv, Sumy, Cherkasy, Zhytomyr, Lutsk;

Agricultural engineering – Kharkiv, Dnipro, Ternopil, Kherson, Odesa, Kyiv, Berdyansk, Uman, Novograd-Volynsky, Nizhyn, Kolomyia (Pihul and Pihul, 2018).

It is well-known that today resort-recreational activity is one of the most profitable businesses in the world. This sector has recently become increasingly important in the structure of national economies and is developing very rapidly; this service sector is growing much faster in the countries that give priority to the development of recreation, becoming not only an increasingly important part of national economies but also the most important State Treasury filler.

The resort-recreational sphere provides a multifaceted contribution to the formation of the country's national wealth. On the one hand, it is the income of producers of resort and recreational services, jobs creation, financial flows of wages, social transfers, taxes, rents, on the other hand – investment in human capital, which is associated with social development and health of the nation. This has the effect of substituting public spending on healthcare with a more effective source of self-financing of improvement of public health through the purchase of resort and recreational services (Humeniuk, 2016).

The 21st century opened in Ukraine with the recognition of tourism as one of the priority areas of national and regional economy. Thus, Ukraine's resort-recreational potential offers it great opportunities to become a world-class recreational State. The expansion of international relations opens new ways to promote the national recreational product on the world market, involvement in the world information space, best practices in the organization of recreation.

A significant part of the natural potential of Ukraine is: recreational landscapes (forest, coastal, mountain), health resources (mineral waters and therapeutic muds), nature reserves (national natural and regional landscape parks, biosphere reserves, park monuments of garden art, etc.), territories for historical and cultural purposes (architectural and urban monuments, historical and architectural reserves, etc.).

These are unique resources for the long-term development of recreation areas and resorts and the best preserved part of the natural environment.

The area of developed and potential recreation areas in Ukraine (excluding radiation-contaminated) is 12.8% of the country's territory and is distributed in relation to the natural features of recreational regions: Carpathian, **Transdniestria**, Dnieper, Donetsk-Pryazovskyi, Polissya, Black Sea. The following factors were taken into account when determining these regions: geopolitical situation (location of the territory, availability of labor resources, transport communications, sources of raw materials, energy, history of development of the territory, traditions, etc.), availability of recreational resources, tourist infrastructure, demand for recreation and resort, tourist and recreational policy of the regions (Ivanukh and Danylyshyn, 2008).

However, socio-economic and spiritual development of society is impossible without recreation and tourism as an integral part of modern life. Ukraine, having a rich recreational and tourist potential, has all the prerequisites for the formation of a highly developed recreational and tourist economy. But the potential opportunities and resources of the resort regions of Ukraine are currently not fully used. Their further development is largely hampered by problems of legal and organizational and economic regulation.

The analysis of the tourism market shows that Ukraine has objective preconditions for intensive tourism development, but market risks, rapid changes in the economic and social situation in the regions, imperfect regulatory framework do not contribute to Ukraine becoming a tourist State of European level. Management of the tourism industry requires the search for non-traditional approaches and new views at the current stage of market transformation in Ukraine.

Unfortunately, a number of offences have been committed since the beginning of the promotion of tourism in Ukraine, along with the development of civil law relations. At the same time, inadequate legislation and lack of adaptability of law enforcement agencies in the gradual transition to a market model of legal relations have led to the spread of offenses, including those related to fraud and abuse of trust in providing tourist services to their consumers (Kaliuha, 2018).

Currently in Ukraine there are more than 1,400 hotels, tourist centers, sanatoriums and about 3,000 recreational facilities for accommodation of vacationers and tourists in Ukraine. Approximately 3 million citizens of Ukraine are employed in this sphere of economy (Savushkin, 2014).

The range of crimes committed in this area is very narrow: in particular, these are acts under Articles 149, 190, 191, 200, 212, 358, 366, 368 of the Criminal Code of Ukraine (LU 2341-III/2001, April 05). The percentage of crime structure in this area is as follows: 1) fraud (Article 190 of the Criminal Code of Ukraine) (92.34%); 2) forgery of documents, seals, stamps and forms, sale or use of forged documents, seals, stamps (Article 358 of the Criminal Code of Ukraine) (3.51%);

3) Misappropriation, embezzlement or conversion or property by malversation (Art. 191 of the Criminal Code of Ukraine) (1.43%) 4) Acceptance of an offer, promise or receipt of illegal benefit by an official (Art. 368 of the Criminal Code of Ukraine (0.48%, respectively); 5) Forgery in office (Article 366 of the Criminal Code of Ukraine) (0.96%); 5) trafficking in human beings or other illegal agreement concerning a person (Article 149 of the Criminal Code of Ukraine) (0.96%); 6) Illegal actions in respect of remittance documents, payment cards and other means providing access to bank accounts, and equipment for their production (Article 200 of the Criminal Code of Ukraine) (0.16%) (Andrushko and Nesterova 2016).

The division of objects of the resort-recreational sphere can be fulfilled using such feature as participation of economic entities in the sectors of production, namely:

1) first cycle industries include consumer transportation services, hotel services and catering services.
2) recycling industries are intermediaries between service producers and consumers (travel agencies, tour operators).
3) third cycle industries are the enterprises that provide services necessary for the functioning of the first two sectors: insurance and legal companies, banks, medical institutions, sports and health and household services, etc.
4) fourth cycle industries are enterprises that provide reference and information services (Shepeliuk, 2011).

However, the results of our study have shown, not all of the above business entities commit or are involved in the commission of crimes in the economic sphere at the resort-recreational facilities.

The most significant results in the process of combating crimes in the economic sphere at the objects of the resort-recreational sphere can be achieved by organizing the operational maintenance of the following objects of the resort and recreational sphere:

1) business entities that provide hotel services.
2) travel agencies, tour operators.
3) insurance companies.
4) tour desks.

Besides, when planning activities for the formation of an agency network at resort-recreational facilities, employees of strategic investigation units of the National Police of Ukraine should take into account the location of resort and recreational facilities in the regions of Ukraine. Thus, today the

main regions of resort and recreational complexes of Ukraine are: Odesa, Zaporizhzhia and Transcarpathian regions.

Conclusions

The activity of operational-search subdivisions is rather broad under modern conditions and is not limited to the implementation of search operations in relation to certain individuals. For the purpose of timely detection and prevention of crimes, the operational protection of individual objects is carried out, taking into account criminogenic and operational situation. The definition that characterizes such activities is known as "operational service".

Today, operational protection is carried out in order to control, monitor, analyze, assess and forecast the operational situation in the area of operational services, in industries, on the service objects, on the line of work (a type of criminal offence or a separate line of operational activity).

At the same time, the regulations of the Ministry of Internal Affairs and the National Police of Ukraine do not contain provisions that clearly define the content of the institution of operational services and its place in the system of operational and investigative units to combat crime, which, in turn affects, the practice subjective attitude to it as ordinary employees and heads of operational units.

The analysis of scientific literature on this issue showed that most scientists have studied some issues of operational protection, but mostly in the context of operational and investigative counteraction to certain crimes or *relating to operational and official activities*. Besides, this analysis indicates that the issues of operational protection were mostly studied by scientists within investigation of the problems and issues of operational and investigative counteraction to crimes in the area of economics. The problem of operational protection of the machine-building complex and the resort-recreational sphere by the criminal police units is almost not reflected in the works of the scientists.

That is why we identified the objects of operational protection of the machine-building complex and the resort-recreational sphere by the criminal police within this Article and drew the following conclusions:

1. The organization of operative protection of the machine-building complex by divisions of criminal police should be carried out in relation to the following objects of operative service:
    a) the enterprises of heavy machine-building.
    b) enterprises of agricultural (tractor) engineering.

c) railway engineering enterprises.

d) enterprises of the automobile industry.

e) enterprises for the manufacture of electrical engineering, instrument-making, and machine tools.

2. The organization of operational protection of the resort-recreational sphere by the criminal police units should be carried in relation to the following objects:

a) business entities that provide hotel services.

b) travel agencies, tour operators.

c) insurance companies.

d) tour desks.

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International experience of citizen engagement in prevention of criminal offences

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Abstract

The objective of the article is to study the international experience of involving citizens in the prevention and fight against crime. The research methodology includes the following legal, general, and special methods: logical method, hermeneutic method, monographic method, comparative legal method, sociological methods, abstract-logical method. The views of Ukrainian and foreign academics on the problem of involving citizens in cooperation with the police to prevent and combat crime are examined. It analyses the experience of individual countries around the world on the peculiarities of involving citizens in crime prevention. It examinesin detail the practice of cooperation of citizens with the police of countries such as the United States, Great Britain, Germany, and a few others. To achieve this objective, the relevant government and regional programmes of these states were studied and the necessary data analyzed. It is concluded that they haveidentified circumstances that prevent the participation of the population in cooperation with the police in Ukraine. As a result, they suggest appropriate ways to solve these problems.

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Keywords: crimeprevention; citizen participation; polycial cooperation; international experience; citizenship-police relationship.

Experiencia internacional de involucrar a ciudadanos en la lucha contra los delitos

Resumen

El objetivo del artículo es estudiar la experiencia internacional de involucrar a los ciudadanos en la prevención y lucha contra los delitos. La metodología de investigación incluye los siguientes métodos legales, generales y especiales: método lógico, método hermenéutico, método monográfico, método legal comparado, métodos sociológicos, método abstracto-lógico. Se examinan las opiniones de académicos ucranianos y extranjeros sobre el problema de involucrar a los ciudadanos en cooperación con la policía para prevenir y combatir los delitos. Se analiza la experiencia de países individuales del mundo sobre las peculiaridades de involucrar a los ciudadanos en la prevención del delito. En lo concreto, se estudia en detalle la práctica de cooperación de los ciudadanos con la policía de países como Estados Unidos, Gran Bretaña, Alemania y algunos otros. Para lograr este objetivo, se estudiaron los programas gubernamentales y regionales relevantes de estos estados y se analizaron los datos necesarios. Se concluye que se han identificado circunstancias que impiden la participación de la población en cooperación con la policía en Ucrania. En consecuencia, se sugieren formas apropiadas de resolver estos problemas.

Palabras clave: prevención del delito; participación ciudadana; cooperación policial; experiencia internacional; relación ciudadanía-policia.

Introduction

The deterioration of the criminal situation in Ukraine makes it necessary to intensify the work of law enforcement agencies to combat crime (Larkin *et al.,* 2020). In this regard, the experience of foreign countries of citizen engagement in preventing and combating criminal offenses is valuable for the practice of crime prevention in Ukraine. Our State is currently in a state of deep political, economic, and social crisis. The activity of criminal justice bodies is unbalanced. The law enforcement agencies are in the process of reform and qualitative organizational and managerial transformations. A number of new criminal prosecution bodies are being set up, including in the field of anti-corruption.

In this regard, the study of modern progressive foreign experience in crime prevention with the involvement of alternative entities deserves special attention.

The current approach of the world community in preventing and combating crime is based on establishing partnerships between government agencies and public and non-governmental organizations, as well as individual citizens. The activities of the latter are directly focused on the prevention and combating crime criminal prosecution, etc.

The study of modern progressive foreign experience of public influence on crime in such countries as the United States, Great Britain, Germany is due to the fact that they are civilized democracies with high degree of protection of human rights, established humane law enforcement practices and the newest strategies of crime prevention.

China and Japan are interesting from the point of view of regulating this issue within Eastern civilization.

1. Methodology

General scientific and special methods were used according to the purpose, tasks, object and subject of research. To achieve the goal of the Article, the following methods of scientific knowledge were used.

Logical method was used for identifying the problems of involving citizens in preventing and combating criminal offenses in Ukraine

The method of hermeneutics was applied when considering legal acts regulating the problem of involving citizens in preventing and combating criminal offenses in Ukraine.

Monographic method helped in the analyses of the research of domestic and foreign scientists who studied the issue under consideration.

Comparative and legal method made it possible to study progressive foreign experience of the involvement of public in preventing and combating criminal offenses.

With the help of specific sociological methods (expert surveys, public opinion polls), information on the effectiveness of public's involvement in crime prevention was collected and processed.

Abstract and logical method was used for proposing the ways to solve the problems of involving citizens in preventing and combating criminal offenses in Ukraine on the basis of effective foreign experience.

2. Literature Review

Dubow and Podolefsky (1982) argue that the police and the public actively cooperate to combat crime. Citizen participation in this activity manifests itself as collective response to crime, which means combining the efforts of individuals to prevent and combat crime. Several or a large number of people can interact within crime prevention; they can channel their efforts in an organized manner or spontaneously, formally or informally. The authors analyze the strategies aimed at stimulating the activity of citizens in the fight against crime.

Choi *et al.* (2014) emphasize that police officers are not able to effectively combat crime without the help of the public. The researchers are searching for the ways to increase citizen participation in crime prevention on the example of the United Kingdom within the article. To do this, they used a survey of 200 citizens of London who have previously cooperated with the police.

Schreurs *et al.* (2018) stress on the significant role of citizens in combating crime, but note that most people are reluctant to cooperate with the police. To conduct their study, the researchers used data from a survey conducted among 217 Duchers who filled out specially designed online questionnaires. The results show that 4 broad categories of participation behavior can be distinguished: social control; responsive participationж collaborative participation; and detection.

Carr (2012) studies the peculiarities of the interaction of citizens with the police on the example of two US cities in order to determine the opposite features of such interaction because of contrasting contexts and different institutional imperatives. He emphasizes that citizens are a developing entity in the fight against crime and justifies its significant role in cooperation with the police in the future.

UN officials, who have also studied the issue, say that public participation plays an active role in in containing rising crime rates. The main attention of the authors is paid to two questions: 1) how to use this resource in the most effective way; and 2) how citizens can effectively assist in preventing and combating offenses and controlling offenders. The author identifies four ways in which citizens can effectively cooperate with law enforcement agencies to combat crime (The United Nations, 1979).

3. Results and Discussion

The increase in negative processes in social and economic life due to the global pandemic of Covid-19, the associated collapse of the economy and, as a result, impoverishment of the population has led to the significant criminal activity increase (Boiarov *et al.,* 2020). In this regard we can

note that the fight against crime is a difficult and continuous process, within which both social and special measures aimed at detecting and disclosing crimes are carried out simultaneously and in parallel (Sevruk, 2017). However, there are a number of problems that negatively affect the investigation and detection of organized crime despite the significant legal support for combating such kind of offences (Pavlenko, 2018). One of these problems is difficulties with legislative regulation and practical matters of citizen engagement in prevention and cessation of criminal offences. Accordingly, it is necessary to study foreign experience on this issue.

As Hribov and Kozachenko (2019) correctly point out in this regard, the confidential cooperation is extremely important for Ukraine; the case law shows that evidence obtained by undercover agents using the means of covert transmission (fixation) of information, are generally considered inadmissible as those collected by improper subjects. Therefore, this issue needs to be addressed immediately, through amending legal documents of Ukraine taking into account foreign experience.

According to Article 8 of the Law of Ukraine "On investigative activities" (LU 2135-XII/1992, February 18), operational units are entitled to use confidential cooperation in accordance with Article 275 of the Criminal Procedure Code of Ukraine in order to perform investigative activities if there are grounds enshrined in the Article 6 of this Law.

Art. 11 of the abovementioned Law of Ukraine states that public authorities, enterprises, institutions, organizations, regardless of ownership, are obliged to assist operational units in solving problems of investigative activities. This cooperation can be concluded by written agreement guaranteeing the confidentiality of cooperation at the request of individuals. Such an agreement can be concluded only with a capable person. The procedure for concluding the agreement is determined by the Cabinet of Ministers of Ukraine.

Persons involved in the performance of investigative activities are obliged to keep the secret that has become known to them. Disclosure of this secret entails liability under applicable law, except in cases of disclosure of unlawful acts violating human rights.

We support the opinion of Holdberh (2016) that individuals may be involved in investigative activities, but such activities should comply with applicable law. The use of individuals in covert investigative (search) actions, including controlled delivery, controlled and operational procurement, special investigative experiment, simulation of the crime situation and other covert investigative (search) actions, unless expressly provided by law, is illegal. Evidence thus obtained must be declared inadmissible by the court.

The effectiveness of citizen engagement when conducting covert activities by police (detective, agent) in criminal proceedings is confirmed by law enforcement agencies of many foreign countries, such as: The Republic of Argentina, the United States, the Federative Republic of Brazil, Great Britain, Portugal, the French Republic, the Federal Republic of Germany and post-Soviet countries: the Republic of Georgia, the Republic of Latvia, the Republic of Moldova, the Republic of Kazakhstan, etc.

As Skulysh (2012) correctly noted, the indisputable achievement of the Criminal Procedure Code of Ukraine is the adoption of established standards of law enforcement of the developed democracies, including the United States, Britain, Germany, where pre-trial investigation of crimes is carried out with the use of public and private, and the processing of intelligence activities is in turn a consequence of the search for the legislative solution to the problems of developing an effective crime control mechanism.

The analysis of the legal experience of such countries as the United States, Germany, Belgium, Austria shows that the legal regulation of investigative activities is carried out by the relevant "open" laws, and the use of the results of such activities as evidence becomes common.

Experience useful for introduction in Ukraine, occurring both in developed democracies and in post-Soviet countries, is the possibility of direct participation of undercover agents in conducting investigative and search measures (covert investigative actions) and the use of special technical means to obtain and record information in criminal proceedings.

There are the following forms of involvement of citizens to preventing crime in the United States: 1) patrolling in public places; 2) participation in prevention programs; 3) providing information on committed crimes; 4) participation in educational activities.

The restoration of the system of crime prevention in the United States began in the late 80's – early 90's of the 20th century, the core of which was the reform of the police. The new concept has been and continues to be based on community policing or community-based policies. One of the directions of this doctrine is the involvement of citizens in patrolling in public places. The legal basis for the implementation of this preventive work is the constitutional provisions of legislation that not only the State has a duty to protect the rights of citizens and ensure their safety, but also the latter has a duty to passively and actively contribute to crime prevention.

In general, the high level of public confidence in the police and the activity of citizens in law enforcement in the United States is explained by the creation of special public organizations that coordinate work in this area. Thus, the National League for the Prevention of Crime by the Population was established in 1974, under the auspices of which a set of measures within the self-defense system is carried out, which, in addition

to joint patrols with the police, includes cooperation in crime detection, prevention of juvenile drug abuse, etc. (Bandurka, 2003b).

Scientists estimate that community policing on the part of the local population in the United States has been optimized since the establishment in 1999 of the Public Patrol Association, with a special activity of 10,000 of its members, which can be traced in New York, Los Angeles and Chicago. Despite the fact that the unemployment rate in the United States remained stable (10%), the country managed to reduce registered robberies by 7.5% and car theft by 19%. Experts state that the improvement in the dynamics of crime is due to the positive effect of assistance on the part of unemployed citizens who are involved in combating street crime (Kolodiazhnyi, 2017).

Useful is the experience of the United States in involving suspects, accused and convicted (prisoners) on legal grounds and on the basis of the opportunity of their release from or commutation of their criminal sentence in case of real assistance in detecting and/or investigation of the facts of preparation and (or) commission of an offense. It is expedient to introduce a witness protection program in Ukraine, by analogy with the United States, which is possible only under the above economic conditions.

Another good example of the impact on crime of public associations is the operation of "Operation Peacekeeper", which was introduced in 1997 in Stockton (California) and whose experience is currently used in other US cities. The aim of the project is to reduce youth banditry and the use of firearms. The program is designed for people aged 10 – 18 who are members of organized crime groups or may be likely to be involved in the near future. The subjects of its implementation, in addition to the police, are the representatives of the local community, including young people-volunteers carrying out an outreach mission in areas of concentration of adolescents (parks, squares, residential areas). Volunteers conduct legal representation with the members of youth gangs, explaining the latter the possible legal consequences associated with their participation in criminal organizations and the commission of various crimes, give examples of lawful behavior as an alternative to crime (National Institute of Justice, 2021)

The special project "Crime Stoppers" has also become popular in the United States; it provides for close cooperation between the media, law enforcement and administrative agencies and volunteer informants in the area of crime prevention. The history of this precautionary approach in the United States dates back to 1976; initially, it laid in a free confidential telephone line with which it was possible to send anonymous information about a particular crime or the person who committed it. The basis of modern practice of this project is material reward in the amount of 100 to 1000 dollars to those persons who provide any information about the committed latent crime. At the same time, commercial structures (banks, individual businessmen) that are interested in protecting their interests

and reducing local crime are involved in financing the "Stop the Criminal" program (Bandurka, 2003a).

Neighborhood Watch is another common type of program to provide information to the police about crimes committed. This practice began in the 1970s and then spread rapidly to Canada, the United Kingdom, and the Kingdom of the Netherlands. Thus, in the United States, about 20% of families live in areas where such projects operate, and a third of them participate in these programs themselves. A key principle of neighborhood watch is to expand informal surveillance and timely inform the police about offenses. This leads to an increase in the number of arrests and, as a consequence, a reduction in the level of local crime, especially its recurrence. This practice also helps to reduce the population's fear of crime and increase security in the area of residence.

In 1994, the British government took the initiative under the name "Partners Against Crime", which aims to deepen further cooperation between the police and the public on crime prevention. Within this initiative, a number of programs are being implemented:

- Neighborhood Watch.
- Street Watch.
- The Neighborhood Constable.

Besides, the Safer Cities Program has been introduced in the country since 1983. It is not only about fighting crime, but also about eliminating the fear of crime. Its activities are carried out jointly by local authorities, police, private business and the public (Kolodiazhnyi, 2017).

Great Britain enshrines the institution of a special constable within which the volunteers can perform some police functions. The system of "neighborhood surveillance", under which citizens participate in the detection of offenses both individually and through public law enforcement associations, is very common.

Work has been organized to provide advice to individual citizens and companies on the organization of their protection. Discussions and TV quizzes on crime prevention are held. A system of measures has been developed to encourage citizens to be witnesses or informants in various cases. Both individual citizens and public law enforcement associations are involved on a voluntary basis to assist the police. According to the plans of the country's leadership, the number of such public associations as "voluntary guards" should reach up to 5 million people in the future, which is a very significant number. Volunteers are responsible for patrolling and retrieving information about crimes and other offenses. They are not armed, do not have special equipment and clothing. Upon learning of the crime, they report it by walkie-talkie to the relevant rapid response unit,

as the cessation of crimes and other offenses is not part of their functional responsibilities (Muzychuk, 2002).

As mentioned above, the government and law enforcement agencies of this country pay special attention to the activities of socially active citizens and their preventive work in the local community at the place of residence. This is due to the fact that, according to British politicians and the belief of the vast majority of Britons, the rule of law is impossible without the participation of citizens in social life, including the protection of public order (Vedernikova, 2001).

In general, there are lively discussions among government officials, law enforcement officers, academics, and NGOs in British society about the current role of the police in ensuring the rule of law and protecting the rights of citizens, the activities of the police, etc. The most common view in this regard is the words of former British Police Secretary H. Blairs, who noted that the best modern innovation of the British police in its history is the creation of the so-called Community Patrol Service (CSO), which includes the work of volunteers police assistants (Moskvychev, 2005).

Volunteers are actively used during mass events, the search for criminals, missing persons, and in other cases of reinforcement of the formed police force.

The institution of special constables exists in many counties and cities in the UK, which facilitates the work of constables of the regular police force. Special constables serve in their free time and receive an hourly wage. Volunteers are used mainly at their place of residence. This has a positive impact on their activity, as it contributes to the realization of personal interest in maintaining law and order in the service area.

The experience of some British cities in introducing the position of community safety managers, who perform a coordinating and supporting function aimed at enhancing police partnerships with local authorities and the local community, is useful from a criminological perspective. This experience was first introduced in Bracknell Forest (Berkshill) in 1992, and later it was spread in many cities of the UK.

Another project of this city, aimed at increasing the role of the public in crime prevention, was a program called “Safe Doors”. This lies in the development of requirements by the local police for some civilian personnel. Security guards of private security agencies, who perform control at checkpoints and entrances to entertainment establishments (restaurants, discos, cafes) are required to have no criminal record; they also have to notify the police on the facts of violations of law and order by the visitors to these institutions.

There are public councils for crime prevention in Denmark, France, the Netherlands, Sweden, and Germany. The leadership of these councils is usually headed by authoritative politicians and managers. For example, the board of the public council of the German district of Schleswig-Holstein included the Minister of the Interior, the Minister of Culture, the Minister of Justice, the Minister of Social Protection.

Crime prevention councils were established both at the land level and at the municipal level in Germany in the early 90's of the 20th century. In total, this State has about 2 thousand such councils varying in purpose and scale of crime prevention. The main ones carry out their activities at the land level, considering crime as a local phenomenon. At the same time, the Federal Government pursues a nationwide crime control policy.

The project called "Jet", which was introduced in 2006 in Heilbronn (Baden-Württemberg) and is still operating, can be distinguished from the variety of program and preventive measures on in Germany. The essence of this program reflects its name, as it consists in the reactive, fast response of various subjects of preventive activity to violent crime in the juvenile environment of this city. In particular, the Heilbronn Police Department decided to change the local law enforcement concept to limit the exclusive response to juvenile violence already committed, while increasing the presence of police officers and volunteers in public places, especially on weekends and holidays. Of the city's 800 police officers, 90 are also law enforcement officers, who perform their duties in civilian clothes and promptly notify the local police in case of wrongdoing.

The effectiveness of this project is due to the speed of criminal prosecution of violent criminals, as well as a broad information campaign of local media, which inform the public about the constant presence of police and volunteers on the streets not only during mass events, but also in other days. Besides, the key to the effectiveness of this program was the conduct of preventive conversations with the leaders of informal groups of adolescents, who are most often involved in mass riots. The above precautionary measures have borne fruit, as the proportion of violent crimes in Heilbronn has decreased significantly, proving the need for this project on a regular basis (The European Crime Prevention Network, 2014).

Following the example of Germany and the United States, it is advisable to regulate the activities of persons who, on their own initiative, using the legislative guarantees of confidentiality provide reliable and relevant information on the preparation and commission of crimes (free or for reward). One should also take into account the experience of the Russian Federation in standardizing the appointment and payment of remuneration for assistance in detecting crimes and apprehending their perpetrators, ensuring confidentiality of such information and the security of persons, who reported it. These persons cannot be considered undercover employees

(freelance undercover agents), but are part of the social institution of covert cooperation. In the future a covert apparatus may be formed from among them, and they themselves should be considered as potential candidates for such cooperation, as practiced in the United States, Germany, and other developed democracies.

In our opinion, effective is the system of influencing crime with the help of the public in Asian countries, where the activity of the Japanese police is of considerable interest. Thus, there was particularly alarming growth of the so-called "blind spots" in cities (the neighborhoods under the control of criminal groups) in the late 80's in Japan. Police officers are making significant efforts to organize the residents of these areas to jointly combat crime and provide them with the necessary assistance. These efforts culminate in the creation of security communities in most criminogenic neighborhoods. Due to this style of work, close contacts are maintained between the population and the police; people trust the police and provide them with all possible assistance in the fight against crime and maintaining public order (Muzychuk, 2002).

The system of influencing crime with the help of the public in the Republic of China is less humane, but no less effective. The core of the system of influencing crime in China is the socio-political structure of Chinese society, based on socio-economic equality, general employment and material security (at a minimum level of meeting needs). A powerful propaganda apparatus allows to involve broad masses in solving national problems, among which is also the fight against crime. A nationwide campaign against crime was launched in this country, new forms of public participation in the fight against crime appeared, and their number increased, when alarming trends emerged in the development of criminal proceedings. It should also be noted that the practice of national campaigns may not always be negative, as it allows to involve almost the entire nation in solving important problems, to integrate the activities of various state and public bodies, to focus national efforts on the most pressing issues. The Chinese practice of large-scale campaigns (although it is formally criticized) has been adopted in many countries (including the United States, Japan, etc.) (Muzychuk, 2002).

Conclusion

Analysis of foreign experience shows that the interaction of citizens with the police is an important means of preventing and combating crime. In most countries, the population is involved in law enforcement under both national and regional programs. They take part in joint patrols together with law enforcement officers, in conducting legal education work, preventive talks with persons who are already involved in illegal activities or have a tendency to commit illegal acts.

Such cooperation can be carried out both on a paid and free basis. Clearly, receiving a reward is an additional incentive for citizens to help police officers. To stimulate the participation of citizens in law enforcement, various methods are used: issuing free overalls, encouraging citizens' activities with various signs of attention (from sending a letter on a birthday to awarding commemorative signs and medals), organizing free meals, parties, cash prizes, mentioning them in the media, announcing gratitude to senior government officials – all this things allows such people to feel their importance and realize the need for their activities.

Unfortunately, Ukraine has lost a great deal of preventive potential that existed during the Soviet period. Such forms of this activity as voluntary peoples' guards and team sites are a thing of the past. At present, there is an artificial inhibition of the process of greater involvement of citizens in crime prevention activity, primarily because of the leadership of law enforcement agencies. Certain achievements can be noted only in the military sphere and anti-corruption activities. Currently, there are about 200 public organizations in Ukraine, the purpose of which is to form State anti-corruption policy and limit corruption risks in the activities of various public authorities and local governments.

The study of modern progressive foreign experience of peoples' participation in crime prevention provides grounds for the selection of a number of areas of its implementation in Ukraine. Activities in these areas can be grouped as follows:

a) political (reform of outdated Soviet approaches to crime prevention, development of political will to use modern alternative approaches in the modernization of law enforcement, etc.);

b) legal (adoption of the new Law of Ukraine "On the Participation of Citizens in Prevention and Counteraction to Crime"; amending current legislation of Ukraine by supplementing the relevant legal acts with the provisions on monetary incentives for informants who provided information about the crime).

c) institutional and management:

- creation of pilot projects in the area of crime prevention with the involvement of citizens.
- formation of a fund to pay for the services of whistleblowers and other persons who provide important operational information about the committed crimes.
- development of volunteer activity in Ukraine for the use of operational data of volunteers on crimes against the foundations of national security, as well as the creation of volunteers on a voluntary basis of public associations of law enforcement.

- development of narrowly focused European-style crime prevention programs, in which volunteers should take an active part.

d) socio-psychological (protection and observance of human and civil rights in Ukraine with simultaneous popularization of citizen participation in the field of crime prevention).

e) technical (participation of individual citizens in the installation of video surveillance cameras at the place of residence; their assistance in the technical equipment of public order patrols) (Kolodiazhnyi, 2017).

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Rules of criminal liability for corruption offences and their prevention

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Abstract

The objective of the article is to conduct a comparative legal study of Ukrainian and international standards of criminal liability for corruption offences and their prevention. The research methodology includes the following methods: system-structural method, formal-dogmatic method, historical method, grouping method, comparative-legal method, legal modeling method and others. As a result, the peculiarities of anti-corruption regulatory-legal provisions and police practice in the states analyzed are clarified, with the selection of relevant positive and negative trends, principles of construction of anti-corruption policy, specificity of the conceptual apparatus, etc. Emphasis is placed on the need to further harmonize Ukrainian legislation with international agreements and the practice of their implementation. It is concluded that negative trends in foreign countries have been found to be the result of non-compliance with relevant commitments to combat and prevent corruption.

Keywords: criminal offences ofcorruption; international anti-corruption standards; Ukrainian experience in the fight against corruption; criminal liability; crime prevention.

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Normas de responsabilidad penal por delitos de corrupción y su prevención

Resumen

El objetivo del artículo es realizar un estudio jurídico comparado de los estándares ucranianos e internacionales de responsabilidad penal por delitos de corrupción y su prevención. La metodología de investigación incluye los siguientes métodos: método sistema-estructural, método formal-dogmático, método histórico, método de agrupamiento, método comparativo-legal, método de modelado legal y otros. A modo de resultados se aclaran las peculiaridades de las disposiciones normativo-legales anticorrupción y la práctica policial en los estados analizados, con la selección de tendencias positivas y negativas relevantes, principios de construcción de la política anticorrupción, especificidad del aparato conceptual, etc. Se hace hincapié en la necesidad de armonizar aún más la legislación ucraniana con los acuerdos internacionales y la práctica de su aplicación. Se concluye que se ha comprobado que las tendencias negativas en países extranjeros son el resultado del incumplimiento de los compromisos pertinentes para combatir y prevenir la corrupción.

Palabras clave: delitos penales de corrupción; normas internacionales anticorrupción; experiencia ucraniana en la lucha contra la corrupción; responsabilidad penal; prevención del delito.

Introduction

The article presents a comparative legal study of national and foreign standards of criminal liability for corruption offenses and their prevention. Performing a comparative legal study of national standards of criminal liability for corruption offenses and their prevention will allow:

- firstly, to understand the degree of regulation of relevant criminal law and criminological provisions at the level of individual States.
- secondly, to assess the extent to which the legislators of individual countries have taken into account the requirements of international and European anti-corruption conventions, treaties, protocols, directives, etc.
- thirdly, to find out the features of anti-corruption regulations and law enforcement practices in the analyzed countries, to highlighting the relevant positive and negative trends, the principles of establishing anti-corruption policy, the specifics of the conceptual apparatus, etc.

It is necessary to note that in some cases Ukraine implement the foreign practice inadequately, ambiguously and almost mechanically (verbatim) borrows conventional provisions.

In our opinion, doctrinal definitions of corruption criminal offenses can only be of secondary importance, as the current law of Ukraine on criminal liability directly determines the format of such offenses.

Unfortunately, those few works of domestic forensic scientists dedicated to this issue contain just several provisions on criminal offenses related to corruption., None of them contain at least a general concept of this type of offence or define their characteristics and types. There are currently no comprehensive scientific studies on this topic, and the existing scientific publications on this issue do not reveal the essence of "criminal offenses related to corruption".

1. Methodology

The choice of research methods is determined by the subject of the research. A set of methods of both general and special scientific knowledge was used. The study is based on such principles of dialectical cognition as historicism, comprehensiveness, objectivity, specificity, determinism, etc.

Such logical methods as analysis, synthesis, abstraction, generalization, deduction, induction, analogy, etc. were widely used within the article.

System and structural method, which assumes that all phenomena are considered as elements of systems, allowed to consider criminal responsibility as a component of the system of legal measures to combat corruption.

Formal and dogmatic method allowed to analyze the norms of the current legislation of Ukraine and some countries of the world, which establish criminal responsibility for corruption offences.

Historical method helped to trace the dynamics of the development of anti-corruption legislation of some countries of the world.

Clustering method was applied for identifying conceptual foundations of anti-corruption legislation of foreign countries as well as generalized models of corruption (based on the historical and cultural principle).

Using a comparative legal method, the rules governing the prosecution of corruption offenses in Ukraine and in some countries of the world were compared.

Legal modeling method made it possible to substantiate the relevant conclusions and proposals.

2. Literature Review

The issue of liability for corruption offences is the topic of scientific works of a number of foreign and domestic scientists. For example, Meyer *et al.*, (2012) considered some problems of corruption in the USA. In particular, they investigated legal framework for fighting this negative phenomenon, provided us with the definition of "bribery", "public official" and described the consequences of corruption on different levels.

The same problem was the topic of investigation by Mcinerney (2002). He studied federal legal acts regulating the issue of bribery, namely the Foreign Corrupt Practices Act and the Federal Bribery Statute. Regulation of bribery on the State level was also the part of his investigation.

The issue of criminal liability for corruption offences of legal entities was examined by Meyer *et al.*, (2014). The scholars tried to find out to what extent the companies can be held liable for corruption offences committed by their employees. They also studied the measures that should be undertaken by the companies for corruption prevention and their responsibility for insignificant adoption of these measures. To do this the authors studied the relevant legislation of England and the Netherlands.

Bribery and corruption in Singapore were studied by Chan and Ling (2020). They state that this country shows no tolerance towards corruption and the problem of corruption is regulated by a number of legal acts, namely by the Penal Code, the Prevention of Corruption Act, Corruption, Drag Trafficking and other serious Crimes Act, etc. They also investigated law enforcement and police activities in this sphere, as well as the peculiarities of investigation of corruption offences.

The modern approaches to fighting corruption in Russia were studied by Vorontsov *et al.*, (2018); Iran's criminal policy regarding economic corruptions was examined by Ardestani (2017), legislative regulation of the peculiarities for bringing employees for responsibility for committing corruption or corruption-related offense in Ukraine was investigated by Podorozhnii *et al.,* (2020).

3. Results and Discussion

Ukraine has been building a law-based State on the example of the European community, in which an individual, his (her) life and health, honor and dignity, inviolability and security are the greatest social values (Kyslyi *et al.*, 2020). That is why studying foreign experience in corruption preventing and fighting this negative phenomenon is of the utmost importance.

Scholars emphasize that foreign experience is characterized using various methods, strategies, and techniques to combat corruption that are effective in their country (e.g., Sweden, Singapore and Germany), but there are no universal methods to combat this phenomenon, although there are principles that are effective in the respective State (Kuptsova and Riutov, 2017).

Finland, Denmark, New Zealand, Iceland, Singapore, Sweden, Canada, the Netherlands, Luxembourg, Norway, Australia, Switzerland, the United Kingdom, Austria, Israel, the United States, Chile, Ireland, Germany and others are the countries that have created an effective anti-corruption mechanism (although each of these countries has its own peculiarities in the organization of anti-corruption activities, they have a common denominators: efforts to organize active counteraction to corruption; creation of an appropriate legal framework; involvement of public organizations in combating corruption) (Topchii *et al.*, 2016). In fact, a similar list is given by other scholars, noting that the methods of combating corruption in foreign countries are quite diverse – from the formation of effective anti-corruption legislation to the promotion of law-abiding high moral types of employee behavior (Hotyzheva, 2018).

One can often find a number of corruption offenses in the national legislation of foreign countries, among which the most serious are: bribery of officials; bribery in private business; influence trade; fraud; stealing; abuse of office; illegal enrichment and money laundering (Council of Europe, 2014). It should be noted that the concept of "Corruption Criminal Offenses" and its derivatives (including "corruption") are widely used in the criminal law of a number of foreign countries, including the post-Soviet ones. For example, the Penal Code of the Republic of Azerbaijan (Law no. 787-IQ/1999 of December 30) provides for liability for "corruption offences and other offences against the interests of the service" (Articles 308 – 314-3); the Penal Code of the Republic of Kazakhstan (Law no. 226-V/2014 of July 3) provides for the liability for "corruption and other criminal offenses against the interests of the civil service and public administration" (Articles 361 – 371). The Penal Code of the Kyrgyz Republic (Law no. 985-XV/2016 of December 22) distinguishes between "corruption and other crimes against the interests of the State and municipal service" (Chapter 44 of the Special Part) and directly "corruption" (Article 319) as a crime. The Penal Code of the Republic of Moldova (LAW no. 985-XV/2002 of April 18) directly enshrines passive (Article 324) and active (Article 325) corruption among the crimes against the proper order of work in the public sphere (Chapter XV of the Special Part), as well corruption crimes in the private sector as a separate type of crime (Chapter XVI of the Special Part).

As for the classification of anti-corruption foreign legislation, it will be difficult to do, as the degree, form and level of regulation of anti-corruption

activity and prevention of corruption differ in each country (even in the case of economic and political alliances such as the EU). They depend on the existence of specific laws to prevent (and / or counter) corruption or the absence of such laws, overwhelming focus on corrupt official (bribe-taker, public official) or the person who gives bribes, assigning responsibility for acts of corruption directly on natural persons of both on natural persons and legal entities (corporations), corruption prevention definitions enshrined in public service laws or their enshrinement mainly in bylaws, priority of corruption prevention or fighting the corruption, focus on foreign corruption instead of the corruption on the national level, etc.

For example, the Federal Law on Corruption Abroad of 1977 (USA), the Law on Corruption of Foreign Officials of 1988 (Canada), and the Law on Bribery of 2010 (Great Britain) are widely discussed in the legal literature due to their effectiveness. There are a number of anti-corruption legal acts in Singapore, which is one of the least corrupt countries in the world: The Penal Code, the Prevention of Corruption Act, Corruption, Drag Trafficking and other serious Crimes Act, etc.

The report "Anti-corruption trends and changes in 2019" (Chambers and Partners, 2019) states that in recent years, many countries:

- firstly, adopted new anti-corruption legislation or improved existing laws, in particular:
    a) in 2018 India amended the Act on Corruption Prevention, expanding the responsibility for those who bribe and for public bribery of companies; just civil servants who received bribes were persecuted before then.
    b) in 2019 Italy improved anti-corruption legislation by increasing penalties for individuals and companies for some corruption criminal offences and expanding the meaning of the term "foreign civil servant".
    c) in 2018 Russia passed laws that provide prosecutors with new means to combat corruption, allow courts to freeze the assets of companies under investigation for corruption offences, up to the maximum amount of any potential fine (the law also provided companies with so-called protection from prosecution for bribery, if they facilitate the detection or investigation of bribery or prove that they were bribed);
- secondly, strengthened international cooperation, as well as cooperation between domestic law enforcement agencies, for example:
    a) The United Kingdom, according to the United States model, passed in 2014 the Law that defer prosecution under

agreements, under which the prosecutor has the right to defer criminal prosecution in exchange for the consent of the defendant (British Bank) to comply with certain requirements (in particular, pay fines, carry out corporate reforms, cooperate with the investigation); Canada did so in 2017;

b) In 2018, the United States passed the Law on the Use of Updated Legal Foreign Data (CLOUD Act), which allowed the US government to access data stored in foreign countries, and vice versa.

Note that the conceptual foundations of anti-corruption legislation of foreign countries, according to some scholars, should be considered the presence of:

1) specialized anti-corruption bodies (for example, in Italy it is the Office of Investigation – Antimafia, in Singapore – Bureau for Investigation of Corruption, in France – Corruption Prevention Service, Central Chamber of Accounts, Central Office for punishment of financial violations in the financial sphere, Central Directorate of General Information).

2) legal framework for combating and preventing corruption (for example, in Finland, anti-corruption rules do not primarily define the type of crime, but a specific area of activity, hence corruption is prevented at the stage of its emergence; in Belgium, the emphasis is on clarifying lawful conduct and anti-corruption standards; Romania has had the Law on the prevention, detection and punishment of corruption since. 2000).

3) a) national programs, strategies, doctrines (for example, Poland has approved the State program "Anti-Corruption Strategy", while in Slovakia there is a "National Anti-Corruption Program").

b) legislation to combat conflicts of interest in the public service (e.g. Spain passed the Law against the use of members of the government and senior government officials for personal purposes (codes of professional ethics) in 2006; the US "Code of Ethics for Civil Service" has defined the moral standards for officials since 1958; Spain adopted the Code of Ethics for Civil Servants in 2007)'

c) criminal liability of legal persons for corruption offenses (for example, in Switzerland such liability has been introduced since 2004, in Montenegro – since 2005).

d) prohibition on lobbying (for example, the US Honest Leadership and Open Government Act of September 14, 2007 enshrines the order of the disclose of information about lobbying and funding,

limits gifts to members of Congress and their staff, provides for mandatory disclosure of their costs), etc. (Fadieiev, 2015).

Taking into account the experience of different States Nevmerzhytskyi (2009) and Voloshenko (2018) offer the following generalized models of corruption based on the historical and cultural principle:

1) Asian.

2) African.

3) Latin American.

4) Western European.

As for the EU States, scholars divide them into three groups according to the level of corruption:

- the "Corrupt South" (southern Catholic countries) – Italy, Spain, Greece, Belgium, Portugal, France, etc.
- the "Pure North" (northern Protestant countries) – Denmark, Sweden, the Netherlands, Finland, etc.
- Countries that are at a level of corruption between the two previous groups – Great Britain, Germany, Austria, Luxembourg, Ireland, etc., (Pujas and Rhodes, 1999).

In general, according to Buryak (2020), the success of the fight against corruption in the EU countries depends not only on the presence or absence of anti-corruption infrastructure in the country, but on economic, historical, cultural and many other factors that usually lie outside the legal area. The image of a high-ranking official in the public consciousness is identified with a person who performs important functions – pursues State policy and serves the population. Corruption is perceived by the governments of these countries as a serious problem of national security. At the same time, corruption is seen as an internal and external threat. It is quite important that efforts to limit corruption in these countries are, as a rule, are institutionalized and impressive in scale.

In this regard the following should be noted: firstly, Organization for Economic and Social Development (OECD), and in particular its Anti-Corruption Network for Eastern Europe and Central Asia, is one of the most among the number of organizations for cooperation in preventing and combating corruption offenses; secondly, the reports of international experts have a significant impact on the attractiveness of countries for foreign investors (for example, this is a positive assessment of Ukraine provided by the experts of the Council of Europe (2014), UN, OECD and other organizations, which is especially important in the context of our country's intention to integrate into the European Union).

At the same time, non-fulfillment of the relevant obligations to combat and prevent corruption is the negative trends in foreign countries. For example, GRECO states that not every CoE Member State adheres to the implementation of anti-corruption recommendations (in particular, negative conclusions were made in 2019 regarding Germany, to which the «non-compliance procedure» has been applied, as well as with respect to the Republic of Belarus, Hungary, Luxembourg, Ireland, Turkey, Romania, Portugal, the Czech Republic, Denmark, France, Northern Macedonia, and Austria).

As for Ukraine, the national standards of criminal liability for corruption offenses and their prevention are represented by the provisions of the relevant domestic laws and regulations, as well as implemented international (including European) conventions, treaties, protocols, and other documents. As a rule, the official websites of State bodies, institutions and enterprises publish a general list of domestic (Constitution of Ukraine, relevant laws of Ukraine, codes, decrees of the President of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine, departmental documents, etc.) and international (relevant conventions, agreements, statutes, etc.) anti-corruption regulations, among which there are documents that are directly related to combating and preventing corruption offenses.

In our opinion, the provisions of the Criminal Code of Ukraine and the Law of Ukraine "On Corruption Prevention" are of fundamental importance for accountability and prevention of corruption offenses. The National Agency for Corruption Prevention annual national reports on the implementation of the principles of anti-corruption policy are also important, as they are the main documents that summarize all data on the state of corruption in the country.

Conclusion

Summarizing the above, it is necessary to agree with Holovkin and Timchenko (2015) and conclude that the new system of anti-corruption legislation is in the process of being adopted in Ukraine, due to the passing the laws of Ukraine on the cleansing of power, prevention of corruption, the National Anti-Corruption Bureau of Ukraine, the Prosecutor's Office of Ukraine, the State Bureau of Investigation, etc., and is "the beginning of a profound reform of the system of anti-corruption activity in Ukraine". At the same time, in today's context, the formation of the legislative and institutional framework for the development and implementation of state anti-corruption policy is not fully completed in Ukraine and therec is a need for the further harmonization of domestic legislation with international agreements and their application (Dorokhina and Moroz 2019).

The strategic direction in the fight against corruption in Ukraine remains its prevention in the form of comprehensive precautionary measures, which include:

- defining a strategy for socio-economic development and administrative reform.
- formation of the ideology of the civil service, i.e. its moral principles and values;
- ensuring the transparency of State power and increasing its social value.
- -improvement of anti-corruption legislation.
- real manifestation of political will.
- specific actions to represent corruption as a risky and unprofitable activity.
- improving the activities of law enforcement agencies, etc.

In the context of political and criminological prevention and counteraction to corruption it is proposed: to change the way the public sector performs its duties due to the principle of integrity in public service; to emphasize the implementation of the political will of government officials; to change the existing approaches that have been formed in the public consciousness regarding the perception of corruption as a common phenomenon; to introduce the system of principles of public life; to increase the level of professionalism of officials; to create opportunities for access by all segments of the population to using the services of private companies through a system of benefits, subsidies for certain categories of citizens; to ensure maximum transparency of election procedures, the activities of officials exclusively in a politically neutral manner, as well as transparency and independence of the media, etc.

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International Legal Problems of Qualification of Armed Conflicts

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Abstract

The article addresses the qualification problems of armed conflicts. The study was conducted through the analysis of international legal doctrine, international treaties, decisions of international organizations. Attention is paid to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court. It is noted that International Humanitarian Law has been in place since the beginning of the armed conflict. Therefore, the application of International Humanitarian Law does not require any recognition of the existence of armed conflict (international or non-international); this conflict exists because of armed clashes. It is emphasized that the need to classify the conflict arises in view of domestic and international legal factors (to bring to international criminal justice those who have committed war crimes; state responsibility for internationally wrongful acts, etc.). Attention was paid to the non-existence of a single body, which was empowered to determine the existence of an armed conflict. Different international agencies may have different qualifications for the same armed conflict. It is concluded that it is necessary to establish a Committee of Experts under the UN Secretary-General, to avoid different qualifications from the same armed conflict.

Keywords: armed conflict; war; crime's war; hybrid warfare; International Criminal Court.

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Problemas jurídicos internacionales de calificación de los conflictos armados

Resumen

El artículo aborda los problemas de calificación de los conflictos armados. El estudio se realizó mediante el análisis de la doctrina jurídica internacional, tratados internacionales, decisiones de organismos internacionales. Se presta atención a la jurisprudencia del Tribunal Penal Internacional para la ex Yugoslavia y la Corte Penal Internacional. Se observa que el Derecho Internacional Humanitario se ha venido aplicando desde el inicio del conflicto armado. Por tanto, la aplicación del Derecho Internacional Humanitario no requiere ningún reconocimiento de la existencia del conflicto armado (internacional o no internacional); este conflicto existe por el hecho de enfrentamientos armados. Se enfatiza que la necesidad de calificar el conflicto surge en vista de los factores de orden legal interno e internacional (para llevar ante la justicia penal internacional a quienes han cometido crímenes de guerra; responsabilidad del Estado por hechos internacionalmente ilícitos, etc.). Se prestó atención a que no existe un organismo único, que esté facultado para determinar la existencia de un conflicto armado. Diferentes organismos internacionales pueden tener diferentes calificaciones para el mismo conflicto armado. Se concluye que es necesario establecer una Comisión de Expertos dependiente del Secretario General de la ONU, a fin de evitar diferentes calificaciones de un mismo conflicto armado.

Palabras clave: conflicto armado; guerra; crímenes de guerra; guerra híbrida; Corte Penal Internacional.

Introduction

Wars have accompanied human civilization during its history, and today it is difficult to imagine what would be the development of society if states had invested their scientific and human potential, as well as financial resources into the overall well-being of humanity, rather than the development of weapons and warfare. Nowadays, it is not possible to calculate victims of the wars and claim the exact toll of human lives. And it is impossible to say surely what our society could be without such conflicts. Unfortunately, for many countries, the priority remains the armed forces, waging war, and not the well-being of its population.

Wars force us to rethink not only human values, but also the values based on which the state and the world community as a whole must function. That is why each new stage of development of public international law is connected with the existing crises of world scale and the desire of states

to revise the 'rules of the game' in the international arena to prevent such crises in the future.

However, armed conflicts are still existing; this is reality of nowadays. Therefore, the issue of qualification of armed conflicts is continuing to be actual.

Qualification of armed conflicts is needed both to determine which norms of the International Humanitarian Law (IHL) are applicable to armed conflict and, if it violated, to bring the perpetrators to justice before national and international courts. In addition, depending on the type of armed conflict, the international legal responsibility of the state may arise.

This article is devoted to analyzing of the existing problems of international legal qualification of armed conflicts, investigating and detecting who has the right to qualify armed conflicts and what are the consequences of such qualifications. In the article is solved the following tasks:

- to define the types of armed conflict.
- to characterize the current problems in the practice of qualifying armed conflicts by state.
- to find out the specific features of the qualifying of armed conflicts by international organizations and international criminal courts.
- to formulate suggestions concerning body that should define the existence or absence of armed conflicts.

1. Theoretical Framework

The qualification of armed conflicts has been the subject of research by scholars. Sylvain Vite in his article "Typology of armed conflicts in international humanitarian law: legal concepts and actual situations" studied international and non-international armed conflicts, as well as paid special attention to "controversial classification of certain armed conflicts", in particular: "control of a territory without military presence on the ground", "foreign intervention in non-international armed conflicts" (Vite, 2009: 83). In the article "Armed conflict under international humanitarian law", O. C. Nwachukwu made similar work researching the specific features of international, non-international and mixed armed conflicts (Nwachukwu, 2014). A comparison of the term's "war" and "armed conflict" was made by V. Bernard (Bernard, 2014).

James G. Stewart and Dietrich Schindler studied internationalized armed conflict. In the scientific article "Towards a Single Definition of Armed Conflict in International Humanitarian Law: a Critique of

Internationalized Armed Conflict" J. G. Stewart paid attention to the test for internationalization of armed conflict, the effect of internationalization, and political influence on characterization of internationalized armed conflict (Stewart, 2003). Dietrich Schindler in his work "International humanitarian law and internationalized internal armed conflicts" researched different relationships in internationalized internal armed conflicts and forcible installation of a new government through the intervention of a foreign State (Schindler, 1982).

Hybrid warfare was subject of study firstly by F. G. Hoffman **(**Hoffman, 2009). After this, hybrid warfare as an armed conflict, waged by specific methods was subject of researching by M. A. Piotrowski (Piotrowski, 2015), N. Antonyuk and M. Malskyy (Antonyuk and Malskyy, 2016), S. Iqbal (Iqbal, 2018), A. Celso (Celso, 2019), etc.

2. Methodology

The study was conducted through the critical analysis of international legal doctrine, international treaties, decisions of international organizations. Particular attention is paid to the case-law of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court.

The subjects of the research were customary and treaty norms of IHL as well as practice of international criminal courts. The subject of the study were armed conflicts (Arakelian *et al.*, 2020)

Dialectical, comparative, historical and formal dogmatic methods are used in this article.

3. Types of armed conflicts

3.1 International and non-international armed conflicts

Traditionally, the norms of IHL distinguish two types of armed conflicts: international and internal (non-international).

International armed conflict is considered as a conflict which occurs between two or more States, and non-international is a conflict, between governmental forces and non-governmental armed groups, or between only these groups (Melzer, 2016; Djukić and Pons, 2018; Tileubergenov *et al.*, 2016). As Nils Melze stresses:

> For centuries, sovereign States have regulated their relations in both peace and war through treaties and custom, a tradition based on mutual recognition of national sovereignty and international legal personality. Conversely, governments have long been reluctant to subject their efforts to maintain law and order and public security within their territorial borders to the purview of international law (Melzer, 2016: 53).

Essentially, states do not want to provide any guarantees for separatists, and they want to have a free hand in "internal affairs" (Cameron, 2008; Thürer, 2011). The legal regulation of international armed conflicts is carried out primarily by the Geneva Conventions of 1949 and the Additional Protocol I to the Geneva Conventions of 1977.

Article 2 of the Geneva Conventions of 1949 provides the commonly accepted definition of an international armed conflicts. In accordance with common art. 2 to the Geneva Conventions of 1949 this Convention is applying to all cases of declared war or of any other armed conflict that arising between two or more of countries, even if the state of war is not recognized by one of that countries; the Convention is applying also to all cases of occupation (partial or total) of the territory of a state, even if the said occupation does not meet with armed resistance.

Certainly, an international armed conflict is foremost an inter-state conflict. But at the same time, the Additional Protocol I extend the definition of international armed conflicts. According to art. 1 (4) of the Protocol, international armed conflicts also include "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination".

Hence, IHL provides for two types of international armed conflicts: 1) inter-state conflict (classic inter-state warfare and partial or total occupation) and 2) armed conflict in accordance with the principle of self-determination (wars of national liberation).

The legal regulation of non-international armed conflicts is carried out by the common art. 3 to Geneva Conventions of 1949 and the Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

According to art. 1 (1) of the Protocol II, internal armed conflicts are armed conflict between armed forces of state and dissident armed forces or "other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". Hence, non-international armed conflict means armed conflict that take place either between 1) one or more armed groups and government's forces or 2) only between armed groups (Vite, 2009).

At the same time, according to art. 1 (2) of the Protocol II, non-international armed conflicts do not cover situations of internal disturbances and tensions, including "riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts".

The general distinction between internal (non-international) armed conflicts and situations of internal disturbances and tensions is made by two criteria:

1) hostilities must be a minimum level of intensity (this criterion includes the duration, number and intensity of individual confrontations; the type of weapons used; the number and caliber of munitions; the number of persons and type of armed forces partaking in the fighting; the number of victims; involvement of UN Security Council etc.) (International Criminal Tribunal for the Former Yugoslavia, 2008; Wilmshurst, 2012; Gill and Fleck, 2015; Murray, 2016).

2) non-governmental armed forces involved in the conflict are "parties to the conflict", meaning that they are organized armed forces (Luban *et al*., 2018; Ziadeh, 2019; ICRC, 2008).

In the context of the study of international / non-international armed conflicts, it should be noted that the term "armed conflict" has almost completely supplanted the term "war". Sometimes it chances to find the opinion that "war" is only a political term, in contrast to "armed conflict", which has a legal meaning in contemporary IHL (Bernard, 2014). With this opinion can only be partially agreed. Indeed, after the Second World War, in particular in the 1949 Geneva Conventions, the term "war" is used much less frequently than "armed conflict". Moreover, the 1949 Geneva Conventions introduced the concept of armed conflict into IHL in the first time. S. Vite emphasizes that:

> Those who drafted those instruments wanted to show that the applicability of IHL was henceforth to be unrelated to the will of governments. It was no longer based solely on the subjectivity inherent in the recognition of the state of war but was to depend on verifiable facts in accordance with objective criteria (Vite, 2009: 72).

At the same time, IHL continues to use *concepts of "laws and customs of war"*, "war crimes". Moreover, the title of the Third Geneva Convention (1949) "The Third Geneva Convention relative to the treatment of prisoners of *war*" and the Fourth Geneva Convention (1949) "Geneva Convention relative to the protection of civilian persons in time of *war*". The term "war" can also be found in the text of the 1949 Geneva Conventions. That is, in IHL, the aspect has changed from "war" to "armed conflict", but the term "war" continues to be used.

3.2 Other possible types of armed conflict in the doctrine of IHL and the practice of international criminal tribunals

As noted above, the norms of IHL distinguish two types of armed conflicts: international and non-international (internal). At the same time other types of armed conflicts can be found in the doctrine and the practice of international criminal tribunals. Why do new types of armed conflict begin to emerge in the doctrine and practice? The reason for this

seems to be that the definition of international / non-international conflicts contains the ideal constructions, because any armed conflict cannot be exclusively international or non-international. As a consequence, since every international armed conflict has more or less armed clashes that can be defined as a non-international armed conflict, and conversely, in a non-international armed conflicts can be involved a third country that will internationalize such conflict, and therefore the concepts of other types of armed conflict are emerged: internationalized, mixed and hybrid armed conflict (Dzhafarova *et al.*, 2020).

a. Internationalized armed conflict

The treaty norms of IHL contain no specific provisions on internationalized armed conflicts. As usually, the term "internationalized armed conflict" scientists describe as non-international armed conflict that are rendered international (Stewart, 2003; Cassese, 2009; Melzer, 2016). It is worth paying attention to the opinion of J.G. Stewart, who emphasizes that the factual circumstances can achieve internationalization are as usually combined and includes armed conflict between two internal groups (both are supported by different States); "direct hostilities between two States that militarily intervene in an internal armed conflict" to support opposing sides; armed conflicts "involving a foreign intervention in support of an insurgent group" fighting against governmental armed forces (Stewart, 2003: 315).

Since the treaty rules of IHL do not define the internationalized armed conflict, the question arises which rules of IHL should be applied to such conflict: those applicable to international or non-international armed conflicts? By the way, the problem of application of IHL to internationalized armed conflict is not so new. As D. Schindler underlined, back at the time of the Vietnam armed conflict in the 1960s, two different opinions were offered concerning the applicability of IHL in internationalized armed conflicts (Schindler, 1982). According to one, a non-international armed conflict becomes an international by the mere fact of armed intervention by foreign state. IHL should be applied to all the parties of the armed conflict, even between the government of the State in which the non-international armed conflict has broken out and the insurgents. According to the other opinion, an internationalized armed conflict should be divided into its international and non-international components (Schindler, 1982).

It seems that the rightest position on the application of IHL to internalized armed conflicts is now adopting by the ICRC. According to the position of ICRC in an internalized armed conflict could be defined three situations: 1) it remains a non-international (when one or more (third) States or an international organization intervene in support of a state involved in a war

against an organized armed group); 2) it becomes an international (when one or more (third) States or an international organization intervene in support of an organized armed group involved in a war against government forces); 3) it becomes "mixed" (depending on the nature of parties to the armed conflict).

b. "Mixed" armed conflict

The treaty norms of IHL contain no specific provisions also on "mixed" armed conflicts.

'Mixed' armed conflicts mean conflicts that combine, on the one hand, international, and on the other hand, non-international armed conflicts (Bouvier, 1986; Nwachukwu, 2014). In such conflicts it is possible to define clearly in which cases there is an international one and in which there is a non-international armed conflict.

Concept of "mixed" armed conflict was used in the practice of the International Criminal Tribunal for the former Yugoslavia (ICTY) (Kolb and Hyde, 2008; Doria *et al.*, 2009). In the Tadic case, the Appeals Chamber of the ICTY stressed that the members of the UN Security Council knew in 1993 (during drafting of the Statute), that in the former Yugoslavia the armed conflicts could have been characterized as both international and non-international, or alternatively, as a non-international armed conflict alongside an international one, or as a non-international conflict that had become internationalized because of support of the third state, or as an international conflict that had afterward been replaced by one or more non-international conflicts, or some combination (international/ internal) these conflicts (International Criminal Court, 1995). Moreover, the different nature of the conflicts in the former Yugoslavia is in evidence by the agreements reached by parties to conflicts in order to abide by certain norms of IHL. The Appeals Chamber of the ICTY (Tadic case) emphasized that the fact reflecting the conflict being international is that on 27 November 1991 representatives of the Yugoslavia Peoples' Army, the Federal Republic of Yugoslavia, Croatia, and the Republic of Serbia reached into an agreement on the implementation of the Geneva Conventions of 1949 and the Additional Protocol I of 1977 (International Criminal Court, 1995). In contrast to the abovementioned agreement, an agreement reached on 22 May 1992 between the various factions of the conflict within the Bosnia and Herzegovina reflected the non-international aspects of the conflicts (International Criminal Court, 1995).

At the same time, the weakness of the conception of "mixed" armed conflict is fairness of the division of participants in armed conflicts, when in hostilities take part the governmental armed forces on the one hand and the anti-governmental armed forces and their supporting third-country

governmental forces are involved in armed clashes on the other hand. Would it be fair to distinguish such persons, in particular by providing different levels of protection by IHL treaties? In reality, the Geneva Conventions of 1949 and the First Additional Protocol of 1977 will apply to governmental armed forces, and only Common article 3 to the Geneva Conventions and the Additional Protocol II of 1977 to anti-governmental forces.

c. Hybrid warfare

The concept of "hybrid warfare" is not common used in international legal doctrine. International law norms do not contain the concept of 'hybrid warfare' either. However, this concept is used actively to characterize armed conflict in Syria (Celso, 2019), Lebanon (Piotrowski, 2015), Libya (Iqbal, 2018) etc.

The concept of "hybrid warfare" is still more military and political than legal. One of the authors of this concept is Frank G. Hoffman, who speaking about hybrid warfare, mainly draws attention to the methods of such warfare. In particular, in his view, hybrid warfare brings together regular and irregular armed forces, state and non-state actors; involvement of high-tech capabilities such as antisatellite weapons with terrorism etc. (Hoffman, 2009).

S. Iqbal gave very similar notion of hybrid warfare and including to hybrid warfare political war, conventional and unconventional warfare, information and cyber warfare, supporting local unrest, mass propaganda (including fake news), diplomacy, intervention in foreign elections (Iqbal, 2018). Hybrid warfare is seen as an armed conflict, waged by specific methods by a number of other scientists too (Josan and Voicu, 2015; Lanoszka, 2016).

However, the question arises whether it is advisable to use the term 'hybrid' instead of the term 'international' / 'non-international' in modern armed conflicts? It seems that the classic division of armed conflicts (international / non-international) contains some ideal constructions. Because it is difficult to imagine any armed conflict that would be exclusively international or non-international, especially that did not contain "political wars", information wars and propaganda, partial support from the local people in the form of collaborators, etc. If we rethink the Second World War, based on the above definition of hybrid warfare, this war, which contained mass propaganda (Welch, 2017), active use of collaborators (Armstrong, 1968) etc., could also be considered "hybrid". Certainly, such a course of thinking about the classification of the Second World War as "hybrid" is false. The example of World War II is just one example that confirms that the term "hybrid" war can be applied to any armed conflict. Further, if this term can be applied to any armed conflict and *apriori* all armed conflicts

are hybrid, then the expediency of using such a term is lost because it does not allow to distinguish one armed conflict from another.

Besides, qualifying an armed conflict, it is necessary to find out who is organizing this conflict. The concept of hybrid warfare minimizes the possibility of identifying the parties of armed conflict (regardless of whether it is an international or internal (non-international) conflict). The application of the concept of hybrid warfare creates the problem of compliance with IHL obligations, including related to prohibited methods and means of warfare, as well as the protection of victims of war.

3.3 The practice of qualifying armed conflicts: current problems

As outlined above, the Geneva Conventions of 1949 apply to all cases of armed conflicts (international or non-international). ICRC paid attention, that "when the armed forces of two States are involved, suffice it for one shot to be fired or one person captured (in compliance with government instructions) for IHL to apply" (ICRC, 2011; Fundamentals of IHL, 2011). Hence, IHL has been applied since the fact of beginning of the armed conflict. As a result, to begin applying IHL does not require any decision of state or international organization (or any other subject), including a decision concerning a type of armed conflict. But at the same time, in case of violation of IHL, responsibility arises both within the framework of national and international justice, the qualification of armed conflict may be made by the state or international courts. An international organization can also qualify an armed conflict.

3.4 Qualifying armed conflicts by state

Since States are parties of the Geneva Conventions of 1949 and the Additional Protocols of 1977, so the primary responsibility for qualifying an armed conflict lies on the States. But, even if a state does not recognize that there is an armed conflict in its territory (but, for example, recognize the existence of a counter-terrorist operation), it does not mean that there is no armed conflict; in this case the IHL must also be applied.

As stressed above, nowadays there are no direct obligations of state to establish the existence of an armed conflict in order to apply IHL. Drafters of The Geneva Conventions of 1949 wanted to show that the applicability of IHL was henceforth to be unrelated to the wishes of states (Vite, 2009). S. Vite pointed, "it was no longer based solely on the subjectivity inherent in the recognition of the state of war, but was to depend on verifiable facts in accordance with objective criteria" (Vite, 2009: 72).

At the same time, the Geneva Conventions of 1949 oblige States to take measures to criminalize certain violations of IHL, which may be regarded as "grave breaches", and to prosecute persons who committed them. However, after the entry into force of the Geneva Conventions and the first Additional Protocol, customary international law has evolved and demanded that all "serious violations" of IHL (not merely "grave breaches") be investigated and prosecuted (Global Rights Compliance, 2016).

States have primary responsibility for bringing to justice those who have committed serious violations of the IHL (Radosavljevic, 2008; Konforta and Vajda, 2014; Hoon, 2017). Undoubtedly, in order to establish which norms of the IHL were violated it is necessary for state to determine first which (international or non-international) armed conflict took place.

3.5 Qualifying of armed conflicts by international organization

International organizations may qualify armed conflict. But taking into account the limited scope of this scientific article we will focus more on the qualification of armed conflict by the UN Security Council.

In accordance with the art. 24 (1) of the UN Chapter, the UN Security Council has the "primary responsibility for the maintenance of international peace and security". In view of this, the Security Council uses the right to qualify the existence of armed conflict (Resolution 771, 1992; Resolution 918, 1994; Resolution 2259, 2015; Resolution 2042, 2012; Resolution 2139, 2014). It should be noted that the UN Security Council is very cautious in classifying armed conflicts. The Security Council as usually, does not use the words "international armed conflict" or "non-international armed conflict" in its resolutions. However, it is possible to find out from the text of the resolutions which armed conflict is in question, in particular when analyzing which parties of the armed conflict are involved, which treaty norms should be applied by the parties of the conflict etc. Also the UN Security Council uses the term "occupation" rarely and very cautiously (Resolution 884, 1993).

De facto, the UN Security Council also qualified an armed conflict through its resolutions, establishing international criminal tribunals, including the ICTY and the International Criminal Tribunal for Rwanda (ICTR). The ICTR's *ratione materiae* jurisdiction over war crimes is defined in Art. 4 of the ICTR Statute and covers "Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II". Therefore, conclusion can be made based on the ICTR Statute that, the UN Security Council qualified in 1994 the armed conflict in Rwanda as a non-international armed conflict. Instead, according to Art. 2 and Art. 3 of the Statute of the ICTY, war crimes are divided into two groups "grave breaches of the Geneva Conventions of

1949" and "violations of the laws or customs of war". As a result, the armed conflict in the former Yugoslavia was not limited to any type of armed conflicts.

UN Security Council, determining that the situation in state continues to constitute a threat to international peace and security may refer the situation to the International Criminal Court (ICC). UN Security Council used this power referring the situation in Darfur (Sudan) (Resolution 1593, 2005) and Libya (Resolution 1970, 2011) to the ICC. In fact, this referral confirmed of the existence of an armed conflict.

3.6 Qualifying of armed conflicts by international criminal courts

International criminal courts, that have power to prosecute for committing of war crimes, also can qualify armed conflicts. Qualification of armed conflict by international criminal courts will be considered in more details in the example of the ICTY and the ICC.

As emphasized by L.R. Blank and G.P. Noone, in the conflict in the former Yugoslavia, conflict characterization was put the test multiple times over the course of the conflict (Blank and Noone, 2018). Slovenia and Croatia declared independence from Yugoslavia in May 1991. After 10 days of fighting, Yugoslav forces withdrew from Slovenia. Armed conflict continued in Croatia and spread to Bosnia in May 1992 when Bosnia and Herzegovina also declared independence. Serbs in Bosnia formed a separate Bosnian Serb entity ("Republika Srpska") and fighting between and among all three ethnic groups exploded. Over the next three years, the world learned of concentration camps, ethnic cleansing, mass killings, and other atrocities throughout Bosnia and the contested portions of Croatia (Blank and Noone, 2018). The conflict in Bosnia-Herzegovina ended in November 1995 with the reaching of the General Framework Agreement on Peace (the so-called "Dayton Agreement"); in Croatia it ended with the signing of the Erdut Agreement (was signed in November 1995 as well) (Young, 2001).

When the UN Security Council established the ICTY in 1993, it did not specify what type of armed conflict took place in the former Yugoslavia. According to UN Security Council Resolution 827 only decided that the ICTY is established "for the sole purpose of prosecuting persons responsible for serious violations of IHL committed in the territory of the former Yugoslavia…" (Resolution 827, 1993). To prosecute, the ICTY was empowered to determine the type of armed conflict.

The definition of armed conflict was given by the ICTY in the D. Tadic case:

> An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. IHL applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved (International Criminal Court, 1995: 70).

In Blaskić case, Trial Chamber of the ICTY, found, that an armed conflict which begins in the territory of one State and which is thus at first view non-international may be deemed as international where the armed forces of another State intervene in the conflict or at least where some participants in the non-international armed conflict act on behalf of this other State (International Criminal Tribunal for the Former Yugoslavia, 2000) and based on Croatia's direct intervention in Bosnia and Herzegovina, the Trial Chamber of the ICTY defined that this conflict as international (International Criminal Tribunal for the Former Yugoslavia, 2000). Similar decision of the Trial Chamber was in Kordić and Čerkez case, where Chamber finds that "the conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina was internationalized by the intervention of Croatia in that conflict through its troops" (International Criminal Tribunal for the Former Yugoslavia, 2001).

In the Statute of the International Criminal Court (ICC) *ratione materiae* jurisdiction over war crimes is defined in Art. 8 and includes war crimes committed both during international and non-international armed conflicts.

The ICC has paid attention, that the concept of armed conflict, is not defined in the Statute or in the Elements of Crimes of the ICC but is developed at other international courts and the ICC has derived assistance from the jurisprudence of the ICTY (Tadić case) (International Criminal Court, 2018; 2012; 2014). The ICC has accepted the definition of armed conflict given by the ICTY in the abovementioned D. Tadic case (International Criminal Court, 2018; 2012; 2014).

The ICC repeatedly qualified armed conflicts. In D. Ongwen case, to define the contextual element of article 8 (War crimes) of the Statute of the ICC, Pre-Trial Chamber concluded existence of a non-international armed conflict: From 1 July 2002 to 31 December 2005 a protracted internal armed conflict between the government armed forces of Uganda (together with associated local armed units in northern Uganda) and the Lord's Resistance Army (LRA). These hostilities exceeded, in intensity, internal disturbances and tensions (International Criminal Court, 2016).

In the case of Lubanga Dyilo, Trial Chamber I of the ICC concerning the mental element in conduct of T. Lubanga, concluded that he was aware of the factual circumstances that established the existence of non-international armed conflict and he was the fully aware connection "between

the crimes of conscripting and enlisting children under the age of 15 to use them to participate in the armed conflict or the factual circumstances that established the existence of the armed conflict" (International Criminal Court, 2012: 1349-1350).

In the same time, the ICC concluded existence in the Democratic Republic of the Congo (DRC) number of simultaneous armed conflicts (both international and non-international armed conflict). Chamber considered that as a result of the presence of Uganda as an occupying Power, the armed conflict which occurred in Ituri could be defined as an international armed conflict from July 2002 to 2 June 2003 (the date of the effective withdrawal of the Ugandan armed forces) (International Criminal Court, 2007). Protracted violence carried out by multiple non-state armed groups remained an internal armed conflict "notwithstanding concurrent international armed conflict" (International Criminal Court, 2012: 563).

It should be emphasized that the ICC qualifies the existence of an armed conflict linked to the alleged war crimes in context of separate accused. Therefore, if the accused persons committed different war crimes in the same state, different qualifications of the armed conflict could be possible, including different time frames for the existence of the same armed conflict.

For example, in the Al Mahdi case (situation in Mali), Trial Chamber VIII of the ICC found that in Mali a non-international armed conflict existed between Malian Government forces and groups including Ansar Dine and AQIM: "During the time frame of the facts alleged in that case, namely between approximately 30 June 2012 and 11 July 2012" (International Criminal Court, 2016: 38).

But in Al Hassan case (the same situation in Mali), Pre-Trial Chamber I of the ICC, to decide question concerning the issuance of a warrant for the arrest of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud considered it necessary to deal with question of this armed conflict in Mali in respect of his case (International Criminal Court, 2018).

About jurisdiction ratione materiae (war crimes), in view of the totality of the material submitted, the Chamber found than non-international armed conflict existed in Mali between January 2012 and January 2013 between the government's armed forces of Mali and several non-state armed groups including Ansar Dine and AQIM (International Criminal Court, 2018).

That is, in the first case (Al Mahdi case), the ICC found that non-international armed conflict in Mali existed for less than one month (between 30 June 2012 and 11 July 2012), in another (Al Hassan case) - one year (between January 2012 and January 2013). Hence, the ICC defines the existence of an armed conflict to find the contextual element of article 8 (War crimes) of the Statute of the ICC and takes into consideration war crimes attributed to particular person.

4. Discussion

As noted above, IHL has been applied since the fact of beginning of the armed conflict. Therefore, in general, to apply IHL do not need any recognition of the armed conflict; it exists due to the fact of armed clashes and not since the moment of the statement of its existence. However, the need for qualification of armed conflict arises in view of both the factors of domestic and international legal order.

In case of an armed conflict on the territory of a state, the government of such state needs to define an appropriate legal regime in the hostilities zone. On the other hand, the relevant legal regime should be defined within the framework of the international legal order, to bring to justice those who have committed war crimes, as well responsibility of state for internationally wrongful acts.

As it can be seen from the above study of the practice of qualifying armed conflicts, there is no single body that is entitled to determine the existence of an armed conflict.

States themselves can determine the existence of an armed conflict in their territory. But even if states determine that there is no armed conflict at all and there is, for example, an anti-terrorist operation's regime, that does not mean that there is no armed conflict (Antonyuk and Malskyy, 2016); IHL will be applied in this situation and violations of these norms will mean responsibility for this.

The UN Security Council may also determine the existence of an armed conflict. However, in the last few decades, the Security Council has shown its Inefficiency; its decisions are often politicized (Peters, 2016; Kolb, 2017). In addition, the qualification of an armed conflict by the UN Security Council is not binding on other international institutions.

International criminal courts are also empowered to determine the existence of an armed conflict. But international criminal courts decide on the qualification of an armed conflict in relation to a specific case in the context of war crimes charges. Therefore, as it is seen in the above study on the qualification by the ICC of the armed conflict in the situation in Mali, the same armed conflict was recognized in one case (Al Mahdi case) as having existed for two weeks (between 30 June 2012 and 11 July 2012) and in the other case (Al Hassan case) for one year (between January 2012 fand January 2013).

Therefore, each subject may qualify the armed conflict, and such qualification is not compulsory for other subjects.

It seems that the legal identification for the existence of an armed conflict should be exercised by a single body that would be independent and impartial. In fact, this will make it possible to achieve legal certainty

about the existence (or absence) of an armed conflict with all possible legal consequences.

At first sight, such an authority could be the International Committee of the Red Cross (ICRC), which operates based on principles "humanity, impartiality, neutrality, independence, voluntary service, unity and universality" (art. 4 (1) (a) of the Statutes of the ICRC).

On the other hand, the ICRC's main goal protection of and assistance to military and civilian victims of armed conflict and of their direct results (Zwitter *et al.*, 2015). Therefore, the ICRC avoids political statements that can complicate relations with the parties of armed conflict and protection of victims of war. Hence, given the fact that the ICRC is trying as an impartial organization to maintain good relations with the parties of the conflict (to facilitate the protection of victims of war), empowering the ICRC to determine the type of armed conflict will be ineffective.

Then who may determine the existence of an armed conflict? It seems that a new permanent body of the United Nations – the Commission of Experts for determination of armed conflicts should be established for this purpose, that will be authoritative and non-political. The Commission should be composed of 11-15 experts who would have the necessary experience and have an impeccable reputation. Such a Commission should be established as a subsidiary body under the UN Secretary-General. The Commission, as a subsidiary body, should carry out the identification of armed conflicts in order to take such identification as a basis for further qualification by the competent body.

It should be noted that the UN has the practice of establishing of a commission of experts *ad hoc*. For analyzing of information on the armed conflict in the former Yugoslavia in accordance with the Security Council Resolution 780 (1992) of 6 October 1992 by the Secretary-General was established the Commission of Experts to examine and analyze information to providing the UN Secretary-General "with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of IHL committed in the former Yugoslavia" (Resolution 780, 1992). Commission of Expert was empowered to obtain information "through its own investigation or efforts" (Resolution 780, 1992).

Among other things, this Commission stated in its Final Report that the armed conflict in the former Yugoslavia had a mixed (international / non-international) character but emphasized that "determining when these conflicts are internal and when they are international is a difficult task because the legally relevant facts have not been generally agreed upont" (United Nations, Security Council, 1992: 43). The Commission was one of the initiators of the establishment of the ICTY (Aksar, 2004).

Returning to the permanent Committee of Experts that is proposed to establish to qualify all armed conflict, it seems that the Commission should be formed of highqualified and impartial persons and the results of the work of these will be beyond doubt. The mechanism for appointing such persons should be non-political, transparent, and effective to prevent the appointment of non-qualified persons to the Commission.

Conclusions

According to the treaty norms of IHL, there are only two types of armed conflicts: 1) international and 2) non-international.

The division into international and non-international conflicts contains the ideal constructions because any armed conflict cannot be exclusively international or non-international. Therefore, since every international armed conflict has armed clashes that can be defined as a non-international armed conflict, and conversely, in a non-international armed conflict a third country can be involved that will internationalize such conflict, therefore the concepts of other types of armed conflict are emerged: internationalized, mixed and hybrid armed conflict. Today it is difficult to imagine any armed conflict that would not contain "political wars", information wars and propaganda, partial support from the local people in the form of collaborators, etc.

Nevertheless, the practice is that, in the end, every armed conflict is classified as international or non-international, or at the same time the regime of both international and non-international armed conflict is applied.

IHL has been applied since the fact of beginning of the armed conflict. Therefore, applying IHL does not need any recognition of existence of the armed conflict; this conflict exists due to the fact of armed clashes. But at the same time, the need to qualify an armed conflict arises in view of both the factors of domestic (to define a legal regime in the hostilities zone) and international legal order (to bring to international criminal justice those who have committed war crimes; responsibility of state for internationally wrongful acts etc.). The practice of qualification of armed conflicts is shown that there is no single body who is entitled to determine the existence of an armed conflict. Therefore, different international bodies, or even the same body (including the ICC) may have different qualifications of the one-armed conflict.

It seems that a new permanent body of the United Nations – the Commission of Experts should be established to define of an armed conflict. The Commission should be authoritative and non-political and composed of 11-15 experts who would have the necessary experience and have an impeccable reputation.

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Problems of Efficiency of Legal Regulation of the Business Relation

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Abstract

The article is devoted to the analysis of the general legal problems of the regulation of economic relations in the Russian Federation. Problems that lead to insufficiently effective legal regulation are identified, while identifying directions for resolving them. The objective of this research was to review theoretical and practical problems of the effectiveness of the legal regulation of economic relations in the example of the Russian Federation, which makes it possible to draw some conclusions. To obtain the results, a set of scientific techniques and methods of study of phenomena and processes were applied, such as synthesis methods, comparative jurisprudence, as well as a formal legal method and an economic modelling method. The method of economic modelling made it possible to assess the extent to which and at what costs, the rule of law has produced the expected economic effect. It is concluded that the effectiveness of legal regulation is one of the essential legal categories and that the legislator is obliged to monitor existing legal standards for its effectiveness.

Keyword: Business law; legal problems; legal regulation in business matters; economic policy; Russian federation.

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Problemas de eficiencia de la regulación legal de la relación empresarial

Resumen

El artículo está dedicado al análisis de los problemas legales generales de la regulación de las relaciones económicas en la Federación de Rusia. Se identifican los problemas que conducen a una regulación legal insuficientemente efectiva y, al mismo tiempo se indican las direcciones para resolverlos. El objetivo de esta investigación fue la revisión de problemas teóricos y prácticos de la efectividad de la regulación legal de las relaciones económicas en el ejemplo de la Federación de Rusia, lo que permite sacar algunas conclusiones. Para obtener los resultados se aplicaron un conjunto de técnicas científicas y métodos de estudio de fenómenos y procesos, tales como: métodos de síntesis, jurisprudencia comparada, así como un método legal formal y un método de modelización económica. El método de modelización económica permitió evaluar en qué medida y con qué costos el estado de derecho ha producido el efecto económico esperado. Se concluye que la efectividad de la regulación legal es una de las categorías legales esenciales y que el legislador está obligado a monitorear las normas legales existentes para su efectividad.

Palabras clave: Derecho empresarial; problemas legales; vigencia de la regulación legal en materia empresarial; política económica; federación rusa.

Introduction

Legal regulation, that is, the process of targeted impact of public authorities on certain social relations, can be more or less effective. By accepting the rules of law, taking specific actions to implement them, the state expects certain benefits and returns from the established rules of conduct. Quite often, for a variety of reasons, the legislator does not achieve the goals that were set before the adoption of the norm. Sometimes goals cannot be achieved for objective reasons, either because goals were set unattainable, or living conditions have changed significantly. But often, the norm does not achieve its goal because it was adopted without scientific, economic, and legal justification, without taking into account other legal norms. Sometimes, in order to achieve not the most economically important result, public authorities spend significant resources (labor, administrative) on the development, adoption, and implementation of a norm, while the same result can be achieved with much lower costs. The effectiveness of legal regulation seems to be one of the most significant indicators in jurisprudence. Ineffective regulation makes no sense in principle. It is

necessary to try by all means to contribute to the development of efficient, effective mechanisms of legal influence.

1. Materials and Methods

The methodological basis of the research presented in this article is a set of scientific techniques and methods of studying phenomena and processes - methods of analysis synthesis, comparative jurisprudence, as well as a formal legal method and a method of economic modeling. The use of these methods seems to be advisable for several reasons. The formal legal method allows us, on the basis of legislation, to form the applied conceptual apparatus, identify the signs and characteristics of the considered institutions of law. The comparative legal method allows us to study the possibility of implementing foreign experience in legal regulation.

2. Research Results

Both Soviet and Russian legal science has relatively little research on the effectiveness of branches of law, methods of legal regulation, or legal norms (Kudriavtsev *et al.*, 1980). In philosophy and theory of law, efficiency (Latin *efficientia* - action, force, influence) is understood as the productivity of the use of resources in achieving a goal. It is quite difficult for legal regulation to assess productivity. It is very difficult to estimate the costs of adopting the norm. These are the costs of organizational work to change regulations, to conduct examinations, and a set of costs for the implementation of the norm, the creation and functioning of special bodies (persons) associated with the implementation of the norm. It is much easier to assess whether or not the goal of legal regulation has been achieved. Unfortunately, both Russian scientists and their colleagues in other countries give little attention to the effectiveness of the rule of law in their works, although there are works on the problems of the effectiveness of regulation in the economy (Spulber, 1989).

When the state regulates economic and business relations, the set goals may be very different. These are global, conceptual goals - ensuring market development, increasing GDP, improving the quality of life, and special goals - attracting investment, establishing a mechanism for protecting the rights of entrepreneurs, legal support for economic development, protecting consumer rights, ensuring tax collection, etc. The effectiveness of legal regulation is influenced by a variety of factors - from the political regime in the state to the legal and technical study of the adopted norms of law and the adequacy of the interpretation of the existing norms. The organization of the rules of law is also important - that is, what are the regulatory acts, branches of law, and other legal formations in the state (Dunne, 2015).

What is important is the ratio in the legal system of the regulators of law - laws and regulations, regulations, and customs.

In Russia and other post-Soviet states, an interesting legal feature has developed - the structural units of law are often formed based not on economic expediency, but on traditional ideas about the branches of law, formed in accordance with the generality of regulated relations. Traditional Russian jurisprudence denies many entities the status of a branch of law - energy, sports, medicine, space, etc. Accordingly, it is believed that there is no point in these entities to adopt codes. Some states of the former USSR have already refused this approach - for example, Belarus has adopted the Banking, Electoral, and Education Codes, and a sports code was being developed.

In Russia, so far, many do not consider entrepreneurial law to be an independent branch and deny to accept the Entrepreneurial (or Commercial) Code as valid. This position leads to the fact that the norms governing relations with the participation of entrepreneurs are contained in a huge number of special laws, which often do not always unconditionally correspond to each other. But even if the Entrepreneurial Code appears in Russia, the rules governing entrepreneurial relations will still be contained in the tax, administrative, land, etc. legislation. Therefore, regardless of the way the issue of the organizational structure of the branches of law and the presence of codes will be resolved, the primary general condition for the effectiveness of the norms governing business relations is the synchronization of legal regulation, taking into account the intersectoral nature of the existing norms. It is necessary to ensure the consistency and complementarity of legal norms.

There are conditions which, if met, boost the effectiveness of legal regulation. Of course, there are various forms of effective legal regulation (Cross and Prentice, 2007); different countries have different economic and political situations. But in the most general form, such conditions include the following. This is the right choice for the purpose of regulation; real achievability of the goal; the correct choice of methods to achieve the set goal; the social value of the norm, its compliance with social realities and needs (the so-called macrosocial conditions); legal and technical quality of the norm, its adequate structure (the organic connection between the elements of a legal norm); availability, clarity of the norm for all subjects of law; correct informing of legal entities about the norm and the peculiarities of its application; ideological provision of the norm, determination of public authorities responsible for the implementation of the norm, and the establishment of their competencies; financing of measures to implement the rule of law.

We can state that not all conditions of effectiveness are associated with the actions of public authorities. Much depends on the specific subjects

of law and their legal culture. For the effectiveness of legal regulation in the economic sphere, it is important how free the economy of a particular country is, how high the level of development of civil society institutions and the level of corruption are, etc. It can also be noted that the non-market economic instruments used in totalitarian states can be considered ineffective in any case - as shown by world history in the XX century.

The former Soviet states, unfortunately, do not have sufficiently serious traditions of life in a free economy. The Revolution of 1917 in the Russian Empire led to a complete change in economic policy; for many years, a state-oriented type of economy based on state ownership was developing in the USSR. The population has developed an attitude towards the law as a tool that arbitrarily changes depending on the will of the ruling class. At the same time, the image of the state, responsible for absolutely everything, gradually developed in the minds of people. The state distributes incentives and restrictions of its own free will, and it is almost impossible for an ordinary person to influence this process. A peculiar attitude has also developed towards laws - if a law in some part does not seem attractive, it is not scary, it can be replaced. At first glance, this position does not appear negative. But in practice, it leads to a certain disrespect for the legislative act, to the emergence of a position that changing the law is a common and widely practiced phenomenon, which means that there is no particular need to carefully think over the adopted norms (which can, in any case, be changed).

For the economic sphere, this approach is extremely unpleasant. Constant changes in legislation lead to the fact that law enforcement officers do not have time to get used to the norms. As a result, there is a confusion of editions that are valid at different times. Practice does not have time to develop mechanisms of action in changing conditions; subjects do not always understand how to protect their rights. Accordingly, there are no important conditions for efficiency - clarity of the rule of law, correct information about the rule.

As an example of a constantly changing regulatory act, one can point to the most important for the Russian economy bankruptcy law (Heindler, 2018), adopted in 2002 and amended 109 times! Therefore, it is not surprising that for many years various lawyers have been stating the ineffectiveness of the bankruptcy law (Khodykin, 2013). Of course, constant change is far from the only reason. Bankruptcy legislation has two objectives - fair distribution of assets of persons declared bankrupt, and restoration of the solvency of persons who find themselves in a difficult economic situation. It is precise with the latter task that Russian bankruptcy law fails. But for the normal restoration of solvency, it is important to have not only well-thought-out legislation, but it is also important that the state of the economy allows for financial rescue measures. The general level of economic development

is extremely important for the effectiveness of legal regulation - the more efficient the economy, the more effective the law, and vice versa.

Arguing about such a condition of efficiency as the determination of the authorities responsible for the implementation of the rule of law and the conduct of state policy in a particular area, we should note the following. For many years, the problem of eliminating redundant functions of the state has been discussed in Russia. This is a problem for many countries that are transitioning from a command-administrative economy to a market economy. And each country solves this problem in different ways. Unfortunately, in Russia to date, the superfluous functions of the state have not been completely removed. The list of unnecessary powers has been compiled by various structures on behalf of the President and the Government of Russia since 2000, but until the end, not a single project to eliminate excess powers has been implemented. This is hindered by the extremely large state apparatus - officials, apparently, cannot agree to radical reforms for fear of losing their place in the public service. At the beginning of 2019, the then-Chairman of the Government of Russia D.A. Medvedev announced a "regulatory guillotine" - to define and abolish all obsolete and unnecessary acts affecting the freedom of the economy. The fate of this next project is not yet clear.

It should be noted that many Russian state bodies have much more powers than similar structures in foreign countries. An example is the Federal Antimonopoly Service, which carries out 24 control functions - apparently, this is a world record of control powers of one state body. Of course, Antimonopoly regulation is extremely important for the economy as it performs the most important functions (Whish and Bailey, 2015), especially in a country that is moving from state monopoly to the market. But too sweeping powers are hardly justified, the antimonopoly authorities of Russia initiate cases of violation of competition more than all the antimonopoly authorities in the world, and large-scale business is not the only one to be prosecuted. The environment of constant control, in our opinion, has a negative impact on business. Many entrepreneurs are afraid to start their own business, fear that the regulatory authorities will be able to prosecute for minor violations. Even the fact that economic entities have to spend their energy, time, and funds on communicating with inspectors does not add any advantages to the rating of the business climate.

Meanwhile, it is a favorable business investment climate that is one of the important conditions for the normal development of the economy and effective legal regulation.

Russia is definitely making attempts to improve its own investment legislation, but it is too early to talk about its integrity and consistency. Existing reform efforts are fragmented and not based on any well-thought-out concept. Moreover, a similar characteristic can be given to the entire

complex of normative legal acts, on the basis of which the interaction of economic entities and public authorities is carried out. The legislation on special economic zones and other territories with a special regime for carrying out the entrepreneurial activity, on public-private partnership has not been sufficiently developed. Improvement of legal regulation in these areas is quite possible. It is necessary to abandon the "point" changes in legislation and go to the principles of improving legislation on the basis of a previously developed concept of development.

The investment legislation of Russia is currently represented by several acts. This is the law of Federal Law of July 9, 1999, No. 160-FZ "On foreign investments in the Russian Federation," Federal Law dated 02.08.2019 No. 259-FZ, "On attracting investments using investment platforms and on amending certain legislative acts of the Russian Federation"; Federal Law of April 1, 2020, No. 69-FZ "On the Protection and Promotion of Investment in the Russian Federation." This list shows that there is still no uniformity in regulation. In terms of the problems of the effectiveness of regulation, it is more promising to adopt general laws that apply to all subjects of the economy.

As a rule, developing countries create special investment laws or codes in seek to attract the maximum amount of foreign investment, create a most favored nation treatment for the investor. In most economically developed countries, there is no special investment legislation - it is believed that any investor should be protected by the rules of the law that are common to all. Ideally, Russia should also create conditions where a business is protected by general rules of law, general rules for investment, access to loans, protection of property rights, and without special investment legislation. For this, it is necessary, first of all, to clearly define one's own strategy for the development of investment legislation.

It's interesting to know that almost all investment legislation in Russia provides for the provision of benefits only to large investors. The latest adopted law - dated April 1, 2020 (Federal Law of April 1, 2020 No. 69-FZ) - was created for industrial projects and does not take into account the specifics of infrastructure projects, which more often involve indirect effects for the economy. To get benefits from this law, a new investment project should be implemented, with 250 million to 5 billion rubles invested, depending on the field of activity. Thus, the majority of Russian entrepreneurs (according to the Chairman of the Accounts Chamber of the Russian Federation A.L. Kudrin, this is 95% of all entrepreneurs) will never be able to use the provisions of this law. Investment legislation is often criticized in Russia, a decrease in the inflow of foreign investment is noted, but ineffective legislation itself contributes to the lack of investment.

Conclusion

Our review of theoretical and practical problems of the effectiveness of legal regulation of economic relations on the example of the Russian Federation allows us to draw some conclusions. Efficiency is the most important legal category, legal acts and norms of law should be assessed in terms of their effectiveness. Different states have different legal regimes and different economic situations, but in the most general form, the set of factors that make legal regulation effective or ineffective is clear. For the economic sphere, the most important condition for efficiency is the synchronization of legal impact, i.e. complex legal regulation of economic relations, taking into account the mutual influence of the norms of various branches of law and a different legal nature. This is easier to achieve. By developing sufficiently large blocks of legislation, ideally codified acts, with a single terminology and with a comparable mechanism of legal impact. In addition, other conditions of effectiveness specified in this article must also be met. In addition, the law should not be changed often - constant changes in the rule of law have a negative impact on efficiency.

The conducted research allows us to systematize knowledge about the conditions for effective or ineffective legal regulation of economic relations. Meeting the indicated conditions will improve the quality of legal regulation. And we must remember that there is a close relationship between the level of economic development, the efficiency of the economy and the effectiveness of the law.

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Legal Regulation of Relations on the Establishment of the Origin of Children in the Russian Federation

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Abstract

The birth of a person is one of the unforgettable events in the life of each family, full of vivid emotions. From this moment on, parents assume new roles, containing moral and legal obligations in relation to the newborn. In this case, it is not important if the child's parents are legal or really married. Based on the analysis of the current family legislation of the Russian Federation and the theoretical provisions devoted to the legal regulation of the establishment of the origin of children, the article examines the mechanism of the emergence of parental legal relations, as well as a set of problems associated with their evaluation, interpretation, and application. The problems of legal regulation in the field of determining the origin of children, the prospects for the development of legislation in this area of relationships, are identified. The general methodological basis was formed by the scientific method, which allowed to consider the problems of the development of family legislation in the legal regulation to establish the origin of children in the Russian Federation. The article presents the opinions of the authors and analyses the theoretical research of scientists in this area

Keywords: kinship; rights of the child; establishment of the origin of children; birth registration; Russian federation.

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Reglamento jurídico de las relaciones sobre el establecimiento del origen de los niños en la Federación de Rusia

Resumen

El nacimiento de una persona es uno de los eventos inolvidables en la vida de cada familia, lleno de vívidas emociones. A partir de este momento, los padres asumen nuevas funciones, conteniendo obligaciones morales y legales en relación con el recién nacido. En este caso, no es importante si los padres del niño están legal o realmente casados. Basado en el análisis de la legislación familiar actual de la Federación de Rusia y en las disposiciones teóricas dedicadas a la regulación legal del establecimiento del origen de los niños, el artículo examina el mecanismo del surgimiento de relaciones legales parentales, así como un conjunto de problemas asociados con su evaluación, interpretación y aplicación. Se identifican los problemas de la regulación jurídica en el campo de la determinación del origen de los niños, las perspectivas de desarrollo de la legislación en este ámbito de relaciones. La base metodológica general se formó mediante el método científico, que permitió considerar los problemas del desarrollo de la legislación familiar en la regulación legal para establecer el origen de los niños en la Federación de Rusia. El artículo presenta las opiniones de los autores y analiza la investigación teórica de los científicos en esta área.

Palabras clave: parentesco; derechos del niño; establecimiento del origen de los niños; registro de nacimiento; federación rusa.

Introduction

Establishing the origin of a child is a law-forming legal fact that gives rise to the child's personal and property rights and forms his/her legal status. It is known that a child's personality develops and improves best in a two-parent family. Family is the first and main stage of human socialization. The family is one of the main objects of study of various sciences, including legal one. However, at the legislative level, the concept of a family has not yet been developed.

In accordance with the current domestic legislation, the mutual rights and obligations of parents and children are based on the origin of children, certified in accordance with the legally established procedure, on the basis of the genetic (biological) relationship between a particular child and his/her parents. We see the legal significance of the certificate of the child's origin in the fact that it acts as a legal guarantee of the protection of the rights of both the child himself and the rights of his parents, since parental

legal relations between the child and his biological parents arise at the time of state registration of the establishment of the child's origin. Accordingly, parents can begin to fulfill their duties as legal representatives of the child only after formalizing their relationship with the child in the manner prescribed by law.

1. Materials and Methods

According to the Civil Registry Office of the Cabinet of Ministers of the Republic of Tatarstan, at the end of 2017, 48,596 newborns were registered in the Republic of Tatarstan. In Naberezhnye Chelny, the number of birth certificates was 7377, which is three times less than in Kazan, with 21,888 registered. This situation is explained, in our opinion, by a direct connection with the birth rate in the country as a whole in the 90s of the XX century, since today children born at that time become parents. In 2017, the number of registered births was less than in 2016, however, in general, over the past 10 years, the number of registered births in the capital of Tatarstan has grown by 42% (Statistical reporting on state registration of vital records in the Republic of Tatarstan at the end of 2017, 2018).

According to the data from the same source, for 2018 the civil registry authorities (hereinafter referred to as the registry office) of the Republic of Tatarstan registered 46,793 birth certificates, which is 1,803 less than in 2017 (Statistical reporting on state registration of vital records in the Republic of Tatarstan at the end of 2018, 2019).

In 2019, 43,180 birth certificates were registered, which is 3,613 less than in 2018. There was a 7.7% decrease in births compared to 2018. However, despite the constant slight decrease in the number of births over the past three years in the Republic of Tatarstan, it is worth noting that the measures taken by the state to stimulate the birth rate have proved their effectiveness. More than 60% of children born in 2019 are the second, third, etc. child in the family (Statistical reporting on state registration of vital records in the Republic of Tatarstan at the end of 2019, 2020).

In 2017, the registering authorities drew up 6291 paternity registration certificates. This is 10.4% less than in 2016. According to the same source, in 2018 the civil registry offices drew up 5893 paternity registration certificates. In 2019 - 5502 certificates.

Modern conditions of development of society have caused a certain reassessment of views on the traditional family. In this regard, the legislation in the field of establishing the origin of children needs further study and improvement. The importance of studying the problems of legal regulation of relations associated with establishing the origin of children is determined by the need to ensure that the interests of the child are met.

However, the interests of parents in this matter are no less important. After all, if a person not involved in the birth of a child carries out his upbringing and maintenance of the child, then there is a clear implementation of other people's parental rights and the fulfillment of other people's duties. And the de facto parent in this case, if the specified legislation is imperfect, can shift parental responsibilities to another person.

The procedural aspect of the considered issue also plays an important role. In a judicial procedure for establishing the origin of children, some controversial points may arise. Family law requires state registration both of the fact of birth and the fact of origin. They serve as the basis for the emergence of rights and obligations between parents and children.

The document confirming the registration of the above facts indicates information about the parents. Moreover, most often the registration of the fact of birth and the fact of origin coincide. However, the absence of a legally registered marriage between parents or other fact that reliably confirms the fact of paternity will prevent this from happening.

2. Research results

Parental relationship is a set of personal non-property and property relations between a child on the one hand and his father and mother, on the other. The rights and obligations of parents associated with proper maintenance, upbringing, and child care, constitute the content of these legal relations.

These relationships develop within the family and are difficult to legalize. They are based on spirituality, love, caring and respect. Each family builds them according to an individual model, based largely on the personal qualities of family members. Accordingly, the legislator cannot establish precise prescriptions for the behavior of participants in family legal relations, limiting himself only to general principles and principles. It can be argued that family relationships are the basis of state relations.

Parental relationship should be considered as an independent type of family relationship. A characteristic feature of parental relationships is the elemental composition, features of their emergence, development and termination. Their very name contains the whole essence of parental relationships - these are the rights and obligations of parents in relation to children, meanwhile, their content also includes the rights and obligations of children in relation to parents.

Parents and children are the subjects of these legal relations. The parents of the child are a woman and a man, recorded in the birth register in the registry office. In a biological sense, these are persons the child genetically originates from.

In addition to biological origin, parents and children are interconnected by a set of mutual rights and obligations enshrined in law. From a legal standpoint, a legal connection between them arises only after the implementation of the procedure for certifying the origin of the child from specific persons.

Recently, along with the category of genetic parenting as the basis for the emergence of a legal relationship between parents and a child, the category of social parenting has been justified. This is due to the existence of such legal institutions as adoption, as well as to the active development and use of assisted methods of human reproduction. Recently, many states has shown a tendency to an increase in the use of these methods, which cannot be ignored by both fertility specialist, geneticists, sociologists, public figures, and jurists (Tagaeva and Aminova, 2017). As an example, surrogacy can be mentioned.

The domestic legislation does not provide for any adequate legal regulation of the mechanism for the use of assisted reproductive technologies (ART) and the procedure for establishing the origin of a child born with the use of ART. Only legal relations have been settled on the registration of a surrogate mother as the mother of a newborn.

The development of reproductive medicine has given rise to certain problems of legal regulation in this area. Researchers of the legal regulation of these legal relations began to operate with new categories: "reproductive travel" (Gürtin, 2011), "fertility tourism", "reproductive tourism", "medical tourism" (Inhorn and Patrizio, 2009; Letherby, 1999; Whittaker and Speier, 2010). As A. Diel rightly notes, at the international level, there are also no uniform or at least similar legal norms designed to regulate reproductive tourism that is actively flourishing in many countries (Diel, 2014).

Modern states are ambivalent about ART. In a number of countries, such as Russia, the USA, Azerbaijan, Armenia, Great Britain, Georgia, India, etc., the use of ART is permitted, and surrogacy is especially popular (Dickens and Cook, 1999). In a number of countries, surrogacy is prohibited. We are talking about such European countries as Germany, Norway, France, etc. In this regard, problems arise when using surrogacy complicated by a foreign element.

In accordance with the family legislation of the Russian Federation, parental rights and responsibilities are recognized primarily for biological parents, although there are exceptions.

Registry offices carry out state registration of the fact of the birth of a child, simultaneously confirming its origin from a certain man and woman. But what is it for?

In practice, there are cases when the lack of data on the origin of a child from a particular person may serve as an obstacle to the exercise of the subjective rights of the mother and child.

Based on the established relationship, the issues of alimony obligations between parents and children are resolved in court.

Establishment of family ties is necessary when considering certain categories of cases in the order of administrative proceedings. In one of the cases, the court found that the citizen did not submit an application for registration of his newborn daughter at his place of residence within the time limit established by law, which was recognized as a violation of the rights of the child and led to administrative liability.

An analysis of judicial practice shows that the legal registration of the fact of the child's origin from his/her parents plays a very important role in the performance of any transactions by the parents in relation to the child's property, hence the right to judicial protection of the rights of the child and his parents. Consequently, the legislator provides for the obligatory registration of the fact of birth and origin of a child within a specified period.

In the Russian Federation, the requirement established by Article 7 of the Convention on the Rights of the Child of November 20, 1989, according to which a child must be registered immediately after his/her birth, confirms his/her origin and the fact of birth. The origin of a child from specific parents is recognized as a confirmed legal fact only after it has been certified by a competent authority. With an application for the birth of a child, parents must contact the registry office within a month from the date of birth of the child, in accordance with the requirements of paragraph 6 of Art. 16 FZ «On vital records".

Today, in most of the countries of the world, including the Russian Federation, children born both out and in wedlock have equal rights. This legal position is of fundamental importance and is established by the 1989 UN Convention «On the Rights of the Child». Also, in order to exercise the rights of children, to prevent their discrimination in the Russian Federation, the Federal Law "On the Basic Guarantees of the Rights of the Child in the Russian Federation" of July 24, 1998 No. 124-FZ was adopted. Chapter 2 of this law establishes the main directions of ensuring the rights of the child in the Russian Federation, which include legislative guarantees of the rights of the child, assistance in their implementation and protection, measures to promote the comprehensive development of the child, etc.

Despite the legally enshrined principle of equality, in fact, there is still an influence of the circumstances of the birth of a child, namely the presence of a registered marriage between his/her parents. The procedure for establishing the origin of the child from the father depends on this circumstance.

Parental rights and responsibilities do not legally arise by themselves immediately after the birth of a child. In order to acquire parental rights and responsibilities, state registration of the fact of the birth of a child should be carried out (Krasnova, 2016). The establishment of a direct genetic, biological tie between parents and a newborn can be considered as the main legal fact within the framework of the actual composition of the creation of their legal relationship.

We think that the mechanism for establishing the origin of a child provided for by the legislator is aimed primarily at protecting the rights and interests of a minor. This mechanism also creates a legal basis for parents to exercise their rights and fulfill their responsibilities for the upbringing and maintenance of their child. After all, the formal consolidation of family relations is very important.

Summary

As mentioned above, the emergence of legal relations between a child and his parents requires two components: firstly, the very birth of the child, and secondly, the establishment of the fact of the child's origin from specific parents.

The birth of a child, as a vital record and as a legal fact of legal significance, requires mandatory state registration. As a rule, the registration of the fact of birth and the establishment of the origin of the child coincide in time, since after completing this procedure, the parents receive a birth certificate of the child, which contains information about the parents as well.

The certificate of state registration of birth (hereinafter - the birth certificate) is an official document of the state standard.

The federal law «On vital records», defining the range of sources, establishes that the legislation on vital records consists of the Federal Law based on the provisions of the Civil and Family Codes of the Russian Federation and the regulatory legal acts of the Russian Federation adopted in accordance with it. In the cases provided for by this Federal Law, when registering vital records, the norms established by the laws of the constituent entities of the Russian Federation adopted in accordance with the FC RF, in particular, the Family Code of the Republic of Tatarstan (hereinafter referred to as the FC RT), are considered.

For example, according to Art. 49 FC RT, a child can be assigned a patronymic based on national traditions. This is another regional feature of the Republic of Tatarstan, enshrined at the level of the law of the subject of the Russian Federation.

State registration of vital records is also possible at the consular offices of the Russian Federation.

The regulatory framework on the basis of which the powers to register vital records are exercised include administrative regulations adopted by the authorized federal executive body on the basis of legislation on vital records. For example, the Order of the Ministry of Justice of Russia «On Approval of the Administrative Regulations for the Provision of State Services for State Registration of Vital Records by Bodies Carrying out State Registration of Vital Records in the Russian Federation» (hereinafter referred to as the Regulation).

In case parents, for objective reasons, are not able to independently apply to the registry office in order to register the fact of the birth of a child, in accordance with the Regulations, an authorized person can submit an application for registration on the basis of a parental power of attorney. An official of the institution the child is staying was born in has the same right.

The application must be sent within a month from the date of the actual birth of the child.

The applicant must attach to the application a birth certificate issued by the medical organization the birth took place in.

The regulations on state registration of vital records also provide for state registration of the fact of the birth of a child who was born dead.

In accordance with Art. 51 of the Investigative Committee of the Russian Federation and the aforementioned regulations, the state registration of the fact of the birth of a child born using artificial methods of reproduction, namely surrogate motherhood, is carried out. Spouses who have expressed their will in writing to bear and give birth to their child by a surrogate mother can be recorded as biological parents of the newborn only after receiving written consent from the surrogate mother.

Conclusion

Recently, the state's interest in the problems of family law has been increasing. This is due to the improvement of legal regulation of family legal relations, and with the increasing attention of the state to the problems of family, motherhood, fatherhood and childhood, which in turn is due to the need to solve social problems in society.

Registration of vital records, in general, and registration of the fact of birth in particular, is an invariable proof that the facts that require state registration have actually taken place, happened in a person's life. The final stage of state registration of the fact of birth is the issuance of a

birth certificate by a state body, which is an official document. We see the importance of registration of vital records in streamlining civil turnover, it is aimed at protecting state interests, ensuring law and order in the country as a whole, as well as protecting the interests of individuals, protecting their property and personal non-property rights.

While state registration of the fact of birth is a certificate of the child's origin and serves as the basis for the emergence of parental relationships.

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Competition Status of a Unitary Enterprise: Some Problems

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Abstract

Problems arising from the insolvency (bankruptcy) procedures of a unitary undertaking are currently very relevant, since, in the context of competition relations, the redistribution of ownership may also take place outside the framework of privatization legislation. This article is dedicated to the analysis of both theoretical and practical problems of the competitiveness of a unitary company. The authors of the paper point out that the lack of a special term for the designation of unitary enterprises on the right to economic management is one of the systemic shortcomings of Russian doctrine of civil law. The study methodology includes a group of general scientific methods (analysis, synthesis, deduction, induction), as well as a group of special methods: analysis of the content of scientific literature and analysis of the regulatory framework. It is concluded that Russian law should create a legal model that excludes the operation of non-proprietary entities alongside legal conditions that prevent abuse of their competitive status, both by the arbitration administrator and by the public legal entity that owns the debtor unitary enterprise.

Keywords: unitary enterprise; public law: bankruptcy proceedings; privatization; competitive situation of the unitary enterprise.

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Competitividad de la empresa unitaria: algunos problemas

Resumen

Los problemas derivados de los procedimientos de insolvencia (quiebra) de una empresa unitaria son actualmente muy relevantes, ya que, en el marco de las relaciones de competencia, la redistribución de la propiedad también puede tener lugar fuera del marco de la legislación de privatización. Este artículo está dedicado al análisis de problemas tanto teóricos como prácticos de la competitividad de una empresa unitaria. Los autores del artículo señalan que la falta de un término especial para la designación de las empresas unitarias sobre el derecho de gestión económica es una de las deficiencias sistémicas de la doctrina rusa del derecho civil. La metodología del estudio incluye un grupo de métodos científicos generales (análisis, síntesis, deducción, inducción), así como un grupo de métodos especiales: análisis del contenido de la literatura científica y análisis del marco normativo. Se concluye que la legislación rusa debe crear un modelo jurídico que excluya el funcionamiento de las entidades no propietarias junto a las condiciones legales que impidan el abuso de su condición competitiva, tanto por parte del administrador del arbitraje como de la entidad jurídica pública propietaria de la empresa unitaria deudora.

Palabras clave: empresa unitaria; derecho público: procedimiento de quiebra; privatización; situación de competencia de la empresa unitaria.

Introduction

The legal status is usually understood as the subject's position in the certain relations system determined by the presence of certain rights and obligations (Alekseev, 1981; Arkhipov, 2004; Mikryukov, 2015). Simultaneously, the competitive status is subject's position in the competitive relations system. By competitive relations we understand the relations arising between the debtor, its creditors and third parties in connection with the non-fulfillment of rights and obligations by the debtor; the term "competition law" was used in the pre-revolutionary doctrine (Genkin, 1913; Golmsten, 1888; Karnushin, 2016; Popondopulo, 2001; Telyukina, 2002; Tkachev, 2006) as well as it is widely used now.

Active and passive competitive statuses can be distinguished, meaning the creditor's legal status as active and the debtor's legal status as passive. This article is focused on the features of relations associated with the implementation of bankruptcy case proceedings against a unitary enterprise, in other words, on the passive competitive status of this entity. This design

- "passive competitive status" – has been developed by the authors of this article and is proposed for use in scientific circulation in order to optimize the doctrine.

1. Materials and Methods

Both in theory and in practice, there are many problems, including those which are not resolved at the legislative level (Erokhova, 2015; Sukhanov, 2014), that are solved by different scientists and courts in various ways. Let us dwell on some of them.

It seems logically to start an analysis of the problems in the passive competitive status of a unitary enterprise with a system-forming problem defined by the answer for two questions:

- firstly, is it advisable to allow the inclusion of a unitary enterprise in the subjects of competition law?
- secondly, is it generally advisable to retain the legal form of a unitary enterprise among the subjects of civil law?

2. Results

The design of a unitary enterprise is not an immanent in market economy because the legal form of the enterprise, as well as institutions are not implied ownership of the property by this subject. Thus, Russian law (unlike most legal systems) allows, although in a limited version, participation in legal relations of entities that are not owners of the property on which they operate. Many scientists criticize this approach (Andreev, 2005; Braginsky, 1960; Gadzhiev, 1996; Golubtsov, 2010). Through the activities of unitary enterprises, public law object is involved in entrepreneurial relations. The related problems are beyond the scope of this article, so we just note the doctrinal interest in them (Istomin, 2003; Kulagin, 1987; Mochalov, 2016; Sadrieva, 2018; Yakovlev and Talapina, 2012).

In this case, a unitary enterprise may function on the basis of economic management or operational management. The latter has a special name – "state-owned enterprise". The absence of a special term for designating unitary enterprises under the economic management right, in our opinion, is one of the systemic shortcomings of the Russian civil law doctrine.

The institution operates on the operational management right, which differs essentially from the operational management right of a state-owned enterprise. In this context, there is one more defect of the Russian civilist doctrine, which can be generically designated as naming various relations by the same term. Thus, the operational management right of a state-owned

enterprise, by no means, is not the same as the operational management right of an institution. Nevertheless, the term "operational management" is used to designate both structures that should be differentiated.

By virtue of the norms, clause 1 of Article 65 in the Civil Code of the Russian Federation (Federal Law of the Russian Federation, 2002a), the passive competitive status is used for only unitary enterprises based on the economic management right. Using the term "competitiveness", known in modern doctrine (Galkin, 2016; Suvorov, 2019; Shishmareva, 2016), it can be said that state-owned enterprises and institutions are not competitive.

The Law "On Insolvency (Bankruptcy)" does not contain a special chapter (or other location of legal norms) for regulation of the particularities in the case proceedings on bankruptcy of a unitary enterprise. At the same time, the Law contains the chapter "Bankruptcy of Strategic Enterprises", as well as the chapters for regulation the general insolvency (bankruptcy) procedure contain rules (mainly, which are relatively recent legislative changes) that define the particular status of a unitary enterprise.

From the foregoing it follows that one of the problems in Russian competition law can be defined the correlation problem between the norms of a special chapter for regulation the bankruptcy of strategic enterprises and the norms, contained in the general chapters, for regulation the position of a unitary enterprise in the tender procedures. The fact is that a unitary enterprise may possess the characteristics of a strategic enterprise, however, other entities (not just unitary enterprises) may be identified as strategic. A detailed discussion of this issue is beyond the scope of this article. Features of the competitive status of strategic organizations are investigated in the doctrine (Chirkov, 2014).

The next problem of the competitive status of a unitary enterprise is determined by the very possibility of applying the procedures, provided for by the Law on Bankruptcy, to unitary enterprises under the economic management right. In the process of bankruptcy proceedings of any legal entity, such procedures as supervision, financial recovery, external management, bankruptcy proceedings may be introduced. Without dwelling on the essence of these procedures and noting the interest on the part of scientists (Order of the Government of the Russian Federation, 2009; The Decision of the Arbitration Court of the North-Western District, 2019; Resolution of the Arbitration Court of the Far Eastern District, 2018), we turn directly to the problem, which is that the Law on Bankruptcy allows the sale of debtor's assets, including a unitary enterprise, as part of external management and bankruptcy proceedings. As a result, the owner of the assets of a unitary enterprise (which can be the Russian Federation itself, the subject of the Federation and the municipality) may lose these assets, which will be transferred to the property buyer. However, in Russian law, the transfer of property from public law object to private individuals has

a special name - privatization - and special legal regulation with complex multifaceted privatization legislation (Egorov, 2019; Koraev, 2018; Lipkin and Barsky, 2017; Miftakhutdinov, 2013; Mikryukov, 2015). Doctrinal studies of privatization can be described as complex and multidimensional (Olenin, 2000; Tkachev, 2006; Telyukina, 2018; Telyukina, 2001).

As a result, we can conclude that there is a parallelization of legal norms or, in other words, there is competition for legal regulation of the property transfer from public law education to private individuals, which, in our opinion, is a drawback of the legal technique of Russian legislation (Federal Law of the Russian Federation, 2002b; Federal Law of the Russian Federation, 2001; Decree of the President of the Russian Federation, 1994; Decree of the Government of the Russian Federation, 2009; Resolution of the Arbitration Court of the Far Eastern District). The term "quasi-privatization" is not commonly used; in the opinion of the authors of this article, it must be put into scientific circulation to indicate the relations that develop in connection with the property transfer from public ownership to private in the process of insolvency (bankruptcy) proceedings.

3. Discussion

The problem of the implementation of quasi-privatization term is associated with the problem of the retained competence of the property owner in a unitary enterprise. The design of the retained competence was introduced into the Law on Bankruptcy with the aim of protecting the property owner of a unitary enterprise, that is, public law object, from actions, aimed at seizing a business carried out by an arbitration manager in the interests of invaders (raiders), are possible because all the powers of all authority's management of the debtor legal entity after the introduction of external management pass to the arbitration manager.

Accordingly, before to the standards introduction on retained competence into the competition law, the arbitration manager, having the authority of all management bodies, could, for example, decide to sell the debtor's business at an unprofitable price or conclude a fulfilment agreement by a third party of the debtor's obligations at non-profitable conditions for debtor. Generally, have been used various schemes of raider seizures through bankruptcy manifest in practice (Telyukina, 2017), this issue is also studied in the doctrine (European Court of Human Rights, 2014).

The inclusion of the retained competence design led to the arbitration manager becoming obligated to coordinate with the property owner of the unitary enterprise issues related to the disposal of the debtor's assets. In this regard, on the one hand, there are guarantees that the arbitration manager is not able to arbitrarily perform actions aimed at implementing quasi-privatization.

However, on the other hand, the property owner of a unitary enterprise (represented by certain officials of the state (municipal) body responsible for property managing) may not agree to certain measures, the implementation of which can restore the solvency of the debtor. This problem can be positioned as follows - this is a problem determined by the absence in the current legislation of mechanisms to challenge the property owner' refusal of the unitary enterprise to approve the actions of the arbitration manager aimed at the property disposing of the unitary enterprise as a debtor.

A different order problem, related to the retained competence, is determined by the fact that at the stage of bankruptcy proceedings the governing bodies of the debtor do not retain any powers, that is, the bankruptcy trustee can make any decisions which opens up the abuse possibility.

Another block of problems is related to the fact that in practice public law object often illegally disposes of the unitary enterprise' assets, redistributing them, despite the prohibition in both the Civil Code of the Russian Federation and the Law on Unitary Enterprises, which often leads to a bankruptcy of a unitary enterprise. And although there is no subsidiary liability of public law object for the debts of a unitary enterprise, there is a practice of the European Court of Human Rights in which the Russian Federation is obligated to compensate citizens who have not received wages, losses and non-pecuniary damage as a result of bankruptcy (Voevodkin, 2017; Grishchenko and Martynov, 2018; Ivanov, 2015; Demchenko, 2015; Popondopulo, 2015); we should note doctrinal interest in this issue.

Conclusion

Summarizing what was said in this article, we note that many competitive features of a unitary enterprise status in Russian law are determined by its anomalous legal nature, especially the lack of ownership of the property that this legal form owns. The strategic objective of science is to create a legal model that excludes the functioning of non-owner entities; the tactical task is to create legal conditions that prevent the abuse of its competitive status by both the arbitration manager and the public legal entity-owner of the property of the debtor-unitary enterprise.

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Law enforcement and implementation of harmonization of law enforcement norms related to drug smuggling

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Abstract

The article examines the problem of the development of Russian law in the framework of the implementation of the criminal procedure norms related to drug smuggling. It is proposed to consider the prevention and effectiveness of offenses related to drug smuggling through the harmonization of national legislation. Special attention is paid to the interaction of international and domestic norms of procedural law. Special attention is paid to a comprehensive analysis of the construction of a system for the implementation of the norms of law, on which the effective achievement of goals in the suppression of crime in the sphere of drug trafficking depends. Based on the study of the material, it has been found that the mechanism for the implementation of the norms of the criminal procedure is not quite simple: on the one hand, the appeal to foreign legal norms is regarded as an unproductive scientific discourse, on the other hand, theories are modeled on the damage to one's own legal system as a result of unjustified borrowings from other legal systems. The results and conclusions can be used in the practical activities of customs, law enforcement agencies.

Keywords: criminal proceedings; procedural law; smuggling narcotics; compliance with the rule of law, legal system.

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Aplicación de las normas y peculiaridades de la armonización (aplicación) de las leyes relativas al contrabando de drogas

Resumen

El artículo examina el problema del desarrollo de la legislación rusa en el marco de la implementación de las normas de procedimientos penales relacionadas con el contrabando de drogas. Se propone examinar la cuestión de la eficacia y la prevención de los delitos relacionados con el contrabando de drogas mediante la armonización de la legislación nacional. Se presta especial atención a la interacción de las normas rusas e internacionales de derecho procesal. Se hace hincapié en el análisis exhaustivo del sistema de aplicación del derecho, del que depende el logro efectivo de los objetivos en materia de represión del delito de tráfico de drogas. El estudio del material documental demuestra que el mecanismo de aplicación de las normas penales no es del todo sencillo: por una parte, las apelaciones a las normas jurídicas extranjeras se consideran un discurso científico improductivo y; por la otra, las teorías se basan en el daño causado a su propio sistema jurídico como resultado de los préstamos injustificados de otros sistemas jurídicos. Los resultados y las conclusiones pueden utilizarse en la labor práctica de las aduanas y los organismos encargados de la aplicación de la ley.

Palabras clave: procedimiento penal; derecho procesal; contrabando de estupefacientes; cumplimiento del estado de derecho, sistema jurídico.

Introduction

The relevance of the study is associated with the dynamic processes taking place between the EU and Russia in the economic, political, legal, and other areas of interaction. The Russian Federation has signed and ratified several international treaties regulating topical issues of international cooperation in the framework of joint conduct of criminal procedural actions. One of them is joint (international) investigations related to drug smuggling, which implies the implementation of the norms on joint investigations into domestic legislation.

The relevance is due to the need to study the positive experience of legal regulation of criminalistic procedures in the law of the EU: an analysis of the formation of a single policy aimed primarily against transnational criminal structures associated with drug trafficking. The norms of the criminal procedure are implemented, first of all, through mechanisms of cooperation between various states and the Russian Federation within the

framework of the economic space. Analysis of the situation related to drug smuggling shows that criminal groups of drug dealers have entered into active interaction around the world. The revenues of criminal organizations that produce and distribute drugs reach USD 600 billion a year. Almost 271 million people, or 5.5 % of the world's population aged 15-64, used drugs in 2017. These data are close to 2016 estimates; however, long-term analysis shows that the number of people who use drugs is now by 30 % more than in 2009. It should be noted that the crimes in this category have a steady upward trend (World Drug Report, 2019).

A significant place is given to increasing the efficiency of joint procedural actions of states in the field of judicial and police cooperation. At the same time, several original legal institutions, organizational and legal forms, and areas of interaction, as well as courts and competent authorities within the framework of judicial and police cooperation, are regulated under the EU law. The experience of the EU in the field of regulation of joint forensic investigations is of interest not only because of the wider legal framework it has created, in comparison with other regional organizations but also because of the practical results obtained. Without fundamental research into the patterns of functioning and development of the mechanisms for committing the crimes under consideration, the activities of law enforcement agencies in their disclosure, investigation, and prevention are also ineffective. In the scientific literature, the issues of initiating a criminal case were considered in the most general terms, and not concerning certain types of crime.

The article is aimed at studying the vector of development of criminal procedural legislation, in an objective and reliable prognostic assessment of the prospects for implementation, in order to determine on this basis, the most promising areas of interaction between law enforcement agencies. Therefore, the study of the experience of other states in the field of legal regulation of the activities of joint (international) investigation teams is the most important target task for Russia, which is a strategic partner of the EU in the field of justice and internal affairs.

The results of scientific research can be used in the formation of a regulatory framework in domestic legislation that allows Russian law enforcement agencies to participate in joint (international) forensic investigations and form joint (international) investigative teams that will effectively perform the assigned tasks. Mistakes made at the stage of initiating a criminal case on drug smuggling are difficult or impossible to correct during the preliminary investigation, therefore the problem of the initial stage of the criminal process – the initiation of a criminal case – has always been of scientific and especially practical interest.

1. Materials and methods

When choosing a research method, the authors proceeded from the fact that the subject of research had features in the nature and understanding of the reasons and grounds for initiating a criminal case, substantiated, in their turn, by peculiar features that characterized the type of crime in question. During the research, the following methods were used: a meaningful analysis of theoretical and methodological sources in the field of theory of law, criminal law, forensic science, and statistics; systematic study of criminological aspects of the development of procedural technologies used in the practice of initiating criminal cases for drug smuggling; examination of regulatory documents; assessment of law enforcement experience. In the course of the study, sociological techniques were used: the study of documents, questionnaire survey, interviewing.

2. Results

Legal liability cannot occur by itself but is implemented by putting a complex legal mechanism into effect, which ensures the implementation of regulatory sanctions in real life (Tompson *et al*., 2008). Responsibility in criminal law comes through the inclusion of criminal procedure rules in the work. This usually concerns the sphere of the national criminal procedural law of Russia, but many gaps will be revealed if we consider the international aspect of the implementation of the norms of responsibility for criminal offenses against the world and humanity, drug trafficking, and human trafficking (Bakhmaier, 2012).

The development of international cooperation on reducing drug trafficking began in 1909 with the Shanghai Opium Commission. This meeting confirmed the recognition by states of the need for joint control over drug trafficking around the world. The need for procedural interaction between states was established by the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1936. Subsequently, Russia's interaction with foreign countries on issues related to the fight against drug trafficking continued within the framework of separate international organizations. These include the UN, the CIS, the SCO, the Council of Europe, and Interpol.

Part 5 of the Criminal Procedure Code of the Russian Federation regulates issues of international cooperation in the field of criminal proceedings by determining the procedure for the interaction of courts and national law enforcement agencies "with the relevant competent authorities and officials of foreign states and international organizations" (Section 18). It involves the implementation of legal responsibility in the form of requests and petitions for legal assistance on the dominant basis of the principle of interstate reciprocity.

However, it is not always possible to expect such reciprocity on the part of individual states. These circumstances form the outline of the problem of implementing criminal liability in the international legal field. What is it upon closer analysis?

We believe that the scientific analysis of the problems of the international criminal process should also include certain aspects of future applications. One of the sides of this problem is the implementation of international procedural norms in national law – the current Criminal Procedure Code of the Russian Federation reflects only a small fraction of what should have been foreseen and provided.

If the Rome Statute is ratified, this problem will be more exposed: on the one hand, the implementation of international procedural norms in national law and, on the other, the possibility of an official, accessible, and predictable interpretation of the law in the process of state law enforcement. There is too much difference in the legal technique of the national legal system and international acts (Safarov, 2006; Trikoz, 2005). We can agree that the activities of the existing modern international courts (Statut du Tribunal penal international pour le Rwanda, 1994) are ineffective (Beliy, 2008) and materials related to the activities of international justice are difficult to access (Beliy, 2008). In these circumstances, it is also possible to conduct a retrospective analysis of the essence of certain legal norms of international criminal prosecution (Volevodz and Solovev, 2007).

The mechanism for implementing the norms of criminal procedure is not simple enough. On the one hand, the appeal to foreign legal norms is regarded as a little productive scientific discourse. On the other hand, theories are modeled about harming one's own legal system as a result of unjustified borrowings from other legal systems (Alizadeh, 2010).

The Russian Federation regularly changes and supplements the existing norms (The Single Convention on Narcotic Drugs, 1961; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988) to fulfill its international obligations.

Following clause 21 of the Strategy of the State Anti-Drug Policy of the Russian Federation until 2020. The Russian Federation is implementing measures aimed at improving procedural legislation in the field of trafficking in drugs and their precursors and countering their illicit trafficking.

Implementation of these measures ensures the implementation of the best international legal practices (Tiunov, 2005; Lukashuk, 1997). Particular attention should be paid to the provisions of Part 2 of Article 36 of the Convention, according to which, willful complicity in any drug offense, participation in a community to commit and attempt any drug offense, as well as preparatory actions, should be recognized as punishable.

The implementation of the norms of international procedural law on drug crimes in the national criminal procedural legislation of Russia is incomplete, which significantly affects the effectiveness and practice of their application. The possibility of taking into account international law is due to the reasonableness and abstraction of the proposed rules.

The Rome Statute of the International Criminal Court has been ratified in 121 countries, including 33 in Africa, 25 in Western Europe, 18 in Eastern Europe, 27 in Latin America and the Caribbean, and 18 in Asia, reforming domestic legislation, including constitutional, criminal, and criminally-remedial.

Issues of implementation of the law for international crimes in national procedural law have been repeatedly considered by individual authors. In our opinion, despite the deep differences in national legal systems, there is no absolute unacceptability of international procedural norms in Russia. This conclusion follows from the inherent universality of human rights and democratic values, which unites all democratic institutions. At least since the Nuremberg Tribunal, this concept of a democratic order has been well understood by all lawyers and politicians in the world.

One of the first EU legal acts in the field of countering drug trafficking is the recommendation of the EU Council of April 25, 2002, on improving investigative methods in the fight against organized crime related to drug trafficking. The main purpose of this recommendation is to develop forms and methods of investigation of crimes related to illicit drug trafficking that can not only determine the mechanism for committing the relevant crime but also identify the criminal organization and its assets. In terms of determining the origin of the financial assets of a criminal organization, it is planned to create specialized working groups to investigate these phenomena, as well as to create joint investigative groups by the EU member states to investigate crimes.

In this regard, along with the improvement of the legal framework itself, both at the national and international levels, an international organizational structure is being developed to control the production, movement, and consumption of drugs, represented by specialized and subsidiary bodies of the UN system (Vasileva, 2005).

International Convention "On the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" of 1988 (Vienna, adopted at the UN Conference on December 20, 1988), its fundamental importance lies in the fact that it qualifies other offenses as crimes. Special emphasis is placed on the organization of procedural interstate cooperation in the fight against illicit drug trafficking.

An important innovation was the introduction of the UN Convention 1988 of the circumstances aggravating punishment for drug crimes,

including committing them to school or public institution, in the immediate vicinity or in other places that are used by students for educational, sports, and social events.

It is of fundamental importance that in the development of the provisions of the 1988 International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the UN conventions that preceded it, the vast majority of the states of the modern world have ratified them and otherwise implemented them into their national legislation.

The relevant international legal norms were also implemented (mainly through transformation) into criminal procedure legislation. Therefore, a partial acceptance by the Russian criminal procedure law of international criminal prosecution procedures for "the most serious crimes of concern to the entire international community" is more than possible and necessary. The absence of these norms in Russian legislation threatens the possibility of legal responsibility for international crimes, while such acts should not go unpunished, and their effective prosecution should be ensured both by measures taken at the national level and by increased international cooperation (Rome Statute of the International Criminal Court (Rome, July 17, 1998) (Framework Decision on Joint Investigation Teams (2002/465/JHA), 2002).

It cannot be allowed for the realization of irrevocable responsibility for internationally punishable acts to remain nothing more than a declarative political statement. Certain provisions of the study based on the analysis of key issues by theme can be used for further improvement of criminal procedure legislation in respect of the regulation stage of a criminal case, in the further development of specialized laws related to trafficking and consumption of drugs (Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offenses, 2005).

The reason for initiating criminal cases on drug smuggling in 100% of cases is the direct detection of signs of a crime by the body of inquiry, investigator, prosecutor, or court. Customs authorities detect signs of this crime in the course of their administrative, including customs, criminal procedures, and operational search activities. The entire activity of customs authorities in the framework of international cooperation to detect signs of drug smuggling consists of several stages (Plachta, 2005).

A necessary condition for initiating a criminal case, except for the reason, is the presence of grounds. It is necessary to have the following information to initiate criminal proceedings for drug smuggling:

1) reliable data about the event of the crime.
2) availability of narcotic substances and information about their type and method of transfer across the customs border.

3) conclusion of a specialist, which gives reason to believe that these are narcotic drugs.

One of these new areas of international cooperation in the field of criminal law is the joint investigation institute. This term refers to crime investigation activities carried out by joint investigation teams made up of representatives of the competent authorities of different states, who are empowered to carry out procedural actions in the territories of those states, representatives of which are included in such teams.

The experience of the EU in the field of legal regulation of joint (international) investigations is of interest not only because of the broader legal framework it has created compared to other regional organizations but also because of the practical results it has obtained.

3. Discussion

Russia has joined and ratified interstate normative documents that provide the possibility of conducting joint investigations: the UN Convention against Transnational Organized Crime, the UN Convention against Corruption. However, not all parties to these international legal instruments have implemented the rules on joint investigations into domestic criminal procedure legislation (Treaty on European Union (consolidated text), 2002).

In many respects, the current situation is due to the novelty and rather general nature of international legal norms on joint investigations, as well as the lack of knowledge about the international experience of legal regulation of joint investigations and the activities of joint investigation teams (Alizadeh, 2010). Even though the member states have actually created harmonized legislation on joint investigations, the EU continues to create new regulations in this area as necessary. For example, the rules on expanding joint practice in the investigation of certain types of crimes affecting the interests of EU member states. The practice of recent years shows that Russian law enforcement agencies are gradually beginning to use the capabilities of interstate investigative groups, after regulatory regulation of interaction in the investigation of crimes that affect the interests of more than one state.

Conclusion

As a result of systematization and study of the EU experience in the field of legal regulation of joint (international) investigative groups, we came to the conclusion that an effective strategic partnership of the EU in the field of investigation of drug smuggling and, first of all, within the framework of

the implementation of criminal procedure norms is relevant and promising for Russia. The implementation of the norms of the criminal procedure can be used in the formation of a regulatory framework in Russian legislation that allows Russian law enforcement agencies to participate in joint (international) investigations and form joint (international) investigative teams for this purpose. The reasons for the development of the "shadow" criminal drug business through transnational criminal organizations are rightly attributed by UN experts to the emergence of appropriate opportunities at the global level and the lack of effective procedural norms.

It is important to use the experience of foreign countries and implement the norms of customs conventions in advance, including the normative provisions of documents in their legislation (secondary reception by adaptation). The foregoing testifies to the need for an in-depth theoretical analysis of the implementation of international legal norms in the criminal procedure law of Russia to develop scientifically grounded recommendations for improving the domestic provision of the implementation of international law related to drug smuggling.

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Role of principles of law from the perspective of legal impact in modern Russia: theoretical and technical-legal aspects

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Abstract

The article discusses the problems related to the implementation of the legal impact on modern Russia and the role of the principles of law as the underlying idea behind that impact. This research aims to structure visions of the main characteristics and classifications of the principles of law in the context of their formalization. The authors use the method of technical analysis of regulations, which is important to meet the requirements of legal engineering. As a result of the work carried out, the authors suggest that, on the one hand, it is important to aim at the standardization of the principles of law as accurately and accurately as possible in legislation. On the other hand, they assume that principles that are already assured in legislation but have not yet been recognized by the scientific community must also obtain an assessment and justified characteristics in the doctrine. They conclude that, from a technical-legal point of view, a principle of law that is not scientifically recognized does not disappear from the legal framework if it is institutionalized as such in effective legislation. On the contrary, essentially new principles enshrined in legislation should not be ignored by legal science.

Keywords: legal science; principles of law; law in modern Russia; theoretical aspects of law; technical-legal aspects of the law.

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Papel de los principios del derecho desde la perspectiva del impacto legal en la Rusia moderna: aspectos teóricos y técnico-legales

Resumen

El artículo analiza los problemas relacionados con la implementación del impacto legal en la Rusia moderna y el papel de los principios del derecho como la idea subyacente detrás de dicho impacto. Esta investigación tiene como objetivo estructurar las visiones sobre las principales características y clasificaciones de los principios del derecho en el contexto de su formalización. Los autores utilizan el método de análisis técnico de las regulaciones, que es importante para cumplir con los requisitos de la ingeniería legal. Como resultado del trabajo realizado, los autores sugieren que, por un lado, es importante apuntar a la estandarización de los principios del derecho con la mayor precisión y especificación posible en la legislación. Por otro, asumen que los principios que ya están asegurados en la legislación pero que aún no han sido reconocidos por la comunidad científica, también deben obtener una evaluación y características justificadas en la doctrina. Concluyen que, desde el punto de vista técnico-jurídico, un principio de derecho que no está científicamente reconocido no desaparece del marco jurídico si se institucionaliza como tal en la legislación efectiva. Por el contrario, los principios esencialmente nuevos consagrados en la legislación no deben ser ignorados por la ciencia jurídica.

Palabras clave: ciencia jurídica; principios de derecho; derecho en la Rusia moderna; aspectos teóricos del derecho; aspectos técnico-legales del derecho.

Introduction

In the modern world, legal impact and its technical components are influenced by several factors and characterized by unprecedented complexity. In this context, the legal and technical need for clear and precise statutorization of the principles of law and principles of legal impact as its fundamentals, which should form the core of legal regulation, is growing.

In Russian science, the issues connected with characteristics and classification of the principles of law remain a subject of discussion. Participants of such discussions point out that the principles of law are always objectively inherent in law as a phenomenon and social regulator, "the essence of law penetrates the content of all its principles" (Vedyakhin and Surkova, 2005). As Jean-Louis Bergel fairly noted, "general principles of law constitute a foundation without any legal framework" (Vedyakhin and Vedyakhina, 2002). According to the interpretations suggested by

modern authors, the principles of law "represent the ideas that express the essence of law and characterize its social purpose" (Vedyakhin and Vedyakhina, 2002).

Unfortunately, from this perspective, the situation in modern Russia is very chaotic in terms of technical-legal aspects. The doctrine contains one set of general legal principles of law; a similar but still different set is enshrined in the federal legislation; the third one —in the regional set of laws; the fourth one —in the acts issued by the Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation. One the one hand, it should be admitted that such a situation exists; on the other hand, it appears unacceptable not only from the technical but also from the legal and social perspectives even though in the course of examination of certain cases, the court spreads general moral definitions that make up the reasonable content of law among the mass of the population (Lavrus, 2005).

This article looks at the issue of classification of principles of law and distinguishing principles as such and doctrinal ideas applying to the legal sphere. Besides, this work pursues the goal of showing that the principles enshrined in the federal and regional legislation of modern Russia are not the same; therefore, they must be unified and brought into correlation.

1. Methods

For making a more accurate distinction between the principles of law and ordinary ideas connected with improvement of social and legal life and shared by well-known scholars, it appears reasonable to use technical analysis of texts of regulations. In our opinion, it is also important to use the comparative method to compare the principles enshrined in the federal and regional legislation and provide comparative characteristics of statutory and non-statutory principles.

2. Results

As a result, we identified three groups of principles recognized as the principles of law: those that are doctrinal, those that are enshrined in the federal and regional legislation, and those enshrined in the acts issued by the Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation. In this connection, we also examined the issue of their correlation and harmonization.

3. Discussion

According to R.Z. Livshits, the principles of law permeate the whole of legal matter — the ideas, norms, and relations — and endow it with logic, consistency, and balance (Livshits, 1994), which is significant from the legal and technical perspectives. However, it happens only if the mechanism of implementation of the corresponding principle has been formed. As noted by representatives of the American socio-legal theory, the principles of law are developed in the course of legal activity and determine the directions of legal practice (Adygezalova, 2017). In this respect, the task of developing such mechanisms of implementation, including information, educational, organizational, and legal means, is gaining relevance.

The principles express the essence of law (social, value, etc.) directly, defining and specifying its general concept. It is the principles that should underlie specific regulatory prescriptions that model the relationships between the subjects of legal relations: "It is the only way to ensure consistency and stability, and, most importantly, the genuine legal nature of regulatory control" (Sidorkin, 2010: 86). At the same time, it should be noted that there is a wide range of opinions as to the very concept of legal principles and the necessity for their practical reinforcement.

For example, V.I. Zazycki reasonably suggests that scientific ideas formulated by scholars and offered as principles of law should be differentiated from those principles that have already been enshrined in legislation (Zazycki, 1996). Indeed, from the technical-legal perspective, before their statutorization, the ideas suggested by scholars and politicians remain only ideas, though advanced and socially valuable.

According to V.M. Vedyakhin, the principles of law are the basic ideas expressing the essence, designation, consistent patterns, and development trends in the Russian law enshrined directly or indirectly in legal regulatory provisions or existing in the legal consciousness of law enforcers (Vedyakhin and Surkova, 2005). In other words, the ideas must be directly or indirectly reflected by the legislation, which is a view that we share. As far as the scholar's statement that the principles of law are contained in legal consciousness is concerned, the very presence of the principles of law in legal consciousness is impossible without receiving the information about such principles by law enforcers primarily from the legislation.

The principles of law along with other "mechanisms of self-regulation (self-organization) in the legal system" (following the terminology suggested by V.V. Sorokin) perform the function of an organization of "control communications", the purpose of which is "to eliminate the internal contradictions on the legal system" (Sorokin, 2004).

It should be noted that the principles of law do not only serve as a kind of reference points in the course of formation and implementation

of legislation but also: "Exercise both direct and indirect influence on the social relations that represent the subject of legal regulation" (Vedyakhin and Vedyakhina, 2002: 569). Sometimes they are called "the dynamic elements of the legal system" (Skurko, 2008) but this opinion needs to be substantiated. They should rather be viewed as a stabilizing component that guides law-making at the federal and regional levels.

In the context of the need for legislative formalization of the principles of law, the opinion put forth by G.V. Nazarenko, who distinguishes written and unwritten principles, is of interest. They make up two large groups: 1) principles of actual law; 2) other legal principles, which are sometimes called "legal maxims". Through laws, written principles institutionalize the fundamental legal requirements and represent legal means and incentives. Unwritten principles (legal maxims), as an element of legal consciousness, convey the initial legal ideas and influence the character and the degree of implementation of legal means (Vedyakhin and Vedyakhina, 2002). However, in this case, the principles of law are intermingled with legal maxims, which is unacceptable from the technical-legal perspective.

According to S.Yu. Lavrus, principles of law "are either directly outlined in positive law and stated in legal regulations or drawn from the general meaning of legislation and are contained there in a concealed form. The latter include, for example, the principle of correspondence between positive law and natural law, the principle of combination of liabilities and rights, the principle of combination of incentives and restrictions, the principle of mutual responsibility between a person and state, etc." (Lavrus, 2005). In this connection, it should be stressed once more that it is necessary to differentiate between doctrinal provisions and principles contained in current legislation, which have been formalized in the texts of current regulations. It is hardly possible to encounter cases when law enforcement bodies make an appeal related to "the combination of incentives and restrictions" or "correspondence to natural law" since these ideas represent provisions desirable within a legal system and an ideological benchmark rather than real principles of law.

Ideas of law belong to the area of legal consciousness developed by legal science. However, before they are included in the effective legal norms, either directly or indirectly, they remain only ideas, important theoretical statements that do not have legal significance. If these ideas are mediated by the legislator, they enter the sphere of legal norms and merge with the content of positive law of a certain state as principles of law (Vedyakhin and Vedyakhina, 2002).

In this connection, it appears that if a principle has not been documented in legislation at all, neither directly nor indirectly, it serves not as a principle of law as such but nothing more than a statement of legal science that has a potential for becoming a principle of law and legal impact. Such principles

as the principle of equality in the eyes of the law and the principle of democratism in law-making have both worked their way from an idea to a principle of effective law.

In a wider sense, the principles of law are interpreted by N.M. Vagina, who points out that by their nature, "principles of law represent fundamental ideas enshrined in various formal sources, as well as those that have not been institutionalized but are widely recognized in consistent legal practice and legal relations" (Vagina, 2004). However, in our opinion, it is important to make a clear distinction between scientific ideas, suggestions connected with legal regulation of different spheres of social life (which represent conclusions made by legal science) and principles of legislation, which represent the first stage of implementation of the principles of law connected with their regulatory legal formalization.

Principles of law are ideas pervading the content of the law as if dissolved in it (Reuf, 2004). For ideas to be implemented as principles of law, they should be formalized and documented in corresponding regulations. It is regulations that will be implemented as principles of effective law. The principles of law determine general focus, high quality, and effectiveness of law-making, law-implementing, interpreting, and law-systematizing practices in any civilized society (Frolov, 2001), which is important from the technical-legal perspective. They can represent generalizations of the content or implementation of law and aspects of its essence. Therefore, it is essential to institutionalize them at the federal and regional levels and specify them in detail for their uniform understanding and usage.

There is also an opinion that principles exist in the form of guiding ideas of law that are abstracted from the patterns of social development. In this sense, they are: "Significantly ahead of the time when they are formalized in legislation and, therefore, represent a worldview category rather than a regulatory one" (Frolov, 2001: 16). However, as we see it, principles are called principles of law because they are documented in legislation and not just in the worldview of certain scholars. Apart from that, it will always remain unknown how many ideas belonging to such scholars have not been documented anywhere and were simply forgotten over time.

It should be noted that the situation in the legal system of modern Russia unfolds in the following way: the doctrine contains a certain set of general legal principles of law; another set is enshrined in the federal legislation; the third — in the regional set of laws; the fourth — in the acts issued by the Plenum of the Supreme Court of the Russian Federation. This situation can be considered to be a flaw in the legal system or a fault in the system of legal impact and can lead to an interference situation, which is unacceptable from the perspective of legal engineering.

Thus, an essential condition for implementation of the principles of law from the perspective of legal engineering is their legal formalization, transformation into principles of legislation, and institutionalized principles of legal regulation of corresponding spheres of social life. This is the main technical-legal condition for implementation of the principles of law.

The principles of law and development of legislation reside in dialectical unity and mutually stimulate each other (Skurko, 2008). Similarly, the doctrinal statement of a principle encourages its more or less full institutionalization within the legislation. On the other hand, the institutionalization of certain principles in current legislation should at least serve as a reason for their evaluation and analysis from the scientific perspective. In any case, a conflict between principles of law outlined in the doctrine and regulatory provisions documented in effective legislation whose level of generalization suggests that they possess the value of principles is unacceptable.

Lack of legislative documentation of the principles of law makes it hardly possible to implement them in practice as a source of law and leads to discrepancies in their interpretation in the course of application.

Interestingly, in the scientific literature, there is a view according to which: "It is necessary to gradually get rid of those legislative statements that contradict the principles of law" (Lavrus, 2005: 8). However, the following reservations should be made here. First, it refers to generally recognized principles of law that are enshrined in the legislation. If statutory regulations contradict a basic doctrinal idea proclaimed by certain authors as a principle of law, this must not lead to a failure to comply with these regulations since it would constitute a violation of the principle of legality. Second, if a certain idea proclaimed as a principle of law contradicts other principles of law enshrined in legislation, it cannot be recognized as a principle of law; from the technical-legal perspective, changing legislation for the sake of such an idea is simply unacceptable.

As we have found, in legal literature principles of law often serve as a subject of discussion and are viewed primarily as ideas or norms. As it has been fairly noted by A.S. Sidorkin:

> When we think of the principles of law as of ideas, we endow them with a purely doctrinal nature, which belittles their role in terms of their practical implementation. Conditioned upon the essence of law, principles initially represent ideas but further on acquire the features of norms. Normativity provides them with practical value as a foundation for developing legislation (Sidorkin, 2010: 13).

In this respect, it should be added that being a specific (fundamental, abstract) legal norm, a principle of law should always be expressed in a certain external form (constitution, law, court ruling, or a doctrine). In this case, such principle starts to be implemented as a legislative principle: a

general legal one, a cross-sectoral or sectoral principle. From the technical-legal perspective, this is the only way for a principle to be implemented.

As can be seen from the foregoing, there is no agreement among legal theorists as to the criterion of positivity applied to principles of law. While some scholars believe that principles of law should be positively documented in the form of regulations (Mitskevich, 1975; Smirnov, 1977), others think that such principles express the spirit of the law rather than its letter. Therefore, they do not have to be directly articulated in laws and regulations but can result from a set of laws and legislation in general (Livshits and Nikitinskii, 1974).

In our opinion, if we are talking about the effective Russian law as a system of norms gathered in regulations and other sources of law rather than scientific abstract ideas applied to law in general, principles of law must be documented in a more or less detailed way in the form of legal provisions of the effective law. Otherwise, they can only be qualified as an ethical foundation for regulating social life or the basic ideas behind human community rather than principles of law as such. It is not infrequent that the legislator institutionalizes a certain regulatory principle not yet recognized by the doctrine, but it becomes such due to its statutorization. It is an important technical-legal feature of the modern Russian legislation at the federal and regional levels.

Moreover, if a principle of law has not been enshrined in legislation, the following question arises: What is its connection to the actual legal reality? Isn't it an ideological cliché detached from reality? In this respect, we cannot agree with the identification of "super-positive principles of law" in the scientific literature.

We assume that it is necessary to discuss not only statutorization of principles of law as ideas but also doctrinal recognition of the legislative provisions whose level of abstraction suggests that their meaning is equal to that possessed by principles of law. It should be noted that principles enshrined in legislation as such will remain those even without doctrinal recognition.

Understanding principles of law as a manifestation of the spirit of the law raises the question of making a distinction between the principles of law as such serving as a regulator and principles of effective law in a certain sphere of regulated relations. There can be discrepancies and even contradictions between them (for instance, legislative institutionalization of the usage of terror against certain persons during revolutions as a principle of legal impact and state policy is in contradiction with the principles of equality, humanity, social peace, and balance of social interests). From the technical-legal perspective, it is impossible to identify the content of the spirit of the law, which is a subject some authors writing a lot about; there is plenty of room for scientific imagination here.

It should be added that the very design and identification of the principle of law in science should be primarily oriented at law-making practices at the federal and regional levels and social functioning needs.

The legal system of the Russian Federation is characterized by a situation when a whole range of principles of legal regulation, though having not been recognized by legal science, have been institutionalized in federal and regional legislation, acts issued by the Constitutional Court of the Russian Federation and the Plenum of the Supreme Court of the Russian Federation. For example, it has been noted in specialized literature that the Constitutional Court of the Russian Federation has repeatedly deduced principles of law from the Constitution of the Russian Federation that are not directly institutionalized in it, such as the principle of proportionality, the principle of legal certainty, and the principle of maintaining citizens' trust in law and government actions (the principle of respect for legitimate expectations) (Vedyakhin and Surkova, 2005). As we see, these principles have not been directly outlined in the legislation. Apart from that, they have not received support from legal science and have not even become a subject of scientific discussion.

It should be highlighted that a set of principles of regional legislation (principles of positive law) have been developed and institutionalized within regional law-making. Let us try to identify those foundations of legal regulation of major spheres of social relations that have been enshrined in legislation but are not recognized as principles of law by legal science.

One of the principles of law specified in specialized literature is consistency, uniformity of legal regulation at the federal and regional levels. We assume that consistency acts not only as a principle of law but also as a principle of its formation and functioning, in other words, as a general legal principle of law. This is not only a doctrinal view, although the unity of legal space as a phenomenon and guidepost have already drawn the interest of Russian scholars (Azizova, 2004; Filippov, 2013).

The thing is that consistency is institutionalized in the current legislation of a few subjects of the Russian Federation as a principle underlying the very design of regulations. Let us provide only two examples. Article 4, paragraph 1 of the Law of the Republic of North Ossetia-Alania of 14 November 2014 no. 36-RZ "On laws and regulations of the Republic of North Ossetia-Alania" says that "laws and regulations effective the Republic of North Ossetia-Alania form an integral system of laws and regulations of the Republic of North Ossetia-Alania arranged by their legal force (legislation of the Republic of North Ossetia-Alania)" (The Law of the Republic of North Ossetia-Alania № 36-RZ, 2014). The Law of Krasnodar Krai "On law-making and laws and regulations of Krasnodar Krai" of 6 June 1995 states that "laws and regulations of the region form in their entirety a unified, integral, and differentiated normative legal system — the legislation of Krasnodar Krai" (The Law of Krasnodar Krai № 7-KZ, 1995).

The Law of the Kabardino-Balkarian Republic of 3 August 2002 no. 52-RZ (as amended on 5 June 2018) "On legal acts of the Kabardino-Balkarian Republic" proclaims consistency as a principle of law-making (The law of Kabardino-Balkarian Republic № 52-RZ, 2002). Interestingly, this regulation also mentions such law-making principles as unity and consistency of the system of law and regulations, timely adoption of laws, comprehensiveness of legal regulation, and commitment to creating mechanisms of implementation of legal acts. It appears that the above-mentioned principles are not only and not so many principles of law-making as principles of legal regulation of social life, i.e. principles of law by their nature, which at the same time apply to the requirement of legal engineering.

The following principle that has been included in the regional legislation in much detail is the principle of respect for ethnic and cultural identity. Incidentally, the principle of respect for identity has been enshrined in international documentation and national legislation for a long time even though it is not identified as a principle of law in Russian literature. For example, Article 21 of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (Ratified by the Federal Law no. 163-FZ of 4 November 1995) has institutionalized that "persons belonging to national minorities shall not be denied the right, either individually or collectively, to express, preserve and develop, without hindrance, their ethnic, linguistic, cultural or religious identity" (The Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States, 1995).

Importantly, this principle has been also manifested in the legislation of the subjects of the Russian Federation. Given the restricted length of the article, we will provide only two examples. Article 3 of the Constitution of the Republic of Ingushetia proclaims "preservation and protection of the historical and cultural legacy of peoples and their national identity" the supreme goal of the state (The Constitution of the Republic of Ingushetia, 1994). Article 5 of the Law of the Republic of Kalmykia "On culture" says that: "The state policy in the sphere of culture in the Republic of Kalmykia is implemented under several principles, including the central role of culture in development and personal self-fulfillment, humanization of society, and preservation of national identity" (The Law of the Republic of Kalmykia № 381-lll-3, 2007).

In some cases, in regional legislation, the principle of national identity is included along with the principle of equality between the peoples living within the territory of the corresponding subject. For instance, the Constitution of the Kabardino-Balkarian Republic of 1 September 1997 says that "the Kabardino-Balkarian Republic is based on the principle of unity of the equal peoples of Kabardino-Balkaria" (The Constitution of the

Kabardino-Balkarian Republic № 28-RZ, 1997). Similar prescriptions can be found in the acts of other subjects of the Russian Federation.

A constituent part of the implementation of this principle is statutorization of the legal protection of national languages as an integral element of national culture.

From this perspective, suggestions of some authors are of interest. They believe that it is necessary to develop so-called ethno-cultural education (Zagirov, 2017) focused on the preservation of ethno-cultural identity of people by introducing them to the native culture, national language, and traditions of the corresponding ethnic group together with their exposure to the most significant values of world culture.

Conclusion

Let us draw conclusions from our research. Today, from the technical-legal perspective, a principle of law that is not scientifically recognized does not disappear from the legal framework if it is institutionalized as such in the effective legislation. On the contrary, essentially new principles enshrined in regional legislation (such as the uniform character (consistency) of regulation at the federal and regional levels, preservation of ethnic and cultural identity, etc.) should not be ignored by legal science; instead, they should become a subject of doctrinal analysis and justified scientific evaluation.

From the technical-legal perspective, for their effective implementation, it is necessary to ensure the most comprehensive, accurate, and unambiguous institutionalization of fundamental ideas connected with legal regulation in normative and legal prescriptions, which should be formulated clearly and precisely and, whenever necessary, provide their detailed normative characteristics.

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Legal Values of Russian Conservatism and Their Impact on Professional Legal Consciousness

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Abstract

Of scientific interest is the process and the result of the cognitive activity of law enforcement, which affects the functioning of the entire legal system. The problem of developing the professional legal conscience of law enforcement is revealed through the study of its value component, so the reference to the legal axiology of 19th-century Russian conservatism is a relevant scientific issue. The authors consider the opinions of the main conservative thinkers of the pre-revolutionary period: K. N. Leontiev and K. P. Pobedonostsev, the heritage of I. A. Ilyin that belongs to the first quarter of the twentieth century, etc. It is concluded that professional legal understanding must be based both on the modern legal paradigm and on the national legal tradition, mentality and established positive social practices. It is necessary to correlate values of the ethical and legal categories: justice and truth, rights and duties, dignity and honor, freedom, equality, order, etc. It can be said that the modern legal conscience of special subjects accumulates many legal values of Russian conservatism, including «justice», «order», «responsibility».

Keywords: legal values; political-legal doctrine; professional legal conscience; Russian conservatism; professional ethics of lawyers.

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Valores jurídicos del conservatismo ruso y su influencia en la conciencia jurídica profesional

Resumen

De interés científico es el proceso y el resultado de la actividad cognitiva de los encargados de hacer cumplir la ley, que afecta al funcionamiento de todo el sistema jurídico. El problema del desarrollo de la conciencia jurídica profesional de los encargados de hacer cumplir la ley se revela a través del estudio de su componente de valor, por lo que la referencia a la axiología jurídica del conservadurismo ruso del siglo XIX es una cuestión científica relevante. Los autores tienen en cuenta las opiniones de los principales pensadores conservadores del período pre-revolucionario: K. N. Leontiev y K. P. Pobedonostsev, la herencia de I. A. Ilyin que pertenece al primer cuarto del siglo XX, etc. Se concluye que la comprensión jurídica profesional debe basarse tanto en el paradigma jurídico moderno como en la tradición jurídica nacional, la mentalidad y las prácticas sociales positivas establecidas. Es necesaria la correlación de valores de las categorías éticas y jurídicas: justicia y verdad, derechos y deberes, dignidad y honor, libertad, igualdad, orden, etc. Puede afirmarse que la conciencia jurídica moderna de los sujetos especiales acumula muchos valores jurídicos del conservadurismo ruso, entre ellos la «justicia», el «orden», la «responsabilidad».

Palabras clave: valores jurídicos; doctrina política-jurídica; conciencia jurídica profesional; conservadurismo ruso; ética profesional de los abogados.

Introduction

The ethical teaching of A. Schweitzer dated to the first quarter of the 20th century stated that law had lost its moral content: "We have entered into a period in which the feeling for law is hopelessly bereft of force, of soul, and sense of moral obligation. It is a period of lawfulness. Parliaments produce with easy readiness statutes that contradict the idea of law. States deal arbitrarily with their subjects without regard to the maintenance of any feeling for law" (Schweitzer, 1992). The Russia of the 21st century experiences the uncertainty of spiritual, moral, and legal values and guidelines, which makes it important to search for ways to preserve Russian legal culture and revive Russian traditions undermined by globalization. Therefore, the correlation of moral-legal values and the system of legal regulation affects not only the sphere of theoretical research but also practical issues. This concerns complex phenomena connected with the infiltration of regulatory institutions into the inner world of a person, encouraging the formation of legal duties and moral obligations to follow legal norms.

The perception and reproduction of legal consciousness is a complex process but is simpler than the formation of moral consciousness. One makes a moral choice while appealing to the higher regulators and being aware of personal responsibility. On the contrary, compliance with law exists in the framework of uniform provisions and legal responsibility. According to A.A. Guseinov (2002), the modern high-tech world moves "towards social systems that can function regardless of people's moral qualities and motives". How will society exist without its moral foundations? Will it be able to realize its potential, in particular, its legal system? In our opinion, law deprived of moral foundations cannot acquire genuine legitimacy based on its ability to maintain order, protect citizens and restore justice. Thus, this article aims at studying the impact of legal values common to Russian conservatism on the professional legal consciousness of law enforcers.

The development of the professional legal consciousness of law enforcement officers is analyzed through the study of its values. Thus, it is recommended to refer to the legal axiology of Russian conservatism of the 19th century. The significance of the issues considered requires both special studies and their consolidation in regulatory legal acts. The analysis of axiological aspects typical of the Russian conservative doctrine, which keeps ideas and concepts on the formation and development of Russia, is important for understanding the essential features of the political and legal status of the state.

1. Methods

The philosophical foundations of science comprise epistemological, ontological, logical-methodological, and axiological aspects. Being a theory of cognition, epistemology analyzes the essence of techniques, forms, and methods of cognition, as well as sets the limits of cognoscibility of objects and phenomena. The ontological section of philosophy is a teaching about general categories and objective laws co-existing with the theory of knowledge and logic. The logical-methodological section develops the relationship between concepts, reasons and judgments in the context of denying the cognitive abilities of a person, their intuition and feelings. The axiological section of philosophy considers values and their hierarchy.

The axiological approach allows combining the evaluative and goal-setting functions of culture. The latter is regarded as a comprehensive phenomenon, without opposing creativity to traditions. The values-based approach to legal thinking proceeds from the perception of law as an axiological-normative system developed in specific historical conditions within the framework of certain religious, cultural, and moral attitudes. This system is recognized and embodied in the behavior of the relevant subjects. It emphasizes the continuity of legal norms expressed not only through

regulatory acts but also through values. In conformity with this approach, values are both methods and goals of cognition. If law is considered from the values-based perspective, it is possible to overcome the impersonal nature of law and avoid its excessive rationalization.

The methodology of this study is conditioned by the set of methods used by Russian conservatism with due regard to the original worldview of this scientific doctrine. The chosen methods depend on specific objects of cognition, which means that each issue involves the use of its own methods. The comparative-legal method plays an important role in Russian conservatism and consists in establishing similarities or differences among the legal phenomena under consideration. The new phenomena are compared with the phenomena already studied to reveal the essence of the first. In the context of specific historical analysis, this method allows determining and examining the trends and patterns of legal processes and phenomena.

The formal-legal method describes, generalizes, classifies, systematizes, and transfers the acquired knowledge in a certain way. Using this method, we identified principles, norms and provisions reflecting legal values of Russian conservatism of different historical periods. The study of the above-mentioned problems involved the use of various methods, both general (analysis, synthesis, induction, deduction, abstraction, systemic analysis) and special scientific methods (historical, comparative-legal, etc.).

2. Results and Discussion

The legal status of society is predetermined by many factors, including the professional understanding of law by special subjects (law enforcement officers). Such legal thinking is a process and result of the cognitive activity of law enforcement officers that affects the functioning of the entire legal system. No appeal to legal values and their perception within "the pure theory of law" deprives legal actions of any meaning. Utilized, pragmatic and formalized law cannot improve a person, as well as provide social harmony and stability. The need to replicate form and content through semantic components is an activity of lawyers. Within such an understanding, law can fulfill its high mission of achieving justice and not turning into an expired form.

Being at the center of legal regulation, lawyers contribute to the creation of laws and their implementation; therefore, they bear much social responsibility. The nature of professional legal activity allows lawyers to be regarded as creators of legal culture. To a large extent, the level of law and order in society depends on lawyers involved in law-making, law enforcement, law protection and other activities.

The professional legal consciousness of lawyers is a special form in the system of legal views, values and skills conditioned by an appropriate academic degree and practical experience. Specific features of the professional legal consciousness of lawyers are as follows: in-depth theoretical and practical knowledge in certain areas of law; perception of the current legal system in its integration; consistency of legal knowledge, values, and commitments; understanding the essence of legal effects, etc. (Baranov, 2006). At the same time, the professional legal consciousness of lawyers is heterogeneous, which is due to the diversity of their competences and the specifics of their legal activity.

A component of the lawyer's status is the professional axiosphere that embodies the values and meanings of this profession, its norms, rules, traditions, etc. This occupation implies not only the possession of special knowledge, skills and competences confirmed by appropriate diplomas, certificates, and other documents but also values-based orientations towards serving public goals. Professional affiliation with the legal profession presupposes a positive assessment of the current law and a well-formed desire to embody legal values in official and private practice. The knowledge of laws does not imply their correct assessment. On the contrary, even an adequate assessment can undermine the regulatory potential of law due to the prevalence of negative legal attitudes.

The professional ethics of lawyers is characterized by a high level of integration between legal and moral norms that govern their activities. Law enforcement officers (in particular, judges, prosecutors, and investigators) have a special status and fulfill their mission relying not only on law, but also on their conscience and moral convictions. Special functions of the legal community necessitate the introduction of increased requirements for the moral status of its members, which was embodied in the development of ethical norms. For example, there are the Code of Professional Ethics of Lawyers in the Russian Federation (Council of the Federal Chamber of Lawyers of the Russian Federation, 2003), the Code of Professional Ethics for Procuracy Officers in the Russian Federation (Prosecutor's Office of the Russian Federation, 2010), the Code of Judicial Ethics in the Russian Federation (All-Russian Congress of Judges, 2012), the Code of Professional Ethics for Notaries in the Russian Federation (Ministry of Justice of the Russian Federation, 2016), etc.

According to V.V. Sorokin (2010), "every person has not only a justified legal but also a moral obligation to obey the existing norms since law prescribes the same external behavior as the one considered moral and just by the still small voice". Such categories as "conscience", "justice" and "duty" determine the substantial component of law. Defining legal consciousness as an instinctive sense of law, the will to spirit, justice and goodness, I.A. Ilyin believed that it is expressed through conscience and religious feelings:

"Indeed, legal consciousness can be considered outside the framework of religion and conscience, like one's will be devoid of heaven and earth. It will be <...> a shallow form deprived of the gift of love and contemplation" (Ilyin, 1993: 236).

As a category of ethics, conscience reflects the ability to perform self-evaluation and correlate one's behavior with the requirements of morality, which helps a person to choose a suitable behavioral pattern. Conscience is independent of society and state, but it is important for these institutions since it creates ideological preferences. The modern legal theorist R.S. Bainiyazov defined legal conscience as "an intuitive understanding and striving for a just life and moral law" (Polyakov and Timoshina, 2005). The Orthodox perception of conscience focuses on the fact that it is an innate moral feeling that unites a person with the Creator and distinguishes between good and evil outside the framework of rational comprehension. This is an internal "judge" who approves thoughts, intentions, and actions.

The legal dimension of conscience lies in its potential as a spiritual and moral law to ensure the correct assessment, respect, and observance of legal rights without external means of coercion. Conscience coexists with the feelings of duty, responsibility, and shame. The latter is expressed in self-reproach and awareness of spiritual unworthiness when some immoral act is suddenly exposed. Duty should be interpreted as moral readiness to perform certain actions and be responsible for them. Responsibility reflects the person's perception of moral and legal values and the ability to act, realizing the consequences of such actions.

It is hard to overestimate the role of conscience in the legal regulation of social relations. This moral feeling largely ensures legitimate behavior. The development of conscience creates natural respect for law without any coercive measures. On the contrary, the lack of conscience encourages a person to commit immoral and illegal acts and violate the established social order.

The well-developed system of legal values is a required attribute of any law enforcement officer. However, the judge's values play a special role. By virtue of its social mission, justice should comply with humanistic traditions expressed in values-based attitudes towards a person. The significance of the judicial system cannot be neglected since it aims at restoring justice, maintaining order, resolving conflicts, protecting rights, and mediating different types of social relations. I.Ya. Foinitskii described the role of justice in the following way: "Among state responsibilities, one of the most important is the obligation to administer justice. This function conditions the formation of the judiciary as a branch of state power and complements the other branches of government (legislative and executive)" (Foinitskii, 1996). Modern legal science considers justice as a specific type of state activity or judiciary function aimed at analyzing and resolving social

conflicts associated with the actual or alleged violation of laws (Rzhevskii and Chepurnova, 1998).

Furthermore, justice is inherent in fairness and these categories are often identified. Fairness is manifested in the adequacy and compliance of the applicable laws with moral norms while assessing some act or attitude subject to judicial proceedings. In the context of legal proceedings, fairness has many aspects. First, it is an imperative that makes a person act in conformity with objective truth, law and their own conscience, relying on the facts established in a particular case. Fairness implies compliance with the concept of due order, equality of all society members, application of just laws, independent and impartial courts, proportionality of action and retribution, etc. Judicial decisions should meet the criteria of fairness. In the context of legal proceedings, the procedure is to establish the truth, ensure the equality of parties and clarify all circumstances.

The founder of the Russian judicial ethics A.F. Koni (2011) believed that judges should exert all the powers of their mind and conscience to find the truth in a certain case, while judicial verdicts should be based not only on logical inevitability but also on moral obligations. The Russian lawyer tried to reveal the functioning of the judge's inner convictions and determine moral components of the administration of justice at the theoretical level. According to A.F. Koni, the application of any law regardless of a particular situation is unworthy of a judge. Indeed, true justice lies in reasonable humanity. The special legal status of a judge presupposes certain professional, legal, psychological, moral, and ethical qualities. Therefore, it is a priority task to develop the legal culture and moral consciousness of the judiciary. This goal can be achieved through strengthening and improving the Russian judicial system.

Modern procedural and material laws legitimized such personal and moral categories as "conscience", "dignity" and "inner conviction", which emphasizes subjective and creative principles of justice. For example, the Law of the Russian Federation "On the Status of Judges in the Russian Federation" contains the following oath of a judge: "I solemnly swear to perform my duties honestly and conscientiously, to administer justice obeying only the law, to be objective and fair, as the duty of a judge and my conscience require" (Russian Federation. Federal Law, 1992). Thus, legal proceedings cannot be assessed with due regard to the judge's knowledge of positive law. Only the unity of normative and values-based systems guarantees the professionalism of the servants of Themis.

Clause 1 of Article 17 of the Criminal Procedure Code of the Russian Federation reads, "The judge, the jurors, as well as the prosecutor, the investigator and the inquirer, shall assess the proof in accordance with their inner conviction and shall rely in doing this on the law and on their conscience" (The State Duma of the Russian Federation, 2001). An inner

conviction is a complex category defined as a subjective sense of confidence and consideration of the truth, which helps judges build up an opinion regarding the rightness of the party to criminal proceedings and their guilt or innocence. Inner convictions form during an objective assessment of a particular case from the standpoint of law and with due regard to moral responsibility in relation to the parties of specific legal relations and society as a whole.

While administering justice, it is necessary to consider such a legal value of Russian conservatism of the 19th century as a legal obligation that implies the fusion of a "moral duty" and a "legal obligation". The Russian specific laws and acts issued by the judicial community emphasize the convergence of professional activity and moral duty. The Code of Judicial Ethics introduced rules of conduct that are binding on every judge and based on high moral and ethical requirements (All-Russian Congress of Judges, 2012). The act adopted by the judicial community establishes increased moral and ethical requirements for judges due to their status. In particular, "the judge shall be guided by generally accepted standards of morality, value the honor, avoid everything that could belittle authority of judicial authority and cause damage to the reputation of the judge" (All-Russian Congress of Judges, 2012).

The issue of freedom (in particular, the freedom of choice) is no less acute in the context of being responsible and understanding the consequences of an act of justice. Being connected with moral imperatives, freedom and independence ensure the fair and impartial activity of judges. The category of "judicial discretion" should eliminate ambiguities and legal limitations by specifying the disputed law. D.M. Chechot (1973) defined judicial discretion as the freedom of a judge to make an appropriate decision. D.V. Boiko (2011) explained discretion by the objective inability to regulate all the variety of legal relations by the general norm, evaluative concepts, dispositive and peremptory norms of law, containing specific or alternative sanctions, open legal lists, legal gaps and conflicts of law. Judicial discretion allows critically considering the rules of law, assessing and analyzing them by referring to legal ideals and principles. The freedom of judicial discretion limits the independent will of judges, within which verdicts are delivered. The moral and legal boundaries of judicial discretion are defined by the categories of justice, honesty, and rationality.

The conservative thinker of the 19th century K.N. Leontev considered internal contradictions of the institute of justice. In his opinion, it is not able to find the highest truth and restore the highest justice. According to the philosopher, "the Russian proverb says where there is a court, there is a lie... The proverb does not mean that all courts are unjust. However, all human institutes have a tendency towards untruth and therefore some legal proceedings are unfair in nature... After all, the Russian people (and

any people who have not been bewildered by democratic ideas yet) do not believe in the truth on earth…" (Leontev, 2003). Thus, K.N. Leontev emphasized that any judicial act is based on the judge's interpretation of law, moral sense of conscience and inner conviction, which does not exclude the possibility of a failure or unfair decision.

K.P. Pobedonostsev criticized judicial institutions in the following manner: "We have a machine for creating artificial truth but the truth itself cannot be seen in the solemn vanity of machine production. It is overlaid by the noise of the wheels turning inside this huge mechanism. People look for moral strength, alas, almost all the potential of this machine is wasted on the friction of the wheels making continuous motion. Almost all the moral efforts are spent on lubricating these wheels and their conductor tracks. Courts hear cases in all their priestly dignity. Like the ancient Augurs, they listen until their attention grows blunt… However, the main victim of this torture is the unfortunate truth that should make its way to the promised paradise along the narrow bridge of Mohammed. Woe betide those who rely on their own powers along the way" (Pobedonostsev, 1996). The philosopher highlighted the need to overcome the formal nature of legal proceedings and acknowledge the priority of law and conscience in establishing the truth and ensuring justice.

The shortcomings of the current judicial system can be overcome if courts are authorized to creatively apply laws, confidence in the judiciary is increased and transparency in judicial activities and other measures are ensured. The credibility of courts is built through the compliance of its activities with justice, legality, and the adopted complex of professional ethics. Adherence to ethical norms and professional rules during a court session, as well as the moral position of a judge, reflected in a verdict, serve as criteria for assessing the judge's status by public opinion, which influences the authority of courts. The Russian state needs not only to improve the existing legal framework but also to increase the legal culture of lawyers because their professional legal consciousness is somehow deformed. Legal thinking should be enriched with the achievements of legal science, intellectual traditions of the Russian politics and jurisprudence, new approaches that can fit into the existing legal framework.

The judge's socialization presupposes the evolution of their values through the interaction of personality traits and the external professional environment. President of the Constitutional Court V.D. Zorkin did not support the opposition of an individual and state. He stated, "For this, we do not need to change the core of our culture, we should correlate the spirit of our people and the content of law, traditions and innovations" (Zorkin, 2013). It is necessary to form the professional legal consciousness of judges based on the moral values of honor, dignity, the special duty of the servants of Themis, etc. Moreover, morality and ethics should be protected by justice,

otherwise, they will destabilize the system of legal values. Unfortunately, the current legislation does not ensure the true independence of judges from other branches of the state power and the higher authorities within the judicial system. As a result, judges are turned de facto into ordinary officials, which does not correspond to the nature of justice and its social mission.

The unity of values-based orientations is significant for classifying professional groups of lawyers. Legal values and ideals are the main components of the lawyer's socialization in the structure of professional legal consciousness. Therefore, any failures in the axiosphere trigger the mechanism of destruction.

Conclusion

The significance of the study results is predetermined by the following facts. The importance of judicial decisions imposes requirements not only on their quality and legality but also strengthens public demand for their humanity and justice. It is impossible without the axiological correlation of such ethical and legal categories as justice and truth, rights and duties, dignity and honor, freedom, equality, order, etc. One more development direction is the need to improve legal educational strategies and overcome technocratic that falsely represent law as orders and directives issued by authorities.

Unlike other public authorities, courts have the legislatively enshrined ability to conduct their activities based on the categories of "conscience", "honor", "dignity", "honesty", "justice", "good faith" and "duty". Their high status is due to the fact that they are the final instance and have powers to supplement and enrich the existing law with new norms of morality and ethics to obtain public and state benefits.

Legal traditions of Russian conservatism reflect the priority of mercy and philanthropy over legality (Kuzubova, 2020). The conservatism of modern legal consciousness manifests itself in the fact that the changes caused by drastic judicial reforms have little affected the foundations of professional legal thinking. At the same time, professional legal thinking should proceed from modern legal paradigms, the Russian legal traditions, mindset and established positive social practices. Trust in the judicial system is a prerequisite for its effective functioning. This trust is built over independent, fair, and humane justice, capable of harmoniously combining the requirements of law and the human spirit. Judges should not forget that a person who has an inalienable right to dignity falls in the sphere of their professional responsibility.

The professional understanding of law by special subjects (law enforcement officers) largely affects the legal status of society. Being a process and result of the cognitive activity of law enforcement officers, legal thinking embodies the values and meanings of this profession, its norms, rules, traditions, etc. The modern legal consciousness of special subjects accumulates many legal values of Russian conservatism, including justice, order, and responsibility. Judges also focus on the improvement of moral qualities in the context of professional development. The effective functioning of the judicial system is conditioned by trust in this institute, which is possible only under the administration of truly independent, fair, and humane justice, capable of converging the legal prescriptions and human needs.

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Special Confiscation as a Measure of Criminal Law under Ukrainian Legislation

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Abstract

Through a documentary methodology the article is devoted to the study of special confiscation as a measure of criminal law, which was introduced in Ukrainian legislation on the path of transformation and reform in the institution of confiscation of property. The study found that the emergence of a special forfeiture was mainly dictated by Ukraine's choice of European integration and the need to fulfil its obligations to bring domestic criminal law into line with European standards and international legal practice in the fight against crime. The article discusses the provisions of criminal law on the regulation of special confiscation as another measure of criminal law and considers the main problematic aspects of this institution in the doctrine of Ukrainian criminal law. The correlation between general confiscation and special confiscation was revealed in the article. It was concluded that these two types of seizures are different in a legal nature. The confiscation of property is a type of additional punishment and, the special confiscation of property is an independent type of other measures of the nature of criminal law.

Keywords: confiscation; confiscation of property; property rights; criminal law in Ukraine; crime.

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Decomiso especial como medida de derecho penal en la legislación ucraniana

Resumen

Mediante una metodología documental el artículo se dedica al estudio de la confiscación especial como medida de derecho penal, que se introdujo en la legislación de Ucrania sobre el camino de la transformación y la reforma en la institución de confiscación de bienes. El estudio encontró que la aparición de un decomiso especial estaba dictada principalmente por la elección de Ucrania de la integración europea y la necesidad de cumplir con sus obligaciones de poner el derecho penal interno en consonancia con las normas europeas y la práctica jurídica internacional en la lucha contra la delincuencia. El artículo analiza las disposiciones de la legislación penal sobre la regulación del decomiso especial como otra medida del derecho penal y considera los principales aspectos problemáticos de esta institución en la doctrina del derecho penal de Ucrania. La correlación entre la confiscación general y el decomiso especial se reveló en el artículo. Se concluyó que estos dos tipos de decomisos son diferentes en naturaleza jurídica. La confiscación de bienes es un tipo de castigo adicional y, la confiscación especial de bienes es un tipo independiente de otras medidas de naturaleza de derecho penal.

Palabras clave: decomiso especial; confiscación de bienes; derechos de propiedad, derecho penal en Ucrania; crimen.

Introduction

In accordance with the basic principle of protection of property rights, enshrined in Art. 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of their property and no one can be unlawfully deprived of property rights. However, Ukrainian law allows for the restriction of property rights if the interests of society or the state require such a restriction. It is allowed, in particular, by confiscation of property (Part 6 of Article 41 of the Constitution of Ukraine, 1996). Thus, recognizing the importance of the development of property relations, the legislator, however, clearly and unequivocally recognizes the right of the state to intervene in these relations within certain limits.

One of the main conditions for Ukraine's membership in the EU is the adaptation of its national legislation to the law of the European Union. Given the new threats and challenges of the modern criminal environment, the international community and some countries around the world are implementing new non-traditional measures to combat the most dangerous crimes, including confiscation. In this regard, Ukraine is obliged to create

an effective regulatory framework and systematically improve the relevant regulations that guarantee the inviolability of property rights, as well as clearly define the limits of permissible (reasonable) state intervention in the sphere of free property ownership.

One of the measures within the framework of adaptation of the legislation of Ukraine to the law of the European Union was the introduction of the institution of special confiscation in the criminal legislation of Ukraine. Such implementation was carried out by the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the implementation of the Action Plan on visa liberalization by the European Union for Ukraine" of April 18, 2013 (Verkhovna Rada, 2014). This was definitely a positive step towards adapting domestic legislation to EU law. However, the legislation governing special confiscation is still imperfect and therefore needs additional attention.

1. Analysis of resent research and methodology.

The purpose of the paper is to study the legal regulation of special confiscation as another measure of criminal law, as well as to address debatable issues to determine the criminal nature of the institution of special confiscation, its place in the system of criminal law of Ukraine and peculiarities of its application.

To achieve the purpose of the paper, general and special scientific research methods were used in the study. The formal-legal method (dogmatic) was used during the legal analysis of the provisions of the Criminal Code of Ukraine, which regulate the concept of «special confiscation» and cases of its application. To establish the content of certain criminal law concepts (for example, «confiscation of property», «special confiscation», «measures of criminal law nature»), the hermeneutic method was used. When comparing domestic and foreign criminal law on the rules governing special confiscation, as well as in clarifying the similarities and differences between confiscation of property as a form of punishment and special confiscation as another measure of criminal law, the comparative legal method was used.

The historical method was used to study the patterns of origin and development of the provisions governing special confiscation in the current criminal law of Ukraine. The method of systematic analysis was used to distinguish special confiscation as another measure of criminal law nature from confiscation of property as a type of punishment.

2. The concept and types of confiscation under the legislation of Ukraine

Confiscation as a type of additional punishment is used in Ukraine in administrative and criminal law. According to Art. 59 of the Criminal Code of Ukraine, confiscation of property is established for serious and especially serious mercenary crimes and may be imposed only in cases specifically provided for in the Special Part of this Code (Verkhovna Rada, 2001). According to Art. 96-6 of the Criminal Code of Ukraine, confiscation of property as an additional measure of a criminal nature may be applied to legal entities.

Confiscation as an administrative penalty is provided by Art. 24, 29 of the Administrative Code of Ukraine (Verkhovna Rada, 1984) and consists in the forced gratuitous transfer of an object that has become an instrument of commission or a direct object of an administrative offense in the ownership of the state by court decision. In this case, confiscation can be applied as a basic and additional penalty. Confiscation as an administrative sanction can be applied only to individuals. In order to confiscate property in administrative proceedings, it is necessary that such a sanction be expressly provided for in the relevant article of the Administrative Code of Ukraine, and the case be considered by a court.

Civil confiscation, sometimes called the recovery of unjustified (illegal) assets, appeared in the Civil Procedure Code of Ukraine (Verkhovna Rada, 2004) with the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" of February 12, 2015 (Verkhovna Rada, 2015), which provided that the claim for unfounded assets and their recovery from persons is filed in the interests of the state by the prosecutor within the statute of limitations from the date of entry into force of the conviction against a person authorized to perform state functions or Local Government.

Thus, the recognition of assets as unfounded and their recovery in favor of the state in civil proceedings is already provided by current procedural law but is possible only after establishing the guilt of a person in a crime and a court conviction in these circumstances.

The Criminal Code of Ukraine defines confiscation of property as the forced gratuitous seizure of all or part of the property that is the property of the convict (Part 1 of Article 59 of the Criminal Code of Ukraine).

Based on the legislative definition of confiscation of property (Article 59 of the Criminal Code), some scholars identify the following features of the confiscation:

1) forced confiscation of property in favor of the state, i.e. regardless of the will of its owner;
2) gratuitous seizure of all or part of the property by the state.
3) only the property or its part specified in the court verdict is subject to seizure.
4) is applied by the court only to the convicted person.
5) is appointed only in cases specifically provided for in the Special Part of the Criminal Code of Ukraine.
6) applies to a person who has committed a serious or particularly serious mercenary crime, or a crime against the foundations of national security of Ukraine or public security, regardless of their severity (Grigorieva and Pavlovskaya, 2014).

However, the attribution of the condition (type of crime) and the order of its appointment (if provided for in the sanction) to the signs of confiscation of property seems inexpedient, as they do not reflect the legal nature, essence of this measure as a type of punishment.

Other scholars suggest that the confiscation of property should be understood as a restriction of the convict's right to property by turning the property belonging to him or her into state ownership. Among the features that characterize it, scientists include:

1) use for committing a crime.
2) only by the court.
3) in cases specifically provided by law.
4) compulsorily.
5) restriction (termination) of the right of ownership by gratuitous application to the state property.
6) applies to property belonging to the offender on the right of ownership (Ponomarenko, 2009).

Confiscation of property is also defined as a compulsory deprivation of a person of the right of ownership of illegally owned, used or transferred property, as a sanction for the commission of a crime imposed by a court decision (Sobko, 2008). However, this definition raises some doubts, in particular the position of the author on the existence of ownership of illegally owned, used or transferred property. Signs of confiscation in this approach include:

1) coercion.
2) free of charge.
3) active withdrawal actions.
4) directing property to state property.
5) restriction of the right of ownership due to a person on the basis of a court decision.

Confiscation of property is a type of punishment, so it has all the features that are characteristic of this measure of state coercion.

Punishment is one of the legal consequences of committing a crime. From the point of view of the guilty punishment is a consequence of the act committed by them, from the point of view of the state - a measure taken as a result of the act committed by the guilty (Tagantsev, 2001). As a socio-legal phenomenon, the concept of "punishment" is characterized by a historically changing nature. The genesis of the development of ideas about its content shows that their evolution depends entirely on society itself, its ideology, culture, morality, and choice of means of combating crime (Yushchyk, 2014). Changing the moral and legal parameters of society affects the understanding of the content of punishment, its purpose, system and types. That is why the concept of punishment must correspond to the modern living conditions of society, the existing political, economic, social relations, moral norms and values.

Thus, confiscation of property as a form of punishment is a coercive measure applied on behalf of the state by a court sentence to a person convicted of a crime. It consists in the forced deprivation of ownership of specific property acquired legally and the transfer it is owned by the state (Bidna, 2017).

Other cases of confiscation that are not criminal penalties and are therefore called special types of confiscation should be distinguished from confiscation of property as a type of criminal punishment (Skrypnyk, 2010). In accordance with Art. 96-1 of the Criminal Code of Ukraine, special confiscation consists in compulsory gratuitous seizure by court decision of state property, money and other property in cases specified by this Code, subject to the commission of a crime under Article 354 and Articles 364, 364-1, 365- 2, 368 - 369-2 of Section XVII of the Special Part of this Code, or a socially dangerous act that falls under the signs of an act provided for in these articles.

According to Art. 96-2 of the Criminal Code of Ukraine, special confiscation is applied if the money, valuables, and other property:

1) received as a result of a crime and / or are income from such property.
2) were intended (used) to persuade a person to commit a crime, to finance and / or provide material for a crime or to be rewarded for its commission.
3) were the subject of a crime, except for those that are returned to the owner (legal owner), and in the case when it is not established - become the property of the state.
4) were found, manufactured, adapted, or used as means or instruments of committing a crime, except for those returned to the owner (legal owner), who did not know and could not have known about their illegal use.

As a result of the study of various types of confiscations provided by criminal law of Ukraine as special types of criminal influence, several conclusions can be drawn.

First, today the criminal law of Ukraine regulates the following types of criminal confiscation:

1) confiscation of property as an additional punishment (Articles 52, 59 of the Criminal Code of Ukraine);
2) confiscation, which is directly defined in the sanctions of the articles of the Special Part of the Criminal Code of Ukraine - special confiscation provided for in the Special Part of the Criminal Code of Ukraine.
3) special confiscation determined by the General Part of the Criminal Code of Ukraine (Articles 96-1, 96-2 of the Criminal Code of Ukraine);
4) confiscation of property as a measure of a criminal nature against legal entities (compulsory free seizure of state property of a legal entity, which will be applied by the court in case of liquidation of a legal entity under the Criminal Code of Ukraine) (Articles 96-6, 96-8 of the Criminal Code of Ukraine).

Secondly, taking into account the system of criminal law measures developed in the criminal law of Ukraine, confiscation of property as a type of punishment is attributed to coercive punitive criminal law measures; special confiscation provided for in both the General and Special Parts of the Criminal Code of Ukraine - to coercive non-punitive other criminal measures; confiscation of property of a legal entity - to a certain type of coercive criminal measures applied to a legal entity.

Third, the analysis of the legislation of foreign states has shown that states have different approaches to determining the types of confiscation. Some recognize as punishment the general confiscation, i.e. compulsory

gratuitous conversion in favor of the state of property belonging to the convict, which is in no way connected with the committed crime (the Republic of Belarus, the Republic of Bulgaria, the Republic of Armenia, the Republic of Kazakhstan) (Lipinsky and Musatkina, 2019). These states consider the confiscation of property to be a punishment that is applied only as an additional, it does not apply to minors. Article sanctions are set either as a mandatory or as an optional additional punishment. The criminal law of some of the considered states of this group, along with the confiscation of property as a form of punishment, also provides for special confiscation, which is not considered a punishment (Wassmer, 2019).

The legislation of the second group of states allows only special confiscation as punishment - forced gratuitous confiscation of specific types of property determined by law, which are somehow (directly or indirectly) related to the crime, objects of crime, tools and means of committing the crime, criminally obtained property, dangerous and harmful items, etc.). These are Belgium, the Republic of Korea, the Netherlands, Japan (Kozachenko and Zinevych, 2015).

3. Legal nature of special confiscation

According to the current criminal legislation of Ukraine, special confiscation consists in the forced gratuitous confiscation of money, valuables, and other property by a court decision in the cases specified by this Code, subject to the commission of an intentional crime or socially dangerous act falling under the provisions of the Special part of this Code, for which the main punishment in the form of imprisonment or a fine of more than three thousand non-taxable minimum incomes.

In accordance with Part 2 of Art. 96-2 of the Criminal Code of Ukraine, if the money, valuables, and other property referred to in paragraph 1 of part one of this article, were fully or partially converted into other property, special confiscation is subject to fully or partially converted property. If the confiscation of money, valuables and other property referred to in paragraph 1 of part one of this article, at the time of the court's decision on special confiscation is impossible due to their use or impossibility of separation from legally acquired property, or alienation, or for other reasons, the court makes decision on the confiscation of a sum of money corresponding to the value of such property.

In addition to confiscation of money, valuables and other property from a person who committed an intentional crime or socially dangerous act (Part 1 of Article 96-1 of the Criminal Code of Ukraine), the content of special confiscation also includes confiscation of money, valuables and other property from a third party (Part 4 Article 96-2 of the Criminal Code of Ukraine) and confiscation of property withdrawn from civil circulation (Part 3 of Article 96-1 of the Criminal Code of Ukraine).

Thus, the essence of special confiscation, as another measure of criminal law nature, is the forced and gratuitous confiscation of property. Property (money, valuables) is confiscated in cases specified by the Criminal Code of Ukraine, provided that the person commits an intentional crime or a socially dangerous act that falls under the signs of a crime.

That is, such a person can be: either a subject of a crime, or a person who does not have the characteristics of a subject of a crime (a person who has not reached the age of criminal responsibility or an insane person).

Based on the above, we can identify those signs of special confiscation, which characterize it as a measure of criminal law.

First, special confiscation consists in the forcible confiscation of property, i.e. such property is confiscated against the will of the person. Seizure of property in case of special confiscation is free of charge, which means that the person does not receive any compensation.

In addition, the seized property becomes the property of the state, i.e. the further fate of the seized property is decided by the state. It is the state that has the right to decide the future fate of such property: to send it to the state budget or, for example, to transfer it to the fund for assistance to victims of crime.

The subject of special confiscation, as seen from the text of the legislative provisions of Art. 96 -1 and Art. 96-2 of the Criminal Code of Ukraine may be:

1) property obtained as a result of a crime (or acts that contain elements of a crime);

2) property that was intended (used) to persuade a person to commit a crime, to finance and / or materially support a crime or to reward it for its commission.

3) means or instruments of committing a crime that have been found, manufactured, adapted or used to commit a crime, except for those that are returned to the rightful owner.

It should be noted that to denote the subject of special confiscation, the legislator uses not only the concept of property, but also the phrases "money, valuables" and the concept of "other property". Thus, the scope of special confiscation is not limited to certain things of the material world or their totality, but also extends to property rights. This is due to the provisions of Part 1 of Art. 190 of the Civil Code of Ukraine, according to which property as a special object is a separate thing, a set of things, as well as property rights and obligations (Verkhovna Rada, 2003). In addition, under Article 2 (d) (d) of the UN Convention against Corruption, "property" means any assets, tangible or intangible, as well as legal documents or assets proving ownership of such assets, or their interests (United Nations, 2003).

An important feature of property as a subject of special confiscation, which essentially distinguishes the latter from confiscation of property as punishment is the connection of such property with the crime (or actions of a person containing signs of crimes under the relevant articles of the Special Part of the Criminal Code of Ukraine) (Vynnyk, 2016). Legal analysis of Art. 96-1 and Art. 96-2 of the Criminal Code of Ukraine makes it possible to say that the connection of the subject of special confiscation with the crime is manifested in four ways, in particular:

1) money, valuables and other property obtained as a result of the crime and / or income from such property.
2) were intended or used to persuade a person to commit a crime, to finance and / or provide material support for a crime or to reward it.
3) were the subject of a crime, except for those returned to the rightful owner.
4) have been found, manufactured, adapted, or used as means or instruments of committing a crime, except for those returned to the rightful owner.

Money, valuables, and other property are also subject to confiscation if they were the subject of a crime and must be returned to the owner. Thus, the legislator establishes an important provision that the object of the crime (money, valuables, other property) is always returned to the rightful owner. In case the owner can't be found, the property becomes the property of the state. Such a change in the legal nature of the seizure of property from special confiscation to the transfer of state ownership has the effect of leaving the owner a legal opportunity to demand the return of this property in civil law (Melnyk and Khavronyuk, 2007).

The next essential feature of special confiscation is the possibility of its appointment by a decision or ruling of the court. At the same time, this property of special confiscation refers to the order of appointment of this measure rather than expresses its essence.

From the legislative definition of special confiscation directly follows its feature as a warning, non-punitive nature of the latter. Special confiscation is essentially a measure of influence on a person who has committed a crime or socially dangerous act provided by the Criminal Code of Ukraine, which aims not to restrict the rights or freedoms, but to stop criminal activity, restore social justice and prevent new crimes.

The above properties of special confiscation make it possible to argue that it is a criminal measure of influence by the state on the person who committed the crime, and therefore it justifiably finds its place in the system of criminal law (Trinchera, 2020). The content of this measure is to take away from the person and withdraw from the state revenue all the

benefits and material values received from the crime, regardless of their transformation, which in turn makes the crime unprofitable for the person, deprives him or her of the opportunity to receive from it any material benefits. Given that the property confiscated from a person by special confiscation is criminal in nature, it is impossible to speak of deprivation or restriction of such a person's property rights, and therefore there is no element of suffering of a person from such seizure.

That is, special confiscation is justifiably placed by the legislator in the system of non-punitive measures of criminal law influence and is defined as a measure of criminal law nature (Minyazeva, 2019).

The above makes it possible to formulate the definition of the concept of special confiscation as a coercive, gratuitous measure of a criminal nature, which is applied to a person for intentionally committing a socially dangerous act under the Criminal Code of Ukraine. The aim of such measure is to deprive a person of any property benefits obtained as a result of the commission of a crime (regardless of the transformations that have undergone these benefits). Special confiscation aims to stop a person's criminal activity, restore social justice and prevent the commission of new crimes.

Special confiscation is a non-punitive measure of criminal law, and therefore its regulation should not be limited to procedural rules, which are a secondary regulator of public relations and provide rules and procedures for implementing substantive law. From the point of view of the criminal-legal essence of special confiscation, its main purpose is not related to the provision of material evidence in criminal proceedings (Polyakov, 2016), while in the criminal procedural aspect special confiscation by its legal nature is one of the ways to resolve the role of material evidence.

4. Types of special confiscation

Given the recent changes in the criminal legislation of Ukraine, special confiscation as a criminal measure can be divided into special confiscation, defined by the General Part of the Criminal Code of Ukraine and special confiscation, which is provided in the Special Part of the Criminal Code of Ukraine.

The special confiscation provided for in the General Part of the Criminal Code of Ukraine consists in the forced free confiscation of money, valuables and other property by a court decision in cases specified by the Criminal Code of Ukraine, subject to the commission of a crime under Article 354 and Articles 364, 364-1, 365 -2, 368–369-2 of Section XVII of the Special Part of the Criminal Code of Ukraine, or a socially dangerous act that falls under the signs of an act provided for in these articles.

Special confiscation provided for in the Special Part of the Criminal Code of Ukraine is a set of techniques and methods of criminal influence, which is applied by the court at the same time as sentencing, to the person who committed the crime (criminal offense), in order to prevent future acts.

This type differs from the previous type of special confiscation by the following:

1) this measure is applied only on condition of commission of a crime (criminal misdemeanor) and at commission of objectively illegal act.
2) the subject of application is exclusively a convicted person, in contrast to the special confiscation defined in the General Part of the Criminal Code of Ukraine where the subjects are also the suspect, accused and other persons who perform various procedural roles.
3) the subject of special confiscation provided for by the Special Part of the Criminal Code of Ukraine may be not only money, valuables, or other property, but also items that do not have some features of property.
4) the specified confiscation is applied exclusively by a court verdict, which excludes the possibility of registration by other procedural decisions.
5) in contrast to a similar criminal law measure provided for in the General Part of the Criminal Code of Ukraine, this measure may be applied on both dispositive and imperative grounds, depending on whether the legislator recognizes special confiscation mandatory or grants the court the right, taking into account the circumstances crime and the specifics of the subject of special confiscation, to decide on the application of special confiscation at its discretion (Kozachenko and Zinevych, 2015).

5. Differences between confiscation and special confiscation

By legal (legal) nature, general confiscation is provided by Art. 59 of the Criminal Code of Ukraine and is a type of additional punishment (see Part 2 of Article 52 of the Criminal Code of Ukraine), which is part of the system of penalties provided by the Criminal Code of Ukraine. By its nature and specifics of restrictions on the rights and freedoms of the convict, confiscation of property belongs to the group of property penalties such as fines, correctional labor, service restrictions for servicemen. Confiscation of property is a means of state coercion applied by a court sentence to a person who has committed a crime and meets the criteria of criminal punishment, namely:

1) is appointed only for the crime committed by a court sentence.
2) is a punishment for a crime committed and causes the convict certain suffering, restrictions.
3) included in the exhaustive list of types of punishment (Polyakov, 2016).

As for special confiscation (Article 96-1 of the Criminal Code of Ukraine), by its legal nature it refers to other (than punishment) measures of criminal law nature, as it is not included in the list of punishments (Article 51 of the Criminal Code of Ukraine).

Thus, at first glance, the basic difference between confiscation of property as punishment and special confiscation as another measure of a criminal law nature is that these two measures of influence are different in their legal nature. The first is an additional type of criminal punishment, which is enshrined in the rules of criminal law, has its own specific features in the system of additional punishments and features of application. While special confiscation is not a criminal punishment but refers to other measures of a criminal law nature and has its own specific features (Munoz, 2019).

However, the difference between these measures is confirmed not only by the location of the rules governing these two categories, but also by the features that characterize them and determine their content. Thus, confiscation of property as an additional type of criminal punishment has the following features:

1) seizure of property from a person who has committed a crime and is the subject of a crime.
2) the property of a person convicted of a crime is confiscated, i.e., despite the will of the convict.
3) such seizure is gratuitous, i.e., the convict is not compensated in any way for the seized property (some scholars also attribute the finality of seizure of such property to the signs of confiscation of property as punishment).
4) only property owned by the convicted person is confiscated, including his or her share in joint ownership, as well as shares, deposits of the convict in a bank, etc. (Yatsenko, 2002). Replacement of confiscated property for an equivalent amount of money is not allowed (Melnyk and Khavronyuk, 2007).
5) the property to be confiscated becomes the property of the state, i.e. the further fate of the confiscated property is decided by the authorized state bodies.

As for the special confiscation of property (Article 96-1 of the Criminal Code of Ukraine), it is also characterized by such features as confiscation of property, i.e. its seizure from a person who is forced and gratuitous. At the same time, the property related to the crime is confiscated from the person. That is, the main difference is that when applying confiscation of property as a form of punishment, the property is the property of the guilty person, and therefore, such a person legally owns such property. Whereas, in the case of special confiscation, the property to be confiscated is not the property of the person in whose possession it was, the person has no rights to such property.

It should be noted that in the case of general confiscation, property is confiscated from the subject of the crime, who is found guilty by a court conviction, and the sanction of a crime committed by such a person provides directly or optionally the possibility of confiscating such property.

That is, confiscation of property (Article 59 of the Criminal Code of Ukraine) can be ordered only on the basis of a court conviction and only in cases clearly defined by law. In this case, based on the interpretation of the provisions of Art. 98 of the Criminal Code of Ukraine confiscation cannot be applied to minors (Melnyk and Khavronyuk, 2007), i.e. to persons who have not reached the age of criminal responsibility.

Instead, the application of special confiscation is not limited to a court decision in a case. According to the provisions of Part 2 of Art. 96-2 of the Criminal Code of Ukraine, it may be applied on the basis of:

1) a court conviction.
2) court rulings on the release of a person from criminal liability.
3) court rulings on the application of medical measures.
4) court rulings on the application of coercive measures of an educational nature.

In addition, as a type of additional punishment, confiscation of property applies only to the subject of the crime, i.e. such a person must meet all the characteristics of the subject of the crime, as required by criminal law. As for the special confiscation, it can be applied both to the subject of the crime and to other persons. Special confiscation applies to:

1) a person who is not subject to criminal liability in connection with reaching the age from which he may come.
2) an insane person.
3) a person who is released from criminal liability or punishment on the grounds provided by the Criminal Code of Ukraine, except in cases of exemption from criminal liability in connection with the expiration of the statute of limitations.

4) a third party (Part 4 of Article 96-2 of the Criminal Code of Ukraine).

As can be seen from the analysis of the above legislative provisions, special confiscation applies to a fairly wide range of persons related to the objects of confiscation. This approach of the legislator confirms the thesis about the possibility of applying certain measures to influence not only the identity of the offender, but also others. It must be acknowledged that the legislator clearly lists these persons, defining their features and, thus, limiting the spread of special confiscation to other persons. Thus, it can be argued that the range of persons to whom special confiscation applies is much wider than the confiscation of property, which applies only to the subject of the crime (Sagrado, 2019).

The next distinguishing feature of confiscation of property (Article 59 of the Criminal Code of Ukraine) and special confiscation (Article 96-1 of the Criminal Code of Ukraine) are the purposes of their application. Indeed, the use of confiscation of property as an additional type of punishment, as follows from the text of Art. 59 of the Criminal Code of Ukraine, aims not only at punishment, but also at correction of the convict, and also prevention of commission of new crimes both by the convict, and other persons. That is, confiscation of property as a form of punishment pursues such a goal as:

1) punishment (its main purpose - the restoration of social justice) (Moskovoy, 2011). By its nature, punishment has a repressive nature (intimidation, retribution for a crime);

2) correction, i.e. such changes in the convict's personality when he is deprived of negative traits and attitudes that can lead to readiness for socially dangerous and illegal behavior, and encourage proper behavior, respect for the rules and traditions of human coexistence (Melnyk and Khavronyuk, 2007);

3) prevention of committing a new crime by convicts. In science, such actions are called "special prevention", which means the desire of the legislator to warn the person about the inadmissibility of criminal behavior in the future, i.e. special prevention is aimed directly at the person of the offender;

4) prevention of crimes by other persons (general prevention), aimed at deterring others from committing crimes by punishing a particular person (Fesenko, 2012).

In turn, special confiscation plays a precautionary role, aimed at stopping a person from committing a crime, preventing him from committing new crimes and restoring social justice. Thus, the seizure of any material property obtained as a result of a crime, i.e. property acquired by criminal means, not only makes the commission of such a crime unprofitable for a person, but to some extent restores social justice. Confiscation of weapons

or means obtained as a result of a crime or simply used for the purpose of committing a crime deprives a person of the opportunity to commit new crimes. It should be emphasized that the deprivation of a person of property by special confiscation cannot be considered to contain elements of punishment. The right to such property does not penetrate into a person, and therefore it is impossible to speak about deprivation or restriction of the property right of such person. That is, the purpose of special confiscation is to stop a person's criminal activity, restore social justice and prevent the commission of new crimes.

The next criterion for distinguishing between special confiscation and confiscation of property as a type of punishment is the conditions of application of these measures.

In particular, as a type of additional punishment, confiscation of property is imposed for the commission of serious and especially serious mercenary crimes, as well as for crimes against the foundations of national security of Ukraine and public safety, regardless of their severity. That is, confiscation of property is applied only in cases specifically provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine, which provides for a crime for which a person is prosecuted.

As for special confiscation, the latter is used not only for the commission of crimes by a person, but also socially dangerous acts that are not a crime. Thus, the legislator in Art. 96-1 of the Criminal Code of Ukraine clearly defines for which crimes or acts that fall under the signs of a crime under the Special Part of the Criminal Code of Ukraine, confiscation is applied to a person as another measure of a criminal nature.

Confiscation of property as a punishment and special confiscation as another type of criminal law also differ in the consequences of their use. As an additional type of punishment, confiscation of property cannot be applied independently, it is always attached to the main punishment. With the application of punishment, a person acquires the status of a criminal record.

In its content, a criminal record is a legal status of a person that arises in connection with his or her conviction to criminal punishment and under the conditions specified in the law is characterized by the occurrence of such consequences for such a person, negative for him or her (Skead *et al.*, 2019). As for the special confiscation of property, its application does not entail such a legal consequence as a criminal record, because in essence special confiscation is a non-punitive measure of criminal influence.

As we can see, by their nature confiscation of property and special confiscation are different legal phenomena, which ideologically have their own significance within the norms of criminal law, in science and in law enforcement practice.

Conclusions

The study revealed the differences between confiscation and special confiscation, identified the essential differences and substantive features of each of these institutions and draw the following conclusions:

1. Confiscation of property (Article 59 of the Criminal Code of Ukraine) and special confiscation (Article 961 of the Criminal Code of Ukraine), although they have some common features are independent institutions of criminal law, which have their own special characteristics.
2. They are different in legal nature. Confiscation of property is a type of additional punishment, and special confiscation of property is an independent type of other measures of a criminal law nature.
3. As well as confiscation of property, special confiscation in some cases can be a form of criminal liability and is used only by court decision.
4. The main difference between the investigated institutions is that their application seizes property of different nature, namely: the subject of confiscation of property in accordance with Art. 59 of the Criminal Code of Ukraine is property that belongs to the convict on the right of ownership, instead of applying Art. Art. 96-1 and 96-2 of the Criminal Code of Ukraine, property related to the commission of a crime is subject to confiscation.
5. A feature of special confiscation is the possibility of its application not only to a person who has committed a crime or socially dangerous act, but also to a third party, while no other criminal law measure can be applied to a third party. That is, special confiscation may act as a criminal measure, which restricts the property rights of both the convict and third parties, but only in the part relating to the confiscation of property in the illegal possession of a person.
6. Exceptional grounds for special confiscation under Part 2 of Art. 96-1 of the Criminal Code of Ukraine are: 1) a court conviction; 2) court decision on release of a person from criminal liability; 3) court decision on the application of coercive measures of a medical nature; 4) court decision on the application of coercive measures of an educational nature.
7. The peculiarity of special confiscation is that in some cases special confiscation is a form of criminal liability. At the same time, the application of other measures of a criminal law nature is not a responsibility but is a measure of the state's response to acts of socially dangerous or harmful to society.

8. The appeal of confiscated property to the state is set by the legislator in connection with such a priority measure as compensation for the damage caused to the victim.

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Modern methods of computer-related fraud: legal characteristics and qualification

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Abstract

Due to the spread of new methods of committing fraudulent actions using electronic devices, the problem arose to provide you with adequate characteristics of criminal law for the development of measures leading to counteracting such crimes. The objective of the article was to identify common methods in Ukraine of committing fraud using computers, to assess the characteristics of criminal law that these crimes have, and, in turn, to determine measures to counter them. Methodologically, this is a documentary investigation. The scientific novelty of the study's findings was to identify methods of performing fraudulent actions using electronic computers that will improve the legal qualification of crimes and affect the prosecution of persons guilty of committing such illegal actions. Measures to prevent such criminal offences were also developed. The results of the study help improve the work of law enforcement agencies in Ukraine, in determining recurrent methods of committing fraudulent actions using electronic means and their proper qualification, providing an opportunity to prosecute those who commit such illegal actions and develop ways for cybercrime research and prevention in general.

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Keywords: electronic fraud; cybercrime; abuse of trust; legal qualification; criminal law in Ukraine.

Métodos modernos de fraude relacionado con la informática: características jurídicas y cualificación

Resumen

Debido a la propagación de nuevos métodos de cometer acciones fraudulentas utilizando dispositivos electrónicos, surgió el problema de proporcionarle características adecuadas del derecho penal para el desarrollo de medidas conducentes a contrarrestar este tipo de delitos. El objetivo del artículo fue determinar los métodos comunes en Ucrania de cometer fraude utilizando computadoras, valorar las características del derecho penal que tienen estos delitos y, a su vez, determinar las medidas para contrarrestarlos. En lo metodológico se trata de una investigación documental. La novedad científica de las conclusiones del estudio fue determinar los métodos de realización de acciones fraudulentas utilizando ordenadores electrónicos que mejorarán la cualificación jurídica de los delitos y afectarán al enjuiciamiento de las personas culpables de cometer tales acciones ilegales. También se desarrollaron las medidas de prevención de tales infracciones penales. Los resultados del estudio ayudan a mejorar el trabajo de los organismos encargados de hacer cumplir la ley en Ucrania, en la determinación de los métodos recurrentes de cometer acciones fraudulentas utilizando medios electrónicos y su cualificación adecuada, lo que proporciona la oportunidad de procesar a aquellas personas que cometen tales acciones ilegales y desarrollar formas para la investigación y prevención de la ciberdelincuencia en general.

Palabras clave: fraude electrónico; delito informático; abuso de confianza; calificación legal; derecho penal en Ucrania.

Introduction

The forecasts for further dependence of the vital functions of the Ukraine's infrastructure on the processes of its involvement into computerized environment and its entry into the unified information space are quite realistic. Modern society is an information technologies-oriented society based on the daily use of computers, communication networks, mobile means of communication and other technical means. Yet the information space has become a place and at the same time a direct instrument of criminal offences, as it does not require personal

contact with a potential victim, and the main tool of the offender is only a computer and access to information and communication systems, where he/she gets access to databases, bank accounts or automated management systems with the help of illegal technical means. Thus, the development of information technologies, increasing production of technical means and the scope of computer technology have given rise to new types of socially dangerous actions in which computer information is illegally used or it itself becomes the object of encroachment, the application of criminal law in the field of fighting cybercrime in general and certain criminal offences, namely computer-related fraud, the Internet. Thus, today there is a problem of providing criminal law characteristics for the reported new ways of computer-related fraud in Ukraine, which indicates the importance of this article.

1. The literature review and research methods

Scientific debates on fraud committed with the use of electronic computers indicate the peculiarity of the disposition of Part 3 of Article 190 of the Criminal Code of Ukraine (2001). One of the first attempts to provide criminal characteristics of computer-related fraud in Ukraine were suggested by Muzyka and Azarov (2005) in the textbook "Legislation of Ukraine on Criminal Liability for "Computer" Crimes: Scientific and Practical Commentary and Ways to Improving" and later on by Azarov (2007) in the book "Crimes in the Field of Computer Information (criminal law research)". At the same time, the author only outlined the general issues of criminal law characteristics of such types of fraud.

Revealing the features of legal characteristics of crimes against property committed with the use of computer technology, M. Karchevsky (2012) focuses on only one type of fraud committed with the use of electronic computers, namely via special Internet resources, designed for posting retail information either of goods or services (online auctions, online stores, etc.).

A. Vasyliev and D. Pashnev (2013) in their article "Characteristics of the Qualification of Crimes in Computerized Environment, Computer Systems and Networks and Telecommunication Networks" revealed only some features of certain types of fraud committed via information and telecommunication systems, and cases in which additional criminal law characteristics for such crimes are required. However, they did not take into account the new methods of fraud committed with the use of electronic computing. A similar thorough study is that of Dudorov (2014), in which he also revealed only the problems of qualification of fraud committed via information and telecommunication systems.

In turn, Shapochka (2015) in the article "On the Concept of Fraud Committed through the Use of Computer Networks (Cyber fraud)" reveals only the concept of cyber fraud, without providing criminal law characteristics of this phenomenon. Shevchenko and Shulyak (2018) studied the problem of putting apart computer-related fraud from other types of crimes.

Taking into account the specifics of the topic, purpose and objectives of the article, a comparative legal method was applied, which allowed to analyze the criminal law of the United States, Great Britain, France, Germany, the Kingdom of the Netherlands, the Republic of Belarus in part of criminal liability for computer-related property offences and also most common methods of commission of such criminal offences in the above-mentioned countries. The method of system analysis provided an opportunity to analyze the methods of computer-related fraud researched in scientific publications, which allowed us to summarize their elements. The use of formal-logical and system-structural methods allowed us to generalize certain methods of fraud committed with the use of electronic computers and provide for their criminal law characteristics. Basing on simulation, preventive measures as to these types of fraud were determined.

To verify the scientific provisions suggested by the researchers, we conducted a survey based on questionnaire and further interview of 30 employees of the Department of Cyber police of the National Police of Ukraine, who are directly involved in the investigation of computer-related fraud.

The survey was conducted among respondents from different regions who studied at the National Academy of Internal Affairs (Ukraine) on the basis of pre-compiled questionnaire. The questionnaire included questions about the methods of committing fraud using electronic computers already known to the authors of the article and gave the opportunity for law enforcement officers to inform about the most common in Ukraine, in their opinion, new types of these criminal offences, problems that arise during the investigation of such offences and suggest measures to counter them. In particular, during the survey, respondents noted that today the number of new types of fraud using electronic computers is growing significantly. As a result, during the criminal proceedings, problematic issues regarding the proper qualification of such new types of fraud arise. Respondents focused on the problem of defining the concept of electronic computing, because modern technologies in manufacturing new types of smartphones are blurring the difference between them and computers, which affects the criminal law characteristics of certain types of crimes and helped determine the directions for combating these offences.

2. The purpose of the article

The purpose of the article is to determine the criminal aspects of fraud committed with the use of electronic computers to further improving the law enforcement in combating this criminal offence. To achieve this goal, the following tasks were formulated:

- to analyze the existing in Ukraine and foreign countries methods of committing fraud with the use of electronic computers.
- to provide the existing methods of fraud committed with the use of electronic computers with criminal law characteristics.
- to suggest the means of responding to new threats of cybercrime and develop ways to implement them.

3. Object and subject of the research

The object of the study is public relations that arise during the detection and investigation of computer-related fraud in Ukraine, as provided for in Part 3 of Article 190 of the Criminal Code of Ukraine "Fraud". The subject of the study is to provide, on the basis of analysis of existing regulations and the results of a survey based on questionnaire of specialists involved from the Department of Cyber police of the National Police of Ukraine about the methods of computer-related fraud, their criminal characteristics and outline directions for combating such types of criminal offences.

4. Results and discussion:

4.1 The concept of cyber fraud

The popularity of the Internet is quite natural, as the user has the opportunity: round-the-clock access to a significant amount of information; fast exchange of information with other users; conducting banking, trading, stock exchange transactions from wherever you are at a convenient time and much more. What exactly is the global computer information network the Internet? It is a system of computers that are interconnected using TCP/IP protocols and have unique identification numbers (domain names). The Internet is a perfect tool in the hands of fraudsters due to the huge audience of users and the opportunity to remain anonymous. The concept of cyber fraud is covered by Part 3 of Article 190 of the Criminal Code of Ukraine (Azarov, *et al.,* 2018), according to which it is a large-scale fraud or fraud committed via illegal transactions using electronic computers.

Fraud committed through illegal transactions using electronic computers occurs when such an operation is a means of committing such criminal

offence as a result of vishing (telephone fraud with the intent of luring bank card details and transferring funds to the cards of fraudsters, for example, by calling on behalf of mobile operator to ask citizens for personal data for the unauthorized issuance of duplicate SIM cards). And having obtained the information, fraudsters issued quick loans on these bank details and misappropriated the money from the accounts of Ukrainians, and as a result of phishing (luring of confidential data - passwords, bank card numbers, PIN-codes), fraud with ATMs: data compromising (skimming and ICS-dropping), cash trapping.

Agreeing with V. Finageev (2016) we would like to note that the methods of committing criminal offences can be differentiated into three main groups: 1) methods of illegal access to bank accounts, related to the payments by payment orders; 2) methods of committing criminal offences related to illegal access to bank accounts and use of transactions in banking sphere, especially in part of payment cards; 3) methods of committing criminal offences related to the use of other means of access to bank accounts.

These include, for example, inputting false information into the banking institution's automated system; placing a bogus message on an electronic bulletin board or online auction; unauthorized interference with the on-board computer of the vehicle in order to mislead the performance. Varieties of fraud have the following features: sending an unauthorized by the legal cardholder request to make a payment and using the existing payment system and established rules for automated processing of requests of legal cardholders, the attacker spoofs the banking institution (issuing bank) about the need to fulfill the obligations under the agreement concluded between the bank and the authorised cardholder; as a result of such misleading, the issuing bank unreasonably debits non-cash funds from the account of the authorised cardholder, which leads to causing the latter losses in the form of reducing the amount of non-cash funds on the card account; the actions of the perpetrator in initiating the transfer of non-cash funds and the following socially dangerous consequences are causally related. Misleading is the defining circumstance that distinguishes fraud from other mercenary crimes against property.

Socially dangerous encroachments on property, which are committed with the use of payment cards or their details and which, in the end, lead to unauthorized transfer of funds from accounts, are grounds for classifying them not as theft (Criminal Code of Ukraine, 2001; Article 185), but as fraud (according to Article 190 of the Criminal Code). For example, a bank employee, when processing documents for issuing consumer loans to purchase goods, having access to an automated banking system, used their data and opened current accounts in the name of her customers with set credit limits. She activated instant credit cards on open accounts, with the help of which she withdrew cash through self-service ATMs. However, we

believe that all other types of such encroachments (using an ATM, payment terminal, Internet) should not be considered as a crime against property of only one kind - fraud. Thus, illegal operations with use of electronic computer equipment should be distinguished from cases of use of such equipment as a tool of commission of usual (unskilled) fraud.

For example, the use in fraud of a counterfeit document, made with the help of specialized software, should not be considered as fraud committed through an illegal transaction using electronic computing equipment. In other words, if certain technique makes possible operations that can be performed with the help of another technique (typing, document issuing, etc.), then the qualifying feature of fraud is absent. This type of fraud may require additional qualifications under Articles 361-363[1] of the Criminal Code of Ukraine. In particular, additional qualification under Article 361 of the Criminal Code of Ukraine is required for fraud committed by initiating an unauthorized transaction in the payment system on behalf of the victim, in cases where the details necessary for the transaction were obtained through unauthorized interference with the computer network (for example, "Hacking" of the email box). However, there are no signs of criminal offence under Articles 361-363[1] of the Criminal Code of Ukraine, if the perpetrator acts without illegal distorting or suppressing computer data, without causing other damage to the operation of computer facilities, uses them on a regular basis. Examples of such acts are fraud committed using the information system of an online auction or electronic bulletin board, withdrawal of cash from an ATM using a stolen payment card, and so on.

Procuring of another person's property by deception in the form of: registration on the website of the online auction providing it with inaccurate information about oneself and further placement of advertisements about selling goods or providing services that actually will not be delivered or provided for to the buyer; offers to sell non-existent goods or services using a page created on a social network; organization and maintenance of own online store, which spreads inaccurate information, etc.

In countries such as the United States, the United Kingdom, France, and Germany, the legislator considers computer crimes to be actions in which the computer is the object or instrument of encroachment (theft of computers or their components). In other countries the Netherlands, the Republic of Belarus, computer crimes comprise a separate group of crimes - illegal actions in the field of automated information processing with the main classifying features: common methods, tools, objects of encroachment; the subject of encroachment is information processed in computer system, and the computer serves only as an instrument of encroachment. The national legislation of Ukraine does not yet define the concepts of "computer crime", "computer fraud", "cybercrime", "cyber fraud'. In Articles 163 and 190 of

the Criminal Code of Ukraine (Azarov, *et al.,* 2018), as well as in Section XVI of the Criminal Code of Ukraine the terms "computer", "electronic computing equipment", "electronic computer" is defined as one and the same object of encroachment or instrument of committing a criminal offence using the Internet and computer and telecommunication devices, systems, or networks.

Thus, Article 163 of the Criminal Code of Ukraine criminalizes "violation of privacy of correspondence, telephone conversations, telegraph or other correspondence transmitted by means of communication or computer", i.e. the term "computer" is used without providing a meaningful definition. At the same time, part 3 of Article 190 of the Criminal Code of Ukraine which defines fraud as the one committed through illegal transactions using electronic computers, does not provide a definition of this term either. It should be noted that a cyber-system can be considered identical to a computer system, the definition of which is given in the Convention on Cybercrime (2001): "any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data".

Completely new opportunities based on the characteristics of email, newsgroups and services provided by the World Wide Web are opening up to fraudsters in the area of creating "financial pyramids", sham marriage offices, employment offices, alleged service companies. In all these cases, the new tools provide with a huge speed of interaction with potential victims and anonymity of the scammer. Another type of fraud consists of modifying the algorithms that determine the functioning of the system for processing information about non-cash bank payments.

4.2 Electronic fraud with exchange rates

There are reported cases when the conversion rate has been changed. While the currency is transferred to the bank's clients at an undervalued exchange rate, the difference is transferred to accounts controlled by criminals. There is also a method based on rounding out the interest charged on a deposit of the bank's client when it is paid out, and the difference between the due and accrued (rounded) interest is transferred to the account of the offender. Such transactions, due to small amounts that are being stolen, at first may not be even detected by both clients and the bank's management. There emerged a new means of payment, the so-called electronic cash, which accompanies new types of fraud, first of all electronic cash in the form of credit cards, which are used both to get traditional paper money and to purchase goods and pay off for services with the aid of special equipment. Virtual stores are actively using a kind of e-cash in the form of electronic coins (cibercash) (Jakobsson *et al.,*2005).

4.3 The cyber fraud in social networks

Nowadays more and more types of fraud aimed at misappropriating another person's property are being invented, while information is the key to gaining access to money, because people pay online much more often than before, so more and more information about us enters the network. Social networks like Facebook, Vkontakte, LinkedIn, Instagram, Swarm, as well as programs for online communication like Skype, Viber, WhatsApp have become extremely popular. On social networks, people provide information about their place of work, date of birthday, contacts, post their photos, and start making friends. For fraudsters, intelligence services and law enforcement agencies, such information is really worthy. For example, there has recently come into being a type of fraud in which attackers copy all the information from a page on a social network, then launch subsequent web page with the same name and photos and send messages to friends of the person asking to borrow or transfer a certain amount of money.

Therefore, first of all, it is necessary to post the information within acceptable limits so that outsiders cannot find out too much (for example, phone number or postal address), or restrict access to sensitive user's information referring to the appropriate options in the settings. One should know personally all "friends" in social networks, although the marketing reality makes changes in the private character of our pages. Secondly, if you receive a friend's message the content of which seems to be strange, ask him/her something that only your friend may know, so his/her answer can make it clear that you are talking to a friend or a stranger. Fraudsters often send messages through social networks and e-mail, the content of which may look strange.

For example, it can be a message about winning of your e-mail in the lottery. Then the scammers try to obtain your personal information referring to the lottery conditions. Fraudsters can both invent non-existent lottery companies and redirect you to legitimate ones. There is always something strange about such messages, for instance, poor spelling, grammar or stylistic errors, or mistakes in an email address that does not contain any information about the sender of the message. If you do not voluntarily provide information about yourself in an e-mail, fraudsters can obtain such information by offering you to download certain programs or clicking on links. In this case you should keep in mind your own informational security and not respond to such offers/provocations.

The most popular methods facilitating fraud are computer viruses (malware), deception of the user with the intent to fraudulently acquire sensitive information from victim (for example, bank card details, etc.), offers of high-paid work at home from unauthorized employers. As well as online begging – the ads from charities, shelters, and parents asking for financial aid for the treatment of their sick children may appear online.

Scammers can make up stories about illnesses by illustrating them with photos of other people's children, or create duplicate ads for real charities, which are exact copies of the real ones, but with the bogus account details for transferring money.

4.4 The fraud to using plastic cards

Despite the various methods of protection used during the issuing and using plastic cards, there are numerous methods of fraud with them. In this case, the role of fraudsters can be 'played' both by service personnel involved in the processing of relevant financial transactions, as well as by outsiders at various stages of card usage. For example, abusing the trust of people the scammer persuaded them to "profitably" invest in e-commerce and gullible citizens transferred money from their e-wallets or through payment terminals "Web Money" to the fraudster's credit cards. (They were promised quick earnings with a solid interest after financial transactions in a virtual enterprise, but in fact people transferred money to the accounts of one of the book-maker's offices).

Also, one more type of fraud with counterfeit credit cards is based on the interception of information in the form of a pair of numbers - the credit card number and its PIN-code.

This may happen either at the stage of sending out the cards to the consumers, or at the moment of entering the PIN code in the trading terminal or ATM, or at the moment of transmission of similar information from the communication channels by the electronic terminal. Besides, the credit card number and PIN may be stolen from the bank or service organization. After the "stealing" of a credit card's identification pair, as a rule, a counterfeit plastic copy of the credit card is made and with its help a "mysterious withdrawal from the account" is made. Another possibility of "mysterious withdrawal from the account" is based on fraud of the unscrupulous personnel performing financial transactions of the client and consists in adding to them non-existent expenditures.

The second group of plastic card fraud involves the use of a phantom card. These frauds are based on the use of the uncovered algorithm to obtain the PIN code from the credit card, the issuing of a non-existent plastic card, followed by financial transactions with it.

The third group consists of fraud with real credit cards. It comprises fraud with stolen or lost credit cards, as well as various fraud committed using special techniques. (Scammers open many bank accounts with debit credit cards depositing a small amount of money on one of these credit cards. Most banks allow overdraft on debit cards to attract customers, so if the account is not closed in the bank, the money from the first card is

withdrawn entirely with overspending and transferred to the second card, from which in its turn it is withdrawn and transferred to the third one, and so on and so on. As a result of these operations a significant amount of money is accumulated).

The fourth group includes methods based on the use of bogus ATMs and trading terminals (Scammers installed a bogus ATM, accepting actual credit cards and intercepted PIN codes entered by credit cards holders. Also, they stole cash that clients tried to deposit via this ATM to their bank accounts. If people tried to get cash from this bogus ATM there appeared a message that the ATM is not loaded with bills of the required value while the neighboring ATMs were out of order) (Lysoded, 1999).

4.5 Problems to legal qualification of offenses committed using a latest technologies

Fraud, which is committed using the latest technologies, is characterized by a variety of forms and methods. However, part 3 of Article 190 of the Criminal Code of Ukraine does not reflect all possible ways of committing fraud with the use of computer equipment, the Internet, mobile communication, etc. In this respect it could be mentioned that telephone fraud is not criminalized either, i.e. when a criminal uses a telephone connection and a tool of gaining access to such connection with the intent of committing fraud: unauthorized debiting of funds from the account of a subscriber; illegal request to call on a certain phone number without warning about debiting of money during such a call; illegal transactions with topping up of mobile telephony subscribers' accounts. SMS-phishing, also known as SMiShing (from "SMS" and "phishing"), is becoming more common. Scammers send messages that contain a link to a phishing site.

Entering it and entering his/her personal data, the victim in fact transmits it to attackers. The message may also ask to call back to fraudsters on a certain number to solve "problems that have arisen." Phishing is a form of Internet fraud that allows to fraudulently obtain valuable information by spoofing communications as if they came from a reliable source, and then the information can be used to gain access to devices or networks. Targeted phishing is a targeted phishing attack based on the victim's personal information to make the attack more successful. In general, there are many types of "phishing": Creating fake web links. International Domain Names (IDNs) can be used to create confusingly similar domain names, allowing to use non-ASCII symbols. Visual similarities between symbols in different scenarios, called homoglyphs, are used to create domain names that can't be visually differentiated, and this misleads users to take one domain for another. Voice and text phishing.

To obtain account information, attackers use phone calls and text messages. At first they send messages to bank clients claiming that their accounts have been blocked. Substitution of websites, forgery, and redirection of messages (websites are vulnerable to cross-site scripting XSS) are used by attackers to post their own content on another website. An XSS attack can be used to intercept data entered on a compromised site (including user's name and password) that attackers will use later (Abroskiv, 2019). Researchers distinguish other types of "phishing", such as keyloggers and screenloggers. Letters allegedly sent from the bank may notify users of the need to call a certain number to resolve problems with their bank accounts. This technique is called vishing (voice phishing). After calling the indicated number, the user hears the instructions of the answering machine, which suggests entering account number and PINNING code. In addition, the Vishenries may call the victims using fake numbers and impersonating the representatives of official bodies (Sabadash, 2011).

There are also technically sophisticated methods based on connection to communication channels, interception of keys that provide cryptographic protection of information, and imitating the work of either an ATM (through transferring the stolen money on the fraudster's accounts), or a bank (through confirming the correctness of cash payments from non-existent accounts).

The use of credit cards on the Internet also provides wide opportunities for fraud. The exchange of plaintext on the Internet (like ordering by telephone), when all the information necessary for a purchase by credit card (card number, name and address of the cardholder, card expiration date) is transmitted openly, can be intercepted by special filters.

When exchanging encrypted messages, the sensitive information cannot be intercepted during the transmission process, but it can, however, be obtained from the seller's or buyer's server. Using clearing payment systems, when making a purchase, the customer does not provide his details to the seller, but instead provides his virtual name and credit card number, and the store authorizes the credit card not in the bank but in the clearing house. In fact, the system guarantees payment to the store, and the client provides his data to the clearing house in any reliable way, for example by mail.

The client's money from the bank is deposited in the clearing house in one of the acceptable ways (based on the client's credit card details, a transfer, or a check, etc.). While committing this type of fraud the scammer may use software that allows the perpetrator (by finding random numbers, passwords, random coincidence/selection) to obtain unauthorized access to the information stored or processed in automated systems with the purpose of misleading the automated system and impersonating oneself an authorized person to perform legitimate operations.

4.6 Means and object of electronic fraud

Thus, there are the following ways used by scammers to seize the funds of authorized payment cardholders: technical devices that are installed on the ATMs in order to seize the payment card or money; electronic devices that allow to obtain the necessary information from the payment card or from the ATM keyboard; infecting computers with viruses in order to obtain information about payment cards (by forging or hacking sites, using botnets and sending malicious spam); forgery of payment cards using stolen information; telephone fraud (when criminals act on behalf of bank employees and try to obtain the necessary information).

There are many types of fraud with payment cards and ATMs (phishing, farming, tracing, skimming, trapping, phantom, shutter, shimming, etc.), but all of them are aimed at stealing money, payment card or its details, such as: card number; date of issue/expiration of the card; CVV2 code (three-digit number on the back of the payment card, serves as a confirmation code for transactions performed on the Internet or by phone); the client's first and last name in Latin; PIN code. Besides, stolen information can be used by criminals not only to forge a payment card or debiting money, but also put up for sale on specialized sites or forums. In this case, the perpetrator may influence the processing of information, distort its content, or destroy, set the necessary command to seize property or the right to it, adjust the system so that it operates in a way that would ensure the perpetrator or his accomplice procuring, without right, someone else's property or right to it. In this case, the essence of fraudulent deception remains unchanged.

The decisive role in defining fraudulent actions belongs to the means through which it is committed - electronic computers. Thus, means of electronic communication (computer technique) includes hardware and software. Hardware includes: 1) computer (including server, personal computer); 2) peripheral; 3) digital media which includes software (system, application software, programming tool) and digital data. Software can be considered both as part of a computer system and as a separate one, for which a computer is an environment. As for the subject of ownership, which consists of property or the right to it, after the fraud has been committed, the fraudster becomes the owner of this property, or the fraudster gets the right of ownership for the subject of property right. The subject of fraud is identified with the subject of property relations, because the social connection, the normal procedure for exercising property rights is violated. Namely, the social connection in this relationship consists in the normal functioning of computers, systems and computer and telecommunication networks.

The subjects of this relationship are persons who use computers, computer systems and computer and telecommunication networks in their own interests, as well as persons who provide relevant services in this

sphere. The objects of this relationship are computers, computer systems and computer and telecommunication networks. Thus, when committing a computer-related fraud, the encroachment is made not on the normal functioning of electronic computers, computer systems and computer and telecommunication networks, but on public property relations, money and other valuables which are the purpose of misappropriation. The object of the fraud in question may not be computers, computer systems and computer networks and telecommunication networks.

4.7 Subject of electronic fraud

As for the subjects of these relations, such fraud can be committed by any persons using computers, computer systems and computer and telecommunication networks in their own interests, as well as by persons who provide relevant services in this sphere. At the same time, while committing such fraud, these persons perform legal operations using electronic computers, without disrupting the normal functioning of electronic computers. Thus, the use of electronic computers with the purpose of misappropriation of someone's property is criminalised under Article 190 of the Criminal Code of Ukraine.

4.8 Remote banking services

Remote Banking Services (RB) is a general term for technologies providing banking services on the basis of orders transmitted by the client remotely (most often without his direct visit to bank). The RB system is a multi-functional software and hardware complex that allows the bank's clients to prepare and send payment orders and other documents to the bank for performing, to view account balances, as well as to receive a wide range of relevant financial information without contacting the bank. Interference with the operation of RB systems occurs by infecting the computer with malware via malicious spam, visiting infected sites or using infected magnetic based memory. The main task of the virus at the initial stage is to monitor and collect information and transmit it to the computer of fraudsters.

The virus can obtain access to passwords to RB systems, electronic 16 digital signature keys, read payment details. There may also be programs that track connection window to RB with the intent of further interception of the secret information which is entered in this window, or copy content of the clipboard at the moment of connecting to systems of electronic payments. The purpose of fraudulent actions is to distort information, generate (with the help of RB) and make a payment that will look like an ordinary payment of the victim, while scammers will transfer money to

the accounts of a fictitious person or fictitious firm, trying to feature the usual payments for usual purchases of the client. Later on, most often the money stolen from the victim's account is transferred into cash, and cash withdrawals are carried out mainly through ATMs in order to avoid communication with bank employees (Kornienko and Strelyany, 2015).

4.9. Cyber fraud can be divided into the following categories:

cyber fraud with the intent of misappropriation of funds.

cyber fraud with the intent of obtaining information (for personal use or for resale);

in the banking system:

1) *ATM fraud:* skimming - making, selling, and installing on ATMs devices for reading/copying information from the magnetic strip of a payment card and obtaining a PIN code to it (illegal copying of the contents of magnetic strip tracks (chips) of bank cards); use of "white plastic" for "cloning" (counterfeiting) of a payment card and cash withdrawal at ATMs; cash trapping - theft of cash from an ATM by installing a special restraining pad Transaction Reversal.

Fraud on the ATM tent - interference in the work of the ATM during cash withdrawal operations, which preserves the balance of the card account unchanged while in fact the attacker has already received cash; Cash Trapping - sealing the dispenser for misappropriation by the attacker of cash that was debited from the card account of the authorized cardholder; - carding - illegal financial transactions using a payment card or its details, which are not initiated or confirmed by its holder; - unauthorized debiting of funds from bank accounts using Remote Banking Systems.

2) *fraud in marketing and service networks*: concluding fictitious trade acquiring agreements for servicing counterfeit payment cards; obtaining payment card details, including the use of technical means for their "cloning"; online fraud – misappropriation of citizens' money through online auctions, online stores, websites and telecommunication means; transactions with the amounts of money below the established limit without authorization; use of lost/stolen/ counterfeit payment cards.

3) *fraud on the Internet*: obtaining, without right, of payment card details; phishing - luring of Internet users' logins and passwords to e-wallets, online auction services, currency transfer or exchange, etc.; performing operations with the use of stolen payment card details; creating malware with the intent of obtaining, without right, payment card details (via bogus WEB-sites, dissemination

of computer viruses and Trojan programs, interception of traffic); malware - the creation and dissemination of viruses and malware; re-filing - illegal substitution of telephone traffic.

4) *fraud in remote banking systems (RB):* creation of computer viruses and Trojan programs for covert interception of the client's computer control with the installed RB software; opening accounts, performing unauthorized transactions and receiving cash as a result of unauthorized transactions in RB systems; receiving payments from foreign senders via the international SWIFT system as a result of interference in the work of computers and RB systems of clients of foreign banking institutions (Order, 2013).

According to Part 1 of Article 190 of the Criminal Code of Ukraine, fraud is misappropriating of someone else's property or taking possession of the right to property by deception or abuse of trust. From the point of view of juridical psychology, fraud means manipulating a person's behavior to obtain a quick and maximum profit from him, and from the point of view of jurisprudence, fraud is the misappropriation of individual property or taking possession of property rights by deception or abuse of trust (Azarov, *et al.*, 2018). In criminal law the deception is understood as the informational and intellectual influence of one person on the consciousness and will of another, which is always aimed at certain behavior, i.e. to induce the victim to a certain behavior. Deception is a way of influencing the human mind, which is deliberately luring another person or maintaining delusion through misinforming or non-informing about various facts, things, phenomena, actions and others in order to induce certain behavior. Deception in fraud can consist in the use of software that allows the perpetrator to gain unauthorized access to information stored or processed in automated systems, with the intent of impersonating an authorized person. Having penetrated in this way into the relevant electronic system, the perpetrator performs certain operations, as it would do the authorized person.

Herein, he may hinder, without right, the processing of information, distort its content, delete or destroy or set the necessary command to defraud property or the right to it, set up the system so that it operates in a way that would ensure the culprit or another person illegal misappropriation and loss of property or right to it. The essence of fraudulent deception remains invariant, the only thing is the fraud is committed using electronic computers and technologies, which require more elaborate and innovative techniques, training, skills.

Another type of fraud according to Article 190 of the Criminal Code of Ukraine is *abuse of trust*, i.e. intentional actions of the offender aimed at luring the victim using existing or new personal or other trusting relationship with the intent of defrauding and procuring an economic benefit for oneself or for another person from victim's property or property rights. Abuse

of trust as a method of fraud with the use of electronic computers occurs when the guilty person makes use of trusting relationship (official relations, friendly relations, etc.) and has free access to the relevant operations and abuses these relations with the intent of misappropriation of property or the right to it. If the perpetrator enters the secure electronic system, for example, by blocking or destroying security codes, and performs illegal transactions to misappropriate someone's property or property rights, his actions do not constitute fraud because there is no deception or abuse of trust. They should be prosecuted as theft of someone's property and criminalized under the relevant part of Article 185 of the Criminal Code of Ukraine.

4.10 Proposals of legal regulation and countering cyber fraud

It should be noted that the term 'fraud' is inappropriate to use in legal definition of socially dangerous actions the essence of which is in entering, altering, disrupting, destroying or suppressing computer data in the computer, automated system, computer network or telecommunication network, or is characterized by any other influence on the processing computer data that has changed the result of this processing, with the intent of misappropriating someone's property, because the fraud always encroaches the ownership and is followed by the voluntary transfer of property while the influence on computer information is coercive and doesn't involve the influence on the victim's conciseness.

First, a computer network (including the Internet) is by definition a set of geographically dispersed data processing systems, facilities and (or) communication and data transmission systems that provide users with remote access to and sharing of its resources (UN, 2010). Accordingly, the posting of the message on a specialized website means the use of information resource via remote access to it, which is provided with means of electronic computing, i.e. is an operation using an electronic computer.

Secondly, under Article 19 of the Law of Ukraine "On Consumer Protection" (1991): posting a knowingly false information about the sale of goods or provision of certain services is a dishonest business practice and is prohibited, and criminal law characteristic of fraud committed by posting such information on relevant Internet resources, is criminalised under Part 3 of Article 190 of the Criminal Code of Ukraine "Fraud committed through illegal transactions using electronic computers", so it is necessary to establish in the Criminal Code of Ukraine the following rule:

"Theft of property through the use of electronic computers." Criminals mostly use special malicious programs or technical means (in particular, the Code of Laws of the United States, the Dutch Criminal Code of the Netherland, the Criminal Code of Denmark or the Criminal Code of FRG

refer to it) and the introduction to part 3 of Article 190 of the Criminal Code of Ukraine amendment "by means of malware or malicious hardware "shall become an additional instrument for combating" cybercrime" (Shulyak, 2011).

Punishment for fraud shall be economic, monetary and the main sanction for such crimes should be a fine, and as an alternative (in cases where the perpetrator does not want to pay the fine, does not have money to pay it or has no property by which to pay a fine) - correction works or deprivation of the right to hold certain positions or engage in certain activities for up to three years - for officials; confiscation of relevant malicious software or hardware that are in property of the perpetrator, if they were used during the commission of fraud.

Now, it can be stated that the current rule (Criminal Code of Ukraine, 2001: part 3 of Article 190) can work effectively if it is correctly interpreted and applied, as fraud in this case implies entering into computer, automated system, computer network or telecommunication network of false information, because, firstly, the computer does not store money or property, but only information about this property or transactions with this property; secondly, if the perpetrator even secretly enters a computer system with the intent to obtain, without right, money or property, it is done through the manipulation with programs, data or hardware, which is typical for deception, which is specific to computer fraud (for example, a person, having access to the automated system of a banking institution, inputs or alters computer information, as a result of which, the money is transferred from the victim's account to perpetrator's one), while the relevant protective (security) systems or computer programs interpret this false information as if it were at the victim's own request or on his personal behalf).

It should be noted that from 1 August, 2016, the Visa payment system introduced in Ukraine the principle of zero customer liability for fraudulent actions (banks will return money stolen by fraudsters to Visa cardholders). Measures taken by Ukrainian banks to prevent fraud include monitoring, SMS-informing, banning Internet payments without a phone call to the bank, setting limits on cash withdrawals and payments (in particular, on the Internet). A bank card with a computer chip is the most secure, as it is much more innovative than magnetic strip cards, as they cannot be counterfeited, and the data of such card cannot be copied by fraudsters. Banks monitor the security of ATMs for fraudulent installation of additional reading devices, equip ATMs with anti-skimming pads on the card acceptor, video surveillance, etc. General rules and recommendations for users are: mandatory connecting to 3D Secure service, SMS - and mobile banking; storing of cards and passwords separately; avoiding of payments on the Internet by the card on which the basic funds are accumulated;

non-disclosing of card details to the third persons, periodic (once a month) password changing; setting payment limits in the retail network and the Internet; complete blocking of card payments on the Internet; non-disclosing security codes CVV2/CVC2; receiving a card with a chip (Makarova, 2016).

In order to take into account certain provisions concerning illegal transactions with means of payment, such as bank payment cards, it is appropriate to focus on the Council of Europe Framework Decision "On Combating Fraud and Counterfeiting Non-cash Means of Payment" (CF, 2001). In accordance with the provisions of this document, the following crimes related to means of payment are distinguished: 1) theft or other illegal misappropriation of a means of payment; 2) forgery or falsification of a means of payment with the intent of using it in fraud; 3) acceptance, receipt, transfer, sale or transfer to any person or possession of a stolen, or otherwise misappropriated, or counterfeit or falsified means of payment with the purpose of its use in fraud; 4) fraudulent use of a stolen, or otherwise misappropriated, or counterfeit or falsified means of payment. The implementation of the provisions of the EU Directive 2007/64 (EP, 2007) has significantly influenced the regulation of activities to prevent criminal encroachments committed with the use of bank payment cards.

However, one of the reasons for the high latency of cyber-fraud is 'the absence of state borders' if this criminal offense is committed via the Internet, imperfect legislation and, consequently, the inability to cooperate with other countries in investigating such criminal offenses because of significant differences in legislation of different countries regarding this type of criminal offence.

Also, we suggest the main ways for combating fraud on the Internet committed using electronic computers: development of new software and constant renewal of antivirus programs; creation of the system of authentication of Internet addresses for checking the conformity of the address entered by the user to the real server; greater spreading of information about known methods of Internet fraud to Internet users. In order to prevent payment card fraud, the National Bank of Ukraine shall improve and spread, on permanent basis, recommendations for payment card holders on their use.

Conclusions

Summing up, it can be noted that our survey based on questionnaire of law enforcement officers, analysis of law enforcement practice, existing scientific publications, and legal regulations, helped specify the most common in Ukraine methods of computer-related fraud, provided them with criminal law characteristics and suggested measures for counteracting these criminal offences.

We provided reasons for clarifying the features of computer-related fraud. Illegal transactions using electronic computers should impose as those aimed at misappropriating someone's property or property rights, which are based on deception or abuse of trust, i.e. fraud using computer networks, despite evolutionary processes, remains a crime against property committed through deception or abuse of trust. And deception occurs not during direct physical verbal or non-verbal contact with the victim, but remotely, i.e. using the capacity of computer and telecommunication devices, systems or networks.

The danger of such fraud is that computer techniques greatly facilitate fraud, allows someone to misappropriate significant funds, causing irreparable damage to owners. Public relations of any form of ownership are the direct object of fraud committed through illegal transactions using electronic computers. Public relations in the field of the use of electronic computers, telecommunication networks can be neither generic nor direct object of such fraud. It should be noted that operations with electronic computers during the commission of fraud in most cases are quite legal and legitimate, for example, the use of the Internet, telecommunication network. Based on the above, it can be concluded that the object of fraud committed via illegal transactions using electronic computers is property relations and committing of such fraud is carried out by a person who is not the owner. As for the subject of property relations, which is property itself or the right to it, after the fraud has been committed, it becomes the property of the fraudster, or the fraudster obtains the right of ownership for the subject of property relations. Fraud is an intentional criminal offence, and the perpetrator wants the result – procuring, without right, certain property for his benefit. As for the lost profit, the guilty person, as a rule, has no direct intent, and this excludes the possibility of recognizing this consequence as an element of any form of theft.

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Modern Threats to the National Security of Ukraine Related to Incomplete Legal Formalization Process of Ukrainian State Border

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Abstract

The border issue has become particularly urgent for Ukraine since 2014 with the beginning of military aggression by the Russian Federation, the illegal annexation of the Autonomous Republic of Crimea and the city of Sebastopol, as well as the temporary occupation of the part of Ukraine's sovereign territory in the Donetsk and Luhansk regions. The problem of the legal formalization of the Ukrainian-Russian state border requires closer examination in the context of complex relations between two states. This article seeks to analyze the current situation of legal formalization of the Ukrainian state border with neigh bouring countries and highlights the main threats to Ukraine's national security arising from the incomplete process of formalizing the Ukrainian state border with the Russian Federation. It was revealed that the incomplete process of legal formalization of the state border threatened to lose the state part of sovereignty, territorial integrity in sovereign territory. It is concluded that there is a potential threat of escalation of border conflicts and military clashes in Ukraine's border regions, as well as at Ukraine's borders, and the spread of extremist, terrorist, and separatist demonstrations on Ukraine's state border.

Keywords: edge of the state; national security; Russian intervention; Crimea; territorial occupation.

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Resumen

La cuestión fronteriza se ha vuelto particularmente urgente para Ucrania desde 2014 con el comienzo de la agresión militar por parte de Rusia, la anexión ilegal de la República Autónoma de Crimea y la ciudad de Sebastopol, así como la ocupación temporal de la parte del territorio soberano de Ucrania en las regiones de Donetsk y Luhansk. El problema de la formalización legal de la frontera entre Ucrania y Rusia exige un examen más detenido en el contexto de relaciones complejas entre dos Estados. Este artículo busca analizar la situación actual de formalización legal de la frontera del Estado ucraniano con los países de la región y pone de relieve las principales amenazas a su seguridad nacional derivadas del proceso incompleto de formalización de la frontera estatal ucraniana con la Federación rusa. Se reveló que el proceso incompleto de formalización legal de la frontera puede significar pérdida de soberanía e integridad territorial para Ucrania. Se concluye que existe una amenaza potencial de escalada de conflictos fronterizos y enfrentamientos militares en las regiones fronterizas, así como en las fronteras de Ucrania, y la propagación de manifestaciones extremistas, terroristas y separatistas en la frontera estatal de Ucrania.

Palabras clave: borde del estado; seguridad nacional; intervención rusa; Crimea; ocupación territorial.

Introduction

State border is an important element of the State policy of institutional integration and cultural assimilation (Vrban, 2018). The establishment of State border always has been and will expectadly remain one of strategic national security objectives of each country. Ukraine is not an exception in this respect.

The issue of defining the borders of Ukraine has arisen after the signature of the Declaration of Independence of Ukraine, the dissolution of the former Soviet Union and creation of new independent states. In this connection, on 12 September 1991, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Legal Succession of Ukraine" (Verkhovna Rada, 1991). Article 5 states that "State border of the Union of Soviet Socialist Republics separating the territory of Ukraine from other States and the border between the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Russian Soviet Federative Socialist Republic, the Republic of Moldova as of 16 July 1990 constitute the state border of Ukraine" (Verkhovna Rada, 2003).

Ukraine has joint borders with seven states. Four of them are the European Union Member States (the Republic of Poland, the Slovak

Republic, Hungary, and Romania). The length of border with the mentioned EU Member States is 1,390,742 km, which is 20% of the whole border length. Other three States which have joint borders with Ukraine are MemberStates of the Commonwealth of Independent States (the Republic of Moldova, the Republic of Belarus and the Russian Federation). The border length with the CIS Member States is 4,601,24 km, or 65 % of whole length. More than 1,001 km (15 %) of Ukraine's border passes along the boundary of the territorial sea. The longest border segment of Ukraine is the Ukrainian-Russian one and stretches for 2,295.04 km. The shortest border segment of Ukraine is the Ukrainian-Slovak area (98 km). Ukraine is bordered in the Black Sea with the sea areas of Romania, Turkey and the Russian Federation.

Taking into account the uncertain legal status of the Ukrainian-Russian segment of state border, Ukraine has faced a potential threat of the loss of the sovereignty and territorial integrity under direct military intervention of the Russian Federation. It is obvious that the ongoing attempts by the political leadership of the Russian Federation to redefine new state borders in modern world constitute one of the most blatant violations of international law, which in turn could trigger or repeat a territorial dispute between neighbours (Harrison, 2007).

Ukraine remains one of the important contributors to international peace and stability. My state pursues peaceful policies being committed to all international principles of mutual non-use of force or threat of its use. This course of Ukraine is unchanged and fixed, inter alia, in the National Security Strategy of Ukraine. Undoubtedly, peace is a key to Ukraine's development. Peacemaking and the restoration of the sovereignty and territorial integrity of Ukraine within its internationally recognized State border is the highest priority of the State (President of Ukraine, 2020).

Improvment of the effectiveness of State policy in the area of State border and sovereign rights protection has been identified as one of the main directions of the State's foreign and domestic political activities in order to preserve its national interests and security Ukraine in its exclusive maritimeeconomic zone, and also migration which also makes it necessary to examine the problems of the legal formalization of the Ukrainian state border. That is why under nowadays conditions researches regarding search for effective enforcement mechanisms and an optimal model of ensuring national security of the States from internal and external threats gain particular relevance (Kuryliuk and Khalymon, 2020).

1. Analysis of resent research

State borders were conceived with the advent of international law, especially after the Peace of Westphalia of 1648, as a direct delimitation

of state territories – the division of the world into nation states. They were seen as signs of the territorial integrity and sovereignty of the state. Since then, the state territory looks like a whole entity, separated from neighbours by clear geometric lines. In addition to arguments in favour of self-determination and linguistic separation, claims for acquisition and alteration of borders are also based on the idea of "natural borders".

Border and territorial disputes are worldwide actual topic for scientific research, including the countries of the post-Soviet area. The principles of territorial integrity and the inviolability of borders are central to modern system of international law, they are democratic governing source of international law and norms of a universal character (Corten, 1998).

The problems of territorial disputes remain relevant for both domestic and foreign researchers. In Ukraine, various scholars have devoted attention to the problems of the legal formalization of the state border.

Adamchuk I. studied forms and methods of changing existing inter-state borders which were legalized by international law during the interwar period (1918–1939), as well as Soviet compliance with the requirements and norms of existing international law during the reunification of Northern Bukovyna and Transcarpathian Ukraine with Soviet Ukraine (Adamchuk, 2010). In their work, Kyslovskyi and Truhan made a research of the problems of defining the frontier of internal sea waters as a part of sovereign maritime territory with a view to demilitarizing maritime area (Kyslovskyi and Truhan, 2012).

The current condition of public administration in the sphere of legal formalization of the state border was researched by Sitsinskyi V. He made the conclusion that the legal formalization of the state border of Ukraine throughout its length is a key foreign policy priority of national security of Ukraine (Sitsinskyi, 2012).

Sitsinskyi N. noted that the State border of Ukraine is not legally formalized and does not allow the introduction of effective mechanisms of public administration to protect the sovereignty, territorial integrity, and independence of the state. It is also impossible to introduce effective mechanisms for ensuring the regime of the state border, in particular the procedure for its maintenance and the development of the relevant border infrastructure and conduction of economic and environmental activities, ensuring the safety of navigation in border waters, as well as carrying out various industrial activities in the continental shelf and the exclusive (maritime) economic zone of Ukraine (Sitsinskyi, 2014).

The subject of Nick Megoran's research was border and territorial disputes between Kyrgyzstan, Uzbekistan, and Tajikistan. The author studied the problems of the delimitation of national territories and the drawing of borders, as well as the results of the Soviet-era policies that continue to have a complex impact on the region (Megoran, 2004).

The researchers (Nematov, 2018) note that the actions of the leaders of Kyrgyzstan, Uzbekistan and Tajikistan are the classic example of the settlement of complex issues through negotiation and diplomacy and are fully in line with the norms and principles of the United Nations Organization (Megoran, 2007).

As Fang and Li point out, territorial disputes can last for decades, possibly more than a hundred years. Some of those disputes did not end even after hostilities; a defeated party could simply waive its claims. Moreover, states are not always prepared to incur incidental costs for the settlement of such disputes, in view of the considerable costs related with tension and the threat of war (Fang and Li, 2019).

The historical aspects of territorial disputes in Africa have also made significant contributions to the scientific literature on these issues. The book "Demilitarization and Demarcation of borders in Africa" (Wafula, 2013) indicates that border disputes continue to follow African states because of the European perception of the division of territory in Africa during the colonial period (Powell and Wiegand, 2014). Europeans believed that Africans had no state.

As a result, Europeans gained control over African territories that they did not recognize as states. While states are members of international community where mutual interdependence, globalization and non-state actors have an increasing role, the state is still the central actor in the community. So, the most convenient approach for the study of borders is the relationships between states. Their formula is foreign policy that range between war and peace, conflict, and cooperation. Even today, the main aim of State's foreign policy is acquisition of strategic, military, and economic advantages over other states.

Unresolved territorial disputes often lead to military conflicts. In 1990, Saddam Hussein used the old border dispute as a reason for Iraq's invasion of Kuwait, as that country was one of the former Ottoman territories (Tymchenko and Kononenko).

We fully agree with the view of Carter and Goemans who mentioned that the way the borders are established in is important for international stability: borders established within pre-existing internal or external administrative border will cause fewer territorial disputes in the future and have significantly lower risk of militarized confrontation in case of controversy (Carter and Goemans).

Transformation of administrative borders between the Union Republics within the USSR into their state borders based on the *uti possidetis* principle demonstrate certain maturity of states and their desire to apply the norms of international law. According to international scholars this principle is the right of newly formed states to determine their own borders. It also helps to

protect the borders of the newly independent states and serves as a shield against further destructions. The uti possidetis principle asserts that: "New states that have gained independence remain with the same borders as they had when they were part of a colonial power" (Hasani, 2003: 7).

The selection of previous administrative borders, both internal and international, effectively minimizes uncertainty and costs, and effectively solves the practical difficulty of consideration all possible boundaries that could be established to separate two states (Marcus, 1996).

A review of scientific literature on Ukraine's border and territorial disputes with neighbouring countries and similar disputes in other countries of both the former Soviet Union and other countries of the world points to several factors which can provoke border conflicts and disputes. Such factors include the influence of third countries or the influence of pseudo-patriotic (nationalist) forces. The existence of such factors could resolve a military conflict between peaceful countries that would not have a diplomatic solution. At the same time, the settlement of issues relating to legal formalization of the state border of Ukraine makes it necessary to conduct further scientific research on this topic.

2. Historical aspects

The legal formalization of the Ukrainian state border with the EU Member States was based on the general principle of succession to bilateral international legal treaties between the former USSR and these countries.

Ukraine's current State borders with the Republic of Moldova, the Republic of Belarus and the Russian Federation have been established by bilateral international treaties, which, fixed the transformation of the administrative borders between the union republics within the USSR into their State borders on the basis of the uti possidetis (Tunkin, 1997) principle.

The State border of Ukraine with the Slovak Republic was established by the Agreement between Ukraine and the Slovak Republic on the Common Border of 14 October 1993, with Hungary – by the Agreement between Ukraine and the Republic of Hungary on the regime of the Ukrainian-Hungarian State Border, Cooperation and Mutual Assistance on Border Issues of 19 May 1995, with the Republic of Poland – by the Agreement between Ukraine and the Republic of Poland on the Legal Regime of the Ukrainian-Polish State Border, Cooperation and Mutual Assistance on Border Issues of 12 January 1993.

The line of the State border between Ukraine and Romania was established on the principle of succession, with the exception of the point of junction of the territorial seas, which was not defined in Soviet times and became the subject of negotiations between Romania and independent

Ukraine. As a result of the negotiations, the Agreement between Ukraine and Romania on the Regime of the Ukrainian-Romanian State Border, Cooperation and Mutual Assistance on Border Issues was signed on 17 June 2003. It confirmed the passage of the state border between Ukraine and Romania on the area as it was defined in the Soviet-Romanian treaties and demarcation documents. This Agreement alsodefined the geographical coordinates of the point of intersection of the state borders (territorial seas) of Ukraine and Romania in the Black Sea: 45°05′21″N, 30°02′27″E.

The agreements about the state borders of Ukraine with the the Slovak Republic, Hungary, Poland, and Romania confirmed not only delimitation but also all the demarcation documents between them and the Soviet Union on the principle of succession. Joint inspections of the State border line on the area take place at these stations.

The fact that the process of legal formalization of the common borders with the Russian Federation has not been completed, as well as the events of the past six years, give reason to note that this issue is a threating problem for Ukraine and has a critical importance for its future, sovereignty, and territorial integrity.

3. State of legal formalization of the Ukrainian-Russian area of border

The total length of the land border of the Ukrainian-Russian border is 1,974 km, which extends through the territories of Chernihiv, Sumy, Kharkiv, Luhansk and Donetsk regions.

Delimitation of the state border between Ukraine and the Russian Federation was completed in 2003 with the signing of the Agreement between Ukraine and the Russian Federation on the Ukrainian-Russian state border. According to it, the Ukrainian-Russian state border passes as it is indicated in the Description of the passage of the state border between Ukraine and the Russian Federation and depicted by a continuous red line on the maps of the state border between Ukraine and the Russian Federation. Description of the passage of the state border and maps of the state border form an integral part of it. The relevant treaty was registered by Ukraine in the United Nations Secretariat on 1 December 2016, No. 54132 and published by link.

In accordance with Article 2 of the Agreement between Ukraine and the Russian Federation on the Demarcation of the Ukrainian-Russian state border of 17 May 2010, the parties established Joint Ukrainian-Russian demarcation commission. In addition to the agreement on the Ukrainian-Russian state border and the above-mentioned agreement, the legal formalization basis for the activities of the Joint Ukrainian-Russian

demarcation commission is the «Regulation on the Joint Ukrainian-Russian demarcation commission» signed on 21 June 2011 in Kyiv.

Field demarcation commenced on 2 April 2012 the first border sign in the area of the junction of the state borders of Ukraine, Russia and Belarus was installed and officially opened. Totally, there were held 18 meetings of the Joint Ukrainian-Russian demarcation commission. The nineteenth meeting of the Commission scheduled for 18–20 February 2014 in Kyiv didn'ttake place because the Russian Federation delegation did not arrive.

As is known, at the end of February 2014 the Russian Federation grossly violated norms of international law and the provisions of inter-state legal acts on border issues, has carried out an armed annexation of part of the state territory of Ukraine in the Autonomous Republic of Crimea. The entire international community has already severely condemned these irresponsible actions by the Russian side as threatening to the security of the entire European continent. Unfortunately, «strategic partners» from the Russian Federation are once again implementing their annexationist and Anti-Ukrainian plans, the essence of which consists in the military annexation of certain border regions of Ukraine and spread of separatist and extremist sentiments among the population of the state.

Today's actions of Moscow on the common area of the state border represent a particular threat to the sovereignty, territorial integrity, and cathedral of Ukraine. Every day, numerous criminal groups try to enter Ukraine through the Ukrainian-Russian state border. Their aim is to destabilize the domestic political situation in our state. For the first time since Ukraine's independence, a powerful group of military forces and assets on both sides of the border with Russia have been accumulated in full combat and mobilization readiness for military action. In the present conditions of statehood, Ukraine faces with a potential threat of the loss of the sovereignty and territorial integrity of the state in the conditions of a direct military threat from the Russian Federation.

During the period of the Commission's work, graphical projects for the installation of border signs in the Chernihiv-Bryansk region (222 km) and in the Sumy-Bryansk region (150 km) were developed and approved. In the first region there were implemented 222 km of the state border, 106 main and 147 intermediate border signs. In the second region there were implemented 96 km of the state border, 381 locations for border signs were identified. Graphic projects of border signs places in the Sumy-Kursk region (299 km) and in the Sumy-Belgorod region (109 km) are at the final stages of development. They were to be confirmed at the nineteenth meeting of the Commission, which did not take place. Graphical projects for the installation of border signs were not prepared and demarcation work was not started on the areas of the state border within Kharkiv (281 km), Luhansk (739 km) and Donetsk (174 km) regions.

O. Melnikov (2008) noted that during the delimitation and demarcation work, there were identified number of so-called «crisis points» (the railway track on the area Rozsosh-Chortkove-Milove). It has not been possible to resolve these issues in 12 years. The situation worsened in 2014 with the beginning of military aggression carried out by the Russian Federation.

As of July 2020, the updated composition of the Ukrainian delegation to the Commission has been approved by the Decree of the President of Ukraine «On amendments to the Decrees of the President of Ukraine of 28 April 2011 No 509 and of 31 October 2011 No 1008» No 177/2017 of 5 July 2017.

The process of legal formalization of the Ukrainian-Russian state border and the work of the Commission can be re-established only after the complete cessation of the armed aggression of the Russian Federation and return of control over the Ukrainian-Russian state border and the restoration of constitutional order in the territories of the Donetsk and Luhansk regions which are temporarily occupied by the Russian Federation.

For a long time, the Ukrainian-Russian state border has been actively used by numerous international criminal groups for illegal migration, trafficking in human beings, smuggling, drug trafficking and the illegal movement of weapons, explosives, means of terror across the border and other illegal activities at the border. Consequently, the activities of cross-border criminal groups along the common State border between Ukraine and the Russian Federation have always posed a potential threat to the national security of the state.

As Zhaimagambetov (2015) noted in his research «Russia has proven itself as incapable mediator to solve border disputes».

That is obviously, it is difficult to expect decent behaviour from the Russian Federation in a process of legal formalization of Ukrainian-Russian state border, especially after the annexation of the Autonomous Republic of Crimea and the city of Sevastopol as well as the occupation of part of the territory of Donetsk and Luhansk regions.

As of summer, 2020, the Ministry of Foreign Affairs of Ukraine had taken measures to update and optimize the personal composition of the Ukrainian delegation. A draft Decree of the President of Ukraine «On amendments to the Decree of the President of Ukraine of 31 October 2011 No. 1008» has been sent to the authorities involved (letter of 3 July 2020 No 72/14-412-1471). It is obvious that the incomplete status of legal formalization of the state border, the exclusive (maritime) economic zone and the delineation of the Black Sea continental shelf is one of the external threats to national security (Marchenko, 2009).

4. State of legal formalization of the Ukrainian-Moldovan area of border

The state border of Ukraine with the Republic of Moldova was established by the Agreement between Ukraine and the Republic of Moldova on the state border of 18August 1999. After the entry into force of the Agreement on the state Border and in order to implement its provisions, the parties concluded the Regulation on the Demarcation of the state border between Ukraine and the Republic of Moldova of 29 January 2003 (in the form of an intergovernmental agreement).

The demarcation process began in March 2002. In accordance with article 7 of the Agreement, the parties established a Joint Ukrainian-Moldovan Demarcation Commission.

Unfortunately, the demarcation process has been stalled for a long time because of the political unresolved issues on the part of the self-proclaimed Transnistrian Moldovan Republic. This prevented the beginning of practical work on the demarcation of the central (Transnistrian) Ukrainian-Moldovan area of the state border (452 km). The demarcation process of this segment of the state border has made significant progress on 29 January 2010. With the participation of the Heads of the foreign affairs of Ukraine and the Republic of Moldova, there was established the first intermediate border sign 0204 in the central section: Velyka Kisnytsa, Iampil area, Vinnytsia region (Sitsinskyi, 2014).

As of March 2020, 66 meetings of the Commission had been held. On the outcomes of work establishment of the border line on the ground was finished: 1,222 km (99.9%) of the border line has been established, including 452 km in the central (Transnistrian) section; 4198 border signs were installed; As of 2020, the Ukrainian-Moldovan border is demarcated at 99.9%.

Problematic issues remain demarcation of the State border in the area of the water-flow dam of the buffer hydro-unit of the Dniester complex hydro-unit; demarcation in the area of Giurgiulesti (delimitation points 712–713).

Demarcation of the Ukrainian-Moldovan area of border in regions of the water-flow dam of the buffer hydro-unit of the Dniester complex hydro-unit and settlement Giurgiulesti is provided due to the implementation of so-called «package agreements» recorded in the Protocol of the thirteenth meeting of the Intergovernmental Ukrainian-Moldovan Mixed Commission on Trade and Economic Cooperation (10–11 November 2011, Chisinau).

Next to the demarcation, the mutual recognition and formalization of the ownership rights of Ukraine and the Republic of Moldova over the facilities located in the territories of the parties, including part of the Dniester complex hydro-unit, located on the territory of the Republic of

Moldova, and the issue of ensuring the proper functioning of the Dniester complex hydro-unit belong to the "package arrangements".

Determination of the midpoint of the hydro technical structures – the water-flow dam of the buffer reservoir of the Dniester complex hydro-unit – is a technical issue which is currently being considered in the Working Group on reciprocal processing of ownership in accordance with the Protocol of the 14th meeting of the Intergovernmental Ukrainian-Moldovan Mixed Commission on Trade and Economic Cooperation (held on 18-19 September 2017 in Odessa).

Joint Ukrainian-Moldovan Demarcation Commission prepares draft decisions on the demarcation of the state border in Dniester complex hydro-unit and settlement Giurgiulesti after receiving from the authorized state bodies of Ukraine and the Republic of Moldova the specific parameters of the midpoint of the hydro technical structures.

The issue of the final demarcation documents is a derivative one: they can be finalized in a relatively short time, provided that the problem of the Dniester complex hydro-unit and settlement Giurgiulesti will be resolved.

The problems arose due to the fact that the cartographers of the Soviet Union never considered the established borders as borders of independent republics, since their planning approaches were considered on a uniform basis from the point of view of water supply, gas supply and transport networks. In addition, industrial, transport and agricultural projects of one republic could be freely extended to the territory of a neighbouring republic (Megoran, 2004).

5. State of legal formalization of the Ukrainian-Belarusian area of border

The state border of Ukraine with the Republic of Belarus was established by the Agreement between Ukraine and the Republic of Belarus of 12 May 1997. Ukraine ratified the agreement on 18 July 1997 and the Republic of Belarus in 2010. The Agreement entered into force on 18 June 2013.

To implement its provisions, the parties concluded an Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Belarus on the approval of the Regulation on the Demarcation of the state border between Ukraine and the Republic of Belarus of 30 July 2014.

In accordance with article 3 of Agreement on state border, the demarcation of the state border between the parties shall be carried out by a Joint Commission. The Joint Commission shall operate under the Regulation on the Demarcation of the state border between Ukraine and

Republic of Belarus, which shall be approved by the Governments of the parties.

Since 24 June 2014, field work has begun on establishment of the state border line and the identification of border signs locations. 23 meetings of the Joint Ukrainian-Belarusian Demarcation Commission were held.

As of July 2020, project for the placement of border signs at the state border (1084.2 km) was developed; 873 km of border has been established on the ground; defined 1,944 sites for the installation of border signs, including 24 in 2019; 416 border signs installed by the Ukrainian side; the coordinates and heights of 693 border signs have been determined; a joint geodetic network along the state border has been established; work has been done on the installation and development of the Ukrainian border pillar of the border sign «Bug» (trilateral junction point of the borders of Ukraine, the Republic of Belarus and the Republic of Poland).

However, there are concerns about the recent social and political occurrences in the Republic of Belarus caused by the results of the presidential elections which have not been recognized by the international community because of massive violations. Minister for Foreign Affairs of Ukraine Dmytro Kuleba (2020) stated that «in view of the electoral campaign in Belarus and further occurrences, the «inauguration» of Lukashenko O. did not signify his recognition as the legitimate head of the Belarus». The official reaction of the Ukrainian authorities to the results of the elections, and the response of the Ministry of Foreign Affairs of the Republic of Belarus, could jeopardize the completion of the procedure for the legal formalization of the Ukrainian-Belarusian area of the state border.

Conclusions

An analysis of the legal formalization for Ukraine's state border with neighbouring countries makes it possible to identify the most significant threats to Ukraine's national security.

Firstly, the incomplete process of legal formalization of the state border threatens to lose the state part of sovereignty, territorial integrity in the sovereign territory. This threat is caused by the intensive politicization of issues the state-territorial structure of certain regions of Ukraine, incitement of separatist and extremist sentiments among the population of the border areas by some neighboring countries intending to revise the existing and regulatory common areas of state borders.

Secondly, there is a significant obstacle to the realization of the strategic foreign policy direction of the state towards European integration. Indeed, one of the main conditions for a State's accession to the European Union is the settlement of issues relating to the legal formalization of the state border and the absence of territorial claims by neighbouring states.

Thirdly, there is a potential threat of escalation of border conflicts and military confrontations in the border regions of Ukraine, as well as at the borders of Ukraine, and of the spread of extremist, terrorist, and separatist manifestations on the state border of Ukraine. Separatism poses a threat to the inviolability of the borders established in accordance with the norms of international law and, consequently, to the political, economic, and territorial security of the entire European space (Litvinenko, 2018).

Fourthly, a significant threat to the national security of Ukraine is the low level of organizational, logistical and financial support for the activities of the Ukrainian state authorities responsible for the legal formalization of the State border, as well as insufficient equipment and resources for military and law enforcement agencies to effectively counter crimes of a cross-border nature and protect national interests at the state border and in the exclusive (maritime) economic zone of Ukraine. The process of delimitation and demarcation of the state border has been considerably hindered by numerous cases of unresolved inter-state property relations and the procedure for managing on border facilities and waters.

Fifthly, there is the potential threat of the loss of the sovereignty and territorial integrity of a state in the situation of direct military aggression by the Russian Federation. The undefined legal status of the common part of the State border of Ukraine with the Russian Federation is potentially dangerous and could become a precondition for Ukraine to lose part of the state territory on the border with Russia.

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Legal basis for ethical behavior of civil servants in Ukraine: some problematic issues

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Abstract

The objective of the article is to consider the legal basis for regulating the rules of ethical conduct of civil servants in Ukraine and, at the same time, to compare them with the relevant legislative framework of other countries. The subject of the study is the analysis of the legal basis for regulating the rules of ethical conduct of public officials in Ukraine. The research methodology includes the following methods: normative and dogmatic method, hermeneutic method, method of analysis and synthesis, dialectical method, legal and comparative method, legal modeling method. It is concluded that there is only one special legal act to regulate the ethics of public officials in Ukraine, but it is not binding, as it does not have the appropriate legal means of influence. Practical involvement. Based on international experience, it was concluded that Ukraine should adopt its own Code of Ethics for public officials.

Keywords: code of ethics; civil servant; misconduct; legal basis; international ethical experience.

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Base jurídica para el comportamiento ético de los funcionarios públicos en Ucrania: algunas cuestiones problemáticas

Resumen

El objetivo del artículo es considerar la base legal para regular las reglas de conducta ética de los funcionarios públicos en Ucrania y, al mismo tiempo, compararlas con el marco legislativo pertinente de otros países. El tema del estudio es el análisis de la base legal para regular las reglas de conducta ética de los funcionarios públicos en Ucrania. La metodología de investigación incluye los siguientes métodos: método normativo y dogmático, método de hermenéutica, método de análisis y síntesis, método dialéctico, método legal y comparativo, método de modelado legal. Se concluye que sólo existe un acto jurídico especial para regular la ética de los funcionarios públicos en Ucrania, pero no es vinculante, ya que no cuenta con los medios legales de influencia adecuados. Implicación práctica. Sobre la base de la experiencia internacional, se llegó a la conclusión de que Ucrania debería adoptar su propio Código de Ética para los funcionarios públicos.

Palabras clave: código de ética; funcionario público; conducta impropia; fundamento jurídico; experiencia ética internacional.

Introduction

Civil service is a manifestation of special trust on the part of society and the State; it places high demands on the moral qualities of civil servants. In order to be effective, civil service should be based on a solid spiritual and moral foundation. The goals of civil service, its guiding principles, norms, professional requirements for its staff have a moral aspect, which decisively determines its focus and the main dominants. The moral atmosphere in the authorities, dishonesty of the responsible official can seriously discredit any good intentions of the government. The authority of civil servants is rightly associated primarily with their decency, justice in public opinion.

The ethics of public service is closely linked to the social structure of a particular society and is clearly defined by it. This, as a rule, reflects the traditional ideas of the community about the status of their society in general, the superiority of their civilization, etc. At the same time, the ethics of civil service is a combination of universal rules that are applied throughout the civilized world. All this necessitates the constant understanding, research and improvement of ethical norms of the civil service, which, in turn, will contribute to the achievement of strategic goals of the State.

In the light of the foregoing, the aim of the article is to consider the legal basis for regulating the rules of ethical conduct of civil servants in Ukraine, to compare them with the relevant legislative framework of other countries and to draw relevant conclusions and propositions.

1. Methodology

The methodology of the Article is based on general and special methods of scientific knowledge. For example, normative and dogmatic method as well as the method of hermeneutics were used in the process of studying domestic legal acts and the legal acts of foreign countries regulating the problem of ethical behavior of civil servants. The method of analysis and synthesis helped to clarify the content of legal mechanism governing the studied issue in Ukraine and in some other States. Dialectical method allowed to identify the problems of legal framework for ethical behavior of civil servants in Ukraine. Legal and comparative method was applied when comparing legal foundation for regulating ethical behavior of civil servants in Ukraine and in some other countries. Legal modeling method made it possible to formulate the relevant conclusions and propositions.

2. Literature Review

The analysis of foreign literature made it possible to identify modern approaches to the ethical education of civil servants in Western democracies. The works of a number of scientists (Dewey, Edlem, Savarin, Wright) are devoted to the problems of teaching ethics to civil servants. They developed two approaches in their researches. The first one is broad, represented by Dewey (2008). He argues that education builds up character, and therefore, every discipline teaches ethics through proper maintenance. Since public administration as a scientific field covers politics, law, management, ethics, economics, business, sociology, psychology, mathematics, etc., the content and methods of each discipline should be considered in the context of the subject of this phenomenon (Wright, 1994).

The second approach is to introduce a special course in professional ethics into the curriculum. Western scholars pay considerable attention to the problem of ethically conscious management of subordinates. This is due to the peculiarities of formal management relations in the system of “manager-subordinate”, primarily their asymmetric structure. Besides, the manager, in addition to the institutional responsibility for the results of work, also has humanitarian responsibility (Kuhn and Weibler, 2004). The practice of government ethics and the responsibility of officials has been an important topic of research by foreign authors in recent years. This is due to the transition to a “new government” – managerialism, and

the development of the European Union as a community of democracies. These studies are presented by scientific works of foreign authors on the ethics of civil servants, which were carried out within the Public Management Service of the Organization for Economic Cooperation and Development – OECD, materials of discussions at seminars on ethics in public administration (ENA), annual international conferences on ethics (Easton, 1962), publications of Transparency International.

Some of the issues of the ethical behavior of civil servants were considered by Kolomoiets *et al.* (2019), Kolomoiets *et al.* (2020), Malimon and Shevchenko (2015), Sorokina (2017) and others.

3. Results and Discussion

Article 19 of the Constitution of Ukraine (LU 254k/96-VR/1996, June 28) stipulates that "State authorities and local governments, their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine". The main of such laws is the Law "On the Public Service" (LU 889-VIII/2016, December 12), Art. 8 of which sets ethical requirements for civil servants. Thus, in accordance with the provisions of this article, he (she) is obliged to: 1) comply with the Constitution and laws of Ukraine, act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine; 2) adhere to the principles of civil service and rules of ethical conduct; 3) respect human dignity, prevent violations of human and civil rights and freedoms; 4) treat the State symbols of Ukraine with respect; 5) use the State language in the performance of their official duties, prevent discrimination against the State language and counteract possible attempts to discriminate against it; 6) ensure, within the limits of the powers granted, the effective performance of the tasks and functions of State bodies; 7) conscientiously and professionally perform their duties and the terms of the contract for civil service (in case of conclusion); 8) execute decisions of the State bodies, orders (instructions) of the heads on the basis and within the powers provided by the Constitution and laws of Ukraine; 9) comply with the requirements of the legislation in the area of prevention and counteraction to corruption; 10) prevent the emergence of a real, potential conflict of interest in the course of civil service; 11) constantly increase the level of their professional competence and improve the organization of official activities; 12) keep State secrets and personal data of persons who became known to him (her) in connection with the performance of his (her) official duties, as well as other information that is not subject to disclosure in accordance with the law; 13) provide public information within the limits set by law.

Besides, the above-mentioned Law contains other articles, the title of which, although does not explicitly state the requirements for the conduct

of these subjects, but their content is directly related to this issue. Thus, Art. 10 enshrines the requirement for political impartiality of a civil servant. The latter should impartially carry out lawful orders (instructions), instructions of heads, regardless of their party affiliation and political beliefs. He (she) has no right to demonstrate his (her) political views and commit other acts or omissions that may in any way indicate his (her) special attitude towards political parties and negatively affect the image of the State body and trust in the government or threaten the constitutional order, territorial integrity and national security, for the health and rights and freedoms of the others.

Art. 36 prescribes the duty of a civil servant to take the Oath of a civil servant when appointing to a civil service position for the first time. If a person refuses to take the Oath of Civil Servant, he / she shall be deemed to have refused to hold a civil service position, and the act on his / her appointment to the position shall be revoked by the subject of appointment. The text of the Oath indicates the priority role of the Constitution. The civil service is based on constitutional provisions. They are the ethical constraints on the actions of a civil servant and the basis for public trust. In case of conflict between the Constitution and another normative act or order of the head, an employee who adheres to ethical principles will be faithful to the Constitution (Sorokina, 2017).

Section 8 "Disciplinary and material liability of civil servants" provides sanctions for persons who violated the requirements of regulations in the area of civil service, committed an act incompatible with the status of a civil servant, did not perform or improperly performed their duties, etc.; that is, this section is also directly related to the ethical conduct of civil servants. Another legal act that regulates relations in this area is the Law of Ukraine "On Service in Local Self-Government Bodies" (LU 2493-III/2001, June 07). Art. 8 of this Law establishes that the main responsibilities of local government officials are: 1) adherence to the Constitution and laws of Ukraine, other regulations, acts of local governments; ensuring, in accordance with their powers, the effective operation of local self-government bodies; 2) observance of human and civil rights and freedoms; 3) preservation of State secrets, information about citizens that became known to them in connection with the performance of their official duties, as well as other information that is not subject to disclosure in accordance with the law; 4) constant improvement of the organization of the work, increase of professional qualification; 5) conscientious attitude to performance of official duties, initiative and creativity in work; 6) respectful attitude to citizens and their appeals to local governments, care for a high level of culture, communication and behavior, the authority of bodies and officials of local government; 7) prevention of actions or omission that may harm the interests of local self-government and the State.

Another Law that directly sets out the requirements for the ethical conduct of civil servants is the Law of Ukraine "On Corruption Prevention" (LU 1700-VII/2014, October 14) (Section 6). According to the provisions of this section, civil servant is obliged to strictly observe the requirements of the law and generally accepted ethical norms of conduct, be polite in relations with citizens, managers, colleagues and subordinates; act exclusively in the interests of the State or territorial community when representing them; adhere to political neutrality; avoid demonstrations in any form of one's own political beliefs or views; not to use official powers in the interests of political parties or their branches or individual politicians; act impartially, regardless of private interests, personal attitude to any person, their political views, ideological, religious or other personal views or beliefs; honestly, competently, timely, effectively and responsibly perform official duties and professional duties, decisions and instructions of bodies and persons to whom they are subordinated, accountable or controlled; prevent abuse and inefficient use of State and communal property; not to disclose or otherwise use confidential and other information with limited access, which became known to him (her) in connection with the performance of his (her) official duties and professional duties; refrain from executing decisions or instructions of management if they are contrary to the law, regardless of private interests.

Requirements for ethical conduct of civil servants are also indirectly contained in a number of other laws of Ukraine. Thus, the Law of Ukraine "On the clearance of the authorities" (LU 1682-VII/2014, September 16) was adopted in order to prevent the participation in the management of public affairs of persons who by their decisions, actions or omission carried out measures (and / or facilitated their implementation) aimed at usurping power by the odious former President of Ukraine Viktor Yanukovych , undermining the foundations of national security and defense of Ukraine or unlawful violation of human rights and freedoms, i.e. in order to prohibit them from holding certain positions (in the service) in public authorities and local governments. Accordingly, this Law establishes certain ethical norms of conduct for persons performing the functions of State power and local self-government.

The Labor Code (LU 322-VIII/1971, December 10) establishes mandatory discipline requirements for all employees (including civil servants). Thus, employees are obliged to work honestly and conscientiously, timely and accurately follow the instructions of the owner or his (her) authorized body, comply with labor and technological discipline, the requirements of regulations on labor protection, treat the owner's property carefully (Article 139).

The issue of ethical conduct of civil servants is covered by some laws of Ukraine, but, unfortunately, it remains insufficiently regulated. This

is due to the number of problems related to the formation of the level of ethics of civil servant: firstly, there is a great need for highly qualified personnel knowing theory and practice of regional development; are able to work in conditions of fierce professional competition and have a high stress-resistant threshold and adhere to ethical and moral norms in business relations. Secondly, it is the lack of appropriate professional (and sometimes specialized) education and the level of professional training, which is a mandatory requirement for holding public office. Thirdly, it is insufficient legislative and legal enshrinement and coverage of moral norms for civil servants, as well as insufficient responsibility for violating these norms (Sorokina, 2017).

That is why in 2012 a special Law "On the rules of Ethical Behavior" (LU 4722-VI/2012, May 17), which defined the guidelines for the conduct of persons authorized to perform the functions of the State or local self-government and the procedure for prosecuting them for violating such norms, was adopted. In addition to such general principles of service as observance of the rule of law, priority of interests of the State or territorial community, political impartiality, tolerance, observance of the principle of objectivity, honesty, competence, timeliness, efficiency and responsibility in the performance of official duties, confidence in government, confidentiality execution of illegal decisions or orders, the Law prescribes such important rules as prevention of conflict of interests, prevention of illegal benefit or gift (donation) and declaration of property, income, expenses and obligations of a financial nature.

However, in 2014, this Law expired on the basis of the enactment of the Law of Ukraine "On Prevention of Corruption", which we have already considered above. No special law was adopted instead, but in 2016 the National Agency of Ukraine for Civil Service approved the Rules of ethical behavior for civil servants and officials of local government (General Rules) (Order of the National Agency of Ukraine for Civil Service Affairs 2016, August 05). These General Rules are generalization of the standards of ethical conduct for civil servants and local government officials, which they are obliged to follow in the performance of their duties.

The Order consists of five sections. Section "General Provisions", in particular, states that the main purpose of the work civil servants and local government officials is to serve the people of Ukraine and the territorial community, to protect and promote the rights, freedoms and legitimate interests of an individual and a citizen. The behavior of civil servants and local self-government officials should ensure public confidence in the civil service and service in local self-government bodies. Ethical behavior of civil servants and local government officials is based on the principles of civil service and service in local governments.

Section 2 is entitled "General Responsibilities of Civil Servants and Local Government Officials". It stipulates that civil servants and officials of local self-government should act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine, as well as international treaties, recognized by the Verkhovna Rada of Ukraine when performing their official duties. Civil servants should honestly, competently, effectively and responsibly perform their duties, take the initiative, as well as evasion of decision-making and responsibility for their actions and decisions, timely and accurate execution of decisions of State bodies, local governments, orders, instructions of managers within the powers; in case of receiving the order (instruction), which civil servant considers illegal or such as threatening the rights, freedoms or interests protected by the law of separate citizens, legal entities, the State or public interests, he (she) has to inform about it the head of the body in which he (she) works in writing immediately.

Section 3 "Abuse of official position" stipulates that a civil servant and a local government official should use their official position exclusively to perform their official duties and instructions of managers, provided on the basis and within the powers provided by the laws of Ukraine. In short, a civil servant is prohibited from abuse his (her) official position to commit acts of corruption. It is also impossible not to mention the prohibition for civil servants and local government officials to abuse their official position for political purposes, as well as in personal (private) interests or in illegal personal interests of others, including the use of their status and information about the place of work in order to obtain illegal benefits for themselves or others.

Section 4 is entitled "Use of resources of the State and the territorial community". The resources of the State and the territorial community are understood as movable and immovable property, funds, official information, technologies, intellectual property, working hours, reputation, etc. It is the duty of civil servants to use State and communal property rationally and carefully, to constantly increase the efficiency of its use, avoiding excessive and unnecessary costs, and to prevent the abuse and use of State or communal property or funds in private interests. It is also emphasized that the working hours of a civil servant and local government official should be used to perform their official duties.

Section 5 "Use of Information" contains rules related to prohibitions and restrictions on the processing of personal data of individuals, confidential and other information with limited access in accordance with the law. Thus, if civil servants or local government officials become aware of the threat or facts of unauthorized dissemination of information with limited access, they must immediately notify the immediate supervisor.

Section 6 "Information Exchange" sets out the rules that civil servant and local government official should follow when communicating in the performance of their duties. In particular: 1) to provide information with the indication of the data confirming it; 2) timely provide, in accordance with the legislation, to other civil servants and officials of local self-government the information necessary for the performance of their official duties; 3) present information materials and messages clearly, concisely and consistently for their unambiguous perception.

Besides, civil servant is obliged to adhere to the established protocol in relations with representatives of foreign authorities, international organizations and foreign institutions.

However, such an important issue as conflict of interest is presented in the Order only by the following sentence: "Civil servants and local government officials should prevent conflicts in relations with citizens, leaders, colleagues and subordinates" (Subparagraph 2, Paragraph, Section 2). Most likely, this is due to the fact that the Law of Ukraine "On Corruption Prevention" dedicates Section 5 to this issue.

As one can see, the legislation in this area is fragmented, and the provisions governing the ethics of conduct of civil service are contained in a number of regulations. The General Rules is the only special act that regulates relations in this area. However, as Malimon and Shevchenko (2015) correctly point out, the provisions contained in the General Rules are mostly justified and aimed at increasing the authority of a civil servant in society. However, unfortunately, these Rules are not provided with adequate legal means to influence civil servants. The Law of Ukraine "On Civil Service" did not stipulate the obligation of civil servant to comply with the requirements set forth in the General Rules of Conduct for Civil Servants. The absence of direct measures of responsibility for violating the rules of conduct of civil servants does not ensure their proper implementation, and the legal culture of civil servants and integrity in the exercise of official authority has not yet reached such a high level to be limited to voluntary compliance.

Therefore, according to the view of the authors (which we fully support), it is advisable to enshrine moral and ethical principles of the civil service in a legislative act (possibly in the Law "On civil service"), which will increase the degree of their binding on the civil servant. The same applies to local government officials.

From this point of view, the way of regulating ethical principles of public service in Estonia is well thought out. The Estonian Law on Public Service, having established the obligation to abide by the Code of ethics, submitted it in the annex to the Law. The Code of ethics for public service is the system of norms that determine the behavior of public servants and provide the principles of high service culture of public servants. For example, this

Code enshrines such norms as: the use of public power only in the public interest; the exercise of public power on the basis of law; accompanying the exercise of public authority; preventing the creation of even an imaginary situation, which may call into question the impartiality and objectivity of the proceedings, etc. The Code outlines ethical principles of official conduct of a person, violations of which can be regarded as grounds for the imposition of disciplinary measures, the list and method of application of which are enshrined in Section 3 "Disciplinary liability of the officials" in the same Law On Civil Service (Tymoshchuk and Shkolyk, 2007).

In the United Kingdom and the United States this issue is regulated otherwise: the Civil Servants' Codes of Ethics apply in these countries.

Thus, in the United Kingdom, this document, on the one hand, regulates the ethics of professional activities of employees, ranging from the provision of services to the public to political advice to ministers, and on the other hand – recognizes the mutual responsibilities of employees and ministers. Therefore, the Code of Ethics consists of two parts:

1. Requirements for the service of ministers.

2. Requirements for other employees.

The Code is based on the need to implement the following principles: decency, honesty, objectivity and impartiality. Officials in their work should be guided by the following basic principles: 1. Serving only the public interest – the refusal of any action to achieve material and financial benefits for themselves, their family and friends; 2. Incorruptibility – prevention of any financial or other dependence on external persons or organizations that may affect the performance of official debt; 3. Objectivity – an impartial solution to all issues; 4. Accountability – responsibility for actions taken before the public and the provision of complete information in the event of a public inspection; 5. Openness – the maximum informing of the society about all decisions and actions, their validity (thus reduction of the information is admissible if necessary observance of the higher public interests); 6. Honesty – mandatory notification of their private interests related to public duties, taking all measures to resolve possible conflicts in favor of public interests; 7. Leadership – adherence to the principles of leadership and personal example in the implementation of standards of public life (European Information and Research Center, 2017).

The United States have developed their own code of ethics for each type of civil service. Thus, there is a Code of Ethical Conduct for Members of the Senate of Congress and a Code of Ethical Conduct for Members of the House of Representatives, the Law on the Ethics for Public Servants, etc. However, the most well-known and widely used document is the Standards of Ethical Conduct for Employees of the Executive Branch.

This Code (Final Regulation of the U.S. Office of Government Ethics, 2017) establishes the following basic rules that all civil servants should follow: adhere to the Constitution, laws and ethical principles without regard to their own interests; have any financial interests that run counter to the conscientious performance of their duties; they are prohibited from demanding or accepting any gift or other item of monetary value from any person or organization; are obliged to make every effort to perform their duties; they are prohibited from using official position for own benefit; they are obliged to act impartially and give no preferences to any person or organization; they should protect and preserve federal property and not use it for purposes other than those provided by law; they cannot be engaged in other work or activities, etc.

The Code is differentiated and its rules provide for more severe r sanctions for high-ranking officials. Penalties for violating the Code of conduct (from reprimand to dismissal) can be determined depending on the violation and the position of the employee, but in the case of public service personnel, such sanctions should be carried out under the standard administrative penalty procedure used in the public service.

It should be noted that the moral codes for officials also apply in France ("Code de déontologie"), Canada ("Conflict of Interests Act"), the Czech Republic (Ethical Code of Ethics and Substitution of Public Affairs), as well as in Croatia (Etički kodeks državnih službenika).

We believe that Ukraine should adopt the best practices of progressive countries and adopt its own Code of Ethics, which would fully reflect the principles of civil servants, set standards of ethical conduct, as well as sanctions for violations of these rules, regulate issues of prosecution for committing corruption offenses in the workplace and resolving conflicts of interest.

Conclusions

In this article, we reviewed the legal framework for regulating the rules of conduct for civil servants in Ukraine and found that this issue is regulated by a number of regulations. The main ones are the Constitution of Ukraine, the Laws of Ukraine "On Civil Service", "On Service in Local Self-Government Bodies", "On Corruption Prevention". Some aspects devoted to this issue are reflected in a number of other legislative acts of our State. A special legal act regulating service ethics is the General rules of ethical behavior for civil servants and officials of local government, but due to the lack of an indication that the General Rules are mandatory in the Law of Ukraine "On Civil Service", the former are not provided with adequate remedies.

That is why, based on the study of foreign experience, we concluded that Ukraine should adopt a single Code of Ethics for civil servants, as is done in many progressive countries.

Indeed, codes of ethics are considered an important means for combating corruption and secrecy. These codes are aimed at ensuring respect for public authorities by the society, establishing a productive, healthy atmosphere in the professional teams of public officials, limiting arbitrariness in relations with citizens and in internal professional relations (Vasylevska, 2015).

The drafting of codes of ethics for officials is also supported by international organizations. For example, Recommendation № R (2000) 10 (Recommendation of the Committee of Ministers to Member States 2000) emphasizes that the governments of the Member States should encourage, in accordance with national law and the principles of public administration, the adoption of national codes of conduct for civil servants, based on the Model Code of Conduct for Civil Servants, which is an annex to this Recommendation. The application itself defines international standards of honor and conduct for employees and prospects in this area.

In order for the code to be relevant and effective, it should include the following realistic goals: 1) promoting high standards of conduct; 2) strengthening public confidence in civil servants; 3) assistance in making management decisions.

In order for the code to be realistic, it must contain five elements, in particular: a) purpose; b) list of positive values to focus on; c) conceptual standards of what is possible and what is impossible; d) real sanctions; e) system of procedural guarantees. The code of conduct should fill the gap between the abstract provisions of the law, which are general principles of conduct, and specific recommendations and rules of conduct in everyday situations. It should reduce the degree of uncertainty and give advice on where the employee should address when such a difficult situation arises (Malimon and Shevchenko, 2015).

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Neurocracia: la Democracia del Tercer Milenio

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Resumen

La democracia es una quimera para muchos que sienten que ella jamás tocará sus puertas. Pero esa democracia ya es parte de un pasado al momento de ver como la ciencia avanza y el mundo empieza una brecha entre quienes tienen y quienes no tienen en todo el sentido de pensar y obrar del humano. En estos nuevos tiempos del milenarismo cibernético alimentado por las redes sociales, por un lado, y los laboratorios por otra, la nueva guerra por quien domina el pensamiento se librará a nivel de bits e Inteligencia Artificial. He aquí donde la neurocracia comienza su caminata como -quizás- la nueva forma de vivir y convivir. El objetivo de este ensayo es dar a conocer como esta nueva forma de pensar, sentir y obrar de convivencia humana está ingresando en nuestro quehacer diario. Los resultados obtenidos apuntan a reafirmar que los *mass media* y la inteligencia artificial han llegado para quedarse en un escenario planetario cada día más distópico.

Palabras Claves: neurocracia; democracia; cybors; ética; análisis prospectivo.

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Neurocracy: Democracy of the Third Millennium

Abstract

Democracy is a chimera for many who feel that she will never knock on her doors. But that democracy is already part of a past when it comes to seeing science move forward and the world begins a gap between those who have and those who do not have in every sense of thinking and acting of the human. In these new times of social media-fed cyber millennialism on the one hand and laboratories on the other hand, the new war for those who master thought will be fought at the bit level and Artificial Intelligence. This is where neurocracy begins its journey as -perhaps- the new way of living and living together. The objective of this essay is to make known how this new way of thinking, feeling, and acting of human coexistence is entering into our daily work. The results obtained when thinking about the work, is of having shown that the middle maas and AI have arrived to stay in an increasingly dystopian planetary scenario.

Keyword: neurocracy; democracy; cibors; ethics; prospective analysis.

Introducción

1984 es una obra reveladora en cuanto a la creación por parte del Estado de una *Policía del Pensamiento*. En un instante de la historia de la segunda mitad del siglo XX aquel concurso de telerrealidad denominado el Gran Hermano se hizo realidad y las tele-pantallas nos inundaron a través de los diferentes dispositivos tecnológicos, con lo cual ingresamos a la medianoche del tiempo de más penuria del mundo: la noche de la era técnica (Heidegger, 1950). La inteligencia artificial es capaz de "leer" nuestro "pensamiento" a través de las tendencias y huellas que vamos dejando en los aparatos cibernéticos cuando navegamos[7]. Este gran Océano es el único que no tiene fosas y que su superficie se conoce y manipula permanentemente, incluso en la denominada "internet profunda" (Deep Web), sea en sus distintas versiones, a saber, *Freenet*, *The Onion Router -Tor-* y *I2P*, solamente por nombrar las más importantes y que permiten mantenerse en un anonimato de espejismos, ya que detrás de ellos, siempre hay alguien que sabe lo que hacen y también saben cómo manipular a los supuestos navegadores anónimos. El secretismo *se supone* que es la clave de la web profunda, "*the most important institution of the Deep Web is anonymity. Each buyer and seller is known by a unique username; their true identity is secret*"

7 Tal vez la única gran diferencia con la distopía de Orwell es que en aquella se trata de un régimen totalitario que espía y controla la vida en contra de la voluntad de las personas. Lo que sucede ahora es un control voluntario o relativamente voluntario sobre el cual los "ciudadanos son conscientes". En este sentido es importante revisar la obra de Armand Mattelart y André Vitalis. 2015. De Orwell al Cibercontrol. Editorial Gedisa. Barcelona, España.

(Hardy and Norgaard, 2016: 516). Se: "Estima que el tamaño de la internet profunda es 500 veces más grande que la web superficial; esto significa que los buscadores tradicionales no rastrean el 99% del contenido existente en internet" (Sánchez, 2015: 105). En síntesis,

> *The darknet (aka "dark address," "lost net," "dark address space," "greynet," "sparse darknets," etc.) consists of a computer network characterized by an anonymous and restricted access by third parties, mainly used for illegal and/ or criminal activities. The darknet is a subsection of the deep web, that is, the World Wide Web content hidden and not accessible by means of standard search engines, consisting in password protected or dynamic websites as well as encrypted networks* (Orsolini *et al.,* 2017: 3).

Las Bestias de Inglaterra (*Rebelión en la Granja*) traspasaron las fronteras de la isla europea, para transformarse en un *Leviatán* que devora todo a su paso a través de las tecnologías desarrolladas y profundizadas en el siglo XXI. Ya no es la granja de Jones, sino, las grandes corporaciones privadas (para el mundo occidental) y estatales (para el mundo oriental) las que nos dicen en elocuentes carteles que algunos seres humanos -los mínimos- son más iguales que otros seres humanos -los mayoritarios-. Sin embargo, esta tentación verticalista del poder atrae a gobernantes de Occidente que anhelan el control de la población, una vocación de conciencia jerarquizada complejo de autoridad sagrada, que hunde sus raíces en la transición desde el Paleolítico al Neolítico (Berman, 2006).

Este deseo choca con la libertad individual de creación y las libertades que los seres humanos protestando en calles y -paradójicamente- en las redes sociales. Se actualiza la tensión entre igualdades y libertades tal como lo pensó y escribió en su hora Alexis de Tocqueville (De Tocqueville, 1856/2015). Leviatán para unos y para otros, si aplicamos una visión individualista, pesimista y en algunas partes realista. El poder en manos de unos pocos pensando individualmente y la libertad que se encuentra en cada ser humano como ADN imposible de fracturar. Las principales creaciones de Medios de Comunicación Masivo (MCM) han nacido de individuos y no de Estados. Orwell es categórico para entregar una voz de alarma a la población y su vida y privacidad de cada una de las personas que habitan este planeta. Estamos a un paso de la manipulación humana.

He aquí donde la Democracia hace su entrada, ya no como la ateniense de Pericles o la de la época de las Grandes Revoluciones de la Edad Moderna, ni de la participación primaveral de las calles que nacen en el norte de África y Oriente Medio para irradiar al resto del orbe. Quizás ni siquiera como aquella de la "Voz Populi, Vox Dei" que hizo caer monarquías y gobiernos actuales. Se debe explorar la idea de una nueva democracia para dar respuesta a las nuevas tecnologías, se debe dejar abierto el camino a la neurocracia y establecer sus deberes y derechos como Tablas de la Ley que deben no ser violadas. Incluso ir más allá.

No en una Declaración de Derechos Humanos que no es vinculante a los Estados como la actual de la Organización de Naciones Unidas, sino que, una normativa de la humanidad vinculante a todo Estado y territorio que componen nuestro planeta. Y con ello, como se ha planteado en anteriores investigaciones y ensayos, la democracia pese a todos sus errores es el único camino que nos queda en estos tiempos de fundamentalismo de todo orden (Estay Sepúlveda y Lagomarsino, 2020)

1. Neurocracia: la Democracia del Tercer Milenio

Los neuroderechos se encuentran en discusión en la actualidad (Borbón *et al*., 2020). La neurocracia se avizora como la nueva forma de velar y proteger nuestros derechos, a la vez que, ante ciertas circunstancias, se solicite en un futuro no lejano y bajo norma judicial o de razón de Estado, des-velar y des-cubrir que sucede en la mente de cada una de las personas. En consecuencia:

> *For over 2000 years, western thought has debated whether free will and responsibility are possible if determinism, universal causation or the like is true. The deterministic explanations have shifted with changes in theological and scientific understanding and fashion. God's foreknowledge, social structure, unconscious psychodynamics, behavioral psychology, and genetics have all been seen as the basis for determinist understanding. Neuroscience is simply the newest alleged source of determinism on the block. Despite such changes, the alleged incompatibility between determinism and responsibility is an ancient issue. In this debate, free will is usually understood as the ability of people to act uncaused by anything other than themselves. If people do not have this ability, it is claimed, responsibility and other worthy goods such as autonomy may be unjustified. This thought is what disturbs people about scientific understanding of human behavior, which relentlessly exposes the numerous causal variables that seem to toss us about like light ships in a raging sea storm. Neuroscience, it seems, will finally support this challenge because it exposes that the brain, the final pathway to action, is nothing but a mechanism* (Morse, 2016: 16).

Adelantarse a los acontecimientos no es ciencia ficción, como quedó demostrado en la película *Minority Report* del año 2002. Las neurotecnologías, por ejemplo, han demostrado experimentos de estimulación a través de las interfaces cerebro-máquina, las cuales: "Pueden cambiar aspectos de la personalidad o del "yo" e incluso, "como tienen como objetivo áreas específicas del cerebro, durante su uso pueden alterar los estados de ánimo, los deseos, la conducta e incluso los valores y la identidad personal" (Monasterio *et al*, 2019: 33).

Incluso, investigadores del Instituto de investigaciones de Telecomunicaciones Avanzadas en Japón se han preguntado si una prótesis controlada por el pensamiento que trabaje junto con los brazos biológicos de una persona puede dar a esa persona habilidades de multi-tarea superiores

a las de una persona media (Monasterio *et al*, 2019: 33). Recientemente, aplicaciones como spotify, obtienen patente para poder "espiar", "basic information such as gender or age", donde:

> *At one point, the patent suggests that obtaining "intonation, stress, rhythm and the likes of units of speech" could be combined with "acoustic information within a hidden Markov model architecture" so that Spotify's app could categorize a user's mood as "happy, angry, sad or neutral* (musicbusinessworldwide.com, 2021, s/p.)

Y, recientemente investigadores se encuentran analizando la funcionalidad del cerebro humano a través de experimentos con minicerebroides con la intención de recrear el cerebro de los neanderthales y con ello, aproximarse a saber o inferir como era su forma de pensar y obrar y, por ende, su forma de vida. De ahí el salto a comprender nuestro cerebro de sapiens sapiens es algo no alejado en el tiempo (Trujillo *et al*., 2021).

Sin dudas, los beneficios para las personas y la humanidad son de una trascendencia única. Pero al mismo tiempo, la cantidad de millones de dólares que se mueven son estratosféricos

> *Among less invasive technologies, some devices remain on the surface of the human body – these are usually called wearables. Wearable technologies are a fast expanding area, with a $15.74 billion market in 2015, estimated to grow to $51.60 billion by 2022. Electronic skin patches alone, which are widely adopted in medical wearables for cardiovascular monitoring, diabetes management, temperature, sweat and motion sensing and other types of biomarker monitoring, achieved more than $7.5 billion in revenue in 2018. Non-medical wearables are a dynamic field, with products and adoptions ranging from personal fitness trackers and smartwatches to enterprise applications* (Liu y Merritt, 2020: 8)

En la actualidad, movimientos como "*Quantifified self*" utilizan la tecnología para adentrarse en los datos de las personas, aunque sean los mínimos, bajo la justificación del bienestar (Monasterio *et al*, 2019: 35) y bajo la lógica ética de usar esos datos para el desarrollo saludable y de entretención humana. La cantidad de información electrónica en la actualidad es impensable

> Sobre el tema, académicos de los macrodatos (Big Data en inglés), en particular Martin Hilbert quien fuera asesor de la Comisión Económica para América Latina y el Caribe (CEPAL), planteó que los datos que se generan en internet por año son superiores a los los 9 zettabytes, lo que él explica serian unas 9000 pilas de libros desde la tierra hasta el sol.
>
> También se podría entender que la generación de esos datos anuales equivaldría aproximadamente, a los de una película HD con más de 350 millones de años de duración. Ante tal panorama, los algoritmos son herramientas potentes e indispensables para el procesamiento de toda esa información y para la automatización de servicios que se pueden ofrecer al ciudadano, el problema está en la orientación y en el necesario uso ético que se debe hacer de las mismas (Gómez, 2020: 2).

Es aquí donde hace ingreso la corriente DIYbio, la cual bajo la premisa de la libertad y la individualidad, puede llegar a causar mayores daños que beneficios, y quienes se encuentran sumergidos y desarrollando el nuevo milenio son: "*diverse sets of individuals such as scientists, designers, software developers, hobbyists, and enthusiasts, that work on a wide range of projects such as citizen science initiatives, amateur science, product development (incubators), artistic work, and educational workshops and courses*" (Sánchez, 2014: 23).

Si bien es cierto, no todos los que pertenecen a este grupo acepta el término biohackers -por su connotación negativa (delincuente cibernético)-, otros si lo aceptan. Quienes se han adentrado al estudio de ellos y sus acciones y un buen número de quienes pertenecen al movimiento, llegan a la conclusión de que "*biohackers want to open access, or in other words: democratize biology as knowledge, as a science, and as a technology*" (Sánchez 2014: 50). Es de esperar que la ética realmente sea el motor principal y fundamental de quienes se encuentran en la corriente DIYbio y no caer en las "garras" de los inescrupulosos de siempre provenientes del mundo de las finanzas, la política y las armas letales.

> *A new model of P2P science is already making its way in institutional science with initiatives such as open science, citizen science, and open innovation, where they establish close cooperation and funding mechanisms with DIYbio. Whether their support comes from legitimately recognizing DIYbio as an low-cost and inclusive solution to education and innovation, or as an exploitation of cheap cognitive capital remains unclear and is yet to be seen. What is certain is that DIYbio will have to develop strategies to take advantage of new opportunities created, as they navigate between the old model and the new model (CBPP), while preserving the ethos of the movement. Such case would be how the movement will manage government and corporate funding whose interests might encroach on their freedom of inquiry by dictating projects or suppress their commitment to openness and sharing by demanding IP protection for commercial exploitation.* (Sánchez, 2014: 51).

El crecimiento de las tecnologías es exponencial al pensamiento. La idea de lo que pensamos está años luz de las fronteras de la técnica, parece cada día más una quimera fácil de desmentir. El big data ha dejado atrás a los astrólogos y adivinos y libros como *Las Centurias* de Nostradamus son juguetes de niño recién nacidos para los ingenieros cibernéticos. En estas dos décadas que van del nuevo milenio, se observó a través del mundo e internet -que ironía- como las personas tomaban decisiones a través de likes y me gusta (Norte, 2020). Quienes tienen acceso al manejo de los datos, tendrán acceso al manejo de las vidas y de ahí a una cybercracia, datacracia y/o neurocracia se encuentra a la vuelta de la esquina. El decidir ya no se encuentra a nuestro albedrío (Jurno y D'andrea, 2017).

La neurocracia, como la democracia, debe cuidarse del lenguaje para no convertirse en el Nuevo Oficio de una Santa Inquisición de las Masas y

los Gobernantes. En ello, el lenguaje produce realidad. Sea este lenguaje verdadero o una noticia falsa (Fake News). Al final, produce una realidad que lo tomará un sector de la población en mano de los *mass media* y con sus like (en Instagram) o los "me gusta" (en Facebook) los legitimarán, sin ni siquiera profundizar en la noticia o en verificar lo que se está comentando, o lo peor, sin leer lo que dan como visto bueno o haciendo una pira para quemar al que todos queman sin saber que están quemando y por qué lo están consumiendo en las llamas.

Total, que importa. Si hubo un error, serán los mismos que aprietan los botones del *me gusta* y el *like*, los que criticarán a quien dio a conocer lo falso. Asunto concluido. Pero, el quemado ya se consumió, tal cual Damiens en *Vigilar y Castigar* (Foucault, 2009).

> Desde finales del siglo XX conocemos la existencia de otro tipo de campañas de desinformación a gran escala relacionadas con el cambio climático, las vacunas, los alimentos, la nutrición, el origen de la vida, la salud, las armas en manos de los ciudadanos, los medicamentos genéricos, la curación u origen de enfermedades, la energía nuclear o el impacto de la inmigración. Pero sin duda, el momento más álgido del fenómeno de las *fake news* se vivió a partir de dos acontecimientos que sucedieron en 2016: el proceso del Brexit en Reino Unido y las elecciones norteamericanas que ganó Donald Trump. Una de las numerosas investigaciones realizadas a partir de estas últimas, confirmaba que durante la campaña electoral se generaron un total de 115 noticias falsas favorables al actual presidente de Estados Unidos que se compartieron en Facebook un total de 30 millones de veces, frente a las 41 fake news en beneficio de Hillary Clinton compartidas en 7,6 millones de ocasiones (Parra y Oliveira, 2018: 55).

Enormemente llama la atención que, en la elección del año 2016 en Estados Unidos, "las noticias falsas alcanzaron casi los nueve millones de visitas mientras que las noticias generales verdaderas un millón y medio menos" (Salas, 2019: 422). Un estudio de IPSOS del año 2018 demostró que a nivel mundial los habitantes de los países que más han creído en noticias falsas son los brasileños (67%), sauditas (58), surcoreanos (58%), peruanos (585 y españoles (58%), dentro del top cinco (Muñoz-Machado, 2020: 124).

La democracia bajo esta nueva lógica de ver el mundo por sus habitantes se ve amenazada. Más aún, cuando los que están elegidos para cuidarla, cometen errores conscientes. En este mundo del tercer milenio, el *homo economicus* con su semejante *homo consumens* han derribado las barreras de que dos tipos de homo no puedan convivir. Incluso, esta nueva forma de ver y obrar en el mundo está consumiendo las relaciones más íntimas del ser humano: la relación de pareja. En ese sentido, Bauman tiene razón al llamar a esta nueva forma de convivencia: *amor líquido* (Bauman, 2005).

Sin embargo, la democracia no ha perdido su clasismo de élite. No compartimos la idea de Liberos *et al.,* (2013) de que las nuevas tecnologías vinieron a democratizar el mundo, en el sentido que democracia es igual a

opiniones de masas y que cada individuo tiene voz y voto en este mundo. Si bien es cierto, el anonimato individual ha desaparecido y cada cual es un ser con opinión, el correr del tiempo ha demostrado que este "espejismo democrático" se encuentra titiritado por quienes ostentan verdaderamente el poder. Más aún, cuando la población se une a temas de discusión política en forma fragmentaria y sin conocer el contenido completo de una conversación o tema o como muy bien lo desarrolla Valera-Ordaz (2019), al argumentarlas que son espontaneas.

Los *mass media* nos indican que pensar, actuar y obrar. Con esto no planteamos que la democracia no sea el mejor entre los peores regímenes: es lo mejor que se ha inventado y planteado para el mundo occidental en los últimos veinticinco siglos desde su nacimiento en la vieja Atenas. Solamente cuestionamos que ese espíritu que la sustenta no ha llegado a todos. Sigue siendo *demos* y no *laikos*.

Al mismo tiempo, la neurocracia puede producir castas o clases. Los *neuroenhancement-man*[8] al poseer el poder adquisitivo para desarrollar su sapiensa, sabrán como dominar al resto de la población o seguir dejándola en este nuevo milenarismo del tercer milenio, donde la literatura de dudosa reputación se abre paso entre las personas.

> A un nivel más político, el *neuroenhancement* radicaliza y lleva casi a un nivel de ciencia ficción las antiguas discusiones sobre desigual distribución de los bienes, al producir desigualdad e incrementando la segregación cuando aquéllos que puedan adquirir *smart drugs* se encuentren mejor situados cognitivamente frente a quienes no las consumen, lo que lleva a una ventaja injusta de uno sobre otros, e incluso una «selección artificial». Este problema de justicia social posee también un dilema ético, en cuanto aquéllos que están en una posición ventajosa estarían cometiendo plagio o «dopaje intelectual» (Cornejo, 2019: s/p).

En el mismo sentido, si somos capaces de interferir en la mente humana ¿quién nos dice que no podamos hacerlo en un crimen y poder manipular las pruebas?, incluso la de los neuroabogados y la neurojurisprudencia. En este sentido,

> Sí existe la libertad, pero no es como creíamos», en el sentido de que «nuestras decisiones pueden ser fruto de nuestra morfología cerebral y de las necesidades adaptativas del cerebro según las vivencias personales que van pasando por nuestra vida», pero «esos impulsos no son ni omnicomprensivos ni unívocos, en el sentido de que la respuesta a un estímulo tiene diversas posibilidades igualmente elegibles, y además es posible que nuestro cerebro carezca de respuesta ante algunas situaciones (Rodríguez, 2018: 197).

Recientemente, el 6 de enero de 2021 observamos como en un "nuevo país bananero", el clímax llegó con un ataque a la House of People (El

8 Nominación dada por los autores de este papers a las personas que quieren o querrían desarrollar sus capacidades cognitivas a través de la biociencia.

Capitolio) lo que hizo que quienes prestaron sus plataformas para alimentar teorías conspirativas hicieran realidad el aforismo de Pierre Victurnien Vergniaud: "La revolución acaba devorando a sus hijos". Facebook, Twitter, Youtube, Instagram, Google, Whatsapp -solamente por nombrar algunos dispositivos de control-, decidieron cerrar las cuentas de quien en ese instante incitaba a sus seguidores a marchar: "*We're going to walk down Pennsylvania Avenue… and we're going to the Capitol… we're going to try and give our Republicans … the kind of pride and boldness that they need to take back our country*" (limaohio.com, 2021: s/p).

Durante cuatro años, bajo el argumento de la libertad de expresión y teniendo bajo el brazo la Primera Enmienda, no hicieron nada y a pocos días del abandono de la Casa Blanca de Donald Trump -en un arranque delirante de civilidad-, decidieron en pos de la democracia comenzar a criticar los mensajes de odio. Mensajes de odio que no censuraron antes. En un par de minutos, irónicamente todos se convirtieron en seguidores de Karl Popper en defensa de la democracia y con ella, tomar decisiones no democráticas -la libertad de expresión censurada- para proteger la propia democracia.

Y, eso lo hicieron porque la revolución comenzaba a comerse a sus hijos y Silicon Valley no se vería bonito con muchedumbres paseando por sus jardines. Los congresistas en ese momento ocultándose debajo de sus asientos o escapando del hemiciclo, los sentarían -más temprano que tarde- a rendir cuentas. Esta realidad estaba anunciada en los libros, películas, series y música de ciencia ficción y en la no ficción. Mundos diptópicos se estaban creando:

> *Zuckerberg, ao destacar que sua rede social tem como objetivo "projetar experiências" em seus usuários, elabora uma plataforma com a potência distópica contemporânea de controle político-cognitivo, podendo atuar como regime autorrepresentativo e de visibilidade pública de si mesmo, mesclando os tempos reais e virtuais, hibridizando em si o espaço-tempo e a esfera público-privada, blindando, por consequência, possibilidades disruptivas de questionamento, criação e transformação inerentes à cultura* (Madureira, 2019: 135).

Situaciones que puedan ser manejadas al antojo de los *neuroenhancement-man*. No estamos hablando -por el momento- de un futuro apocalíptico, pero la libertad del ser humano debe ser defendida contra viento y marea. La Inteligencia Artificial -IA- es bienvenida y necesaria para el desarrollo de la humanidad (Gallina, 2019; Barrat, 2013; Perucchietti, 2019). Lo cyborg es algo existente. La pregunta es si ésta IA estará para ayudar a los seres humanos en su trascendencia y sobrevivencia o se cansará de sus creadores. Pensar hoy en día, junto a Philip K. Dick si ¿sueñan los androides con ovejas eléctricas?, podríamos decir que estamos a un paso de violar las tres leyes de la robótica de Asimov.

La dictadura de las plataformas digitales se encuentra en su auge. Las plataformas a través de sus millonarios recursos podrán decidir qué hacer y no hacer con nuestras vidas y poder luchar contra grandes multinacionales será como luchar contra el poder de la nueva plutocracia (Gillespie, 2018). Las nuevas tecnologías "*podem ser cerceadoras e castradoras da capacidade de indivíduos e grupos de existir e agir*" (Veloso y Lopes, 2020: 167). Quien no se encuentra conectado incluso puede sufrir el síndrome FoMO.

> El acceso a las plataformas de redes sociales y al consumo libre, el nuevo perfil de consumidor, hiperconectado y activo en redes sociales han abonado el terreno para fenómenos enfrentados de libertad y sometimiento; la libertad para elegir qué información consumir, difundir noticias y opiniones, generar contenidos, vincularse a grupos afines y por otro lado el sometimiento a la datacracia, la infoxicación, la posverdad y las fakenews, determinados en gran medida por fenómenos psico-sociales vinculados al FoMO (fear of missing out) y al sesgo de confirmación. Los medios dan servicio a mediadores con capacidad de influir en las audiencias en un contexto en el que hoy en día cualquiera puede apropiarse y difundir la noticia. Los datos son el principal interés de la nueva economía, monopolizados por unas pocas plataformas que ofrecen servicios gratuitos con la contraprestación de adquirir nichos de poder alimentados por los datos y su extracción, análisis y comercialización en el denominado "capitalismo de plataformas"
>
> Nos enfrentamos a un contexto en el que las plataformas que median en la comunicación entre personas, o Behavioral Modification Empires, están tratando de modificar su conducta. Lo mismo sucede cuando abrimos una aplicación para consumir su contenido, donde las más o menos sutiles recomendaciones algorítmicas se ponen al servicio de incrementar nuestra interacción y la permanencia en la plataforma (Hernández, 2020: 222).

Esta nueva forma de manipulación es en tiempo real (Castellanos, 2019) y puede realizarse simplemente a través de los algoritmos y una que otra compañía que esté disponible, como lo hizo Cambridge Analytica a través de macrodatos (Betzu *et al.*, 2019) y que fue utilizada en campañas electorales de los últimos años y que dieron, por ejemplo, un posicionamiento de Trump en las redes sociales, apuntando directamente al ciudadano medio estadounidense y con una campaña logísticamente planificada (Ayala, 2017). En palabras de Castellanos, "*La democrazia pare aver mutato il proprio DNA, e la fonte di questa mutazione è la rivoluzione digitale. La politica ormai si fa sugli smartphone, a colpi di post allarmistici, tweet mattutini e selfie con gli elettori*" (Castellanos, 2020: 42).

Los algoritmos y su brazo armado de la publicidad y los medios de comunicación son herramientas esenciales para la propaganda en el mundo de las campañas electorales (Leal, 2021), entendiendo dicha propaganda computacional: "Como la concurrencia de redes sociales, agentes autónomos de la IA y el tratamiento del Big Data, cuyo objetivo es

la manipulación de la opinión pública" (Petit, 2018: 6).

Todo ello a través del *microtargeting*, que será una operación microscópica directa al individuo. Una cirugía perfecta y exacta al pensamiento de la persona, que se obtuvo gracias a sus navegaciones por la red. He aquí el efecto burbuja es ama y señora del pensar y obrar del individuo y, por ende, de los individuos, "cuando en Facebook un usuario efectúa una acción tan aparentemente inocente o neutral como la aprobación de un contenido, la "manita con el dedo pulgar hacia arriba, que indica que me gusta" esos datos se pueden recoger con gran facilidad y de forma automatizada para elaborar psicometrías" (González de la Garza, 2018: 281-282). Del mismo modo, podemos estar charlando con sockpuppet o un troll sin darnos cuenta (Gorwa y Guilbeault, 2018). La dictadura de las plataformas es una dictadura que incluso se puede adelantar a lo que pensamos a través de cruce de algoritmos.

> *Desse modo, as plataformas das redes e mídias sociais como o Twitter, e as práticas que elas favorecem, também são componentes do dispositivo de vigilância - um conjunto que, além de textos, discursos, protocolos de rede, imagens, vídeos, tecnologias, empresas e leis, inclui agentes não humanos como os algoritmos dos buscadores que indexam as páginas na web, os sistemas de recomendação das mídias sociais, os cookies que acompanham e rastreiam a trilha de dados deixada pelos internautas e, também, robôs de conversação como Tay* (Vale, 2016: 40-41).

Iniciativas comunitarias para acabar -no regularizar- con las noticias falsas en líneas y la manipulación que existen detrás de ellas, han sido tomadas, por ejemplo, por Unión Europea, donde se propone:

> Mejorar la transparencia de las noticias online, promover la alfabetización mediática e informativa, desarrollar herramientas para empoderar a usuarios y periodistas, salvaguardar la diversidad y la sostenibilidad del ecosistema de los medios de comunicación europeos y promover la investigación continua sobre el impacto de la desinformación en Europa (Aba-Catoria, 2020: 136).

Para el caso de América Latina, al encontrarnos en un Feudalismo Digital (Ávila, 2018), el pasar de una colonización a otra ya es un acto que pareciera imposible de sacudir. En resumen, si bien Cambridge Analytica dejo de existir, *"já existiam e ainda persistem indícios de novas empresas de análise comportamental eleitoral no mundo"* (Fornasier y Beck, 2020: 189), que tendrán a personas o instituciones/organizaciones dispuestas a comprar esos mecanismos de manipulación electoral, donde:

> La posibilidad de los operadores de Internet de procesar la información de sus usuarios y crear perfiles muy precisos de los mismos, además de predecir sus preferencias e incluso dirigirse a ellos con datos y publicidad individualizados, consiguen promover o desalentar determinadas conductas, entre las que se encuentra la decisión de voto (Arena, 2019: 350).

E incluso, pasado el período electoral, influir "en el proceso de formación de la voluntad de los ciudadanos" (Arenas, 2019: 350), donde además se "pueden utilizar los avances tecnológicos de forma permanente en su función de formación de la opinión pública" (Arenas, 2019: 350). Debemos estar conscientes que, en la actualidad, podemos estar conversando un tema sin darnos cuenta de que, quien se encuentra al otro lado de la pantalla, no es otro ser humano, sino un bot que es capaz incluso de contestar en forma irracional:

> *This ability to carry on conversations at length is what makes the technology behind XiaoIce —and Tay— different from previous chat bots. Like earlier chat bots Eliza and Parry, XiaoIce and Tay use strategies of deflection and indignation when faced with difficult-to-answer questions. But unlike those bots, XiaoIce and Tay have intentionally built-in "human" conversational qualities such as unpredictability and irrationality. XiaoIce offers resistance to her conversation partner at several junctures, has clear opinions, and is often capricious* (Neff y Nagy, 2016: 4920)

Tay es un caso muy especial de analizar. Desarrollado por Microsoft en 2016, tuvo que ser desactivado al poco tiempo debido a que "aprendió" a insultar y proferir frases discriminatorias contra los usuarios, las cuales las fue adaptando a "su cerebro" gracias a su interacción con los usuarios de Twitter. Lograr en la actualidad ir descubriendo bots se hace cada vez más difícil, a medida que las tecnologías se van desarrollando a una alta velocidad (Murthy *et al.*, 2016). Los bots, en este sentido, han hecho una excelente tarea en los planos de la política y el comercio y las finanzas.

Conclusiones

Cuando George Orwell escribe su obra distópica 1984 criticaba el sistema totalitario en los países comunistas. Un Estado fuerte, omnipresente, capaz de controlar hasta las acciones más íntimas de los ciudadanos. Enfrente estaba el sistema capitalista, la economía de mercado que ofrecía como valor esencial la libertad de los individuos para llegar a donde quisieran llegar, libres del poder del estado, libertad de expresión, libertad de empresa, libertad, por encima de todo lo demás.

Con el avance de las tecnologías de la información y la irrupción de la Inteligencia Artificial como una realidad cotidiana, el futuro ha llegado y estamos viviendo esa sociedad distópica que fue tan novelada en el siglo XX, y que es capaz desestabilizar a Estados (Rosenbach y Mansted, 2018) y de estar en una frágil línea de traspaso para la violación de la privacidad (Boehme-Neßbler, 2016).

El ser humano en su libertad ha avanzado hacia un sistema totalitario que lo controla todo. Con una enorme ventaja, el poder es invisible, no hay enemigo a vencer, no existe un Estado malvado a quién derribar. La falta

de un enemigo común y la continua propaganda a favor del individualismo exacerbado ha llevado a la atomización de la sociedad en esta nueva etapa de la neurocracia. Esta nueva realidad exige a los estudiosos de las humanidades y las ciencias sociales adoptar nuevas fórmulas para el análisis, la dicotomía simplista de buenos o malos ya no resuelve las interrogantes planteadas a lo largo de este trabajo, exige avanzar hacia un modelo de estudios que Reig (2020) denomina Enfoque Estructural Complejo (EEC), siguiendo los planteamientos de pensamiento complejo de Edgar Morin (1998).

En esta etapa de la evolución humana, los planteamientos básicos de las humanidades y las ciencias sociales tendrán que abrir su perspectiva a otras ciencias, las matemáticas, la física y la biología, fundamentalmente, para comprender el comportamiento de los individuos como seres que funcionan en masa y se manipulan a través de algoritmos programados con determinada finalidad. La neurocracia es la etapa más reciente de la sociedad de la información, como se decía en el siglo XX, la información es poder, pero no imaginábamos hasta qué punto llegaría este poder al tener el control de los datos.

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Online mediation due to the quarantine caused by COVID-19 Pandemic

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Abstract

The institute of mediation is becoming increasingly popular. This is due to several factors, including the possibility to save on attorneys' fees and court costs. Mediation also helps to save a lot of time and find a solution to the conflict that would satisfy both parties as quickly as possible. During the pandemic, the institution of mediation, like many other spheres of public life, moved online. The mediation process itself involves individuals who use online communication or even artificial intelligence, such as chatbots. Thus, in connection with the transition of mediation to the online plane, there is a need for legal support for the use of innovative technologies in the field of mediation. Thus, the article is relevant and timely in terms of quarantine restrictions. The object of research is public relations in the field of online mediation. The authors of the article used general and special research methods. The authors of the article concluded that online mediation is a useful institution, but the implementation of appropriate procedures must take care to protect private information, as there is no full control over the situation outside the camera of a computer, tablet, phone, or other device with access on the Internet.

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Mediación online en la cuarentena provocada por la pandemia COVID-19

Resumen

El instituto de mediación es cada vez más popular. Esto se debe a varios factores, incluyendo la posibilidad de ahorrar en honorarios de abogados y costos judiciales. La mediación ayuda a ahorrar tiempo y a encontrar una solución al conflicto que satisfaga a ambas partes. Durante la pandemia, la institución de la mediación, como muchas, se desarrolló en la web. El proceso de mediación en sí involucra a individuos que utilizan la comunicación en línea o incluso la inteligencia artificial, como chatbots. Así, en relación con la transición de la mediación al plan online, es necesario un apoyo jurídico para el uso de tecnologías innovadoras en el ámbito de la mediación. Por lo tanto, el artículo es relevante en términos de restricciones de cuarentena. El objeto de la investigación es el estudio de las relaciones públicas en el campo de la mediación en línea. Los autores utilizaron métodos de investigación generales y especiales. Se concluye que la mediación en línea es una institución útil, pero la implementación de procedimientos apropiados debe tener cuidado de proteger la información privada, ya que no hay un control total sobre la situación fuera del ordenador, tableta, teléfono u otro dispositivo con acceso a Internet.

Palabras clave: resolución alternativa de disputas; mediación en línea; procedimiento pacífico de resolución de disputas; tecnología de la información; mediador.

Introduction

According to the analysis of the duration of civil disputes by the courts of Ukraine, the average duration of a case lasts a year (The Supreme Court of Ukraine, 2019). Through mediation, the term does not exceed 4 months. One of the best international examples of the use of mediation in the 20th century is the resolution of the Egyptian-Israeli conflict over the ownership of the Sinai Peninsula in 1978. Israel's main interest was to maintain its security, as revealed in the mediation process. For Egypt, on the other hand, there was the preservation of historic territories. After the application of the tool, the peninsula remained a neutral territory (Kriesberg, 2001).

Mediation is an alternative out-of-court dispute resolution with a high level of efficiency, reaching 90% worldwide. The quarantine caused by the COVID-19 pandemic has facilitated the peaceful settlement of disputes through mediation. Quarantine measures forced mediators to provide their services online. Online mediation is transforming alternative dispute resolution methods.

It should be stated, that according to the part 5 of Art. 55 of the Constitution of Ukraine (1996), everyone has the right by any means not prohibited by law to protect their rights and freedoms from violations and unlawful encroachments. For today, according to the Concept of Improving the Judiciary for the Establishment of a Fair Court in Ukraine (2006), one of the tasks of the concept is to create opportunities for the development of alternative (out-of-court) ways of resolving disputes.

At the legislative level, the concept of "mediation" is enshrined in the Regulations on free primary legal aid in the Administration of the State Service for Special Communications and Information Protection of Ukraine, approved by the order of the Administration of the State Service for Special Communications and Information Protection of Ukraine from May 4, 2016, No. 320, and means the activities of professional mediators who direct the parties to a legal dispute to compromise and settle the dispute independently by the participants themselves. It should be noted that Ukraine is moving towards the harmonization of its legislation with the legal framework and the recommended EU standards (Pavlova, *et al.,* 2020).

That is, in the legislation of Ukraine there is a definition of the concept of mediation, and the grounds for resolving the dispute are different from those provided for in Art. 432 of the Civil Code of Ukraine (2003), however, insufficient attention is paid to the use of online mediation and the use of information technology, and therefore there is an urgent need to investigate this issue in more detail. The article examines the introduction of online mediation at governmental level, the promotion of this method of resolving disputes in various spheres of public life, as well as the problems faced by mediators in carrying out their activities around the world.

1. Methodology of the study

To study the features of the use of information technology in mediation and the use of online mediation, the following research methods were used: dialectical method, method of generalization, comparison, logical methods, modeling method, and method of abstraction.

Thus, firstly, thanks to the dialectical method, the institute of mediation was analyzed during its development, as well as to investigate how this institute developed in resolving disputes in the field in various

fields. Moreover, the generalization method brought together the general theoretical aspects of the use of mediation in Ukraine and the world and the problematic aspects faced by the parties during this process. Further, the method of comparison made it possible to compare online mediation in resolving disputes in Ukraine and abroad, highlight the features and draw attention to the positive experience of foreign countries in the use of online mediation in resolving disputes.

It should be noted that the method of analysis allowed to single out general theoretical aspects and problematic issues of application of online technologies in resolving disputes through mediation. Thus, the public relations that arise during the settlement of disputes through mediation, Ukrainian legislation, and draft laws on the subject, the case-law of Ukraine, as well as the international experience of using online mediation in dispute resolution were analyzed. This allowed us to conduct a comprehensive study and achieve the goal of the article.

The synthesis method was used to study certain aspects of the relationship that arise, change, and end during the resolution of disputes through online mediation and then combine them into a single whole. Using logical methods, conclusions were drawn on the problematic issues of mediation in resolving disputes in various areas of law and clarified with the help of general problems inherent in mediation as an institution, the problem of using mediation in resolving disputes in intellectual property.

The method of analogy allowed to analyze alternative dispute resolution and the place of online mediation, as well as the use of mediation in different areas of law, in order to understand the difficulties that arise in the same conditions when resolving disputes using a mediator. The modeling method allows simulating disputes that would be appropriate in Ukraine to resolve with the help of a mediator and to draw conclusions about what is necessary for the successful implementation of the mediation procedure in Ukraine.

Using the method of abstraction, mediation was studied as an institution of alternative dispute resolution without taking into account the Ukrainian conditions of its operation. When writing the article, the following regulations were analyzed: The Constitution of Ukraine (1996); Civil Code of Ukraine (2003); Draft Law "On Mediation" (2020); The concept of improving the judiciary to establish a fair court in Ukraine following European standards (2006), and; Regulations on the provision of free primary legal aid in the Administration of the State Service for Special Communications and Information Protection of Ukraine (2016).

2. Analysis of recent research

The following researchers studied the topic of using information technologies during mediation: Sidoryshyna (2019), Markov (2014), Moroz (2020), Romanadze (2020), Polishchuk (2020), Mykhailenko (2019), Kossak and Yakubovsky (2007), Logvinenko (2019), Motuzka and Samelyuk (n.d.), Ostrovska and Finko (2018), and Starovoitova (2020).

Thus, Sidoryshyna (2019) considered mediation as a new feature of communication in her article. She reviewed the basic techniques of mediation, highlighted the differences between mediation and negotiation, and analyzed the consolidation of mediation at the legislative level. In addition, the article emphasizes the positive experience abroad. The scientist came to the conclusion that even today (without the current law) mediation in Ukraine is often used as a way to reconcile the victim and the offender, to protect consumer rights, to resolve labor and family disputes.

Moreover, Moroz (2020) studied the peculiarities of the use of mediation in resolving disputes between participants in a legal entity. The scholar emphasizes that the use of alternative dispute resolution methods is associated with the imperfection and inefficiency of the national judicial system. Besides, the article discusses in detail the concept of mediation, the principles on which it is based, the benefits of mediation. Particular attention is paid to the person of the mediator and the mediation agreement.

Further, Romanadze (2020) carefully analyzed online mediation between business entities, namely, drew attention to additional challenges for the parties and the mediator. In addition, Markov researched sports mediation and its prospects. Polishchuk (2020) analyzed in detail the use of Zoom, and online platforms in general, for online mediation. Also, Mykhailenko (2019) studied the peculiarities of the mediation online or by phone, its advantages, and disadvantages.

The book of Kossak and Yakubovsky (2007) became the basis for the study of intellectual property law. Thus, the authors have developed definitions of intellectual property rights, including the objects of intellectual property rights, which are most often disputed, which allowed a comprehensive and comprehensive study of dispute resolution in the field of intellectual property. Logvinenko (2019) analyzed the peculiarities of the gradual implementation of mediation in the field of intellectual property and drew attention to its peculiarities in Ukraine. The author's work helped to draw comprehensive conclusions about the peculiarities of the introduction of mediation in Ukraine.

Also, Motuzka and Samelyuk (n.d.) analyzed extrajudicial methods of resolving disputes in the field of intellectual property. Ostrovska and Finko (2018) considered mediation in 2 aspects, namely as an alternative way of resolving conflicts and as a consulting service. In turn, Starovoitova (2020)

explored in which areas of intellectual property mediation is most effective. Unfortunately, the issue of online mediation has not been sufficiently studied in the literature, so there is an urgent need to conduct research on the use of information technology in mediation.

3. Results and discussion: general provisions on mediation

The institute of mediation is part of civil and civil procedure legislation. At the same time, it should be remembered that civil law contains the vast majority of dispositive rules. This is a system of legal norms that gently affect the participants in public relations, giving the latter the right to independently choose the most acceptable option for streamlining the relationship between them (Tkalych, *et al.,* 2020).

Basic principles of mediation: voluntariness, confidentiality, the neutrality of the mediator, responsibility of the parties, mutual respect and equality of the parties, openness of the result. Conflict from the point of view of mediators is an opportunity to see the crisis situation from the other side. Statistics in the world show that 85% of conflicts are resolved through a mediation tool and only 15% – when they go to court. As long as the parties are left with negative and conflicting emotions, the mediation process cannot end.

First of all, we will provide a brief overview of the key points related to the mediation process. For ease of perception of the main theses, they are combined in Table 1.

When considering a dispute, the mediator cannot:	• Be a representative of either party. • Provide legal, consulting and any other assistance to either party. • Carry out the activities of a mediator during the mediation procedure to be personally interested in its results, including with a person if he is in a family relationship with one of the parties, and; • Make public statements without the consent of the parties.

According to a 2018 survey, 90% of commercial dispute resolution was achieved through mediation. In this case, the tool itself is best used if:	• There is a need or intention to continue the relationship on both sides. • There is a need to reduce time and effort, and; • There is some information that is confidential and cannot be disclosed to the other party.
However, there are situation when mediation method is not the suitable one. Thus, it is better not to use the method:	1. If the situation is a crisis, and; 2. When a court decision is required.
Finally, considering the mediation process, the mediator usually works with questions on:	• Identification of interests. • Solutions. • Criteria, and; • Alternatives.

Table 1. The key points on mediation process (by authors).

Thus, the rules of law governing the mediation procedure are mostly dispositive. For example the parties to the conflict have the right to independently regulate certain issues of mediation. However, imperative rules of law should establish the status, rights and responsibilities of the mediator or regulate the protection of confidential information.

3.1 Online dispute resolution procedures in foreign countries

Mediation is a legal phenomenon that has emerged relatively recently in the United States. However, due to the processes of globalization, the institution of mediation quickly gained popularity in most countries. With regard to the wider context of the development of world processes, it is thanks to globalization, as a deliberate policy of the developed countries of the world, aimed at the gradual integration of economic, political, socio-cultural and other systems, that any person can satisfy his needs in any sphere (Shyshka and Tkalych, 2020).

Consider the foreign experience of using online mediation (Table 2):

Country	The method of settlement
USA	Online dispute resolution procedures have been in use in the United States since 1996 and have become widespread in the settlement of domain name disputes. The most striking example is the Uniform Domain Name Dispute Resolution Policy, (UDRP), developed by ICANN. UDRP is a transparent global online dispute resolution process that allows trademark owners to effectively combat cybersquatting. UDRP is used to resolve disputes between trademark owners and those who have registered a domain name for fraudulent purposes (for the purpose of reselling or illegally using the trademark reputation). In addition, a single Uniform Mediation Act came into force in the United States in 2001, bringing together 2,500 different laws governing mediation procedures in different states.
European Union	The European Commission has developed the European Small Claims Procedure (ESCP), which has been in force for all members of the European Union since January 2009. This procedure is intended for resolving cross-border disputes in which the amount of the claim does not exceed 2000 Euros. According to the ESCP, settlements are made in writing using information and telecommunications technologies (e-mail, videoconferencing, etc.). The provisions of the ESCP are advisory rather than directive, and the EU Member States develop their own legal rules for online dispute resolution. However, the ESCP provides a vector that will facilitate the introduction of online litigation, as well as increase overall confidence in alternative dispute resolution.
Asia	In India, online dispute resolution procedures are in their infancy, but their use is gradually gaining popularity. With the enactment of the Information Technology, E-Commerce, and E-Government Technologies Act in 2000, India has acquired a legal basis. Arbitration law has been amended, and now the Indian Arbitration Act of 1996 is harmonized with the standards of the UNCITRAL model, and the Code of Civil Procedure of 1908 has been modified to introduce alternative dispute resolution procedures.
Russian Federation	In Russia, online mediation is in its infancy, the situation is quite similar as in Ukraine. Today, only a small number of companies provide such a service.

Table 2. Foreign experience of using online mediation (by authors).

Thus, the institution of mediation is developing rapidly in all regions of the world. At the same time, it reached it peak in the developed countries of the West. However, in other regions, mediation is also gradually becoming in demand.

3.2 Virtual mediation today

Now, let's look at what online mediation is in more detail. Online dispute resolution is a set of methods for resolving disputes (conflicts) using Internet technologies.

Online dispute resolution can be used to resolve a wide range of issues, from interpersonal disputes, including consumer disputes, to interstate conflicts. Online mediation has great potential for resolving conflicts in the field of e-commerce.

A virtual mediation is a process by which the parties can resolve business and any other disputes online without the need for personal presence. Meetings are conducted through video or teleconferences, and any form of filing is facilitated through an encrypted cloud platform available via the Internet.

As for software for online mediation procedures, the leading provider of software solutions for online dispute resolution procedures to date has been the American company SquareTrade, which in 2000 launched its first online service for resolving conflicts between e-commerce market participants. The first client of this company was the eBay auction, and later Amazon.com, Crutchfield, eCost, Buy.com, Woot, Vanns, Abt, etc. Other developers are entering the market, including Qualtrust.

The use of Zoom is also common. Thus, Zoom (an American platform for remote conferencing services) is not a purely legal platform and was designed to facilitate access to hearings. However, there are ways to ensure security. The mediator can select settings that require a password. Moreover, once all the expected parties have joined, the mediator can "block" the meeting so that no additional parties can join.

Dispute resolution through online mediation is very similar to regular mediation. The parties may choose a joint meeting at which introductory statements are made. The mediator then invites the participants to the discussion room. As a rule, in complex commercial disputes, the parties may provide additional evidence or important documents in support of their position. Like the classic type of alternative dispute resolution, online mediation involves both short-term and long-term dispute resolution periods. Also, in some cases, online mediation helps reduce overall tensions and bring the parties closer to solving the problem. If an agreement is reached, the parties can prepare a draft and exchange signatures through Docusign, "DIA" (Ukrainian service), or similar programs. Everything can be done online. In the future, this option may replace mediation in its classic form.

Besides, it is worth noting that online mediation is used successfully in the field of sports law. Sport is a special area of public relations. Modern

sport is a complex system consisting of many levels, one of the main of which and the most dynamically developing is commercial sport (Kharytonov *et al.*, 2021). However, currently, the legal support for professional sports remains at a very low level (Tkalych, *et al.,* 2019). Thus, the mediation procedure gives the athlete obvious advantages: efficiency (agreements reached voluntarily, usually performed according to the laws of conscience and honor), confidentiality (secret "agreements" of the athlete do not apply to the general public), equality (mediation takes into account fair equality, hence the protection of the interests of the weak side in the dilemma of "athlete-federation" and other benefits for athletes.

Thus, the pandemic has affected the work of the courts, which are also taking measures to protect court visitors, judges, and court staff from the spread of the virus. The increase in the number of disputes between business entities due to improper fulfillment of obligations and certain restrictions on the access of citizens to the courts due to the quarantine, lead to an increase in demand for the use of out-of-court online methods of conflict resolution. Thus, online mediation is becoming increasingly popular among businesses, which can be successfully carried out in quarantine. However, any remote mediation is an additional challenge and responsibility for the mediator and the parties to the mediation.

Conclusions

Therefore, the regulation and application of online mediation in Ukraine are a rather difficult, but quite real procedure.

First, to conduct such mediation, in addition to the mediaability of the case and the intention of the parties to resolve the dispute through mediation, the participants must have the technical ability to participate in meetings via the Internet – a computer, smartphone, or another gadget, the Internet speed enough for quality communication and minimal knowledge to download the necessary program and connect to online meetings.

Secondly, the mediator has an additional burden and responsibility. The mediator needs:

- talk to the parties about more aspects related to the specifics of online mediation.
- solve more organizational issues (assessment of the realism of online mediation, determination of a convenient platform for online meetings, technical support of the parties for downloading and using the online platform (if necessary), organization of visualization, etc.).
- hold preliminary technical meetings with the parties to test the quality of communication.

- keep in focus more issues (in particular, to ensure the technical and psychological comfort of the parties to mediation).

Third, the key to the success of mediation is the trust of the parties – trust in the procedure, the trust of the parties to each other, and trust in the mediator. In online mediation, the issue of establishing trust requires the special attention of the mediator and additional time. Mediation is a voluntary procedure, and no person can be forced to participate in mediation. Only the presence of trust can determine the party's consent to participate in mediation.

The issue of maintaining confidentiality also needs special attention in online mediation. The mediator (as well as the parties) cannot be sure that there are no persons who are not participants in the mediation. It is not possible to make sure that participants do not record audio or video or broadcast the meeting online. The issue is resolved by emphasizing the parties 'additional attention to the importance of maintaining confidentiality, open discussion of probable risks, and the parties' trust in each other.

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7. Las citas bibliográficas incluidas en el texto se deben realizar por apellidos del autor y año de la obra, por ejemplo: (Contreras Portillo, 2005). Cuando la cita es textual se coloca entre comillas, y debe aparecer los apellidos del autor, año de la obra y número de página, por ejemplo: (Contreras Portillo, 2005: 56); en caso de varios autores, se colocan los apellidos del primer autor que aparece en el texto a citar y se agrega la expresión et al, por ejemplo: (Contreras Portillo et al, 2005: 24). Si la cita está constituida por varias páginas continuas deben separarse por un guión, por ejemplo: (Contreras Portillo, 2005: 54-55), cuando la cita es de páginas aisladas, no continuas, deben separarse por una coma, por ejemplo: (Contreras Portillo, 2005: 56, 58, 60). Si existen varias citas de un mismo autor publicadas en el mismo año, se distinguen con letras, por ejemplo: (Contreras Portillo, 2005a) y (Contreras Portillo, 2005b). Cuando se trate de citas de jurisprudencias, se coloca el órgano emisor, fecha de la decisión, fuente, año y página, por ejemplo: (Tribunal Supremo de Justicia, Sala Constitucional: 6-11-2001, en Pierre Tapia, 2001: 55). En caso de citas de textos normativos, se coloca el nombre del texto normativo, año y artículo, por ejemplo: (Constitución de la República Bolivariana de Venezuela, 1999: artículo 49). Las citas de internet deben contener los apellidos del autor, página web y año de la publicación, por ejemplo: (Contreras Portillo, en: www.luz.edu.ve, 2008). Las citas textuales de más de 40 palabras serán incluidas en un párrafo aparte, en bloque, y a un solo espacio. Las citas de citas deben ser utilizadas en casos estrictamente necesarios, colocando los apellidos del autor comentado, luego la expresión citado por, los apellidos del autor de la obra, año y página, por ejemplo: (Contreras Portillo, citado por: Chirinos Medina, 2009: 54).
8. Las referencias bibliográficas están constituidas por los textos citados contextual o textualmente en el trabajo, deben aparecer al final del mismo con los datos completos de los autores citados en el contenido, y escribirse a un (1) espacio y (2) dos espacios entre cada una:

- Se debe disponer en orden alfabético, atendiendo al primer apellido del autor citado. Se deben seguir las normas del sistema Harvard, así: apellidos del autor en mayúsculas (coma); nombre (punto); año de publicación (sin paréntesis)(punto); título del libro, o, de ser el caso, del capítulo de libro, artículo de la revista o artículo de periódico seguido de la palabra "En" para luego colocar el nombre del libro, de la revista o del periódico (punto); editorial (punto); lugar de la publicación (punto); en caso de tratarse de un capítulo de libro, artículo de revista o artículo de periódico debe señalarse las páginas que comprenden el artículo, por ejemplo: Pp. 250-275.
- Si se hace referencia a más de un trabajo del mismo autor, pero publicados en años diferentes, se ordenará la lista cronológicamente, es decir, en forma descendente, comenzando por el año de la última de las obras publicadas.
- Si dos (2) o más trabajos de un mismo autor tienen el mismo año de publicación se añadirá a éste un código alfabético (a, b, c,…), se ordenarán entre sí tomando en cuenta la primera letra del título de la obra y siguiendo dicho código, por ejemplo 1995a, 1995b, 1995c.
- En caso de existir varios autores de la misma obra deben colocarse los apellidos y nombres de todos, separados con punto y coma.
- En caso de referencias de jurisprudencias se colocará de la siguiente manera: órgano que emitió la decisión (punto), fecha completa (punto), caso tratado (punto), fuente (punto), lugar (punto), editorial (en caso de tenerla) (punto) y páginas.
- Las referencias de los textos normativos serán de la siguiente manera: órgano emisor (punto), año de publicación (sin paréntesis) (punto), título de la norma (punto), lugar (punto), número del órgano divulgativo (punto) y fecha.
- Las referencias tomadas de Internet deben contener los apellidos y nombre del autor (punto), año de publicación (sin paréntesis) (punto), título de la obra (punto); la palabra "En" seguida de la página web (punto); día, mes y año en que se efectuó la consulta.

9. Enviar original debidamente identificado, más tres (3) copias sin identificación alguna y un CD contentivo del trabajo y transcrito en procesador de palabra Word. El disquete debe estar etiquetado identificando al (los) autor (es) y el título del trabajo. El trabajo se

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10. Los trabajos serán considerados por el comité editor de la Revista y serán sometidos a una revisión exhaustiva por parte de un comité de árbitros, seleccionado a fin de mantener un elevado nivel académico y científico. La evaluación será realizada de acuerdo a los siguientes criterios: identificación del manuscrito; correspondencia del título con el contenido del manuscrito, así como la correcta sintaxis de los mismos; la importancia del tema estudiado, esto es su pertinencia social, académica científica; originalidad y relevancia de la discusión; medida del impacto de los planteamientos en el trabajo; diseño y metodología; valoración de la arquitectura del artículo conforme a los criterios de presentación, tanto formal como metodológicos; organización interna, claridad y coherencia del discurso que facilite su lectura; calidad del resumen, el cual debe dar cuenta de manera sintética del contenido del mismo; actualidad y relevancia de las fuentes bibliográficas.

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